OMBUDSMAN'S REPORT 2006

Annual report of the Iowa Citizens' Aide/Ombudsman

June 2007

Inside

How to reach us

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

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

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

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

TTY: (515) 242-5065

Fax: (515) 242-6007

Do we really believe mental illness is a crime?

Judi Milosevich
Assistant for Corrections

More than one-fourth of the Ombudsman's complaints in 2006 came from inmates in state and county jails, prisons and other facilities. The majority involved health services.

While the number of complaints about prisons controlled by the Iowa Department of Corrections (DOC) remains steady, complaints from within county jails are on the rise.

The Ombudsman has observed an increasing unwillingness by county sheriffs and jail administrators to provide inmates with adequate medical attention and prescribed medications. Many prisoners who contact our office tell us that county officials sometimes refuse to refill necessary medications, even if those prisoners enter the jail with a doctor's prescription.

Iowa law, however, does not permit sheriffs and jail staff to deny medications to inmates with serious health problems. The Code of Iowa does permit a sheriff to charge an inmate "for any medical aid provided to the prisoner." The tensions between a sheriff's obligation to provide medical care and an inmate's responsibility to pay for it is spelled out in more detail in the Iowa Administrative Code. This rule was developed in consultation with the Iowa State Sheriffs and Deputies Association, the Iowa Association of Chiefs of Police and Peace Officers, the Iowa League of Cities and the Iowa Board of Supervisors Association.

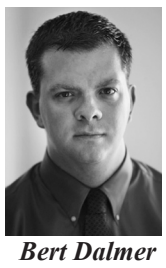
The rule emphasizes that a sheriff cannot deny necessary medical treatment, including medicine, to a prisoner just because that prisoner is indigent.

The Ombudsman's investigations into matters such as medication delivery in jails also have brought another serious issue to light: a lack of resources to treat mentally ill offenders. With few beds available for individuals in psychiatric crisis, many of the mentally ill are simply arrested and jailed because there is nowhere else for them to go.

The reason for this is clear. Our communities have few mental health services to begin with. As a result, the prisons continue to expand their role as the mental health institutions of the 21st century.

***MENTAL HEALTH** Continued on page 11*

Limited whistleblower role for Ombudsman after CIETC scandal



Bert Dalmer
Assistant for Whistleblower Protection

"We know enough about bureaucracies to understand that often they provide a cover for wrongdoing, especially since many executive managers at the top still want to shoot the messenger, instead of fixing the problem. And so we should not forget that whistleblowers are often doing the dirty work that highly paid administrators refuse to do." Diane Swanson, chairperson of a business ethics initiative, Kansas State University

Nowhere in Iowa was this lesson learned better last year than in the case of CIETC, the public job-training agency that awarded nearly $1 million in bonuses to its top three administrators.

The CIETC scandal, which has led to criminal charges against six former state and local officials, might never have come to light but for the courage and persistence of a handful of state employees, one of whom stood apart.

As a budget analyst with Iowa Workforce Development (IWD), Kelly Taylor discovered the high salaries at CIETC and started asking questions. When he took his findings to supervisors, he and a staffer were reportedly pulled off the case.

One of Taylor's superiors told federal officials that Taylor's report amounted only to "rumor and innuendo." Taylor was later excluded from team meetings at IWD and felt that he had been "blacklisted" from attaining a higher position, he told The Des Moines Register.

Fortunately for the public, Taylor also relayed his concerns to the State Auditor, who considered the information and dug deeper. The Auditor would later issue a report critical of CIETC's pay practices and of IWD's oversight. Within days of the audit's release, representatives of both CIETC and IWD were stepping down or being fired. Federal prosecutors followed with indictments and officials are now seeking restitution for the misspent money.

Taylor's inspiring story prompted Iowa lawmakers last year to provide greater protections to government whistleblowers. From now on, lawmakers decided, whistleblowers who face retaliation for trying to protect the public's interest may seek relief from the Public Employment Relations Board and enlist the aid of the Citizens' Aide/Ombudsman to investigate their claims.

***WHISTLEBLOWERS** Continued on page 7*

Iowa Ombudsman hosts national conference

Scott Raecker, Executive Director for the Institute of Character Development at Drake University, led a session on Civility in the Public Arena at the 2007 national conference of the United States Ombudsman Association.

Ombudsman representatives from across the globe gathered in Des Moines for four days in September 2006 for the 27th annual conference of the United States Ombudsman Association (USOA).

The USOA is North America's oldest national ombudsman organization dedicated to the promotion of fairness, accountability, equality and justice in government through the public sector ombudsman. Its purpose is to encourage the establishment of new ombudsman offices and to promote professional development of existing ombudsman offices.

Representatives from ombudsman offices in state and local governments across the United States, as well as some federal agencies, were in attendance. The conference also attracted international participants from offices in the provinces of Canada, Bermuda, United Kingdom, India, Pakistan, and Botswana.

The Iowa Ombudsman's office hosted the conference. Deputy Ombudsman Ruth Cooperrider is currently the USOA President. Staff from the office assisted with registering participants, setting up audio/visual equipment, and ensuring the sessions ran smoothly.

***CONFERENCE** Continued on page 5*

Luther closed session violates Open Meetings Law

The Ombudsman issued a public report in 2006 because the Luther City Council failed to announce the reason for going into a closed session.

The City Council member initiating the closed session refused to tell the public or the other City Council members the reason for going into closed session. She said she would tell the other City Council members the reason once they were in closed session. This is contrary to Iowa Code section 21.5, which states, "[t]he vote of each member on the question of holding the closed session and the reason for holding the closed session by reference to a specific exemption under this section shall be announced publicly at the open session and entered in the minutes."

We found the City Council failed to include the closed session on the agenda for the August 2 meeting, contrary to Iowa Code section 21.4. This section requires public notice of the meeting agenda. A closed session must be disclosed on the agenda in advance. The public may want to attend the meeting to verify the reason for the closed session, watch how the elected official votes, and decide whether they would like to wait until final action is taken in open session.

Iowa Code section 21.5 gives specific reasons for holding a closed session. We found the City Council went into the closed session to discuss a policy to limit the amount of time citizens could talk at City Council meetings. This is not a permissible reason to hold a closed session, and we determined the discussion should have been held in open session.

We also found the City Council discussed other, unrelated issues during the closed session, such as feeding firefighters and taking donations for an Automatic External Defibrillator. Iowa Code section 21.5(2) prohibits a governmental body from discussing any business during a closed session which does not directly relate to the specific reason announced as justification for the closed session.

We made specific recommendations to the City Council to ensure it complies with the Open Meetings Law and provided the City Council with educational information.

In a one-page written reply to our report, Council Member Frank Leopold stated, "I can not make any excuses for my actions and I understand that I should have moved to close the session before I discussed any further business." He also adds, "I am sorry that you have had to become involved. I will do everything in my power to keep Luther Council meetings running correctly."

