



OMBUDSMAN'S REPORT



2004

Annual report of the Iowa Citizens' Aide/Ombudsman

May 2005

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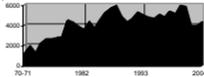
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Ombudsman's message

Anatomy of a number

Bill Angrick



Each year when I work on my column for the annual report, I am faced with the reoccurring challenge of what to say. This year I can once again say, as I have many times before, the number of contacts received by my office this past calendar year increased over the proceeding year. As I write this column, 2005 is already one quarter gone and our complaints and information requests for the year appear on course to again surpass the previous year. Our increased visibility in the realm of public records and open meetings issues means citizens are learning more about who we are and the range of assistance and relief we can give. That is perhaps one explanation for the increase in the number of contacts my office received in 2004. It also means we had more work to do and earned our keep for the year. But is that good enough? Trends and patterns are important to an ombudsman. They tell us where government isn't working well, where it fails to meet the expectations of its citizens, where it fosters grievances, causes harm, violates trust. Under such circumstances the measure of government and the goal of an ombudsman should be to reduce dissatisfaction and complaints. Yet one cannot reduce a count if its range is unknown or constantly

dynamic. Are 4,000 contacts received in a year a lot? A respectable number? A mere drop in the bucket? That depends on whether we can ever know how many there are. What if that number 4,000 is a mere fraction of the ones felt? Should an ombudsman be so well known that the first thought of a person having a complaint about government is to call the ombudsman? If the ombudsman should be highly visible then increasing the number of contacts each year, or at least consistently over the span of several years, is probably a satisfactory performance.

But I also have a different goal. I'd like to see the numbers of contacts we receive reduce over time, or at least go down in certain categories as the conditions, processes and performance shortcomings causing those dissatisfactions are addressed and improved. From this perspective it is not enough that the ombudsman be an objective, impartial, timely investigator of complaints but that the ombudsman must also be an effective educator and motivator. My staff and I try to do that in a variety of ways. Often after investigation a justified complaint is found to be isolated and individual. Other times today's complaint is related to

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New phone numbers for reporting child abuse

The Department of Human Services (DHS) has made changes in the phone numbers used to report child abuse.

Iowans can still call the statewide child abuse hotline toll-free at any time (1-800-362-2178). If they call during regular business hours, their call will be forwarded to a designated office in their area, which will take the information from the caller.

Callers who prefer to make reports directly to the intake staff can use the accompanying map and table to find the phone number(s) for their area. (Most counties will share a number with other counties in their area.)

Five years ago, the Ombudsman criticized the child abuse reporting system in an investigative report regarding DHS' response to reports about a toddler, Shelby Duis, who died from abuse. The Ombudsman recommended DHS create a single point of contact to which people can report child abuse directly to an intake worker at anytime and from any-



where. The changes by DHS do not create a single statewide toll-free telephone number answered by intake workers, as advocated by the Ombudsman. Instead, people reporting abuse can call a number in their area or otherwise will be transferred or redirected to that number. These changes, which became effective on March 1, 2005, were implemented at the prompting of the federal government.

Table of new phone numbers for reporting child abuse to DHS

1. (515) 283-9222 Polk	9. (641) 585-3271 Hancock, 866-707-3271 Winnebago	22. (563) 263-9302 Cedar, Muscatine
2. (515) 283-9222 Boone, Dallas, 800-652-9516 Madison, Marion, Warren	10. (641) 228-5713 Chickasaw, Floyd, 888-417-9027 Mitchell	23. (319) 753-6311 Des Moines, Louisa
3. 800-550-5753 Adair, Adams, Clarke, Decatur, Lucas, Ringgold, Union, Wayne	11. (563) 382-2928 Allamakee, Fayette, Howard, Winneshiek	24. 888-381-6831 Henry, Lee
4. (712) 255-2699 Buena Vista, Cherokee, Clay, Dickinson, Emmet, Ida, Kossuth, Lyon, O'Brien, Osceola, Palo Alto, Plymouth, Sioux, Woodbury	12. (563) 334-6091 Buchanan	25. 877-683-0323 Audubon, Carroll, Cass, Crawford, Fremont, Greene, Guthrie, Harrison, Mills, Monona, Montgomery, Page, Sac, Shelby, Taylor
5. (319) 291-2441 Black Hawk	13. (563) 927-4512 Clayton, Delaware	26. (712) 328-4875 Pottawattamie 877-683-0323
6. (319) 352-4233 Bremer 888-887-4296	14. (563) 242-0573 Clinton	27. (641) 682-8793 Appanoose, Davis, Jefferson, Mahaska Van Buren, Wapello
7. (319) 267-2594 Butler, Franklin, 800-873-1340 Grundy	15. (563) 557-8251 Dubuque	28. (641) 682-8793 Monroe 888-338-6067
8. (641) 424-8641 Cerro Gordo, Worth 800-217-6903	16. (563) 652-2550 Jackson	29. (319) 339-6166 Benton, Iowa, Johnson, Keokuk, Washington
	17. (515) 292-2035 Story	30. (319) 892-6800 Jones, Linn 866-534-3112
	18. (641) 752-6741 Hardin, Marshall, Tama	
	19. (641) 792-1955 Jasper, Poweshiek	
	20. (515) 955-6353 Calhoun, Hamilton, Humboldt, Pocahontas, Webster, Wright 877-529-6873	
	21. (563) 326-8794 Scott	

How to reach us

E-mail: ombudsman@legis.state.ia.us

Web: www.legis.state.ia.us/ombudsman

Phone: 1-888-426-6283
(515) 281-3592

Address: Ola Babcock Miller Building
1112 East Grand Avenue
Des Moines, Iowa 50319-0231

TTY: (515) 242-5065

Fax: (515) 242-6007



Eight steps for resolving your own complaints

“What steps have you taken to resolve the problem?” That’s 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’s not just the law – it’s also simple, common sense. Disputes and grievances can be resolved with simple, honest communication. Certainly not all the time, but enough that it’s almost always worth trying *before* filing a complaint with our office.

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

1. Be pleasant, persistent and patient. The wheels of government do usually move, but not always quickly. We’ve found that 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’re 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 can’t 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’re 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’re most comfortable with, unless the problem is urgent, in which case you’ll 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’re wanting face-to-face contact, we recommend that 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. And 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. This includes 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 don’t have authority to investigate any federal agency.



Small businesses

Gas chain’s unemployment rate reduced after inquiry

Private owners may be required to relinquish property for the public benefit through the exercise of eminent domain. The use of eminent domain can have trickle down effects beyond the obvious and immediate impact of transferring land ownership from private to public use.

A gas station was closed and torn down to accommodate new road construction. The owner was compensated for the value of the business. But the impact of the now displaced workers stretched beyond paying their unemployment compensation to a future and continuing financial burden placed on the business owners.

Unemployment benefits are paid in part through employer contributions. When claims for unemployment benefits are made against a business, the rate at which the company must contribute each month increases. In this case, the closed station was one of several stores in the same business, and now each would have to budget for higher unemployment contributions rates.

But the unemployment claims in this case did not arise due to deliberate action by the business; they were strictly the consequence of government exercising its authority. The Ombudsman presented this question of fairness to Iowa Workforce Development (IWD), the agency responsible for collecting contributions and setting compensation rates. IWD agreed the circumstances warranted an adjustment to reflect no change of rate based on these unexpected and uncontrollable compensation claims.

Here today – gone tomorrow

The owner of a small business complained that city officials were licensing transient merchants, without confirming that they had posted a bond as required by state law. His concern was that his business would be harmed by transient merchants who might be operating illegally.

We contacted the city clerk. She agreed to modify the city’s ordinance to reflect this requirement (in Iowa Code section 9C.4). The Secretary of State’s office also agreed to create and send a certificate to transient merchants verifying proof of bond.

To ensure that the bonding provisions in 9C.4 are met, our office proposed legislation requiring all cities that license transient merchants require proof of bond.



