State of Iowa

Annual Report of the Citizens' Aide/Ombudsman

2012

This annual report about the exercise of the Citizens' Aide/Ombudsman functions during the 2012 calendar year is submitted to the Iowa General Assembly and the Governor pursuant to Iowa Code section 2C.18.

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Ombudsman's Message

Ruth H. Cooperrider
Iowa Ombudsman

For me and my staff, 2012 will be remembered as a year of multiple challenges to our authority. I have worked in the Office of Citizens' Aide/Ombudsman for more than 22 years, serving as Legal Counsel for the office, then Deputy Ombudsman, then as the Ombudsman. During those years, the office has periodically encountered legal challenges to our authority. The issues have usually concerned the manner in which we conduct our investigations and the extent that we have access to information in the possession of an agency that is relevant to our investigations.

Challenges to Ombudsman's Investigative Authority

Most of the challenges concern our ability to obtain information we believe is necessary to an investigation. These can delay progress on a case while we try to work it out with the agency involved or hinder our ability to complete work on a case. If the issue is one that I believe will significantly impact our ability to perform our duties, I may choose to pursue litigation.

Litigation Against the Department of Corrections (Mental Process Privilege Claim)

One issue that we litigated was resolved with an Iowa Supreme Court opinion in December. The case concerned our ability to question under oath an administrative law judge (ALJ) working for the Department of Corrections about the basis for her ruling on an inmate's discipline. The Iowa Supreme Court found the mental process privilege applies to administrative law judges in an Ombudsman investigation but concluded we had provided a sufficient showing of improper conduct to overcome that claim by the ALJ. (See article about the lawsuit on page 5.)

Closed Session Records

The issue causing me the most concern is our office's ability to have access to records of closed meetings held by government bodies. In the past, our office has been able to obtain closed session records from various government bodies, including cities, counties, school boards, and a state agency. In 2012 the Attorney General's Office, in its representation of two professional licensing boards, denied us access to their closed meeting records. The Attorney General contends that Iowa Code section 21.5(4) of the Open Meetings Law prevents our office from examining the minutes or audio recording of a closed meeting without a court order specifically granting us access to those records. I disagree and believe that our statutory power to review confidential records necessary to an investigation gives us access to the sealed session records and that the court order requirement only applies to access by the public.

Now that the Attorney General has taken a firm public stance against our office's access, I am worried more government bodies will now deny us access to their closed session records. That is very unfortunate for the citizens of Iowa, because our office is the one entity that has been given responsibility to independently review actions by government bodies. This includes authority to investigate agency actions or decisions that may be contrary to law or regulation, unreasonable, arbitrary, or based on improper motivation or irrelevant consideration. If we do not have oversight when these agencies enter into and conduct business in closed sessions, who will?

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It is important to know that our office only requests access to closed session records if they are necessary to our investigation. In the one investigation that resulted in a public critical report in 2012, we were able to review closed session records to determine if a school board's disciplinary action was based on improper motivation. (See article about the public report on page 6.) Without that access, we would not have been able to make complete and accurate findings.

More importantly, we are required by law to maintain the confidentiality of the closed session records. Consequently, we will not be disclosing information from those records to anyone outside of the agency. At most, we would inform a complainant to our office whether or not we substantiated a complaint and whether we shared concerns or recommendations to the agency. This protects the agency's need for confidentiality.

The Attorney General's Office has also argued that our access will have a chilling effect on government bodies deliberating or discussing matters freely. We believe that is speculative and no proof has been shown of that occurring in instances when we have been allowed access. If a government body is functioning properly during closed sessions, what is there to hide? On the other hand, if there is reason to believe that a government body violated the law in going into a closed session or might have engaged in other inappropriate conduct, should it not be subject to review by our office, which was given that oversight responsibility by the General Assembly?

[Note: As of the publication date of this annual report, the Joint Government Oversight Committee of the General Assembly is considering a bill, HSB 216 and SSB 1237, that would clearly grant the Ombudsman's Office access to closed session records without a court order.]

Attorney-Client Privilege

The attorney-client privilege protects direct communications between the attorney and the agency. A provision in our statute, Iowa Code section 2C.9, specifically precludes us from examining records and accessing hearings or proceedings which are attorney work product or covered by the attorney-client privilege. This challenge has been raised to deny us records in several cases by some state and local agencies. Currently, we are being denied access to email and verbal communications between a professional licensing board and its attorney related to the board's decision on a complaint.

While we recognize the importance of this privilege, we have concerns when agency officials attempt to use this shield to refuse to provide answers to our questions about their *own* positions or actions, not what their attorneys told them. In addition, this privilege belongs to the agency officials (as the client) and not the attorney representing the agency, so agency officials can choose to waive this privilege and share communications helpful to our investigation that would not otherwise harm the agency, especially since we have to keep that information confidential.

Case Work

Despite these challenges, my staff remains committed to work cases thoroughly and completely. During calendar year 2012 we opened 4,498 cases. Of the total cases:

- 3,046 were complaints about state or local government agencies within our jurisdiction.
- 517 were requests for information about government agencies within our jurisdiction.
- 868 were complaints or information requests about matters outside of our authority.
- 67 were treated as special projects for other activities related to the work of the office.

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Of the 3,046 jurisdictional complaints:

- 1,509 (50%) were or are being investigated. 1,537 were declined for investigation; even so, we typically will refer the complainant to an appropriate remedy or provide an explanation or information to help the complainant to better understand the reason or issue.
- To date, 214 complaints have been substantiated or partially substantiated and 865 were not substantiated. [Note: some cases opened in 2012 are still being investigated.]
- In 120 of the 214 substantiated or partially substantiated cases, we made either informal suggestions or formal recommendations to the agencies to remedy or correct a problem or take action to improve a policy or procedure.

The Ombudsman's Authority

Iowa law gives the Ombudsman the authority to investigate the administrative actions of most local and state governments when those actions might be:

- Contrary to law or regulation.
- Unreasonable, unfair, oppressive, or inconsistent with the general course of an agency's functioning, even though in accordance with law.
- Based on a mistake of law or arbitrary in ascertainments of fact.
- Based on improper motivation or irrelevant consideration.
- Unaccompanied by an adequate statement of reasons.

By law, the Ombudsman cannot investigate the Iowa courts, legislators and their staffs, the Governor and his staff, or multi-state agencies.

Legislative Proposals

I submitted two bills during the 2012 legislative session, both of which were not enacted. One would change the name of the Office from "Citizens' Aide" to "Ombudsman." [Note: I resubmitted this bill in 2013. As of the publication date of this report, the General Assembly has passed the bill and it is awaiting the Governor's signature.]

The other bill would clarify and expand current law so that any advisory body created by a governmental body to make recommendations to the governmental body would be subject to the Open Meetings Law. Not all such advisory bodies are subject to the law and there continues to be confusion based on statutory language and case law which advisory bodies are covered.

Our investigation of several complaints (see case example on page 37) about the debt setoff process under Iowa Code section 8A.504 also led to a legislative proposal. Under that law, an agency that is owed money by a person can ask the Department of Administrative Services (DAS) to set off money payable by the state to the person and apply it to the debt. I made some recommendations to the DAS to improve the process and to update its rules. We worked cooperatively with the DAS to draft a bill that would ensure that local government agencies provide debtors with an opportunity to contest the setoff before their money is taken.

[Note: As of the publication date of this report, the bill has passed out of the House of Representatives and is being considered in the Senate.]

Eight Steps for Resolving Your Own Complaints

"What steps have you taken to resolve the problem?" That is often one of the first questions we ask people who contact us with a complaint.

Under law, one of the scenarios in which the Ombudsman is not required to investigate is when people have available "another remedy or channel of complaint which [they] could reasonably be expected to use." [Iowa Code section 2C.12(1)] And it is not just the law, it is also simple common sense. Disputes and grievances can be resolved with simple, honest communication. Certainly not all the time, but enough that it is almost always worth trying *before* filing a complaint with our office.

Here are some basic, important guidelines to follow when you are trying to resolve any "consumer" problem, whether it involves a government agency or not.

1. Be pleasant, persistent, and patient. The wheels of government usually move, but not always quickly. We have found the citizens who are best able to get problems resolved have three core traits in common: they treat everyone with respect and courtesy; they don't give up easily; and they realize that most problems are not resolved overnight.

2. Exercise your appeal rights. Does the problem involve a decision or action that has a formal appeal process? If you are not sure, ask the agency. The right to appeal usually has a deadline. Respond well before the deadline and consider sending your appeal by certified mail. If you cannot write before the deadline, call to see if you can get an extension or if you can appeal by telephone.

3. Choose the right communication mode. If you are not filing a formal appeal, decide whether you want to contact the agency in person, over the phone, or through a letter or e-mail. Go with the mode you are most comfortable with, unless the problem is urgent, in which case you will probably want to rule out a letter or e-mail.

4. Strategize. Before making contact, consider who your likely audience will be. Will it be someone who can actually fix the problem to your satisfaction? If not, your initial goal might be along the lines of patiently explaining your concern, listening to the response, and then politely asking to speak with a supervisor—perhaps even more than once!

5. Plan your questions. Write down your questions before calling or visiting the agency. Be sure to specifically ask which law, rule, or policy authorized the agency's actions. Then ask for a copy of the law, rule, or policy (so you can read it for yourself, to see whether you agree).

6. Be prepared. Be sure to have any relevant information available before contacting the agency. If you are wanting face-to-face contact, we recommend you call first. A short phone call could save headaches and wasted time, such as finding that the person you need to talk to is sick that day.

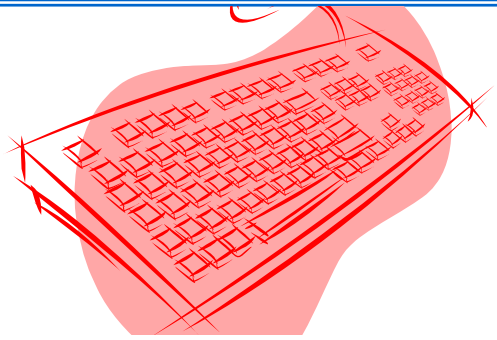
7. Keep records. Take good notes of all conversations. This should include the person's name and title, the time and date, and what they told you. Keep all records received from the agency, even envelopes. Also keep copies of any letters, faxes, or e-mails you send to the agency.

8. Read what is sent to you. Carefully read everything from the agency, front and back including the fine print!

If all that fails, contact us. Our office has authority to investigate complaints about most agencies of state and local government in Iowa. Major exceptions include the courts, the legislature, and the Governor. We do not have authority to investigate any federal agency.

Top Ten Government Web Sites

We have put together a list of ten web sites that will quickly put you in touch with almost any facet of state and local government in Iowa. This is certainly not an exhaustive list, but one that should help you get started in finding whatever you might be looking for.



1. Official State of Iowa website—www.iowa.gov
2. State agencies—http://phonebook.iowa.gov/agency.aspx
3. Legislative—www.legis.iowa.gov
4. Judicial—www.iowacourts.gov
5. Cities—www.iowaleague.org
6. Counties—www.iowacounties.org
7. Public school districts and Area Education Agencies—www.ia-sb.org
8. Iowa law—www.legis.iowa.gov/IowaLaw/statutoryLaw.aspx
9. "Sunshine Advisories"—www.iowaattorneygeneral.org/sunshine_advisories/ (primers on the Open Meetings and Public Records laws)
10. Citizens' Aide/Ombudsman—www.legis.iowa.gov/Ombudsman

What We Do:

We investigate complaints against agencies or officials of state and local governments in Iowa.

We work with agencies to attempt to rectify problems when our investigation finds that a mistake, arbitrary, or illegal action has taken place.

We have unique statutory responsibility to investigate and determine if an action was fair or reasonable, even if in accordance with law.

We have access to state and local government's facilities and confidential records to ensure complete review of facts regarding a complaint.

We make recommendations to the General Assembly for legislation, when appropriate.

Iowa Supreme Court Orders Former State Prison Official to Answer Ombudsman's Questions

In a 2012 opinion, the Iowa Supreme Court ruled that the Ombudsman may conduct a sworn interview of a former Department of Corrections (DOC) administrative law judge (ALJ), who had ordered an assaultive prisoner to forfeit twice as much earned time as DOC policy allowed.

The Ombudsman found that ALJ Deborah Edwards had sentenced inmate Randy Linderman to 180 days' loss of earned time after Warden Cornell Smith wrote her an email stating, "Please exercise sanctions to fit situation (180 to 365)." At the time of the sentencing, the maximum earned-time sentence for the infraction as charged was 90 days. By law, ALJs are required to be free from outside influences; by policy, DOC wardens review inmate appeals of ALJs' decisions.

DOC officials and their attorney had refused to allow the interview, arguing that the Ombudsman lacked the authority to ask questions about the ALJ's thought process in reaching her decision. The Supreme Court ruled that a common-law "mental-process privilege" does exist, but decided that the privilege did not apply in this particular case because the Ombudsman had made "a strong showing of … improper behavior" by DOC officials involved in the inmate's discipline.

The state's highest court said it "cannot condone" such "troubling" communications between a warden and an ALJ "whose independence is statutorily mandated, particularly when the warden himself is to hear the inmate's appeal."

Based on this ruling, an agency official making decisions in a quasi-judicial capacity could assert this privilege, despite clear statutory authority for the Ombudsman to investigate improper motivations or irrelevant considerations by an official or to obtain an official's reasoning for a decision, without having to first show improper behavior.

Secretary Illegally Uses School Car for Private Purposes

By: Andy Teas, Legal Counsel

In the Ombudsman's only public report of 2012, we determined that the Earlham School District violated Iowa law when its superintendent allowed a school secretary to drive a school vehicle on personal business, indefinitely.

The superintendent imposed no limitations on the secretary's use of the vehicle, and asked for mileage reimbursement only after the secretary had totaled the school car in an accident. The secretary drove the vehicle over 1,000 miles in 27 days, including on weekends and to run personal errands, after her own car had broken down.

The Iowa Constitution and state law generally prohibit government employees from using public property for private purposes when it is detrimental to the public. Though some exceptions exist, the Ombudsman concluded that none applied to this situation.

The school district's attorney argued that the district benefited from the arrangement because the secretary would have otherwise been unable to get to work. The attorney further contended that the district benefited financially from the arrangement because it had received a generous insurance payout and reimbursement from the secretary. We dismissed those arguments because it is a standard expectation for virtually every employee, everywhere, to commute to work on their own. We could not see how the secretary's commute served any unique public purpose to justify her use of the school vehicle. Any payments the district received to compensate for the use of, and damage to, the vehicle did not excuse the fact that it was improperly used for private purposes.

The district's school board discussed the issue privately and settled the matter by instructing the superintendent to discipline the secretary as he saw fit. We disagreed with the board's handling of the controversy and recommended the board assume direct responsibility for disciplining both employees. The Ombudsman also referred the matter to the county attorney to determine whether criminal charges were appropriate.

Sufficient Funding is Key to the Success of Mental Health System Redesign

By: Linda Brundies, Assistant Ombudsman

In 2012, while mental health redesign workgroups continued to meet and discuss changes to Iowa's mental health delivery system, counties and consumers have been dealing with the reality of the system in transition. Funding, or the lack thereof, is the biggest issue facing counties or regions and mostly impacts patients and families.

