OMBUDSMAN[141]

[Prior to 3/30/94, see Citizens' Aide[210]]
[Rules published 3/30/94 exempt from Iowa Code chapter 17A pursuant to Iowa Code section 2C.9(5). These rules were also published in the 3/30/94 IAB as authorized by the ARRC pursuant to Iowa Code section 17A.6(1)*"c."*]
[Prior to 10/26/16, see Citizens' Aide/Ombudsman[141]; renamed Ombudsman by 2013 Iowa Acts, House File 185, section 3.]

CHAPTER 1
ORGANIZATION

1.1(2C) Authority and function
1.2(2C) Location and access
1.3(2C) Composition and duties of staff

CHAPTER 2
PROCEDURES

2.1(2C) Definitions
2.2(2C) Complaints
2.3(2C) Institutional communications
2.4(2C,70A) Whistleblower reprisal complaints
2.5(2C) Preliminary review and inquiry
2.6(2C) Criteria for investigation
2.7(2C) Decision not to investigate
2.8(2C) Decision to investigate
2.9(2C) Investigations
2.10(2C) Subpoenas
2.11(2C) The taking of testimony
2.12(2C) Disposition after investigation
2.13(2C) Investigative reports
2.14(2C) Annual reports
2.15(2C) Referral for disciplinary or criminal action
2.16(2C) Privileges and immunities
2.17(2C) Penalties for obstruction

CHAPTER 3
INFORMATION PRACTICES

3.1(2C,22) Definitions
3.2(2C,22) Statement of policy
3.3(2C,22) Requests for access to records
3.4(2C,22) Access to confidential records
3.5(2C,22) Requests to treat record as confidential
3.6(2C,22) Additions, dissents or objections to records
3.7(2C,22) Notice to suppliers of information
3.8(2C,22) Release to subject
3.9(2C,22) Consensual disclosure of confidential records
3.10(2C,22) Disclosure without consent of subject
3.11(2C,22) Availability of records
3.12(2C,22) Personally identifiable information
3.13(2C,22) Other groups of records
3.14(2C,22) Data processing systems
3.15(2C,22) Applicability

CHAPTER 4
RULE MAKING

4.1(2C) Applicability
4.2(2C) Adoption of rule
4.3(2C) Contents, style, and form of rule

CHAPTER 1
ORGANIZATION
[Prior to 3/30/94, see 210—Chapter 1]

Chapter exempt from chapter rescission pursuant to Iowa Code section 17A.7

141—1.1(2C) Authority and function. The office of ombudsman was established by the general assembly in 1972 and is charged with the responsibility to investigate complaints from any persons regarding administrative actions of Iowa state or local governmental agencies and to render objective opinions or recommendations on the complaints, in the interests of resolving complaints and improving administrative processes and procedures. In addition to the powers and duties specified in Iowa Code chapter 2C, the office of ombudsman shall investigate complaints received pursuant to Iowa Code section 23A.4.
[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16; Adopted and published 6/2/21 pursuant to Iowa Code section 2C.9(5), effective 6/2/21]

141—1.2(2C) Location and access. The office of ombudsman is located at the Ola Babcock Miller Building, 1112 E. Grand Avenue, Des Moines, Iowa 50319. The office website is www.legis.iowa.gov/Ombudsman. The office can be reached at the following numbers: telephone (515)281-3592, 1-888-426-6283 (1-888-IA-OMBUD), and TDD/TTY (515)242-5065, and fax (515)242-6007. The office can also be reached by electronic mail at ombudsman@legis.iowa.gov. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, except designated state holidays.
[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—1.3(2C) Composition and duties of staff.

1.3(1) *Staff.* The office of ombudsman is composed of the following staff positions:

a. Ombudsman. The ombudsman is appointed by the legislative council pursuant to Iowa Code section 2C.3. The ombudsman shall meet the qualifications specified in Iowa Code section 2C.4 and serve for the term of office provided in Iowa Code section 2C.5. The ombudsman employs and supervises all staff in the positions and at the salaries authorized by the legislative council.

b. Deputy ombudsman. The ombudsman shall designate one of the members of the staff as the deputy ombudsman. The deputy ombudsman shall act as the ombudsman when the ombudsman is absent from the state or becomes disabled, or when the position of ombudsman is vacant, until the vacancy is filled by the legislative council.

c. Legal counsel. The legal counsel shall provide legal advice, assistance, and representation to the ombudsman and members of the staff in matters pertaining to their authority and duties and shall perform other assigned duties.

d. Assistant for corrections. The assistant ombudsman for corrections is primarily responsible for investigating complaints relating to penal and correctional agencies, and performs other assigned duties.

e. Assistants. The assistant ombudsmen receive and investigate complaints and perform other assigned duties.

f. Support staff. The support staff performs secretarial, clerical, and other assigned duties.

1.3(2) *Delegation of authority or duties.* The ombudsman may delegate to any staff member any authority or duties of the ombudsman, except the duty of making formal recommendations to agencies or reports to the governor or the general assembly.
[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

These rules are intended to implement Iowa Code sections 2C.3(2), 2C.6, 2C.9(6), 23A.4, and 217.3A(3).

[Filed 12/15/75, Notice 10/20/75—published 12/29/75, effective 2/2/76]
[Filed 8/26/81, Notice 7/22/81—published 9/16/81, effective 10/21/81]
[Filed 8/1/84, Notice 6/20/84—published 8/29/84, effective 10/3/84]
[Adopted and published 3/30/94 pursuant to Iowa Code section 2C.9(5), effective 5/1/94]
[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]
[Adopted and published 6/2/21 pursuant to Iowa Code section 2C.9(5), effective 6/2/21]

CHAPTER 2
PROCEDURES

[Prior to 3/30/94, see 210—Chapter 2, rules 6.1(601G) and 7.1(601G)]

Chapter exempt from chapter rescission pursuant to Iowa Code section 17A.7

141—2.1(2C) Definitions. As used in this chapter:

"Administrative action" means any action, decision, omission, policy, practice, procedure, or rule of an agency or any failure of an agency to act pursuant to law.