The full report and an unedited copy of Council Member Leopold's reply can be viewed at www.legis.state.ia.us/ombudsman. The mayor and other City Council members also had an opportunity to submit written replies, but only Council Member Leopold did so.

What is the purpose of your public record request?

A citizen got the public records he requested but not without a lot of phone calls and getting "the runaround." The citizen contacted this office after finding several officials reciting the same errant policy. The policy, according to many employees, was that the citizen had to put the request in writing, sign his name, and state the purpose of the record request.

Despite the Attorney General's Sunshine Advisories and changes to the Public Records Law (section 22.3), agencies may not know that requiring someone to identify themselves as a condition to getting records, asking why they want the information, or asking for the request in writing, may violate the spirit and intent of the Public Records Law.

Agency officials may ask questions to ensure they are able to get back to the requester and understand the record request, but agencies need to know that the requester's identity is usually irrelevant and the purpose for the request is inconsequential.

The requester's identity is usually irrelevant and the purpose for the request is inconsequential.

Except for a few variations in the law, an official should respect the citizen's desire to remain anonymous if preferred. If the official would like to ask for their name or purpose for the request, we suggest adding a simple "please" at the end of your question. If they refuse to provide the agency with the information, by law, the agency is still required to provide the information. In this particular situation, we ensured staff became familiar with the law and our recommendations were accepted.

Public records and open meetings

Boards should avoid empty rooms when eating out

Supervisors in one county will be watching where they sit when they go out for lunch together, thanks to an alert restaurant customer.

"Four of five … County Supervisors met at the Chinese restaurant," the citizen wrote. "The meeting lasted 40 minutes. They ate and discussed county business."

We called the man and asked for details. He acknowledged he could not actually hear what the four county supervisors were discussing; he was in the main portion of the restaurant and they were in a sideroom. He got the impression they were discussing county business, but admitted this was merely an impression.

We called one of the supervisors. He explained that board members had a years-long tradition of going out for lunch after their weekly meetings. He confirmed they were at the Chinese restaurant at the time in question, and that they were in a sideroom.

The supervisor said that board members never discuss county business during their lunches. He added that their lunches are far from a secret, as many people have seen them eating out for lunch over the years.

We responded by noting that if in fact the supervisors don't discuss county business (when in groups of three or more), going out for lunch is not a violation of the Iowa Open Meetings Law. But we added that sitting together in a restaurant sideroom, where no other customers are seated, could easily give others the impression that they might be discussing county business.

The supervisor agreed, saying, "I can understand how someone could come to" believe that the supervisors were discussing county business. We suggested that the board avoid eating together in otherwise empty rooms. The supervisor accepted our suggestion and agreed to discuss this with the other board members. He also asked us to advise the citizen, "They are welcome to sit down and eat with us any time."

Public records, open meetings 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/ag/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 for School Boards.

If these resources do not answer your questions please contact our office, your attorney, or the attorney working for the governmental body.

City board violates Open Meetings Law

Members of a City Board claimed to have consulted with the City Attorney before holding two closed sessions. Yet the Board violated the Open Meetings Law multiple times in the closed sessions. Fortunately, these violations did not go unnoticed or unpunished.

The Open Meetings Law requires an agenda to reasonably apprise the public of what will take place at the meeting at least 24 hours in advance of the meeting unless it is "impossible or impractical." The Board had planned to go into closed session until an astute member of the media noticed it was not on the agenda. Due to the objection, the board elected to postpone the meeting to a future date. This was a good decision but then the Board proceeded with a closed session the next day, also without notice.

The public was not invited to the meeting. There was no evidence suggesting good cause for an emergency meeting; nor was there evidence that the individual requested the closed session, as required by law. The Iowa Code also states the Board is required to tape-record closed sessions. We listened to the tape and found that the Board stopped the tape in the middle of the closed session while discussing a topic that was not allowed by law to be discussed in closed session. One topic in the closed session was about intentionally keeping a future agenda item vague so as to not draw any attention to the item.

The Ombudsman made several recommendations to the Board to improve its operations and come into compliance with the law. We also made similar recommendations to the City as a whole. Not all of our recommendations were accepted. The City decided that our recommendation to have the individual request the closed session in writing was "beyond the legal requirements."

As a result, the Ombudsman proposed language to the 2007 General Assembly that would require requests for closed sessions concerning hiring decisions or job evaluations to be made in writing. (See House Study Bill 38 and Senate Study Bill 1042. Both bills were discussed by legislative committees in the 2007 legislative session and may be considered further in 2008. A legislative interim study committee to review Iowa's public records and open meetings was approved in June by the Legislative Council, and will be submitting a report before the 2008 session).

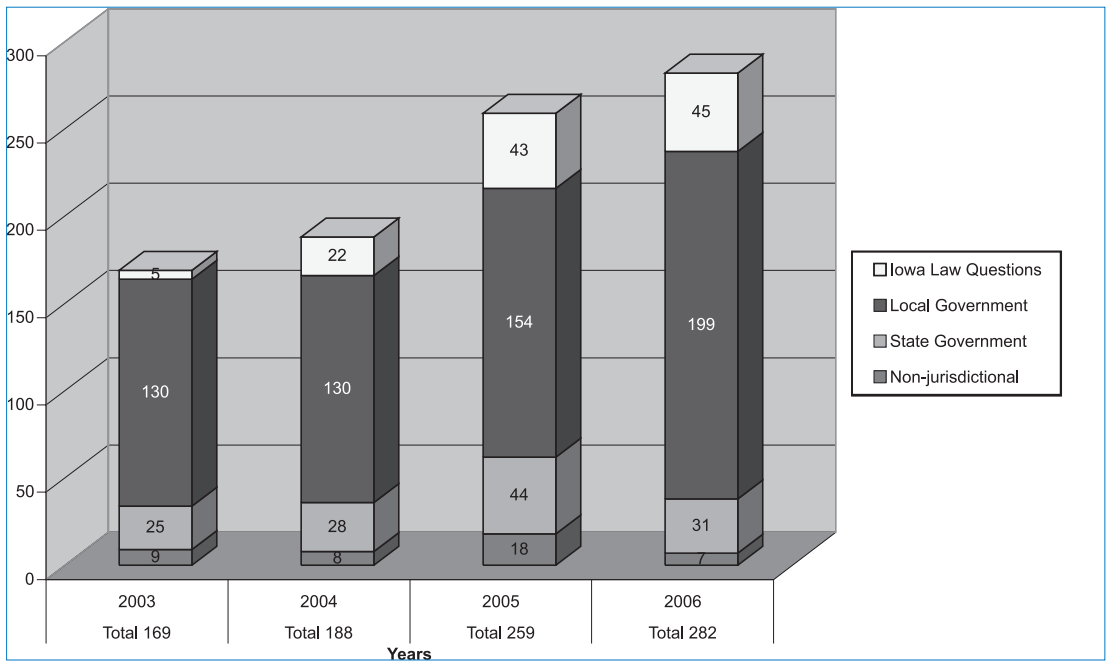
Although the Ombudsman cannot enforce the provisions of the law, the County Attorney filed a civil lawsuit which resulted in $100 fines for each of the five Board members.