Our office dealt with several cases that involved funding issues in 2012:

- A long term care advocate was concerned about county staff refusing to fund residents' stays at a residential care facility based on lack of county mental health funding. This decision was causing residents to have to find new services and housing. The county central point of coordination administrator (CPC) explained that county payment for residence in such a facility was not in the county management plan. Given funding problems, they could not afford to continue paying for the housing subsidy for patients in care facilities.
- A hospital social worker called us about a patient whose county of legal settlement was not paying for his care. County staff was claiming they were out of money. I discussed with her that the county must follow its management plan and pay for services they agree to cover. I also informed her there is a statutory procedure for counties to dispute billings and determine who should pay for patient care. I suggested she discuss the issue with her local CPC and that the patient may want to contact an advocacy agency.
- A mental health advocate complained a county was refusing to pay for the correct level of care for involuntary commitment patients, insisting on placing them in a mental health institute (MHI) instead of a residential care facility (RCF). The advocate believed the cost of care in an RCF was cheaper than in an MHI. She also believed sending patients to an MHI rather than an RCF violated the Olmstead U.S. Supreme Court decision requiring placement in the community rather than in an institution whenever possible. I contacted the county CPC. The CPC admitted individuals under court commitments were placed in an MHI rather than an RCF and explained why. She said that due to budget issues, the county had to initiate a waiting list. The RCF level of care is a waiting list service whereas placement in an MHI is a mandatory service. Even though it costs the county more money to use the MHI, it was forced to do so for mental health commitments because of the RCF waiting list. I substantiated the complaint, but realistically there was nothing the county could do to resolve the situation without funding. I suggested the advocate contact legislators regarding lack of funding causing placement issues.

Redesign legislation did not necessarily cause the funding issues described above, but certainly some counties are struggling to provide current services.

Mental health redesign legislation requires the state pay for all Medicaid services, and local property taxes are to pay for non-Medicaid services including services to people who are not eligible for Medicaid. The mental health system will change from a system managed by counties to a system managed by regions. The new law defines core services that must be provided by each region. As I stated in my column last year, one of the biggest issues with redesign involves disagreements about how to appropriately fund the system.

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Transition Fund

Redesign legislation passed in 2012 established a transition fund to help counties get through the transition period prior to receiving money from property taxes in fiscal year 2013. Money was not appropriated for the fund during the 2012 legislative session. The Department of Human Services (DHS) was directed to determine how much money would be needed by the counties to get through the transition period without service cuts. DHS came up with three scenarios in December to determine how much money counties should receive. The scenarios ranged from $1.5 million to $11.6 million in state aid. The scenarios were based on a DHS analysis of 32 county requests for transition funds.

Scenario one compared all of each county's resources to all of their expenditures and the need was projected at $11.6 million. This scenario did not take into consideration that some counties had unpaid Medicaid bills owed to the state.

In scenario two, each county's fund balance was used to pay down the county's unpaid bills; the county's remaining money was applied to fiscal year 2013 non-Medicaid services. This resulted in 14 counties having negative fund balances and no means to pay non-Medicaid expenses. The amount was projected at $3.8 million.

Scenario three used all of each county's resources to pay fiscal year 2013 non-Medicaid expenses but did not provide funding for counties to pay their unpaid Medicaid bills. The projected amount was $1.5 million.

DHS recommended scenario three stating that counties applying for transition funds were required to show they were appropriately managing their overall costs and part of that was making certain all of their Medicaid bills were paid. The legislators on the Fiscal Viability Study Committee recommended that up to $20 million be available for counties to apply for in fiscal year 2012-2013. [Note: As of this annual report's publication date in 2013, the Iowa General Assembly is considering a bill, House File 160, which would appropriate $11.6 million to the transition fund for allocation to those counties identified in scenario one.]

Property Tax Equalization

The 2012 legislation allowed counties to raise $47.28 per capita (per person) in property taxes starting July 1, 2013, to pay for non-Medicaid services. The legislation provided counties that currently raise more than $47.28 per capita must cut their property taxes. Counties that currently raise less than $47.28 per capita are supposed to receive state money to bring them up to that level. This is called property tax equalization. Money was not appropriated last legislative session to pay the approximately $30 million it would take to equalize property taxes. There was also nothing in the Governor's budget for this property tax equalization.

Counties are understandably anxious about having sufficient money to pay for current services without appropriation of this money. Many counties do not expect reorganizing into a region will solve their financial issues, and some counties are already establishing waiting lists and cutting services. Waiting lists for services and loss of services were not intended consequences of mental health redesign.

[Note: As of this annual report's publication date in 2013, the Iowa General Assembly is considering a bill, Senate File 415, which seeks to provide for equalization money.]

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Mental Health Redesign Workgroups

As the Ombudsman's mental health specialist, I have participated as our office representative on several mental health study groups. These groups were also concerned about funding issues.

I have been a member of the Judicial/DHS Workgroup for three years, including 2012. Mental Health Redesign legislation directed the group to study and make recommendations to consolidate the commitment process in Iowa Code chapter 125—substance-related disorders, chapter 229—mental health, and chapter 222—intellectual disability. The workgroup was also asked to study and make recommendations regarding the feasibility of establishing an independent statewide patient advocate program for qualified persons representing the interests of patients suffering from mental illness, intellectual disability, or a substance-related disorder and involuntary commitment by the court. The workgroup made recommendations regarding these topics and made additional recommendations regarding funding and justice involved services.

The workgroup recommended:

- Adequate funding must accompany the recommendations in order to improve the system; otherwise, the recommended changes will not be meaningful. The recommendations could actually provide better outcomes with an overall costs savings. As an example, one pre-commitment screening at a community mental health center is estimated to cost $300, but the screening could identify an appropriate referral in the community that would not occupy a hospital bed for up to five days at a cost of $4,000. This was shown to be the case in Warren County in 2010, with a decrease of over 50 percent of involuntary commitments when pre-commitment screenings were provided.
- Justice involved services need to be core services. This includes:
  a. Implementation of a mental health court including both diversion and conditions of sentencing models; and
  b. Implementation of a jail diversion program.

The Judicial/DHS Workgroup's entire report is available at:
http://www.dhs.state.ia.us/uploads/Judicial-Workgroup-Final-Report-November-29-2012.pdf

I also participated in a Jail Diversion Study Group which was required by legislation. This group also recommended that justice involved services be core services, including mental health courts and jail diversion programs. This group recommended the following regarding funding:

> In order to have a comprehensive statewide program in Iowa, significant state funding and resources should be distributed to local jurisdictions and Mental Health Disability Services (MHDS) regions.
> a. Resources should be "front loaded" in order to focus on early intervention. Treatment options and recovery supports should be available in the community.
> b. Approve the Department of Human Services' 2015 budget request for increased funding for crisis programs and pre-commitment assessments.
> c. Some funding should be allocated to research and assessment. Although diversion programs have generally shown promising results nationally, success may vary depending on program type, client characteristics, and the context in which the

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program operates.

d. Decisions regarding the responsibilities and boundaries of the regions and the courts should be made as the regional system develops. Establish MHDS regions as the entities responsible for ensuring implementation of local programs.

The Jail Diversion Study group's entire report can be viewed at:
https://www.legis.iowa.gov/DOCS/LSA/IntComHand/2013/IHJCP000.PDF

Other redesign workgroup reports are also available on the DHS website at:
http://www.dhs.state.ia.us/Partners/Partners_Providers/MentalHealthRedesign/Redesign-Reports.html

The redesign of the mental health system in Iowa will succeed or fail depending upon whether it is properly funded. Iowans who have been affected by the system can share their personal stories with legislators. It is important for all stakeholders to remain focused and continue to work closely with policy-makers to ensure the success of our mental health system redesign.

Public Records, Open Meeting Resources

- The Attorney General's Office has published easy to read "Sunshine Advisories" which interpret the basic nuts and bolts of Iowa law. Go to: http://www.state.ia.us/government/ag/open_government/Open_and_Sunshine.html
- The Iowa Freedom of Information Council provides some training and publishes the Iowa Open Meetings, Open Records Handbook. Fourteenth edition copies can be obtained (for a fee) by calling the Council at 515-271-2295 or go to: http://www.drakejournalism.com/newsite_ifoic/.
- Local government officials can get information and training from the Iowa League of Cities, the Iowa State Association of Counties, and the Iowa Association of School Boards.
- For legal advice or more formal oral or written opinion, contact your attorney or the attorney working for the governmental body.
- If these resources do not answer your questions, contact our office at 515-281-3592 or 1-888-426-6283.

Changes Ahead For Handling Open Meetings and Open Records Matters

By: Angela McBride, Assistant Ombudsman

It has been a busy and exciting year for me as our office's specialist for matters concerning Iowa's Open Meetings and Open Records Laws, Iowa chapters 21 and 22, respectively. In 2012 we handled over 300 complaints and information requests related to these laws, and I conducted trainings for government officials and citizens. We also began preparations to transfer these responsibilities to a new board.

Iowa Public Information Board

Psst, pass the word: Legislation (Senate File 430) was passed and signed by the Governor in 2012 to create the Iowa Public Information Board (IPIB). The members of the IPIB were appointed by the Governor in late 2012, and the IPIB is expected to be operational by July 1, 2013. In addition to the responsibilities our office has had, the IPIB will have enforcement authority to hold hearings on cases it is unable to resolve informally.

Our office is doing everything we can to help the IPIB to "hit the ground running." We offered the Board our case management software and contents from our website. I have also been attending the monthly IPIB meetings and offering input on behalf of the Ombudsman. We hope the IPIB will have the necessary funds and staff to handle all its duties. Filling the executive director position is critical because the person must be a skilled investigator, negotiator, mediator, office and staff manager, prosecutor, speaker, writer, and interpreter of the laws. Needless to say, this is a big job and vital to the IPIB's success. The first test could come quickly, since effective July 1, 2013, the Open Records Law will specifically allow government agencies to keep "drafts" confidential. We expect agencies will be looking for some direction on how the law applies to them.

Ombudsman's Role After the IPIB

Even after the IPIB becomes functional, we will still play a role in ensuring government bodies are following Iowa laws with regard to transparency and the public's access to government information. We will still handle some complaints where the IPIB's authority is limited; for example, complaints handled by the IPIB must be filed within 60 days of alleged violation or when a complainant became aware of the violation, but our office has discretion on the timeframe. There are also a number of transparency related issues not covered in chapters 21 or 22, such as retention of records and publication of meeting minutes (see case examples in this report). Amazingly, we still find small cities that are unaware or unwilling to publish meeting minutes within 15 days, as required by law. The bottom line is we will remain active on these issues because we believe transparency and accountability are critical to good governance.

From our Case Files

One topic that is constantly on our radar screen is the amount of fees charged for records. For many agencies there is not an issue when they charge for the time and materials in fulfilling large record requests and charge a nominal per-page fee for small requests. Problems arise when the fees exceed actual costs and the agency makes a profit. After seeing a stream of fee complaints about county and city assessors, the Ombudsman asked that I meet with the Iowa State Association of Assessors about this issue. The association welcomed our ideas and

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established a subcommittee which drafted a model policy that I presented to 300+ members at the assessors' annual meeting. Some assessors were relieved they finally had some directive; the few who grumbled still understood the reasons for the model policy.

We had two noteworthy case examples from law enforcement in 2012. One was about fees imposed by the county sheriff, and the other concerned what records constitute peace officer investigative files protected under the law, Iowa Code section 22.7(5).

We continue to see different interpretations by cities as to what constitutes a "government body." In one case example in this report we found a city's "finance and personnel committee," which was created by the city council and had three out of six council members on the committee, was meeting without an agenda or taking minutes. In another case example a citizen complained that during a county board meeting, the board divided up into smaller work groups which shut out the public from hearing all the discussion. The informal advice we have been giving to agencies is that if a committee, task force, or other body is formally created to make policy decisions, then it should be subject to the Open Meetings Law. Even if a body is formally created but only makes recommendations to a government body, it may still be covered by the law. If an agency is uncertain about applicability of the law, we prefer that agencies err on the side of openness.

Training and Education

We continue to strongly believe that training for government officials is essential and necessary. In 2012 nearly 474 people heard me speak at various trainings about open meetings and records issues.

If an agency is uncertain about an issue or needs training, we generally suggest the agency first contact the attorney for the agency. Another resource to contact may be the associations of which an agency is a member, such as the Iowa League of Cities or the Iowa State Association of Counties. The Iowa Attorney General's website has Sunshine Advisories and other references: http://www.state.ia.us/government/ag/open_government/Open_and_Sunshine.html. In addition, the Iowa Freedom of Information Council publishes a very helpful "Iowa Open Meetings, Open Records Handbook," copies of which can be ordered from its website: www.ifoic.org.

Statistics

We saw a slight increase in open meetings and open records cases this year with a total of 331 complaints, information requests, and special projects. Over the years this subject area has been fairly constant and makes up between six and seven percent of our total cases; however, my sense is that we spend more than seven percent of our total time working on these issues.

Calendar Year	Information Requests	Complaints	Special Projects	Total
2003	13	57	5	75
2004	67	116	8	191
2005	106	150	3	259
2006	99	172	10	281
2007	98	206	14	318
2008	106	186	11	303
2009	108	190	17	315
2010	84	180	9	273
2011	97	150	16	263
2012	119	199	13	331

Public Records, Open Meetings, and Privacy

Small Town Council Meeting Minutes Disappear After Windstorm

A windstorm can temporarily harm a small town's ability to provide basic services. Posting the minutes from city council meetings over the next year should not be one of them.

A windstorm hit a small town in 2011 causing damage to city hall and other city buildings. Nearly a year later, a member of the city council contacted our office concerned that the town had not posted the council's meeting minutes since the windstorm.

We contacted the mayor, who admitted no minutes had been posted in the 11 months since the windstorm. After reviewing Iowa law, we told the mayor that because of the town's population, the town was actually required to publish the council's meeting minutes in a local newspaper. The mayor said the town adopted an ordinance in 1996 which held that council minutes did not have to be published because there was no newspaper in town. We explained the local ordinance does not supersede state law, in this case Iowa Code section 372.13, which requires minutes be published "in cities in which a newspaper is published, or in cities of two hundred population or over."

Under the circumstances, we recommended the town post the minutes for all council meetings held since the windstorm. We also recommended the town begin publishing the minutes for all future meetings in a local newspaper. We later received proof that the December 2012 and January 2013 minutes were published as required by law.

At our request, city officials also bought an advertisement in the newspaper, explaining the minutes for the previous 11 months of meetings should have been published and that those minutes would be posted for 30 days.

Privacy Not a Valid Reason to Deny Some Records

A recently-divorced woman was denied access to two dashboard-camera videos that captured an exchange between the woman and her ex-husband. Police officers had twice accompanied the woman to retrieve personal items from her home. Police also had served a protective order against the ex-husband. The police chief denied the woman copies of the recordings due to "privacy" concerns.

The police chief told us he was relying on legal advice from the city attorney, who cited the ex-husband's privacy interests. We confirmed with the city attorney that he was relying on privacy to deny the records. We pointed out Iowa law does not cite privacy as a basis to deny a records request. Further, we noted that because the record was not created as part of a criminal case, it could not be denied on those grounds either.

At our request, the city attorney reconsidered his advice and reviewed the pertinent state laws. He ultimately concluded the records request should not have been denied and advised the police chief to make the video available to our complainant.

Where are the Emails?

Private entities are not usually subject to Iowa's Open Records Law. But that can change if they are under contract with a public agency subject to the Open Records Law.

This case involved a 28E organization—an intergovernmental entity that had been created under Iowa Code Chapter 28E. The purpose of this 28E organization is to plan a water supply project. Its members include a county, several cities, and several other local government agencies.

To help manage the project, the 28E organization entered into a contract with a private non-profit organization. Under the contract, the executive director of the private non-profit is responsible for managing the 28E organization's water supply project. The executive director later told us, "We are the visual face, day-to-day face for" the 28E organization.

A man sent a July 2 letter to the private non-profit organization requesting all of the 28E project manager's documentation and emails concerning the 28E project over a six month period (January 1 to June 30, 2012). The letter also requested the minutes of any committee meetings of the 28E organization from June 2011 through June 2012.

On July 31, nearly a month later, the man contacted our office. Although he had been advised that the executive director had turned the matter over to the private non-profit organization's attorney, the man had not received any records in response to his request.

