Iowa Office of Ombudsman

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HTTPS://OMBUDSMAN.IOWA.GOV/

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State of Iowa Office of Ombudsman
Introduction

Ombudsman Bernardo Granwehr

Assistant Ombudsman Angie Long

State of Iowa Office of Ombudsman *Overview*

- ❑ Iowa Office of Ombudsman - Introduction
- ❑ Essential Characteristics and Jurisdiction
- ❑ Complaint and Investigative Process
- ❑ Case Law and Case Stats
- ❑ Conclusion and Resources

State of Iowa Office of Ombudsman *Ombuds-WHAT?*

Strange names we've been called…

- "I didn't ask for your help I asked for the arms budman's help"
- Letter addressed to Ola Babacook



- Letter addressed to Ola Bobcat Miller



- "the Amish men."

State of Iowa Office of Ombudsman
What is an Ombudsman?

Swedish term - representative or agent

First Ombudsman – 1809 – Sweden

The term is gender neutral



State of Iowa Office of Ombudsman *Evolution of the Ombudsman in the U.S.*

- Classical, legislative branch, general jurisdiction
- Specialized jurisdiction, executive branch
- Long-term care ombudsman
- Organizational ombuds

State of Iowa Office of Ombudsman *Classical Ombudsman Model*

An independent, nonpartisan officer of the legislative branch of government with broad jurisdiction over governmental agencies and officials. This enables the ombudsman to be independent of the agencies under his or her jurisdiction.

State of Iowa Office of Ombudsman *Origin of the Iowa Ombudsman*

- The first ombudsman position was created by Governor Robert D. Ray in 1970 as a two-year pilot project funded by a federal grant.

- In 1972, the Office of Ombudsman was created by statute as a legislative agency (Iowa Code Chapter 2C).

State of Iowa Office of Ombudsman
Origin of the Iowa Ombudsman

"The ombudsman is the people's hope for unraveling the red tape, for remedying the oversights, and repairing the injustices of governmental bodies."

Honorable Robert D. Ray

Condition of the State, 1972

State of Iowa Office of Ombudsman *Four Essential Characteristics*

- Independence
- Impartiality
- Confidentiality
- Credible Review Process

State of Iowa Office of Ombudsman
Four Essential Characteristics - Independence

- A core defining principle of an effective and credible ombudsman
- Free from outside control or influence in structure, function and appearance
- Enables the ombudsman to be an impartial critic

State of Iowa Office of Ombudsman
Four Essential Characteristics - Impartiality

- The heart of the ombudsman concept
- Instills confidence in both the public and agencies that complaints will receive a fair review
- Encourages all parties to accept the findings and recommendations

State of Iowa Office of Ombudsman
Four Essential Characteristics - Confidentiality

- A key tool of the ombudsman
- Ombudsman should have the privilege and discretion to keep confidential or release any information related to a complaint or investigation
- Ombudsman should not be compelled to testify or release records

State of Iowa Office of Ombudsman
Four Essential Characteristics - Credible Review Process

- Defined and transparent processes
- Our processes promote respect and confidence
- This standard is necessary for the work of the ombudsman to have value and to be accepted by all parties to a complaint

State of Iowa Office of Ombudsman
Ombudsman Staff

- Ombudsman
- Deputy
- Legal Counsel
- 12 Assistant Ombudsman (Investigators/Intake)
- 2 Front Office Staff



State of Iowa Office of Ombudsman *Ombudsman Functions*

Four Main Functions:

- Front Desk – Screen and route calls.
- Intake – Field complaints. Provide assists or information.
- Investigation – Investigate complaints. Make conclusions and provide suggestions to agencies.
- Reports – Letter reports vs. public reports.

Each function has a consistent process that Ombudsman staff follow to ensure a consistent result.

State of Iowa Office of Ombudsman
Ombudsman Jurisdiction

- Executive branch agencies
- Local Governments (counties, cities, townships, school districts, etc.)

- Not the Legislative Branch
- Not the Governor's Office
- Not the Iowa Courts
- Not employer/employee issues
- Not issues between private entities
- Not federal government

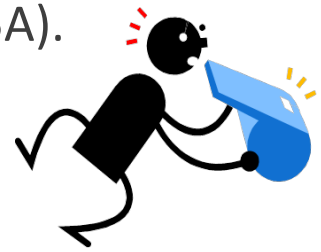
State of Iowa Office of Ombudsman *Ombudsman Jurisdiction*

"Administrative action" - Any policy or action taken by an agency or failure to act pursuant to law. §2C.1(1).