2006

Citizens' Aide/Ombudsman
Ola Babcock Miller Building
1112 East Grand Avenue
Des Moines, Iowa 50319-0231
1-888-426-6283 (515) 281-3592
Fax (515) 242-6007 TTY (515) 242-5065
E-Mail: ombudsman@legis.state.ia.us

This publication was released by the Office of the Citizens' Aide/Ombudsman, which printed 1,500 copies at a cost of $1.03 per copy, to provide an annual report to the Legislature, the Governor and the public.

Public records/open meetings/privacy contacts to Ombudsman from 2003-2006



Number of public records and open meetings complaints rising

Since 2003, the number of complaints and information requests regarding Public Records, Open Meetings, and Privacy (PROMP) has grown from 169 to 282 contacts in 2006.

Angela Dalton
Assistant for Public Records, Open Meetings and Privacy

Why the increase in PROMP concerns? Some possible answers include: the public is becoming more educated; agency officials have lost the spirit and intent of the law; officials are keeping more information secret from the public causing more complaints; or, there is more knowledge about us, causing our phone to ring more often. I think they are all behind the increase.

Annually, 60 to 80 percent of our PROMP complaints and information requests involve local government issues, such as counties and cities. This is understandable considering the number of officials from 941 cities, 99 counties, 365 school districts and the number of governmental bodies underneath the parent bodies. This year we allotted more space in this annual report to highlight PROMP and plan to get this report in the hands of more local officials.

One easy way for <u>all</u> government officials to decrease the possibility of having a PROMP complaint filed against them is by establishing a point person who knows, or can learn, the law and its intent. The point person should also have access to an attorney when necessary.

If you are looking for more education, or advanced education, regarding Public Records or Open Meetings, please call me at 1-888-426-6283. However, most of your statewide associations and local or regional training groups are already conducting training.

Board cited for open meetings violations

The Randolph Library Board, in southwest Iowa, violated the state Open Meetings Law several times, the Ombudsman concluded in a report issued in late 2006.

The investigation resulted from a complaint that the Board did not have a quorum at its December 2005 meeting, when it fired a library employee. The Board asked an assistant librarian to leave the meeting before discussing legal negotiations with a company she was a partner in.

The Ombudsman concluded that the Board effectively went into a closed session without following the procedures required under Iowa Code section 21.5, and also improperly discussed terminating the assistant librarian. Alternatively, if the Board had not intended to go into closed session, as it claimed, the Ombudsman concluded that the Board violated the Open Meetings Law by requesting the assistant librarian to leave the meeting.

During the investigation, the Ombudsman became aware of additional violations of closed session and meeting notices, and found the Board had contradictory rules for proxy voting and the required number of Board members. The Ombudsman concluded that the Board:

· Acted contrary to law when it subsequently provided the assistant librarian with a partial agenda for a meeting that was later cancelled.

· Acted contrary to law with its practice of allowing a member to vote on a matter before and outside the official meeting.

· Had six members, but it was unknown how this came to be, and there was no written policy for resolving tie votes.

· Required that only three of its six members be present at a meeting to call quorum, contrary to state law, which requires a majority of members be present in order to establish a quorum.

During the investigation, the Board reduced the number of members to five, and adopted a policy requiring that three members be present at a meeting before it calls a quorum, actions that the Ombudsman found were in accordance with Iowa law.

The Ombudsman concluded the report by making the following recommendations to the Board:

1. The Board should not exclude any members of the public from its open meetings. If the Board wants to discuss a matter privately, it should determine if it can go into a closed session under Iowa Code section 21.5 and follow that procedure.

2. If the Board wants to go into a closed session, it should do so only under one or more of the eleven enumerated reasons stated in Iowa Code section 21.5, and only after it has followed the required procedures. In addition, the Board should limit the discussion to those matters for which it went into the closed session.

3. The Board should provide the complete agenda to all members of the public. Agendas must be posted in a prominent place that is easily accessible to the public. Agendas should contain sufficient information to inform the public the actions to be taken and matter to be discussed at the meeting.

4. Robert's Rules of Order Newly Revised, states proxy voting "is not permitted in ordinary deliberative bodies" and generally discourages its use. The Ombudsman believes it also contravenes the intent of Iowa's Open Meetings Law that governmental decisions, and the basis and rationale for those decisions, be easily accessible to the people. Because it is highly questionable whether proxy voting is legally permissible to be used by Iowa governmental bodies, the Ombudsman recommends against its usage.

5. The Board should cease the practice of allowing a member to declare his or her own vote to the President prior to and outside the meeting at which the matter will be decided. The Ombudsman believes such action violates the intent and the implicit requirement of the Open Meetings Law for members to deliberate and vote at the appointed meeting.

6. If the Board conducts an electronic meeting, it should ensure the public can hear the absent member through a speaker phone or other means. The minutes must state why a meeting in person is impossible or impracticable. The Ombudsman recommends the Board incorporate written rules on how and when electronic meetings will be conducted, and ensure they are in compliance with Iowa Code section 21.8.

7. The Board should ensure all its members are knowledgeable about the Iowa Open Meetings Law and Iowa Open Records Law, Chapters 21 and 22 of the Iowa Code, respectively. Relying solely on the legal council's advice will not shield the government body from liability if the body fails to follow these laws.

Before publishing the Report, the Ombudsman contacted Randolph Library officials for a response to his recommendations. The Library accepted all the recommendations and stated it did not intend to issue a formal reply.

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

If it walks like a duck...

When a majority (or quorum) of City Council members discuss or deliberate City business, they are required to follow the Open Meetings Law. The Mayor of one city told the Ombudsman that City Council members had been coached to call its gatherings "workshops" if they wanted to meet privately. The Ombudsman determined the "workshops" qualified as meetings under the Open Meetings Law and the private gatherings violated the law.

The Mayor also said sometimes a majority of the City Council members privately discussed city business by rotating members in and out of the deliberation room, to avoid having a majority of the members present. This practice is also referred to as a "walking quorum." While this practice is not specifically prohibited, the Ombudsman believes it contravenes the spirit of the law.

The Ombudsman provided educational resources and made recommendations to improve operations and comply with the Open Meetings Law.

Job applications

When a job applicant didn't get hired for three positions at three different government agencies, he began to question the credentials of the other candidates and the hiring decisions of the agencies. He asked all three agencies for copies of the other candidates' resumes.

His requests were denied based on Iowa Code section 22.7(18), which allows communications to a governmental body to be kept confidential if:

1) the communication is not required by law and,

2) is from a person outside of government and,

3) government could reasonably believe persons would be discouraged from making the communication if the communication was made available for general public examination.

However, there are a few exceptions to this law, which means the documents may be released if the person consents to its disclosure, or the information can be disclosed without revealing the identity of the person.