The Iowa Open Records Law includes a provision [section 22.8(4)] which identifies four exceptions in which a "good-faith, reasonable delay" in responding to a public records request is not a violation. The last exception reads, "To determine whether a confidential record should be available for inspection and copying to the person requesting the right to do so. A reasonable delay for this purpose shall not exceed twenty calendar days and ordinarily should not exceed ten business days."

Our investigator contacted the 28E project manager about the delay in responding to the man's request. The 28E project manager said the man's letter was not actually received for about a week because the secretary had been gone and he did not pick up the mail. After reading the man's letter, the 28E project manager did not know whether his emails were public record, so he said he turned it over to the attorney for the private non-profit.

Later that day, the 28E project manager called back to say the attorney had just advised him he needed to release his emails in response to the man's request. The project manager said the attorney advised him that even as a contractor the Iowa Open Records Law still applied to him. We agreed.

The project manager emailed the man the next day, advising that the requested records were ready to be picked up. His email also included an invoice for the fees associated with responding to the man's records request.

Based on this information, we advised the man and the project manager that we were closing the complaint as substantiated. "Thank you for looking into this matter for me," the man emailed us. "It is assuring to know there are people like you to keep government open as possible."

Unfortunately, this matter did not end there. The man later recontacted us to report a problem. He confirmed receiving records from the 28E project manager. However, while the man had requested the project manager's emails from January 1 to June 30, 2012, the oldest email provided to him was dated April 16. The project manager had provided no emails for the months of January, February, and March.

(Continued)

Moreover, the man told us he had made a similar records request to another agency that also was involved with the water supply project. That agency's response included a number of emails that had been sent to the 28E project manager—but none of those emails had been included in the project manager's response to the man's public records request. As a result, the man told us he felt the project manager was "intentionally withholding information requested … and is obviously abusing the Iowa code."

We recontacted the 28E project manager and asked him to double-check to make sure he had provided all relevant emails that the man had requested. In response, the project manager explained he deletes most emails, generally keeping only those for the current month and the prior month. This appeared to explain why he had not provided any emails for the first three months of the year.

We found the 28E project manager's practice of deleting emails was inappropriate and we notified him of our concern. In response, he offered to change his practice by creating a folder system to organize and retain substantive emails. He also offered to discuss this issue with the boards for both the 28E organization and the private non-profit he was employed by.

We notified the citizen that his complaint about not receiving all relevant emails was substantiated. Our investigator sent him a final email which stated in part, "I am hopeful the acceptance of our recommendation to keep all substantive emails and the agreement to develop a record retention policy will make future records requests more complete and ultimately make the board's actions more transparent."

[Update: In February 2013, the board for the private non-profit adopted a records management policy which requires the executive director to keep substantive emails for the active life of a project, plus five years. In a follow-up letter the 28E project manager later thanked our investigator. "Your guidance on emails was specifically helpful," he wrote.]

Open Meeting, Closed Discussions

A county official asked for our input following a meeting in which an assessor's budget was approved, but without the pay raises proposed by the assessor for her staff. The assessor alleged the action by the county conference board was illegal because its members had huddled in small groups and voted in blocs rather than as individuals. County conference boards, which oversee county assessors, are by law made up of multiple representatives from three constituencies: counties, cities, and school districts.

Unlike virtually all government boards, conference boards are instructed in state law to vote in groups, rather than as individuals. The law suggested to us that it was proper for the conference board to vote in blocs: one vote by the county's representatives, one vote by the cities' representatives, and one vote by the school districts' representatives.

However, we were concerned the votes of each bloc's individual representatives were not publicly announced. Iowa's Open Meetings Law is clear that the meeting minutes of any governmental body "indicate the vote of each member present." We were further concerned that citizens attending the meeting were unable to simultaneously monitor all of the conference board's discussions when members broke into groups to consider the proposed budget. State law requires the discussions of all government bodies to be conducted and executed in the open.

Because of these deficiencies, we concluded the meeting was likely illegal. We suggested the meeting be held again, with all of the discussions and votes of individual members to take place openly. Officials agreed to re-do the meeting, and the budget was approved a second time, with slightly different results.

Something's Missing Here

Citizens who actively monitor their government know when officials are following the state's Open Meetings Law. But they also recognize when those officials begin to fall short on their past practices.

A resident of a town in north-central Iowa contacted our office when a committee formed by the city council—and composed of three council members—stopped producing meeting minutes in a timely fashion. The committee made recommendations to the full council on a range of budget issues. Historically, committee members had produced typewritten minutes that were posted at city hall and on the city's website within two to three days of a meeting.

The resident grew concerned when she noticed that meeting minutes were no longer publicized or produced following a change in the committee's leadership. The resident was worried not only by the delays, but the potential that meeting details and specificity would be forgotten if minutes were written weeks after the fact.

When local government watchdogs raised questions, they felt that committee members had responded dismissively.

We researched Iowa law and concluded that, because the committee fit the definition of a "government body," it was required to keep meeting minutes.

We contacted local officials, who did not dispute that the committee was indeed a "government body" and assured us they were already working to address residents' concerns. Officials explained that the committee's new chairperson had decided to write up several weeks' worth of meeting minutes in bulk, rather than preparing and posting minutes soon after each meeting. When residents rejected that method, city officials opted to return to the way people had come to expect. City officials pledged to again post the minutes online and at city hall, and also to distribute the minutes to local media.

We reminded the officials that meeting minutes for each committee should always reflect the date, time, and place of the meeting, the people present, the nature of the discussion, and a record of any actions taken. City officials responded favorably to our suggestions, to avoid similar concerns in the future.

Since our inquiry, we have monitored compliance of the committee in question, as well as the city's other municipal boards and commissions. We have seen improvements and consistency in the city's meeting minutes, and our office has not fielded any more complaints from residents.

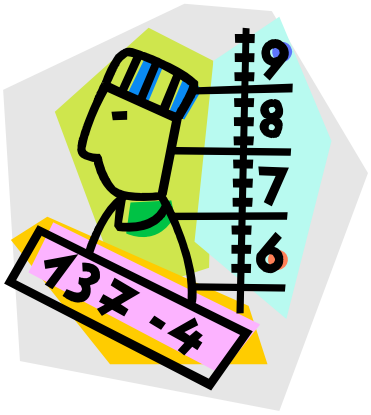
Juveniles' Names in Police Reports Not Off Limits to Public

An Iowa newspaper reporter sought advice from our office on how to obtain police records on an assault that allegedly involved juveniles. We provided the reporter with key language from state law that should have facilitated his access to the records, but the police chief who fielded the reporter's request refused to provide the records.

We contacted the police chief, who confirmed that he had no intention of providing the information to the reporter. We explained to the chief that Iowa law requires police to provide the time, place, location, and immediate facts and circumstances of incidents to requesters.

When the chief expressed a concern about revealing the names of the juveniles, we explained the names might have to be released if criminal charges were filed, unless the records were expressly sealed by the juvenile court. We also suggested that no fee be charged to the reporter because his request was so simple.

Sheriff Lowers Mug Shot Fees



Have you ever looked at mug shots of people who have been arrested? If so you are not alone.

A national tabloid newspaper that publishes jail mug shot photos ran into a problem with an eastern Iowa county sheriff. The newspaper's publisher had contacted the sheriff to request the jail's booking information, including mug shots. The sheriff responded that he could easily accommodate the request for most of the information. But the sheriff said he would have to charge the newspaper $5 each for mug shots because his staff would have to do a manual search for the photos.

The publisher argued that $5 per photo was excessive and alleged it violated the Iowa Open Records Law. That law prohibits agencies from charging anything above "actual costs" to produce a public record. The law defines "actual costs" as only those costs directly attributable to producing the record and specifically excludes employee benefits.

"Hundreds of law enforcement agencies across the nation provide electronic copies of these records to our newspaper at no ongoing cost," the publisher wrote in an email to the sheriff.

The publisher later added, "Our newspaper is not trying to be difficult, disruptive or place a burden on your agency but it is seeking access to copies of public records to which it's entitled."

The publisher even quoted a summary from our office's 2011 Annual Report. Headlined "Excessive Fees Charged to Reporter," that summary stated in part:

> A frustrated and astute reporter called us after he failed in his attempts to convince a county in central Iowa that its fees for a recurring public records request were excessive. The county had been charging the newspaper 50 cents per page for an electronic report on mortgages and deeds that he requested regularly. We recommended the county reconsider its fee policy to be consistent with the Open Records Law….

The sheriff stood by the price of $5 per photo, saying it was determined after consultation with the county attorney's office. The newspaper publisher then contacted the Iowa Attorney General's Office, which asked our office to intervene.

After reviewing the email exchange between the publisher and the sheriff, we asked the sheriff to provide information about the time it took to complete the task and who was doing the work. In response, the sheriff said top-paid staff had to complete the request and employee benefits were included in the fee. We asked the sheriff to reconsider, and he subsequently revised his fee to exclude employee benefits and use an administrative assistant to do the job. We were satisfied that the final fee of $2.14 per photo was an accurate reflection of "actual costs."

The sheriff hoped the mug shot fees would be temporary. He said the jail would be obtaining new software that should allow the jail to provide mug shot photos electronically—at no cost—by early 2013.

"We very much appreciate your assistance in working with the Sheriff's Office," the publisher said in a final email to our investigator.

Significant Changes and Developments Related to Child Support and Child Welfare

By: Barbara Van Allen, Assistant Ombudsman

The State of Iowa has many different programs, services, and regulations that affect the lives of children and families. In my role as the Ombudsman's child welfare specialist, I try to stay informed on important changes, advise the Ombudsman about them, and participate in reviewing and commenting on them when the opportunities arise.

Child Support Guidelines

One of my duties is to serve as our office's representative on the state's Child Support Advisory Committee (Advisory Committee) and legislative workgroups.

The Federal Family Support Act of 1988 requires each state to maintain uniform child support guidelines and criteria and to review the guidelines and criteria at least once every four years. The Iowa General Assembly has entrusted the Iowa Supreme Court with this responsibility. The guidelines were last reviewed and updated in 2009.

The Advisory Committee makes recommendations about changes in the guidelines to the Child Support Guidelines Review Committee (Review Committee), appointed by the Iowa Supreme Court, to review the guidelines and "to ensure that their application results in the determination of appropriate child support award amounts." During 2012 the Advisory Committee held public meetings and requested written comments from parents and interested stakeholders. From the information gathered from the public and the Advisory Committee's own independent study of the guidelines, several recommended changes to the guidelines were submitted to the Review Committee for consideration in 2013.

One recommendation was to amend the minimum obligation amounts. In 2009 the lowest amount a non-custodial parent could be ordered to pay under the low-income guidelines adjustment was $10 for one child, $20 for two children, $30 for three children, $35 for four children, or $40 for five or more children. The Advisory Committee did not believe these amounts provided sufficient minimum contribution to support children, and has recommended raising the minimum child support amounts—but not too high that they would be onerous—to $30 for one child, or $50 for two or more children.

Prior to the Iowa Supreme Court taking action to change any of the guidelines, the public has the opportunity to submit comments on the Child Support Guidelines Review Committee's report and recommendations. The report for the 2013 review is available at http://www.iowacourts.gov/Supreme_Court/Orders/ or at the office of the Clerk of the Iowa Supreme Court.

Child Protection Processes

Starting in 2011, Ombudsman Ruth Cooperrider and I participated in a Department of Human Services' (DHS) workgroup, mandated by the Iowa General Assembly in House File 562, to develop and implement improvements in the child abuse assessment and registry processes. Individuals found to have committed child abuse, as defined in Iowa law, are placed on the registry. The workgroup made a series of recommendations in a report to members of the Iowa General Assembly. The report can be seen online at:

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http://www.dhs.state.ia.us/docs/2011_Recommendations_Child_Abuse_Registry.pdf.

During the 2012 legislative session, action was taken to implement some of the workgroup's recommendations, resulting in significant changes in the law. These changes included amendments to the Code of Iowa or the administrative rules that limit the contested case hearing process to persons alleged to have committed child abuse, that give administrative law judges the authority to stay a contested case hearing pending the final decision in a juvenile or district court case relating to the abuse findings, and that establishes a maximum time frame of 120 days for any final ruling by the DHS Director.

In addition, the General Assembly, pursuant to House File 2226, directed the DHS to further study and report on the following issues:

- implementation of a differential response to child abuse reports,
- the time period persons who committed child abuse remain on the registry and the circumstances when the DHS may remove the person's name earlier from the registry,
- the number, reasons, and lengths of time for registry appeals in the last five years.

I participated in the differential response workgroup, which was responsible to conduct a comprehensive review of the differential response approach and recommend if Iowa should implement such an approach to handling child abuse reports. Differential response for purposes of the study meant at least two different response options for screening reports of child abuse for assessment purposes, of which one of the options would include a voluntary, non-investigative response. The workgroup unanimously agreed to recommend implementation of a differential response approach statewide.

The 2012 reports for Differential Response Review and Recommendation, Child Abuse Registry Length of Time Review, and Child Abuse Assessment Administrative Appeals are available online at:
http://www.dhs.state.ia.us/Partners/Reports/LegislativeReports/LegisReports.html.

Legislative action will be needed for the DHS to put in place a less adversarial approach for providing services targeted to the unique needs of a family when the child abuse report does not allege serious or imminent harm and child safety is not compromised.

[Note: As of this annual report's publication date in 2013, the Iowa General Assembly is considering a bill (House File 590) to enable the DHS to implement a differential response or multipath approach to handling reports of child abuse. The bill also allows for earlier removal of persons from the registry after five years (instead of ten years) for certain types of abuse, and provides for a DHS workgroup to study and recommend circumstances under which a person may be removed earlier than the five or ten years.]

The Ombudsman investigates complaints against agencies or officials of state and local governments in Iowa. We perform this service, without a fee, in an independent and, when appropriate, confidential manner.

Human Services

Placing Children with Relatives: Misunderstanding Iowa Law

The removal of a child from his or her parents is always a tragedy. For family members, the tragedy can be compounded when the child is not placed with a relative who has expressed an interest.

Our office receives occasional calls about such cases. Many of the callers are under the mistaken belief that Iowa law requires relatives to receive priority consideration over a non-relative.

Approximately 41 states and Puerto Rico have laws that give preference or priority to placing children with relatives. Iowa is not one of these states. In Iowa and eight other states, the law requires only that state agencies make a reasonable effort to identify and notify a relative when a removal has occurred and a placement is needed.

Families who want Iowa law to give preference to relatives may want to consider contacting their state legislators. During the 2013 session of the Iowa General Assembly, a bill has been introduced which, if passed, would require courts to waive several procedural requirements in adoption proceedings if the petitioner is a grandparent, aunt, uncle, or adult sibling of the person to be adopted.

This bill, House File 343, also would require a state agency to examine its child protection policies and to recommend new policies that would provide for placements of children with family members.

Facility Tries to Use Haircut as Leverage Over Native American Student

A Native American student at a juvenile detention facility contacted our office because staff was threatening to deny him educational programming as coercement to cut his hair. He wanted to keep his hair long due to his religion. "They insist that I must still cut my hair or there will be further consequences/punishment for not doing so," he wrote in a letter to our office.

Our investigator contacted an individual who advises the Department of Corrections on Native American issues. The consultant was adamant that the student should not be forced to cut his hair. The consultant told us hair cutting has significant spiritual and religious significance for Native Americans and is only cut for certain specific reasons.

Our investigator relayed this information to the juvenile detention facility's superintendent.

He said the facility's policy requires students to cut their hair every four to six weeks. But he also said staff should never threaten to deny educational programming for any desired outcome other than safety or security issues.

The superintendent spoke with the student and the student agreed to cut his hair every three months. The superintendent agreed to remind staff of the facility's limitations on using educational programming as leverage. The superintendent also agreed to have the student and facility staff speak with the Native American consultant.

