BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of: GRACIELA GOMEZ, Respondent.	NO. 02-050 BRIEF ADJUDICATIVE HEARING AMENDED INITIAL ORDER

I. APPLICABLE PROCEDURAL ISSUES

1.1 On April 9, 2004, the Executive Ethics Board (Board) found reasonable cause to believe that Graciela Gomez may have violated RCW 42.52.070 when she used materials and resources available to her as a state employee such as DSHS letterhead and a DSHS fax machine to correspond with law enforcement in a manner that implied that her personal complaint was related to official agency business or concerns.

1.2 On April 22, 2004, the Executive Director provided notice by first class and by certified mail that the Board had scheduled this matter for a Brief Adjudicative Hearing on June 7, 2004.

1.3 On June 7, 2004, Board Presiding Officer, Marilee Scarbrough, conducted a brief adjudicative hearing in this matter. The Respondent, Graciela Gomez, appeared personally, and Brian Malarky, Executive Director, appeared and presented this matter on behalf of the Board staff.

1.4 The Board Presiding Officer having heard arguments, considered the records and files herein, including:

a. Washington State Executive Ethics Board complaint received by the Board on October 10, 2002.

b. September 25, 2002 DSHS official fax cover page with DSHS letterhead and accompanying personal complaint directed to WSP, Captain David Karnitz and Sergeant Tom Foster from Gracie Gomez regarding a 9/22/02 incident report of a personal nature.

c. September 27, 2002 DSHS official fax cover page with DSHS letterhead and accompanying Request for Public Records directed to the Washington State Patrol from Gracie Gomez.

d. April 9, 2004 Preliminary Investigation and Board Determination.

e. April 22, 2004 Brief Adjudicative Hearing Notice.

f. June 4, 2004 Declaration of Investigative Time.

g. Declaration of Thomas Foster dated June 2, 2004.

h. Declaration of Robert Perales dated June 3, 2004.

i. Human Resource Development Information System dated June 20, 2003 listing training taken by Graciela Gomez; including Ethics Briefing taken on October 20, 1999.

j. Employee Development and Performance Plan for the period of August 2002 through August 2003 for Graciela Gomez.

II. FINDINGS OF FACT

2.1 The Board received the above-referenced complaint on October 10, 2002 alleging that Graciela Gomez, an employee of the Department of Social and Health Services (DSHS) faxed a letter of complaint to the Washington State Patrol Office in Union Gap using State of Washington letterhead as a cover page. The complaint involved a personal incident that did not relate in any way to her official capacity with the State of Washington. The same letter, including the state letterhead cover page was faxed to the Granger Police Department, according to the address line it may also have been sent to the Yakima County Sheriff's Office. Ms. Gomez also sent another fax to the WSP Union Gap office requesting public disclosure, again utilizing state letterhead as a cover page.

2.2 Ms. Gomez' use of a state fax machine and state letterhead provided by her employer to communicate regarding a personal matter was not within the performance of her official duties, and her access to these resources is available to her by virtue of her employment with DSHS.

2.3 Ms. Gomez believed that her use of the computer was not in violation of rules or standards, nor does it indicate she was acting on behalf of the state.

2.4 Ms. Gomez views her use of DSHS fax and letterhead as de minimis.

2.5 Ms. Gomez attended four-hour ethics training in October 1999.

2.6 Ms. Gomez submits that she is a long term employee who has received excellent ratings from her supervisors.

III. APPLICABLE LAW

3.1. While the Ethics in Public Service Act allows limited and occasional personal use of state resources, state employees are prohibited from using their position including state resources available to them on the basis of that position to secure special privileges. State employees are prohibited from using their position to secure special privileges. RCW 42.52.070 states:

> Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons.

3.2. The Board has decided cases involving state employee use of position. EEB Case No. 01-049 involved a violation of RCW 42.52.070 when a state employee used her state title on documents of a personal nature. The Board has also decided cases involving personal use of a state fax machine. In EEB Case No. 00-036, the Board held that an employee violated

RCW 42.52.160 when the employee used a state fax machine to fax documentation regarding a personal lawsuit.

IV. CONCLUSIONS OF LAW

4.1 Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Graciela Gomez and over the subject matter of this complaint.

4.2 Ms. Gomez violated RCW 42.52.070 when she used materials available to her as a state employee such as DSHS letterhead and a DSHS fax machine to correspond with law enforcement in a manner that implied that her complaint was related to official agency business or concerns. Ms. Gomez used a state fax machine and DSHS cover page that indicated that the document was being sent from a state agency, to send documents to Washington State Patrol and other law enforcement agencies for a personal purpose. The use of the state fax machine in this manner was initially interpreted to imply that DSHS was involved in her personal action.

V. AGGRAVATING & MITIGATING FACTORS

5.1 In determining the appropriateness of the civil penalty, the criteria in WAC 292-120-030 has been reviewed. In the case at hand, there are no aggravating factors.

5.2 It is a mitigating factor that Ms. Gomez did not intend to violate the law and in fact believed her actions did not violate the law.

VI. ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, I hereby find that Graciela Gomez has violated RCW 42.52.070. Ms. Gomez is ordered to pay a civil penalty in the amount of one hundred dollars ($100.00) and investigative costs in the amount of seventy-five dollars ($75.00). Pursuant to RCW 42.52.480(1)(c), payment owed on the civil penalty shall be reduced by the amount of investigative costs paid, thus, the total amount owed is one hundred dollars ($100.00), which is due and payable to the state Executive Ethics Board within forty-

five (45) days of the date of this order. It is further ordered that it be recommended to the Department of Social & Health Services that Ms. Gomez be required to complete the Executive Ethics Board's half-day ethics training within six months of the date of this order.

DATED this 7th day of July 2004.

Debbie Odell on behalf of
MARILEE SCARBROUGH
Presiding Officer

REQUEST FOR REVIEW

In accordance with WAC 292-100-200, the respondent or the Board staff may request a review of this initial order. WAC 292-100-200 provides that:

(1) The board shall conduct a review of the initial order upon the written or oral request of a party if the board receives the request within twenty days after the service of the initial order.

(2) If the parties have not requested review, the board may conduct a review of the initial order upon its own motion and without notice to the parties, but it may not take any action on review less favorable to any party than the original order without giving that party notice and an opportunity to explain that party's view of the matter.

(3) The order on review shall be in writing stating the findings made, and the reasons for the decision, and notice that judicial review is available. The order on review shall be entered within twenty-one days after the date of the initial order or of the request for review, whichever is later.