Kristie Hirschman, Senior Assistant for Small Business, with Michael Barrera, National Ombudsman for the Small Business Administration (SBA). The Ombudsman’s office hosted a regional “Regulatory Fairness Hearing” for SBA on June 24, 2004 in the Ola Babcock Miller Building. Small business owners from around Iowa and surrounding states were able to participate in the hearing from five other Iowa communities via the Iowa Communications Network.

City cancels “Sewer TV”

While some of us prefer not to think about what is inside sewer lines, there are people who work on them for a living. An owner of such a business called our office to complain when a city purchased a device to televise private sewer lines (in which a robotic camera is lowered into the sewer line to assess its condition).

Iowa law allows cities to compete with small business in some situations, if the city has passed an ordinance authorizing the activity. In this case, the city confirmed it was televising private lines, usually to look for footing tiles that were connected to the city’s portion of the sewer line. The city manager said the city did not intend to compete with private businesses.

We asked that the city comply with Iowa law and adopt an ordinance specifically permitting this activity. Instead, the city chose to stop televising private lines, and agreed to adopt an ordinance if it ever resumed this activity. The small business owner was most thankful for our help.

EXTRA MILERS



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



Steve Conway, former Account Manager with Iowa Medicaid Enterprise — for hand delivering a check to a health care provider to avoid further payment delays which had been caused by a government agency.



Mark Day, Treatment Program Administrator, Eldora State Training School — for his time, care, and consideration in removing materials that conflicted with the treatment program.



Stu De La Castro, Pottawattamie County Jail Administrator — for agreeing to change practices and policies when problems are brought to his attention.



Debra Hubbs, Administrator of Correctional Medical Services, Polk County Jail — for attentively and proactively improving procedures to ensure new offenders receive their medications as soon as possible.



Darla Luse, Support Recovery Officer, Child Support Recovery Unit — for going beyond the call of duty to help an incarcerated man obtain documents to show his parental rights had been terminated years ago.



Gary Maynard, Director, Department of Corrections — for confronting long-term issues involving treatment of mentally ill offenders, and making changes in policies, practices and training programs.



Ted Priester, Assistant County Attorney, Scott County Attorney’s Office — for actively listening to a resident with a serious problem that may or may not have been caused by government, and then engaging other key officials in an effort to resolve the problem fairly and expeditiously.

2004

CITIZENS’ AIDE/OMBUDSMAN
OLA BABCOCK MILLER BUILDING
1112 EAST GRAND AVENUE
DES MOINES, IOWA 50319-0231
1-888-426-6283 (515) 281-3592
FAX (515) 242-6007 TTY (515) 242-5065
E-MAIL: OMBUDSMAN@LEGIS.STATE.IA.US

STAFF

WILLIAM P. ANGRICK II, CITIZENS’ AIDE/OMBUDSMAN
RUTH H. COOPERRIDER, SENIOR DEPUTY AND SENIOR LEGAL COUNSEL
JUDITH MILOSEVICH, SENIOR ASSISTANT FOR CORRECTIONS
KRISTIE F. HIRSCHMAN, SENIOR ASSISTANT FOR SMALL BUSINESS
JEFF BURNHAM, SENIOR ASSISTANT
KYLE R. WHITE, ASSISTANT II
RORY E. CALLOWAY, ASSISTANT II
DON GROVE, ASSISTANT II
ELIZABETH HART, ASSISTANT I
ANGELA DALTON, ASSISTANT
BARBARA VAN ALLEN, ASSISTANT
JERI BURDICK CRANE, FINANCIAL OFFICER
MAUREEN LEE, SECRETARY RECEPTIONIST

THIS PUBLICATION WAS RELEASED BY THE OFFICE OF THE CITIZENS’ AIDE/OMBUDSMAN, WHICH PRINTED 2,000 COPIES AT A COST OF 45 CENTS PER COPY, TO PROVIDE AN ANNUAL REPORT TO THE LEGISLATURE, THE GOVERNOR AND THE PUBLIC.



Corrections

Ombudsman: Helping make good governments better

Iowa appointed its first Ombudsman in 1970, when Governor Robert Ray established the position in his office. In 1972, the Legislature approved the Ombudsman Act, now located in Chapter 2C of the Code of Iowa. The ombudsman became an independent office working under the auspices of the Iowa Legislature.

The Ombudsman is selected by the bipartisan, bicameral Legislative Council subject to the approval of the General Assembly. The appointment is for a term of four years, renewable for additional terms.

Under Iowa Code Chapter 2C, the Ombudsman is generally charged with looking into complaints about most agencies of state and local government in Iowa. Chapter 2C gives the Ombudsman authority to investigate administrative actions that 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.

The ombudsman system is based on the principle that everyone has a right to have his or her grievances against government heard and if justified, satisfied.

Duty to provide medicine for indigent inmates

A jail prisoner could not afford to get his prescription refilled. He alleged that jail staff refused to provide the refill, as they believed his medical condition was not life threatening.

However, jails have a duty to provide prisoners "necessary medical attention for all illness and injury," according to Department of Corrections' rules. The rules also state, "Responsibility for the costs of medical services and products remain that of the prisoner."

If a doctor or dentist prescribes medication for a prisoner, the jail must provide that medication to the prisoner. Only a licensed health practitioner has authority to determine if a person should stop taking a prescribed medication.

We contacted the jail and discussed these rules with the sheriff. He agreed the jail would arrange to provide the prisoner with his medicine.

Jail buys TDD for hearing-impaired

A hearing-impaired jail inmate wrote our office about being unable to make phone calls. "I've been here a month and had to have the officers call for me," he wrote.

The jail administrator confirmed the jail did not have a telecommunications device for the deaf (TDD). We reviewed the issue and concluded that the Americans with Disabilities Act (ADA) required the jail to make a TDD available to hearing-impaired inmates, unless doing so created a financial or administrative burden. The jail subsequently purchased a TDD, trained staff on how to use it, and implemented a policy regarding its use.

Message from the prison ombudsman



Assistant for Corrections Judith Milosevich

One expects death in prison. The population of the prison system is aging. One must expect suicides as well. The number of mentally ill is growing. As the result of three deaths, and one incident of self-mutilation, the Governor asked the Citizens' Aide/Ombudsman to

investigate and make recommendations to improve staff and offender safety.

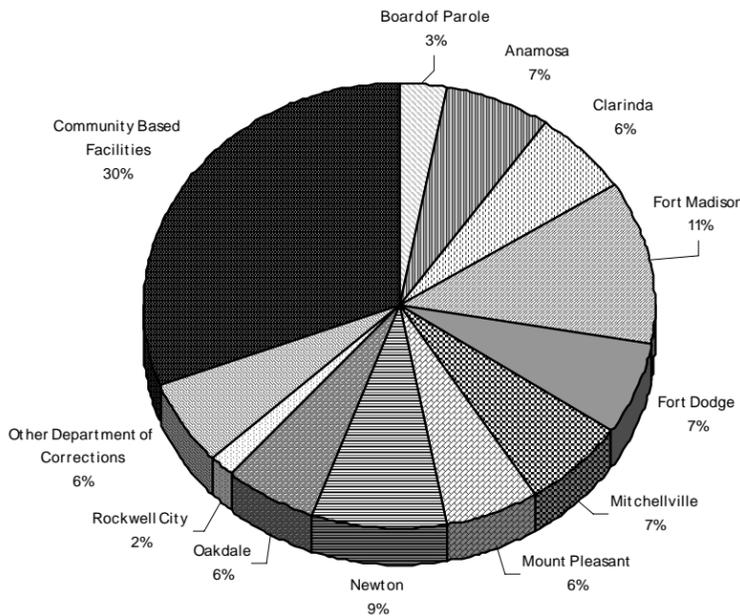
We proposed a Task Force. Gary Maynard, the Director of the Department of Corrections (DOC), enthusiastically agreed to participate. The State's Medical Examiner was added when questions arose about the consistency of autopsies. We invited Iowa Protection and Advocacy (P&A) for their insight in dealing with mental illness issues.