We found that all three agencies chose to deny the record request but we saw no evidence addressing the exceptions. We asked each agency whether it asked job applicants if their resumes could be made public. Noting that internal candidates are not from "outside government, we asked the agencies for their authority to keep resumes of internal candidates confidential.

In one case the agency decided that resumes of internal applicants were public. Meanwhile, another agency determined that all applications would be kept confidential without asking the applicants if they had a preference.

Due to the problematic nature of using 22.7(18) to keep job applications confidential, and many other cases involving the openness of hiring decisions for positions of public trust, the Ombudsman has attempted to resolve this problem by proposing legislation. In the 2007 Generally Assembly we proposed House Study Bill 38 and Senate Study Bill 1042, which did not make it past the first funnel date but we anticipate further discussion over the interim and the 2008 General Assembly.

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35 years of helping Iowans: Looking back

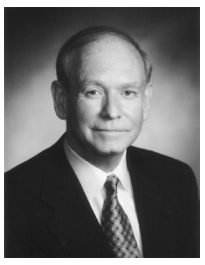
2007 marks the 35th anniversary of the Iowa Citizens' Aide/Ombudsman's office establishment by statute.

As we celebrate that event, it is worth remembering efforts that led to the creation of the office as it is today. Two attempts by Republican legislators in 1967 and 1969 to establish the Ombudsman by law did not succeed. The Ombudsman became a reality when Governor Robert D. Ray created the position as an arm of the governor's office in 1970. The Ray administration won a grant from the federal government to form the office as a "demonstration project" after he learned about the ombudsman concept during a work trip to the West Coast.

"If people understood why a government worker did what he did, you've solved a problem."
-- Robert D. Ray

What most don't remember is the person who issued that initial federal grant. It was a man who headed the Office of Economic Opportunity created by President Nixon.

That man was Donald Rumsfeld, President Bush's former Secretary of Defense. "I dealt with Don Rumsfeld on several different projects," recalled Ray.



Robert D. Ray
Iowa Governor
1970-1982

Ray had borrowed the Ombudsman idea from Hawaii, which in the late 1960s was the only state to operate such an office. The idea of an Ombudsman, popularized in Scandinavia in the 19th and early 20th centuries, is to allow citizens to redress their grievances against government's shortfalls and abuses.

Ray made the idea a centerpiece of his 1969 inaugural address, arguing that the "perilous impersonality" of government made such an office necessary. Ray also reasoned that an independent Ombudsman could validate good government against frivolous complaints and explain the basis for government's responses to citizens.

"If people understood why a government worker did what he did, you've solved a problem," Ray said.

After Ray created the position, it took another two years before the office was established as a permanent statutory office within Iowa government. When that was achieved the Ombudsman was moved from the executive to the legislative branch. That achievement is important for several reasons.

In the late 1960s and early 1970s there were few ombudsman offices in the United States. Creation of the office by statute meant the office had greater permanency and perhaps more powers than offices created solely under administrative authority. Placing the office within the legislative branch of government ensured greater independence of the office from the agencies it investigates, enhanced more objective and impartial consideration of the inquiries undertaken, and removed it from potential pressures within the executive bureaucracy. And requiring by law that the ombudsman and staff refrain from active involvement in partisan affairs removed the ombudsman from politics. The statute passed by the Iowa General Assembly and signed by Governor Ray in 1972 was then and remains today a model piece of legislation for establishing ombudsman offices.

Today, the Iowa Ombudsman office fields almost 5,000 complaints and information requests a year. It has a staff of 11 investigators, two administrators, a legal counsel and two support staff. Iowa's office is a moderate size office in North America and the world.

The office simultaneously serves as a complaint department, troubleshooter, mediator, watchdog, and the "conscience" of state and local government.

Topics of complaint about how Iowa government touches its citizenry run the gamut, from the treatment of prison and jail inmates to citizens' open-meetings disputes to the thoroughness of police and child-abuse investigations to the fairness of property-tax assessments, and to the appropriateness of licensing regulation plus a whole lot more.

Most complaints to the Ombudsman are resolved informally, through inquiry, explanation and persuasion. Some investigations do result in published reports that may be critical of an agency or official. In addition to recommending corrective action in a particular case when it is appropriate, the Ombudsman can also recommend new legislation in the interest of fair, responsive and responsible government.

"I think it did develop as I hoped it would," Ray recently said of the Ombudsman's office. "It's served a very valuable service."

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 ascertainments 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.

Can we talk...

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

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2006: Complaints Opened by Agency

Name	Jurisdictional Complaints	Non-jurisdictional Complaints	Information Requests	Pending	Total	Percentage of Total
Administrative Services	3	0	3	0	6	0.1%
Agriculture & Land Stewardship	2	0	1	1	4	0.1%
Attorney General/Department of Justice	9	0	12	0	21	0.4%
Auditor	2	0	3	0	5	0.1%
Blind	2	0	0	0	2	0.0%
Citizen's Aide/Ombudsman	2	0	26	1	29	0.6%
Civil Rights Commission	7	0	1	1	9	0.2%
College Aid Commission	0	0	0	0	0	0.0%
Commerce	5	0	18	1	24	0.5%
Corrections	533	0	39	22	594	12.3%
County Soil & Water Conservation	1	0	0	0	1	0.0%
Cultural Affairs	0	0	0	0	0	0.0%
Economic Development	0	0	6	0	6	0.1%
Education	5	0	1	0	6	0.1%
Educational Examiners Board	0	0	0	0	0	0.0%
Elder Affairs	2	0	22	0	24	0.5%
Ethics and Campaign Disclosure Board	0	0	1	0	1	0.0%
Executive Council	0	0	0	0	0	0.0%
Human Rights	3	0	4	0	7	0.1%
Human Services	440	0	36	21	497	10.3%
Independent Professional Licensure	6	0	1	3	10	0.2%
Inspections & Appeals	22	0	7	1	30	0.6%
Institute for Tomorrow's Workforce	1	0	0	0	1	0.0%
Iowa Communication Network	0	0	0	0	0	0.0%
Iowa Finance Authority	0	0	1	0	1	0.0%
Iowa Public Employees Retirement System	2	0	3	0	5	0.1%
Iowa Public Television	0	0	0	0	0	0.0%
Law Enforcement Academy	0	0	0	0	0	0.0%
Lottery	2	0	0	0	2	0.0%
Management	1	0	0	0	1	0.0%
Municipal Fire & Police Retirement System	1	0	0	0	1	0.0%
Natural Resources	13	0	7	2	22	0.5%
Parole Board	24	0	10	0	34	0.7%
Professional Teachers Practice Commission	0	0	0	0	0	0.0%
Public Defense	0	0	0	0	0	0.0%
Public Employees Relations Board	0	0	1	0	1	0.0%
Public Health	11	0	16	0	27	0.6%
Public Safety	19	0	9	2	30	0.6%
Regents	18	0	0	1	19	0.4%
Revenue & Finance	44	0	13	1	58	1.2%
Secretary of State	3	0	6	0	9	0.2%
State Fair Authority	3	0	1	0	4	0.1%
State Government (General)	117	0	222	2	341	7.1%
Transportation	41	0	6	4	51	1.1%
Treasurer	7	0	2	0	9	0.2%
Veterans Affairs Commission	2	0	0	0	2	0.0%
Workforce Development	22	0	12	1	35	0.7%
State government - non-jurisdictional						
Governor	0	4	10	0	14	0.3%
Judiciary	0	163	29	1	193	4.0%
Legislature and Legislative Agencies	0	2	19	0	21	0.4%
Governmental Employee-Employer	0	37	3	1	41	0.9%
Local government						
City Government	648	0	77	35	760	15.8%
County Government	686	0	50	34	770	16.0%
Metropolitan/Regional Government	22	0	1	1	24	0.5%
Community Based Correctional Facilities/Programs	204	0	27	2	233	4.8%
Schools & School Districts	47	0	12	4	63	1.3%
Non-Jurisdictional						
Non-Iowa Government	0	104	54	1	159	3.3%
Private	0	472	132	1	605	12.6%
Totals	**2982**	**782**	**904**	**144**	**4812**	100.0%