"Agency" means all governmental entities, departments, boards, commissions, councils or institutions, and any officer, employee or member thereof acting or purporting to act in the exercise of official duties. "Agency" includes any person providing child welfare or juvenile justice services under contract with an agency that is subject to investigation by the ombudsman. "Agency" does not include:

1. Any court or judge or appurtenant judicial staff;
2. The members, committees, or permanent or temporary staffs of the Iowa general assembly;
3. The governor of Iowa or the governor's personal staff;
4. Any instrumentality formed pursuant to an interstate compact and answerable to more than one state; and
5. Any agency, official or employee of the federal government.

"Employee" means any employee of any agency.

"Officer" means any officer of any agency.

"Person" means an individual, aggregate of individuals, corporation, partnership, or unincorporated association.

"Records" or *"documents"* means any writings, drawings, graphs, charts, photographs, phonorecords, audio recordings, video recordings, and any other data or information stored or preserved in any medium.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—2.2(2C) Complaints.

2.2(1) *Persons who may contact office.* Any person may contact the ombudsman concerning an administrative action by an agency. If a person contacts the ombudsman on behalf of another person whose specific right or interest is directly affected by an administrative action, the ombudsman may request that the affected person contact the ombudsman as the complainant or obtain the consent of the affected person before considering the complaint.

2.2(2) *Methods of contact.* The ombudsman may be contacted at the office of ombudsman or at the site of an agency or other location specified by the ombudsman. Contact may be made by mail, email, telephone, facsimile (fax), or any other method deemed acceptable by the ombudsman, except as provided in subrule 2.2(3). Contact may also be made indirectly by the receipt of a person's correspondence which is referred or forwarded to the office of the ombudsman.

2.2(3) *Written complaints.* The ombudsman may require complaints to be submitted in writing or on a form prescribed by the ombudsman.

2.2(4) *Assistance by the ombudsman.* If a person is incapable of submitting a written complaint or has difficulty communicating with the ombudsman because of a disability or language barrier, the ombudsman shall assist that person in completing the complaint or make accommodations to facilitate communication with that person.

2.2(5) *Self-initiated complaints.* An investigation into an agency's administrative action may be initiated on the ombudsman's own motion, if the ombudsman determines it is an appropriate subject for investigation.

2.2(6) *Anonymous complaints.* The ombudsman may accept a complaint from an anonymous person. However, if the ombudsman at any time determines the complainant's identity is needed to pursue an investigation of the complaint, the ombudsman may request that the complainant's identity be disclosed. If the identity of the complainant is not disclosed as requested, the ombudsman may decline to pursue investigation of the complaint.

2.2(7) *Information requests.* If a person who contacts the ombudsman requests information, the ombudsman may provide such information, if it relates to state and local government, or refer the person to another agency or to any other appropriate entity or source for the information.

2.2(8) *No fee or charge.* The ombudsman shall not assess any monetary or other charge against any person who contacts the office of ombudsman for assistance.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16; Adopted and published 6/2/21 pursuant to Iowa Code section 2C.9(5), effective 6/2/21]

141—2.3(2C) Institutional communications.

2.3(1) *Correspondence.* Any correspondence from a person confined or residing in an institution or facility under the control of an agency shall be forwarded, unopened and without undue delay, to the office of ombudsman by the institution or facility. Any correspondence from the office of ombudsman to such a person shall be delivered, unopened and without undue delay, by the institution or facility to that person.

2.3(2) *Telephonic communication.* A telephonic communication between a person confined or residing in an institution or facility under an agency's control and any staff member of the office of ombudsman shall not be monitored by any officer or employee of that agency.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—2.4(2C,70A) Whistleblower reprisal complaints.

2.4(1) *State employees.* Notwithstanding the limitations of subrule 2.6(1), the ombudsman may investigate a complaint filed by an employee of a state employment system who alleges that an adverse employment action has been taken against the employee as provided in Iowa Code section 70A.28(2). This provision does not apply to employees of those entities excluded from the definition of "agency" under Iowa Code section 2C.1(2). This provision applies only to employees who are non-merit employees and employees not covered by a collective bargaining agreement. Complaints must be made to the ombudsman within 30 calendar days following the effective date of the adverse employment action.

2.4(2) *Investigation.* If an investigation of the employee's complaint occurs, the ombudsman shall issue findings to the employee and the agency in an expeditious manner.

2.4(3) *Investigative findings.* If the employee files an appeal of the adverse employment action with the public employment relations board pursuant to Iowa Code section 70A.28(6), the written findings issued by the ombudsman may be introduced as evidence before the public employment relations board.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16; Adopted and published 6/2/21 pursuant to Iowa Code section 2C.9(5), effective 6/2/21]

141—2.5(2C) Preliminary review and inquiry.

2.5(1) *Review of complaint.* The ombudsman shall review and consider each complaint to determine if it is within the ombudsman's jurisdiction, if it is an appropriate subject for investigation, and if it warrants an investigation, under the criteria in rule 141—2.6(2C).

2.5(2) *Preliminary inquiry.* The ombudsman may make a preliminary inquiry to obtain information for the purpose of making the determination required in subrule 2.5(1). A preliminary inquiry may utilize any of the methods available for investigations under subrule 2.9(1). However, a preliminary inquiry shall not be considered an investigation.

2.5(3) *Resolution without investigation.* If, in the course of a preliminary inquiry on the complaint, an agency provides an explanation or response or takes an action which resolves the complaint, the ombudsman may decline to investigate the complaint. The ombudsman shall inform the complainant regarding the resolution of the complaint. However, the resolution of a complaint during a preliminary review and inquiry does not preclude the ombudsman from conducting an investigation into the complaint.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—2.6(2C) Criteria for investigation.

2.6(1) *Jurisdiction.* The ombudsman has jurisdiction to investigate any administrative action of an agency; however, the ombudsman shall not investigate the complaint of an employee of an agency in regard to that employee's employment relationship with the agency, except as provided in rule 141—2.4(2C,70A).