(P&A is a federally funded advocacy program for people with disabilities and mental illnesses.) They agreed.

The cases of the four offenders represented some of the mentally ill offenders the prison system is expected to deal with on a daily basis. Until recent years, security staff received little training in recognizing the signs and symptoms of mental illness. Even less was provided in an ongoing manner. Senior staff is far removed from preservice training.

The Clinical Care Unit (CCU) was built at the Iowa State Penitentiary (ISP) as the result of a federal district court judge's ruling that DOC must provide a special unit for the seriously mentally ill. The unit is open, but does not seem to be meeting the needs of the seriously mentally ill. Many of the officers, particularly those working the evening and night shifts, don't want to be there, but don't have enough seniority to bid for other positions.

Sources of corrections contacts



This chart shows the proportion of contacts opened by the Ombudsman's office in 2004 involving various corrections-related agencies.

Missing photos lead to policy changes

A jail inmate complained that staff confiscated, and then mishandled, risqué photographs of the inmate's wife.

Our investigation found that the inmate's wife had mailed five to eight photos to him. The jail administrator intercepted the photos he deemed to be inappropriate.

At the inmate's request, staff shredded some of the photos, but did not document the shredding. The other photos were not added to the inmate's property sheet, nor were they put in the inmate's property box. It was unclear what happened to the photos, although we did conclude that they were at the jail administrator's desk at one time.

We found the jail's policy for such matters was inadequate. It didn't include criteria for determining whether photos are appropriate.

It didn't require staff to document why they were confiscating an inmate's property. And it didn't require staff to add confiscated property to the inmate's property box and to add those items to the inmate's property sheet. As a result, we recommended several changes to the jail's policy on inmate property. Jail officials accepted our recommendations.

Even with the inadequate policy, however, we also determined that the jail administrator's actions in this matter were unreasonable. Some time before our investigation, the individual in question was no longer working as the jail administrator, having been reassigned to other duties by the county sheriff (and for reasons that did not involve this matter).

Jail improves restraint policies

A jail inmate alleged staff assaulted him and then denied his request for medical attention. He also alleged they put a bag over his head, strapped him into a restraint chair, and left him there for 12 hours.

Based on our investigation, we determined that staff did not assault the inmate and did not deny his request for medical attention. We found that the inmate instigated the incident that prompted staff to restrain him.

But we also determined that staff acted unreasonably by keeping him in the restraint chair for more than 12 hours without arranging for medical and mental assessments.

We also concluded that staff's continued use of a spit mask for more than five hours was unreasonable, as there was no record of staff asking the inmate to stop spitting.

We recommended that the jail make significant changes to its policies regarding use of force, use of the restraint chair and incident reports. We also recommended the jail adopt policies for using the spit mask and the visual recording system. The sheriff and jail administrator accepted our recommendations, which we believe will help prevent similar incidents in the future and will improve the jail's overall operations.

No training was provided to the officers who eventually staffed this unit, so there were no set expectations to treat the mentally ill any differently than other inmates. If an inmate broke the rules, he was disciplined in the same manner, with no consideration given to mental illness. Many people who are mentally ill will have periods of mental stability and exhibit few symptoms, with scattered incidents of a psychiatric crisis. Segregation can exacerbate the symptoms.

Officers often punish mentally ill offenders for exhibiting signs of their illness – such as being noisy, refusing to follow orders, self-mutilation and attempted suicide. When an offender is in a crisis at night or on the weekend, there have been no mental health services available. The few psychologists and other counseling staff work Mondays through Fridays, with no evening or weekend coverage. The DOC employs one psychiatrist to serve the entire prison population.

According to the report by the private consultant hired by DOC to evaluate the CCU, officers refuse to check offenders after medications have been distributed, to ensure they are not "cheeking" their pills. There is little documentation that security staff are performing shakedowns. There is also no documentation that security staff are doing their checks every half an hour during the night after lights go out, as required by policy.

A unit dealing with the mentally ill must be able to recruit and hire professional staff. Staff must be held accountable if they do not perform their job duties. A unit like this one should be near professional resources, such as those offered by the University of Iowa Hospitals and Clinics. The new unit under construction at the Iowa Medical and Classification Center (IMCC) will provide that proximity, as some of the staff at that facility have experience dealing with the seriously mentally ill.

Not all mentally ill offenders need long-term intensive supervision and treatment. For these offenders, all staff should be able to recognize the signs and offer immediate intervention until a crisis has passed.

Director Maynard is taking these issues seriously and has made a number of changes to policies, practice and training programs, in response to the Task Force's findings and recommendations. (Copies of the Task Force report are available upon request and from the Ombudsman's website.)

We also need to build a bridge to the community so mentally ill offenders can qualify for release programs and continue to receive mental health services once released. Many offenders go back to self-medicating with illegal substances. Many are discharged directly from institutions into communities which have few services available for them.

Public mental health care was based on institutional care 50 years ago. In the 1960's, states began to downsize and close mental health institutions. The goal was to develop a community-based model that would allow the mentally ill to be treated in our communities with the new anti-psychotic medications. The federal government initially provided seed money for this effort, but did not provide ongoing funding. States cut their budgets for mental hospitals but did not provide commensurate funding for community-based mental health services.

We need to develop a comprehensive community-based program for our mentally ill in the hopes of keeping them out of the criminal justice system. Prisons should not be our primary mental health facilities.



Department of Human Services

Improving child abuse reporting

By reviewing complaints, the Ombudsman can facilitate improvements to the child protection system. This helps ensure children are protected from abuse and neglect.

When a child abuse report is received, the intake process is to focus on child safety and getting information to decide whether to accept or reject the abuse report. In Iowa, the Department of Human Services (DHS) is responsible for responding to reports of suspected abuse.

The Iowa Legislature has defined "child abuse" as several types of harm suffered as the result of the acts or omissions of someone responsible to care for a child. This includes:

- A nonaccidental physical injury;
- A mental injury to a child's intellectual or psychological capacity;
- A sexual offense with or to a child, including involving a child in prostitution;
- The failure to provide for adequate food, shelter, clothing or other care necessary for the child's health and welfare;
- The presence of an illegal drug in a child's body as a direct and foreseeable consequence of someone's acts or omissions;
- Manufacturing a dangerous substance in a child's presence.

In one case, a woman contacted the Ombudsman's Office to complain about her experience with trying to report a case of suspected child abuse to DHS. The woman was a child care provider and felt it was her duty to try to help a child left in her care. She complained that DHS had not listened to her reported concerns and, as a result, did not protect the child from abuse.

We learned that the woman was providing care for a 7-year-old who had been staying in the home of her father's girlfriend. The woman reported that the child was frightened about returning to the girlfriend's home. The child told the woman she wanted to kill herself. In addition, the

Food stamps reinstated

For three months, a woman who is disabled and elderly tried to get food stamps from the Department of Human Services (DHS). Despite her extraordinary attempts to provide her worker with requested records from an out-of-state bank, she continued to be denied food stamps. The main problem was the bank's failure to send the information to DHS. The woman wrote to the Ombudsman's Office because of her urgent need for food stamps.

We asked a DHS supervisor to review the woman's application and eligibility problems. Upon review, the supervisor determined the bank information was actually not required to determine the woman's eligibility for food stamps.

We requested that DHS reinstate the woman for food stamp benefits to avoid reapplication and requested retroactive benefits be awarded from the date she first applied for food stamp benefits. The agency agreed and took action to see that the woman received three months of retroactive food stamps, in addition to the current benefits due.