Agency employee's employment relationship is exempted. §2C.9(1).

a. Exception for complaints from a state employee, not in merit system or covered by a collective bargaining agreement, who alleges adverse employment action taken against the employee as a "whistleblower." §2C.11A.

b. Adverse employment action includes discharge, suspension, demotion, reduction in pay, or not getting an appointment, promotion, or other advantage in a position. §70A.28(2) and (5A).



State of Iowa Office of Ombudsman *Ombudsman Jurisdiction*

Issues for investigation include administrative actions which might be:

- ✓ Contrary to law or regulation;
- ✓ Unreasonable, unfair, oppressive or inconsistent even though in accordance with law;
- ✓ Based on a mistake of fact or arbitrary in the determination of facts;
- ✓ Based on improper motivation or irrelevant consideration; or
- ✓ Unaccompanied by an adequate statement of reasons. §2C.11.

In addition to addressing specific complaint, can conduct more systemic reviews of agency procedures and practices. §2C.11.

State of Iowa Office of Ombudsman *Ombudsman Jurisdiction*

- ✓ Unreasonable, unfair, oppressive or inconsistent even though in accordance with law

"You will never understand bureaucracies until you understand that for bureaucrats procedure is everything and outcomes are nothing."

--Thomas Sowell (Stanford University economist)

State of Iowa Office of Ombudsman
Ombudsman Jurisdiction – Specialty Topics

Whistleblower

- Iowa Code Chapter 2C.11A authorizes the Ombudsman to investigate whistleblower complaints under certain circumstances:

> The office of ombudsman shall investigate a complaint filed by an employee who is not a merit system employee or an employee covered by a collective bargaining agreement and who alleges that adverse employment action has been taken against the employee in violation of section 70A.28, subsection 2. A complaint filed pursuant to this section shall be made within thirty calendar days following the effective date of the adverse employment action. The ombudsman shall investigate the matter and shall issue findings relative to the complaint in an expeditious manner.

State of Iowa Office of Ombudsman
Ombudsman Jurisdiction – Specialty Topics

Whistleblower jurisdiction requirements:

- ✓State employee.
- ✓Not covered by a collective-bargaining agreement.
- ✓Non-merit employee.
- ✓Suffered an “adverse action” (discharged, denied appointment, denied promotion, denied any advantage).
- ✓Blew the whistle to state lawmaker, the Ombudsman, any public official or law enforcement agency.
- ✓Complaint made to Ombudsman within 30 days of adverse action.

State of Iowa Office of Ombudsman
Ombudsman Jurisdiction – Specialty Topics

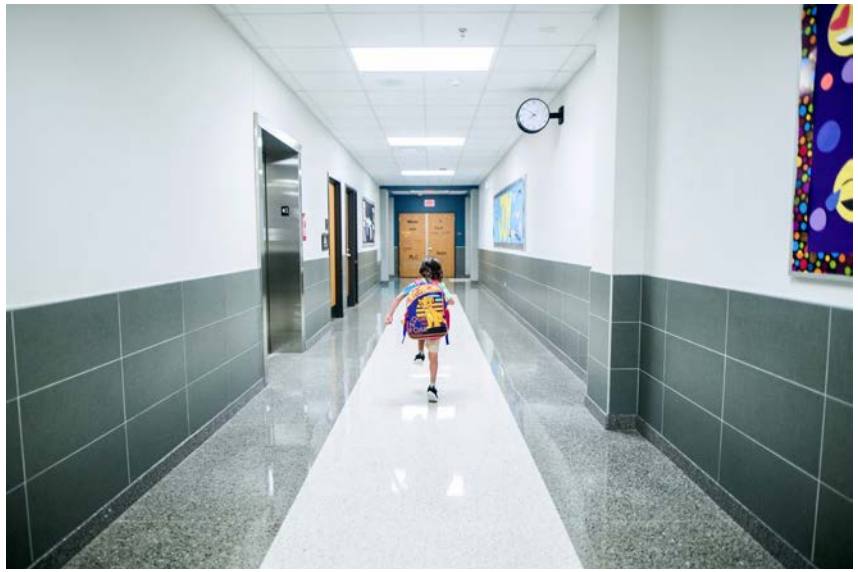
School Violence

- House File 604 authorized the Ombudsman to investigate complaints about school violence. This was codified under Iowa Code Chapter 2C.9 and effective July 1, 2023.
- The complainant must be an individual who hold a license, certificate, authorization, or statement of recognition issued by the Board of Educational Examiners.
- Ombudsman must provide the results of the investigation to the Iowa Department of Education and the Iowa Board of Educational Examiners.