2.6(2) *Subjects for investigation.*

a. An appropriate subject for investigation includes any administrative action which the ombudsman has reason to believe might be:

(1) Contrary to law or regulation;

(2) Unreasonable, unfair, oppressive, or inconsistent with the general course of an agency's functioning, even though it is in accordance with the law;

(3) Based on a mistake of law;

(4) Arbitrary in ascertainments of fact;

(5) Based on improper motivation or irrelevant consideration; or

(6) Unaccompanied by an adequate statement of reasons.

b. The ombudsman may also inquire into an agency's policy, practice or procedure if the ombudsman has reason to believe improvements can be made to the policy, practice or procedure which lessen the risk that objectionable administrative actions will occur.

2.6(3) *Reasons to decline investigation.* The ombudsman may decline to investigate a complaint if the ombudsman finds substantiating facts that:

a. The complainant has available another remedy or channel of complaint which the complainant could reasonably be expected to use;

b. The complaint pertains to a matter outside the ombudsman's power;

c. The complainant has no substantive or procedural interest which is directly affected by the matter complained about;

d. The complaint is trivial, frivolous, or vexatious or not made in good faith;

e. Other complaints are more worthy of attention;

f. The resources of the ombudsman are insufficient for adequate investigation;

g. The complaint has been delayed too long to justify present examination of its merit;

h. The complainant does not provide or refuses to provide, without good reason, information in the complainant's possession or knowledge which is requested by the ombudsman;

i. A previous determination has been made by the ombudsman regarding the subject matter of the complaint; or

j. The complaint has been resolved due to a change in the complainant's circumstances or in the law, or due to an action taken by the agency during a preliminary review and inquiry on the complaint.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—2.7(2C) Decision not to investigate.

2.7(1) *Notice of decision.* If, after preliminary review and consideration of a complaint, the ombudsman decides not to investigate the complaint, the complainant shall be informed of the decision and the reasons for the decision. The ombudsman may also inform the agency involved of the decision, if such notice is deemed appropriate.

2.7(2) *Referral of nonjurisdictional complaint.* If the ombudsman does not have jurisdictional authority to investigate a complaint, the complainant may be referred to an agency or other appropriate entity or person for assistance.

2.7(3) *Effect of declining investigation.* A decision to decline investigation of a complaint under subrule 2.6(3) does not preclude the ombudsman from inquiring into the complaint or a related subject matter in the future.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—2.8(2C) Decision to investigate.

2.8(1) *Notice of decision.* If, after preliminary review and inquiry and consideration, the ombudsman decides to investigate a complaint, the complainant and the agency involved in the complaint shall be notified of the decision.

2.8(2) *Notice to agency.* A notice of investigation to an agency shall be directed to an official or employee of the agency. Such notice may be given simultaneously or in conjunction with any investigative action that is initiated under rule 141—2.9(2C).

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—2.9(2C) Investigations.

2.9(1) *Methods.* The ombudsman may use any one or more of the following methods in conducting an investigation:

a. Review applicable laws, rules, regulations, and policies;

b. Request a statement from an agency providing reasons for taking an administrative action;

c. Make informal verbal or written inquiries to an agency and other persons for assistance or information;

d. Take testimony from any person as provided under rule 141—2.11(2C).

e. Examine and copy records or documents of an agency;

f. Enter and inspect without advance notice any premises within an agency's control;

g. Attend administrative hearings or proceedings;

h. Issue a subpoena to compel a person to provide sworn testimony or to produce relevant records or documents;

i. Hold private hearings;

j. Convene a public hearing as a forum to obtain public input or comment on a subject of general or broad public concern;

k. Any other method determined appropriate by the ombudsman.

2.9(2) *Ex parte communications.* A communication or receipt of information by the ombudsman or any person in the course of an investigation shall not be considered an ex parte communication as described in Iowa Code section 17A.17.

2.9(3) *Status reports.* The ombudsman shall report the status of an investigation to the complainant upon request of the complainant or whenever it is deemed appropriate.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—2.10(2C) Subpoenas.

2.10(1) *Issuance.* Pursuant to Iowa Code subsection 2C.9(5), the ombudsman has power to issue a subpoena to compel any person to appear, give sworn testimony, or produce documentary or other evidence relevant to a matter under inquiry.

2.10(2) *Notice.* The ombudsman shall give reasonable notice of the date, time, place, and purpose for the taking of testimony or the production of documentary or other evidence. Notice shall be served in accordance with the law applicable to the service of subpoenas in civil actions.

2.10(3) *Fees.* A person required to give testimony or produce documentary or other evidence is entitled to payment of the same fees and travel allowances as are payable to a witness whose attendance has been required in a district court of this state.

2.10(4) *Enforcement.* If a person fails or refuses to obey a subpoena, the ombudsman may file a petition with the district court having jurisdiction for an order directing obedience to the subpoena under Iowa Code subsection 2C.9(5).

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—2.11(2C) The taking of testimony.

2.11(1) *Purpose.* The taking of testimony is an internal device used by the ombudsman to gather information and to assist in arriving at conclusions or recommendations regarding an agency's actions.

2.11(2) *Witnesses.* Any person may be called to give testimony relating to a matter before the ombudsman.

2.11(3) *Notice.* The ombudsman shall provide to the person whose testimony is sought reasonable notice of the date, time, and place for taking that person's testimony. If the ombudsman issues a subpoena compelling a person to give testimony, notice shall be provided in the subpoena.

2.11(4) *Location.* The ombudsman has discretion to take testimony from a person at the ombudsman's office or at another location deemed appropriate by the ombudsman, or by telephone or other electronic means.

2.11(5) *Rights of witnesses.* A person who gives testimony is accorded the same privileges and immunities as are extended to witnesses in the courts of this state. The witness is entitled to be accompanied and advised by counsel or other representative while being questioned, but only counsel

may speak or raise objections to questions on behalf of the witness. Objections to questions shall be noted, but the witness shall answer all questions, except when a privilege or immunity accorded to the witness has been asserted.

