

STATE OF IOWA



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MEMORANDUM

- **Ombudsman's Access to Records and Release of Information; Iowa Code sections 2C.9(4) and 2C.21.**

A reoccurring problem the Ombudsman has faced in recent years is access to information that agencies have asserted is privileged or confidential. The Legislature has granted the Ombudsman broad general access to all agencies' records, but conflicts within Iowa Code chapter 2C have allowed some agencies to withhold access to records that are critical to its investigation. This has hindered the Ombudsman from discovering actions and true motivations behind agency decision-making, and in turn handicapped the Ombudsman from formulating effective solutions to cure a problem.

The Ombudsman also faces a dilemma with how to treat confidential information when it issues public critical reports that describe agency wrongdoing and proposes remedies. This adversely effects the Legislature's and public's ability to fully understand and address problems our office has identified. Iowa Code section 11.42 affords the State Auditor's office the discretion to share confidential information acquired during its audit examinations for a variety of reasons. The proposed changes would grant the Ombudsman similar discretionary authority.

The proposed changes to Iowa Code sections 2C.9 and 2C.21 would address some of the problems we have experienced in obtaining relevant evidence or testimony, and sharing the results of our investigation in a comprehensive manner.

- **Ombudsman's Access to Records and Release of Information; Iowa Code sections 2C.9(4) and 2C.21.**

The Office of Ombudsman has identified problems under Iowa Code section 2C.11A that concerns whistleblower complaints. First, the law currently requires that the Ombudsman "shall" investigate all complaints filed by a qualified employee. Provisions in the balance of Iowa Code chapter 2C give the Ombudsman the *discretion* to decide whether to investigate a complaint. For efficiency purposes, the Ombudsman should not have to proceed with an investigation if a whistleblower complaint facially lacks merit, or if the complainant has already retained legal counsel for litigation.

Contrary to the concept of fairness that is the foundation of our office, this section also implies that we share our findings only with the complainant-employee. For all other complaints filed with our office, we are required to share our conclusions and findings with *both* the complainant and the agency.

To address these problems, the Ombudsman has proposed changes to sections 2C.11A and 70A.28(6).