State of Iowa Office of Ombudsman
Ombudsman Jurisdiction – Specialty Topics

School Violence Case Examples

- Teacher violence
- Other student violence
- Non-juris request



State of Iowa Office of Ombudsman *Complaint and Investigative Process*

- Intake
- Preliminary Review and Inquiry
- Investigation
- Notice
- Recommendations
- Published Reports
- Legislative Recommendations
- Refer for Criminal or Disciplinary Action

State of Iowa Office of Ombudsman *Complaint and Investigative Process*

Reasons for Declining Further Inquiry… §2C.12

- Another remedy or channel of complaint is available
- Outside the Ombudsman's authority
- Not directly affected
- Trivial, frivolous, vexatious, or not made in good faith
- Other complaints more worthy
- Insufficient resources
- Not timely

State of Iowa Office of Ombudsman *Complaint and Investigative Process*

Reasons for Declining Further Inquiry… §2C.12

Outside the Ombudsman's authority common examples:

- Iowa Courts
- Employer/Employee
- Private Entities
- Federal Government

State of Iowa Office of Ombudsman *Complaint and Investigative Process*

Reasons for Declining Further Inquiry… §2C.12

Outside the Ombudsman's authority *interesting* examples:

- Cigarette run
- Bar bet
- War of the roses



State of Iowa Office of Ombudsman *Complaint and Investigative Process*



Access to Information – 2C.9(4)

Ombudsman can:

- ✓ Examine any and all records and documents,
- ✓ Enter and inspect premises within any agency's control, and
- ✓ Attend proceedings and hearings.

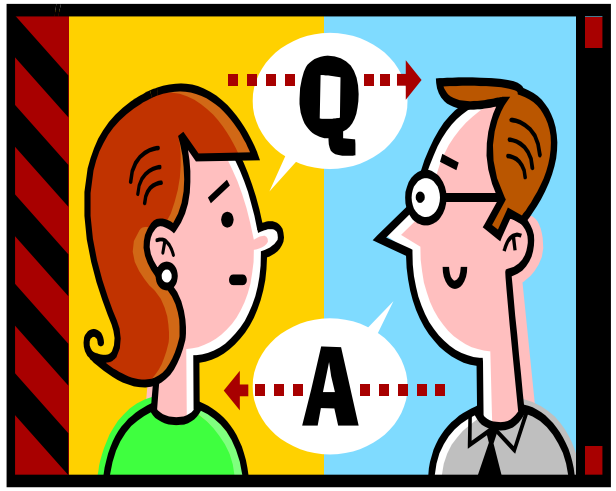
State of Iowa Office of Ombudsman *Complaint and Investigative Process*

CONFIDENTIAL

Access to Information

- This includes confidential records and proceedings.
- Confidential records maintain their confidentiality, and the same policies and penalties apply to the Ombudsman.
- An agency can deny access if it can show it would violate federal law or result in the denial of federal funds to the agency.

State of Iowa Office of Ombudsman *Complaint and Investigative Process*



Subpoena Power

The Ombudsman may issue a subpoena to compel any person to appear, give sworn testimony, or produce documentary or other evidence relevant to a matter under inquiry. 2C.9(5).

State of Iowa Office of Ombudsman *Complaint and Investigative Process*



Penalty for Obstruction

A person who willfully obstructs lawful actions of Ombudsman or staff or misleads or attempts to mislead them during an inquiry is guilty of a simple misdemeanor. §2C.22.

State of Iowa Office of Ombudsman *Complaint and Investigative Process*

Investigative Agency

- An Ombudsman investigation only discovers facts. It is not a contested case and does not adjudicate rights, privileges, or duties.
- A subject is not entitled to a preinvestigation hearing as a matter of due process. *See Citizens' Aide/Ombudsman v. Rolfes*, 454 N.W.2d 815 (Iowa 1990).