Bringing Common Sense to Records Checks

Want to work in a health care facility or child care facility? You first have to clear an evaluation of your criminal and abuse records by a state agency.

A man contacted our office because he was having difficulty getting the state agency to complete his records check. The agency had previously approved him for employment in a nursing home, but he left that job to go to school.

After school, he wanted to work again in a nursing home. Because there had been no changes to his criminal and abuse history since the first records check, the man figured the state agency should be able to review his records quickly, or waive the review altogether. But the agency said it had no such authority. As a result, the man contacted our office, concerned that the lengthy review process might cause him to miss an employment offer.

We worked with the state agency on ways to streamline the review process. In addition, a new law (Senate File 2164) authorized the agency to streamline the process under certain specified circumstances. Under the new law, the agency can now exempt an applicant from the review process under the following circumstances:

> (1) The position with the subsequent employer is substantially the same or has the same job responsibilities as the position for which the previous evaluation was performed.
> (2) Any restrictions placed on the person's employment in the previous evaluation by the department shall remain applicable in the person's subsequent employment.
> (3) The person subject to the record checks has maintained a copy of the previous evaluation and provides the evaluation to the subsequent employer or the previous employer provides the previous evaluation from the person's personnel file pursuant to the person's authorization. If a physical copy of the previous evaluation is not provided to the subsequent employer, the record checks shall be reevaluated.
> (4) Although an exemption may be authorized, the subsequent employer may instead request a reevaluation of the record checks and may employ the person while the reevaluation is being performed.

These changes are in Iowa Code section 135.33(4)(b)(1-4) for health care facilities and Iowa Code section 237A.5(2)(g)(1-4) for child care facilities.

After careful investigation, research, and analysis, the Ombudsman makes recommendations to resolve complaints that are found justified. Additionally, the Ombudsman may provide information and answer questions relating to government.

Complicated Issue Clarified in Policy

An Iowa legislator referred an attorney to our office who was having difficulty obtaining Medicaid benefits for his clients who were in a nursing home. The attorney said the state agency that oversees Medicaid had not explained why an irrevocable burial trust had to have a funeral contract attached to it in order to avoid a transfer of asset penalty. He believed this was affecting more than just his clients.

We asked the state agency to explain its position. We wanted to ensure the agency's policies were not more restrictive than state or federal law.

The agency's explanation led us to believe its policies were consistent with state and federal law. In 1993, most trusts, including irrevocable burial trusts, were deemed by federal law to be a transfer of assets for less than fair market value. There were a few exceptions in the law, but an irrevocable burial trust was not one of them. The law was changed to diminish the use of trusts to shelter assets in order to qualify individuals for Medicaid while passing the assets to survivors.

We believed the confusion in this case arose because the attorney was only referred to the resource provisions of the agency's policies, which noted without explanation that a funeral contract was needed to avoid a transfer of asset penalty on an irrevocable burial trust. While the information regarding transfer of assets is included elsewhere in the agency's policy manual, the resource section of the manual could have been clearer by citing relevant sections of state and federal laws and/or regulations regarding transfer of assets together with the citations regarding resources.

To remove this confusion, we recommended the state agency update the resource provisions section of its policy manual by inserting the appropriate statutory authority regarding transfer of assets. This clarification would direct agency employees and others to review the transfer of asset provisions of the law as well as the resource provisions when dealing with irrevocable burial trusts. The state agency accepted the recommendation and updated its manual accordingly in January 2013.

Fixing the "High Call Volume" Blues

You've probably heard it: A recorded phone message that apologizes for "high call volume," then puts you on hold. Or even worse, it ends your call.

This happened to a central Iowa man who was calling to check on the status of a food-assistance application he had submitted to a state agency. "When calling them to ask about it, I get a 'high call volume' recording and the phone call is terminated," he said in an email to our office. "I cannot reach anyone this way. People that need assistance should at least be able to talk to a person."

After reading the man's email, we immediately forwarded it to an agency manager. A case worker called the man the same day and requested his payroll stubs to determine whether he was eligible. The man confirmed he had received a call from the case worker and appreciated our quick response to his complaint.

Agency officials looked into the phone troubles and found a malfunction, which it reported to the phone company. The agency also decided to change the way phone calls are routed to ensure clients can speak to someone if their case worker is unavailable.

Corrections Corner

By: Eleena Mitchell-Sadler, Assistant Ombudsman

"The day we see the truth and cease to speak is the day we begin to die"
- Martin Luther King Jr.

Over 40 years ago the Iowa Legislature created the Citizens' Aide/Ombudsman Office. In their wisdom, and I like to think compassion, the legislators also specified the Ombudsman shall appoint an assistant who shall be primarily responsible for investigating complaints relating to penal or correctional agencies. It has been five years since I began working as the Ombudsman's corrections specialist.

I learned a long time ago that doing what is right is not always the easy road. I can remember speaking out against a perceived "injustice" in my 9th grade science class and being sent to the principal's office for three days. That ordeal did not temper my convictions, although I would like to think I am a bit more tactful than I was back then. Who would have thought I was on my way to being an ombudsman—an individual that seeks truth, and speaks out—even for those who have been cast out of society.

Outreach

Aside from managing a regular caseload, as the corrections specialist, I speak to different corrections-related groups about the role of the Ombudsman and the type of complaints the office receives. In 2012, I spoke to over 200 tenured jail staff across the state. My presentations focused not only on how to reduce complaints coming to our office about the jails, but also how to reduce the number of complaints they must deal with in their jails.

In the training I shared quotes I felt were easy to remember that were relatable to the jail setting. I then detailed a specific complaint our office received to highlight how, had the quote been kept in mind, the incident may not have occurred. The quotes shared were:

- First seek to understand, then to be understood. - Dr. Stephen Covey, *7 Habits of Highly Effective People*
  My translation: Everyone likes to feel heard. If you're not in an emergency situation, allow an inmate to share their point of view. Even if you are not swayed, the person may be more accepting of your direction because you listened.

- It's a new dawn, it's a new day… - Nina Simone, singer
  My translation: Simply put, don't hold grudges. Without jeopardizing your safety, allow an inmate the opportunity to change. Don't let a previous negative interaction overshadow the good the inmate may be attempting at the present.

- Second thoughts are even wiser. - Euripides, Greek playwright
  My translation: We've all done it right? Open mouth, insert foot. Take a breath before responding, but if you goof, admit it, apologize and move on.

- Say what you want, but do as I say. - Dr. George Thompson, founder of Verbal Judo
  My translation: It's a twist on the old saying "sticks and stones may break my bones, but words will never hurt me." If you tell an inmate to do something and they offer lip service but they do what you tell them, mission accomplished. Don't take the comments personally—focus on their actions; not their attitude.

(Continued)

This past year I also completed a total of ten presentations about our office to new jail staff through the Iowa Law Enforcement Academy and new prison staff at the Iowa Department of Corrections.

Prison Complaints

Like last year, the total number of complaints about prisons has declined this year, but it seems the complaints are more complex. My theory is that inmates are utilizing the prisons' internal complaint process more to resolve issues and are bringing more difficult or complicated issues that are not resolved by the prison officials to our office.

Specific complaints under the category of health services have decreased again this year. Examples of issues that would fall into this category could be "I have a physical disability and I am being denied a bottom bunk," or "I disagree with the doctor's diagnosis," or "my medication was discontinued." Because we are not medical professionals, we do not attempt to replace or override a physician's decision. We can make sure the inmate's concerns are reviewed in a timely manner by a medical professional, and we may ask for an explanation or the rationale for the decision or treatment. If we still have concerns, we may ask the department's medical director to further review the inmate's concerns.

Complaints about inmate treatment programs have increased by 14 percent from last year. Examples of these issues could be "I do not need substance abuse treatment," or "I was wrongly kicked out of treatment," or "I was skipped over and should be in treatment now." Since we have online access to the prison's offender database, we can easily review an inmate's records, including the offense, the sentence, the length of time served, and any release denials and reasons. This enables us to see the rationale for the treatment intervention being required or the reason for the action being taken by the prison.

Staying Current

As a former trainer for Corrections, I understand the value of staying informed. In the past year I attended trainings offered by the Iowa Corrections Association and the United States Ombudsman Association. I also attended a two-day training about conducting systemic investigations. The trainings helped to hone my investigative skills and my knowledge about specific subject matters, such as gangs and sex offender management.

After receiving a complaint about a prison or jail, we review the relevant information and decide whether staff:

- ***Followed the law and institution policy.***
- ***Acted reasonably and fairly.***

If we conclude a complaint is substantiated, we look for ways that staff can:

- ***Fix the problem.***
- ***Reduce the chance it will happen again.***

Corrections

Supervisor's Absence Creates Unnecessary Delay

A female offender wrote to us about a month after she was granted parole to report that she still was in prison. We made inquiries and learned that corrections officials had not decided which office would be monitoring the parolee. The decision was delayed for about three weeks when a supervisor overseeing the decision went on medical leave.

By the time of our inquiry, the supervisor had returned from leave and acknowledged that there was "no good excuse" for the delay. She committed to having our complainant's parole finalized quickly. However, we were concerned that a better system was not in place to ensure parolees' releases were not delayed indefinitely any time a supervisor was on leave.

The supervisor agreed to discuss the matter with her staff, to improve the method for processing parolees in her absence. The supervisor's secretary now retains a list of parolees and their parole officers to enable her to alert officials to any delays attributable to staff absences.

An Inmate's Plea for Medications Must be Taken Seriously

A woman being transferred from a county jail to a state prison informed a nurse that she was currently taking psychiatric medication under a doctor's care. However, despite the disclosure, the nurse did not try to contact the psychiatrist to confirm the prescription because there was no indication she had taken the medication while at the jail.

The inmate wrote us 24 days later to say she still had not received any medications for her condition.

We asked the prison's nursing director whether the nurse's response was appropriate. She replied that it was not, and said that an on-duty psychiatrist should have been called to decide whether medications were necessary. The nurse who failed to consult with a doctor received training to ensure the mistake was not repeated. We determined the oversight was an isolated incident.

Paperwork Mistake Found, Inmate's Credit Restored

A probationer who was revoked to prison after absconding wrote us to complain that he had not received all the probation credit he was entitled to. This had the effect of keeping him under correctional supervision for a longer period of time. The man had tried to get the issue resolved with court officials without success.

We examined the man's court and prison records and noticed that an officer had written down an incorrect date on when the probationer absconded. When the officer reviewed the paperwork, she admitted the mistake and corrected the date. The change resulted in the restoration of 97 days of credit to the inmate's record.

Don't Give my Compliments to the Chef

Do you make pasta dishes with pork? For many the answer is a matter of taste. But for some, it's a matter of not wanting to get sick.

Prisons are well aware that pork presents a challenge. Some people are allergic to pork and some choose not to eat pork for religious reasons. We received a complaint from an inmate who became sick after eating ziti containing pork. The prison usually used turkey in its ziti, but sometimes used pork instead.

The prison confirmed that the inmate—who had a "no pork" sign on his cell door—asked whether the ziti had pork. The prison also confirmed staff mistakenly told the inmate the ziti did not contain pork. The inmate took a few bites before realizing he was eating pork. He quickly got a headache, stomach cramps, and then vomited. He was taken to the medical unit, where he stayed for about 20 minutes before going back to his cell in apparent distress. The inmate said he was allergic to pork, although prison staff told us he had not reported an allergy before this incident.

Iowa's prisons try to call attention to food items containing pork by placing an asterisk next to those items on the posted menus. But there were two problems in this case. First, this inmate was in segregation, where the menus are not available to inmates and meals are served directly to the cell. Second, even if this inmate had been able to see the menu for that particular meal, it did not have an asterisk next to the ziti, prison staff later told us.

Fortunately, his symptoms were not severe. But how did this happen? Based on the prison's response to our inquiry, we learned the officer on the unit did not know pork was in the ziti until after food trays were served to the inmates. In fact, when the inmate specifically asked if the ziti contained pork, the officer called the servery officer, who checked the food cart and found no indication the ziti contained pork. The servery officer did not contact staff in the food service. This explains why the servery officer told the unit officer there was no pork in the ziti.

Around the same time the offender began to get sick after eating a few bites, the servery officer called the unit officer again to advise that in fact the ziti did contain pork. It was unclear how the servery officer became aware of this.

In an attempt to avoid further problems with the ziti, the dietary supervisor told us the prison had decided to always make the ziti with pork and to designate it as such on the menu posted for offenders.

Ombudsman Suggestion Allows Children to See Their Father

A woman contacted our office because an Iowa prison denied her request to visit her fiancé. He had two young children. No one else could take the children to the prison, so this meant they were unable to see their father.

The denial was based on the fact the woman had been at the scene of her fiancé's crime. She was told that her own criminal history was also a concern.

Prisons will sometimes allow no-contact visits when there are concerns about a visitor. This allows people to talk and see each other, but not to have any direct physical contact.

We asked a Department of Corrections deputy director if the woman could be considered for no-contact visits, which would allow the children to see their father. The deputy director agreed to approve her for no-contact visits, especially since the man would be discharging his sentence in six months. After several no-contact visits were held without any issues, the prison approved her for regular visits three months later.

Sometimes the Buck Doesn't Stop Anywhere, it Just Gets Lost

When it comes to prisons, our office has authority to decline complaints about grievable matters if the inmate has not exhausted the prison's grievance process. If the inmate is not satisfied with the written response from the prison grievance officer, the inmate can appeal to the warden. Policy states the warden shall respond within 15 calendar days from receipt of an appeal. After the warden responds, then the inmate can send an appeal to the Department of Corrections (DOC) Central Office if he/she is not still not satisfied.

In this particular case, an inmate claimed the prison had lost some of his property. His grievance was denied by the prison grievance officer so the inmate appealed to the warden. After not receiving a response from the warden, the inmate sent an appeal to DOC's Central Office, but that office refused to reply until the warden responded.

In response to our inquiry, prison staff said they did not have the inmate's appeal to the warden. When we reviewed prison records, however, we found that the inmate's appeal to the warden was logged into the prison's record system more than three months after it had been received.

Two months later, the warden still had not responded to the appeal and he was unable to explain why he had not yet responded. The warden said he would take care of it the same day. The warden denied the inmate's grievance but the grievance was later substantiated by DOC's Central Office. The prison was ordered to reimburse or replace $96.05 worth of property for the inmate.

Our Services Are Available to:

- **All residents of the State of Iowa, including those confined in state institutions.**
- **Persons from other states and countries who may have complaints against agencies of Iowa government.**

Ombudsman Helps Prison System Address Telephone Glitch

Telephone privileges are very important for prison inmates. So it was not surprising when an inmate complained that his family's phone numbers had not yet been reactivated on his phone list weeks after he returned to prison. He said he had followed staff's instructions but still could not call his family.

We found the staff member responsible for entering these phone numbers had been on vacation for two weeks. In addition, we learned there were two methods to terminate a phone account when an offender leaves prison: disabling and deactivating. In this case, the prison that released the inmate six months previously had "disabled" the inmate's phone account in their system rather than "deactivating" it.

This meant when he returned to prison, the prison had to manually enter all the phone numbers on the inmate's list rather than just electronically reactivating the account. We contacted the Department of Corrections' Central Office about this issue and after conducting their own inquiry, they agreed with our findings. Central Office staff directed staff at the various prisons to deactivate inmate phone accounts upon release, rather than disable them.

Nunc Pro Tunc: It's all Latin to Us

When a man violated the terms of his probation, the court revoked his probation. The court's revocation order stated in part, "Defendant is given credit for any time served pursuant to his incarceration on the application to revoke the probation filed October 19, 2010."