Levied monies refunded

A woman called, concerned that the Child Support Recovery Unit (CSRU) took money from her bank account for a debt her son incurred for child support. The son's name was on the mother's account for the sole reason she wanted him to have access to her money in case she died before he did. The son had not contributed any money to the account. The son was very sick and applied for disability benefits. The mother stated no one at the bank explained to her the effect of having her son's name on the account.

CSRU levied against the account, as authorized by Iowa law, because the son's name was on it. The mother wanted an opportunity to prove, through bank statements and check stubs, that all the money in the account was hers.

CSRU initially refused to grant the mother the opportunity to make her case. Our office made an inquiry. Simultaneously, CSRU had decided to revisit the issue, in response to the mother's formal appeal. CSRU later decided to grant the mother an "exception to policy" and grant her that opportunity. After receiving the woman's documentation, CSRU issued a full refund of the amount levied from her account.

child was asking about sexual matters that did not appear to be age appropriate. The woman reported to DHS that she suspected the child was being physically and/or sexually abused. The intake worker rejected the woman's abuse report, treating it as though the woman had contacted DHS for information on how to care for an upset child.

Our office determined that intervention was necessary to correct an intake mistake by DHS. When DHS took a closer look at the woman's reported concerns and information, the agency agreed that the abuse report should have been accepted and further assessment done by a social worker. An assessment would have looked at the child's safety, including risk of harm to the child, the child's vulnerability and the family's ability to protect the child.

DHS recommended that agency staff involved in the incident receive additional training on abuse reporting policies to improve their responsiveness. DHS subsequently verified that the child was receiving professional counseling services independent of DHS.

Case of mistaken identity resolved in a few hours

A man applied for a job at an assisted living center. After doing a background check, the employer told him there was a big problem: His name was on the child abuse registry maintained by the Department of Human Services (DHS).

The man contacted our office and said this was all a big mistake. We immediately called DHS. They confirmed his name was on the registry, but noted that it did not include his date of birth or Social Security Number. When DHS checked further, it found that the man was right: The name on the registry was someone else with the same name.

At our request, DHS agreed to call the man and his potential employer to explain all of this. In just a few short hours, the man went from being told he couldn't be hired because he was on the registry to learning that it was a case of mistaken identity and that the job would be his.

Appeal not needed: Ombudsman cuts through red tape

Should a person who's being cut from public benefits have to file an appeal if the action was entirely due to a mistake by the agency?

That question was at the crux of a complaint from a single father with three children. Because of a temporary financial setback, he was receiving Family Investment Program (FIP) benefits and food stamps.

In line with policy, the Child Support Recovery Unit (CSRU) opened a case on him, in an attempt to get the non-custodial mothers to pay child support. A financial questionnaire is required of both parents. Because the man's questionnaire was not returned timely, the Department of Human Services (DHS) ended his benefits.

When he learned his benefits were being cut, the man called in and explained he had not received the question

Child Support Advisory Committee



Deputy and Legal Counsel Ruth Cooperrider

I serve as the representative from the Ombudsman's Office on the State's Child Support Advisory Committee, as provided by Iowa law (Iowa Code section 252B.18). The Committee provides input and makes recommendations to the Department of Human Services (DHS) regarding Iowa's child support program. The Committee meets every other month.

One issue the Ombudsman has been urging the Committee to address since 2001 concerns the DHS continuing to collect support for a child, even if the child goes to live with the parent who was ordered to pay support (obligor). This can result when a juvenile court transfers custody of the child to the obligor or when the parent receiving support (obligee) is incarcerated or dies, or for other reasons. Under current law, the DHS will only suspend collecting the support if all the children covered by the order move in with the obligor, and the obligee agrees to the suspension. Otherwise, the obligor who is caring for a child must petition a court to modify or terminate the support order. However, obligors may encounter obstacles due to limited financial resources and time delay in getting a court order on their own.

Consequently, the Ombudsman recommended to the DHS that it use the administrative modification procedure under Iowa Code chapter 252K to modify or terminate the support order in the situations discussed above. DHS officials resisted this idea because they believed they did not have adequate staff and resources.

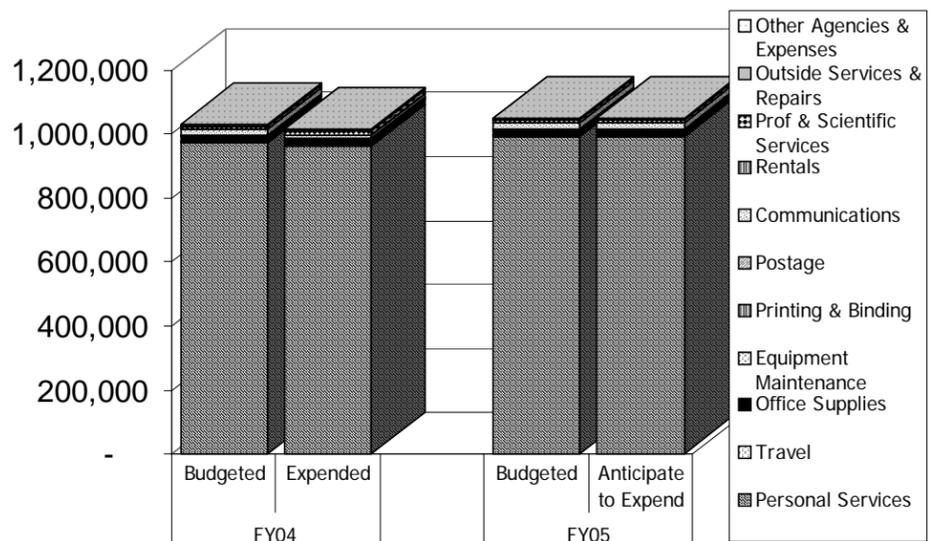
The Ombudsman then submitted a bill proposal to the 2005 Iowa Legislature which would provide for the DHS to use the administrative modification process to modify or terminate a support order when the obligor assumes care for the child in the order. The proposed bill also requires the DHS to create an expedited procedure by which the parent requesting the administrative modification may at the same time request the DHS to establish a new support order for the child who is now living with and being cared for by that parent. [Note: As of this report's publication, no vote was taken on the bill by the Legislature because of the costs estimated by DHS. The Ombudsman plans to review this issue and recommend legislation again in 2006.]

naire. So CSRU sent out another one, but it was returned as having an incorrect address, and it didn't look like his benefits would be reinstated anytime soon.

He contacted CSRU and was told he'd have to appeal the reduction of benefits. He believed that was unfair, because he could prove he had provided a change of address on the agency's own form. After receiving his complaint, we contacted his worker, who agreed the man had properly submitted his change of address. The worker also said the man's benefits were being sent to the correct address, but the questionnaire was not. Apparently someone had incorrectly entered his address into the computer system.

After talking with several people in the CSRU and the assistance programs, they agreed to waive his need to appeal and to send him the missed benefits.

Office of Citizens' Aide/Ombudsman
FY04 & FY05 Financial Information



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



Continued from page 1

a similar one heard yesterday, perhaps created by miscommunication, poor performance, flawed policy, insufficient resources, biased behavior, or inadequate training. If the ombudsman finds patterns of complaints or systemic causes of problems, the ombudsman should alert administrators, policy makers and the public about those conditions. Publishing a report is one way to accomplish this responsibility. Making formal recommendations to agency administrators is another. Proposing legislative change is a third. Over the years I have learned there are other ways of fulfilling these responsibilities. We frequently compile reports for agency officials who are proactively interested in improving government. If we show a prison warden, for example, that inmate property complaints have increased dramatically then perhaps a change in how property is inventoried, stored or how much is allowed would reduce the problems. The report my office released in October 2004 about prison inmate deaths and critical incidents is another example of how to approach our work differently.

My staff and I responded to the Governor's request for an investigation by creating a task force including state agency and private organization members rather than independently investigating the circumstances ourselves. My office has demonstrated it can independently investigate and make reports and recommendations, as we did in our investigations and reports about the tragic deaths of Shelby Duis and Reggie Kelsey. But a cooperative approach to finding truth and improving policy and practice may have better results. It is often the case that changes coopera-

tively reached are longer lasting, especially when that effort is made up of motivated and receptive participants.

