

# STATE OF IOWA



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RUTH H. COOPERRIDER  
CITIZENS' AIDE/OMBUDSMAN

**CITIZENS' AIDE/OMBUDSMAN**  
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1112 EAST GRAND AVENUE  
DES MOINES, IOWA 50319

Date: December 15, 2011  
To: Members of the Joint Government Oversight Committee  
From: Ruth Cooperrider, Citizens' Aide/Ombudsman  
Re: Role of Citizens' Aide/Ombudsman's Office Related to Iowa Code Chapter 8F

I am providing this information in response to questions raised at this Committee's November 21, 2011 meeting concerning the following:

- What is the State Ombudsman's role as it relates to Iowa Code chapter 8F?
- Are there any specific instances that have been reported to or handled by the State Ombudsman's office related to chapter 8F?

## Ombudsman's Role and Jurisdiction Generally

Before I discuss chapter 8F specifically, it would be helpful to understand the Ombudsman's role generally. Iowa Code chapter 2C authorizes our office to investigate complaints regarding administrative actions of most state and local governmental entities and officials. Exceptions include the Judiciary, the Governor, the members of the General Assembly, and the staffs of these officials; also excluded are instrumentalities created by interstate compacts. We do not have jurisdiction over any private entities, unless it is a private entity that is providing child welfare or juvenile justice services under contract with a state or local government agency.

In addition to limitations regarding the types of agencies or entities we can investigate, we are also prohibited from investigating complaints from state or local governmental employees regarding their employment relationship. However, there is one exception to this prohibition - - we can investigate a complaint from a *state employee who is not in the merit system or covered by a collective bargaining agreement* who alleges an adverse employment action (reprisal) has been taken against the employee for disclosing information to a public official about illegal action, mismanagement, or an abuse of authority in violation of section 70A.28 ("whistleblower" protection law). The complaint to our office must be filed within 30 days of the reprisal.

## Ombudsman's Role Related to Chapter 8F

Based on our authority under chapter 2C, we can investigate complaints about the actions or omissions of an “oversight agency” or of a “recipient entity,” as defined in chapter 8F, *that is a state or local governmental agency*. We cannot directly investigate the actions of a *private* recipient entity in general, although we may refer the complainant to the “oversight agency” or other appropriate agency or official with authority to look into the concerns involved. Or, we may contact that agency and ensure that it appropriately checks into or acts on the concerns.

Our investigative authority is applicable to chapter 8F, which sets out certain contractual requirements (section 8F.3) and reporting requirements (section 8F.4) for a “recipient entity” that enters into a service contract or an aggregate of contracts with an “oversight agency” for over \$500,000 in a fiscal year. Even if a “recipient entity” is private, we could look into whether a state “oversight agency” has ensured compliance by the “recipient entity” with any requirements.

The Ombudsman's office is referenced in one of the contractual requirements under section 8F.3. That section requires a “recipient entity” to certify the availability of certain information for inspection by the “oversight agency” and the legislative services agency, including the following whistleblower protection information:

*d. Information regarding any policies adopted by the governing body of the recipient entity that prohibit taking adverse employment action against employees of the recipient entity who disclose information about a service contract to the oversight agency, the auditor of state, the office of the attorney general, or the office of citizens' aide and that state whether those policies are substantially similar to the protection provided to state employees under section 70A.28. The information provided shall state whether employees of the recipient entity are informed on a regular basis of their rights to disclose information to the oversight agency, the office of citizens' aide, the auditor of state, or the office of the attorney general and the telephone numbers of those organizations.*

[Emphasis added.]

What is the Ombudsman's role pertaining to this particular provision? An *employee* of a “recipient entity” could contact us about actions of that entity relevant to the contract, but we would be able to investigate those concerns only if the “recipient entity” is a state or local governmental agency. Even if we cannot conduct our own investigation, we may refer those concerns to the “oversight agency” or other appropriate agency or official to look into the concerns and inform us of any resulting action. If the employee is claiming whistleblower reprisal by a “recipient entity,” we can investigate that claim only if the employee is a state employee who is not in the merit system or covered under a collective bargaining agreement.

## Contacts to Ombudsman Related to Chapter 8F

We searched our case management system for the period from January 1, 2010 to the present date and found some complaints about agencies or entities providing services under contract with state agencies. However, none of those complaints were about non-compliance by an “oversight agency” or “recipient entity” with any contractual or reporting requirements in chapter 8F.

Attachment – Relevant Statutory Provisions

**2C.9 Powers.**

The citizens' aide may:

1. Investigate, on complaint or on the citizens' aide's own motion, any administrative action of any agency, without regard to the finality of the administrative action, except that the citizens' aide shall not investigate the complaint of an employee of an agency in regard to that employee's employment relationship with the agency except as otherwise provided by this chapter. . . .

2. Investigate, on complaint or on the citizens' aide's own motion, any administrative action of any person providing child welfare or juvenile justice services under contract with an agency that is subject to investigation by the citizens' aide. The person shall be considered to be an agency for purposes of the citizens' aide's investigation.

. . .

**2C.11A Subjects for investigations — disclosures of information.**

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

**8F.2 Definitions**

4. "*Oversight agency*" means an agency that contracts with and disburses state or federal moneys to a recipient entity.

. . .

6. "*Recipient entity*" means an intergovernmental entity or a private agency that enters into a service contract with an oversight agency to provide services which will be paid for with local governmental, state, or federal moneys.

. . .

8. a. "*Service contract*" means a contract for a service or services when the predominant factor, thrust, and purpose of the contract as reasonably stated is for the provision of services. When there is a contract for goods and services and the predominant factor, thrust, and purpose of the contract as reasonably stated is for the provision or rendering of services with goods incidentally involved, a service contract exists. "*Service contract*" includes grants when the predominant factor, thrust, and purpose of the contract formalizing the grant is for the provision of services. For purposes of this chapter, a service contract only exists when an individual service contract or a series of service contracts entered into between an oversight agency and a recipient entity exceeds five hundred thousand dollars or when the grant or contract together with other grants or contracts awarded to the recipient entity by the oversight agency during the oversight agency's fiscal year exceeds five hundred thousand dollars in the aggregate.

[Subsection "8(b)" lists contracts that are exempted under chapter 8F.]

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