Ombudsman's message

Compromising the public's right to know erodes trust

Open government is a foundation stone for modern democracy. Transparency is an essential element of accountable government. Access to information and records is fundamental to meaningful citizen participation in the political process.

Bill Angrick
Iowa Ombudsman

The Iowa General Assembly has given our state two chapters of law the Public Records and Open Meetings acts that should leave little doubt about the obligations of our public officials to respect the public's right to know. But somewhere along the way, adherence to the spirit of the law has lost out to legal technicalities and strategic maneuverings that cost all of us in the long run. When government officials are able to find ways to compromise the spirit of what our public records and open meetings statutes mandate, not only does government become less accountable, but our basic trust is eroded.

The Iowa Ombudsman investigates citizens' complaints about Iowa state and local government. We respond to almost 5,000 inquiries each year. Of those, more than 200 contacts annually deal with some aspect of public records, open meetings or privacy. The range of these issues is quite varied and involves state, regional, county, city, school and township government. Over the past several years my office has experienced, investigated and reported on attitudes and behaviors of some government officials which have led to recommendations for corrective legislative change.

One 2006 legislative recommendation by the Ombudsman that was passed by the Iowa General Assembly and became law clarified the manner in which a citizen can make a request for a public record. At issue was whether requests needed to be made in person at the office of the custodian of the record. Iowa law at the time provided for examination and copying of a record to be done under the supervision of the lawful custodian, but it did not specifically require that records requests be made in person. In fact across the state, most governments were flexible and reasonable in responding to telephone and mail requests in addition to those made in person. With the advent of fax machines and electronic mail, Iowans used those technologies to request records. In a few instances, some government agencies narrowly construed the law to require a person they perceived as unfriendly to drive from one border of our state to the middle of Iowa rather than mail the records to him. Fortunately the Iowa General Assembly saw the unreasonableness of this practice and the Iowa Public Records Law now clearly requires accepting a public records request in writing, by telephone, or by electronic means. But other ambiguities and inconsistencies still exist and some seem to emerge more frequently than they should. Consider the case where city and county officials deliberately met privately in numbers of less than a quorum to discuss an impending decision. They could do so because the size of the group was less than the quorum required for conducting an open meeting. By rotating members in and out of the gathering (also known as a "walking quorum") the two bodies skirted public accountability during those deliberations. Technically, walking quorums are not prohibited under current law.

Technically, walking quorums are not prohibited under current law.

More recently an Iowa newspaper reported the elected board of a public hospital met without notice, claiming the meeting was simply called to receive information, not to discuss it. It supposedly could meet without public notice or scrutiny because no deliberation or action was taken. Other public bodies have followed similar tactics to avoid being in the public eye when receiving information that might be used in deliberation sometime in the future.

Another public body, one which has been under significant scrutiny for over a year, reportedly engages in the practice of a nonspecific start time for public meetings which piggy back onto a meeting of the same officials meeting as a different public body. The result of this practice has been that both the public and the media are uncertain when to show up for the start of a meeting; as a consequence, public scrutiny and participation may be lost.

In November, I submitted a bill draft for the 2007 legislative session to address how our public bodies make hiring decisions by amending both the Iowa Open Meetings and Public Records laws. Current law allows a governmental body to hold a closed meeting to evaluate the professional competency of an individual whose appointment, hiring, performance, or discharge is being considered at a meeting of a governmental body when necessary to prevent needless and irreparable injury to that individual's reputation and when the individual requests a closed session.

The bill provides that before a government body can hold such a closed meeting:

1) The individual must have requested the closed meeting in writing, stating the reason for requesting a closed meeting, and

2) The government body must have determined the closed meeting is necessary to prevent "needless or irreparable injury" to the individual's reputation.

With respect to public records, the bill creates a new provision specifically about employment applications. The bill provides that information contained in a communication pertaining to an applicant, candidate, or nominee being considered for employment with or appointment by a government body is a public record unless the applicant, candidate, or nominee requests in writing that the information be kept confidential and the government body makes a determination that disclosure of the information will result in needless and irreparable injury to the reputation of the applicant, candidate, or nominee. However, the government body shall disclose at least the name, city of residence, employment history, and educational history of an applicant, candidate, or nominee under final consideration and shall notify the applicant, candidate, or nominee of the requirements of the public records requirements of the bill.

It is to me as simple as: Do I as a resident of my community have a stake in who becomes its city manager? Should I as a parent have the opportunity to know about the background and accomplishments of my school superintendent before he or she is hired? If candidates for president of a major public university have different management styles, or emphasize a particular way of delivering public education, should not those variations be known before the selection is made? In so doing, should not the hiring body be open to comment from the public?

Government is open when its records are public and its decision making transparent. I firmly believe that open government begins with allowing citizens to know who is being considered and selected for positions of trust and authority. We value free and open elections. We should expect and demand when persons are hired for positions of trust and authority that those processes be as open and accessible as they can be. The governed have a major stake in who does the governing, whether elected or appointed. Transparent selection processes instill trust. Closed ones promote suspicion. An informed government is a better government.

