

2007 Annual Report

June 2008

OMBUDSMAN'S MESSAGE

2007 was an active year for my office. We received almost 4,500 complaints and information requests, and opened 57 special projects. During the year we managed to close or complete 91.5% of the new cases opened in the year. Overall the number of new contacts during the year was down from last year; however, the number and variety of issues we investigated appeared generally more complex. In addition, the number of complaints we substantiated or partially substantiated increased to 19.4%, from 18.6% in 2006. It is also significant to note we declined 6.5% fewer cases.



Bill Angrick
Iowa Ombudsman

A substantiated or partially substantiated complaint places an additional responsibility on an Ombudsman. If a person's grievance has been substantiated, an attempt should be made to make that person whole again or to remedy the problem. In accomplishing the resolution of a complaint, an Ombudsman uses a different skill set—moving from the application of investigative tools to the application of reason and persuasion. Sometimes fixing a problem takes as long or longer that determining who was at fault.

for tax-sale registration fees (June)

- Scott County Jail's use of force and restraint chair on a detainee (June)
- Inadequate agenda for a Winfield City Council meeting (October)

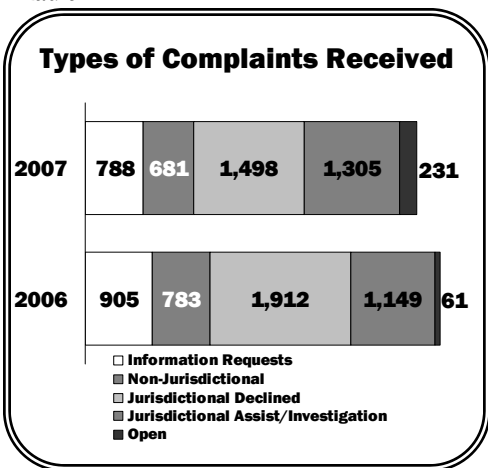
These reports can be read at: <http://www.legis.state.ia.us/ombudsman/reports>.

The range of agencies that were the subject of the 2007 contacts remained generally the same as in years past. A few examples of some increases or decreases merit mention. Complaints and information requests relating to corrections issues (the Department of Corrections and its 9 prisons, the Board of Parole, and the 8 Judicial District Supervision Programs and their 22 facilities) continued to make up the greatest number of contacts we receive annually. Complaints and information requests about Iowa's 947 municipalities accounted for the second largest number of contacts during the past calendar year. Contacts relating to Iowa's 99 county governments decreased by over 100 from the previous year.

I think it is important to explain what may be categorized as a special project and why that number is increasing. For a number of years my office did not statistically record and report the work we do beyond complaints or information requests. I created the special project category a few years ago to help us monitor, track, and manage records and actions taken on other activities or assignments related to our work. Examples of a special project include: the research, drafting, and follow-up of a legislative proposal; the preparation, coordination, and hosting of visits by official delegations to my office; the research, gathering, and presentation of case data and statistics when requested by public officials or the media; and presentations about our office to civic or government groups.

In late 2007 my office submitted four bill drafts that would do the following:

1. Require a governmental body that collects or maintains a public record containing personal information to notify



My office published four investigative reports during 2007. The reports concerned:

- The Pacific Junction mayor's failure to timely release public records (May)
- Amounts charged by county treasurers

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<p>State of Iowa Citizens' Aide/Ombudsman 1112 E. Grand Avenue Des Moines, IA 50319</p> <p>515/281-3592 1-888-426-6283</p> <p>515/242-6007 (fax) 515/242-5065 (TDD)</p> <p>ombudsman@legis.state.ia.us www.legis.state.ia.us/ombudsman</p>	



Public Records and Open Meetings

Two Cases Highlight Need to Publish Minutes of Meetings Timely

When government bodies don't timely publish the minutes of their meetings, citizens may not have current information about matters discussed at those meetings. We investigated two complaints involving this issue.

In the first case, a woman alleged that the minutes of the local city council meetings were routinely not published within 15 days, as required by Iowa law. The law provides that failure to do so is a simple misdemeanor.

We investigated the matter by speaking with the city clerk, representatives from the local newspaper where the city publishes its meeting minutes, and representatives from the State Auditor's office (who had also reviewed the issue). We then compiled a table of the council meetings and the minutes published for 2006. We found that of the council's first 15 meetings in 2006, the minutes from only 4 meetings were published within the statutory deadline. Two were published more than 30 days after the meetings. Most significantly, the minutes

from two other meetings had still not been published as of May 2007 even after communications with the city clerk by our office and the State Auditor's office about the publication requirement.

We presented our findings that minutes from city council meetings were routinely not published within 15 days, as required by Iowa law, in a report to the city clerk. Our report did note the city clerk's ability to comply with the law seemed to improve after our communication with her on August 8, 2006. Of the council's last 11 meetings in 2006, the minutes from all but 1 were published within the 15-day deadline. In closing, the Ombudsman recommended that the city publish the missing minutes as soon as reasonably possible.

In the second case, a man said a 28E intergovernmental agency in his county was not publishing its minutes until several months later. He had e-mailed his concern to the agency, but received no response.

The agency's manager told us that its

board meets only four times a year. He said the board had decided it didn't want to publish "unapproved" or draft minutes, so it had chosen to wait until after the minutes are approved at the next meeting, which is typically three months later.

The manager mentioned new legislation passed the year before, which required 28E agencies to submit minutes to newspapers within one week of any meeting. He indicated the agency simply did not like the new legislation, especially because it would have to publish the minutes before they were approved. We quoted an article published by a statewide association of counties which clearly explained the new law gives agencies one week to submit minutes to the newspaper for publication. In response, the agency changed its policy to comply with the state law. We confirmed it published the minutes of its next meeting only five days after the meeting.

Citizen's Recording Confirms Denial of Public Record

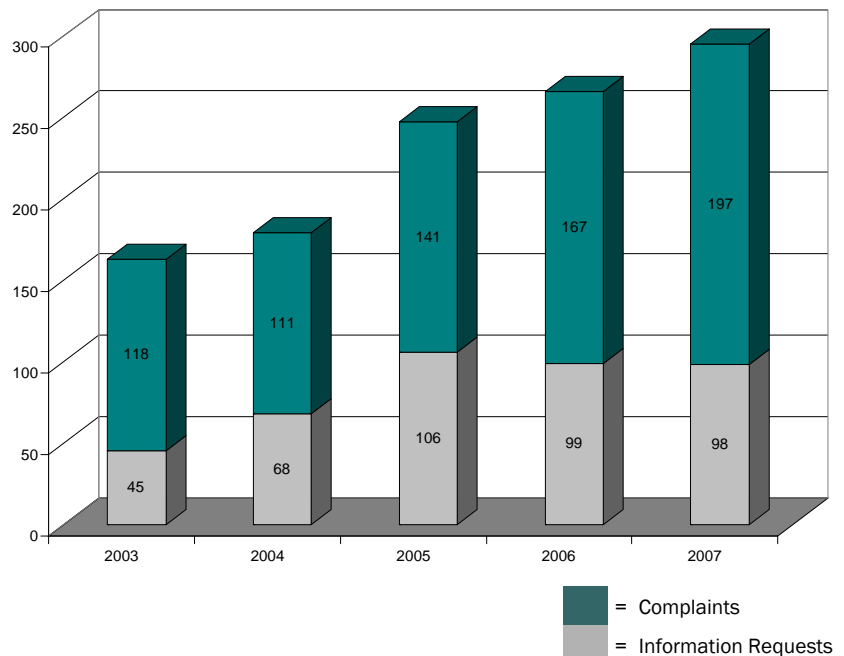
In a published report in 2007, the Ombudsman concluded that a southwest Iowa mayor violated Iowa's open records law. A citizen requested a copy of a budget document from the mayor of Pacific Junction. He secretly tape-recorded the entire conversation because of previous experiences with the mayor.

Throughout our investigation, the city attorney and the mayor claimed the mayor did not deny the citizen's request for a public record. They also asserted the mayor stated he would check with the city attorney on whether he needed to honor the request. But we found the mayor's explanation was not supported by the audiotape evidence.

A formal response to the report, written by the city attorney, did not acknowledge nor respond to the Ombudsman's recommendations, which included providing the requested document to the citizen and offering an apology to him. An unedited copy of the city attorney's two-page response is attached to the report.

[Copies of the report are available on request, or from the Ombudsman's website at www.legis.state.ia.us/ombudsman/]

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



What's Happening on Open Meetings, Open Records, and Privacy

From Our Cases Files

Our office opened 317 cases related to open meetings, open records, and privacy issues in 2007; 197 were complaints and 98 were information requests that we had jurisdiction to handle. Of the complaints for which we completed investigations, 45 were substantiated. The case summaries in this report highlight the variety of issues we receive and the assistance we can provide.

Some of the issues were ancillary to the Open Meetings Law (Iowa Code chapter 21) and the Open Records Law (Iowa Code chapter 22), such as publication of minutes and retention of records as required by other laws. These issues, nevertheless, are intertwined because if records are not published as required or retained in a format that can be retrieved, they are not accessible to the public. Legal custodians need to be cognizant of these issues and have a good system to keep the records and provide them to the public.

Most of our cases stemmed from citizen complaints. A few complaints came from journalists. Citizens and media alike can stay involved and be vigilant by participating in government, asking questions, and requesting documentation. At the same time, they should be prepared to pay the actual costs for the records they request. And government employees, who through their work identify or see issues or problems—things even the most diligent citizens will never find—have the ability to make a difference. There are several resources to air your concerns if a government body is not responsive, including the county attorney, the Attorney General's office, the State Auditor's office, and our office.

Government officials need to keep in mind the basic intent of the open meetings and open records laws—that openness and public participation generally improve government. Both chapters 21 and 22 start with the premise that meetings and records are open, unless exceptions are provided by law. If officials can approach compliance with the open meetings and open records laws from that mindset and also recognize that these laws allow officials some discretion, it may help address questions or issues they encounter.

As an impartial office, we can assist both citizens and government officials with answering questions about open meetings, open records, and privacy issues. In addition, I am available to speak to citizen or government groups about our office and these subjects in particular.



