

Ombudsman's Message:

Systemic Investigations Are the Ombudsman's Future

This will be my last message as Iowa Citizens' Aide/Ombudsman. I decided this spring to take early retirement and will officially leave office on June 24, 2010.



Bill Angrick
Iowa Ombudsman

It has been my privilege and honor to serve as Iowa's Ombudsman since 1978. The past three-plus decades have gone by surprisingly quickly.

I remember well the first case I investigated—a complaint from a woman in Brooklyn, Iowa, who had been denied unemployment compensation. At the time, I knew absolutely nothing about unemployment claims and had to

learn "on the job." Eventually, the woman's complaint was rectified when her unemployment claim was approved upon appeal.

Learning about different government programs, policies, laws, and issues is a daily challenge of this job. Over the years, I have come to learn much about the administration of Iowa government and its obscurities (think of fence viewers and weed commissioners) in ways I never could have anticipated. Each new assistant I hired in my 32 years went through similar learning curves as we received and responded to almost 149,000 contacts during that period.

Iowa is fortunate that our General Assembly provided the Ombudsman's office with strong legislation when it established the

office by statute in 1972. The office is assured of independence by its placement in the legislative branch of government, and by its bipartisan and bicameral selection process for Ombudsman. The Ombudsman is further protected from undue influence with a defined, renewable four-year term of office, and a prescribed removal process that requires "just cause" before such an action can be taken.

The Legislature also equipped the office with significant enforcement tools. Those include the authority to initiate an investigation on the Ombudsman's own motion; access to confidential records and closed proceedings; the ability to enter and inspect agency

(Continued on page 27)

Retailer Fraud Not Well Policed

The Iowa Lottery is taking steps to ensure that its customers are adequately protected from fraud and theft by retailers, following release of a critical report in 2009 by Ombudsman Bill Angrick.

The 210-page report, which made 60 recommendations to the Lottery, was the culmination of a year-and-a-half-long investigation into how the Lottery policed and prevented retailer fraud and theft. The key conclusion was that the Lottery had failed to adequately protect its customers from potential wrongdoing by retailers.

The Ombudsman's investigation was triggered by developments in Canada, where independent investigators found that lottery retailers were winning a disproportionately large number of prizes. Angrick found that customer safeguards in Iowa fell well short of those in place in Canada, despite the Lottery's public claims to the contrary.

In reviewing three years' worth of Lottery investigations, Ombudsman investigators found numerous

(Continued on page 30)

Jails Found Misusing Restraints

Five county jails in Iowa were criticized for their use of restraint chairs and restraint boards in an investigative report released in 2009. The Ombudsman found that the jails failed to follow Iowa law, manufacturer recommendations, and industry standards for the use of four- and five-point restraints on inmates. The Ombudsman's report also made recommendations to jails to identify and treat mentally ill inmates who are often subjected to the restraints.



Three counties—Polk, Jefferson, and Wapello—accepted all of the Ombudsman's recommendations. Woodbury County Jail rejected all of the recommendations, asserting that it had complied with Iowa law in its use of restraint devices. Appanoose County Jail rejected the Ombudsman's recommendations, citing budget issues.

Iowa law allows county jail personnel to place in-

(Continued on page 31)

Inside This Issue

Government Must Confront the Complaint—Not the Complainant	2
Ten Top Government Websites	3
Extra Milers	3
The Faces of Mental Illness	4
Message from a Korean Ombudsman	6
Problems Persist With Openness	8
Don't Let Abuse Protection and Services Fall Through the Cracks	14
The Way You Do The Things You Do	17
Toll-Free Numbers	28

From the Ombudsman's Case Files

Public Records and Open Meetings	7
Human Services	12
Corrections	15
Other Agencies	21
Local Government	24

Government Must Confront the Complaint—Not the Complainant



*Bert Dalmer
Assistant for
Whistleblower
Protection*

On any given day, an investigator at the State Ombudsman's office will hear just about any complaint about government you can conjure.

The driver whose city won't reimburse him after he breaks a rim in a pothole. The homeowner whose basement flooded after road crews filled a nearby drainage ditch. The estranged father who says he doesn't make enough money to pay his child support and still make rent. The citizen who is told her volunteer fire department's expenses are none of her business.

Our office typically receives close to 20 of these complaints every day. Naturally, with so many complaints on so many different subjects, our small staff has to prioritize which cases we can fully investigate.

For me, some cases always rise to the top. These include instances when a government agency not only acts unreasonably, but persecutes the citizen who questions its actions.

People who blow the whistle on the perceived injustices of their government are not uncommon. Yet, in my experience, it has become all too common for government officials to marginalize, ostracize, or retaliate against the whistleblower.

Take, for example, a complaint I fielded out of Stuart, a central Iowa town of about 1,700 residents. A dentist there said he and others had watched for years as the city's street superintendent used a city snowplow to clear his own driveway. The dentist had reported the misconduct to city officials at least four times, but despite the assurances of the city manager, the activity did not cease. Three days after the dentist lodged the last of his complaints with City Hall, the street superintendent issued him a citation for failing to shovel his sidewalk.

At a subsequent meeting of the city council, the street superintendent said he objected to being watched on the job and challenged a concerned citizen to "stay up every night and find out" whether he was continuing to use the city plow at his home.

Our resulting investigation showed that the street superintendent had indeed used the plow improperly for years. Furthermore, we found he had written only two or three previous snow citations in nine years and had ignored snow on the sidewalk of the dentist's neighbor. This gave credence to the dentist's allegation that the street superintendent's motivation in writing the citation was retaliation.

The city manager, city council, and mayor did nothing to discipline the street superintendent and considered the matter settled when they forgave the dentist's citation. The Ombudsman was not satisfied that the city had addressed the issue adequately, and we referred the findings of our investigation to the county attorney for his consideration of criminal charges against the street superintendent.

The reactions of some government officials to public scrutiny do not always rise to the level of criminal behavior. But their lesser responses are sometimes just as objectionable.

To read the full report on Stuart, see: http://www.legis.state.ia.us/caodocs/Invstgtv_Reports/2010/CIWPA001.PDF

Can We Talk....

....to your organization or group? Staff from the Ombudsman's office is available to give talks about our services. Brochures and newsletters are available in quantity.

Address:

Ola Babcock Miller Bldg.
1112 E. Grand Avenue
Des Moines, IA 50319

Phone:

1-888-426-6283
515-281-3592

Fax:

515-242-6007

Top Ten Government Websites

We've put together a list of ten websites 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.state.ia.us
4. Judicial—www.judicial.state.ia.us
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.state.ia.us/iowaLaw.html
9. "Sunshine Advisories"—www.iowaattorneygeneral.org/sunshine_advisories/ (primers on the Open Meetings and Public Records laws)
10. Citizens' Aide/Ombudsman—www.legis.state.ia.us/ombudsman

Extra Milers



Public employees we recognize as special because they deliver top quality service



John Ault, Warden, Iowa State Penitentiary—for his steadfast professionalism and open-mindedness in dealing with inmate complaints of all types. Ault has stood apart for his approachable demeanor and sensible responses to problems or concerns.



Urbandale Police Chief **Ross McCarty** and the Urbandale Police Department—for going the distance by hosting a conference specifically to address citizens' access to police records and for drafting a fair and complete public records policy at our request. That policy has been shared with other law-enforcement entities as a model for dealing with records requests from the public.



Michael Schrock Jr., City Manager, City of Oskaloosa—for his quick and decisive action to improve a handicapped parking space that had fallen into disrepair. On the day we conveyed a complaint from a woman suffering from multiple sclerosis, Schrock examined the area and ordered the space moved and widened, and a nearby curb resurfaced and smoothed.



Kim Snook, Director of Driver Services, Iowa Department of Transportation—for being extremely responsive to our inquiries and very customer service oriented. Snook takes a "hands-on" approach to handling complaints and explains clearly the agency's position.

The Faces of Mental Illness



Linda Brundies
Assistant 1

When we think about people with mental illness, what faces do we see?

Among the faces we have seen in the media this year were Michelle Kehoe and Mark Becker. Michelle Kehoe was found guilty of killing one of her children and attempting to kill another. Mark Becker made national news when he was charged and convicted in the murder of Coach Ed Thomas.

Both defendants were indisputably mentally ill. But judges and juries in both cases determined that Kehoe and Becker knew right from wrong at the time of their crimes.

While media attention in the two cases brought mental-health issues to the forefront, the publicity also added to the stigma felt by mentally ill patients in general. The attention to these violent crimes understandably leads people to conclude that anyone who is mentally ill is dangerous. According to a 2003 report by the President's New Freedom Commission on Mental Health, [*Achieving the Promise: Transforming Mental Health Care in America*](#), 61 percent of Americans think that people with schizophrenia are likely to be dangerous to others.

Hollywood feeds this perception with movies like *The Crazies* and *Shutter Island*, and the "Crazy King" commercial from Burger King. According to a study reported by the federal Substance Abuse & Mental Health Services Administration, at least one-third of stories on television continue to focus on the dangerousness of mentally ill individuals. The study indicates that the vast majority of other stories on mental illness focus on other negative characteristics such as unpredictability and unsociability, or on medical treatments. There are few positive stories that focus on the recovery or accomplishments of persons with mental illness.

The reality is, people with mental illness are more likely to be victims of violent crime than perpetrators. Most people with mental illness who receive proper care and treatment can be productive members of society.

Recent studies show there is no significant relationship between mental illness and violent crime. The May 2009 issue of *JAMA*, the *Journal of the American Medical Association*, reports on a study where researchers compared the rate of violent crime in 8,000 diagnosed schizophrenics with that of the general population of Sweden. The study showed an

8 percent incidence of violent crime by schizophrenics without substance abuse issues, and a 28 percent incidence by those schizophrenics with substance abuse issues. Across the general population, there was a five percent incidence of violent crime. This shows no statistically significant difference in the commission of violent crime between the general population and schizophrenics without drug dependency.

A Duke University Medical Center study reported in the September 2002 issue of the *American Journal of Public Health* finds that a combination of three factors sharply increases the risk that a person with mental illness could commit a violent crime:

1. having been a victim of violence during childhood
2. living in a neighborhood where violence is common
3. having a substance abuse problem

A mentally ill person exhibiting these three traits is 10 times more likely to commit violence, according to the study. However, absent any of these risk factors, people with severe mental illness were no more likely to commit violence than people in the general population. The lead author of the study, Dr. Jeffrey

Swanson, said the findings "suggest that serious violence is the rare exception among all people with psychiatric disorders." Swanson added that, "The public perception that people who are mentally ill are typically violent is un-

founded."

Did Iowa add to the stigma of the mentally ill when its lawmakers passed legislation which is referred to as the Ed Thomas bill? Some advocates worry that the new law, which requires hospitals to notify police before they release a mental patient facing criminal charges, is an infringement on privacy rights.

I believe that, so long as Iowa's jails and prisons continue to serve as de facto mental institutions, this law is necessary. Police must be allowed the flexibility to take a person to a hospital rather than jail if they are concerned about the individual's mental state without fearing the person will be released without the hospital notifying them. Iowa took a much needed step in the right direction with this legislation but there is much, much more to accomplish. The fact remains that the mentally ill in Iowa continue to lack access to quality health care and treatment.

What faces do I see when I think of mental illness? I see a mother who believes the system's failure to

The reality is persons with mental illness are more likely to be victims of violent crime than perpetrators.

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.

Importance of Office's Role Keeps Files Confidential

Are investigative files of the Citizens' Aide/Ombudsman Office subject to subpoena and disclosure in a federal court action?



This issue was again raised in a recent U.S. federal court case.

An offender serving time in a state prison had complained in 2007 to the Ombudsman's Office regarding conditions of his confinement. The Office had investigated his case and obtained a resolution of the problems presented. Subsequently, the offender filed a lawsuit in federal court contending that the prison staff's action had violated his civil rights. He sought to obtain copies of the Citizens' Aide/Ombudsman's investigative file to provide supporting documentation of his claims. The offender subpoenaed the Ombudsman's case file.

The Ombudsman resisted the subpoena and petitioned the federal court to quash the subpoena. The Ombudsman argued that the documents were privileged from disclosure based on a 1987 federal court decision that had recognized the confidentiality of the Ombudsman's documents. The 1987 case, *Shabazz v. Scurr*, had looked at Iowa's Ombudsman statute, recognized the importance of confidentiality of communications to the Office's dispute and problem solving functions, and held that the Ombudsman's communications were entitled to court protection from disclosure.

In the current case, the Court again recognized the importance of confidentiality for the Ombudsman's Office to accomplish its role. The Court upheld the privilege for Ombudsman files and granted the Ombudsman's motion to quash the subpoena. The Court did authorize the release of some portions of the Ombudsman's file which all parties, including the Ombudsman, agreed did not need to be maintained as confidential.

Message from a Korean Ombudsman

Hee Eun Kang works for the Korean Anti-Corruption and Civil Rights Commission (ACRC), which includes ombudsman-related functions. The South Korean government selected Kang for a two-year, all-expenses-paid program to travel abroad to study and conduct research. He selected the Iowa Office of Citizens' Aide/Ombudsman for this program. Kang, 41, arrived in Iowa with his wife and two children in October 2009. He lives in West Des Moines.