The Iowa Ombudsman is recognized both nationally and internationally as a leader in the ombudsman community. Deputy Ombudsman Ruth Cooperrider has served on the board of directors of the United States Ombudsman Association (USOA) for several years, most recently as vice president. Essentially this honor means work. There are programs and conferences to plan, perhaps attend, questions from members and potential members to answer, letters and emails to write, teleconferences to participate in. Often there are out-of-state inquiries from legislators or legislative staff at the local, state and national level consider whether and how best to create an ombudsman. Because Iowa has a good law establishing our office, a history of conducting in-depth investigations and issuing significant reports, and the support of our legislature and government officials, we are looked to by others for information about how to do the job. This means Iowa is known as a leader in the good government community.

This past September I attended the World Ombudsman Conference in Quebec City, Canada. I did so as a member and as the elected North American Regional vice president to the board of directors of the International Ombudsman Institute. This was the first time I attended an Ombudsman World Conference, held every four years, since becoming Iowa's Ombudsman in 1978. It was an amazing experience. The presentations and workshops were challenging. The opportunity to meet and learn from ombudsmen around the world was stimulating. At the end of the world conference I was elected President of this international ombuds-

Iowa's ombudsman visits Nigeria



N.V. Yaro, National Secretary for the Public Complaints Commission in Nigeria, with Iowa Ombudsman Bill Angrick during a January 2005 exchange visit to Kaduna and Plateau states in Nigeria.

man association. With the position comes the opportunity to help improve the quality of the ombudsman institution internationally. As Iowa has done at the national level for over three decades, we also contribute to the world ombudsman community. In November I was invited by the government of Bermuda to participate in a Commonwealth Secretariat sponsored international conference on conducting effective police reviews. While meeting with various Bermudian officials I believe I may have played a small role in their decision to fund an independent ombudsman office. In December we hosted Sun Kyo Jung, a member of the staff of the South Korean national ombudsman office who came to Iowa to learn how we investigate and resolve complaints. In 2004 I was asked by former Iowa Lieutenant Governor Robert Anderson, who is now president of the private nonprofit organization, Iowa Resources for International Service (IRIS), to share information about the ombudsman with a group of government officials, educators and journalists visiting Iowa from Nigeria. My staff and I had the opportunity to host Mahmud Mahmud, the administrative services officer for the Governor of Kaduna state, for a day which was spent demonstrating how we receive, respond to and manage complaints about Iowa state and local government. In January 2005 IRIS hosted me on an exchange visit to Kaduna and Plateau states in Nigeria. I visited schools, health clinics, journalists, small businesses and agricultural cooperatives learning about the problems and challenges facing the people and government of Africa's most populated country. I also had the opportunity to meet with N.V. Yaro, the National Secretary for Public Complaints Commission (Nigeria's national ombudsman) and exchange experiences and ideas about handling citizen grievances and complaints. In March 2005 Dr. Jose Luis Soberanes Fernandez, President of the Mexican National Commission for Human Rights (Mexico's national ombudsman), invited the International Ombudsman Institute officers and regional vice presidents to hold an organizational and planning meeting in Mexico City. We had a productive several days after which I was asked to speak to an international seminar focusing on the human rights of migrants who are being victimized and abused throughout the Americas. That was an eye opening meeting, one which demonstrated to me there is significant need to coordinate among ombudsman offices world wide when dealing with the challenges facing our residents and citizens.

2004: Complaints Opened by Agency

Table with 7 columns: Name, Jurisdictional Complaints, Non-jurisdictional Complaints, Information Requests, Pending, Total, Percentage of Total. Rows include various agencies like Administrative Services, Agriculture & Land Stewardship, etc., and a Totals row at the bottom.

How to reach us

E-mail: ombudsman@legis.state.ia.us

Web: www.legis.state.ia.us/ombudsman

Phone: 1-888-426-6283 (515) 281-3592

Address: Ola Babcock Miller Building 1112 East Grand Avenue Des Moines, Iowa 50319-0231

TTY: (515) 242-5065

Fax: (515) 242-6007



Couple regains home with Ombudsman's help

Over the years, we've found that most government agencies are willing to fix a problem if it's clear that the agency caused it. Few agencies fix a problem when the evidence is unclear whether it was caused by the agency.

But we encountered such an agency last year. We were looking into a complaint from a married couple who alleged someone made a mistake which cost them their home.

The woman began receiving Social Security Income (SSI) in 1999. Homeowners who receive SSI or State Supplementary Assistance are eligible for suspension of their property taxes, under Iowa law (Code section 427.9). The law describes a process whereby:

- DHS provides the homeowner with documentation of eligibility.
- The documentation needs to be presented to the county board of supervisors.
- Upon receipt, the board of supervisors "shall order the county treasurer to suspend the collection of" property taxes and special assessments, including interest, fees, and other costs.

The couple believed each of those steps were taken, but their taxes were not suspended. The ensuing taxes weren't paid, so the property was listed on a scheduled tax sale in 2001. A local investor paid off the tax debt in 2001. The couple contacted county officials, asserting it was a mistake for the property to be sold at tax sale because of the woman's eligibility for suspension of property taxes. But the sale stood. And in 2004, the investor applied for – and received – the deed to the property.

Upon learning that they no longer held the deed, the couple called our office. They alleged that the property should never have gone to a tax sale, and that the county should have suspended their taxes starting in 1999. While the couple believed all of the required steps had been taken in 1999, they could not recall whether they had presented the necessary documentation to the board of supervisors.

We contacted DHS, which confirmed sending documentation of eligibility in 2000. Due to the passage of time, however, DHS could not confirm whether it sent the documentation to the woman, or to her protective payee, an employee of the county's Community Services Department (CSD).

We then contacted the CSD Director. She confirmed that for individuals who have a protective payee in the CSD, the documentation for suspension of taxes goes through that office and then to the board of supervisors. But from her information, it was not clear whether the payee had been appointed at the time that DHS sent the documentation – which in turn meant it was unclear whether DHS sent the documentation to the woman or to her payee.

As we were preparing to contact the payee, we received a phone message from the couple stating, "It's all been taken care of. Thanks for your help." We returned the call



Local government

and learned that the board of supervisors had voted to suspend all taxes back to 2000, and also to reimburse the investor for all of his expenses. The couple told us that the investor had returned the deed to them, and mentioned that our office's inquiry had prompted county officials to consider the matter further.

We contacted the county and spoke with an assistant county attorney who had become involved in the matter. He noted that the county was not legally obligated to suspend the taxes. But because the couple had been just days away from losing their entire interest in the property, he and several other county officials decided to discuss a possible resolution.

He said that officials decided that the county should redeem the taxes on behalf of the couple and pay the additional interest, costs and penalties to the investor. He added that the property taxes were now suspended indefinitely, based on the woman's eligibility.

City persuaded to allow petition drive at city hall

It's been said that you can't take on city hall, but what about gathering signatures at city hall for a petition drive?

That was the focus of a complaint from a woman who was wanting to collect signatures at city hall in an effort to force a special election. But city officials denied her request, saying their policy did not permit people to gather signatures at city hall.