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

Proposed Legislation

In the fall of 2007 a legislative interim study committee took on the task of examining chapters 21 and 22 to address a myriad of issues brought to their attention by our office, the media, citizen complaints, and Professor Arthur Bonfield from the University of Iowa's Law School. The interim meetings were attended by people advocating for openness, such as the Iowa Freedom of Information Council, Iowa Broadcasters Association, and the Iowa Newspaper Association. Also in attendance were those who represent the municipalities, boards, commissions, and councils which would be most affected by the proposed changes, such as the Iowa Association of School Boards, Iowa League of Cities, Iowa State Association of Counties, and the Iowa Hospital Association. I and other representatives from our office also were at the meetings.

In February of 2008 the product of a lot of hard work was revealed. The result was a 50-page study bill that would create an administrative enforcement agency with some "real teeth." The bill also proposed substantive changes to the open meetings and open records laws, including:

- Disclosing names and certain information of finalists for government positions.
- Changing the definition of "meeting" to include "walking quorums" where members of a government body intentionally meet serially in groups with less than a majority to discuss a matter before taking action on it in an open meeting.
- Clarifying how much time a lawful custodian has to respond to a record request.
- Allowing preliminary draft documents to be kept confidential prior to their use in the final formulation, recommendation, or adoption of official policy or action.
- Allowing certain personal information to be kept confidential based on an "undue invasion of privacy."
- Increasing the civil penalties for violations of the open meetings and open records laws.

A number of these proposed revisions were controversial and generated much debate. Senate File 2411 did pass the Iowa Senate but not the Iowa House of Representatives. The bill lacked sufficient unconditional support and time to work out the disagreements before the legislative session ended. Since our office believes many reforms are overdue, we hope the discussion continues during the interim period and into the 2009 legislative session.

I recently returned from a conference of the National Freedom of Information Coalition in Philadelphia, where I heard stories of other states trying to reform, overhaul, and put band-aids on broken meetings and records laws. A few states have stronger enforcement models and some states have more intermediate steps, such as requiring and using freedom of information officers at every government agency. It is worthwhile to see what other states are doing.

For now, our office will continue the work of investigating and resolving complaints, and educating citizens and public officials on the application of the open meetings and open records laws, as well as issues related to records retention and privacy. And, if we determine that a case merits referral for enforcement by prosecutors, we will do that also as provided by our statute.

This chapter seeks to assure, through a requirement of open meetings of governmental bodies, that the basis and rationale of governmental decisions, as well as those decisions themselves, are easily accessible to the people. Ambiguity in the construction or application of this chapter should be resolved in favor of openness.

Iowa Code section 21.1

Did I Miss Anything at the Meeting Last Night?

A part-time deputy clerk for the city of Winfield contacted us after her position was eliminated during a city council meeting. She claimed she was never informed that her position was going to be discussed and she did not attend the meeting. Furthermore, the agenda posted on the city's website made no mention the issue was going to be discussed.

We learned two different agendas had been published for the same meeting, the second included the additional language "Job Description/Employee Handbook." The former clerk claimed she had no knowledge of the second agenda; a claim the city disputed. The first agenda was posted on the city's website two weeks before the meetings, while the subsequent agenda was posted, at the earliest, the Thursday before the Monday meeting. The revised agenda was never posted on the website.

Although the second agenda was posted timely (24 hours before the meeting), we determined it did not comply with Iowa law requiring sufficient information to apprise the public of the issues to be discussed. The phrase "Job Description / Employee Handbook" did not inform the public of the city council's intent to discuss an employee's continued employment or possible elimination of the position. This was supported by statements from the city clerk, a council member, and the mayor who drafted the agenda, who all said they had no specific knowledge the council intended to discuss eliminating the deputy city clerk's position at the meeting.

In a public report, the Ombudsman concluded the city council was limited to discussing the items on the agenda. If the city council wanted to discuss the deputy city clerk position, it should have delayed it until a later meeting, after adequate notice on the agenda. Each council member has an obligation to object to discussion on an issue not properly placed on the agenda. The Ombudsman also concluded the city violated the spirit of the open records law when it failed to place the revised agenda on the city's website in addition to the usual locations for posting.

[Copies of the report are available on request, or from the Ombudsman's website at www.legis.state.ia.us/ombudsman]

Should Obtaining Public Information Be This Difficult?

A man who wanted to know how to properly file a request for information from a city contacted the Ombudsman. He said he had verbally requested information at the city clerk's office, but an employee yelled at him and accused him of trying to start trouble. He thought a special form was needed. We advised him public records can be requested in person, by phone, in writing, or by email, and no form is required by law.

The man then made a written request for the information in the form of five questions. He received a response from the city attorney that he could come to city hall to review the records. He told us that arthritis in his hands makes it hard to leaf through a stack of documents. We spoke with the city attorney, who took the position that city employees are obligated to provide public records, but should not have to dig through the records, find and give answers to the citizen's questions. After the man followed our suggestion to re-frame his questions in the form of a request for records, he received the documents containing the information that he wanted.

Door Locks Shortly After the Meeting Starts

A library board held a public work session in a building, the door to which became locked during the meeting. Iowa law requires open meetings to be accessible to the public. As a result of our inquiry, the board agreed to vote again on one controversial agenda item at a subsequent public meeting. The board also agreed to stop holding work sessions in that building, since keeping it unlocked would require an additional staff person for security.

Public Records, Open Meeting Resources

- **Every month the Attorney General's office publishes an easy to read "Sunshine Advisory" which interprets the basic nuts and bolts. Go to: www.state.ia.us/government/ng/sunshine_advisories/index.html**
 - **The Iowa Freedom of Information Council publishes the Iowa Open Meetings, Open Records Handbook. Twelfth edition copies can be obtained (for a fee) by calling the Council at (515)271-2295 or go to: www.drake.edu/journalism/IFOICWebSite/index.html**
 - **In 2004 the Attorney General's office, the Iowa State Association of Counties, and the Citizens' Aide/Ombudsman office conducted a two-hour Public Records Law Training Course for Public Officials over the Iowa Communications Network. The tape is available by contacting Assistant Ombudsman Angela Dalton at 1-888-426-6283 or by contacting ISAC at www.iowacounties.org**
 - **Local government officials can also get more information and training from the Iowa League of Cities, the Iowa State Association of Counties, and the Iowa Association of School Boards.**
- If these resources do not answer your questions, please contact our office, your attorney, or the attorney working for the governmental body.**

Do You Need a Subpoena to Access Public Records?

We received a complaint that a police department was requiring subpoenas issued by a court for all requests for investigative reports, even on closed cases. We notified the city attorney and city administrator that this was occurring and that we believed this practice violated Iowa law.

We informed city officials that Iowa courts have interpreted the open records law to say that confidentiality of law enforcement investigative files are a qualified, not absolute, privilege, and the agency has the burden of showing why the files must be kept confidential. In response, the police department stated it would 1) cease the practice of requiring a subpoena in order to request investigative files, 2) make a determination on a case-by-case basis which records or information should be kept confidential, and 3) inform staff of this revised practice.

How Long Before a Response

A city had not yet responded to a records request when we contacted the city clerk 23 days after the request. Iowa law states that a delay in providing a record should not ordinarily exceed 10 business days and shall not exceed 20 days for the purpose of determining whether a record should be open for inspection. It became clear during our inquiry that a response was not being prepared and that the clerk had little knowledge of the time restrictions. We educated the city clerk about the law and were able to get the records shortly thereafter.

When Privacy Can Matter

A child protective worker revealed the new home address for the child and mother to the mother's former husband. The woman had a no-contact order against her ex-husband, who was incarcerated, but would soon be released. The worker initially stated she was not aware of the no-contact order. However, the woman asserted she told the worker about the beatings and family difficulties caused by her ex-husband, as well as the no-contact order. We found the woman to be credible. We informed the agency we believed the worker should have asked more questions and determined if the address information should be shared with the former husband. The worker, realizing what had happened, on her own initiative apologized to the mother for the revelation.

Public's Right to Tape an Open Session

A citizen initially contacted us with concerns about actions by the city council and the city clerk at meetings. When we suggested he record a meeting, the citizen said there is a sign in the city council chambers stating recording of meetings is prohibited. Iowa law does not prohibit a member of the public from recording an open meeting. The citizen informed the council of this at a subsequent meeting, but the sign remained. We then inquired to the mayor about the legality of the sign, and the mayor immediately said it would be removed. The mayor said the purpose of the sign was to prohibit certain citizens from interfering with the council meetings; however, he could not provide an example of how a recording device has interfered with a council meeting.

Board of Supervisors Accommodate Large Crowd

At times the number of citizens wanting to see or hear a government body deliberate an agenda matter may exceed the space capacity of the regular meeting location. A man contacted us concerned this would likely occur at an upcoming county board of supervisors meeting. He had tried unsuccessfully to get county officials to change the meeting location to accommodate a larger crowd. We contacted the board chair, who agreed to change the location so all anticipated attendees could participate in the meeting. The board proposed to hold the meeting outdoors, and to use a public address system to ensure all the participants could see the board and hear its discussion and comments by citizens.

Sorry, The Meeting Is Closed

A resident tried to attend a city council meeting about hiring a new city clerk, and the mayor told him the meeting was closed. The meeting agenda did not indicate a closed session. No one gave a reason for closing the session, and the council did not vote to close the session. The resident also said the city often did not post agendas for meetings.

Iowa law requires meetings of government bodies to be open unless a specified exemption applies. It also requires the city council to state the reason and to vote on closing the session.

We reviewed the minutes of the meeting, which verified no reason was given for the closed session and no vote was taken. The mayor admitted the errors, noting this was the first closed session in two years. The mayor also admitted the closed meeting was not tape recorded as required by law. The mayor acknowledged the city did not always post an agenda and mistakenly thought cities under a certain size did not have to post agendas.

We sent open meetings/open records handbooks to the mayor and council members and advised them to also review the Attorney General's "Sunshine Advisories." They agreed to attend trainings regarding open meetings and open records. We contacted the resident six months later and confirmed there had been no further violations of the open meetings law by the city council.

Can We Talk...

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

Address: Ola Babcock Miller Building
1112 E. Grand Avenue
Des Moines, IA 50319-0231

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

Fax: 515-242-6007
TDD: 515-242-5065

ombudsman@legis.state.ia.us
www.legis.state.ia.us/ombudsman

Ombudsman's Message (Continued from page 1)

the affected individuals of a breach of security upon discovery of the breach. The bill defined “personal information” as an individual’s first name or first initial and last name in combination with one or more data elements from a specified list.