Hee Eun KANG,
Director of ACRC
(Anti-Corruption and
Civil Rights

Commission of the
Republic of Korea

About eight months have passed since I started my inter-governmental fellowship program with the Iowa Ombudsman, which is one of the most renowned ombudsman offices in the world. I have come to learn that, although there are many differences between the Iowa Ombudsman and my Korean agency, the ACRC, there are also some similarities. I would like to share my observations.

Hybrid Ombudsman

The ACRC is known as a “hybrid” Ombudsman with a mandate to resolve complaints about the government, and to investigate government corruption.

The Ombudsman of Korea was established in 1994 to protect people's basic rights and interests by handling complaints and grievances. Separately, in 2002, the Korea Independent Commission Against Corruption (KICAC) was established to foster transparent processes for preventing and regulating government corruption. Finally, in 2008, the Ombudsman of Korea, the KICAC, and the Administrative Appeals Commission (AAC) were consolidated to form the ACRC. By combining these functions, the government is able to provide these necessary services to the people more effectively and efficiently.

Purpose and Functions

The ACRC serves 21 official functions to protect people's basic rights and interests, to ensure validity in administrative decisions, and to create transparent public service and society. The main Ombudsman-related functions are as follows:

- Formulate and implement policies to protect civil rights and remedy civil rights infractions.
- Investigate and handle complaints, and issue corrective recommendations to improve the administrative system or the operations that are causing the public complaints.
- Provide information and counseling for public complaints and confirm and guide complaint-handling.

- Operate the online “e-People” portal website and establish and operate the government call center, which was opened in 2007 to provide information and handle complaints over the phone.

Organization

The ACRC is made up of a Commission and a Secretariat to perform the above-mentioned functions. The Commission is composed of 15 members, including one chairperson, three vice-chairpersons, three standing commissioners, and 8 non-standing commissioners. The vice-chairpersons assist the chairperson by taking charge of complaints/grievances, anti-corruption, and administrative appeals. The Secretariat deals with administrative affairs for the Commission.

The Iowa Ombudsman has no board or commission, but is overseen by the Iowa Legislature.

The Korean government provides the ACRC with 466 employees and an annual budget of about \$50 million (US) to serve a population of about 46 million people. By comparison, the Iowa Ombudsman has 16 employees with an annual budget of about \$1.5 million to serve a population of about 3 million people.

Appointment

Unlike the Iowa Ombudsman, who is appointed by the Iowa Legislature, all members of the ACRC Commission are appointed by the Korean President. However, the ACRC Commission's annual reports are issued to the Korean National Assembly as well as the President. The Commission may also make special reports when deemed appropriate, as does the Iowa Ombudsman. Reports in both countries are issued to the general public.

Complaint-resolving Operation

The ACRC usually receives about 50,000 cases each year—10 times as many as is received by the Iowa Ombudsman. The ACRC complaints consist of about 27,000 complaints and grievances, 21,000 administrative appeals, and 2,000 anti-corruption cases.

In 2008, the ACRC received 27,509 complaints and grievances in the following areas:

- Housing and construction (11.9%)
- Agriculture, forestry, fishery and the environment (11.5%)
- City (9.7%)
- Police (9.4%)
- Road and water resources (8.9%)
- Health, welfare and labor (8.9%)
- National defense, veterans affairs, military (8.4%)
- Administration, culture and education (7.2%)
- Finance, industry and telecommunications (7.1%)
- Civil and legal affairs (5.6%)
- Taxation (5.4%)



Public Records and Open Meetings

Confusion Used as Excuse to Ignore Records Request

An individual contacted us with a claim that a school district had not provided him with public records he had asked for. Prior to contacting our office, the individual had made two phone requests and one e-mail request for invoices of someone who had done computer work for the school. Both he and his wife had been requesting the records for over a month. The school technical coordinator responded but refused to provide the records. The school superintendent did not respond to the requests.

Iowa law requires governmental entities to respond to citizen requests for public records within a reasonable period of time, even if the records are denied for legally defensible reasons.

We contacted the school superintendent, who admitted to receiving the e-mail request but explained that he was confused about what records the complainant wanted. We concluded that the complainant clearly stated what records he wanted. We also noted that the requester had provided his name and phone number in the e-mail, giving the superintendent a way to contact him if he had any questions.

The superintendent agreed to release the records and we provided him with the complainant's mailing address. The caller later confirmed he received the documents.

Is the Public Entitled to Government Lawsuit Settlement Information?

We received a call from a man who wanted to make certain he was entitled to a document pertaining to the settlement of a lawsuit in which his hometown was sued.

Prior to calling our office, the man had delivered a letter to the city clerk requesting the document. Several weeks later, since the city had not provided him with the document, the man asked the mayor about the status of his request. The mayor told the man his request had been turned over to the city attorney.

We pointed the caller to a provision in the state's Open Records law that required the city to release a summary of the settlement to the public. The caller wrote a second letter to the city requesting the summary, incorporating a reference to the law. A few days later, the caller informed us that he received the summary, the document he originally requested, plus additional information he had not requested.

Honking Ticket Leads to Better Fee Policy for Police Department

What do car horns have to do with the Open Records Law? Quite a bit, in the case of a central Iowa man who wanted to fight a ticket for honking his horn unnecessarily.



He asked the police department for a copy of the squad car's "dash camera" video footage. A clerk made a copy of the video, but only after insisting that the man provide his name. The clerk also said it would cost him \$23. The man called our office instead, questioning whether the Open Records Law allowed police to demand his name and whether the law permitted a \$23 charge for just one videotape.

We suggested that he write a letter of complaint to the police department. He followed our advice and received a written response from the police department's records supervisor. The supervisor apologized that the clerk required him to identify himself, and promised to remind his staff that the law makes no such requirement.

Still, however, the supervisor defended the \$23 charge, saying the department charges a flat fee for a copy of any squad car video where a VHS tape is the original media. We contacted the supervisor to ask how the department calculated the \$23 fee and whether the law authorizes such a flat fee. The supervisor answered our questions and encouraged our investigator to contact the city attorney.

We contacted the city attorney, describing the situation and noting our concerns. The city attorney agreed to review the matter further. About a week later, the city attorney called our investigator and said, "Much to my chagrin, they screwed it up. You were absolutely right." A few weeks later, the city council approved a resolution establishing a new policy for the police records division, in which fees would be calculated based on the actual time spent in responding to each request, plus the cost of the tape.

The city attorney also offered to let the man have the videotape in question for free. But after learning that the tape did not include audio, the man decided he no longer wanted it.

Problems Persist With Openness



Angela McBride
Assistant for
Public Records,
Open Meetings,
and Privacy

In 2009 this office had a host of very interesting public records and open meetings questions and complaints. Please take time to read the anecdotal information from our case files about record requests going unanswered, agencies unnecessarily requesting the identity of a record requestor, draft records being denied unlawfully, meetings being held without agendas and without 24 hours notice, closed session procedures getting ignored, excessive public record fees being charged, shutting out the public by changing the time of the meeting, and discussing and voting on items which were

never on the agenda. If you have feedback about any of these stories or others, please let me know.

Public Records and Open Meetings on the Hill

Legislative discussions of overhauling the public records and open meetings laws have stalled. I am keeping my fingers crossed for a resurrection in 2011. The overhaul is badly needed because some Iowa Code sections are difficult to interpret and contain unintended loopholes.

I believe strongly that we must revisit a handful of issues that continue to cause problems and uncertainties for citizens for government agencies alike. Among the recurring issues that remain unsettled are:

(Continued on page 10)

Supervisors Did Not Initiate Last-Minute Agenda Change

We received a complaint that a county supervisor changed the agenda for a Board of Supervisors' meeting with no advance notice to the public.

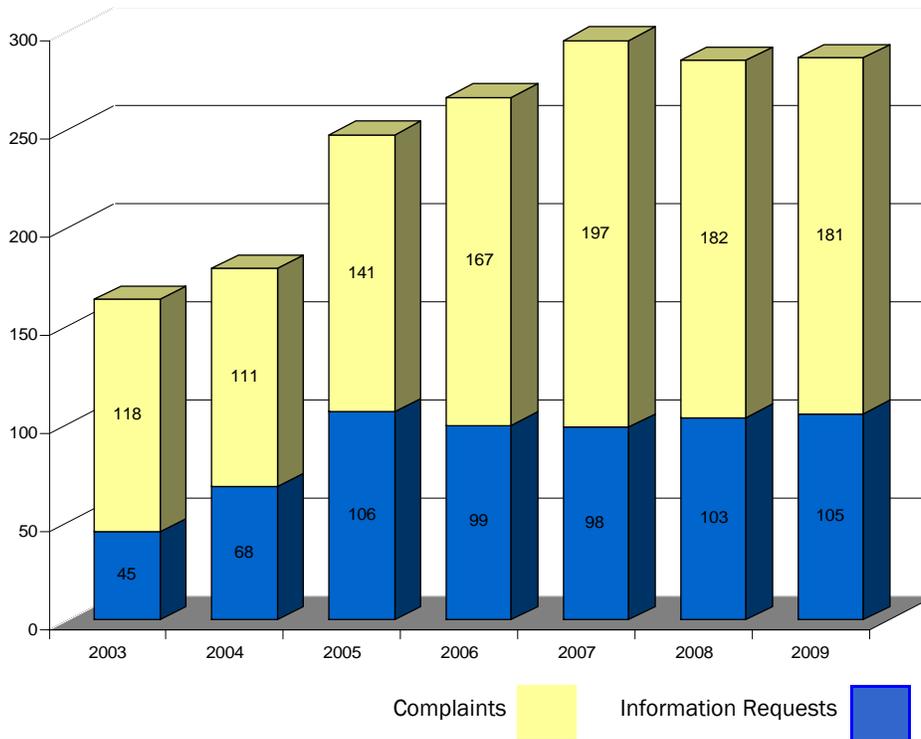


Our caller told us that the Board was scheduled to hear from a particular person at 4:30 p.m. However, to the surprise of members of the public who turned out for the meeting, the presentation was rescheduled to 1:30 p.m. Our complainant believed the chairman of the Board arranged for the time change because he did not want to be put on the "hot seat" about a controversial issue that was the topic of discussion.

We contacted the county auditor who clerked the Board meeting and obtained minutes of the meeting. The minutes indicated that the person scheduled to speak at 4:30 contacted supervisors shortly before the start of the meeting and asked to be moved up on the agenda. The supervisors voted to make that change. We also found that the supervisors' staff contacted local media to notify them of the time change.

Although we could not find that shuffling the agenda posed a violation of the state's Open Meetings law, we advised the auditor that members of the public were upset that they missed an opportunity to hear the speaker's presentation. After our phone call, the supervisors decided to have the speaker return to their following monthly meeting. We commended the supervisors for proactively resolving the problem.

Public Records, Open Meetings, and Privacy Jurisdictional Complaints and Information Requests Received by the Ombudsman



Draft Documents Falsely Deemed Confidential

DRAFT

The city clerk of a small Iowa town refused to provide a resident with copies of city resolutions. The citizen explained to us that the mayor reportedly told the clerk the resolutions could not be released because they were not finalized.

We contacted the mayor, who admitted he had denied our caller copies of the resolutions. His stated reason for the denial was that the resolutions were drafts and had not yet been reviewed by the City Council. We advised the mayor that the Iowa Public Records law makes no exception for draft documents. The mayor then realized his refusal was a mistake and understood that he needed to provide the caller with the resolutions.

To allay his concerns that the documents were drafts, the mayor said he would stamp such documents in the future as "DRAFT." Our complainant later confirmed she was given a copy of the draft resolutions.

Open Means It's All Open

A student accused of damaging school property faced possible suspension or expulsion. The parent requested the school board conduct their hearing on this matter in public. The evidence was presented during a public hearing, but then the board asked the audience to leave while it deliberated. The parent questioned whether going into closed session for deliberation was proper.

The board at first responded that it didn't actually go into closed session—it just asked people to leave. Semantics aside, we found that the audience would not understand they didn't have to leave and this hearing had effectively moved into closed session. The question was whether this action was supported by law.

Although we could not find any relevant appellate cases, we did find that an Administrative Law Judge for the Iowa Department of Education, in a case to compel discovery, had ruled that once a student disciplinary hearing has been requested to be held in the open, the board must then deliberate in the open also.

When presented with this information, the board accepted its error and offered to provide the parent a copy of the audio recording of the deliberations.

Public Records, Open Meeting Resources

- Every month the Attorney General's office publishes an easy to read "Sunshine Advisory" which interprets the basic nuts and bolts. Go to:
www.state.ia.us/government/ag/sunshine_advisories/index.html
- The Iowa Freedom of Information Council publishes the Iowa Open Meetings, Open Records Handbook. Twelfth edition copies can be obtained (for a fee) by calling the Council at (515)271-2295 or go to: www.drake.edu/journalism/IFOICWebSite/index.html
- In 2004 the Attorney General's office, the Iowa State Association of Counties, and the Citizens' Aide/Ombudsman office conducted a two-hour Public Records Law Training Course for Public Officials over the Iowa Communications Network. The tape is available by contacting Assistant Ombudsman Angela McBride at 1-888-426-6283 or by contacting ISAC at www.iowacounties.org
- Local government officials can also get more information and training from the Iowa League of Cities, the Iowa State Association of Counties, and the Iowa Association of School Boards.

If these resources do not answer your questions, please contact our office, your attorney, or the attorney working for the governmental body.