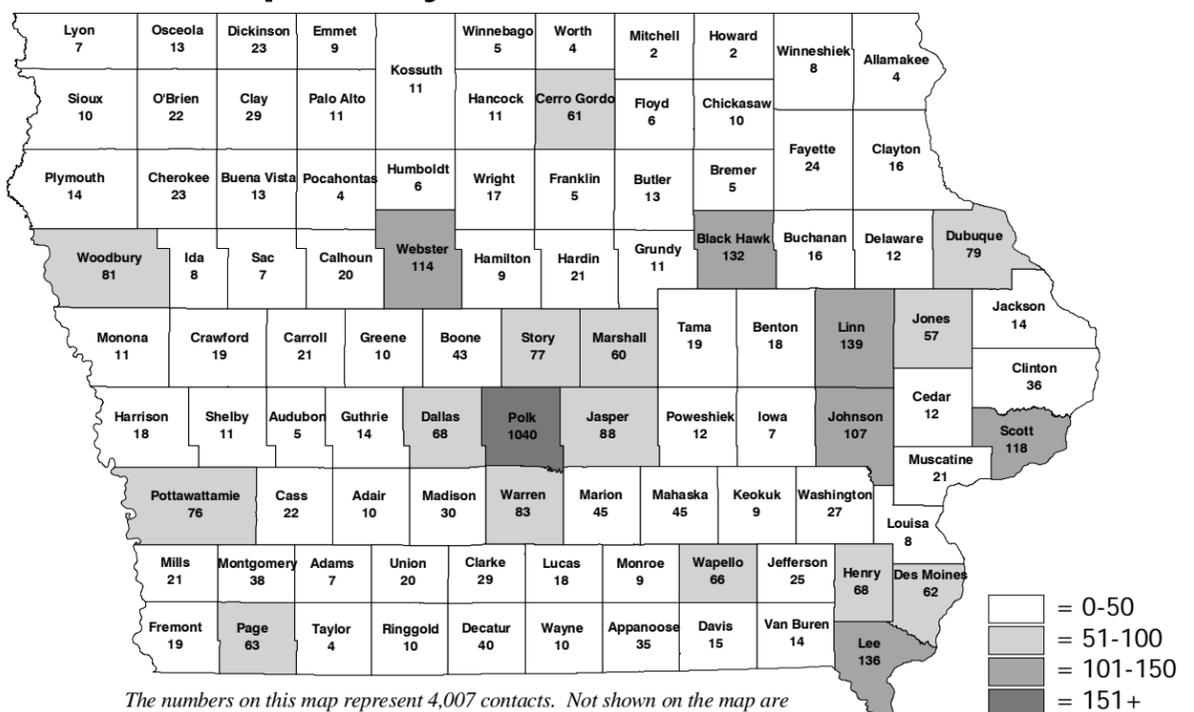
We reviewed the city's policy and found no reference to gathering signatures there. City officials asserted that they did not have to allow access for these types of activities. They said they could not control the content of the petition. If the woman was allowed to collect signatures on petitions, city officials believed they would have to allow the American Nazi party or the Ku Klux Klan to do so.

The deadline for submitting signatures was just a few days away. We noted that city hall is a government building, not a private institution; and that the federal and state constitutions state that city buildings are public areas.

We provided city officials with a link to a policy developed by Las Vegas city government for petition drives. Officials tailored the policy to fit the city and provided our office with a copy. Eventually, the group in question was able to obtain enough signatures to force a special election to fill a vacancy on the city council.

Where's your county?

Contacts opened by Citizens' Aide/Ombudsman in 2004



The numbers on this map represent 4,007 contacts. Not shown on the map are the following contacts: Iowa unknown (93); unknown (22); other states and District of Columbia (182); and other countries (2).

Police improve parental notification procedures

A police officer handcuffed a brother and sister for refusing to sign citations for smoking. Their father contacted our office, alleging the handcuffing was contrary to law. He also alleged that the officer failed to notify him that his kids had been taken into custody, as required by law.

Iowa law [Code section 232.19(2)] allows peace officers to handcuff a child "if the child physically resists; threatens physical violence when being taken into custody; is being taken into custody for an alleged delinquent act of violence against a person; or when, in the reasonable judgment of the officer, the child presents a risk of injury to the child or others" or "if the child has a known history of physical violence to others."

In reviewing the complaint, we determined that the officer had sufficient reason for handcuffing the children. We found that the boy had become belligerent and verbally abusive, and had displayed violent behavior in the past. We found that the girl became verbally abusive, refused to sit down, and reached for the officer's telephone.

The issue of parental notification is addressed in the same section of Iowa law, and in a police department policy. Both state, "When a child is taken into custody ... the person taking the child into custody shall notify the child's parent, guardian, or custodian as soon as possible."

In the son's case, we found that a call to the father was not necessary: Through a phone call with his son, the father knew his son was planning to refuse to sign the citation, which would probably lead to his arrest.

But in the daughter's case, there was no indication that the father knew that she had received a citation or had been taken into custody, until he got a call from the detention center advising that she had arrived there.

As a result, we recommended that the police chief remind

officers of their requirement, under Iowa law and department policy, to notify parents or guardians as soon as possible after taking children into custody. Our recommendation noted that the law does not allow officers to rely on third parties, such as detention center staff, to make these notifications. We also recommended that the police chief modify department policy to require officers to document such notifications, or attempts at notification.

In response, the police chief agreed that officers must ensure parents are given timely notifications. But he did not agree that the notice can be made only by the arresting officer. "In most circumstances, officers are able to make direct contact with a parent to notify them of their child's arrest," the chief wrote. "There are circumstances that occur where an officer is unable to make contact with a parent, and past practice has been that a third party, acting on behalf of the officer, has made contact with a parent. The third party may be the police communications center, juvenile in-take, or another law enforcement agency."

The chief reminded officers of the need to document an officer's notification or attempts at notification. The chief also agreed that department policy could be improved. New language was added stating:

- "Legislative intent: The legislative intent appears to permit any reasonable method of notification be used, provided the person taking a child into custody can be reasonably certain notice will be provided without undue delay."
- "Acceptable notification: The person taking a child into custody may enlist dispatchers, juvenile intake staff or other responsible persons to fulfill the requirement to notify a child's parent, guardian or custodian as soon as possible."

While the chief did not accept all of our recommendations, his explanation for rejecting some were reasonable. We believe the changes that were made will improve the police department's overall operations and effectiveness, by clarifying and reinforcing the arresting officer's duty to either make the call or make sure the call is made, and to document the call.

Water bill cut to size

Imagine opening your monthly water bill and it's for \$5,000. This actually happened to one man last year. He hadn't been living in his home because he was caring for his elderly mother. His average water bill was only \$25 per month. He had no idea what might have caused the extraordinary water usage that was alleged on the bill.

Before contacting the Ombudsman Office, he tried to get the city to look over the situation. Despite his water consumption history, he understood the city's utility intended to seek full payment.

After receiving his complaint, our office reviewed the utility's water code to see if there was any governing ordinance to be implemented on behalf of a customer when extraordinary or inadvertent water usage occurs. We discovered that the director had authority to bring an equitable solution to this situation. After we contacted the utility, it offered to reduce the man's bill by \$4,400, pursuant to the existing utility code. The man doubted he would have ever received an equitable account adjustment without the intervention of the Ombudsman's Office.



Open records & meetings

Meeting by e-mail contrary to Open Meetings Law

Iowa's laws for open meetings and public records can sometimes act like siblings who stand up for each other. Take the case where a citizen used the Public Records Law to obtain copies of e-mails showing a possible violation of the Open Meetings Law by a Library Board (Board).

The citizen asked for e-mails between the Board and the librarian after becoming suspicious of possible meeting violations. He then filed a complaint with our office and requested that we review the e-mails.

The librarian sent one e-mail to all the Board members and requested a "majority vote" from the members on whether to proceed with a list of projects. Over the next several days, several Board members responded to the librarian by e-mail or by telephone. One member wrote that another Board member "will not be liking this method of voting" but continued to "vote" on the projects. We also reviewed the minutes from the meeting that followed the e-mails in question.

Based on our review, we advised the Board that conducting a meeting by e-mail was contrary to law because Iowa Code section 21.3 states in part, "all actions and discussions at meetings of governmental bodies, whether formal or informal, shall be conducted and executed in open session."

We also believed the minutes were insufficient because it was not clear what topics were covered and how each member voted, which is also required by Iowa Code section 21.3.