The county jail interpreted this to mean the man should only get credit for the days he was in jail on or after October 19, 2010. While we understood the jail's interpretation, we believed the order was actually silent as to whether the man should receive credit for days served prior to that date.

More importantly, we found the Iowa Court of Appeals had ruled a few years earlier that section 903A.5 of the Iowa Code required individuals receive credit for all days served. The man had requested a court hearing to argue his point, but the hearing was not scheduled to take place for another three months. The county attorney agreed with our analysis of the facts and promptly presented a *nunc pro tunc** order to the judge for his signature. The jail then certified the additional jail credit and the man's release date was moved up by four months.

**Nunc pro tunc* is a Latin term meaning "now for then." A *nunc pro tunc* order typically applies retroactively to correct a previous court ruling.

A Tribute to Human Endurance

A prison inmate who was having problems with a rear molar requested a dental appointment. The prison dentist determined the tooth was significantly decayed and recommended pulling the tooth. The inmate wanted to save the tooth and requested a root canal, but the dentist declined. The inmate asked our office to intervene.

Our office investigated the availability of root canals in correctional settings. The prison in question had historically provided root canals for inmates, as did other institutions around the state. The prisons also have the option of referring inmates to a university dentistry college. In an interview, the dentist told us he declined to give the inmate a root canal because he was not capable of doing the procedure. The facility did not offer to send the inmate to the dentistry college.

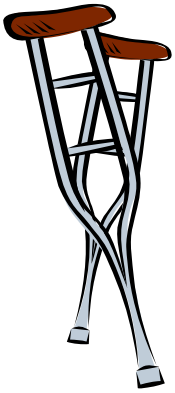
We asked the prison officials to provide pain medication to the inmate while we explored other options. Meanwhile, the contract employing the dentist at the institution expired. For this reason, we ran into difficulties obtaining a prompt review of this matter. We asked the state prisons' top medical administrator to become involved.

By this time, the inmate's pain had worsened; he was experiencing intermittent infections and migraine-like headaches. He had been given the option of taking over-the-counter Tylenol, but was apparently not offered stronger medication because a course of treatment had not been formally decided.

The administrator increased the inmate's pain medication and directed the prison to arrange for an appointment at the college dental clinic. When the inmate subsequently went to the dental school for assistance, he was told *again* that a root canal was not an option.

We called an associate dean at the college who promptly reviewed the situation. He discovered that a college dentist had denied the root canal because he erroneously believed the inmate had to pay for the procedure. We brought all the parties together and obtained agreement that the inmate would be responsible only for a co-pay. After eight long months, the inmate finally received his root canal.

Persistence Pays



A man who had been receiving treatment for a lifelong knee condition wrote us after he had gone to prison and received no care for the knee. The man's knee pain had progressed to the point where he was forced to use crutches. He believed surgery might be in order.

We reviewed the man's medical records and discussed his condition with prison doctors. After our discussions failed to yield any progress, we presented our concerns to the prisons' top medical official, who decided to refer the inmate to outside specialists for an evaluation.

Within a few weeks, the man was able to meet with an orthopedic surgeon.

Other Agencies

No Penalty for Last-Minute Electronic Tax Payments

The state wants to encourage taxpayers to submit their payments electronically. Mistakenly penalizing 74 taxpayers who did so in 2012 was not part of the plan.

We received an email from a man who submitted his state income-tax return electronically around 7 p.m. on the state's annual due date, April 30. At the same time, he paid his tax debt electronically through a relatively new program called ELF (Electronic File). The man later received a notice that he was being penalized for making a late payment. He called the agency and was told that electronic payments must be submitted by April 30 at 4 p.m.

The man noted he could have mailed his payment with a postmark of 11:59 p.m. on April 30 and avoided a penalty. Why then, he asked, did the same rules not apply for ELF? The state official held firm, which prompted him to contact us.

"I do not understand the double standard being practiced," his email said. Although we agreed to investigate his complaint, the man paid the penalty, even though he felt he should not have to.

We contacted state officials and asked a number of questions. Following an internal review, an agency administrator explained the agency did not intend to penalize taxpayers for making ELF payments during the evening hours of April 30. A second electronic payment program, called eFile & Pay, does not issue such penalties for last-minute payments. The eFile & Pay computer system was programmed to accept last-minute payments; mistakenly, the ELF system was not.

Our complainant was among 74 taxpayers who were assigned a penalty due to this programming oversight. The agency was able to cancel the penalties in all but 13 of those cases. The 13 remaining taxpayers were issued refunds.

The agency said this was the first time—and hopefully the last time—that it had ever penalized a taxpayer for submitting an electronic payment between 4 p.m. and midnight on April 30.

The agency assured us the ELF system would be reprogrammed to accept timely payments up to 11:59 p.m. on April 30. It also agreed to clarify information on its website and in its administrative rules that electronic payments would be accepted until that time without penalty.

Rare Defense to Tax Debt Initially Disregarded

An Iowa woman told us she was being pursued by state authorities for an outstanding tax debt of about $25,000. She had attempted to explain that she had been forced to cosign financial instruments by an abusive ex-husband, but her pleas fell on deaf ears. State officials had begun garnishing the woman's wages and had threatened to seize her savings and place a hold on the renewal of her driver's license.

Although we understood the state has authority to take such actions against legitimate tax evaders, we asked an agency supervisor whether this woman might have legal grounds to avoid responsibility for the debt. The supervisor said he was aware of a concept called "innocent spouse relief," which is recognized by federal taxing authorities. Although Iowa has no such law, the supervisor explained that the state will recognize the defense in rare cases if federal officials do.

The woman told us she had proof the federal government had recognized her innocence of these debts, and through our contact, she forwarded this information to the state office for its consideration. The woman was very thankful for our assistance.

Ombudsman Prods Agency into Helping Blind Inmate

Are blind prisoners eligible for help under the federal Americans With Disabilities Act (ADA)?

This question was posed to a state advocacy agency in a letter that the agency then forwarded to our office. The letter, which was written on behalf of a blind prison inmate, requested an explanation of his rights as a legally blind person.

The letter referenced the ADA and asked, "How far do my legal rights extend for incarcerated blind persons?" The rest of the letter detailed several concerns the man had about the prison. We opened a complaint file regarding his prison-related concerns.

At the same time, we were not sure how to answer the man's request about his legal rights under the ADA. We asked the state advocacy agency why it had not responded to the man's questions. In response, an official provided a copy of a response letter she had already sent to the man. Her letter told him that her agency "is essentially a service agency for Iowans who are blind or visually impaired. We are not equipped to give legal advice."

We noted that the state law governing the agency indicates that it shall "act as a bureau of information" for people who are blind. We did not view the man's letter to the agency as a request for legal advice, and said so.

The next day we received a call from the agency's director. She said she did not know whether the ADA applies to blind people in prison. She agreed to do some research, but said she believed the man was asking for legal advice. We responded by asking whether the agency would refuse to help someone who walked into its main office and asked about his or her legal rights as a blind person under the ADA.

The next week the agency's director said she had consulted with state attorneys and a federal regional resource center that provides assistance about the ADA. She wrote a letter to the inmate informing him that he had a right under ADA "to participate in programs and activities that would be otherwise available" to him if he were not blind.

Let's Try This Again, and Again, and ...

The flustered owner of a business that had been closed for several years contacted us after he failed in his repeated attempts to get a state agency to stop sending him erroneous notices on unemployment claims.

The former business owner had lost count, but knew the agency had mistakenly sent him some two dozen notices over the years. Each time an inaccurate notice arrived, the man carefully filled out and submitted the paperwork and requested the agency correct its errors. Agency officials repeatedly told him they had corrected the problem. To the business owner's dismay, the mistakes happened again and again.

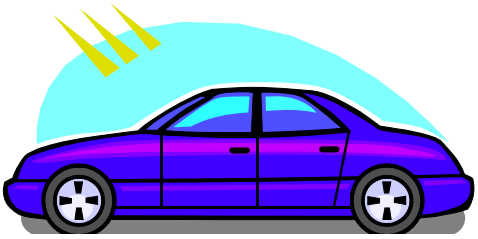
The complainant contacted our office when he lost faith in the agency's ability to correct the problem. We contacted the agency to find out what could be done to fix things once and for all. Officials readily acknowledged their errors. We were told the name of the complainant's former business was very similar to a different company still in business. Agency officials pledged to purge the closed business' name from their database. That, we were told, would put an end to the erroneous notices and inconvenience to our complainant.

We told the complainant we believed the problem was fixed. The complainant was relieved and thanked us.

Unfortunately, six months later, the complainant recontacted us to report that he had received yet another notice. We contacted the agency to find out why the problem had recurred. We were assured the complainant's business information was deleted from its system. However, agency officials said an employee still somehow had the old business information, entered it manually, and mistakenly mailed a notice to our complainant.

An apology was given, and the complainant was told he could disregard the notice. The case was ultimately used in agency training sessions to help prevent similar problems in the future.

State Worker Gets Haircut and a Reprimand



"That was boneheaded."

That comment, from an official we called about a complaint, was directed at one of his employees. We had called him after getting an anonymous call alleging a state employee had driven a state vehicle to get a haircut that afternoon. The anonymous caller said the vehicle clearly identified the agency it was owned by, and he also gave us the license plate number as well as the location and time of day.

We in turn called a supervisor for the agency and relayed the caller's information. The supervisor agreed to look into the matter immediately.

An hour later we received a call from another supervisor for the agency. They had identified the employee who had used a state vehicle to get a haircut. According to this supervisor, the employee said he was there on his lunch hour. The employee was surprised this was a problem, noting he could have just as easily gone to a nearby restaurant to eat lunch and that would not have been a problem.

The supervisor said he understood the employee's comments, but said they had reviewed the agency's policies and confirmed they prohibit using a state vehicle to run personal errands, such as getting a haircut. The supervisor said they would be notifying all employees to explain this type of activity was not acceptable.

Licensing Agency Gives Refund to Licensee's Widow

The death of a spouse is tough enough. The last thing the survivor needs is government bureaucracy.

An electrician had paid $750 for two professional licenses. Six months later the man died unexpectedly. Because the licenses were good for three years, his wife contacted the licensing agency to request a refund. But her request was denied.

The woman wrote a letter of complaint to the Iowa Attorney General's Office. They forwarded her letter to our office and we in turn contacted the licensing agency. We were referred to the executive assistant for the agency's board. He agreed to discuss this with the board's members and also wanted to get in touch with the woman. So we called her with the executive assistant's phone number.

Three days later the executive assistant advised us that the board's chair and vice chair agreed to give a pro-rated refund to the woman. In addition, the agency would be drafting new administrative rules to establish guidelines for future refund requests.

Federal Law Protects Overseas Troops from Taxman

It's never convenient to face a tax audit—especially if you are stationed at Guantanamo Bay, Cuba.

We received a call from a woman whose daughter was out of the country on active military duty. The woman had power of attorney status for her daughter's legal matters. She had received a notice from state revenue agents that claimed her daughter owed about $1,100 following an audit of her income tax returns. State tax auditors had determined that a receipt submitted for the daughter's child care expenses was not acceptable. This made the daughter ineligible for a tax credit for child care costs. The notice said interest would be charged each month the debt remained unpaid.

The woman had been in contact with an agency representative. She had told the representative about a federal law called the Servicemembers Civil Relief Act (SCRA) that prohibits tax agents from taking enforcement actions against taxpayers on active military duty. But the woman said the representative had not indicated whether the case would be put on hold in light of the law.

Under the SCRA, the collection of income tax, interest, and penalties from an active service member "shall be deferred" for up to six months after the member ceases his or her service, if they would have difficulty paying. (More information about the SCRA is available at http://usmilitary.about.com/library/milinfo/scra/bl510.htm.)

We contacted an agency administrator who confirmed that the SCRA prohibited the state from trying to collect taxes from our complainant's daughter. He said he was surprised that not all his employees were aware of the federal law, and he took steps to ensure that was no longer the case.

As a result of this case, the agency has added an informational section about military issues to its website. This section is available at: http://www.iowa.gov/tax/educate/MilitaryInfo.html.

Local Government

No ID? No Trip For You!

A central Iowa man who planned to accompany his terminally ill wife on a dream trip to California was informed that he could not board a plane without an up-to-date identification card. Unfortunately, the man's driver's license had expired, and to obtain a new one, he needed a certain proof of identity he did not readily have. The man was told by his county treasurer's office that it would take months for him to receive the new credentials necessary to obtain a new ID. Those were months that he and his wife did not have.

The man asked us whether we could help. We immediately contacted state transportation officials, who agreed to accept an alternate form of credential that would get him a temporary driver's license needed to take the trip.

Cities to Take More Active Role in Permitting Bike Tour

In 2011, we determined that a handful of businesses and nonprofit organizations had been wrongly denied an opportunity to set up food or informational booths at one specific overnight stop of an annual bicycle tour. In that town, city officials had delegated their responsibility of permitting booths to volunteers, who had decided on their own to exclude anyone who was not locally based. We had concerns the exclusions were discriminatory and should have been decided by the city, since it had enacted the permit requirement in the first place. We also believed the permit fees should be paid to and accounted by the city, and not the volunteers.

Concerned that these practices were not isolated, we decided to review the ordinances and permitting policies of eight Iowa cities selected as stops on the 2012 bike tour. Our goal was to ensure that permits were being fairly decided and proceeds correctly accounted for.

In most of the cities, we found that officials planned to require businesses and nonprofits to obtain costly permits to sell products such as pizzas and pies to bicyclists. However, many cities were deferring their review of permit applications to chambers of commerce or volunteer groups that might discriminate against out-of-town vendors or deny permits arbitrarily. Several of the cities also were allowing permit fees—which typically cost several hundred dollars apiece—to go straight to the volunteer groups without flowing through the city. We believed it was an improper use of a city's powers to require a fee to be paid which gets routed straight to private individuals. State auditors agreed.

We issued individualized feedback to seven of the eight cities and explained why they should handle the process differently. Most of the cities amended their ordinances or practices to ensure that city staff was assuming a more active role to oversee the permitting.

Rather than continue to police different cities year after year, we asked event organizers to offer different advice to its host cities. After some productive discussion, organizers readily agreed to explain to their partners why they should change the way past hosts have operated. Thus far, we have not heard any new permitting complaints from businesses working along the ride.

Local Zoning Board Attains Gender Balance

Gender balance for state boards and commissions has been required by law since 1987 (under Iowa Code section 69.16A). The Iowa General Assembly broadened this requirement in 2009 to include local government boards and commissions. The 2009 amendment differed from the original in two important ways:

1. The local government requirement did not apply to appointments to terms expiring before January 1, 2012.
2. Unlike *state* boards and commissions, which are required to be gender-balanced, *local* boards and commissions are not required to be gender balanced if officials have made "a good faith effort" for three months to appoint a qualified person of the other gender.

Our office was contacted about a gender-balance issue involving a county planning and zoning commission. A man had resigned from the zoning commission earlier in the year, months before his term expired. According to our caller, county supervisors appointed a man to fill the remainder of the term. This kept the zoning commission's membership at four men and one woman.

Under the gender-balance law, the commission ideally would have no more than three members of either gender. The caller alleged there was little effort to find a qualified woman, but also acknowledged that no one had spoken out at the time against the appointment.

More recently, the caller said, county supervisors reappointed the same man to serve an additional term on the zoning commission, even though a woman had also expressed interest in the position. In response to questions about the reappointment, county supervisors discussed the matter with the county attorney at an open meeting. Supervisors said they felt the man was more qualified, but acknowledged they may not have met the "good-faith requirement" in state law. The county attorney agreed to review the matter, but the caller wanted our office to become involved to make sure the state law was being followed.

We called the county attorney, who confirmed she was looking into the matter. The county attorney also confirmed her belief that county officials had not met the good-faith requirement before reappointing the man to the zoning commission. Because the gender-balance law is relatively new for local governments, we provided the county attorney with a guide that advises cities and counties on how to abide by the law. (This guide is available at http://www.women.iowa.gov/ICSW_initiatives/Guide%20to%20Women%20for%20BC%202012.pdf.)