Without Public Notice, There Can Be No Meeting

Two citizens of a small town in central Iowa said they learned that their city council had discussed a planning and zoning matter without appropriate notice to the public.

The two citizens suggested that open-meetings violations were ongoing. Conversely, when we called the city clerk, she told us that a small group of citizens that is continually dissatisfied with the city had a personal vendetta against the mayor.

Regardless of the controversy between activists and the city, we reviewed the meeting's agenda, minutes, and an audio recording. The material revealed



that three items were discussed without the required 24 hours' prior notice to the public. When asked for the reasons, the clerk explained that city staff had not dropped off information to her until the day of the meeting.

We explained to the clerk that council discussion of issues not included on a meeting notice must be postponed until the public could be notified of them in advance. The mayor subsequently told us it was never the council's intention to violate the Open Records law, and he pledged to bring the same matters back for a re-vote at the next council meeting. He also promised to advise city staff of the need to provide the clerk with information more than a day in advance of a meeting.

*Public Records, Open Meetings & Privacy—
(Continued from page 8)*

- **Request response times**—Some agencies cite the “reasonable delay” provision of the Open Records law to withhold records from requesters for up to 20 days, even if the records are readily available.
- **Job applications to government agencies**—Many agencies refuse to release the job applications of prospective employees until a hire has been announced, thus preventing the public from knowing who is under consideration and whether or not the person hired was the most qualified.
- **Walking quorums**—This tactic is used by some government agencies to cycle small numbers of officials in and out of a meeting to avoid opening those meetings to the public.
- **Release of final disciplinary actions**—Complainants who have concerns about government employees never learn of any final disciplinary action taken against an employee due to “personnel” records being considered confidential.
- **Advisory bodies**—Some formally created bodies making

recommendations are not opening their doors to the public.

Statistics

In the area of public records, open meeting, and privacy we had 315 contacts in 2009; this number has been very steady in the last couple of years. Of those, 29 were substantiated or partially substantiated, and 17 were special projects such as training. In 2009 about 300 individuals from all levels of government heard my presentation about public records, open meetings, and privacy, and I have received favorable reviews. To schedule a training session, please feel free to contact me directly at angel.mcbride@legis.state.ia.us.

Public Records Lesson 101

I try to give hints and notes in my annual column about problems we have identified to help officials do their jobs better and make sure citizens can be effective watchdogs. Government officials should look at and know their policies for public record fees. In my experience government is charging too much for records and government is taking too long to respond to record requests. And, you might be interested to know, both are illegal.

Fees: The Iowa Code says that fees should be nothing more than

“actual costs.” Fees for public records should accurately reflect the administrative time and materials for getting the record to the citizen. Records stored electronically may not take the same amount of administrative time as paper records. Without a well written and researched policy that includes language about fees for electronic records, it will be difficult for staff to know how to handle each request. Contact me if you have questions or need input on your policy. Citizens with a complaint should first take it up with the agency, and if you are not satisfied with the response you may contact this office.

Response Time: Citizens are not required to put public record requests in writing, but if they are having trouble getting a response to their public records requests we advise them to put their request in writing and ask for a written response. This documents the request and hopefully prevents any ambiguity regarding the request. Public records requests should not take over 10 business days to produce. If you still don't get the record, send your request up the chain of command. Still no response? Send us your documentation and we will take it up with the agency directly.

Act First, Ask Questions Later



We found that a city council in southern Iowa violated three provisions of Iowa law when it appointed a replacement for a city council member.

We were alerted to the situation when a woman asked for our help in finding the state law that dealt with council appointments. The woman was convinced that the appointment was arranged in secret before the public meeting where the appointment occurred. She wanted to know whether the public still could petition for an election for the seat. We provided the woman with the relevant statutes and suggested she ask some follow-up questions of the city clerk.

Based on some of the facts presented by the requester, we had reason to believe the city did not follow state law. We investigated further and found additional problems that the woman was not aware of. After reviewing minutes of the meeting, the Iowa Code, and past opinions of the Iowa Attorney General, it became clear that the council had: 1) failed to give proper notice of the proposed appointment; 2) voted on the appointment by secret ballot; and 3) allowed the mayor to cast the tie-breaking vote.

Under Iowa law, the public has a right to petition for a special election for a vacant council seat within 14 days after it receives notice of a proposed appointment. We found that the city published no notice, as the law required.

We also found that the council members had cast their votes on slips of paper, without identifying which council member voted for whom. This violated a section of the Open Meetings law that requires all official actions of an elected board to be done openly.

We also found that, while the mayor could legally vote to break ties on small matters, he could not do so on a council appointment.

By the time we shared our concerns with the city clerk, the woman's questions had already reached the city attorney. The city attorney's response was similar to ours, and the city decided to nullify the appointment and start the process over, with proper notice to the public. We strongly urged the clerk to share provisions of the Open Meetings law with the council and mayor, and she agreed.

On Second Thought . . .

Early last year, we received an anonymous complaint regarding the cost of an accident report charged by a central Iowa police department. Iowa law allows government agencies to charge only the actual cost of retrieving and copying its records. The police department in this case routinely charged \$25 for a copy of an accident report and \$10 for other reports. When we confronted the department, it offered to host a records symposium to further educate area officials about the state's Open Records law. Some 30 officials from around the metro attended the event. Afterward, we applied more pressure on the department to update its policy. After two days of consultation, details were hashed out and a new model policy was enacted.

E-mail Gets "Stuck," But Controversy Averted

Ombudsman investigators monitor a variety of state and local government agencies' meeting agendas on topics that have gotten our attention in the past.

One such agenda issued by a central Iowa town caught our eye when we received it just a few hours before the Monday meeting was to start. Under Iowa's Open Meetings law, the public and requesting media must be alerted to public meetings at least 24 hours in advance. Included on the city's agenda were two proposed tax increases, which we deemed to be potentially controversial measures of particular interest to the public.

We asked the city clerk when the agenda was posted and sent to the media. The clerk said the agenda was posted at City Hall the preceding Friday and e-mails were sent to local media at the same time. Upon coming into work on Monday, however, the clerk noticed that her e-mail notifications did not go through. She re-sent the e-mails on Monday morning, 10 hours before the start of the meeting.

We contacted a local news organization to see whether the short notice constituted a hardship for its reporters. A reporter there told us he typically reads the council packets in advance of the meetings so he can research the topics to be discussed and write them with maximum accuracy.

Based on this feedback, and the violation of the notice provisions of the Open Meetings law, we suggested that the city postpone the meeting and reschedule it so that the media and public could know in advance of the proposed tax increases. We also noted that holding the meeting without proper notice could expose the city to allegations of wrongdoing, even if the notice delay was inadvertent. The city agreed with our proposal and immediately sent out notices for a meeting the following day.





Human Services

Agency-Provider Dispute Interferes with Disabled Woman's Independence



A woman with paralysis, cerebral palsy, and other illnesses resides in a nursing home. Her daughter contacted our office because her wheelchair was not getting needed repairs.

The woman entered the nursing home with her own specialized, motorized wheelchair that she is able to operate using just one hand. According to the woman's daughter, the wheelchair was getting old and was in frequent need of repair.

Normally, Medicaid does not pay for wheelchairs for nursing home residents because such equipment is covered by the daily nursing home fee. But because the woman owned and needed a specialized chair, her family requested an "exception to policy" from the Department of Human Services (DHS) for a new one. DHS refused because, in its judgment, the wheelchair could be repaired. The repair company fixed some of the problems but refused to do further work because DHS had not paid for their previous repairs.

Our complainant explained that her mother needed the chair for mobility and independence. We contacted DHS and were told that the repair company had not filled out the paperwork properly for payment. DHS agreed to assign a specific worker to the case to ensure that the repair company understood what could be done, but payment problems persisted over the proceeding months, leaving the woman without her wheelchair.

We made more contacts with DHS in an attempt to resolve the problems once and for all. Most recently, DHS approved payment for more repairs and the company agreed to request pre-approval for future repairs. However, in light of the ongoing problems, we are continuing to monitor the situation.

Mistaken Identity Corrected

A retiree had applied for a volunteer position at a health care facility. To his surprise, the facility's background check with the Dependent Adult Abuse Registry (Registry) revealed a 2003 founded abuse report against him.

He contacted the Registry and learned the victim of the abuse was the wife of the person accused of the abuse. The victim did not have the same name as the caller's wife of 63 years. He also learned there had been three founded abuse reports involving the other couple.

Our office asked the Registry to review the accuracy of the information. The agency confirmed the caller's Social Security Number was mistakenly associated with two of the founded dependent adult abuse cases. The Registry's information was changed to correct the errors.

Health Insurance "Runaround" Comes to an End

You may never see a photo of someone "getting the runaround," but we all know what it feels like. Such was the case of a Des Moines man who signed up for a state-managed health insurance plan. After learning that he qualified, he mailed in a check for the initial \$94 premium and figured he'd be approved soon after. He needed the coverage because he has a variety of health-related issues.



But a month later, he still hadn't been approved. Bank records showed the state cashed the man's check, but for some reason the payment was not credited to his account. At the request of the Department of Human Services (DHS), he obtained a copy of the cancelled check and sent it in, but this still did not resolve the problem.

After dealing with DHS staff for several weeks, the man called our office. He described the problem and said he felt was "getting the runaround." Our investigator contacted a DHS supervisor the same day, described the problem, and requested an urgent review and response.

Two days later, DHS decided to approve the man on a "hardship" basis. This meant he was finally on the insurance plan and was eligible for coverage immediately. In the meantime, DHS agreed to work with the bank to figure out what happened with the man's \$94 check.

We called the man and learned that DHS staff had already shared the good news with him. He was very thankful for our help in getting his complaint resolved so quickly.

Investigators' Wishes Do Not Trump Required Notice

A man whose wife was the subject of a child abuse investigation contacted us. She was a day care provider. He complained that the Department of Human Services (DHS) had taken more than 20 days to do an abuse assessment and had not provided a copy to his wife.

Iowa law requires DHS to complete child abuse assessments within 20 days. Furthermore, DHS must issue a notice of the assessment to the child's parents, guardians, custodians, noncustodial parents, child, and the person alleged to be responsible for the abuse, as well as any mandatory reporters.

We contacted DHS staff who verified the assessment had been completed within 20 days but was not provided to the alleged abuser. DHS told us that police did not want the agency to provide the assessment to possible suspects. We told DHS that we believed the assessment had to be provided to all the parties who were legally entitled to it. The day after our call, DHS provided the report to the day care provider.

Payment Snafu Resolved for Daycare Provider

It's no fun not getting paid for an honest day's work. But the problem was compounded for an eastern Iowa daycare provider who had not been paid for many days of work.

She operated an in-home daycare service and cared for several children, some of whom were covered under a contract with the Department of Human Services (DHS). She previously had no problems getting paid on time. But when problems surfaced and persisted for two months, her calculations showed that DHS still owed her nearly \$1,000.

After several weeks of dealing with the problem, she asked a DHS worker how much longer it would take to resolve the problem. "I have no idea," the employee purportedly told her.

That is when the daycare provider called our office. After listening to her, we contacted DHS. The next business day, a DHS supervisor called the woman to discuss the situation.

Following that call, DHS immediately agreed to issue her a check for \$170. For the remaining amount, the supervisor asked her to submit paperwork to the local DHS office (she had mistakenly sent it to Des Moines) and she would be reimbursed accordingly.



Abuse Investigators Address an Unreasonable Delay



Almost nine months after filing a dependent adult abuse complaint with DHS, a man reported that the investigation was still not done. He was concerned that his sister was not properly caring for their father and that she was exploiting him financially.

The man said DHS repeatedly told him the worker had not "got to it yet." We found Iowa law requires completion of the initial assessment within 20 days unless a supervisor grants an extension; and only three 30-day extensions can be granted. When we contacted DHS, they admitted the assessment was not complete and that not all the extensions had been requested.

DHS assured us that the investigation would be completed within a week. We later reviewed the completed report to ensure the investigation was adequate. We found the investigation was very thorough and we concurred with the findings.

A Simple Misunderstanding

A distraught central Iowa woman asked for our help. She believed she could no longer visit her teenage grandchildren because of an ongoing investigation into abuse by their father. The woman, who helped raise the kids, was interviewed as part of the state's abuse investigation and said she was brought to tears by some of the investigators' questions. She left the interview with the impression that she was now a suspect as well and could not have unsupervised visits with the children.

We asked the investigator's supervisor whether the woman was indeed under suspicion and learned she was not. The supervisor said he believed the woman misunderstood what was happening. He agreed to call her to assure she could visit the teens anytime she wished.

The woman later told us the call from the supervisor was "a big relief" and thanked us for clearing up the misunderstanding.



Don't Let Abuse Protections and Services Fall Through the Cracks

In this cost-conscious era of state budgeting, the 11 percent increases in both child abuse investigations and findings of abuse or neglect make it critical to ensure



Barbara Van Allen
Assistant for
Child Welfare

protection cases and services do not fall through the cracks. Department of Human Services (DHS) reports that it conducted 25,814 investigations for child abuse or neglect in 2009. The investigations resulted in finding 10,148 Iowa children were abused. After a two year drop in founded abuse cases, the 2009 abuse findings were predictably higher, given the economy and resulting stresses it has created for families. DHS reports domestic abuse and substance abuse continue to be the main risk factors for these Iowa children, 52 percent of whom are age five or younger. (See News Release at: <http://www.dhs.state.ia.us/docs/childwelfarebynumbers2009.pdf>.)