State of Iowa Office of Ombudsman *Complaint and Investigative Process*

Providing Notice

- Oral or written
- Formal or informal



State of Iowa Office of Ombudsman *Complaint and Investigative Process*

Post-Investigation

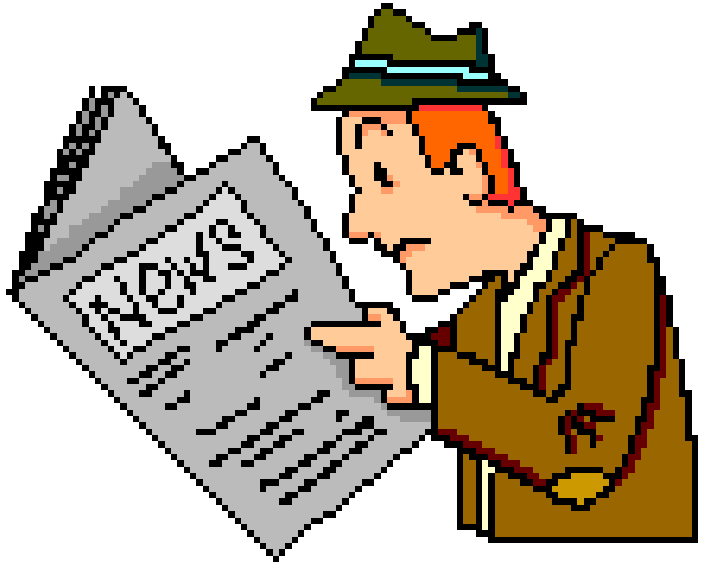
- ✓Make Recommendations
- ✓Publish Report - 2C.15
- ✓Legislative Recommendation - 2C.16
- ✓Referral for Criminal or Disciplinary Action - 2C.19

State of Iowa Office of Ombudsman *Complaint and Investigative Process*

Published Report

WHY?

- Systemic issue
- Significant issue



HOW?

- Copy to Agency
- Agency response
- Response included in report

State of Iowa Office of Ombudsman *Case Law*

Shabazz v. Scurr, 662 F.Supp. 90 (S.D.Iowa 1987)

The Ombudsman intervened in a lawsuit to stop a former employee from testifying about information related to an inmate's death. The court held a limited privilege existed under federal law that the Ombudsman could assert to prevent the former employee from disclosing in court the complaints and investigative communications he received while employed.

However, the limited privilege did not extend to his general knowledge or expertise, even though he may not have been able to gain that expertise without the benefit of protected communications.

State of Iowa Office of Ombudsman *Case Law*

Shabazz v. Scurr, 662 F.Supp. 90 (S.D.Iowa 1987)

Impact – Protected Communications:

- The Ombudsman can assert a limited privilege to prevent a former employee from testifying in court concerning certain information the employee received while employed in the office.

State of Iowa Office of Ombudsman *Case Law*

Citizens' Aide/Ombudsman v. Rolfes, 454 N.W.2d 815 (Iowa 1990).

The Ombudsman sought enforcement of a subpoena issued to a sheriff, who was being investigated for alleged misuse of government property and violations of the gift law. The district court granted the sheriff a protective order, after concluding the investigation was a "contested case" under the Iowa Administrative Procedure Act and the Ombudsman had not complied with the contested case procedures.

The Iowa Supreme Court reversed, saying the investigation is not a contested case, primarily because it does not determine the sheriff's legal rights, duties, or privileges. The court also concluded the investigation was proper and the sheriff was not entitled as a matter of due process to a preinvestigation hearing.

State of Iowa Office of Ombudsman *Case Law*

Citizens' Aide/Ombudsman v. Rolfes, 454 N.W.2d 815 (Iowa 1990).

Impact – Subjects Not Entitled to Due Process:

- Ombudsman's investigation does not involve adjudication of legal rights, duties or privileges, only the discovery of facts related to the investigation.
- As a result, investigations are not considered "contested cases" under the Iowa Administrative Procedure Act, and subjects are not entitled, as a matter of due process, to a preinvestigation hearing.