"Although women make up more than half of the Iowa population, they are underrepresented on some local boards and commissions, especially those that make economic decisions for communities," the guide says. "Likewise, men are underrepresented on other types of boards and commissions, such as library boards and others."

We subsequently called the county's zoning administrator and discussed the matter. He shared the county attorney's opinion that county officials had not met the law's good-faith requirement.

Two months later, the county attorney told us that, based on her research, she believed the man's membership on the zoning commission was illegal. The man then resigned from the zoning commission. His resignation letter said he was convinced that both of his 2012 appointments to the zoning commission were illegal.

County supervisors appointed a woman to the zoning commission about two months later.

Council Member's Conflict of Interest Leads to Ombudsman Recommendation

Two park board members presented a proposal to a city council to revitalize a park. A council member who owned property next to the park expressed concerns about the proposal.

Citizens complained to our office about the council member's continued participation in council discussions concerning the park. He was also voting on matters concerning the park. Based on our investigation, we suggested the city council seek training about conflict of interest and other issues.

The city council accepted our suggestion and received training from an individual with the Iowa Institute of Public Affairs. During the training, council members were advised that under Iowa law they should not discuss or vote on matters in which they have a conflict of interest. Instead, a council member with a conflict of interest should voice the nature of the conflict and abstain from any discussion and/or vote. The trainer also suggested council members should contact the city attorney, or a private attorney, if they have any questions about how to handle a specific issue.

A month later the council member told us he had not requested legal advice about his conflict of interest with the park. We suggested he consult an attorney regarding the issue before continuing to discuss the matter at city council meetings. Nonetheless, a video of a subsequent city council meeting showed the same council member again participating in—and voting on—a matter involving the park.

In a letter to the city council member, Ombudsman Ruth Cooperrider wrote, "It is our opinion a conflict of interest exists with regard to the impact the revitalization of [the park] has on your abutting property. It is also our opinion that you are acting contrary to law by continuing to vote on such matters."

Her letter recommended the council member immediately abstain from participating in—and voting on—matters concerning the park "or any other issues in which you have a personal interest." The council member accepted the Ombudsman's recommendation.

Victory for Disabled Vet

An elderly veteran from south central Iowa asked for our help after the city turned off his water for falling delinquent on his bills. The man, who is severely disabled, requires water to run his medical devices. His neighbors had taken to bringing the man jugs of water for his daily living needs.

The man said that his municipal utility shut his water off one day before a deadline came due to make good on an old bill. The man said he had called the utility with an offer to pay half of the bill by the end of the month, and the remainder two weeks later, but the utility refused. When the man complained to the city clerk, she suggested he call our office.

We reviewed the man's household budget and confirmed he could pay off the bill in a fashion similar to his earlier proposal. We contacted the utility and explained the circumstances. Upon further consideration, the utility agreed to accept a payment plan and turned the water back on.

Improper Claims Send Transit Agency on Wild Ride

People who sit on government boards beware: If your employees engage in improprieties, the board is responsible for cleaning up the mess.

A regional transit agency learned this the hard way after enduring what may have been the mother of all bureaucratic nightmares. Rooted in improper reimbursement claims submitted on the transit agency's behalf, it resulted in a demand to repay more than $200,000 to the state, a demand that nearly brought about the demise of the agency.

The transit agency is a state and federally funded regional transportation system. In addition to fares collected from customers, the agency is eligible to be reimbursed for the costs of certain services.

The transit agency is governed by a ten-member board which has little direct involvement in the agency's day-to-day operations. Instead, the transit agency has contracted with a municipal transit agency to handle administrative and operating duties. As a result, the municipal transit agency's staff has run the day-to-day operations for both transit agencies.

In 2010, complaints about the municipal transit agency triggered an investigation by the Federal Transit Administration (FTA). While the federal investigation focused on the municipal transit agency, it also found the regional transit agency had provided some transit services that were prohibited.

In May 2011, the State Auditor reported the municipal transit agency's staff, in making reimbursement claims to a state agency, had intentionally overstated the number of passengers on its buses for fiscal year 2010—and probably had overstated the same numbers for prior years. However, the State Auditor's Office was unable to review data for prior years because the municipal transit agency's staff had destroyed key records for fiscal year 2009 and prior periods, contrary to state and federal record retention requirements.

Based on the findings of both FTA and the State Auditor, the state agency initiated audits in an attempt to determine how much money it may have overpaid in reimbursements to both the municipal transit agency and the regional transit agency. The state agency ultimately determined the regional transit agency had been overpaid $211,250 due to claims for ineligible rides from fiscal years 2006-2009. The regional transit agency's board of directors agreed to repay the $211,250 to the state through monthly installment payments over the next two years.

Several months later, the regional transit agency's board chairman and two legislators asked our office to investigate. They alleged the state's repayment request was burdensome and likely inaccurate. Based on our investigation, we found the state agency was not blameless in this matter, but neither was the regional transit agency.

While the state agency conducted a compliance review of the regional transit agency in late 2010, it uncovered no significant problems. This was at least partially due to the fact that compliance reviews are based on interviews and do not involve a paper review of records. We also learned the state agency had not been doing transit agency audits on a consistent basis for some time—in part due to a number of retirements in that unit.

One state official acknowledged his agency "did a crappy job" in terms of uncovering the problems, but also noted that did not absolve the regional transit agency from having any responsibility.

Without a doubt, the regional transit agency's biggest concern was with the state's repayment figure of $211,250. The board chair noted the state agency could not provide any

(Continued)

paper trail to justify its calculations and said the repayments were causing significant cash flow problems for the regional transit agency.

From our review, we could not conclude the state's reimbursement amount was mistaken or unreasonable. Because the municipal transit agency's staff had destroyed many relevant records, the state agency's auditors were forced to estimate the reimbursement amount by relying on the few records that were available. While this process most likely did not yield an accurate amount, the state agency could have just as easily been underestimating the amount owed.

In addition, the state agency only sought reimbursement back to 2006, even though they could have sought recoupment for prior years. We also found the state agency had failed to consider reimbursement for the inflated payments the transit agency received to purchase new buses. Overall, we found the state agency could have sought recoupment of significantly more money from the regional transit agency.

While we had no doubt the repayment schedule placed a burden on the regional transit agency, we could not conclude the repayment plan was unreasonable or unfair. In the end, regional transit agency officials agreed. Helping matters was the fact that the regional transit agency's cash flow issues were resolved through continued operations.

State agency officials have since changed how they conduct compliance reviews of local transit agencies. These reviews are now document-based rather than solely interview-based. In response to our specific suggestions, the state agency also has revised its manager's handbook and has developed training for board members of local transit agencies, so they can be better able to spot warning signs.

Update

The state agency has scheduled new training sessions for April and May 2013. The sessions will focus on the legal and fiduciary responsibilities of public agencies.

Woman Billed for Unwanted Ambulance

A central Iowa woman was shocked to learn her planned income-tax refund was being held, or "offset," by state officials to pay for a medical bill she had incurred when she fainted in a local discount store.

Store employees who spotted the ill woman called for an ambulance. When the woman regained her senses, she insisted she did not want an ambulance, which was already en route. The woman, who had donated plasma earlier that morning, was still faint when paramedics arrived, and they administered an IV.

The woman and her sister continued to protest a trip to the hospital because they could not afford it. They reported that their mother had been contacted and was on her way to pick up the stricken woman. Despite the protestations, the paramedics directed the sister away from the scene and took the woman to a local emergency room. She was evaluated and released with an order to drink plenty of fluids. The city fire department later billed the woman for the service.

Although state law requires cities to grant hearings to citizens who protest billings, the city in question refused to do so. Instead, city officials offered to forward the woman's letter of protest to the fire department for its consideration.

We convinced state officials to place a hold on its offset while we asked a state licensing board to review the propriety of the billing. Before the state board could consider the matter, the woman received the full income-tax refund she had expected, without any offsets.

Window Tint Exemption Goes With Vehicle Not the Person

Photosensitivity is among the lesser known medical conditions. It refers to a heightened sensitivity to sunlight. For someone with photosensitivity, too much sunlight can cause a severe rash.

This is why the Iowa Department of Transportation (DOT) has allowed a "dark window" exemption for motor vehicles. The exemption has been allowed for people whose doctor documents a medical need for dark or tinted windows.

We received a complaint from a woman who has photosensitivity. She did not own a car, relying instead on her daughter for transportation. Her daughter had purchased a car with dark windows and the mother obtained a "dark window" exemption from her doctor.

But soon after driving the car, local police started pulling the daughter over for driving with tinted windows. While the officers did not give her a ticket, they said it was against the law for her to drive the vehicle without her mother. She was subsequently pulled over and ticketed for violating the city's ordinance on dark windows, even though her mother was in the car at the time. She faced a court date and possibly $127 in fines and charges.

Our investigator reviewed the DOT's exemption, under section 450.7(1) of the DOT's administrative rules. She noted the rule did not say the patient had to be in the vehicle whenever it was in use.

Our investigator then contacted a lieutenant at the police department. He said the city attorney's office had agreed to dismiss the ticket in exchange for the daughter's agreement to pay the court costs ($60). He said she would continue to be ticketed unless she either registered the vehicle under her mother's name, or bought another car to use when her mother was not a passenger.

Not being satisfied, our investigator contacted a DOT official. He confirmed the DOT's rule did not require that the patient be in the vehicle, and also did not require the vehicle be registered in the patient's name. "The exemption is for the vehicle," he added. "Especially if the person is older, we can't expect them to be driving themselves around and we wouldn't expect them to have to own a car."

Our investigator relayed the DOT's position to the assistant city attorney. In response, he said he had already advised the police department not to issue any further tinted-window tickets to the daughter. He also said if she were cited again under the same circumstances, he would ask that the charge be dismissed and that any court costs should be assessed to the city.

Update

The medically-based exemption for dark windows was eliminated in July 2012. DOT modified the rule in question (section 450.7 of the DOT's administrative rules). The rule now says, "Effective July 4, 2012, no exemption shall be granted from the minimum standard of transparency set forth in subrule 450.7(2)."

Under this action, all people previously approved for an exemption were "grandfathered in," but no further exemptions would be granted (although individuals could apply for a waiver under Chapter 11 of the DOT's administrative rules).

Asked why the exemption was eliminated, a DOT official cited "a lack of a compelling

(Continued)

medical need that can be addressed by other means, such as special sunglasses."

During the 2013 session of the Iowa General Assembly, at least two bills have been introduced which, if passed, would allow for medically-based dark window exemptions. These bills are Senate File 67 and House File 95.

House File 95 includes the following language:

> If the exemption is granted, the approved application shall be carried at all times in the vehicle to which it applies, whether or not the person qualifying for the exemption is the driver of or a passenger in the vehicle at the time, and shall be available to any peace officer upon request.

The ombudsman system is based upon the principle that every person has a right to have his or her grievances against the government heard, and if justified, satisfied. The Office of the Citizens' Aide/Ombudsman provides Iowans a non-partisan independent agency where action can be taken to resolve their complaints.

Protecting Information on Outbreaks Sometimes Defensible

The editor of an eastern Iowa newspaper complained to us that state health officials refused to publicly confirm the source of a norovirus exposure that made several local residents ill. Norovirus is a highly contagious infection commonly spread by food or water contaminated by human or animal fecal matter.

The newspaper published a story about the outbreak but refused to confirm facts that reporters had gathered independently. Newspaper officials believed the health department was more concerned about protecting the business where the virus originated than in protecting the public. We initially recognized the health department had the discretion to release that information, but wanted to understand better why the department was keeping it secret.

Department officials explained to us that their role is to foster public health; if that purpose is not served by releasing the name of the business where the virus originated, they would not release it.

Because the norovirus has a very short incubation period, it became evident to us that people who were exposed to the virus would fall ill before the health department could be alerted. It also was not altogether clear the business was to blame for the outbreak. Therefore, we concluded that naming the business where people fell ill would have served no useful purpose for others.

We agreed that a public announcement was advisable in cases when officials can alter the course of an infection or deter the spread of an illness. In this case, however, a public announcement would have come too late to protect anyone.

Ombudsman's Hunch Helps Locate Test Scores

A man called our office when a community college said it had no record of a test he had taken years earlier. The man was to begin classes within days and if the test scores were not located he would be forced to retake the test. He feared this might cause him to miss the start of classes.

Our investigator was familiar with the man and knew his first name is commonly mistaken for another name. She wondered if this might be the case with the college, so she called the college and spoke with a representative.

The representative checked her computer records and confirmed she had no record of the man taking the test. Our investigator then asked the representative what name she was using. In response, the college representative gave an incorrect version of the man's first name.

When our investigator provided the correct spelling of the man's name, it only took a few seconds for the representative to find the record of the man previously taking the test. Our investigator relayed the good news to the man, who was very relieved and thankful.

Sometimes, the Squeaky Wheel is Right

A rural resident of south-central Iowa complained that a gravel road near his home was not being properly maintained. This was especially a problem at a bridge where improper grading created a bump that made the road dangerous. The resident explained he had made several calls to county officials, but merely received empty assurances the work would be done.

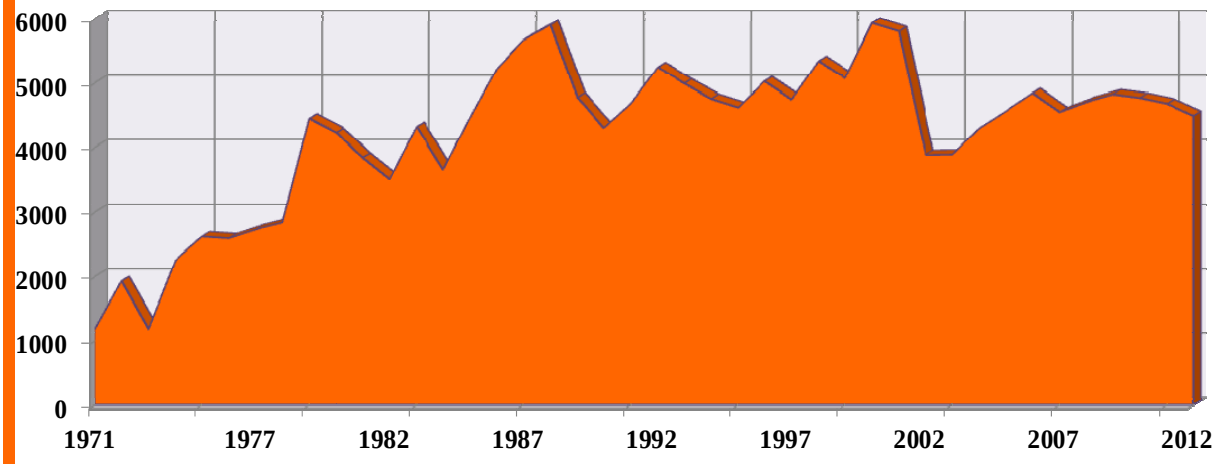
We contacted the county engineer, who acknowledged that he had talked to the resident about the bridge. The engineer characterized the resident as "a squeaky wheel" who always complained that his road was the last to get plowed during the winter. The engineer said he believed the resident received better service than other residents because of his frequent complaints. Nevertheless, the engineer did agree to check the bridge in question, and he confirmed that only one end was graveled and properly graded. Two days later the problem with the bridge was resolved.

The Office of the Citizens' Aide/Ombudsman

An independent Legislative agency created for the citizens of Iowa to help ensure fair and equitable government services for all its residents.