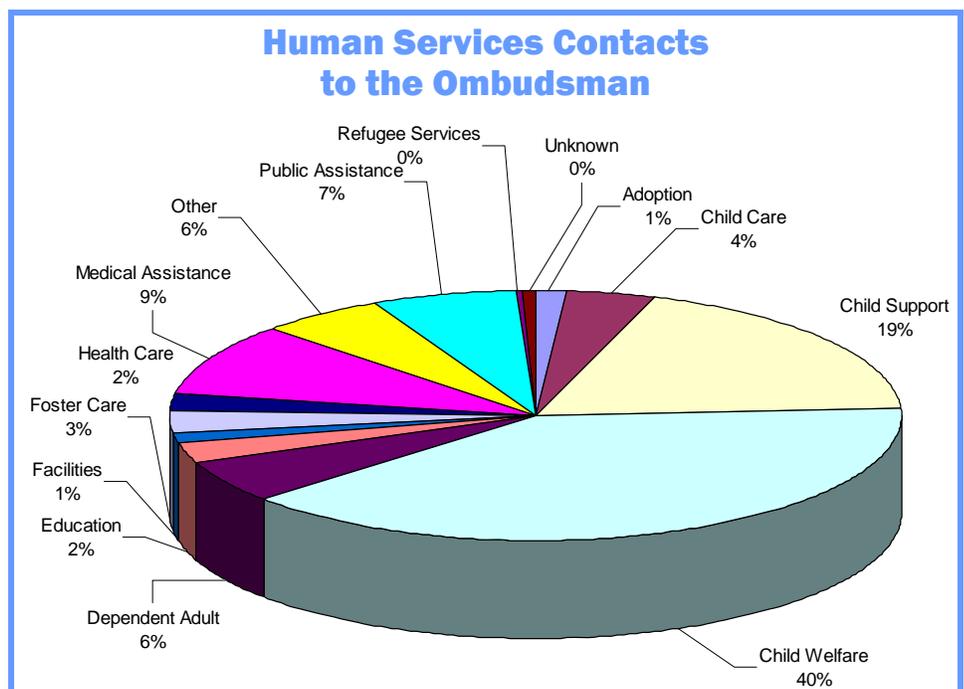
The Ombudsman has been committed to child welfare issues and improvements in the protection practices for many years. On December 14, 2000, the Ombudsman released an investigative report on DHS' handling of allegations of child abuse concerning Shelby Duis. (The full report can be found at <http://www.legis.state.ia.us/Ombudsman/>.) The Ombudsman found that DHS needed to make certain policy and practice changes or improvements in the child protection system in Iowa. The Ombudsman made 23 recommendations, the most significant of which was for DHS to create a statewide centralized intake unit to take and screen all reports of child abuse. Another important recommendation was for DHS to

study the accessibility to and the sufficiency of medical experts available to DHS child protective staff and take the necessary steps to provide or obtain such expertise. DHS eventually did set up eight regional report intake units. However, these two recommendations were not adopted in full by DHS until recently.

On August 31, 2009, DHS Director Charles Krogmeier announced that the agency would arrange for a team of medical experts to be on call for consultation when there are questions about the cause of injuries to children. Diagnosing child abuse can be a challenge in some cases, but DHS now has access to medical consultation from child abuse experts across the state, a statewide multidisciplinary team, and hospital specialists.

Director Krogmeier has also announced that DHS is transitioning to one statewide intake unit for reports of child abuse and neglect. This would consolidate the intake units from the eight regional offices.

It has taken nearly a decade for DHS to implement these important recommendations. Often reform is driven by an emotional response to a tragic case outcome. In addition to reorganization forced by state budget cuts, I believe the above changes were also spurred by horrible abuse suffered by an infant in 2009, despite efforts by DHS. Whatever the motivation, the systems change demonstrates a continued commitment to ensuring long-term improvements in the child protection system. The lasting human costs of child abuse and neglect must be faced also by legislative engagement. As DHS continues to reform its policies and practices for improved accountability, it must have necessary budget and staff to maintain its responsiveness to children and families. Child welfare systems cannot maintain continuity and long-term improvements in positive outcomes for Iowa's children and families without budget and staffing support and flexibility.





Corrections

Station Added for Spanish-Speaking Inmates



Our office was contacted by inmates who wanted Spanish programming added to the available television channels at Iowa's prisons. Some prisons had been forced to contract with a private satellite company for television reception as the result of the conversion from analog to digital signals.

The inmate council at the respective prisons pays for the equipment and installation, as well as the monthly fees associated with the satellite service.

The basic programming package included Spanish channels but prison officials had not "enabled" those channels. Prison officials' had been citing language in a 1997 appropriations bill which directed DOC to limit the availability of television channels to those "representing networks or stations for which under normal circumstances a fee is not required..." Since this restriction was in an appropriations bill, it was not codified in law. Regardless, prison officials believed they were still limited by the intent of the language—allowing only "over the air" channels that can be viewed at no charge.

We suggested that in 1997 the Legislature likely did not anticipate the switch to digital service. We noted the January 2009 Board of Corrections' minutes indicated the Board was considering adding basic channels such as CNN and ESPN. Three months and several inquiries later we were informed that a Spanish-language television network, along with other channels such as Discovery, would be added at the prisons receiving TV service through a private satellite company. This decision is not applicable to the women's prison as it uses an antenna for over-the-air reception.

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 the complaint is substantiated, we look for ways that staff can:

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

Restrictive Policy Reconsidered

The Parole Board asked an offender to successfully complete a work program under prison supervision in order to gain release into the community. The problem was the prison was denying her the opportunity. The denial was solely based on a statewide change in policy which did not allow offenders with second-degree murder convictions to live or work outside prison walls.

It did not matter that this offender had previously lived outside the walls for over 16 months, problem-free. She was pulled back inside the walls. It did not matter that this offender had not received a single major report in nine years. It also did not matter that this offender received excellent work and unit behavior notations. Most significantly, it did not matter that prison officials had recommended this offender for a parole or work release to the community six different times in a four-year period.

This was not the first complaint of this nature to our office, so we had already expressed concerns about the policy change to DOC. We were told by prison officials that they would work to develop a solution.

Several months later, we were told the policy would change to allow offenders to work outside prison walls with a GPS ankle bracelet. Finally, two months later, this offender and a couple of others received GPS ankle bracelets under the policy revision.

After only two months of working outside prison walls with the GPS bracelet, prison officials again supported this offender for release and it was granted. She subsequently moved to a community work release and became employed full-time with benefits, attending required meetings and reportedly doing well.



Leave All Your Money Behind



Five weeks after she was released from prison, a woman called us to say she still had not received the \$100 gate fee that departing inmates normally receive. By law, inmates are required to save a percentage of their earnings and transfers from family and friends until they accumulate \$100, which is given to them when they discharge.

When we asked the prison about the woman's gate money, we learned that the money was kept because the woman was arrested on an outstanding warrant at the moment of her discharge. Apparently, the arresting agency would not accept the woman's belongings to be transferred to its jail, so the prison reasoned that it would keep the money to pay for the costs of mailing the woman's personal property to her home.

The prison acknowledged that it had not asked the inmate whether she could make other arrangements to pick up the property at no cost. Nor had the prison attempted to calculate the shipping costs so it could pay the woman the difference.

The prison immediately agreed to send the woman her \$100 after we provided her address. The prison also agreed to start making arrangements in advance for shipping the property of inmates who are known to be awaiting arrest at the time of their discharge.

Nurse Corrects Prescription Sanfu

There is a reason why a doctor's prescription is called an order. These directions are essential for the most efficient healing. Medications only work if they are administered as the doctor prescribes.

A prison inmate contacted our office because his HIV medications were not kept in stock. Because of this, he was forced to go without his medication for a certain period of time on four separate occasions during a seven-month period.

We contacted the prison. The nursing supervisor at the institution responded staff did not notice the prescription needed refilling because the packaging was different from the standard "bubble cards." This oversight caused an interruption in the availability of the medication on the unit. Staff did not notice the prescription needed to be refilled in time to ensure consistent administration.

The nursing supervisor agreed to instruct her employees to automatically reorder this type of medication every 21 days to make sure it is always available.

Following Doctor's Orders Impossible

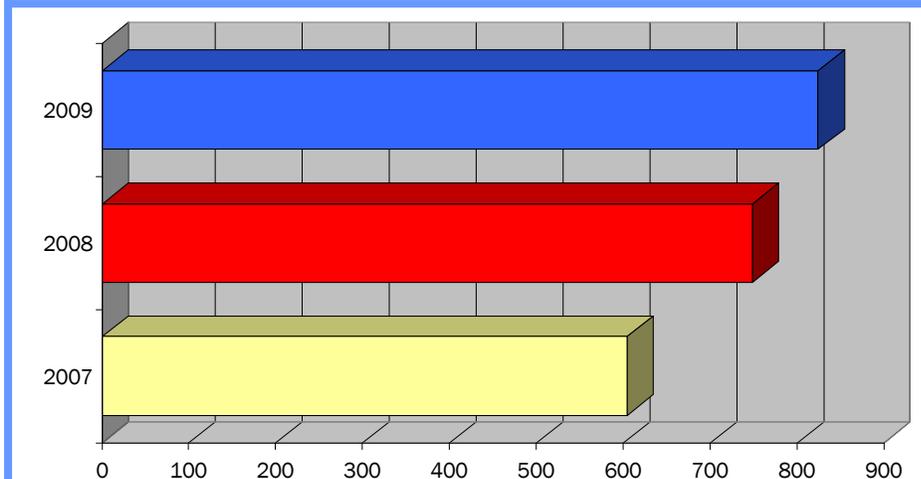
A prison inmate who reported chronic gum disease complained that, despite bleeding from his mouth, he was not receiving adequate care.



After an extensive review of the inmate's medical records, we noted that a prison dentist had told the inmate he could best alleviate his dental issues with regular brushing and flossing, and that he was not complying with this suggestion. When we conveyed that information to the inmate, he responded that floss was inaccessible to him because he was housed in a mental-health unit where floss could be used as a weapon. The prison's deputy warden confirmed that a miscommunication existed between staff and medical officials. He agreed to allow the inmate to purchase individual plastic flossers that would pose no danger to others.

We disagreed with the inmate's assertion that he should receive the flossers free of charge after we ascertained that other inmates are required to buy their own floss, as well as toothbrushes and toothpaste.

Number of Prison Issue Complaints/ Questions Received by the Ombudsman



The Way You Do The Things You Do

A young girl was happy she was finally old enough to help her mother with preparing Easter dinner. She had watched her mother for several years prepare the ham and now that she was actually helping she asked, "Mom, why do you cut off the end of the ham and cook it in a separate pan?"

Her mom responds "I have always done it that way because that is how my mother taught me." The girl persists "But why?" The mom says "I really don't know. Why don't you ask Nana? She's in the other room setting the table."

The girl approaches her grandmother, "Nana, I asked mom why we need to cut off the end of the ham before we cook it and she said that she does it because that's what you had always done. Why did you cook your ham that way?"

Nana stated "Honestly, Sweetie, I cook it that way because that's how my mother taught me. Why don't you ask Great Ma, she's on the front porch relaxing."

The girl walks to the front porch where her grandmother is. "Hi Great Ma. I have a question. I asked mom why she always cuts off the end of the ham before cooking it and she said she didn't know—that she does it that way because Nana always did. I asked Nana why she taught mom to cook the ham by cutting off the end and she told me that she did it that way because you always had. I want to know why we cut off the end of the ham before cooking it."

Great Ma smiled and patted the young girl's hand and said, "Oh child, Great Ma never had a pan



Eleena Mitchell-Sadler
Assistant for
Corrections

large enough to hold the whole ham."

That wonderful story was told to me many years ago by a new supervisor. Obviously, it left an impression. I think it

was her way of saying "Nothing personal, but it's important for me to know and understand why certain policies exist and why department procedures are what they are." I respected that because her attitude wasn't critical, it was that of interest. Being asked "why?" may help develop better or more efficient procedures.

Being asked "why?" may help develop better or more efficient procedures.

"Nothing personal." That's part of the message I have tried to relay to new jail and prison staff about the Ombudsman's inquiries, but that can be a tough sale to prison or jail officials who aren't used to being asked to explain a thought process, a policy, or restriction they have ordered.

This past year I continued making presentations to recently hired jail and prison employees. In 2009 this was done before over 200 jail and prison employees representing 51 different counties. The Ombudsman overview focuses on our involvement with prisoner complaints. It is explained to jail staff that the Ombudsman is an independent, impartial fact-finder put in place by the legislature to "help make good government better." The

Ombudsman is not an advocate for the inmate or the agency. Statistics about the type of complaints we receive are shared, as well as examples of what our office did to help resolve the issues.

It was a pleasure to be invited by two county sheriffs to speak to their staff regarding the Ombudsman's role in investigating complaints about their jails. We were also invited to tour a third county jail. It was interesting to see the daily issues that arise and to see how accessible the jail administrator was to the staff and the inmates. It was also encouraging to actually see flexibility exercised in the decision making process while we were there.

In 2009 we received 295 new complaints or questions involving Iowa's jails. That is a nine percent decrease from the previous year. Though overall the numbers of complaints are down, jail complaints involving grievances are up

nearly 50 percent, and complaints involving use of force have increased by 64 percent.