2.11(6) *Conduct of testimony.* The ombudsman may administer oaths to persons giving testimony before the ombudsman. The ombudsman determines the order for the taking of testimony and may sequester witnesses or examine a witness privately. Questions will be posed by the ombudsman. At the conclusion of the ombudsman's examination of a witness, counsel for the witness may be permitted to question the witness, after which the ombudsman may inquire further into any matters raised during the examination. The scope of the questions shall be decided and may be limited by the ombudsman.

2.11(7) *Evidence.* Strict rules of evidence shall not apply. The probative nature of any evidentiary matter shall be determined by the ombudsman.

2.11(8) *Record.* The ombudsman may record the testimony by audio or video recording or by use of a certified court reporter. A copy of the witness's testimony record may be provided to the witness upon request at the conclusion of the investigation in order to prepare a comment in response to conclusions or recommendations that criticize the witness, pursuant to Iowa Code section 2C.15.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16; Adopted and published 6/2/21 pursuant to Iowa Code section 2C.9(5), effective 6/2/21]

141—2.12(2C) Disposition after investigation.

2.12(1) *Complaint unsubstantiated.* If, after completing an investigation, the ombudsman determines the complaint is not substantiated based upon a preponderance of the evidence, the ombudsman shall inform the complainant and the agency involved of such determination.

2.12(2) *Complaint indeterminate.* If, after completing an investigation, the ombudsman is unable to conclusively determine based upon a preponderance of the evidence whether the complaint is substantiated or unsubstantiated, the ombudsman shall inform the complainant and the agency involved of such conclusion.

2.12(3) *Complaint substantiated.* If, after completing an investigation, the ombudsman determines the complaint is substantiated based upon a preponderance of the evidence, the ombudsman shall inform the complainant and the agency involved of the findings of fact and conclusions. If appropriate, the ombudsman shall also inform the agency of any recommendation that:

a. The matter be further considered by the agency;

b. The administrative action be modified or canceled;

c. A rule on which an administrative action is based be altered;

d. Reasons be given for an administrative action; or

e. Any other action be taken by the agency.

2.12(4) *Agency response to recommendations.* If the ombudsman requests, the agency shall notify the ombudsman within 20 days in writing of any action taken or to be taken on the recommendations or the reasons for not complying with the recommendations.

2.12(5) *Legislative action.* If the ombudsman believes that a law resulted in administrative action which was unfair or otherwise objectionable, the ombudsman shall notify the general assembly of desirable statutory change. The ombudsman may give notification by submitting a legislative proposal or by presenting testimony or statements to the general assembly or one of its committees or members regarding the statutory change.

2.12(6) *Referral for disciplinary or criminal action.* The ombudsman shall refer a public official, employee or other person for disciplinary or criminal proceeding, if such referral is warranted under rule 141—2.15(2C).

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—2.13(2C) Investigative reports.

2.13(1) *Issuance of reports.* The ombudsman may prepare a report of the findings of fact, conclusions, and recommendations relevant to an investigation.

a. Critical reports. If the ombudsman determines as a result of an investigation that an administrative action of an agency, officer or employee warrants criticism, the ombudsman may issue a critical report containing the findings, conclusions and recommendations relevant to that investigation.

b. Special reports. A special report may be issued if the findings of fact, conclusions, or recommendations are not critical of an agency, or an officer or employee of an agency, but are of significant interest to the public.

2.13(2) *Publication of reports.* The ombudsman may publish and send a critical report or a special report to the governor, the general assembly or any of the committees of the general assembly. Any published report sent to the governor, the general assembly or any of its committees becomes public information and may be disseminated to the news media and to any interested members of the general public upon request.

2.13(3) *Prepublication procedure for critical reports.* Before publishing a critical report or announcing a conclusion or recommendation which criticizes an agency, officer or employee, the ombudsman shall consult with that agency, officer or employee.

a. Transmission to agency. The ombudsman shall transmit a copy of the critical report to the agency and each officer or employee who is a subject of the criticism and allow the agency, officer or employee a reasonable opportunity to reply to the report in writing.

b. Reply to report. The agency, officer or employee shall notify the ombudsman within 7 days from the date the critical report is received of any decision by that agency, officer or employee to make a reply. The agency, officer or employee shall be allowed 30 days from the date of receipt of the critical report to submit a written reply to the ombudsman. The ombudsman may for good cause extend the time allowed to submit the reply, if an extension is requested by the agency, officer or employee.

c. Comment to reply. The ombudsman may comment on any reply from an agency, officer or employee. The comments may include modifications by the ombudsman to any findings, conclusions, or recommendations in the critical report. The ombudsman shall transmit in writing any comments to the replying agency, officer or employee.

d. Reply or comment attached to report. Any unedited reply made by an agency, officer or employee and any written comments by the ombudsman shall be attached to every critical report which is published, sent, or disseminated by the ombudsman, unless inclusion of the reply is waived by the agency, officer or employee.

e. Confidential information not published. The ombudsman may not publish any confidential information which the ombudsman is not authorized to disclose or is prohibited from disclosing by law. The ombudsman may prepare, for the purpose of publication, an edited version of the critical report, from which confidential information has been deleted or excluded. The ombudsman shall transmit the edited version of the critical report to the agency, officer or employee and consult with that agency, officer or employee to ensure the report does not contain confidential information that may not be disclosed. Any reply or comment which is attached to this report and which contains confidential information that may not be disclosed shall likewise be edited to delete or exclude the confidential information.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—2.14(2C) Annual reports.

2.14(1) *When and to whom submitted.* Pursuant to Iowa Code section 2C.18, the ombudsman shall by December 31 of each year submit an economically designed and reproduced annual report to the general assembly and to the governor concerning the activities and work performed during the preceding calendar year.

2.14(2) *Inclusion of reply by agency or official.* If the annual report summarizes or discusses the findings, conclusions or recommendations in a critical report and names the agency, official or employee involved, the annual report shall also include any unedited reply made by the agency, official or employee to the critical report, unless inclusion of the reply is waived by the agency or official.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16; Adopted and published 6/2/21 pursuant to Iowa Code section 2C.9(5), effective 6/2/21]

141—2.15(2C) Referral for disciplinary or criminal action. If the ombudsman believes that a public official, employee, or other person has acted in a manner warranting a disciplinary or criminal proceeding, the ombudsman shall refer the matter to the appropriate authorities.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—2.16(2C) Privileges and immunities.