2. Clarify some aspects related to my office’s handling of whistleblower complaints.
3. Amend the Iowa civil rights act by expanding the definition of a “public accommodation” to include jails and other penal, correctional, and detention facilities of the state and its political subdivisions.
4. Require a preliminary death investigation to be conducted by the county medical examiner in the event of the death of a person committed or admitted to certain state facilities administered by the Department of Human Services.

In addition to these legislative proposals, we also actively provided input to a freedom of information interim study committee and the legislative process which followed. This and other important work my office did in 2007 in the areas of public records, open meetings, and privacy are discussed in more detail by Assistant Ombudsman Angela Dalton in her column on page three. It is notable the number of contacts on these subjects increased and the proportion of substantiated complaints went up.

Since creating a special assistant ombudsman position to focus on public records, open meetings, and privacy issues in July 2001, my office has received an ever increasing number of inquiries, information requests, and complaints about such issues. We receive several of them every week. When we identify the more egregious, repeated violations, and problems with these laws, we will speak out through recommendations to agencies, published reports, and referrals for prosecution when appropriate.

Some of these issues were addressed in an omnibus freedom of information bill (Senate File 2411) that ultimately failed to pass the General Assembly in 2008. A significant piece of the bill was the creation of an independent administrative board to enforce Iowa’s open meetings and open records laws. Since the bill did not become law, current enforcement options remain the same as they have been for years. I intend to more frequently exercise the discretionary authority of my office to refer what I believe to be violations of Iowa’s public records and

open meetings laws to the Attorney General or appropriate county prosecuting attorneys. In addition, I will continue to inform the Legislature when we find practices that violate the spirit and the letter of our public records and open meetings laws, or when we believe changes to the laws are needed. My office will continue to be engaged in any legislative developments in the future.

Other special projects we undertook in 2007 included: hosting delegations of public officials or individuals in leadership roles who visited our office from Nigeria, Ukraine, Russia, Tajikistan, and Taiwan; conducting a review requested by the Department of Corrections of that department’s grievance policy; presenting trainings to the annual jail school; and reviewing the treatment of offenders in prisons diagnosed with hepatitis C.

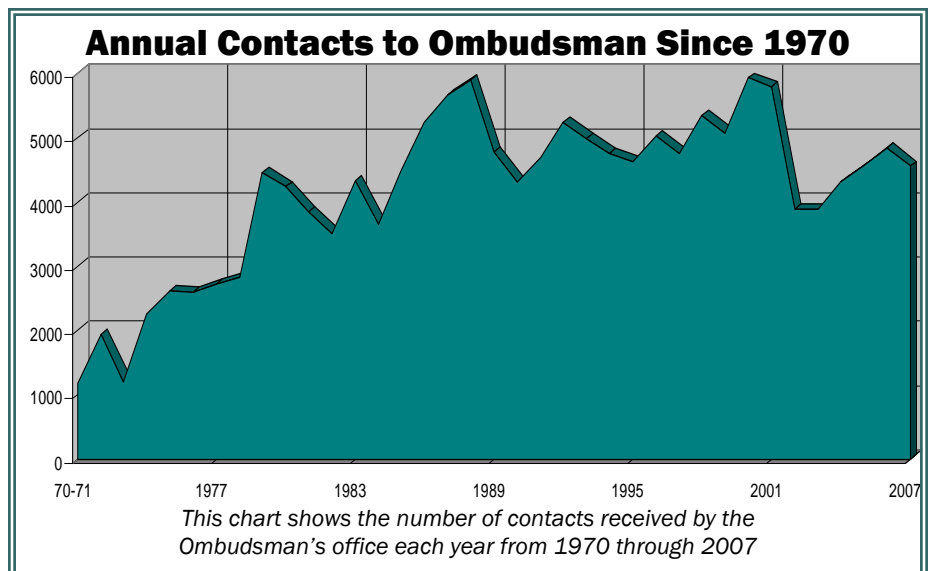
The Iowa Ombudsman office continues to be a leader in the ombudsman community both nationally and internationally. Deputy Ombudsman Ruth Coperrider completed her term as President of the United States Ombudsman Association in 2007. As the past president, she continues to serve on that association’s governing board. Each year legislators and other policy makers across America contact our office to advise them as they consider establishing their own state or local ombudsman office.

I continue to serve as president of the International Ombudsman Institute; my term will end at the 2009 World Ombudsman Conference in Stockholm Sweden, when I chair the quadrennial assembly of ombudsman from around the world. This honor and responsibility has allowed me to meet many of the world’s ombudsmen and learn from them about the best practices they follow and also

gives Iowa exposure to international visitors. Because of my involvement, we had an official visit to my office in 2007 by a delegation from the Control Yuan, which serves as the ombudsman office for Taiwan.

One particularly valuable product of the ombudsman associations we maintain was an invitation for two of my assistants to attend a “Sharpening Your Teeth” training program presented by the Ontario Ombudsman this past December. Since becoming Ombudsman for the Canadian province of Ontario, Andre Marin and his staff have developed a very proactive watchdog approach to identify issues and undertake several systemic and major case investigations annually. While the Ontario Ombudsman has a much larger office than Iowa—they have approximately 80 employees while my office employs only 16—we have already implemented some of the lessons learned from this opportunity, and I hope to undertake more systemic investigations in the future.

As for my staff, the end of 2007 marked a milestone. Long-time Assistant for Corrections (prison ombudsman) Judith Milosevich retired after almost 17 years of service. Among her enduring contributions, Judi worked to ensure that polices and practices were fair and consistent across Iowa’s prisons and community based corrections facilities. She was an early and dedicated advocate for the diagnosis and proper treatment of mentally ill inmates in our state. Judi’s values and experience will be missed. However, I am fortunate to have hired a very talented and committed successor, Eleena Mitchell-Sadler, whose introductory column is found elsewhere in this report.



The Expectation of Privacy: Personal Information in Public Records

An inherent conflict exists between an individual's access to public records and their right to privacy. According to Beth Givens, the director of the Privacy Rights Clearinghouse, a nonprofit consumer information and advocacy organization, "One of the most challenging public policy issues of our time is the balancing act between access to public records and personal privacy—the difficulty of accommodating both personal privacy interests and the public interest of transparent government."



Kristie Hirschman
Assistant for
Small Business

Many government bodies in Iowa require individuals to provide personal information, including social security numbers, before an individual can receive a service or acquire a license. These documents are public records that are available to anyone who requests them, unless they are specifically identified as confidential in law. The availability of personal information on public records can expose unsuspecting citizens and businesses to the risk of identity theft. Our office has received complaints about what information should be part of a public record, as well as complaints about the lack of precautions in the destruction of records containing personal and/or confidential information.

Technology adds another dynamic to the availability of public records. On-line database searches, implemented for the convenience of citizens, businesses, and government bodies, allow anyone with computer access to view and print public records, some of which contain social security numbers and other personal information. Where the information is not available on-line but is stored in an electronic format, hackers may still be able to access the files. In addition, the exponential growth in the use of portable computers and mobile devices multiplies the risk of loss or theft, resulting in the unexpected release of confidential and personal information.

Ironically, while the Iowa Attorney General's website advises citizens to protect their social security number to avoid identity theft, few sections of the Iowa Code prohibit government bodies from using or releasing social security numbers on public records. Compounding the problem is that Iowa law rarely affords government bodies the authority to redact social security numbers from public records.

The Ombudsman proposed legislation

for the 2007 legislative session that would have minimized the fraudulent use of social security numbers by giving government bodies the authority to redact social security numbers from public records. The bill would have required government bodies to provide notice of a breach of security to the affected persons in situations where illegal use of the personal information has or may occur. Furthermore, when government bodies decide to dispose of their records, the bill would have required them to take all reasonable steps to remove or destroy those records containing personal information. Government bodies also would have had to implement and maintain reasonable security procedures and practices to protect the personal information from unauthorized access, destruction, use, modification, or disclosure. The bill did not make it out of subcommittee before the legislative session ended.

Our office then proposed a modified version for the 2008 session, Senate Study Bill 3116 and House Study Bill 617. Again, the purpose of our "Personal Information Protection Act" was to require government bodies to proactively and reactively address unauthorized access of personal information collected, maintained, or possessed by a government body. During the session, similar pieces of legislation pertaining to the notification of security breaches were introduced by legislators; these proposals were applicable to both government bodies and businesses. One of these bills, Senate File 2308, ultimately moved forward through both the House and the Senate.

At our request, an amendment expanding the definition of "personal information" was adopted. Our office felt it was important to recognize the changes and advances in biometrics, the science and technology of measuring and analyzing biological data. Biometrics includes technologies that measure and analyze human body characteristics, such as fingerprints, eye retinas and irises, voice patterns, facial patterns, and hand measurements, for authentication purposes. An example of the application of this technology in Iowa government is the November 2, 2006, announcement by the Iowa Department of Transportation of a contract with Digi-marc Corporation for facial recognition software aimed at reducing identity theft by insuring that just one license is issued to each applicant. The revision included unique biometric data, such as a fingerprint, retina or iris image, or other unique physical or digital representation of the biometric data in the definition of per-

sonal information.

Senate File 2308 was signed into law by the Governor on May 9, 2008. The new law will apply only to computerized data, whereas our proposal would have applied to all public records. In addition, the new law will not require notification if, after investigation or consultation with law enforcement, it is determined there is "no reasonable likelihood of financial harm to the consumers." Our proposal would have required security breach notification as soon as the record was breached, regardless of the risk. Nevertheless, we are pleased Iowa is no longer 1 of only 11 states without a breach of security law applicable to businesses and government bodies that maintain computerized data containing personal information.

Of note is the additional provision for the Legislative Council to "establish an interim study committee to assess and review the extent to which public officials, entities, and affiliated organizations in possession of or with access to personal identifying information of a resident of this state which could, if disclosed, render the resident vulnerable to identity theft, are disclosing or selling such information for compensation." This addition was the result of a joint Senate and House Conference Committee report. Our office believes this is an appropriate and timely topic for review and assessment, and we look forward to the opportunity to participate and offer input to that discussion. Since Senate File 2308 did not address the issue of destruction of records containing personal information, we hope it will be included in the study committee's agenda.