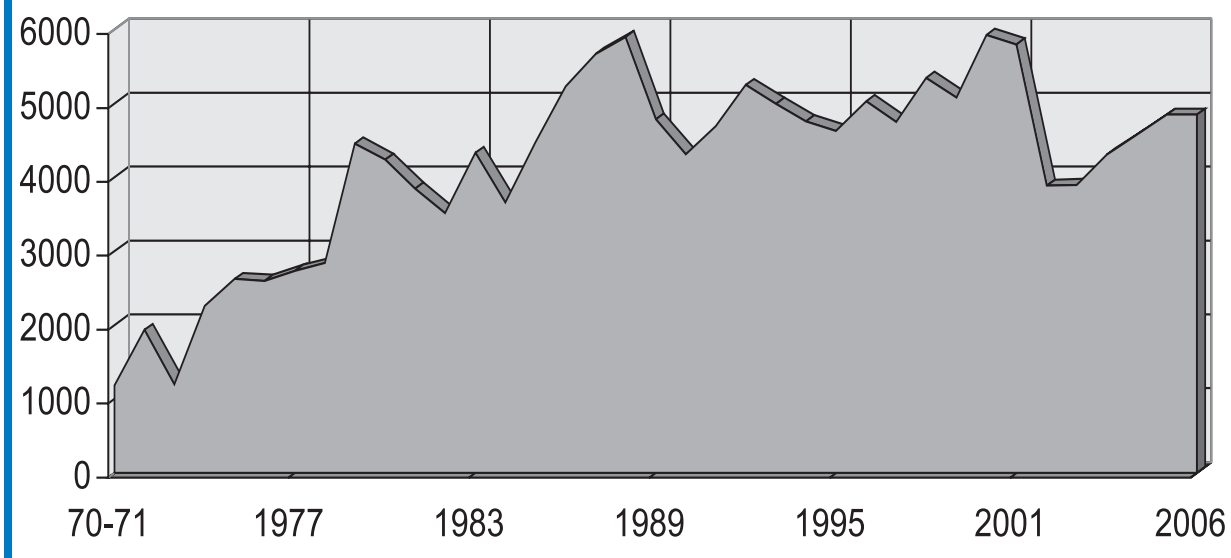
Responsible government has certain duties it must fulfill for its citizens. Protection is paramount among these. Government protects individual rights. Government protects public safety. Government protects public health. Government protects personal well-being and financial and property interests.

At some point in time, most government bodies in Iowa have been or will be faced with disposing public records containing personal information of Iowans. As Ombudsman, I strongly believe these records should be disposed of with the same level of security required during the life of the record. I believe this duty of protecting sensitive personal information of our citizens should be carefully considered, and standards and best practices should be sought. One way this responsibility can be accomplished is, if after study by policymakers who weigh the risks, responsibilities, costs and alternatives, our state and local government agencies are given standards and guidelines for proper record destruction or disposal.

Toward the end of both ensuring open government in Iowa while also protecting the confidential information of Iowans contained in certain records and reducing the risks of identify theft, I support the proposal of an interim legislative study committee to carefully and thoroughly review our open meetings, public records and records retention policies and practices.

One obligation of democracy is vigilance. Another is participation. Good government requires commitment and effort. No matter how carefully Iowa's laws are written, if we are to preserve and enhance open government in our state, each of us as citizens must remain attentive and let our voices be heard.

Annual contacts to Ombudsman since 1970



This chart shows the number of contacts received by the Ombudsman's office each year from 1970 through 2006.

CONFERENCE *Continued from page 1*

The theme of the 2006 conference, Ombudsmen at the Crossroads: Broadening Our Horizons, reflected the importance of having direction, resources and skills in making informed decisions. The program drew from some local speakers with expertise on certain subjects. Iowa State Auditor David Vaudt helped open the conference with some welcome remarks. Micheal Thompson, Executive Director of Iowa Mediation Service, conducted an all-day workshop about advanced dispute resolution skills. Civility in the public arena was the topic of a presentation by Scott Raecker, Executive Director of the Institute for Character Development. Jerry Foxhoven, Director of Drake University Law School's Middleton Center, led a discussion about child welfare issues at the Children and Families Chapter meeting.

Ontario Provincial Ombudsman André Marin, who has issued several highly publicized reports on issues ranging from child welfare to unfair property taxation, delivered the keynote address. Marin served as Canada's first Military Ombudsman before his appointment as Ontario Provincial Ombudsman in 2005.

Participants took a guided tour of the State Capitol and attended a banquet at the Iowa Historical Museum. Two groups from Des Moines, the Isiserettes Drill and Drum Corps and Las Guitarras De Mexico, a mariachi quartet, provided entertainment at the banquet.

Cooperrider noted the USOA and Iowa office are getting more international recognition because Iowa Ombudsman William Angrick is President of the International Ombudsman Institute.

More information about USOA can be found at: www.usombudsman.org.

Insurance problem fixed

Pregnant women have a vital need for access to good health care. But one pregnant woman was being shut out of the health care system. So she contacted the Ombudsman for help.

She had applied for Medicaid coverage through the State Department of Human Services (DHS). But her application was being denied by Iowa Medicaid Enterprise (IME), the private company which manages Iowa's Medicaid program for DHS. IME was saying that she was still covered through other insurance providers. But the woman said it had been months since she was covered through those other providers. She also said that her DHS worker had tried "umpteen times to get them [IME] to fix it," without success.

We contacted DHS about her complaint. Two days later, DHS reported that the problem had been resolved, and she was finally approved for coverage through Medicaid. We called the woman and she said her DHS worker had already called her with the good news.

Provider gets checks (finally)

A woman who provided transportation for a Medicaid recipient contacted the Ombudsman when DHS refused to resend two compensation checks. The first set of checks were sent to the wrong address and were made out to the Medicaid beneficiary. However, the beneficiary died during the mailing process. The checks were returned to DHS, which promised to send another set of checks made out to the provider.

DHS sent the second set of checks again to the deceased beneficiary. The checks were forwarded to the beneficiary's mother's address, who cashed the checks. When the provider informed DHS of what occurred, DHS informed her it would not send another set of checks, and she would have to file a legal claim against the recipient's mother. The provider then contacted the Ombudsman.

The Ombudsman found DHS was notified of the Medicaid recipient's death, but had failed to properly reissue the checks in the provider's name, as it normally would in such circumstances. The Ombudsman found that DHS was responsible for ensuring the correct name was placed on the checks, and sent to the correct address, and suggested DHS reimburse the provider directly. DHS agreed to send another set of checks to the provider, and decided it would take the responsibility of contacting the recipient's mother for reimbursement and possible legal action.

Machine error, human error

An in-home health-care provider from northeast Iowa contacted the Ombudsman for help after the state paid her for just a fraction of the work she had performed.

The Iowa Medicaid Enterprise told the care provider that the discrepancy was due to an error in a scanning machine. But the agency said it could be a month before it could fix the mistake.

Seeing that the worker could not wait 30 days for payment, the Ombudsman argued her case to the agency and persuaded officials to manually issue a new check right away.

One week later, however, the check still had not arrived. In response to the Ombudsman's questions, the agency found that the check had been sent to the right street address but to the wrong town. A second check was then issued and delivered overnight.

While researching the health-worker's complaint, the agency discovered that a scanning error had occurred in many other requests for payment. The agency said it has since resolved the other payment problems.