Prison complaints increased significantly in 2009. Our office opened 905 new prison cases this past year; that's a 21 percent increase from 2008. Cases opened for our entire office increased in 2009 by 2.4 percent.

While complaints regarding health issues remain the highest area of complaint within the prisons, complaints involving classification, releases, and property increased by 50 percent or more in 2009.

Complaints from Iowa's two prisons classified for maximum prisoners declined, but we saw an increase in complaints of at least

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.**

Is it Cold Out Here, or Is It Just Me?



In January 2009 our office was contacted by an inmate who was about to be released from prison.

Prison staff told him he would be receiving a hooded sweatshirt and not a coat upon release. Department of Corrections (DOC) policy states that an offender, upon release, will be provided "seasonal clothing" between November 1 and March 31. The term "seasonal clothing" was not defined, so we contacted the prison warden to ask for his interpretation of the policy.

The warden told us the inmate could get a sweatshirt or a coat, depending upon the circumstances on the day of his release. He said he would consider the temperature on that day, and whether the offender was picked up by car or had to wait for a bus. We were not satisfied with that response so we contacted DOC's regional director, who agreed with the warden. We then contacted DOC's director, who agreed it was winter and the offender needed a coat upon his release.

When we contacted the inmate, he was relieved he would receive a coat. The offender later called and confirmed that the prison provided him with a coat and boots.

Prisons Easing Visitation Restrictions

Infant grandchildren denied visits with incarcerated grandpa. Minor children denied visits with incarcerated dad.

These children were not the offenders' victims, so why aren't visits allowed? These are just two examples of the many complaints the Ombudsman received last year about prison visitation denials.

Prison policy states all family members of victims are denied visitation. In domestic abuse cases this means children of the victim, who are often also the children of the offender, are denied. All minors are denied visitation if the offender has a crime against a minor—even if that crime is discharged, if the offender has not completed required treatment.

Certain programming, such as a batterer's education class or sex offender treatment, is required to be completed by the offender before visits will be allowed. Depending upon the offender's sentence, this may take several months to even decades for the offender to complete these requirements.

We had concern this policy may weaken family bonds, and perhaps unwittingly punish some children. We also wondered if the prison's definition of "victim" was too far reaching, because in all cases an adult responsible for the minor child had applied for visitation.

A published social scientist we contacted had this to say about the visitation policy and denials:

- It does seem, on the face of it, that this policy is unwise and has many unintended consequences.
- I can't imagine programming mattered as much as reviewing for appropriateness.
- A stronger policy may be education than denial.... For true victims, I favor helping educate

them about what is safe and not, healthy and not.

- ... the trend in those circles (advocacy) among the most thoughtful is HIGHLY in the direction of education and NEVER taking the choice away from the victim, as that is increasingly seen as a type of victimization in its own right.

After making several inquiries to prison officials about the individual complaints, we felt it was time to sit down with them to gain a better understanding of the policy. Prison officials stated the term "victim" encompasses more than the person directly assaulted or abused, and they need to ensure their visiting rooms are safe and individuals are not being victimized.

Prison officials said the policy was changed in September because they determined it was too restrictive. As a result some denials have been reversed. With the new process, if appealed, they take a more individualized look into the relationship and circumstances.

We told prison officials we need to feel confident that the policy is reasonable, and since we often advise offenders or family members to appeal a visitation denial, we need to know that the process works and is fair. They emphasized the need for the applicant to appeal a denial to the warden. If the denial is upheld, the applicant can then appeal to DOC Central Office. We were told "just call" if a denial appears unreasonable.

After reviewing the updated policy, hearing prison officials' explanations, and seeing examples of denials that were reversed under the new policy, we found the new policy is definitely a step in the right direction.

Cardiac Episodes Now Given Priority

A prison offender complained of chest pressure that kept getting worse. When correctional health services performed an electrocardiogram (EKG), the test revealed abnormalities that required an emergency trip to a hospital. The man underwent a cardiac procedure to clear his coronary arteries.



Correctional logs confirmed a nurse spoke with the offender about his pain and told him to lie down, but the nurse did not document the encounter or notify a physician. The offender kited again a few days later and visited with a different nurse, describing symptoms such as chest pain, left arm pain, nausea, and shortness of breath. The nurse notified a physician and an EKG was ordered for the next day, but it was given a normal priority.

The case was brought to the attention of the Correctional Medical Administrator, who oversees all medical and mental health personnel in the state prison system. He had been the Medical Director, and had instituted routine orders for ailments such as chest pain. The use of these orders was discontinued after he left, but he promptly re-implemented them.

If the orders had remained in force, the above situation would have called for an immediate EKG, vitals signs, one aspirin, and a series of nitroglycerin pills prior to contacting the physician.

After this case, another chest pain issue occurred and these standing orders were initiated. Our office was pleased with the re-implementation of the standing orders.

Prisons and Jails—(Continued from page 17)

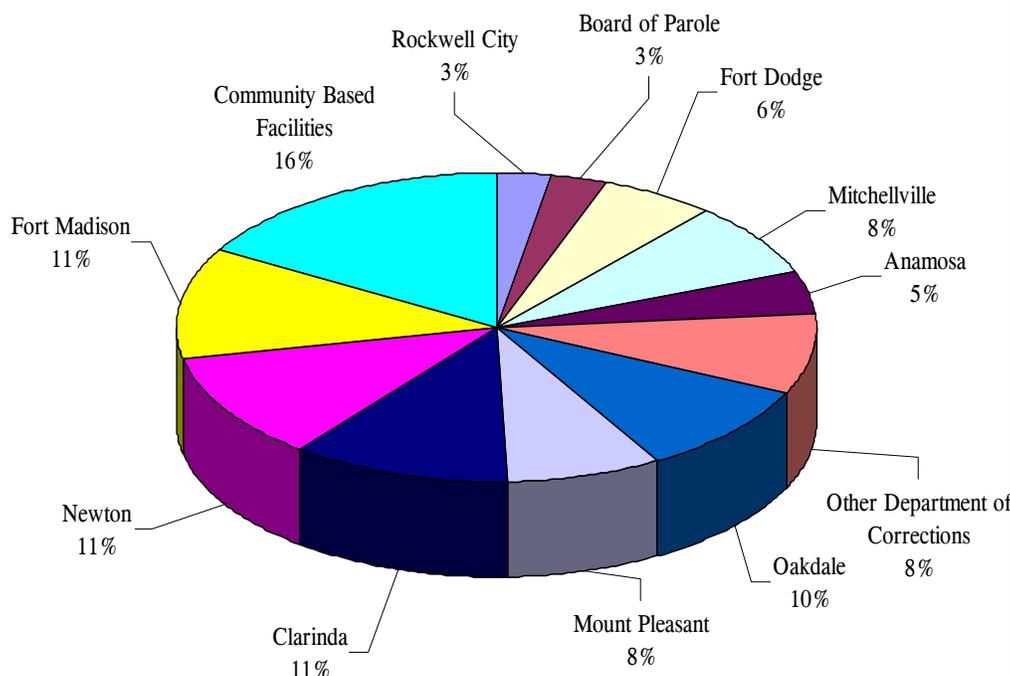
33 percent from the other three prisons.

Rises in certain areas of complaints can be concerning, however we must analyze the complaints individually. An inmate may complain his grievance was denied, but that grievance may have been denied for a legitimate reason. For example, an inmate may complain an officer removed his towel that was hanging from his bunk. Upon investigation the grievance officer may learn the towel hanging from the bunk interfered with the officer's line of sight into the cell; therefore the reason for removing the towel is so that the officer can perform his duties effectively.

On the other hand, a denied grievance that states, "Your grievance about Officer Smith instigating discord by telling other inmates that you are a 'baby beater' is being denied because when I came to talk with you about it I saw you throwing spit wads across the range" can be a red flag for us. An inmate's conduct regarding an entirely different matter does not excuse the alleged unprofessional behavior of the officer.

One of the most important tools for any correctional facility is the grievance process provided to inmates. The grievance process allows the inmate to file complaints regarding conditions, as well as events in the jail where the inmates believe their rights have been violated. By providing inmates with a proper grievance process, the jail administration can resolve legitimate problems before they lead to disruptions, lawsuits, or both.

Subjects of Corrections Contacts to the Ombudsman



2009: Contacts Opened by Agency

Name	Jurisdictional Complaints	Non- jurisdictional Complaints	Information Requests	Pending	Total	Percentage of Total
Administrative Services	2	0	2	0	4	0.08%
Aging	0	0	24	0	24	0.50%
Agriculture & Land Stewardship	3	0	2	0	5	0.10%
Attorney General/Department of Justice	8	0	74	1	83	1.74%
Auditor	1	0	1	0	2	0.04%
Blind	2	0	2	0	4	0.08%
Citizens' Aide/Ombudsman	8	0	43	0	51	1.07%
Civil Rights Commission	8	0	5	0	13	0.27%
College Aid Commission	1	0	1	0	2	0.04%
Commerce	12	0	10	1	23	0.48%
Corrections	824	0	42	39	905	19.00%
County Soil & Water Conservation	0	0	0	0	0	0.00%
Cultural Affairs	0	0	2	0	2	0.04%
Economic Development	3	0	1	0	5	0.10%
Education	8	0	1	0	9	0.19%
Educational Examiners Board	2	0	0	0	2	0.04%
Energy Independence	0	0	1	0	1	0.02%
Ethics and Campaign Disclosure Board	0	0	1	0	1	0.02%
Executive Council	0	0	0	0	0	0.00%
Human Rights	0	0	1	0	1	0.02%
Human Services	351	0	33	21	405	8.50%
Independent Professional Licensure	3	0	0	0	3	0.06%
Inspections & Appeals	30	0	8	0	38	0.80%
Institute for Tomorrow's Workforce	0	0	0	0	0	0.00%
Iowa Communication Network	0	0	0	0	0	0.00%
Iowa Finance Authority	2	0	2	0	4	0.08%
Iowa Lottery	6	0	1	0	7	0.15%
Iowa Public Employees Retirement System	2	0	1	0	3	0.06%
Iowa Public Television	0	0	0	0	0	0.00%
Law Enforcement Academy	1	0	1	1	3	0.06%
Management	0	0	1	0	1	0.02%
Municipal Fire & Police Retirement System	0	0	0	0	0	0.00%
Natural Resources	18	0	6	2	26	0.55%
Parole Board	26	0	5	0	31	0.65%
Professional Teachers Practice Commission	0	0	0	0	0	0.00%
Public Defense	1	0	0	0	1	0.02%
Public Employees Relations Board	0	0	0	0	0	0.00%
Public Health	10	0	23	1	34	0.71%
Public Safety	21	0	11	1	33	0.69%
Regents	9	0	1	1	11	0.23%
Revenue & Finance	60	0	13	1	74	1.55%
Secretary of State	1	0	5	0	6	0.13%
State Fair Authority	3	0	0	0	3	0.06%
State Government (General)	115	0	186	0	301	6.32%
Transportation	62	0	15	0	77	1.62%
Treasurer	3	0	8	0	11	0.23%
Veterans Affairs Commission	1	0	0	0	1	0.02%
Workforce Development	59	0	16	1	76	1.60%
State government - non-jurisdictional						0.00%
Governor	0	4	6	0	10	0.21%
Judiciary	0	147	32	0	179	3.76%
Legislature and Legislative Agencies	0	10	6	0	16	0.34%
Governmental Employee-Employer	0	41	1	1	43	0.90%
Local government						
City Government	599	0	80	26	705	14.80%
County Government	548	0	36	30	614	12.89%
Metropolitan/Regional Government	31	0	5	1	37	0.78%
Community Based Correctional Facilities/Programs	180	0	4	3	187	3.93%
Schools & School Districts	48	0	6	2	56	1.18%
Non-Jurisdictional						
Non-Iowa Government	0	99	42	0	141	2.96%
Private	0	377	114	0	491	10.31%
Totals	3072	678	881	133	4764	100.00%



Other Agencies

Talk to the Machine

A man contacted the Ombudsman's office after his unemployment benefits were suspended due to an outstanding appeal. He was not able to reach anyone in the Unemployment Insurance Division (UI) to fix what he believed was a mistake on his account.

The Ombudsman contacted UI staff, who found an old appeal from a former employer mistakenly registered as a new appeal to the reactivation. This was a mistake on behalf of UI and the benefits should not have been suspended. UI immediately lifted the suspension.

The Ombudsman also identified a problem with the phone tree system preventing beneficiaries from contacting officials with their questions and concerns. UI turned off the phone tree system and replaced it with a live operator until the technical problem could be fixed.

Phone Call ... It's Not for You

The Iowa Department of Revenue and Finance (DOR) uses an automated phone system to call individuals who owe a tax debt. An automated message asks the individual to contact the DOR.



We received complaints from several people who said the automated system was calling them repeatedly by mistake. One complainant from Illinois said he not only had no tax debt with Iowa, he had no connection to Iowa at all. He said he had been receiving the calls for a year before learning of our office. During that year, he contacted the agency repeatedly asking for resolution, but the calls continued.

Another complainant contacted us after receiving calls for a couple of months. He said staff admitted he did not have a tax debt, but the calls continued nevertheless. We contacted the agency to ask why the calls were persisting. An agency manager told us that a recent software update would not allow the agency to remove erroneous numbers themselves. Instead, the agency would have to rely on the software company to fix the problem. Due to the aggravating nature of the repeated calls, we asked the agency to stop all the automated calls until the improper numbers were removed. The agency quickly agreed to do so.