2.16(1) *Immunity of ombudsman.* Except for removal from office as provided in Iowa Code chapter 66 or for employment-related claims, no civil action or other proceeding shall be commenced against the ombudsman or any member of the staff for any official act or omission performed pursuant to the provisions in Iowa Code chapter 2C, unless the act or omission is actuated by malice or is grossly negligent.

2.16(2) *Testimonial privilege.* The ombudsman or any member of the staff shall not be compelled to testify in any judicial or administrative proceeding with respect to any matter involving the exercise of the ombudsman's official duties, except as may be necessary to enforce the provisions of Iowa Code chapter 2C.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—2.17(2C) Penalties for obstruction.

2.17(1) *Penalties.* As provided in Iowa Code section 2C.22, any person who willfully obstructs or hinders the lawful actions of the ombudsman or any member of the staff, or who willfully misleads or attempts to mislead the ombudsman or a member of the staff in the course of an inquiry or investigation, shall be guilty of a simple misdemeanor.

2.17(2) *Prosecution.* The ombudsman shall refer for prosecution a violation of Iowa Code section 2C.22 to the county attorney in the county where the violation occurred.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

These rules are intended to implement Iowa Code sections 2C.1, 2C.8 to 2C.22, and 70A.28.

[Filed 12/15/75, Notice 10/20/75—published 12/29/75, effective 2/2/76]
[Filed 8/26/81, Notice 7/22/81—published 9/16/81, effective 10/21/81]◊
[Filed 11/5/82, Notice 6/23/82—published 11/24/82, effective 12/29/82]
[Adopted and published 3/30/94 pursuant to Iowa Code section 2C.9(5), effective 5/1/94]
[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]
[Adopted and published 6/2/21 pursuant to Iowa Code section 2C.9(5), effective 6/2/21]

◊ Two or more ARCs

CHAPTER 3
INFORMATION PRACTICES
[Prior to 3/30/94, see 210—Chapter 5]

Chapter exempt from chapter rescission pursuant to Iowa Code section 17A.7

141—3.1(2C,22) Definitions. As used in this chapter:

"Agency" means the office of ombudsman.

"Confidential record" means a record which is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include records or information contained in records that the agency is prohibited by law from making available for examination by members of the public, and records of information contained in records that are specified as confidential by Iowa Code section 22.7, or other provision of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record.

"Custodian" means the agency or a person lawfully delegated authority by the agency to act for the agency in implementing Iowa Code chapter 22.

"Open record" means a record other than a confidential record.

"Personally identifiable information" means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system.

"Record" means the whole or a part of a public record, as defined in Iowa Code section 22.1, that is owned by or in the physical possession of this agency.

"Record system" means any group of records under the control of the agency from which a record may be retrieved by a personal identifier, such as the name of an individual, number, symbol, or other unique retriever assigned to an individual.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—3.2(2C,22) Statement of policy. This chapter implements Iowa Code section 22.11 by establishing agency policies and procedures for the maintenance of records and access to records. The purpose of this chapter is to facilitate public access to open records and to guide agency determinations with respect to the handling of confidential records and the implementation of the Iowa fair information practices Act.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—3.3(2C,22) Requests for access to records.

3.3(1) *Location.* A request for access to a record should be directed to the ombudsman at the Office of Ombudsman, Ola Babcock Miller Building, 1112 E. Grand Avenue, Des Moines, Iowa 50319. The agency may also be reached at the following numbers: telephone (515)281-3592, 1-888-426-6283 (1-888-IA-OMBUD), TDD/TTY (515)242-5065, and fax (515)242-6007.

3.3(2) *Office hours.* Access to records shall be available during all customary office hours, which are 8 a.m. to 4:30 p.m., Monday through Friday, except designated state holidays.

3.3(3) *Request for access.* Requests for access to records may be made in writing, in person, by telephone, by e-mail, or by facsimile (fax). Requests shall identify by name and description the particular records sought in order to facilitate the location of the record. Requests by mail, telephone, e-mail, or facsimile (fax) shall also include the name, address, e-mail, and telephone or fax number of the person requesting the information. A person shall not be required to give a reason for the request.

3.3(4) *Response to requests.*

a. Access to an open record of the agency shall be provided promptly upon request. If the size or nature of the request makes prompt access impracticable, the custodian shall comply with the request as soon as practicable. Access to an open record may be delayed for one of the purposes authorized by Iowa Code subsection 22.8(4) or 22.10(4). The custodian shall notify the requester of the reason for a delay in access to an open record and an estimate of the length of that delay and, upon request, shall provide such notice in writing.

b. The custodian of a record may deny access to the record by members of the public only on the grounds that such a denial is warranted under Iowa Code subsections 22.8(4) and 22.10(4), or that it is a

confidential record, or that its disclosure is prohibited by a court order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 141—3.4(2C,22) and other applicable provisions of law.

3.3(5) *Security of record.* Examination and copying of agency records shall be supervised by the custodian or a designee of the custodian. A person may not search or remove any record from agency files without permission from the custodian. A person may not cause damage or disorganization to any agency records.

3.3(6) *Copying.* A reasonable number of copies of a record may be made in the agency's office. If photocopy equipment is not available in the agency office, the custodian shall permit examination of the record in the office and shall arrange to have copies made as soon as practicable elsewhere.