State of Iowa Office of Ombudsman *Case Law*

Citizens' Aide/Ombudsman v. Grossheim, 498 N.W.2d 405 (Iowa 1993).

The Ombudsman sought to enforce a subpoena requiring prison officials to provide a copy of a videotape of an inmate incident at the state penitentiary. The district court issued a protective order which allowed the Ombudsman to view the videotape at the corrections office, but prevented it from obtaining its own copy.

The Iowa Supreme Court reversed, saying the Ombudsman had good reasons to have a copy and was entitled to the presumption it would uphold its statutory duty to maintain the confidentiality of the videotape. The court found prison officials had failed to articulate reasons why the videotape was irrelevant to the investigation or why giving the Ombudsman a copy would increase any security risk.

State of Iowa Office of Ombudsman *Case Law*

Citizens' Aide/Ombudsman v. Grossheim, 498 N.W.2d 405 (Iowa 1993).

Impact – Presumption to Maintain Confidentiality:

- Ombudsman can review agency information outside of the geographical bounds of the agency.
- Ombudsman was entitled to presumption to maintain the confidentiality of information and protect the integrity of the evidence.

State of Iowa Office of Ombudsman *Case Law*

Citizens' Aide/Ombudsman v. Miller, 543 N.W.2d 899 (Iowa 1996).

The Ombudsman sought enforcement of a subpoena to the Board of Mortuary Science Examiners to produce its investigative files on a complaint about a licensee. The Board had refused to provide the files, claiming its statute made the files confidential and made no exception for the Ombudsman. The Ombudsman contended its own statute gave it broad access to agency records, including any confidential records not exempted under its statute. The district court agreed with the Ombudsman.

The Iowa Supreme Court affirmed, saying the seemingly conflicting statutes could be interpreted to give effect to both provisions. The court recognized the Ombudsman must have broad access to agency records to fulfill its role as a "watch dog." It noted the Board's records will maintain their confidential status in the Ombudsman's hands, which would protect the files from disclosure to other officials and the general public.

State of Iowa Office of Ombudsman *Case Law*

Citizens' Aide/Ombudsman v. Miller, 543 N.W.2d 899 (Iowa 1996).

Impact – Reconciling the Power of Investigation and Right to Confidentiality

- Ombudsman has statutory authority to access investigative files of licensing boards which are otherwise privileged/confidential by law.
  - In order to fulfill its role, the Ombudsman must have widespread access to agency records.
  - The licensing boards' files will continue to maintain their confidential status with the Ombudsman.

State of Iowa Office of Ombudsman *Case Law*

Office of Citizens' Aide/Ombudsman v. Edwards, 825 N.W.2d 8 (Iowa 2012).

The Ombudsman found evidence of improper influence by an agency official on an Administrative Law Judge's (ALJ) decision. However, agency officials and their attorney refused to allow the Ombudsman to interview the ALJ, arguing that the Ombudsman lacked the authority to ask questions about the ALJ's thought process in reaching her decision.

The Iowa Supreme Court ruled that a common-law "mental-process privilege" does exist, but decided that the privilege did not apply in this particular case because the Ombudsman had made "a strong showing of … improper behavior" by agency officials involved in the discipline decision. The court said it "cannot condone" such "troubling" communications between the agency official and an ALJ "whose independence is statutorily mandated, particularly when the warden himself is to hear the inmate's appeal."

State of Iowa Office of Ombudsman *Case Law*

Office of Citizens' Aide/Ombudsman v. Edwards, 825 N.W.2d 8 (Iowa 2012).