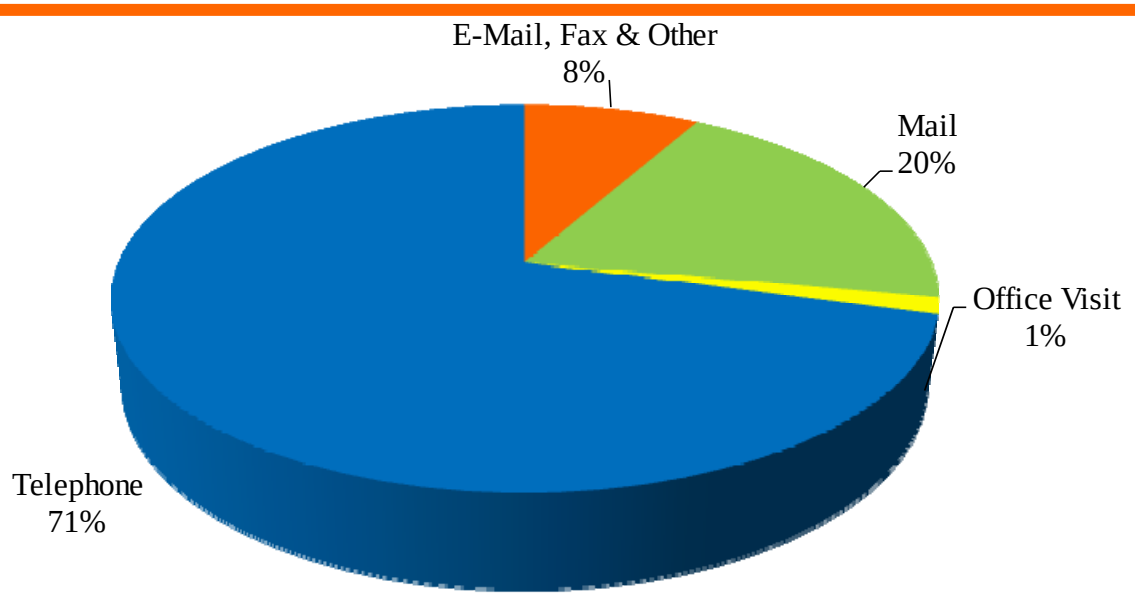
Statistics

4,498 Cases Opened in 2012

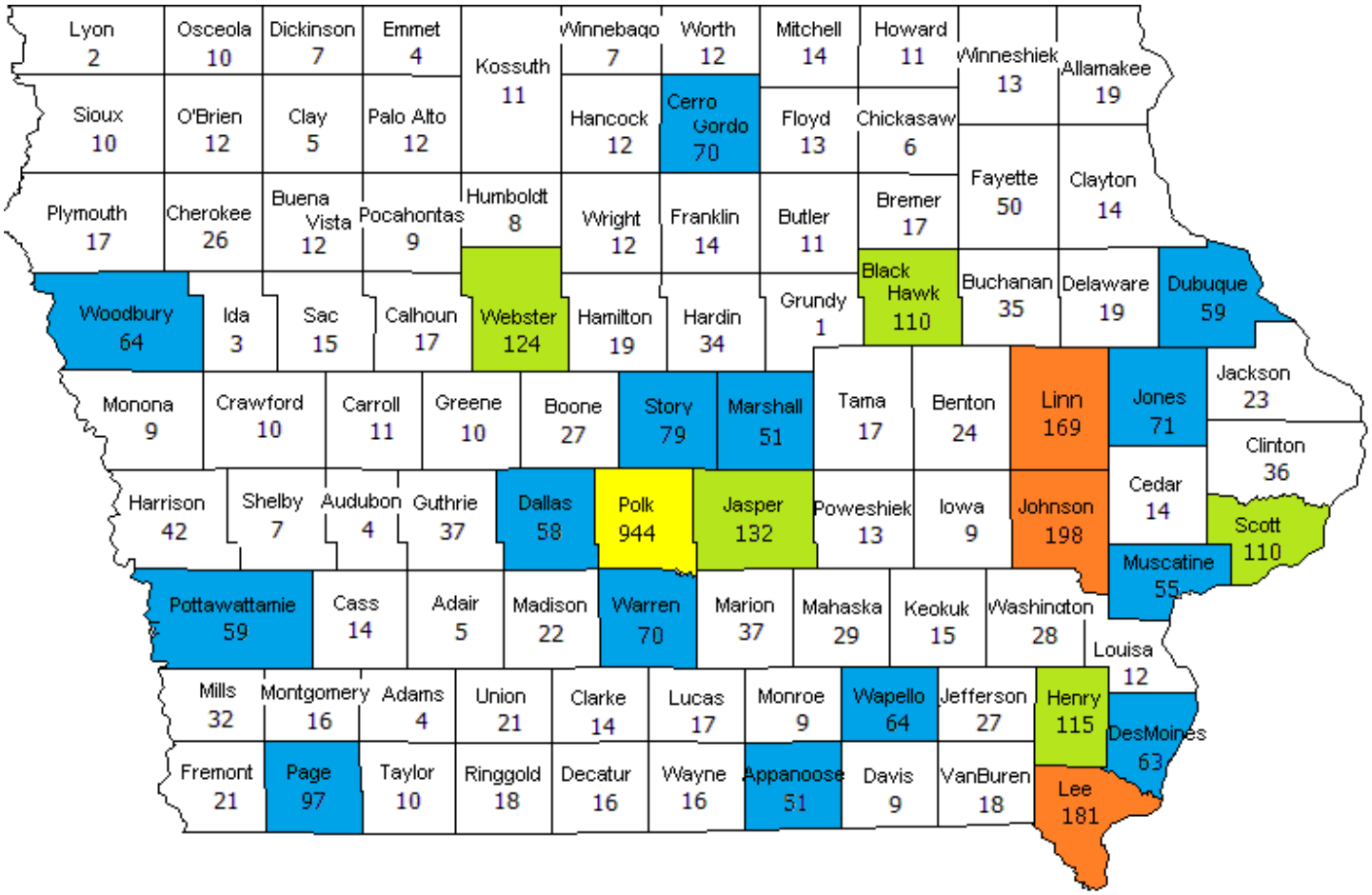


This chart shows the number of contacts received by the Ombudsman's Office each year from 1971 through 2012.

Means by Which Cases Were Received



Cases Are Received From All Counties in Iowa



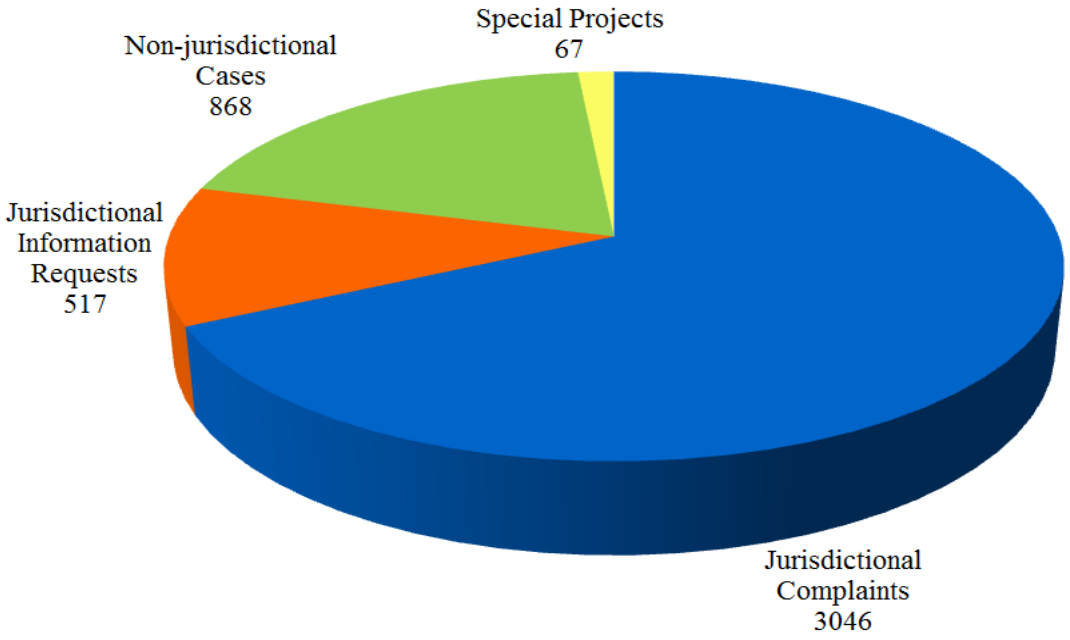
The numbers on this map represent 4,498 cases.
Not shown on the map are the following:

- *Iowa unknown (53);*
- *other states, District of Columbia and territories (220);*
- *other countries (3);*
- *and unknown (9).*

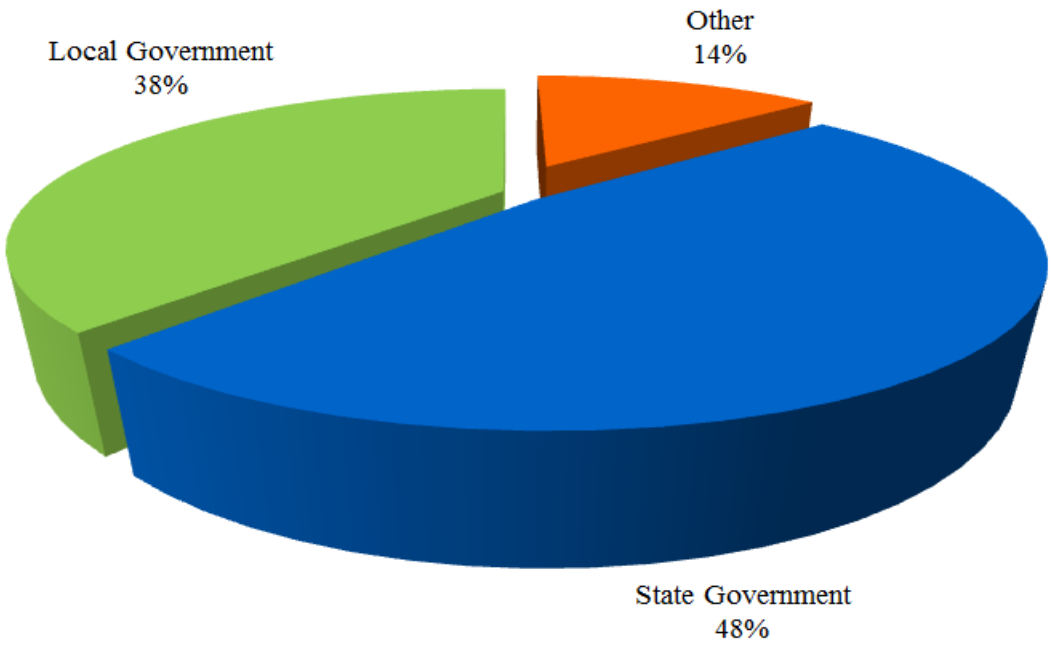
Cases Opened in 2012 by Agency

Name	Jurisdictional Complaints	Jurisdictional Information Requests	Non-jurisdictional Cases	Total	Percentage of Total
Administrative Services	6	2	0	8	0.18%
Aging	0	6	0	6	0.14%
Agriculture & Land Stewardship	1	1	0	2	0.05%
Attorney General/Department of Justice	6	1	0	7	0.16%
Auditor	1	3	0	4	0.09%
Blind	1	1	0	2	0.05%
Citizens' Aide/Ombudsman	1	46	0	47	1.06%
Civil Rights Commission	11	3	0	14	0.32%
College Aid Commission	0	1	0	1	0.02%
Commerce	6	8	0	14	0.32%
Corrections	725	35	0	760	17.15%
County Agricultural Extension	0	1	0	1	0.02%
Cultural Affairs	0	2	0	2	0.05%
Drug Control Policy	1	0	0	1	0.02%
Economic Development	2	2	0	4	0.09%
Education	4	1	0	5	0.11%
Educational Examiners Board	1	0	0	1	0.02%
Energy Independence	0	0	0	0	0.00%
Ethics and Campaign Disclosure Board	0	3	0	3	0.07%
Executive Council	0	0	0	0	0.00%
Human Rights	2	1	0	3	0.07%
Human Services	342	30	0	372	8.40%
Independent Professional Licensure	4	1	0	5	0.11%
Inspections & Appeals	40	5	0	45	1.02%
Institute for Tomorrow's Workforce	0	0	0	0	0.00%
Iowa Communication Network	0	0	0	0	0.00%
Iowa Finance Authority	0	0	0	0	0.00%
Iowa Lottery	4	0	0	4	0.09%
Iowa Public Employees Retirement System	2	1	0	3	0.07%
Iowa Public Information Board	0	2	0	2	0.05%
Iowa Public Television	0	0	0	0	0.00%
Law Enforcement Academy	2	0	0	2	0.05%
Management	2	1	0	3	0.07%
Municipal Fire & Police Retirement System	0	0	0	0	0.00%
Natural Resources	21	5	0	26	0.59%
Parole Board	18	5	0	23	0.52%
Professional Teachers Practice Commission	0	0	0	0	0.00%
Public Defense	1	0	0	1	0.02%
Public Employees Relations Board	0	1	0	1	0.02%
Public Health	12	12	0	24	0.54%
Public Safety	25	4	0	29	0.65%
Regents	15	4	0	19	0.43%
Revenue & Finance	52	9	0	61	1.38%
Secretary of State	3	7	0	10	0.23%
State Fair Authority	0	0	0	0	0.00%
State Government (General)	100	145	0	245	5.53%
Transportation	31	5	0	36	0.81%
Treasurer	1	2	0	3	0.07%
Veterans Affairs Commission	2	2	0	4	0.09%
Workforce Development	50	8	0	58	1.31%
State government - non-jurisdictional					
Governor	0	0	19	19	0.43%
Judiciary	0	0	181	181	4.08%
Legislature and Legislative Agencies	0	0	21	21	0.47%
Governmental Employee-Employer	0	0	34	34	0.77%
Local government					
City Government	631	90	0	721	16.27%
County Government	615	31	0	646	14.58%
Metropolitan/Regional Government	31	6	0	37	0.84%
Community Based Correctional Facilities/Programs	225	10	0	235	5.30%
Schools & School Districts	49	14	0	63	1.42%
Non-Jurisdictional					
Non-Iowa Government	0	0	107	107	2.41%
Private	0	0	506	506	11.42%
Totals	**3046**	**517**	**868**	**4431**	100.00%