Which Comes First, the Chicken or the State-Issued Photo ID?



A quadriplegic contacted our office because he believed he needed a state-issued photo ID to claim abandoned property from the Great Iowa Treasure Hunt. In order to get a photo ID from the Department of Transportation (DOT), he had to prove his age and identity.

His only option was to provide an original or certified copy of his birth certificate. However, it was his understanding the Illinois county where he was born required a copy of a state-issued photo ID to get the birth certificate.

In other words, he couldn't get a birth certificate from Illinois without a state ID from Iowa, and he couldn't get an Iowa ID without an Illinois birth certificate. We contacted the DOT and a supervisor agreed to call the man to discuss his options. Before doing so, DOT contacted Illinois and learned the man did not need a state-issued photo ID to get a certified copy of his birth certificate. DOT informed the man of this but still offered to help him get a photo ID. DOT officials said they could take a digital camera to the man's home and take his picture. They would also allow his caretaker to sign on his behalf.

We also contacted officials with the Great Iowa Treasure Hunt. They offered to waive the photo ID requirement for claiming abandoned property, if the man could provide other documents to prove his identity.

Unemployment Benefits Paid When Missing Number Found



A Des Moines man who was laid off from his job around Thanksgiving told us in late December that the state had still not processed his claims for unemployment benefits. Each time he called, he said, the agency provided a different reason for the delays.

We contacted the agency's administrator to ask about the holdup. Within a day, the issue was researched and the problem was pinpointed. The agency had inadvertently omitted the last digit of the man's bank account number, which prevented the payments from going through. The man received his first unemployment benefits later that day.

Red Tape Sliced for Food Vendors



Two issues were presented to our office from two State Fairground flea market vendors. The first issue involved the sale of frozen meat. Based on an inspection, the Department of Inspections and Appeals (DIA) determined the vendors needed to apply for Temporary Food Establishment licenses for each flea market at the State Fairgrounds if certain criteria were not met. The vendors questioned the need for individual licenses, costing \$33.50 each, for each flea market and the discrepancy between license types.

After reviewing applicable laws and rules, we spoke with DIA officials. They acknowledged it was DIA's responsibility to keep food safe for the public, but they agreed it was also important to be fair to the different types of vendors. The distinguishing fact regarding our complainants was that the frozen meat remained in an operating freezer in the building where the vendors sold the product, thereby guaranteeing the food safety.

For this reason, DIA agreed to not require Temporary Food Establishment licenses for these two vendors as long as they had a mobile food license and they plugged in their freezers while at the State Fairground flea markets. Coolers would not be allowed without a Temporary Food Establishment license. DIA also agreed to look at possible rule changes.

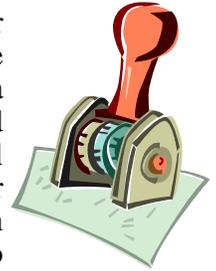
In the second issue, one of the vendors was told she had to pre-package all cookies and candies or she would have to get a Temporary Food Establishment license every time she set up at the State Fairground flea market. The packaging would need to include the vendor's name and address as well as the product ingredients, including allergens. The vendor currently displays her cookies, bars, and candies in a showcase. Interestingly, if she sold the same items under identical circumstances at a farmer's market, she would not need any type of license.

DIA subsequently determined this group of State Fairground flea market vendors would not need to be licensed as a Temporary Food Establishment under the following conditions:

1. There is no bare-hand contact with ready-to-eat food;
2. Only non-perishable food is sold;
3. All non-perishable food items are kept covered or packaged at all times while being transported to the stand and while being on display for service. (Acceptable packaging includes new food-grade plastic bags, plastic wrap, or glass containers.) and;
4. The vendor's name and address, product ingredients including allergens, must be listed on a placard displayed at the stand.

An Extremely Taxing Situation

A disabled man contacted our office because he did not feel he should be charged \$17,000 for a drug stamp when he was convicted of possession of only a small amount of marijuana. Our caller realized there was a problem when his state rent rebate was taken to repay the drug stamp tax from a 2006 drug arrest.



The man told us he was charged only with having three grams of marijuana. The person he was arrested with was found in possession of over 1600 grams. Our complainant believed he was mistakenly charged for the other defendant's drug stamp tax. Iowa law provides for a drug stamp tax which is imposed on dealers who possess, distribute, or offer to sell drugs. A dealer is defined as any person who ships, transports, or imports into this state or acquires, purchases, possesses, manufactures, or produces seven or more grams of a taxable substance other than marijuana.

We obtained a copy of the police report, which verified our complainant possessed only three grams of marijuana at the time of his arrest. We contacted the state taxing agency and informed an official that we did not believe our complainant met the legal definition of a dealer and asked that the tax be rescinded. The taxing agency reviewed the matter, determined that our complainant should have no responsibility for the drug stamp tax, and refunded the man's rent rebate checks.

An Expensive Oversight



An eastern Iowa man who was paying \$60 a month toward a tax debt was charged \$210 in overdraft fees when the state double-debited his account. The man told us the state had previously agreed to stop taking automatic debits from his checking account but continued doing so, even after he made his monthly payment by check. The double payment caused the overdraft, and his bank charged him six fees of \$35 each.

We asked the man to plead his case to his bank while we contacted the Iowa Department of Revenue (DOR). In response, DOR confirmed its mistake and agreed to write a letter explaining its mistake to the bank. The bank then agreed to reverse the man's overdraft fees.

Laid-off Workers Hit by Delays in Unemployment Benefits



Many Iowans have felt the pain of the recent national recession. Included was a northern Iowa man who called our office because he had nowhere else to turn.

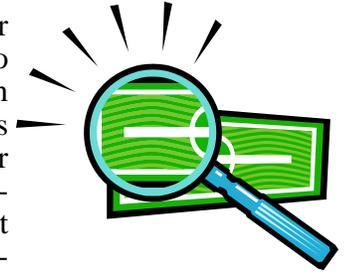
After being laid off from his job about a year earlier, he received assistance to enroll in a local community college. He had been receiving unemployment benefits, but they expired. He was approved for an extension by staff with the Iowa Workforce Development (IWD). But five weeks went by and he had not received any of the additional benefits. Each time he called, he said he was given a different reason for the delay.

He called our office on a Friday afternoon. He explained the situation and said that after five weeks with no income, he was out of money. Our investigator immediately contacted IWD and requested an "ASAP" review of this man's case. The following Tuesday, an IWD supervisor told us that:

- The delay occurred because IWD had to transfer his benefits from a federal program to a state program, which requires a manual input of the data.
- Not only does this process take some time, many other Iowans also needed to be transitioned in the same manner.
- Staff had entered the man's data on Monday, and he should be receiving a new debit card in the mail by Wednesday.

We called the man and learned that IWD had already called him with this information. He was very thankful to know he would soon be receiving assistance again.

Payment "Confirmations" Not Really So



A small business owner set up an E-pay account to pay his sales tax obligation by phone. He filed his sales tax obligations for the third and fourth quarters of 2008 and the first quarter of 2009 via telephone. Each time, he received a confirmation number after entering his information.

The first time he did this, the man received a letter claiming that the Department of Revenue (DOR) had not received his payment. He contacted DOR and was told that DOR did not know why his monies were not automatically withdrawn from his account, but that he needed to remit a check.

To avoid further problems, he had an agency employee walk him through the process the second time he used the phone filing system. However, he again received a letter informing him his tax had not been paid. After the third try and the third letter, he kept calling DOR until he was provided an accurate explanation of the problem.

It was discovered that he accidentally entered an incorrect routing number for his checking account when he first set up his payment options. So although he was filing his sales tax information, the money was not being withdrawn from his bank account.

The small business owner had refused to pay the penalty and interest for two of the late filings, and when he finally called our office he was getting three phone calls a day from a collection agency for the \$250 he owed in penalties and interest. He could not license his vehicles until this obligation was paid. DOR offered to settle the account for the interest owed, \$50, and the caller accepted but our office still had concerns about the process.

We confirmed the small business owner's filings had been timely—they were just "not honored." DOR tried to call the business owner after each of the filings but did not reach him by phone until after the third filing. Our office subsequently provided DOR a summary showing everything we believed the small business owner and DOR did correctly and incorrectly. DOR agreed to write a letter to the small business owner to inform him they were aware of the facts of his case and would consider whether changes could be made to improve communications with sales tax filers.

***The ombudsman system
is based on the principle
that everyone 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 complaint.***

Ombudsman Delivers For Injured Pizza Driver



A pizza delivery driver who badly injured his ring finger during a stick up

won a worker's compensation judgment against his employer but complained to our office when no government agency forced the business to make good on the claim.

We reviewed the worker's compensation case and found that an administrative law judge (ALJ) sided with the driver after the pizza business failed to present a defense. The ALJ ordered the business to pay the driver more than \$25,000 in medical expenses, back wages, and disability. In the two years that followed, however, the worker told us he had heard nothing from the business or Iowa Workforce Development (IWD). The worker remained particularly upset because the business reportedly had no worker's compensation insurance at the time he suffered the injury.

We asked the ALJ whether IWD had any role in the worker's ongoing complaints. The ALJ agreed to ask IWD regulators to seek proof of insurance from the employer. When the employer failed to respond to the request, the case was referred to the Attorney General for consideration of criminal prosecution.

We also advised the worker that he could seek a court judgment against the business for failing to comply with the ALJ's order.



Local Government

A Difficult Existence Made More Difficult

We received several phone calls throughout the spring and summer from a homeless woman who was living in her sport-utility vehicle with her dogs. The woman said she was continually being roused by police at highway rest stops in eastern Iowa and threatened with arrest, although she insisted she had broken no laws.

After confirming with the Iowa State Patrol that it is legal for drivers to sleep in their cars, we convinced one local police department to stop removing homeless drivers from the local rest stop. However, shortly after we solved that problem, the woman claimed that a state patrol officer had threatened to impound her car unless she left the rest stop.

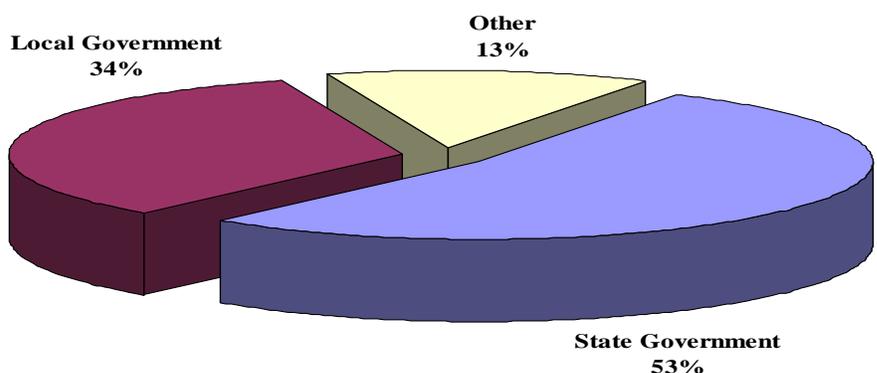
Again, after confirming that no crime had been committed, we discussed the matter with law enforcement commanders who again agreed to instruct their officers to leave the driver alone.

Two months later, the woman reported a third run-in with police. This time, an officer from a different city gave her a written "ban notice" that effectively prevented her from setting foot on two specific rest stops where she had been lounging with her dogs under a tarp attached to her open hatchback. When we questioned the police about the legality of the ban notice, they alleged that the woman was camping in violation of a sign prohibiting the activity. However, when pressed, police admitted there was no law that enabled them to enforce the camping restriction. The police rescinded the ban notice and we asked the Iowa Department of Transportation (DOT), which owns the rest stops, to explain its legal authority for posting the signs.

The DOT said it had previously adopted a policy that prohibited camping and loitering at its rest stops. With concerns that the woman's ongoing presence might present a nuisance for other travelers, the DOT issued her a letter informing her that she was free to stay at a rest stop for no more than 24 hours at a time. The DOT emphasized that it was not banning the woman from the facilities and stressed that its 24-hour stay limit applied to all visitors. After confirming that the DOT had the legal authority to pass such a policy, we concluded the DOT was acting reasonably, and advised the woman to follow the rules or risk a citation.



Subjects of Complaints to the Ombudsman



Out of the Hospital and Straight to Jail



An upset woman called us when she learned her son was on the verge of being discharged from a hospital's mental-health unit—too soon, in her opinion. The woman said her son's mental-health

commitment order said he could be committed to the hospital or jail. She said the hospital was discharging him even though his psychiatrist felt he needed further treatment.

We contacted the county's Central Point of Coordination (CPC) administrator, who said the hospital was trying to locate a "dual diagnosis" facility for the woman's son that could treat him for both mental-health and substance-abuse issues. The CPC said the doctor determined the patient was no longer in imminent danger, which prevented the hospital from keeping him under the commitment. The CPC administrator faxed us a copy of the commitment order, which said the caller's son was to be hospitalized. The order said nothing regarding jail. However, the CPC said the patient might go to jail if a dual-diagnosis facility could not be found. As it turns out, the man had an outstanding arrest warrant for a probation violation.