Although Senate File 2308 also did not include provisions for implementation of security standards, this issue may well be addressed at the state level with the implementation of "Removable Storage Encryption Standard" by the Iowa Department of Administrative Services (DAS). According to the DAS's website, "[t]his standard establishes minimum requirements for the encryption of removable storage devices and media including USB flash drives, portable hard disks, CDs, DVDs, floppy disks and others, to protect State data resources." The DAS contract also allows political subdivisions to purchase the encryption software.

Our office will continue to actively review and respond to complaints about the intentional and unintentional release of personal information. We also intend to continue to monitor and make recommendations to further safeguard personal information in public records.



Department of Human Services

Assistant for Child Welfare

The Assistant Ombudsman for Child Welfare helps the Iowa Ombudsman identify and examine issues and recommend improvements to how the state oversees the care and protection of its children. Our office works to promote fair and responsible policies and practices affecting children and families needing governmental services for health and education needs or protection from abuse or neglect. This is done in several ways, including responding to child welfare complaints, reviewing programs, conducting special investigations or special projects, publishing critical reports, and recommending policy, rule, or statutory changes.



Barbara Van Allen
Assistant for
Child Welfare

The Ombudsman provides citizens with information on child-serving systems and programs within Iowa and serves as an avenue through which citizens may express their concerns for the children and families who are served by such systems and programs. Contacts received about child welfare concerns allow the Ombudsman to identify trends and issues in the state system that need to be addressed.

From January 1, 2007, to December 31, 2007, the Ombudsman's office received over 452 contacts from citizens who had questions or concerns regarding children served by the state. Of the 452 contacts handled by the Ombudsman staff, we categorized 195 as child welfare matters. Common questions or concerns in this category are about:

- Child abuse reporting, investigations, and assessments
- Appeal rights related to child abuse assessments and other governmental and administrative actions taken pertaining to child-serving health, educational, support systems, and programs
- Juvenile court proceedings, including delinquency and child in need of assistance actions
- Family preservation and family-centered services
- Removal of children from their care providers; placement in foster care system, or with relatives or non-relatives; termination of parental right proceedings
- Transitional planning for older foster care children
- State operated facilities: mental health institutes in Cherokee, Independence, Mt. Pleasant and Clarinda; resource centers at Glenwood and Woodward; and juvenile facilities in Toledo and Eldora.

We categorized 114 contacts under child support. Common questions and concerns relate to:

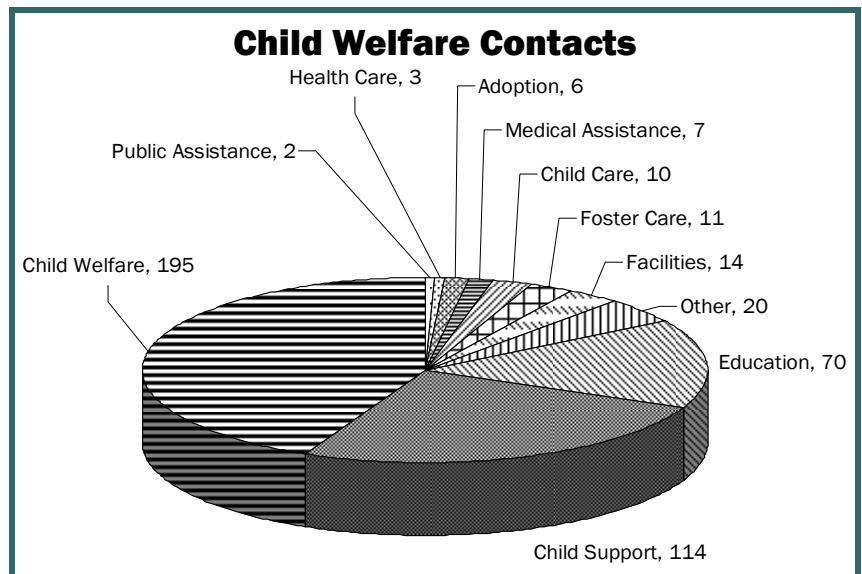
- Establishment of paternity and child support orders
- Collections of support and enforcement methods
- Review and adjustment or modifications of support orders

- Medical support orders
- Hardship requests
- Accounts—delinquency or amount of past due obligations
- Appeal rights
- Application of child support guidelines

In my role as the Assistant Ombudsman for Child Welfare, I serve as our office's representative on the state's Child Support Advisory Committee. The Committee reviews issues that are raised at its bi-monthly meetings and makes recommendations for changes or improvements. This includes making recommendations every four years to a committee of experts designated by the Iowa Supreme Court to review the child support guidelines under federal and state law.

Seventy of the contacts to our office in 2007 were in the category of education. Approximately half of those contacts involved allegations of student bullying or harassment by another student or teacher. Since school boards, public schools, and accredited nonpublic schools are now required by law to have a new anti-bullying/anti-harassment policy, our office has been attempting to encourage parents or other interested parties to obtain a copy of the policy. The policy must include, in part, a definition of harassment and bullying that is consistent with the definition provided by law, and which includes all of the following 17 traits/characteristics: real or perceived age, color, creed, national origin, race, religion, marital status, sex, sexual orientation, gender identity, physical attributes, physical or mental ability or disability, ancestry, political party preference, political belief, socioeconomic status, or familial status. The policy must also have procedures for both reporting and investigating bullying or harassment complaints.

Our office received a few contacts about public assistance, which includes child care, financial, and food stamp assistance. In addition, there were a few contacts about health care or medical assistance services, which include the Medicaid/ Title 19 program and waiver program for handicapped, mental illness or mental retardations, and physical disability services.



Officer Takes Child's Safety Seriously

A county deputy sheriff was concerned neither the parent nor the state was protecting a child. The officer had removed the child from a situation where her parents were drinking and fighting. He had reported to the Department of Human Services (DHS) that the child was neglected. He had also arranged for the child to stay with the child's grandmother.

The officer contacted our office when he found out the DHS staff did not communicate with him or the child's school about who would pick up the child after school. The child's 17-year old sibling had picked her up from school and had taken her to the mother's home. The officer was concerned about the child's safety back in the mother's home.

He then spotted the child with the mother near a bar and suspected the parent had been drinking again. The officer arranged with a different child protective worker to remove the child from the mother's home.

We made an inquiry to the DHS. The original child protective worker had the child's parent sign a safety plan in which the parent agreed to cooperate with services and submit to random urinalysis. The worker thought this was sufficient.

However, the worker's supervisor admitted the safety plan failed to include provisions stating the mother would not drink and also would not have contact with a potential abuser. It also failed to state the parents should have no contact due to domestic abuse. The worker also did not provide sufficient information to the supervisor so she could make an informed decision about returning the child to the parent. If the supervisor had received all the information, removal of the child would have happened more quickly. The supervisor counseled the worker about these concerns.

Billing Error Resolved. . .Finally

A care provider who provides residential care for disabled people had contacted our office after trying unsuccessfully to resolve a billing error by the Department of Human Services (DHS).

Provider staff initially overcharged the DHS, billing it for 27 days rather than 24 days in February 2006. Provider staff found the billing was in error and in April 2006 submitted a credit/adjustment request correcting the bill. The request asked that \$890.88 be subtracted from a future payment. When the agency made the adjustment, \$2,426.88 was subtracted from the provider's payment, resulting in a shortage to the provider of \$1,536.

We made an inquiry about this error to the DHS. The agency was finally able to resolve the situation in August 2007. The DHS admitted the provider submitted three adjustment forms, each of which should have resolved the situation. Only after we became involved did a DHS worker direct the claims unit to manually price the claim rather than allow the computer system to price the claim. The provider was then paid the proper amount.

The problem in this instance appeared isolated. The provider has had no other problems and the DHS reports no other providers have reported problems. The provider now has a DHS contact person if problems arise in the future.

Getting Only Half the Story Has Serious Consequences

A man initially contacted the Ombudsman concerned the Department of Human Services (DHS) would not allow him to have contact with his step-daughter. The girl had not lived with him and his wife (the girl's mother) for a couple of years as a result of a DHS finding that he had sexually abused her. The abuse was alleged to have occurred approximately six years before the DHS investigation, when the family lived in Michigan. The man told us that he was never interviewed before the DHS issued its founded report. Although he appealed the decision, the DHS claimed he missed the deadline and any appeal would not be considered.

We reviewed two "founded" assessments and discovered there was no indication that the DHS worker contacted the man for an interview before making the finding on the first assessment. The second assessment was initiated when the man and his wife tried to allow the girl back into their home at the girl's request, and an emergency removal action was taken. The DHS worker who prepared the second assessment noted the failure of the first assessment to interview the man. Despite noting this failure, DHS took no action to correct its mistake or to change its finding on the first assessment.

Based on our research, we concluded the DHS violated the man's constitutional due process rights when it denied him an opportunity to be heard. The DHS also violated Iowa law and its own manual, both of which require offering an interview to an alleged perpetrator prior to making any determination whether that person committed abuse. Unfortunately, this failure led to the man and his wife being separated from their daughter, the girl's second removal from their home, and a second assessment being conducted due to the findings of the first assessment.

We shared our concerns with the DHS director. The DHS admitted its failure to interview the father and agreed to re-interview him and his step-daughter. DHS later reported that the step-daughter recanted the allegations of abuse. The DHS then amended the assessment finding to "not confirmed," and allowed the girl to move back home with her parents.

[Note: Our office is currently investigating another incident of the DHS failing to interview an alleged perpetrator before issuing a founded abuse report].

The ombudsman system is based on the principle that everyone has a right to have his or her grievances against the government heard, and if justified, satisfied. The Office of the Citizens' Aide/Ombudsman provides Iowans a non-partisan independent agency where action can be taken to resolve their complaint.

The Check is Not in the Mail

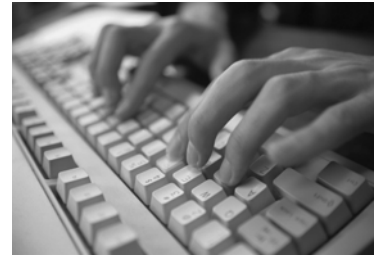
A woman contacted our office after learning she would not be paid for the day care services she had provided in the children's home. We found the parent and the child care provider had been notified in May that the Department of Human Services (DHS) would not pay for in-home day care because only one of the three children qualified for day care assistance. By rule, three children in the home must qualify before the DHS can pay for in-home child care services.