We also stated in a letter to the entire Board, "If there is a question about the law there are several resources available which will provide advice and guidance including the City Attorney. The Iowa Open Meetings Law does not allow for ignorance of the requirements. In our opinion, each Board member was responsible for the violation that occurred. It is our expectation that every member of the Board follow all laws and ask questions if there is any uncertainty." We have not received any additional complaints about this Library Board.

No agenda for "unofficial" meetings?

A citizen alerted our office to some potentially illegal meetings being held by a County Board of Supervisors (Board).

To save publication costs, the Board elected to have "unofficial" meetings on Wednesdays, with "official" meetings only on Mondays. All three members were present for the Wednesday meetings. But because the Board agreed to not take any action in those meetings, its members also believed they were not required to post an agenda, take minutes or publish minutes.

After reviewing the matter and the Open Meetings Law (Iowa Code Chapter 21), we advised the Board that it could gather and accept information from citizens on Wednesdays. But we noted that if the Board begins the evaluative process by discussing or deliberating a matter within the scope of its policy-making duties, with a majority of members present, the Board would be in violation of the Open Meetings Law and possibly of the law which requires it to publish the minutes. Since then, we have not received any additional complaints about this Board's meeting practices.

Mayor agrees to follow public records law

A citizen called to complain that at the direction of the mayor, the city clerk would no longer provide copies of the minutes and the agenda. We called the mayor, who said this was done on advice from the county attorney.

So we contacted the county attorney. He denied advising the mayor that the city did not have to provide copies of the agendas and the minutes. What he had told the mayor was that the city, as a small town, was not required by law to publish the minutes of council meetings (instead, posting the minutes was sufficient).

We recontacted the mayor. After some discussion, she acquiesced to providing copies of the minutes and agendas upon request. We advised the mayor that Iowa law allows the city to charge a reasonable fee for services and copies.

Top ten government websites

When Iowa was in its infancy, the size of many counties was determined by how far a horse could travel in one day.

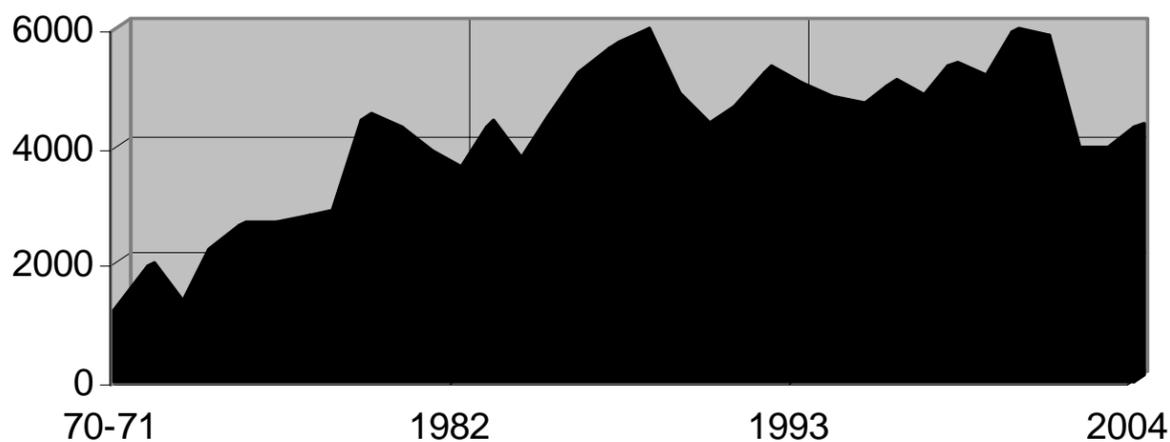
Now, a person could visit each of the 99 counties through cyberspace in a matter of hours, without leaving home.

To help navigate through the maze of the Internet, we've put together a list of 10 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/state/main/index.html
2. State agencies — www.iowa.gov/state/main/govagenciesfl.html
3. Legislative — www.legis.state.ia.us
4. Judicial — www.judicial.state.ia.us
5. Cities — www.iowa.gov/state/main/livingcitiesfl.html
6. Counties — www.iowa.gov/state/main/govcountiesfl.html
7. Public school districts and Area Education Agencies — www.ia-sb.org/usefullinks/usefullinks.asp
8. Iowa law — www.legis.state.ia.us/IowaLaw.html
9. "Sunshine advisories" — www.state.ia.us/government/ag/Sunshine_adv/sunshine.html (primers on the Open Meetings and Public Records laws)
10. Citizens' Aide/Ombudsman — www.legis.state.ia.us/ombudsman



Annual contacts to Ombudsman since 1970



This chart shows the number of contacts received by the Ombudsman's office each year from 1970 through 2004.

Sign on the dotted line

"Sign on the dotted line" is usually not a phrase that causes a dispute. But it did in the case of a citizen who told us that city officials were requiring him to sign his name before they would grant his request for a public record.

The city confirmed it was requiring citizens to sign a form in order to get copies of public records. City officials simply wanted to know who was getting the information they were giving out. We requested a copy of the form and after further review, we discussed the situation with staff at the Attorney General's office. A short time later, the Attorney General's office issued a "Sunshine Advisory" which stated:

"Requesters should not be required to identify them-

selves. Government offices may develop forms to be submitted in writing or filled out over the telephone, but forms should not force requesters to identify themselves or explain why they want to examine or copy public records. Public officials should not require requesters to supply any additional information, unless it is needed to send the records by mail, or to comply with laws limiting access to certain records (such as student academic records or medical records.)"

We shared a copy of the Sunshine Advisory with city officials. They immediately stopped their practice of requiring signatures before honoring requests for public records.

DNR prompted to release information in fatal accident

A fatal boating accident occurred on Lake Okoboji. The Des Moines Register reported that a Department of Natural Resources (DNR) official said Iowa law prohibited the agency from releasing any information about the incident.

After reading the article and reviewing the public records law (Iowa Code Chapter 22), our office self-initiated an investigation. In response to the newspaper's written request for information, we encouraged DNR to either provide the information requested, or cite the specific section

of law authorizing the agency to not release the information. We noted that Iowa Code section 22.7 (5) requires the release of "the date, time, specific location and immediate facts and circumstances surrounding a crime or incident."

Through several press releases and a letter from DNR's Director, our office became satisfied that the DNR responded to the reporter's request for immediate facts and circumstances and also took steps to train field officers to ensure future compliance.

Public records, open meetings resources

Do you believe a public official has violated the law in your community? Are you a public official and desire to get additional information about the law?

Below is a list of resources the Citizens' Aide/Ombudsman Office recommends for citizens and public officials if there are questions regarding the Public Records and Open Meetings laws. If these resources do not answer your questions, please contact our office, your attorney, or the attorney working for the governmental body.

• Every month the Attorney General's Office publishes an easy to read "Sunshine Advisory" which provides an interpretation of the basic nuts and bolts and some more complicated issues. Go to: http://www.state.ia.us/government/ag/Sunshine_adv/sunshine.html

• The Freedom of Information Council (FOIC) recently released the 11th edition of the **Iowa Open Meetings, Open Records Handbook**. Copies can be obtained by calling FOIC at (515) 271-2295.

• The Attorney General's Office, Iowa State Association of Counties, and the Citizens' Aide/Ombudsman Office conducted a free two-hour **Public Records Law training course for public officials** over the Iowa Communications Network in September 2004. The tape can be made available to anyone by contacting Assistant Ombudsman Angela Dalton at 1-888-426-6283 or by contacting ISAC at <http://www.iowacounties.org/>.