3.3(7) *Fees.* To the extent permitted by law, the agency may charge fees in connection with the examination or copying and may waive payment of such fees when the imposition of fees is inequitable or when a waiver is in the public interest.

a. Copying and postage costs. Copies of records may be made by or for members of the public on agency photocopy machines or from electronic storage systems at costs as determined by the custodian. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged.

b. Supervisory fee. An hourly fee may be charged for actual agency expenses in supervising the examination and copying of requested records when the time required is in excess of one-half hour. The hourly fee charged shall not be in excess of the hourly wage of an agency employee who ordinarily would be appropriate and suitable to perform this supervisory function.

c. Search fees. If the request requires research or if the records cannot readily be retrieved by the agency, the requester will be advised of this fact. Reasonable search fees may be charged where appropriate. In addition, all costs for retrieval and copying of information stored in electronic storage systems may be charged to the requester.

d. Advance deposit. When the estimated total fee chargeable under this subrule exceeds $25, the custodian may require the requester to make an advance payment to cover all or a part of the estimated fee. When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require advance payment of the full amount of any estimated fee before the custodian processes a new request from that requester.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—3.4(2C,22) Access to confidential records. Under Iowa Code section 22.7 or 2C.8 or other applicable provisions of law, the custodian may disclose certain confidential records to one or more members of the public, or may be authorized or required to release specified confidential records in certain circumstances or to particular persons. In requesting the custodian to permit the examination and copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule 141—3.3(2C,22):

3.4(1) *Proof of identity.* A person requesting access to a confidential record may be required to provide proof of identity or authority to secure access to the record.

3.4(2) *Requests.* The custodian may require that a request to examine and copy a confidential record be in writing. A person requesting access to such a record may be required to sign a certified statement or affidavit enumerating the specific reasons justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

3.4(3) *Notice to subject of record.* After the custodian receives a request for access to a confidential record, and before the custodian releases such a record, the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified in that record, and whose address or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8 and may indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

3.4(4) *Request denied.* When the custodian denies a request for access to a confidential record, the custodian shall promptly notify the requester. If the requester indicates to the custodian that a written

notification of the denial is desired, the custodian shall promptly provide such a notification which is signed by the custodian and which includes:

a. The name and title or position of the custodian responsible for the denial; and

b. A citation to the provision of law vesting authority in the custodian to deny disclosure of the record and a brief statement of the reasons for the denial to the requester.

3.4(5) *Request granted.* When the custodian grants a request for access to a confidential record, the custodian shall notify the requester and indicate any lawful restrictions imposed on the requester's examination and copying of the record.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—3.5(2C,22) Requests to treat record as confidential. The custodian may treat a record as a confidential record and withhold it from examination only to the extent that the custodian is authorized by Iowa Code section 22.7 or 2C.8, another applicable provision of law, or a court order to refuse to disclose that record to members of the public.

3.5(1) *Persons who may make request.* Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts that Iowa Code section 22.7 or 2C.8, another applicable provision of law, or a court order authorizes the custodian to treat the record as a confidential record may request the custodian to treat that record as a confidential record and to withhold it from public inspection or disclosure.

3.5(2) *Request.* A request that a record be treated as a confidential record and be withheld from public inspection shall be filed with the custodian in writing and shall set forth the factual and legal basis for the request. If possible, the request shall be accompanied by the original or a copy of the record, which identifies the parts of the record requested to be treated as confidential. A person filing such a request may be required to provide proof necessary to establish relevant facts.

3.5(3) *Failure to request.* Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record.

3.5(4) *Timing of decision.* A decision by the custodian with respect to the disclosure of a record to members of the public may be made when a request for its treatment as a confidential record that is not available for public inspection or disclosure is filed or when the custodian receives a request for access to the record by a member of the public.

3.5(5) *Request granted or deferred.* If the custodian grants the request or defers action on the request, a copy of the record from which the matter in question has been deleted and a copy of the decision to grant the request or to defer action upon the request shall be made available for public inspection or disclosure in lieu of the original record.

3.5(6) *Request denied.* If the custodian denies the request, the custodian shall notify the requester in writing of that decision and the reasons for that decision. Upon application by the requester, the custodian may, in good faith, reasonably delay allowing examination or disclosure of the record so that the requester may seek injunctive relief under Iowa Code section 22.8 or other applicable provision of law. The custodian shall notify the requester in writing of the time period allowed for the requester to seek injunctive relief.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—3.6(2C,22) Additions, dissents or objections to records. Except as otherwise provided by law, a person may file a request with the custodian to review and, in addition, to have a written statement of additions, dissents, or objections entered into a record containing personally identifiable information pertaining to that person. However, this does not authorize a person who is a subject of such a record to alter the original copy of that record or to expand the official record of any agency proceeding. The requester shall send such request or written statement to the custodian. The request or written statement must be dated and signed by the requester and have the current address and telephone number of the requester or requester's representative.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—3.7(2C,22) Notice to suppliers of information. The agency shall notify persons completing agency forms of the use that will be made of personal information, which persons outside the agency might routinely be provided this information, which parts of the requested information are required and which are optional, and the consequences of a failure to provide the information requested. This notice may be by rule, on the form used to collect the information, on a separate fact sheet or letter, in a brochure, in formal agreements, in contracts, in handbooks, in manuals, verbally, or by other appropriate means. Notice is not required with discovery requests in litigation or administrative proceedings, subpoenas, or similar demands for information.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—3.8(2C,22) Release to subject.

3.8(1) The subject of a confidential record may file a written request to review confidential records about the person who is the subject of a confidential file, as provided in rule 141—3.6(2C,22). All information in case files, including the identity of a person providing the information to the agency, may be withheld from the subject pursuant to Iowa Code section 2C.8. The agency need not release records that are the work product of an attorney or are otherwise privileged and need not release records that are otherwise authorized by law.

3.8(2) When a record concerns multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—3.9(2C,22) Consensual disclosure of confidential records. To the extent permitted by any applicable provision of law, a person who is the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party. A request for such a disclosure must be in writing and must identify the particular record that may be disclosed, and the particular person or class of persons to whom the record may be disclosed and, where applicable, the time period during which the record may be disclosed. The person who is the subject of the record and, where applicable, the person to whom the record is to be disclosed may be required to provide proof of identity.

3.9(1) *Disclosure to legal counsel.* Appearance of counsel on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the agency to disclose records about that person to the person's attorney.

3.9(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency may to the extent permitted by law be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—3.10(2C,22) Disclosure without consent of subject.

3.10(1) *Open records.* Open records are routinely disclosed without the consent of the subject.