However, another document was subsequently submitted by the child care provider and was approved by the DHS. The document indicated she could provide services in the children's home. The document listed an effective date of May 1, 2007, but was not signed by the DHS until June 28, 2007. When the child care provider submitted her May and June invoices for payment, she was informed she would not be paid unless she was approved as a non-registered provider. She was not able to meet the requirements for a non-registered provider.

We agreed the child care provider should not be paid from that point forward. However, we thought the DHS should allow an exception to policy in this case to pay for prior services due to the conflicting documents. Although the DHS staff in its field office resisted filing an exception to policy, staff in its central office agreed to file the request for an exception. The request was approved and the child care provider received payment for the entire period she provided child care for the one child in his home.

Top Ten: Government Websites

We've put together a list of ten websites that will quickly put you in touch with almost any facet of state and local government in Iowa. This is certainly not an exhaustive list, but one that should help you get started in finding whatever you might be looking for.



1. Official State of Iowa website—www.iowa.gov
2. State agencies—www.iowa.gov/state/main/govagencies.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/Links.aspx
8. Iowa law—www.legis.state.ia.us/IowaLaw.html
9. "Sunshine Advisories"—www.iowaattorneygeneral.org/sunshine_advisories/ (primers on the Open Meetings and Public Records laws)
10. Citizens' Aide/Ombudsman—www.legis.state.ia.us/ombudsman



Extra Milers

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



Major Vic Munoz, Jail Administrator, Polk County Sheriff's Office—for his quick and thorough response to jail problems.



Tania Porter, Health Services Director, Polk County Jail—for her quick and thorough response to jail health complaints and her willingness to work directly with our complainants.



Jody Smith, Director of Administrative Services, city of West Des Moines—for initiating a common-sense move to lower fees for residents who seek home improvements that conflict with zoning rules. Smith recognized that costly surveys were no longer necessary with new mapping technologies and proposed an elimination of fees for notice to nearby residents. As a result, residents who used to pay \$578 to request a variance now pay just \$200.



Corrections

DOC Responsive to Prison Stairwell Requiring Repair

Every now and then we receive a complaint that demands immediate action. This was the case with a letter from an offender describing a problem with a stairway in a prison housing unit. He said the problem began after an offender fell through the stairs because they were “rustied out.”

The offender claimed prisons officials had closed the stairway, which reduced access to and from the unit, and feared that he and others could get trapped in case of an emergency. He noted, “There are medical and special needs inmates up in this unit (we are at the very top of the unit, and have to go up four flights of stairs just to reach the upper unit), along with orientation inmates who do not know their way around the unit/institution yet in the event there is an emergency.” It was his understanding the stairway would be closed until the prison had the money to fix it. He said the stairway “needs immediate attention for sake of health/safety.”

We contacted the prison’s warden the day after receiving the letter, noting that this appeared to be a significant situation. We had a series of communications with the warden over the following week. We also contacted the State Fire Marshal’s Office to ensure they were fully aware of the situation, as well as the Department of Corrections’ safety officer.

In response to our initial inquiry, the warden denied that they planned to leave the stairway closed until they had enough money. “Absolutely untrue—we have no choice, we must rebuild the staircase even if we cannot afford it,” the warden wrote.

The following week the warden reiterated his intent to fix the stairway and added:

- The problem was created when the second stair from the bottom broke. The inmate who was on the stairs at the time was not injured and reported it immediately.
- There was no need to have a structural engineer assess other stairways and similar structures. “These stairs had a particular issue,” the warden wrote. “It is an exterior staircase that, for a number of years, was only partially enclosed and was subject to the weather and (even worse) the use of salt for control of ice and snow. The area is now fully enclosed—but a good deal of damage was done. It is the only staircase of its type in the facility.”

We also found that the prison’s safety officer had reviewed the revised exit routes and exit plans and found them to be in full compliance with standards adopted by the state. At our request, the State Fire Marshal’s office sent an inspector to assess the situation from a fire safety (and evacuation) perspective. The inspector reported back that he found no problems.

The stairway was reopened about two months after being closed. In our closing letter to the offender, we wrote: “Based on the information available to me, I cannot conclude [the prison] acted unreasonably or otherwise objectionably in responding to the incident involving the stairs.”

17 Years Lost/17 Years Gained



Eleena Mitchell-Sadler
Assistant for Corrections

After almost 17 years as the Assistant Ombudsman for Corrections in our office, Judith Milosevich retired in the last week of 2007. Thereafter, I assumed the position of Assistant Ombudsman for Corrections, having had nearly 17 years of experience in jail and prison settings.

I have held various positions in corrections, including correctional officer, sergeant, and training specialist. Other duties I was assigned gave me a vast array of experiences.

Serving as chair on institution committees, being selected as a representative of the institution for trainings, and being given the task of offender work crew coordinator—while still fulfilling my main duties—are just a few examples of the types of previous experiences I have had.

However, the one duty I most attribute to my selection as the Assistant Ombudsman for Corrections was serving as an acting administrative law judge (ALJ) for nine months in 2007. I believe the ALJ has a unique role within the institution. The ALJ must be an unbiased, disinterested party in order to sort the facts, and render a decision that may involve federal or state law and departmental policies and rules. It is important that the rulings issued by an ALJ fit the violations and be reasonable.

Although I was employed by the Iowa Department of Corrections (DOC) for some time, one goal before the end of my first year as Assistant Ombudsman for Corrections is to visit each state prison and to develop good working relationships with DOC officials and staff.

As a continuation of Ms. Milosevich’s involvement with corrections-related groups or activities, I attend meetings of an ongoing mental health study group, speak at the Iowa Law Enforcement Academy’s Jail School, and am a new member of the Criminal and Juvenile Justice Planning Institutional Review Board.

I believe strong leadership and training is a huge part of having a successful organization and delivering quality services within an institution. For that reason, I plan to look below the surface of complaints in order to determine if there is a systemic problem and if there is a more effective, efficient way of operating or conducting business in order to avoid frustrations in the future.

Ms. Milosevich reported last year that the DOC, acting on the recommendations of a 2004 Ombudsman’s task force report, found on-line training through the National Institute of Corrections for correctional staff. This course, “Supervising Offenders with Mental Illness,” helps staff to better recognize symptoms of mental illness and offers ways to better manage and work with that population.

It was reported last year that 47 DOC employees had completed the course and earned certificates. The employees were selected to complete the course based on their positions or the special roles they had within the prisons. Now, over 500 employees who interact with offenders in a variety of ways have completed the course. This is leadership and training making a difference.

Access to State Library by Offenders

An offender from a state prison contacted us because he was no longer able to obtain information from the State Library. Although he had previously obtained information directly from the library, his request was returned with a letter stating the library was no longer providing information directly to offenders.

Prison officials initially told us that offenders were to request materials from the State Library through their facility's librarian or activities director. There had been a time period when offenders were obtaining documents directly from the State Library because a library official relaxed policies and allowed them to. Under new management, library staff determined they did not have sufficient time to fill all requests from offenders. Library staff and prison officials jointly decided to go back to the original procedure for offenders to process requests through their facility librarian or activities director.

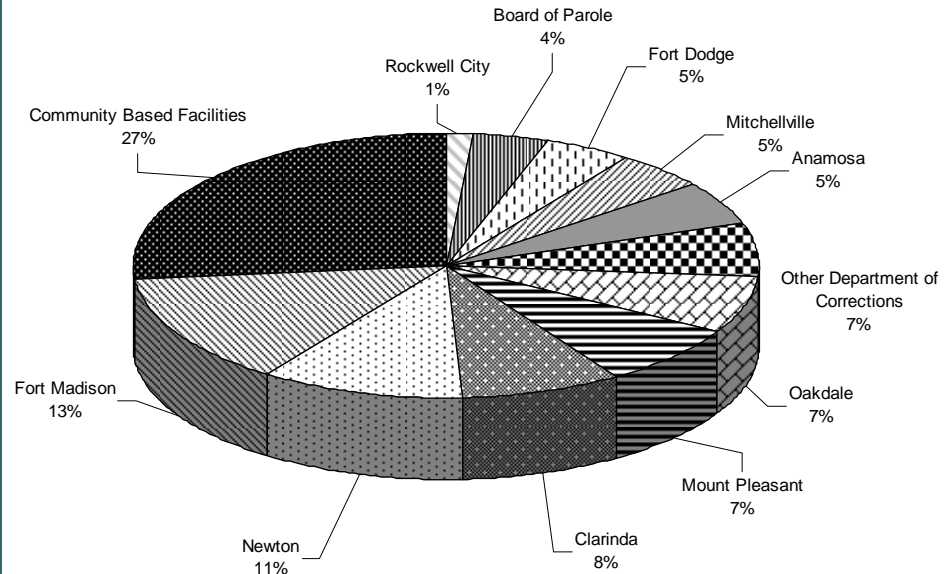
We contacted library staff to discuss the policy and find out how much they charged the facility for copies. Library staff stated that since the policy was changed, the library had received almost no requests. The librarian said they wanted to control the flow of requests, not stop them. We also contacted several prison librarians and activities directors and determined they were not aware they were to obtain the materials for the offenders from the State Library.

Prison officials and library officials agreed to meet with us to discuss this further. An agreement was reached that the State Library would take requests directly from offenders, limiting each offender to a certain number of copies per month. They informed their staffs of this change. Library staff subsequently verified offender requests were coming in and were manageable.

Our Services Are Available to:

- **All residents of the State of Iowa, including those confined in state institutions.**
- **Persons from other states and countries who may have complaints against agencies of Iowa government.**

Source of Corrections Contacts



This chart shows the proportion of contacts opened by the Ombudsman's office in 2007 involving various corrections-related agencies.

Restriction on Mailing Inmate's Art Lifted

An offender sentenced to life in 1984 for murdering a relative was twice disciplined by prison officials for defying an order not to mail artwork outside the institution without approval. The offender, an accomplished artist, said he had taken to writing the name of his victim on the back of his drawings as a way to memorialize her. Prison officials ordered the offender to cease naming or even implying the name of his victim on future artwork and began to monitor his mail. These measures were taken after the offender mailed a drawing to a family friend, who forwarded the artwork to the surviving relatives of the offender's victim.