How to reach us

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

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

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

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

TTY: (515) 242-5065

Fax: (515) 242-6007

Department of Human Services

Assistant for Child Welfare

Barbara Van Allen
Assistant for Child Welfare

The Ombudsman appointed me in 2006 as the first Assistant Ombudsman specializing in child welfare matters. In that role, I will assist the Ombudsman to better respond to and track issues affecting children. Examples include, but are not limited to the following:

- Child Support
- Education Rights
- Foster Care/Adoption
- Child Labor Laws
- Child Abuse Prevention and Assessment
- Juvenile Placements/Treatment
- Governmental Medical Programs
- Family and Children Welfare Programs
- Medical Examiner complaints related to infant deaths

Child Support Advisory Committee

I serve as the representative from the Ombudsman's Office on the State of Iowa's Child Support Advisory Committee. Along with other representatives on the Committee, recommendations are made to the Department of Human Services (DHS) regarding the state's child support program.

The Committee in 2006 recommended and DHS approved changes to the hardship rules for parents who pay child support and also receive Social Security Disability and Supplemental Security Income Disability benefits. The parent can now claim hardship toward payment of past due support now at any time. This is a significant change from the old rule that only allowed the disabled parent to request that less money be taken to pay the past due child support on the grounds of hardship when first notified of collection and enforcement proceedings.

The Committee held public meetings on Iowa's Child Support Guidelines, and will be providing input and recommendations to the Iowa Supreme Court Committee to Review Child Support Guidelines. Pursuant to the federal Family Support Act of 1988, each state must maintain uniform child support guidelines and criteria, and review the guidelines and criteria at least once every four years. In Iowa, the Iowa General Assembly has entrusted the Iowa Supreme Court with this important responsibility [see Iowa Code section 598.21(4)]. The next review will be completed by the Court's committee of experts in 2008. The 2004 final report is at: www.judicial.state.ia.us/Reports.

Proposed Legislation for Changing Child Support Orders

Independent of the Child Support Advisory Committee, Deputy Ombudsman Ruth Cooperrider and I continued the Ombudsman's efforts to propose legislation for expanding the administrative modification procedure under Iowa Code chapter 252K. The Ombudsman believes parents need a fast and economic method to request changes in child support orders when a child goes to live with the parent ordered to pay support for that child. Changes in the child's care and living arrangements may be caused by:

- Agreement of the parents
- A juvenile court order changing custody
- Other circumstances, such as the custodial parent going to jail, prison or dying.

The DHS lobbied against the bill, Senate File 338. Although the Legislature did not pass the bill, the Ombudsman remains committed to helping Iowa's families and to ensure support goes to the children.

Foster Parents' Bill of Rights

Is it time for the vulnerability of being a foster parent to be recognized in Iowa law? Some states think so and have passed legislation to establish basic rights for foster parents. The National Foster Parent Association (NFPA) reports the following states have legislated a Foster Parents' Bill of Rights: Alabama, Colorado, Illinois, Georgia, Kentucky, Maryland, Mississippi, Missouri, New Mexico, Oklahoma, Oregon, Tennessee and Washington. The NFPA's basic foster parents' rights are the right to:

1. Be treated with consideration, respect for personal dignity, and privacy.
2. Be included as a valued member of the service team.
3. Receive support services which assist in the care of the child in their home including an open and timely response from agency personnel.
4. Be informed of all information regarding the child that will impact their home or family life during the care of the foster child.
5. Have input into the permanency plan for the child in their home.
6. Assurance of safety for their family member.
7. Assistance in dealing with family loss and separation when a child leaves their home.
8. Be informed of all agency policies and procedures that related to their role as foster care giver.
9. Receive training that will enhance their skills and ability to cope as foster care givers.
10. Be informed of how to receive services and reach personnel on a 24 hours a day, 7 days a week basis.
11. Be granted a reasonable plan for relief from the role of foster care giver.
12. Confidentiality regarding issues that arise in their foster family home.
13. Not be discriminated against on the basis of religion, race, color, creed, sex, national origins, age, or physical handicap.
14. Receive evaluation and feedback on their role of foster care giver.

The Ombudsman believes it is timely for Iowa to consider a Foster Parents' Bill of Rights. The Ombudsman's office has received complaints from foster parents. Some report they and others have or will be surrendering their foster care license because of actual or perceived mistreatment and undervaluation by the child welfare system. Others have said they will not file complaints about the child welfare system or will not seek information due to fear of being identified as difficult, interfering or uncooperative. They also fear agency retaliation, resulting in the removal of children in their home, or never having children placed in their home for foster care and/or adoption.

Chief Justice of the Iowa Supreme Court Marsha Ternus, in her 2007 State of the Judiciary remarks to the Iowa Legislature, expressed great concern for expeditiously finding foster children safe, permanent homes with good families. She indicated that in Iowa, over 5,000 children are living in foster care. According to Iowa Foster & Adoptive Parents Association (IFAPA) 2006 Iowa Key Foster Care and Adoption Facts, 64 percent of children in foster care are not placed with a relative. The National Resource Center for Family-Centered Practice and Permanency Planning at the Hunter College School of Social Work reports that in Fiscal Year 2006, 11,748 children were served in Iowa's foster care, with an average stay of 18 months. It is therefore important that foster parents feel valued by the child welfare system, while asked to care for some of our most vulnerable children.

The missing appeal

A father and his daughter contacted our office at the suggestion of a legislator. They complained that the Department of Human Services (DHS) had failed to act on an appeal regarding their wife/mother's Title 19 application for payment of nursing home care. The original application had been denied almost a year before and it took nine months to get a response on an appeal of that decision.

While awaiting a response to their appeal, they submitted a new application. This application was also denied and they also promptly appealed its denial. When they contacted our office, they had not yet received any response to their inquires regarding the status of the second appeal. DHS' appeals liaison told us the appeals division had no record of receiving the second appeal.

We also learned that the first appeal was never closed; the appeals division had remanded the case in June 2006 to the local DHS office, asking it to recheck information and to redo the attribution of assets. After posing additional questions, we were contacted by the local DHS office supervisor, who indicated that the case worker had misunderstood the attribution of assets. The supervisor advised that the problem had been corrected and benefits would be approved within ten days, retroactively to the month they submitted a new application.

Local government

Ombudsman persuades city to open blocked street

A woman in northeast Iowa had twice appealed to her city council to keep an unpaved street near her home clear of obstructions. The woman, who had health problems and wanted an alternative route open in case of emergency, even hired an attorney to make her case. Still, she received no reply from the city.

The street in question was a "paper street," meaning it was dedicated for public use as a right of way but never paved as a primary thoroughfare. The woman said the grass street had historically been used only for foot traffic but could conceivably be used by vehicles if it were clear.

When the Ombudsman contacted city officials, the utilities superintendent acknowledged that the street was in fact a city right of way. He also acknowledged that a private landowner had blocked the street by erecting a fence and placing junk cars and other debris at the site. Nevertheless, the superintendent said, "I don't see any reason why" the woman deserved greater consideration than other residents who had only one route out of their homes.