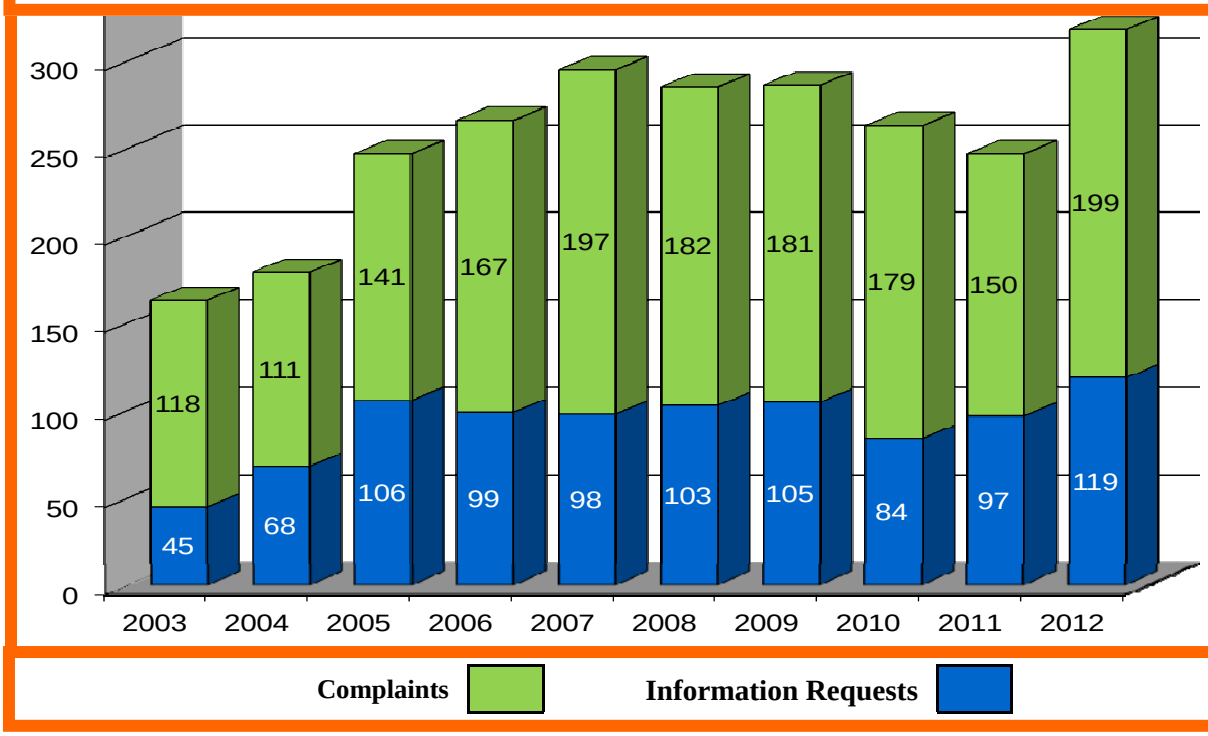
Types of Cases Opened in 2012



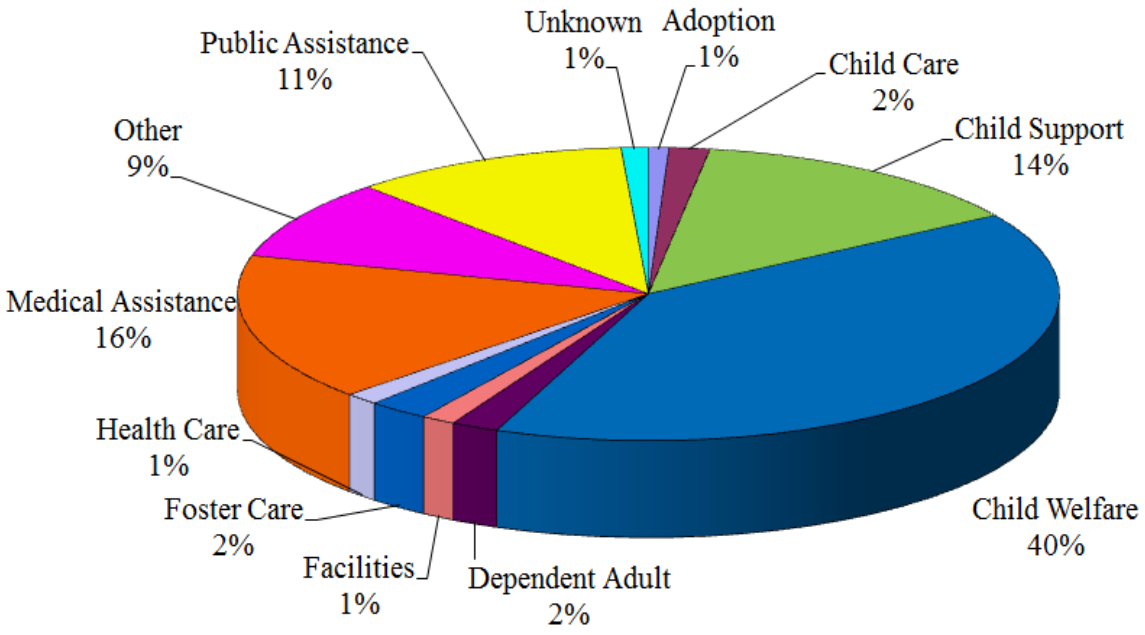
Subjects of Cases



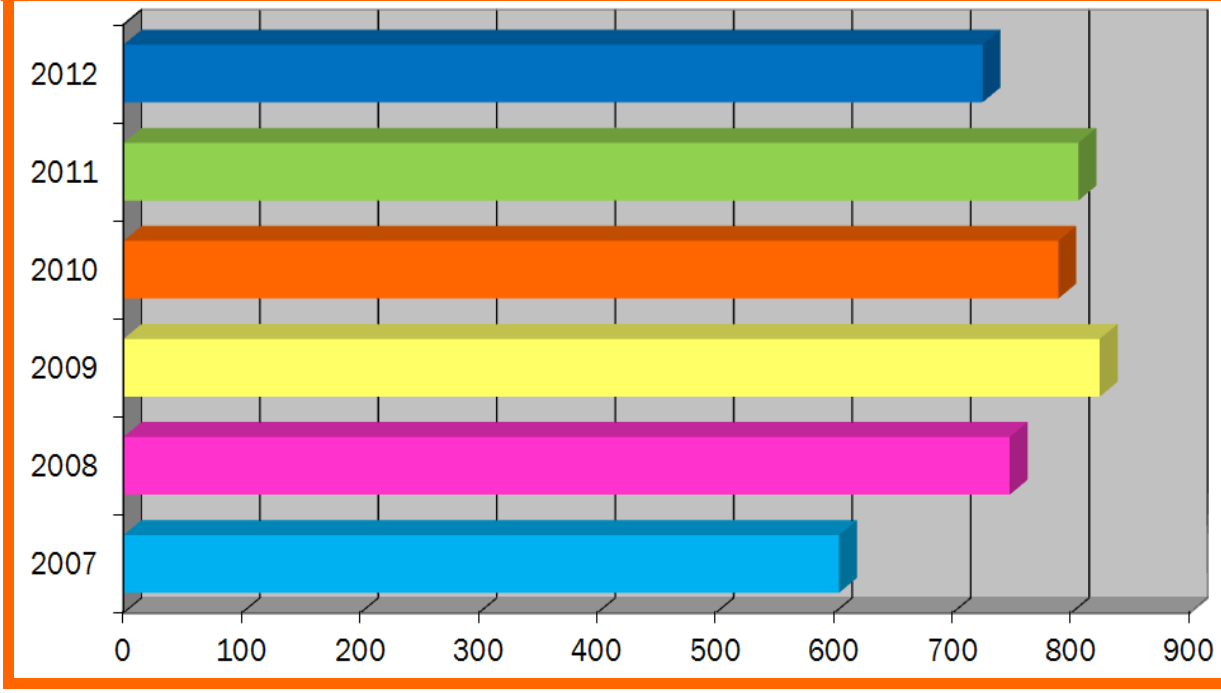
Public Records, Open Meetings, and Privacy Complaints and Information Requests Received



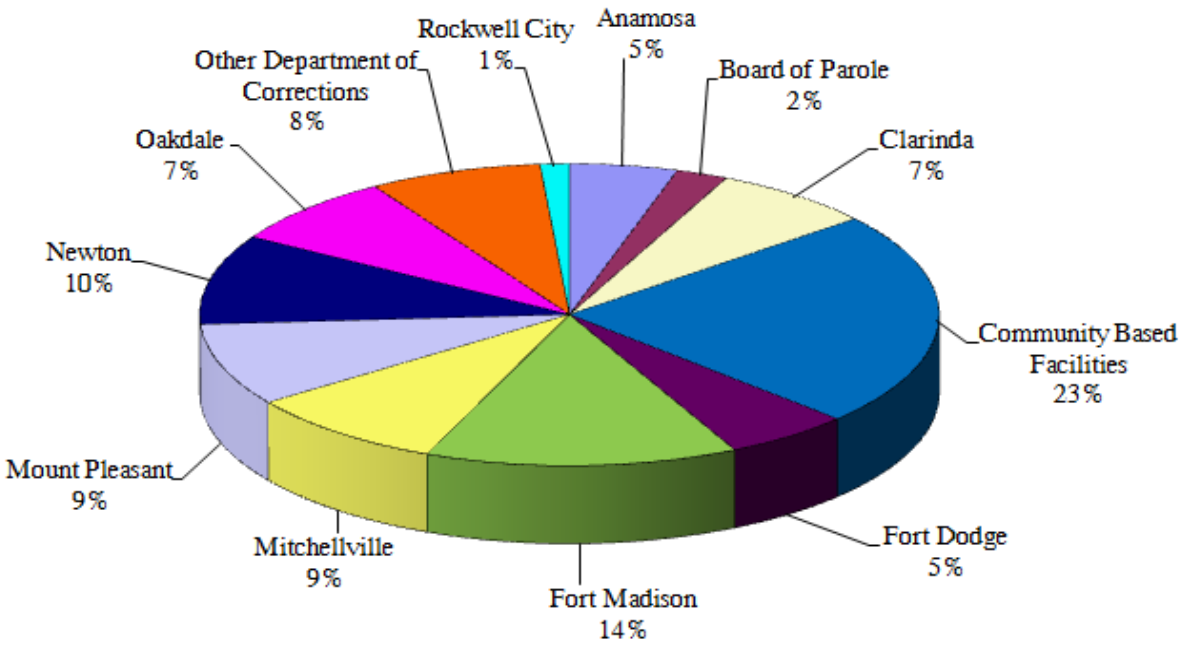
Human Services Cases



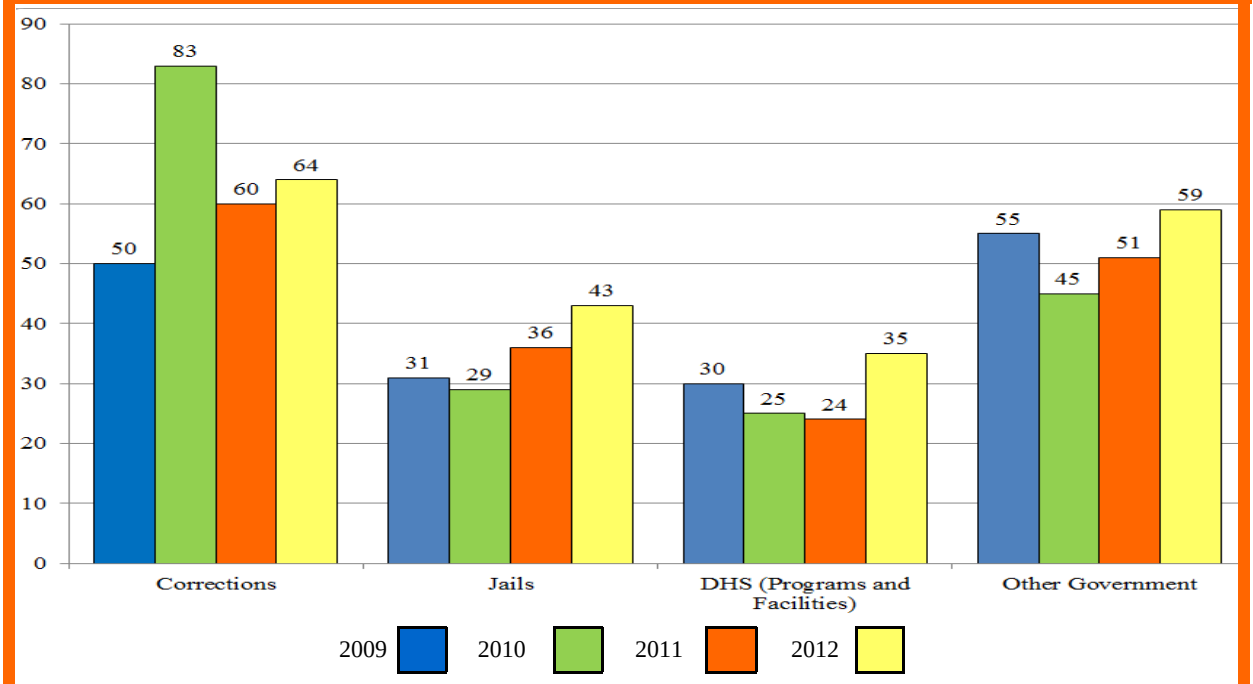
Number of Corrections Complaints



Subjects of Corrections Cases



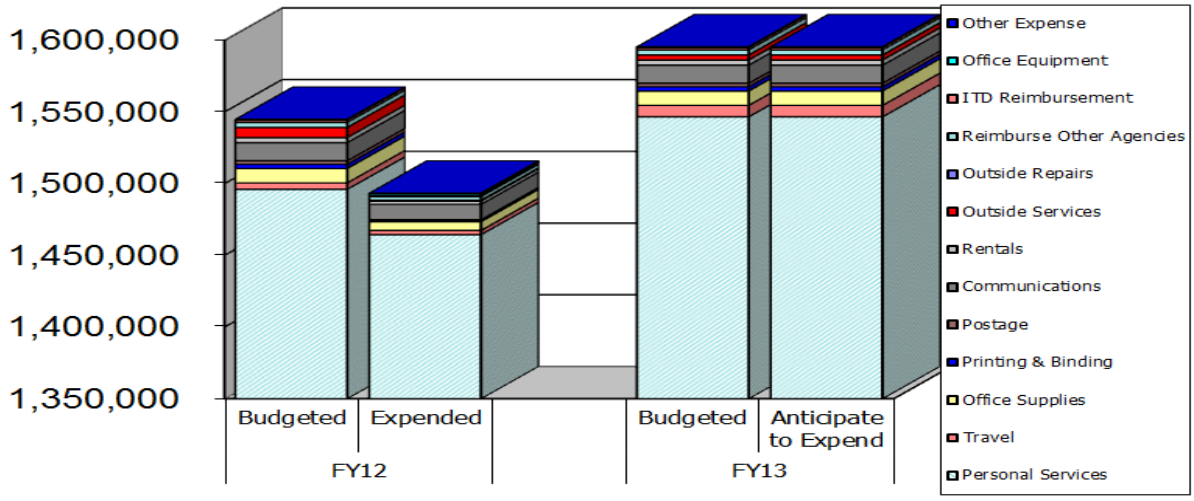
Mental Health Related Cases



Mental Health related cases identify cases:

- ***Where complainants claim they were adversely impacted as a result of their mental illness.***
- ***Involving the delivery and availability of mental health services.***
- ***Where the agency identifies mental illness as an issue in the complaint.***

Office of Citizens' Aide/Ombudsman FY12 & FY13 Financial Information



Budget information is presented to meet the requirement that state government annual reports to the Legislature include certain financial information.

From Left to Right: Front Row: Jinhong Lim, Debbie Julien, Ruth H. Cooperrider, Linda Brundies, Kyle White; Second Row: Rory Calloway, Elizabeth Hart, Andy Teas, Kristie Hirschman, Jeri Burdick Crane, Angela McBride; Third Row: Jason Pulliam, Bert Dalmer, Eleena Mitchell-Sadler, Barbara Van Allen, Jeff Burnham

The Citizens' Aide/Ombudsman and Staff

Ruth H. Cooperrider, Citizens' Aide/Ombudsman
Andy Teas, Legal Counsel
Jeff Burnham, Senior Assistant Ombudsman
Kristie F. Hirschman, Senior Assistant Ombudsman
Rory E. Calloway, Assistant Ombudsman 3
Bert Dalmer, Assistant Ombudsman 3
Kyle R. White, Assistant Ombudsman 3
Elizabeth Hart, Assistant Ombudsman 2
Angela McBride, Assistant Ombudsman 2
Eleena Mitchell-Sadler, Assistant Ombudsman 3
Barbara Van Allen, Assistant Ombudsman 3
Linda Brundies, Assistant Ombudsman 2
Jason Pulliam, Assistant Ombudsman 1
Jeri Burdick Crane, Senior Financial Officer
Debbie Julien, Secretary/Receptionist

Jinhong Lim, Director of Administrative Management Division, South Korea's Anti-Corruption and Civil Rights Commission. Mr. Lim is completing an 18-month fellowship study in our office.

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