The CPC followed through with the hospital and assisted in finding two dual-diagnosis facilities willing to take the caller's son. We explained the situation to the caller, who felt better knowing her son would get further treatment before going to jail.

Adding Insult to Injury

A north central Iowa city demolished several unsafe structures and removed junk from a rural homestead following a lengthy court dispute with the elderly owners.



Armed with a court order outlining the nuisance, the city council hired a man to take heavy equipment to the site and to clean the property. The city then planned to bill the owners for the work, as state law allows.

All was proceeding smoothly until the equipment operator accidentally struck a gas line during demolition. The gas company was called to repair the break and later billed the property owners for \$1,200. The couple argued that the city was at fault for the break, but the city council reportedly would not assume responsibility for the accident. The couple said the gas company was also unsympathetic and refused to allow for installment payments.

After contacting the city clerk and reviewing the council's meeting minutes, we found no indication that the city had agreed to reimburse the landowners for the gas main break. When we contacted the city attorney, he researched the issue and learned that the council had indeed agreed to offset the landowners' bill for the cleanup by \$1,200 to make amends for the accident. The city attorney, who did not attend council meetings, could not ascertain how that measure was approved. At our urging, he arranged for the council to formalize its actions with a vote on the matter during a subsequent public meeting.

A Reasonable Exercise of Sympathy



An indigent family seeking financial assistance to bury their deceased brother was denied aid when county officials were unable to determine that every family member lacked the means to pay for the interment themselves.

Guidelines for the general assistance program required that the financial wherewithal of "responsible relatives" such as parents, grandparents, children and grandchildren of the deceased be considered before money could be provided. In the case of this family, some relatives were estranged and their whereabouts were unknown. A son of the dead man was serving overseas with the Navy.

After our review of the situation, we convinced the county attorney and program staff that officials had done their due diligence to try to verify the financial status of all responsible relatives, and that it was unreasonable to continue to deny aid to the family in light of the circumstances.

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.

City Watches Woman's Steps

The husband of a woman with multiple sclerosis said the condition of a city street near the woman's chiropractor's office was pockmarked and made walking unsafe. We advised the man to discuss the problem with the central Iowa town's mayor.

Within three weeks, the man said city crews did some rudimentary patchwork that failed to alleviate the problem. The road remained rutty and difficult for his wife to negotiate from the only handicapped parking space in the vicinity.

We contacted the city manager, who immediately went to the scene and assessed the safety of the street for himself. The city manager took photos showing the problems and instructed his crews to repave the area, and to widen the slope of the sidewalk and parking space to his satisfaction.

The man, although happy with the repairs, called us several months later to report that melting snow was pooling near the handicapped parking space, creating an ice hazard.

Recognizing that the city had already done much to try to address the issue, we proposed that the couple be allowed to park temporarily in a nearby no-parking zone whenever the man accompanied his wife to the chiropractor's office. The city manager agreed to this arrangement and alerted police not to issue any parking tickets to the man during his visits.

False Alarm About a False Alarm

An elderly woman contacted our office after officials in her city issued her a citation for a false burglar alarm that caused an officer to be dispatched there. The caller told us her alarm was not turned on and had not been on for several weeks. She tried to resolve the matter with a letter to the city but received no response.

We contacted the city, where staff informed us they planned to investigate the woman's claim but had only two staff. Soon after our call, the city's false alarm coordinator contacted the officer who responded to the auditory alarm call.

The officer informed the coordinator that the neighbor who called in the alarm got the address wrong. The neighbor mistakenly gave our complainant's address when the alarm was actually coming from a different nearby address. The officer said he had asked dispatch to correct the address but this was apparently not done.

The false alarm coordinator dismissed the woman's citation.



Ombudsman's Message—(Continued from page 1)

offices; and the power to compel the cooperation of subjects and witnesses, by subpoena (if necessary) and under oath. All of these tools enable the Ombudsman's office to be thorough, accurate, and effective in its oversight.

By law, the Ombudsman's office can investigate most agencies of Iowa state and local government. Within this broad jurisdiction, we can investigate any administrative action or inaction alleged to 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 ascertainties of fact.
- based on improper motivation or irrelevant consideration.
- unaccompanied by an adequate statement of reasons.

Within this list of potentially egregious behaviors, what an assistant ombudsman decides to investigate and how that assistant approaches the complaint depends in part on how a complainant articulates his allegation. For example, if the complainant believes he was wronged because a law was not followed, the assistant will probably first consider whether the agency in question acted contrary to law, rule, or policy. If the complainant contends that what happened to him was unfair or just didn't make sense, then the investigator might weigh the reasonableness of the agency's actions. Usually, the assistant tries to work with the complainant to define the allegation and to determine a best approach for reviewing the agency action. As part of that collaboration, the complainant may be asked to pursue the issue further before an investigation is contemplated.

The Ombudsman is also empowered to recommend strengthening an agency's procedures or practices, to lessen the risk that future objectionable administrative actions will occur.

During my tenure as Ombudsman, I have found it necessary to exercise many of the office's powers and protections in the performance of my duties. This has included successful litigation in the state and federal courts. In 1993 we convinced the Iowa Supreme Court to compel the Iowa Department of Corrections to provide us a copy of a videotape as part of our investigation

(Continued on page 29)



Toll-Free Numbers

State Government

Blind (Department)	1-800-362-2587
Child Abuse/Dependent Adult Hotline	1-800-362-2178
Child Support Recovery Unit	1-888-229-9223
Child Advocacy Board	1-866-448-4608
Citizens' Aide/Ombudsman	1-888-426-6283
Civil Rights Commission	1-800-457-4416
College Student Aid Commission	1-877-272-4456
Commission on the Status of Women	1-800-558-4427
Consumer Protection Division	1-888-777-4590
Crime Victim Assistance Division	1-800-373-5044
Economic Development (Department)	1-800-245-4692
Elder Affairs (Department)	1-800-532-3213
Gambling Treatment Hotline	1-800-238-7633
HAWK-I (insurance for low-income kids)	1-800-257-8563
Home Health Hotline	1-800-383-4920
Human Services-Administrative Offices	1-800-972-2017
Human Services-Report Welfare Fraud	1-800-831-1394
Insurance Division	1-877-955-1212
Iowa Client Assistance Program (advocacy for clients of Vocational Rehabilitation and Blind Department)	1-800-652-4298
Iowa COMPASS (information and referral for Iowans with disabilities)	1-800-779-2001
Iowa Finance Authority	1-800-432-7230
Iowa Waste Reduction Center	1-800-422-3109
Narcotics Division	1-800-532-0052
Nursing Home Complaint Hotline (DIA)	1-877-686-0027
Public Health (Department)	
Immunization Program	1-800-831-6293
Revenue and Finance (Department)	1-800-367-3388
SHIP (Senior Health Insurance Information Program)	1-800-351-4664
Small Business License Information	1-800-532-1216
State Fair	1-800-545-3247

State Patrol Highway Emergency Help	1-800-525-5555
Substance Abuse Information Center	1-866-242-4111
Tourism Information	1-800-345-4692
Transportation (Department)	1-800-532-1121
Veterans Affairs Commission	1-800-838-4692
Utilities Board Customer Service	1-877-565-4450
Vocational Rehabilitation Division	1-800-532-1486
Welfare Fraud Hotline	1-800-831-1394
Workforce Development Department	1-800-562-4692

Miscellaneous

ADA Project	1-800-949-4232
Better Business Bureau	1-800-222-1600
Domestic Abuse Hotline	1-800-942-0333
Federal Information Hotline	1-800-688-9889
Iowa Legal Aid	1-800-532-1275
Iowa Protection and Advocacy	1-800-779-2502
Lawyer Referral Service	1-800-532-1108
Legal Hotline for Older Iowans	1-800-992-8161
Youth Law Center	1-800-728-1172

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 ascertaining facts.
- 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.

Ombudsman's Message—(Continued from page 27)

into the extraction of a mentally ill inmate from his cell. Through our appeals to the courts, we also won judgments that:

- provided us access to the investigative records of a professional licensing board.
- compelled the cooperation of a county sheriff accused of inappropriate activities in office.
- recognized certain communications with the office are privileged and protected from disclosure.

While our appeals to the courts were fairly infrequent during my time in office, the judicial affirmation of the office's exercise of its statutory authority has been vital to the success of our investigations and the performance of our official responsibilities.

While we handled close to 5,000 complaints, information requests, and special projects last year, we also were particularly active on legislative matters. Over the past three years, we were most notably involved in discussions relating to public records and open meetings. We asked for a clarification of laws pertaining to walking quorums and serial meetings, and proposed a tightening of prohibitions against the practices. We also called for better definitions of draft records, advisory bodies, and public-sector job applications, and we advocated for a more specified enforcement system for violations of the state's Public Records and Open Meetings laws.

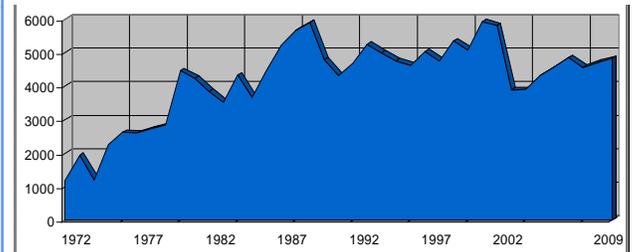
In the area of privacy, we worked with legislative committees toward improving the definition of "personally identifiable information" in the Iowa Code. Additionally, we played a role in seeing that personally identifiable information is protected when certain real estate documents are scanned or otherwise posted on county recorders' websites. Lastly, we helped create a process to proactively notify citizens when sensitive information kept in government record-keeping systems is compromised.

We also published a number of reports in 2009 in which we made dozens of formal recommendations to address complaints that we substantiated. In some of these reports, we made findings that:

- the Iowa Lottery maintained a weak system of preventing and responding to complaints about theft and fraud by its retailers.
- some county jails were restraining mentally ill inmates to chairs or boards for hours without proper medical reviews or monitoring, and in spite of manufacturer warnings against such actions.
- a street superintendent for the City of Stuart improperly used city equipment and retaliated against a citizen who complained about it.

One key transformation the Ombudsman's office has made over the past several decades is in identifying and addressing systemic problems from the re-

Annual Contacts to Ombudsman Since 1970



This chart shows the number of contacts received by the Ombudsman's office each year from 1970 through 2009.

ceipt of more individualized complaints. We have come to learn it is often more efficient and effective to conduct a broad investigation than to make inquiries into several separate complaints when we identify a pattern of issues that pertain to a single agency or topic.

Our aforementioned investigation into county jails' use of restraint devices was a good example of this new approach. By documenting several different examples of a problem and correlating those examples, we can help to define statewide standards that will improve regulation for all Iowa's citizens. Similar improvement can be made by the creation of task forces that can focus deeply on complicated issues. In 2004 we participated in such a task force, proposed by former Governor Tom Vilsack, to examine a rash of deaths of mentally ill inmates in Iowa's prisons. The work of the task force resulted in a number of positive changes to administration and policy.

I mention the past successes of this broader approach because I believe this model represents the best future of a successful Ombudsman's office. With a reasonable increase in resources, the Ombudsman's office could be reorganized into two divisions—one focusing upon the rapid resolution of individualized complaints, and a second dedicated team concentrating on complex investigations and systemic issues whose findings could improve services for large numbers of citizens. Undertaking this dramatic restructuring of the Ombudsman's office would require a long-term commitment by the General Assembly and a fostering of two different skill sets for assistants.

I am hopeful that the Ombudsman's office will be allowed to take this next step in its development. When it does, I believe the impact and contributions of the Ombudsman's work toward the betterment of Iowa government will be even greater than what the office has accomplished to date. I look forward to seeing the realization of this potential sometime soon.

Retailer Fraud Not Well Policed—(Continued from page 1)

customer complaints where leads went unexplored and potential crimes were not pursued. “Many of these were the types of cases where the Lottery investigator would need to ‘make the case,’” Angrick’s report said. “Most of the time they didn’t even try.”

In response to the Ombudsman’s investigation, the Lottery has taken a number of positive steps to address prior shortcomings. These include:

- Conducting undercover “security checks” throughout the state to ensure retailers take appropriate actions when customers present winning tickets.
- Installing a musical jingle to help cue customers that their ticket is a winner.
- A planned purchase of self-service “ticket checkers” for customers by 2011.
- Requiring prize claimants to report whether they are an employee or owner of a business holding a Lottery license (for prize claims over \$100 made at the Lottery).
- Developing and implementing a searchable computer database for Lottery investigators.

The Lottery also adopted a “Sign It, It’s Yours” policy during the Ombudsman’s investigation. Under this policy, customers are required to sign their tickets before presenting them for redemption, and retailers are prohibited from accepting unsigned tickets from customers.

Overall, the Ombudsman determined that the Lottery has implemented 17 of the report’s 60 recommendations. Lottery officials have said they are still considering some of the other recommendations. The Lottery rejected a number of the report’s recommendations due to concerns about “undue governmental intrusion,” cost-benefit factors, and security issues.

The Lottery licenses approximately 2,500 convenience stores, grocery stores, and other outlets to sell its products and to pay out the vast majority of Lottery prizes. Iowa law allows these retailers and their employees to play Lottery games with little or no oversight, even as they handle Lottery transactions for customers. Clerks also may continue to sell Lottery tickets even if they have been convicted of Lottery fraud or theft.