3.10(2) *Confidential records.* To the extent allowed by law, the agency may disclose confidential records without the consent of the subject of a confidential record. Following are instances where the agency may disclose confidential information without consent of the subject:

a. Disclosure to those officers, employees, or agents of the agency who need the information in the performance of their duties. The custodian of the record shall determine what constitutes legitimate need to use the confidential information.

b. Disclosure of information related to cases to complainants or other state or local governmental agencies, as appropriate to carry out the agency's statutory functions. The agency may disclose the identities of complainants or witnesses who appear before the agency, if disclosure will facilitate an inquiry or investigation by the agency or enable the agency to sufficiently present its investigative findings and conclusions.

c. Disclosure of any records, upon request, to the general assembly, any standing committee of the general assembly, or the governor, under Iowa Code section 2C.8, except that confidential information provided by other agencies shall not be disclosed.

d. Release of critical reports, special reports, or annual reports to the general assembly or any of its committees, the governor, the news media, or interested members of the public.

e. Disclosure of information to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

f. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigations and possible criminal prosecution, civil court action, or regulatory order.

g. Disclosure of information to the appropriate authorities concerning the conduct of any public official or employee which warrants disciplinary proceedings.

h. Disclosure of information to a recipient who has given to the agency written assurance that the record will be used solely as a statistical research or reporting record, if the information is transferred in a form that does not identify the subject.

i. Disclosure of information to an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual, provided that notice of the disclosure is first transmitted to the last-known address of the subject.

j. Disclosure of information to the legislative services agency.

k. Disclosure of information in the course of an employee disciplinary proceeding.

l. Disclosure of information in response to a court order.

m. Any disclosure of information specifically authorized by the statute under which the record was collected or maintained.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—3.11(2C,22) Availability of records.

3.11(1) *Open records.* Agency records are open for public inspection and copying, unless otherwise provided by rule or law. This agency also has possession of records which may be open records but which are copies of records from other agencies, which have been filed in judicial or administrative proceedings, or which are available in the state law library. This agency may refer persons to the originating agency, the clerk of the appropriate court, or the law library for those records. This ensures that the requester receives a clean official copy of the record and protects the agency against unintended disclosure of confidential information.

3.11(2) *Confidential records.* Confidential records may be withheld from public inspection by the agency. The following confidential records are listed by category, according to the legal basis for withholding them from public inspection:

a. All records, including case files, related to the statutory functions of the agency, which are confidential under Iowa Code section 2C.8.

b. Records which are exempt from disclosure under Iowa Code section 22.7.

c. Those portions of agency staff manuals, instructions or other statements issued, which set forth criteria or guidelines used by agency staff in making investigations or in the selection or handling of cases which will be or are being litigated, when their disclosure would enable law violators to avoid detection, facilitate disregard of requirements imposed by law, or give a clearly improper advantage to persons who are in an adverse position to the agency. The agency also maintains some office or policy manuals provided by other agencies concerning the operations of those agencies. Some information in office manuals may be confidential under Iowa Code section 17A.2(11)(f), 17A.3(1)(d), or 2C.9(4) or other applicable law.

d. Records which constitute attorney work product or attorney-client communications or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4) and 622.11, Iowa R.C.P. 122(c), Fed. R.Civ.P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

e. Any other records made confidential by law.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—3.12(2C,22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal

identifier in the record systems and the means by which that information is stored. Unless otherwise stated, the authority to collect the information is provided by Iowa Code chapter 2C and the statutes governing the subject matter of the record. The agency maintains record systems that include case files, litigation files, personnel files, and applicant files.

3.12(1) *Case files.* Case files contain information related to complaints and information requests, stored in either paper form or electronically in a case management system. These files contain names and locations of persons who contacted the agency, methods of contact, agency staff members who handled the case files, the dates the files were opened and closed, the subjects of the contacts, and the agencies involved. The files also include notes and memoranda of agency staff members and may include research materials, correspondence, and documents provided by complainants or agencies involved in the complaint. These files are confidential pursuant to Iowa Code section 2C.8.

3.12(2) *Litigation files.* The litigation files contain information regarding litigation or anticipated litigation, which includes judicial and administrative proceedings. These files include pleadings, briefs, depositions, discovery materials, docket sheets, general correspondence, attorney-client correspondence, documents, memoranda, investigative information, research materials, witness information, attorney's notes, information compiled under the direction of the attorney, and case management records. These files may be stored in paper or electronic form. These files contain materials which are confidential as attorney work product and attorney-client communications or which are confidential under Iowa Code section 2C.8 or other applicable law, or because of a court order.

3.12(3) *Personnel files.* The personnel files contain information about the employees in the agency. These files include payroll records, information required for tax withholding, biographical information, medical information relating to disability, information concerning employee benefits, performance evaluations and reviews, disciplinary information, and other information concerning employer-employee relationships. These records may be stored in paper or electronic form. Some information in these records is confidential under Iowa Code section 22.7.

3.12(4) *Applicant files.* The applicant files contain information about applicants for positions with the agency. These files include biographical information, correspondence, equal employment opportunity and affirmative action data, and other preemployment materials. These files may be stored in paper or electronic form. Some information in these files is confidential under Iowa Code section 22.7 or other applicable law.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—3.13(2C,22) Other groups of records. This rule describes groups of records maintained by the agency other than record systems as defined in rule 141—3.12(2C,22). These records are not stored or retrieved by personal identifiers. These records are routinely available to the public; however, the agency's files of these records may contain some confidential information. Unless otherwise stated, the authority for this agency to maintain the record is provided by Iowa Code chapter 2C and the statutes governing the subject matter of the record.

3.13(1) *Administrative records.* The administrative records include documents concerning budget, administrative or personnel reports, purchasing, printing and supply requisitions, property inventory, time sheets, and office policies for employees.

3.13(2) *Publications.* Publications include a variety of books, periodicals, newsletters, government documents, and similar publications, which agency staff use as reference, research or resource materials. These materials are generally available for public examination but may be protected by copyright law.