Our legal research revealed that inmates do not generally forfeit their First Amendment rights by being in prison. Generally, mail may be censored or confiscated only if its contents compromise the security and order of the institution or the rehabilitation of the inmate. After an extended conversation on the matter, the warden at the prison agreed to stop regular monitoring of the offender's mail. The warden also lifted restrictions on the offender to include his victim's name on his artwork, so long as the drawings were not intended for the victim's family.

Offender Served with a Detainer Gets Help Connecting to Attorney

Sometimes people in prison are served with a detainer for failing to appear in court on a criminal charge unrelated to the one they're serving time for. And so it was with a man in a state prison. After being served with the detainer, he wrote letters to the county sheriff, clerk of court, and county attorney's office asking them to explain what he needed to do. However, nobody responded so he wrote to our office. We in turn contacted the county attorney's office. A prosecutor said she checked the file and found no letters from him.

The prosecutor said the detainer resulted from the man's failure to appear for a probation revocation hearing in 2006. If he is found guilty, he might face some jail time. The prosecutor also said it appeared the attorney who had been representing the man on this charge had since been disbarred, and that may be why it had not been dealt with. Because of the unusual circumstances, the prosecutor called the head of the county public defender's office who said he would be willing to be appointed to represent the man on this charge.

We relayed this information to the offender, including how he can contact the public defender.

After receiving a complaint about a prison or jail, we review the relevant information and decide whether staff:

- Followed the law and institution policy
- Acted reasonably and fairly

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

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

Safety Precautions Apply to Inmates Too

Should inmates have access to Material Safety Data Sheets (MSDS) when they are forced to use chemicals during the course of cleaning their cells? If the cleaning was done by a county employee, this would not be an issue. All employees have access to MSDS information in order to handle chemicals safely. However, inmates do not. Instead they rely upon the knowledge of the deputy supervising the use of the chemicals.

In a case our office investigated, jail staff wore gloves when handing out chemical-soaked rags to the inmates to clean their cells. However, they did not provide that same type of protection to the inmates who actually did the cleaning.

We discussed the matter with the Iowa Division of Labor, which informed us the jail has the obligation to provide the inmates with the protective gear the MSDS requires. We pointed out that obligation to the jail administrator, who agreed in the future to instruct the officers to give gloves to the inmates without requiring the inmates to ask for them first. He also agreed to review with his staff the MSDS safety precautions as they apply to both employees and inmates.

When a Positive Drug Test Isn't Positive

A woman serving time in a residential facility for illegal drug use insisted that she was drug-free at the time a surprise test implicated her as a user. Corrections officials said that an advanced test at an independent laboratory confirmed the illegal drug use, which resulted in the offender being penalized for the act.

We called the laboratory and discovered the corrections officials were mistaken—no confirmation test was done. When the test was ordered, it was found a cold medicine was to blame for the false reading. The offender's record was wiped clean of the purported violation.

An Apology Can Make a Difference

An offender who was granted an out-of-state parole was bothered that it took two months for the appropriate paperwork to be filed. He had filed grievances, and responses from correctional staff were that the paperwork was filed appropriately. He asserted to our office that this was not true, and just wanted staff to admit they delayed in filing the paperwork and to apologize.

We investigated his concern and confirmed that the process should not have taken two months. Each facility has the proper forms to initiate the parole process before the Parole Board even grants an out-of-state parole. The superintendent of the facility admitted they had made a mistake and was willing to apologize to the offender for the delay.



Other Agencies

To Hyphen or Not to Hyphen—That is Important for a Name

The correct spelling of a person's name is quite important to an individual, especially when it is on an official state birth certificate. One citizen had difficulty getting a simple hyphen removed between the two words intended to be the middle name for both his wife and their infant son, as shown on the son's birth certificate. The last word of the two-word middle name was the same as the wife's maiden name.

The Department of Public Health (DPH) is responsible for birth certificates and had adopted a policy to automatically insert the hyphen. Upon the citizen's request, the DPH agreed to remove the hyphen in his son's name but refused to remove it in his wife's name. The citizen objected because he felt that the DPH had both arbitrarily changed the name they as parents had given the child and had arbitrarily altered the wife's name from her legal name. In addition, the family had close relatives living abroad and would be making frequent visits outside of the United States. He was concerned the difference between his wife's name on the birth certificate and her name on other official legal documents could potentially cause problems for their travels.

We verified the DPH had refused to modify the wife's name on the birth certificate to conform it to her legal name, as it was submitted on the son's birth certificate application. We found the DPH had not adopted administrative rules to implement its automatic hyphenating policy.

With our assistance, the citizen brought the issue to the attention of DPH director, the Administrative Rules Review Committee, and indirectly, the Governor's office. The DPH reconsidered the citizen's request and agreed to remove the hyphens inserted in both the wife's and son's names. The DPH also agreed to change its form by modifying the line for the "mothers' current legal name" to allow the mother's name to be separately identified.

Tax Amnesty Notice Unexpectedly Leads to Tax Debt Being Absolved

For one Colorado resident, Iowa's tax amnesty program really worked—in an unexpected way. The Iowa Legislature created the tax amnesty program in 2007 to facilitate payment of back taxes owed by waiving the interest and penalties for taxpayers who either paid their back taxes or entered into approved payment plans to do so.

The individual was notified he was eligible to participate in the tax amnesty program to pay approximately \$8,000 of back taxes, penalties, and interest arising from his failure to file a state tax return several years earlier. He told us he had been in the military and that, although he was married to an Iowa resident, he was never a resident of Iowa nor earned money in Iowa.

We assisted the individual in contacting appropriate authorities within the agency and to protest the underlying tax debt. The individual submitted proof that during the tax years in question, he was a resident of Nevada and had no Iowa income. Upon further review, the agency agreed to remove the tax debt, which also eliminated the penalty and interest.

Flying Iowa Flag with US Flag

Not many people would have thought twice about it, but a patriotic citizen noticed the Iowa flag was flying even with the United States flag at the Iowa State Historical Building, and called us to complain. By law the Iowa state flag is to be flown “subservient to and placed beneath the stars and stripes.” After we notified the state agency responsible for taking care of the flags, the flags were adjusted so the United States flag is flying several feet above the Iowa flag.



A Driver's Nightmare

It is bad enough to be pulled over and ticketed for having a tail light out, but a driver contacted us because he was also ticketed for driving with a suspended license. This was a shock to him because he had not received a notice of the suspension.

Eight months earlier he was in a car accident. The insurance company had paid and everything was taken care of—or so he thought. The Department of Transportation (DOT), the licensing agency, contacted the insurance company listed on the accident report. The insurer responded they could not find a policy for the driver. In accordance with established procedures, the DOT suspended the driver's license.

We put the DOT in touch with the driver's insurance adjustor. After the DOT staff spoke with the insurance adjustor, it rescinded the suspension and removed it from the driver's record.

Four Months of “Red Tape” Resolved in Three Days

A woman complained a hospital claimed she still owed money for health services it provided. She had been dealing with this problem for about four months and was now concerned because the hospital business office said it was prepared to forward the bill for collection. The woman said she had a primary and a secondary insurance carrier, and they told her she did not owe any money to the hospital. When she questioned the hospital about what was owed, she would be referred back to her insurance carriers, who kept telling her she did not owe any money.

We made an inquiry to the hospital and discovered errors were made by the hospital, as well as the insurance carrier. The contracted business office had placed the patient on self pay and never billed the secondary insurance. The insurance company had refused to pay for certain items that required rebilling. We were able to resolve the problem within three days.

Agency Lifts Freeze on Vehicle Registration After Tracing Problem to Employer

A man in west central Iowa went to his county treasurer to renew his vehicle registration tags, only to learn that his tags had been stopped due to nonpayment of back taxes. His wife said her husband was making regular payments on the debt and could not understand why he was being penalized further. He needed his car to do the work that would allow him to pay the taxes.

We made an inquiry to state officials at the Department of Revenue, who contacted the man's employer and discovered that money was being withheld for the payments, but mistakenly not forwarded to the state. The department lifted the “stop” on the man's vehicle tags and collected the back taxes from his employer.

P.S. You Have the Right to Appeal!

A woman contacted our office because she missed the deadline to file an appeal with a state agency. She said the agency's decision did not inform her of the 20-day appeal period. She had an attorney but he did not inform her either.

We contacted the agency. The agency confirmed administrative law judges were not putting appeal language in their decisions. Initially, an official with the agency took the position that the agency did not have to put appeal language in decisions since it was in their rules. We expressed concern the lack of a notice may impact an individual's due process rights. The official reconsidered and agreed to put appeal rights language in the decisions. He requested some proposed language from us, which we offered. The agency accepted our language with minor change, and agreed to ensure all administrative law judges put it in their decisions.

Inconsistent Decisions on Employees' Unemployment Benefits Remedied

When a large company in central Iowa went out of business, former workers were befuddled by news that some were receiving extended unemployment benefits while others had been denied the same. One of the workers called our office.

We brought the matter to the attention of a division director in the Department of Workforce Development who oversees the processing of unemployment benefit claims. After several contacts, we learned the administrative law judges were confused about whether the company was actually closed or was still functioning in a limited fashion—a fact that was crucial to the question of benefits.

The agency ultimately decided that all former workers were entitled to an extension of benefits and agreed to provide back benefits to all those workers who had been mistakenly denied.