In interviews with the Ombudsman, Lottery investigators agreed that retailer players have several inherent advantages and should therefore be held to a higher standard than the general public. Lottery investigators acknowledged, however, that retailers received no more scrutiny than customers.

The Ombudsman discovered at least nine Iowa retailers and store employees who had collected five or more major wins, otherwise known as “high-tier” prizes. The odds of winning a high-tier prize, on av-

erage, are about one in 67,450. The retailers who have claimed numerous high-tier wins included:

- A store owner and clerk who each claimed \$250,000 prizes in 2007 within three months of one another. The store clerk won an additional \$16,000 in less than one year’s time.
 - A retailer who has claimed at least 67 prizes for \$100,626 since 2005.
 - A convenience store manager who claimed 17 prizes totaling \$33,290. The manager was charged with first-degree theft in connection with the 2007 theft of \$45,204 in tickets and cash from a Pull-tab vending machine. Despite the charges, the Lottery investigated none of his prior prize claims.
- The Ombudsman also found that the Lottery:
- Had not issued a single license sanction against a retailer for fraud or theft in 23 years.
 - Had routinely failed to seek recovery of prize money from store clerks who cashed stolen Lottery tickets.
 - Did not provide its investigators with an electronic database for cataloging and searching their casework from the mid-1990s until 2007.

In general, the Ombudsman found that the Lottery had maintained a weak, reactive enforcement system that failed to detect retailer dishonesty independently of customer complaints. This means that there likely have been instances of fraud—possibly large-scale fraud—that went undetected.

“What our investigation revealed is a pattern of indifference and incuriosity in an area where customers depend on the government to protect their interests,” Angrick said. “Unfortunately, when we sought to learn what was being done to prevent and police theft by Lottery retailers, the answer we arrived at was, ‘Not much.’”

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.

Misuse of Restraints Found—(Continued from page 1)

mates in restraints if the inmate poses an actual threat to self or others, or otherwise jeopardizes jail security. The Ombudsman's report identified situations where inmates—including those with a history of mental illness—were placed in restraint devices for as long as 12 hours at a time. In some cases, inmates were not seen by medical or mental health professionals during their entire restraint period.

One female inmate at Appanoose County Jail was left in a restraint chair for 10 straight hours with no medical or mental health review. Before being placed in the chair, the inmate was seen punching herself in the face, banging her head against a wall, and jamming her thumbs into her eyes. An agent for the jail defended the jail's actions by stating "her behavior at that point suggested no mental illness," and at-

tributed her behavior to intoxication. The jail apparently reached this conclusion without consulting a mental health professional.

The Ombudsman's report also criticized the Wapello County Jail, where an officer punched an inmate in the chest while the inmate's arms, shoulders, and waist were strapped to a restraint chair. The officer threw a punch after the inmate kicked him. The officer was trying to strap the inmate's free leg to the chair without the assistance of other officers, contrary to the manufacturer's instructions. The jail changed its policy so that it now requires the use of two officers to secure an inmate in a restraint chair.

The Ombudsman's report also advocated the use of restraint chairs over restraint boards, noting that medical problems that can arise from restraining someone in a prone position. The restraint board used by Woodbury County

Jail is a piece of plywood that uses 10 straps to secure an inmate face-down.

The Ombudsman's report did not recommend a ban on the use of restraint devices altogether. Instead, it provided guidelines on when and how to use restraint devices. The report found that restraint devices do have their place in the jail setting, if properly used.

"The Ombudsman believes restraint devices can be a useful tool to safely control an inmate, but concerns arise when the devices are not used in accordance with manufacturer policies or used for reasons other than those allowed by Iowa law," Ombudsman Bill Angrick said.

Along with recommendations for each of the county jails named in the report, the report lists 13 recommendations applicable to all county jails in Iowa regarding use of restraint devices and responding to the needs of mentally ill inmates.

Government Must Confront the Complaint—(Continued from page 2)

Last winter, I received a report that a city clerk in north central Iowa stopped recording a city council meeting when an activist left the room. The activist previously told the clerk that she planned on making a request for past meeting tapes. The clerk, who had kept copies of the tapes for years, asked the mayor for permission to begin destroying the recordings after the Ombudsman advised her that citizens had the right to listen to them. When I asked the clerk why she objected to sharing the tapes, she replied, "I don't think (what happens in a meeting) is anybody else's business."

Attitudes like this seem more common in small towns and school districts, where I have seen officials take the position that this is "their" government and where any question is often seen as a threat. But such a view misses the point entirely: The government's business is, by definition, the public's business. In a democracy, we elect city councilmen, county supervisors, and school boards to act in our best interests. As such, citizens have every right to review the work of their elected officials—and the

At times, officials have displayed a worrisome lack of ethics toward whistleblowers.

work of their subordinates—to judge for themselves whether government is performing its job competently and honestly. It should go without saying that they should be able to do so without fear of reprisal.

Unfortunately, I find that government officials who are questioned about their actions are sometimes more concerned with confronting the complainant than resolving the complaint.

Last winter, I confirmed a report that a sitting city councilman in western Iowa was appointed to fill a vacant council seat before he had given up his old one. Effectively, it appeared the councilman had occupied two City Council seats at the same meeting. When I pointed out the problem to the mayor, he asked me several times to reveal the name of the person who had contacted our office. I declined to do so, and explained that the identity of the complainant was irrelevant—what mattered, I said, was that the councilman had acted out of turn. The mayor agreed to explain the city's misstep to the public at the next council meeting. But he also took pains to notify us later that he had learned the complainant's name when he "owned up to" calling us.

(Continued on page 32)

Government Must Confront the Complaint—(Continued from page 31)

In a separate case, a mayor from a central Iowa town balked at a citizen request for copies of letters the city had sent to homeowners with junk or other nuisances in their yards. When I advised the mayor that the letters were probably a matter of public record, she protested mildly, pointing out of the requester: “She doesn’t even live here.”

At times, officials have displayed a worrisome lack of ethics toward whistleblowers.

Last year, I began to hear from a couple in a tiny town who claimed they were being harassed by their fire chief. The dispute involved outdoor fires that the couple set to cook their evening meals. The fire chief claimed the fires were illegal open burning; the couple insisted they were not. A deputy sheriff tried to mediate, but the dispute quieted only temporarily. I called the mayor and asked him to intervene. Rather than address the fire chief’s actions, the mayor wanted me to know that the husband was unemployed, in debt, had no running water, and was, in his words, “worthless.” The mayor never did explain what the man’s social status had to do with the legality of his bonfires.

I subsequently learned that the fire chief had made at least five complaints about the couple to law enforcement officials over the previous year. In no case could authorities determine that the couple had broken the city’s open-burning ordinance. Meanwhile, the couple had made six complaints about the fire chief over that time, accusing him of unjustified surveillance, verbal harassment, and reckless driving near their home. Despite warnings from the sheriff and the Ombudsman about his conduct, the fire chief allegedly continued his actions. The chief was later charged by the sheriff with harassment and disorderly conduct. His court case is pending.

I am concerned these cases may not be aberrations. They may be symptomatic of a trend of intolerance and defensiveness by our governments.

In my opinion, the public would be less cynical about government if public officials would simply take responsibility for their actions. Given the trends, however, many of Iowa’s governments will have to regain the trust of the citizens they serve. Otherwise, Iowa’s citizen whistleblowers will have to rely on the oversight of others to right the wrongs. The Ombudsman stands ready to do just that.

Korean Ombudsman—(Continued from page 6)

- Transportation (4.1%)
- Others (1.9%)

By comparison, the most common areas of complaint to the Iowa Ombudsman’s office in 2008 pertained to jails and prisons (16.1%), city government (15.6%), county government (14.3%), and human services (7.8%).

Whistleblowing

Koreans who report corruption or fraud qualify for protection from retaliation and physical violence, as well as a share in the recovered proceeds—up to \$1.5 million (US)—to be determined by the ACRC. There is no similar financial rewards program in Iowa, although the Iowa Ombudsman does have limited authority to investigate allegations of retaliation against some state employees who report mismanagement or illegalities from within their workplace.

The Process and Performance of Institutional Improvement

The ACRC has three Institutional Improvement Divisions which investigate complicated, systemic issues to improve the administrative system or its operation. The ACRC’s process of institutional improvements is as follows:

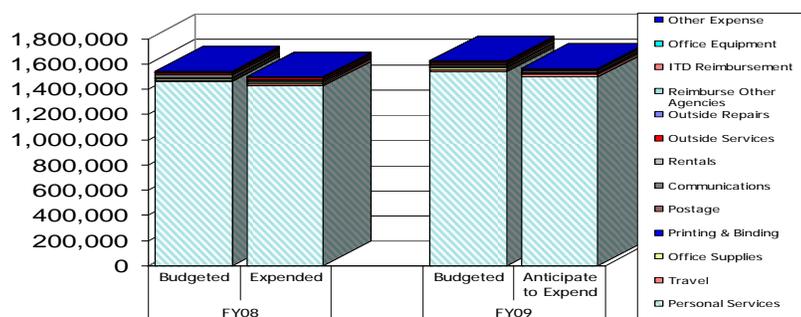
- Selection of issues through the analysis of complaints and proposals from citizens, media reports, and so forth
- Issuance of press releases at the beginning of an investigation to collect information from a variety of people
- Investigation and analysis of investigation results
- Drafting of investigative report
- Conference with pertinent governmental organization
- Issuance of recommendations and press release about the investigation results
- Management of the implementation of recommendations
- Proposals to the Korean National Assembly that important recommendations be legislated when deemed necessary

When I was a division director in 2008 and 2009, we investigated about 20 systemic issues affecting many people. In addition, we improved 396 agency regulations that we found were needlessly restricting free trade. These institutional improvements resulted in about \$3 billion worth of annual savings to corporations, citizens, and the government.

The Iowa Ombudsman also performs systemic investigations, but with its smaller staff and budget, it currently has no devoted unit for the task.

With one-third of my two-year training period in Iowa passed, I renew my pledge to contribute to improving the ACRC into one of the most developed Ombudsman’s offices in the world. Through the valuable and meaningful lessons I am learning in Iowa, I believe I will be able to make a good Korean government a better one.

**Office of Citizens' Aide/Ombudsman
FY09 & FY10 Financial Information**



The above information is presented to meet the requirement that state government annual reports to the General Assembly include certain financial information.

The Faces of Mental Illness—(Continued from page 4)

treat her mentally ill son resulted in the death of a beloved family friend. I see a sheriff who tried to keep his community safe by taking a mentally ill young man to the hospital rather than jail. I see the faces of frustrated parents who must wait for a spot on the mental-health waiver so their child can receive support and treatment at home rather than in an institution. I see mentally ill defendants in jail who do not receive the proper medication and are disciplined for behavior caused by their illness.

During the past year, I served as a member of the Acute Care Task Force coordinated by the Department of Human Services. As a member of that group, I participated in the passage of recommendations to improve the mental-health system as a whole that focus on crisis situations.

I also attended meetings of the Mental Health Institute Task Force. The task force, composed of former legislators and current mental health providers and administrators, reviewed each of Iowa's Mental Health Institutes (MHIs). The task force recommended that none of the MHIs be closed until proper community supports were in place. The group also made recommendations to improve Iowa's mental-health system as a whole and potential best future uses of the MHIs.

I attended meetings of the Governor's Task Force on Dependent Adults with Mental Retardation. The task force was formed after 21 mentally disabled men were found living in unsafe conditions in Atalissa. The task force recommended a change in Iowa law to allow for the monitoring and licensing of boarding homes. The goal was to prevent any further situations like that in Atalissa. The Iowa Legislature passed the law and the Governor signed it.

In addition to the work of these task forces, the Ombudsman provided suggestions to a legislative

workgroup on mental health and developmental disability issues. We suggested that the Legislature consider:

- Mandating communication and collaboration between all parties in the mental-health system. This may involve a rewrite of Iowa Code Chapter 229 to clarify who is responsible for what role in the commitment process and encourage consistency across the state.
- Establishing a pilot project or mandating use of community mental-health centers to pre-evaluate people alleged to be mentally ill prior to court-ordered commitment. This is already being done in some areas of the state, and when it

occurs, it reduces the need for inpatient commitment, which saves beds for those who truly need them.

- Using the Department of Human Services' mental-health institutes for sub-acute care (care for those patients who no longer meet the criteria to be committed but cannot yet be released). This would free up local psychiatric beds to be used for acute care commitment purposes.

Because our office has long recognized that jails and prisons have become the dumping ground for the mentally ill, we further suggested that the Legislature:

- Create pilot projects using federal grants to establish mental-health courts and jail diversion programs.
- Study the guide published by The Council of State Governments Justice Center, called, [Mental Health Courts: A Guide to Research-Informed Policy and Practice](#). The guide explains how mental-health courts address the issues related to people with mental illnesses in the criminal justice system.
- Review Iowa Code Chapter 230A and its administration and consider the role of community mental-health centers to provide mental-health services to jails.

I also attended the Iowa Protection and Advocacy annual meeting, where we asked that issues involving the restraint and seclusion of the mentally ill and developmentally disabled remain a priority for the organization. We also discussed our concerns about an increase in the commitment of children with mental illness.

At all of these meetings, I see many of the same people who, despite similar stories and frustrations, continue to direct their energies toward repairing a system they see as broken. I have no doubt these people will continue to work doggedly to improve the quality of life for Iowa's mentally ill.

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