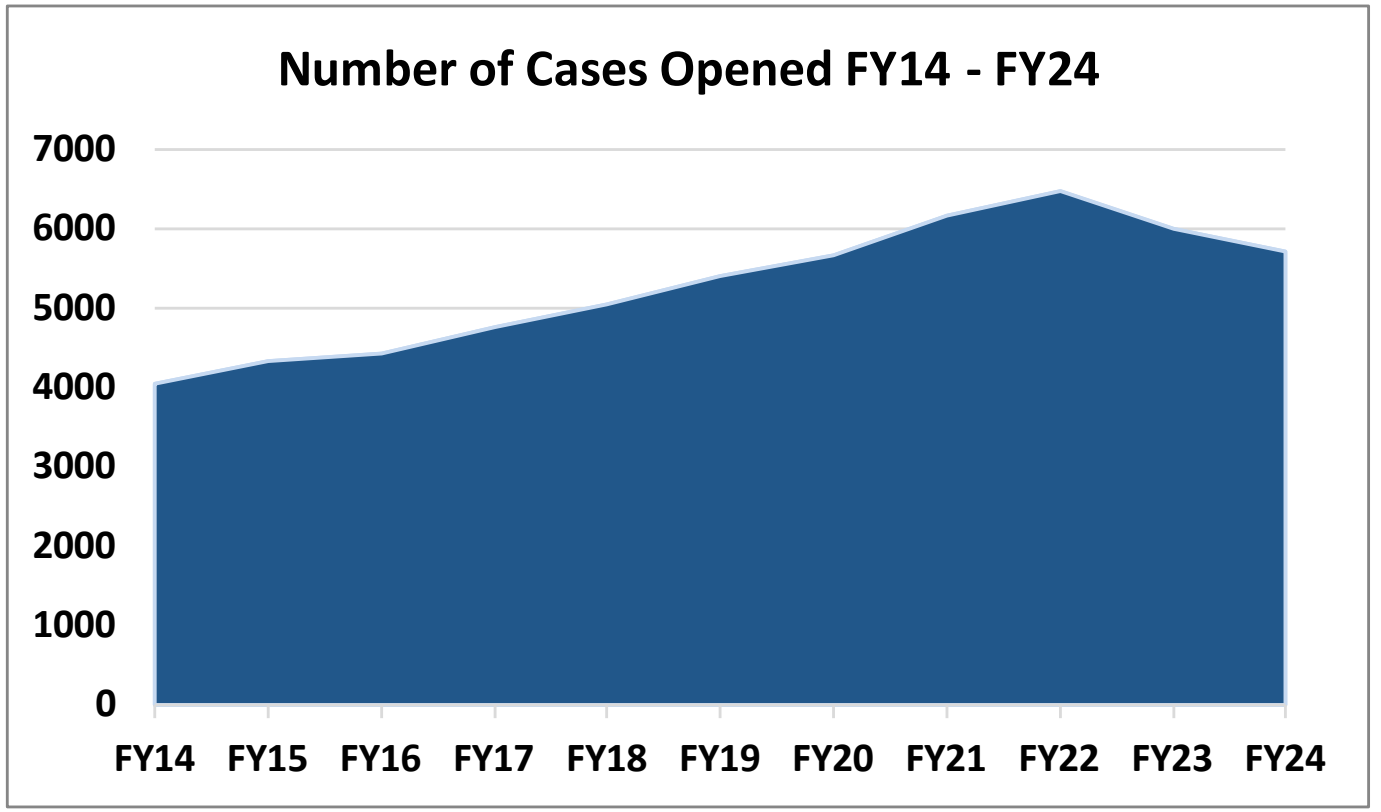
Impact – "Mental Process Privilege" Allowed:

- Although the ALJ is an employee of a state agency and subject to the Ombudsman's investigative authority, an ALJ is serving in a quasi-judicial capacity and may assert the "mental process privilege".
- Absent a strong showing of bad faith or improper behavior, an ALJ is protected from compelled testimony as to the ALJ's thought processes behind a decision

State of Iowa Office of Ombudsman *Case Stats*

Source: FY24 Ombudsman Annual Report

ombudsman.iowa.gov



State of Iowa Office of Ombudsman *Case Stats*

FY 2024 – 5,715 cases – Case Breakdown:

- Department of Corrections – 29%
- State Government – 24%
- County Jails – 18%
- Local Government – 18%
- Other – 11%

State of Iowa Office of Ombudsman *Conclusion and Resources*

Referring Complainants to the Office of Ombudsman

- Contact the Ombudsman directly (no proxies).
- Remember, we are not advocates for complainants.
- But we will advocate for a fair process.
- We can also help connect citizens to services.

State of Iowa Office of Ombudsman *Conclusion and Resources*

What to expect if we contact you:

- We may contact you as a courtesy before or after a referral.
- We may contact you with a request to assist a complainant.
- We may contact you with subject-matter questions to obtain clarifying information.

State of Iowa Office of Ombudsman
Conclusion and Resources

Resource: https://ombudsman.iowa.gov



State of Iowa Office of Ombudsman

Questions?