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
Civil Rights Commission	1-800-457-4416
Citizens' Aide/Ombudsman	1-888-426-6283
College Student Aid Commission	1-800-383-4222
Commission on the Status of Women	1-800-558-4427
Crime Victim Assistance Division	1-800-373-5044
Economic Development (Department)	1-800-245-4692
Gambling Treatment Hotline	1-800-238-7633
HAWK-I (insurance for low-income kids)	1-800-257-8563
Health Facilities Division	1-800-383-4920
Human Services (Department)	1-800-972-2017
Inspections and Appeals (Department)	1-800-831-1394
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
Long Term Care Residents Advocate	1-800-532-3213
Missing Persons Information	1-800-346-5507
Narcotics Division	1-800-532-0052
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	1-800-247-0614
Tourism Information	1-800-345-4692
Transportation (Department)	1-800-532-1121
Vaccines for Children	1-800-831-6293
Veterans Affairs Commission	1-800-838-4692
Utilities Board Consumer Services	1-877-565-4450
Vocational Rehabilitation Division	1-800-532-1486
Workforce Development Department	1-800-562-4692
	TTY: 1-800-831-1399

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 Protection and Advocacy	1-800-779-2502
Lawyer Referral Service	1-800-532-1108
Legal Services Corporation of Iowa	1-800-532-1503
Legal Hotline for Older Iowans	1-800-992-8161
Youth Law Center	1-800-728-1172

Amish father not required to swear, agency to revise form

Amish people are taught to never swear. Not even when asked to "swear" that they are telling the truth.

An Amish father wrote to our office about a problem with a Delayed Certificate of Birth that he needed to fill out for his daughter. "They require us to swear where we sign our name," he wrote. "It is against our religious faith to swear upon oath."

Next to the signature line, where the form stated "sworn," the man had crossed out that word and wrote "affirmed." But the Bureau of Vital Statistics (Bureau) rejected the form. "The law of our country has never forced our Amish people to swear upon oath before now, that I am aware of," the man wrote, "but have always let us off by changing the wording to (affirm) rather than sworn upon oath. So let's keep our country a free country!"

The Bureau's rules state, "Each delayed certificate of birth shall be signed and sworn to before an official authorized to administer oaths by the person whose birth is to be registered if such person is 16 years of age or over ... otherwise, the certificate shall be signed and sworn to by one of the parents."

Report clears agency's investigation of fish sales

In an investigative report that was publicly released, the Ombudsman found the Iowa Department of Natural Resources' (DNR) investigation of three Asian markets in Polk County for unlawful fish sales was fair and reasonable.

The DNR initiated a covert investigation in August of 2002 after receiving information from a confidential informant indicating a specific Asian market was selling fish that had been caught by local fishermen. The purchase and sale of game fish taken from the waters of the State is a violation of Iowa Code section 481A.136 - Unlawful Commercialization of Wildlife. The DNR conducted surveillance of one Asian market and visited a total of eight ethnic and seven non-ethnic markets in Polk County. A covert team member also visited three ethnic markets in eastern Iowa.

Three markets were identified as selling game fish and 224 fish were purchased by the DNR. The surveillance also identified seven individuals (fishermen) delivering game fish. A search warrant was executed at one of the markets on October 21, 2002, during which an additional 137 game fish were seized. Consent searches were conducted the same day at the other two markets and 12 game fish were seized.

Following discussions with the attorney for the owners of the Asian market from which most fish were seized, the Polk County Attorney's Office charged the owners with 40 counts of unlawful commercialization of wildlife, a serious misdemeanor. Under Iowa law, the owners could have been charged a separate offense for each misdemeanor. They pled guilty to all counts and each received a one-year suspended sentence. They were fined \$20,000 and ordered to pay \$6912 in penalties and restitution, in addition to surcharges and court costs.

The owner of the second market was charged with eight counts of unlawful commercialization of wildlife, pled guilty to two counts and received a deferred judgment; he was ordered to pay a charitable contribution of \$500 in lieu of community service. The owner of the third market also pled guilty to lesser charges and was ordered to make a \$1000 charitable contribution. The seven fishermen were charged with a total of 85 counts of unlawful commercialization of wildlife.

The Ombudsman concluded the DNR did not single out or treat the Asian markets differently from other Polk County markets, since the DNR also visited other ethnic and non-ethnic stores in Polk County and eastern Iowa to determine if they were in compliance with Iowa law.

The Ombudsman concluded the DNR did not act unreasonably in referring the violations to the county attorney for prosecution, instead of just warning or notifying the markets that they were violating Iowa law. In making this determination, the Ombudsman considered whether there were reasonable bases for the DNR's decision, in view of



Other agencies

Our review, however, found that Iowa law allows the option of affirming, as an accommodation for people whose religious beliefs prohibit swearing upon an oath. We shared our findings with Bureau staff. In response to our inquiry, they agreed to accept and file the man's "revised" certificate. The Bureau Chief assured us that they would change "declare upon oath" to "affirm," and "sworn" to "affirmed," the next time they need to order forms.

In the meantime, the Bureau Chief agreed to advise her staff, as well as the staff at all 99 county recorder offices, that her staff will revise the form electronically whenever anyone makes similar objections. She also said the Bureau was in the process of reviewing and revising its administrative rules, and she will recommend that "sworn to" and "swear to" be replaced with "affirmed" and "affirm."

existing laws and information available to the DNR at the time. These considerations included:

- While the DNR recognized they were dealing with individuals originally from different cultures and considered possible cultural differences, they also believed the store owners had become assimilated into the Iowa culture, given the time they have lived in Iowa.

- The DNR did not have the option of assessing administrative penalties and could only pursue criminal prosecution once it knew the seriousness and extent of the violations.

- While the DNR may have had some input in the charging decision, the final decision to charge the Asian markets for unlawful commercialization rested with the Polk County Attorney.

The Ombudsman also concluded the DNR did not unnecessarily prolong the investigation. Similar investigations in other states usually took a much longer period of time. During the DNR's three-month investigation, DNR staff attempted to identify the fishermen and markets involved, as well as determine whether deer, squirrel or other game were being sold; they also had to attend to their regular duties as conservation officers. It was also the Ombudsman's opinion that ending the investigation sooner would not have guaranteed fewer criminal charges or substantially smaller penalties for the Asian markets. The Ombudsman found the number of game fish available for sale in the stores varied from day to day.

The Ombudsman did, however, identify several deficiencies in the DNR's documenting, training and education efforts. Included were recommendations that the DNR:

1. Develop an action plan for updating the DNR's cultural awareness curriculum and timely provide updated training to all conversation officers.

2. Revise the language in the DNR's publications and on the DNR's web site to emphasize the seriousness and potential consequences for unlawful commercialization of fish.

In addition, the Ombudsman recommended that the DNR explore seeking statutory authority to create administrative penalties for unlawful commercialization of wildlife, in lieu of or independent of criminal charges for such violations. Factors to consider in the assessment of an administrative penalty may include the gravity of the violation and the degree of the culpability of the violator.

The DNR's written reply said the agency was pleased with the Ombudsman's conclusions. An unedited version of the reply, by the Chief of the DNR's Law Enforcement Bureau, is attached to the report. His reply said the DNR will implement many of the Ombudsman's recommendations.

Copies of the 62-page report and the DNR's reply are available upon request and from the Ombudsman's website.

One phone call, 15 minutes, problem solved

Imagine getting calls from a collection agency asking for someone with the same last name as yours. You tell them that you've never heard of that person. But they keep calling back again and again.

This is what prompted a frustrated Iowa taxpayer to call our office. He kept getting calls from the State Department of Revenue (DOR), even though he kept telling them that he'd never heard of the person they were trying to reach.

After listening to his complaint, we immediately called a DOR supervisor. The supervisor quickly confirmed the

man's description: Notes by staff showed the man had requested no more calls, but staff members had failed to take the next step of actually removing the man's phone number from the "call list."

As a result, the supervisor did so while on the phone with us. The supervisor asked that we send our apologies to the taxpayer. We called him back and relayed what the supervisor told us. The man was very pleased that a problem that had been going on for months was resolved within 15 minutes of a phone call to the Ombudsman's office.