

State Court 4/30, No Pass 5/2

WITHDRAWN

Substituted for, by HF 2487

FILED APR 30 1992

SENATE FILE **2377**

BY HUTCHINS

(COMPANION TO LSB 6359HH

BY MCKINNEY)

Passed Senate, Date _____ Passed House, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to information subject to the review or control
2 of the office of citizens' aide.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 2377

1 Section 1. Section 601G.1, Code 1991, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 6. "Record or document" includes all
4 writings, drawings, graphs, charts, photographs, phonorecords,
5 audiotapes, videotapes, and any other data compilations stored
6 or preserved in any medium from which information can be
7 obtained.

8 Sec. 2. Section 601G.8, Code 1991, is amended to read as
9 follows:

10 601G.8 CLOSED FILES.

11 The citizens' aide may maintain secrecy in respect to all
12 matters including the identities of the complainants or
13 witnesses coming before the citizens' aide, except that the
14 general assembly, any standing committee of the general
15 assembly, the legislative council, or the governor may require
16 disclosure of any matter and shall have complete access to the
17 records and files of the citizens' aide except for information
18 in the records and files which is confidential as provided by
19 law. The citizens' aide may conduct private hearings.

20 Sec. 3. Section 601G.9, subsection 3, Code 1991, is
21 amended to read as follows:

22 3. Request and receive from each agency assistance and
23 information as necessary in the performance of the duties of
24 the office, including but not limited to assistance and
25 information for purposes of determining if an investigation
26 under section 601G.11 or 601G.12 should be conducted. In
27 obtaining the assistance and information, the citizens' aide
28 may do all of the following:

29 a. ~~Notwithstanding section 22-77, pursuant to an~~
30 ~~investigation the citizens' aide may examine~~ Examine and copy
31 any and all records and documents of any agency, including any
32 record or document as defined in this chapter which is
33 required by law to be kept confidential, unless the
34 custodian demonstrates that the one of the following:

- 35 (1) The examination would violate federal law.

1 (2) The examination would or result in the denial of
2 federal funds to the agency.

3 (3) The information is privileged under law and the
4 privilege has not been waived by a person entitled to assert
5 the claim of privilege.

6 (4) The information would disclose the privileged mental
7 impressions, conclusions, opinions, or legal theories of an
8 attorney.

9 PARAGRAPH DIVIDED. Confidential documents provided to the
10 citizens' aide by other agencies shall continue to maintain
11 their confidential status. In order to assure a free flow of
12 information for accomplishing the purposes of this section,
13 any information in the possession of the citizens' aide which
14 is privileged and confidential by law shall not be subject to
15 discovery, subpoena, or other means legally compelling the
16 release of the information to any person and shall not be
17 admissible evidence in any judicial or administrative
18 proceeding. The citizens' aide is and any current or former
19 staff member are subject to the same policies and penalties
20 regarding the confidentiality of the a record or document as
21 an employee of the agency which provided the record or
22 document.

23 b. The-citizen's-aide-may-enter Enter and inspect premises
24 within any agency's control and may observe proceedings and
25 attend hearings, with-the-consent-of-the-interested-party,
26 including those held under a provision of confidentiality,
27 conducted-by-any-agency with the consent of the interested
28 party, unless the agency demonstrates that the attendance or
29 observation would violate federal law or result in the denial
30 of federal funds to that agency. This-subsection-does-not
31 permit-the-examination-of-records-or-access-to-hearings-and
32 proceedings-which-are-the-work-product-of-an-attorney-under
33 section-22-77-subsection-47-or-which-are-privileged
34 communications-under-section-622-10.

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EXPLANATION

1 This bill changes the provisions relating to secrecy of
2 files or information obtained or maintained by the office of
3 citizens' aide/ombudsman by adding the legislative council to
4 the list of individuals who may require disclosure of
5 information. The bill also qualifies the extent to which
6 information can be required to be disclosed by the citizens'
7 aide/ombudsman and by prohibiting disclosure where disclosure
8 or access is specifically prohibited by law.

9 With respect to citizens' aide/ombudsman access to
10 information or assistance from other agencies, the bill
11 provides that assistance and information, which is for
12 determining whether an investigation by the citizens'
13 aide/ombudsman should be conducted, is included among the
14 types of information that the citizens' aide/ombudsman may
15 request and receive. The bill states that records which are
16 confidential by law are also subject to examination and
17 copying by the citizens' aide/ombudsman unless prohibited by
18 law or privilege or the examination and copying would result
19 in loss of federal funds. The bill also provides that
20 attendance at confidential hearings by the citizens'
21 aide/ombudsman may be permitted with the consent of the
22 interested party.

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