How to Reach Us

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ombudsman@legis.state.ia.us

Web:

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Mail:

Ola Babcock Miller Building

1112 E. Grand Avenue

Des Moines, IA 50319-0231

Phone:

1-888-426-6283

(515)281-3592

Fax: (515)242-6007

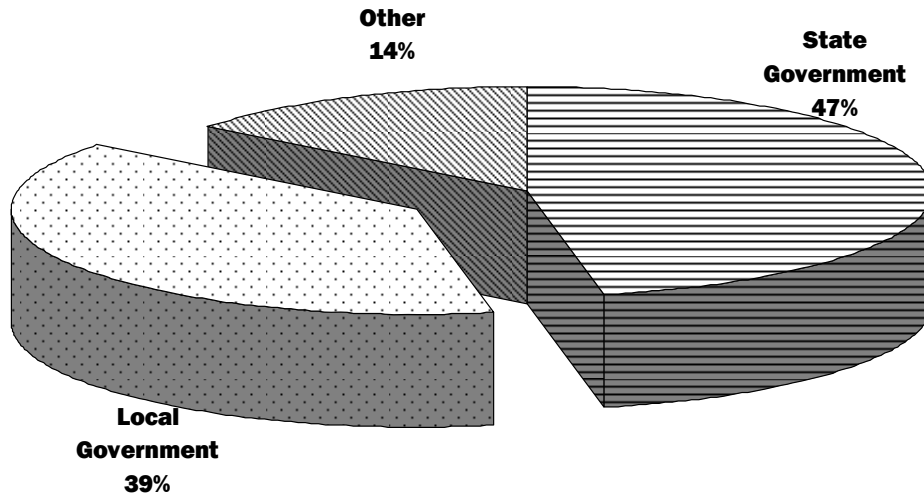
2007: Contacts Opened by Agency

Name	Jurisdictional	Non-	Information	Pending	Total	Percentage of Total
	Complaints	jurisdictional Complaints	Requests			
Administrative Services	5	0	2	0	7	0.2%
Agriculture & Land Stewardship	2	0	0	0	2	0.0%
Attorney General/Department of Justice	13	0	27	0	40	0.9%
Auditor	2	0	4	1	7	0.2%
Blind	0	0	1	0	1	0.0%
Citizens' Aide/Ombudsman	0	0	27	0	27	0.6%
Civil Rights Commission	6	0	4	0	10	0.2%
College Aid Commission	1	0	0	0	1	0.0%
Commerce	8	0	9	0	17	0.4%
Corrections	521	0	27	56	604	13.4%
County Soil & Water Conservation	0	0	0	0	0	0.0%
Cultural Affairs	2	0	1	0	3	0.1%
Economic Development	0	0	3	0	3	0.1%
Education	8	0	6	0	14	0.3%
Educational Examiners Board	0	0	0	0	0	0.0%
Elder Affairs	1	0	28	0	29	0.6%
Ethics and Campaign Disclosure Board	2	0	1	0	3	0.1%
Executive Council	0	0	0	0	0	0.0%
Human Rights	0	0	3	0	3	0.1%
Human Services	426	0	29	31	486	10.8%
Independent Professional Licensure	2	0	0	1	3	0.1%
Inspections & Appeals	34	0	12	3	49	1.1%
Institute for Tomorrow's Workforce	0	0	0	0	0	0.0%
Iowa Communication Network	0	0	0	0	0	0.0%
Iowa Finance Authority	1	0	0	1	2	0.0%
Iowa Public Employees Retirement System	3	0	1	0	4	0.1%
Iowa Public Television	0	0	0	0	0	0.0%
Law Enforcement Academy	0	0	0	0	0	0.0%
Lottery	0	0	0	1	1	0.0%
Management	2	0	1	0	3	0.1%
Municipal Fire & Police Retirement System	1	0	0	0	1	0.0%
Natural Resources	20	0	8	3	31	0.7%
Parole Board	28	0	4	3	35	0.8%
Professional Teachers Practice Commission	0	0	0	0	0	0.0%
Public Defense	2	0	1	0	3	0.1%
Public Employees Relations Board	0	0	1	0	1	0.0%
Public Health	9	0	14	2	25	0.6%
Public Safety	19	0	11	0	30	0.7%
Regents	23	0	5	2	30	0.7%
Revenue & Finance	28	0	10	5	43	1.0%
Secretary of State	0	0	5	0	5	0.1%
State Fair Authority	0	0	1	1	2	0.0%
State Government (General)	79	0	179	3	261	5.8%
Transportation	42	0	7	2	51	1.1%
Treasurer	2	0	4	1	7	0.2%
Veterans Affairs Commission	4	0	0	0	4	0.1%
Workforce Development	22	0	12	5	39	0.9%
State government - non-jurisdictional						
Governor	0	8	7	0	15	0.3%
Judiciary	0	133	25	0	158	3.5%
Legislature and Legislative Agencies	0	7	8	0	15	0.3%
Governmental Employee-Employer	0	31	1	0	32	0.7%
Local government						
City Government	623	0	94	50	767	17.1%
County Government	569	1	41	47	658	14.6%
Metropolitan/Regional Government	13	0	1	4	18	0.4%
Community Based Correctional Facilities/Programs	211	0	10	10	231	5.1%
Schools & School Districts	55	0	7	8	70	1.6%
Non-Jurisdictional						
Non-Iowa Government	0	101	60	1	162	3.6%
Private	0	399	85	0	484	10.8%
Totals	2789	680	787	241	4497	100.0%



Local Government

Subjects of Complaints and Information Requests



Printing of Ballots for School Bond Election Was Premature

Allegations of election-fixing arose in a community after it was discovered that a county election office printed ballots for a school bond issue before the election was officially called. Similar bond issues had been called several times in the past amid contentious community debates, but none had ever passed.

Through a review of records, our office found the ballots were printed early, at the request of the school board's bond attorney, who told county election officials in a letter that the school board's approval of the measure would be forthcoming. While we did not find any violation of law, we expressed concern with the practice, since it gave the public the impression that their opinions at an upcoming public hearing were irrelevant.

The printing also was potentially wasteful since the school board could have decided to postpone or cancel the proposed referendum. The county auditor agreed with the Ombudsman's recommendation not to print future ballots for a referendum until it was officially authorized.

After the referendum failed, we learned the school superintendent had called the voters "idiots" in an e-mail that could be made public. We voiced concern about the superintendent advocating a position on the bond issue, which is improper under the law, and for instigating further angst on an already divisive issue. The Ombudsman recommended that school officials refrain from advocating a position on future ballot issues affecting the school district.

Sewer Bills Increase Without Notice, Customers Get Credits

A group of citizens in a small northwestern Iowa town were stunned when they received sewer bills that included rate hikes with no forewarning. The rate increase was in an ordinance.

We researched the law and found cities may adjust the rate by ordinance or resolution, but it must be published. We determined the city had failed, as required, to publish a notice of the proposed rate hike before it took effect.

After raising our concern with the city, the city voluntarily agreed to repeal the new rates and restart the rate-hike process by publishing a notice and re-voting the measure. The city also issued refunds to residents who paid the improperly approved rate increase.

Survey of County Treasurers Reveals Problems with Tax Sales

A northeastern Iowa businessman complained that several counties were charging more for a registration fee to their annual tax sales than they should. Iowa law only allows governments to charge fees to recover actual costs to hold the sales. The businessman also noted that some tax sales, which are similar to auctions, were not being fairly run as the law required.

This led to a survey by our office that found that eight out of ten county treasurers contacted had not calculated the costs related to their tax sales. This made it impossible to justify whether the amount they charged investors who participated in their 2006 tax sales were within the law.

We also found three counties were awarding delinquent taxes without regard to a randomness provision that ensures bids are awarded fairly. Two other counties allowed buyers to purchase multiple seats at the auction, which gave those bidders an unfair advantage in instances where bids were awarded randomly.

In a public report, the Ombudsman recommended that county treasurers carefully estimate and publish their annual tax-sale costs before setting registration fees in the future. The Ombudsman also recommended that all treasurers and their staffs undergo training through the Iowa State County Treasurers Association and the State Auditor's office.

All of the county treasurers surveyed agreed to begin calculating their costs and setting their admission fees accordingly. Those county treasurers who ignored the randomness provision agreed to stop the practice.

[Copies of the report are available on request, or from the Ombudsman's website at www.legis.state.ia.us/ombudsman]

The Ombudsman investigates complaints against agencies or officials of state and local governments in Iowa. We perform this service, without a fee, in an independent and, when appropriate, confidential manner.

City Cuts Permit Fee to Build Fence

A clash between neighbors over wafting cigarette smoke was left at an impasse when the family affected by the smoke learned that it would cost nearly \$600 just to request permission from the city to construct a higher fence to block the smoke. The neighbor who contacted our office said his wife was highly allergic to the smoke which drifted from a neighbor's screened porch into her garden. The man argued that the fee was unreasonably high and that he could not justify the expense since his request to build the fence could still be denied.

The city that imposed the charges justified the fees because of a city requirement that all neighbors within 370 feet be notified of the proposed zoning variance. The city said it required the services of highly paid attorneys and surveyors to determine the boundaries of the 370-foot rule.

When we pointed out that precise measurements were possible through using free online satellite photographs, the city revisited its policy and ultimately lowered the fee by nearly \$400.