3.13(3) *Office publications.* Office publications include a variety of documents issued by the agency, including pamphlets, news releases, critical reports, special reports, and annual reports. Critical reports and special reports are also maintained in some files within the case files record system. Critical reports, special reports, and annual reports may contain information about individuals.

3.13(4) *Rule-making records.* Rule-making records consist of official documents produced during promulgation of agency rules.

3.13(5) *Office manuals.* Agency staff may maintain office manuals which contain memoranda or statements of various policies and procedures related to performance of the agency's functions. The agency also maintains some office or policy manuals provided by other agencies concerning the operations of those

agencies. Some information in office manuals may be confidential under Iowa Code sections 17A.2(11)(f) and 17A.3(1)(d) or other applicable law.

3.13(6) *Legal counsel research files.* The agency's legal counsel maintains research files on a variety of legal issues related to the functions of the agency or specific case files. These files include copies of cases or other published materials, briefs, notes, and legal memoranda or opinions to agency staff. Some files regarding issues in particular cases may contain information about individuals. Some records in these files are confidential as attorney work product or attorney-client communications, or are confidential under Iowa Code section 2C.8 or other applicable law.

3.13(7) *Form files.* Form files contain various blank forms used by agency staff in the performance of agency functions.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—3.14(2C,22) Data processing systems. None of the data processing systems used by the agency compare personally identifiable information in one record system with personally identifiable information in another record system.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—3.15(2C,22) Applicability. This chapter does not:

3.15(1) Require the agency to index or retrieve records which contain information about an individual by that person's name or other personal identifier.

3.15(2) Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.

3.15(3) Govern the maintenance or disclosure of, notification of, or access to records in the possession of the agency which are governed by the rules of another agency.

3.15(4) Make available records which have been compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable rules of the agency.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

These rules are intended to implement Iowa Code sections 2C.8, 2C.9(4), and 22.11.

[Filed 12/15/75, Notice 10/20/75—published 12/29/75, effective 2/2/76]
[Filed 8/26/81, Notice 7/22/81—published 9/16/81, effective 10/21/81]
[Filed 11/5/82, Notice 6/23/82—published 11/24/82, effective 12/29/82]
[Adopted and published 3/30/94 pursuant to Iowa Code section 2C.9(5), effective 5/1/94]
[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

CHAPTER 4
RULE MAKING

Chapter exempt from chapter rescission pursuant to Iowa Code section 17A.7

141—4.1(2C) Applicability.

4.1(1) *Procedure exempt from Iowa Code chapter 17A.* Pursuant to Iowa Code section 2C.9(6), the promulgation of rules relating to the organization, operation, and procedures of the office of ombudsman is exempt from the provisions of Iowa Code chapter 17A, the Iowa Administrative Procedure Act.

4.1(2) *Definition.* As used in this chapter, "agency" means the office of the ombudsman.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—4.2(2C) Adoption of rule.

4.2(1) *Time of adoption.* The agency may adopt a rule at any time.

4.2(2) *Manner of adoption.* The agency is exempt from the procedural requirements for rule making in Iowa Code section 17A.4. The agency shall file each rule the agency adopted with the administrative code editor, who shall publish the rule in the Iowa Administrative Code. The agency shall file the rule for publication as soon as practicable after adoption of the rule.

4.2(3) *Review by service committee.* The agency may submit a proposed rule to the service committee of the legislative council for the committee's review and comment before the rule is adopted and published. If the agency submits a proposed rule to the service committee, the agency shall provide the text of the rule and include a preamble containing:

a. A statement of the purpose of the rule;

b. A reference to all rules repealed, amended, or suspended by the rule; and

c. A reference to the specific statutory or other authority authorizing adoption of the rule.

4.2(4) *Publication in Iowa Administrative Bulletin.* The agency may submit an adopted rule to the administrative rules review committee and request that the adopted rule be published in the Iowa Administrative Bulletin.

4.2(5) *Exempt from governor's review.* An adopted rule of the agency is not subject to review by the governor and may not be rescinded by executive order of the governor.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

141—4.3(2C) Contents, style, and form of rule.

4.3(1) *Contents.* Each rule adopted by the agency shall contain the text of the rule and, in addition:

a. The date the agency adopted the rule.

b. A reference to the specific statutory or other authority authorizing adoption of the rule; and

c. The effective date of the rule.

4.3(2) *Incorporation by reference.* The agency may incorporate, by reference in an adopted rule, and without causing publication of the incorporated matter in full, all or any part of a code, standard, rule, or other matter if the agency determines that the incorporation of its text in the agency-adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient.

a. The reference in the agency-adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, if any; shall briefly indicate the precise subject and the general contents of the incorporated matter; and shall state that the adopted rule does not include any later amendments or editions of the incorporated matter.

b. The agency may incorporate such matter by reference in an adopted rule only if the source from which the matter originated makes copies of it readily available to the public. The agency shall retain permanently a copy of any material incorporated by reference in a rule of the agency. The rule shall state how and where copies of the incorporated matter may be obtained at cost from the agency or the originating source.

4.3(3) *References to materials not published in full.* When the administrative code editor decides to omit the full text of an adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the agency shall submit to the administrative code editor for inclusion

in the Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material.

a. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the adopted rule and of significant issues involved in the rule. The statement shall also describe how a copy of the full text of the adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the agency. The agency will provide a copy of that full text at actual cost upon request.

b. At the request of the administrative code editor, the agency shall provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

4.3(4) *Style and form.* In preparing its rules for publication in the Iowa Administrative Code, the agency shall follow the uniform numbering system, form and style prescribed by the administrative code editor.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

These rules are intended to implement Iowa Code section 2C.9(6).

[Adopted and published 3/30/94 pursuant to Iowa Code section 2C.9(5), effective 5/1/94]

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

CHAPTER 5
PETITIONS FOR RULE MAKING
[Prior to 3/30/94, see 210—Chapter 4]
Rescinded 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16

CHAPTER 6
DECLARATORY RULINGS
[Prior to 3/30/94, see 210—Chapter 3]
Rescinded 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16