City Uses Taxpayer Money to Influence Franchise Election

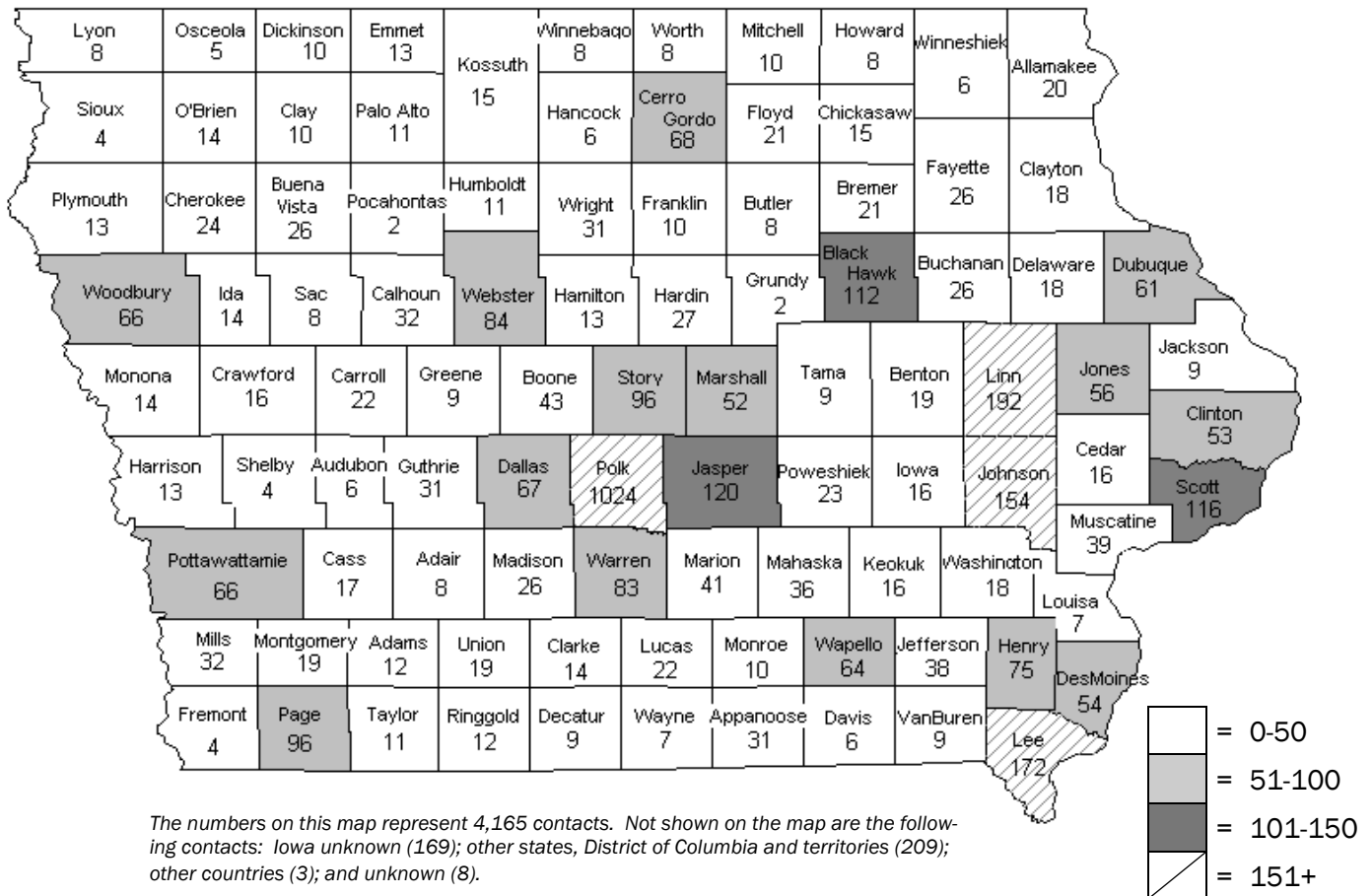
Residents in a city were asked to vote for or against a company providing a sewer system for the city and its residents. The city encouraged residents to sign up for sewer service and offered to pay half of the sewer connection cost if they signed up by a certain date—a date which was prior to the date of the election..

We reviewed this issue and determined the city's action was a violation of an Iowa statute which prohibits use of public moneys for political purposes. Under another statute, it is considered election fraud if a person pays, offers to pay, or causes to be paid money or any other thing of value to a person to influence the person's vote.

We spoke with a city council member who was willing to extend the sign-up date and the time limit to accept the \$1,000 offer until after the election. We were not satisfied with this response.

We then contacted the county auditor who agreed the council member's proposal did not resolve the situation. The county auditor contacted city officials to explain how they could resolve the matter. The city council then sent letters to all residents explaining the early sign-up confusion and rescinding the \$1,000 offer until after the election. The county auditor confirmed the city's letter resolved the problem.

Where is Your County? Contacts Opened by Citizens' Aide/Ombudsman in 2007





Law Enforcement

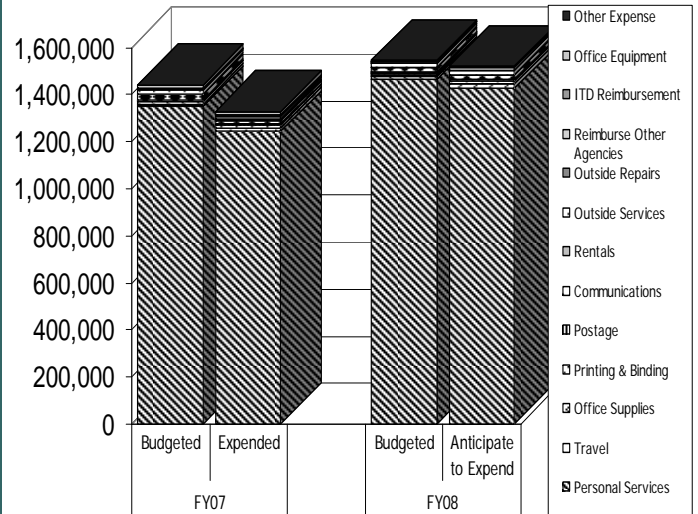
Help for Tourist Contesting Traffic Ticket

A tourist from Colombia who was visiting Iowa called our office with a problem. Even though he could speak only limited English, we were able to understand the gist of the issue. He had been stopped by a law enforcement officer and received two tickets. One was for speeding. The caller admitted he had been driving 85 miles per hour and did not object to the speeding ticket.

His problem concerned the other ticket. The officer ticketed him for not having a valid driver's license. The man said he showed the officer his valid driver's license from his home country of Colombia, but the officer was not satisfied. So he wanted to contest the second ticket. The problem was the court date listed on that ticket was for the following week, and the man would be back in Colombia by then. The man did not know who could help him.

Our office does not have authority over the courts, and so we normally do not look into an issue like this. Due to the man's circumstances, however, we made an exception and called the clerk of court office listed on the ticket. The person we spoke with was very helpful, explaining that the man could show up to contest his ticket on any Tuesday or Friday morning at 8:30 a.m. They also suggested that he try to bring someone who could speak English. We called the tourist back and relayed this information, for which the tourist was thankful.

Office of Citizens' Aide/Ombudsman FY07 & FY08 Financial Information



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

Eight Steps for Resolving Your Own Complaints

"What steps have you taken to resolve the problem?" That is often one of the first questions we ask people who contact us with a complaint.

Under law, one of the scenarios in which the Ombudsman is not required to investigate is when people have available "another remedy or channel of complaint which [they] could reasonably be expected to use." [Iowa Code section 2C.12(1)] And it is not just the law, it is also simple common sense. Disputes and grievances can be resolved with simple, honest communication. Certainly not all the time, but enough that it is almost always worth trying *before* filing a complaint with our office.

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

1. Be pleasant, persistent, and patient. The wheels of government usually move, but not always quickly. We have found the citizens who are best able to get problems resolved have three core traits in common: they treat everyone with respect and courtesy; they don't give up easily; and they realize that most problems are not resolved overnight.

2. Exercise your appeal rights. Does

the problem involve a decision or action that has a formal appeal process? If you are not sure, ask the agency. The right to appeal usually has a deadline. Respond well before the deadline and consider sending your appeal by certified mail. If you cannot write before the deadline, call to see if you can get an extension or if you can appeal by telephone.

3. Choose the right communication mode. If you are not filing a formal appeal, decide whether you want to contact the agency in person, over the phone, or through a letter or e-mail. Go with the mode you are most comfortable with, unless the problem is urgent, in which case you will probably want to rule out a letter or e-mail.

4. Strategize. Before making contact, consider who your likely audience will be. Will it be someone who can actually fix the problem to your satisfaction? If not, your initial goal might be along the lines of patiently explaining your concern, listening to the response, and then politely asking to speak with a supervisor—perhaps even more than once!

5. Plan your questions. Write down your questions before calling or visiting the agency. Be sure to specifically ask which

law, rule, or policy authorized the agency's actions. Then ask for a copy of the law, rule, or policy (so you can read it for yourself, to see whether you agree).

6. Be prepared. Be sure to have any relevant information available before contacting the agency. If you are wanting face-to-face contact, we recommend you call first. A short phone call could save headaches and wasted time, such as finding that the person you need to talk to is sick that day.

7. Keep records. Take good notes of all conversations. This should include the person's name and title, the time and date, and what they told you. Keep all records received from the agency, even envelopes. Also keep copies of any letters, faxes, or e-mails you send to the agency.

8. Read what is sent to you. Carefully read everything from the agency, front and back including the fine print!

If all that fails, contact us. Our office has authority to investigate complaints about most agencies of state and local government in Iowa. Major exceptions include the courts, the legislature, and the Governor. We do not have authority to investigate any federal agency.



Toll-Free Numbers

State Government

Blind (Department)	1-800-362-2587
Child Abuse/Dependent Adult Hotline	1-800-362-2178
Child Support Recovery Unit	1-888-229-9223
Child Advocacy Board	1-866-448-4608
Citizens' Aide/Ombudsman	1-888-426-6283
Civil Rights Commission	1-800-457-4416
College Student Aid Commission	1-800-383-4222
Commission on the Status of Women	1-800-558-4427
Consumer Protection Division	1-888-777-4590
Crime Victim Assistance Division	1-800-373-5044
Economic Development (Department)	1-800-245-4692
Elder Affairs (Department)	1-800-532-3213
Gambling Treatment Hotline	1-800-238-7633
HAWK-I (insurance for low-income kids)	1-800-257-8563
Home Health Hotline	1-800-383-4920
Human Services (Department)	1-800-972-2017
Insurance Division	1-877-955-1212
Iowa Client Assistance Program (advocacy for clients of Vocational Rehabilitation and Blind Department)	1-800-652-4298
Iowa COMPASS (information and referral for Iowans with disabilities)	1-800-779-2001
Iowa Finance Authority	1-800-432-7230
Iowa Waste Reduction Center	1-800-422-3109
Narcotics Division	1-800-532-0052
Nursing Home Complaint Hotline (DIA)	1-877-686-0027
Public Health (Department) Immunization Program	1-800-831-6293
Revenue and Finance (Department)	1-800-367-3388
SHIIP (Senior Health Insurance Information Program)	1-800-351-4664
Small Business License Information	1-800-532-1216
State Fair	1-800-545-3247
State Patrol Highway Emergency Help	1-800-525-5555

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

Miscellaneous

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

The Ombudsman's Authority

Iowa law gives the Ombudsman the authority to investigate the administrative actions of most local and state governments when those actions might be:

- Contrary to law or regulation.
- Unreasonable, unfair, oppressive, or inconsistent with the general course of an agency's functioning, even though in accordance with law.
- Based on a mistake of law or arbitrary in ascertainties of fact.
- Based on improper motivation or irrelevant consideration.
- Unaccompanied by an adequate statement of reasons.

By law, the Ombudsman cannot investigate the Iowa courts, legislators and their staffs, the Governor and his staff, or multi-state agencies.

Citizens' Aide/Ombudsman

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ment in September 2007]

We're on the Web!

www.legis.state.ia.us/ombudsman

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