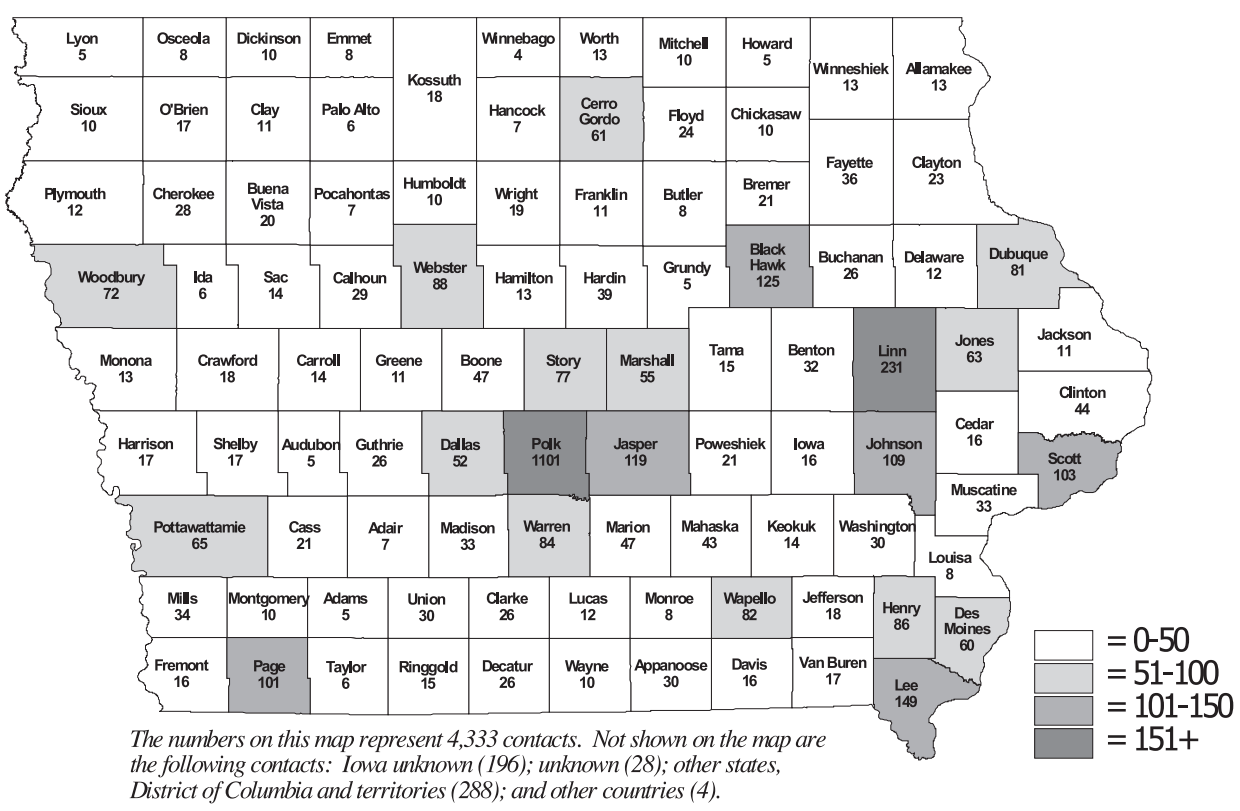
The Ombudsman noted that the private encroachment onto a public street appeared to violate five separate city ordinances on nuisance prohibitions and illegal parking of vehicles. The superintendent admitted he was unaware of those city prohibitions.

Within days, the city's mayor ordered a response and city officials persuaded the neighbor to clear the street without further dispute. The city even trimmed back some trees and sent a fire engine down the length of the street to ensure it was passable.

"I want you to know how much I appreciate all that you have done to help us with this matter!" the woman wrote to the Ombudsman.

Where's your county?

Contacts opened by Citizens' Aide/Ombudsman in 2006



The numbers on this map represent 4,333 contacts. Not shown on the map are the following contacts: Iowa unknown (196); unknown (28); other states, District of Columbia and territories (288); and other countries (4).

Municipal no-no: Shutting off water without chance for hearing

Shutting off the water supply to private property is among the more drastic actions government can take. Iowa law prohibits city utility services from being discontinued "unless prior written notice is sent to the account holder … informing [them] of the nature of the delinquency and affording [them] the opportunity for a hearing prior to discontinuance of service." [Iowa Code section 384.84(2)c]

Over the years, our office has found that not all towns are aware of this law. This was the case when we were contacted by a man from a relatively small town. The week before, the city had put a notice on his front door, saying he hadn't paid his monthly water bill by the deadline. It also said the city was going to shut off his water supply later that day. Before the city would restore his water service, he had to pay a $50 "reconnect" fee.

The man felt it wasn't right for the city to shut off his water on the same day that it issued the notice. We told him he was raising a good point, and explained what is stated in Code section 384.84(2)c.

The next day we called the mayor. We explained the complaint and also explained what the law says. The mayor agreed to take this up with the city attorney. Later that same day, the man's water was turned back on, and he was never again billed for the $50 "reconnect" fee.

A few weeks later, the city attorney confirmed that the city had modified the late notice that goes out to delinquent account holders. We obtained a copy of the new notice, and found that it includes language consistent with the process set out in state law.

Slow leak adds up

A member of Iowa's congressional delegation referred an elderly couple on a fixed income to our office with a complaint about a city water utility. The utility installed water service at the property in January 2003. The couple noticed fluctuating meter readings soon after, and the utility determined the meter had been installed incorrectly.

By summer 2003, the couple again suspected problems because their bill still showed fluctuating usage. They began reading the meter regularly until that fall, when the utility removed all meters and implemented an automated radio-read system. The couple was put on a waiting list for a visual meter (compatible with the automated system). But when that didn't happen, they eventually installed their own meter.

That's when they learned they were being billed for 1,000 to 3,000 gallons per month more than their meter registered. They shared this discrepancy with the utility in January 2005 and were told they had a slow leak somewhere.

The utility informed the couple that all excavation and repairs were the couple's responsibility as one year had passed since service was installed.

A technician present when repairs were made in July 2005 reported that a fitting was not screwed on properly at the time of installation (January 2003). The couple alleged they were unable to confirm there was a leak within the warranty period because the utility removed the visual meters within the first year of service. They also complained that the agency was not responsive to their concerns.

With the couple's permission, we provided a copy of their letter of complaint to the utility. After some delay and multiple calls from our office, the utility denied having been unresponsive; but as a "public service action" agreed to reimburse the couple for the cost of repairs and credited them for the water usage attributed to the water leak. The couple was reimbursed for $600 in repair bills and received a credit for $57.71 on their account.

Your hearing is … last week!

Why would a local government agency mail a notice about an administrative hearing a week after the hearing was held?

That was the essence of a property owner's complaint. The county assessor's office had mailed a notice, stating the assessed value of his property was going up. He sent a letter back, protesting the proposed increase. He later got a notice in the mail, indicating his protest was denied. The notice also seemed to indicate that the Board of Review would be holding a meeting at a particular date and time.

Trouble was, he received that notice more than a week *after* the date listed for the meeting. So we contacted the county assessor. She explained that Iowa law requires an oral hearing be held only when the property owner requests one. In this case, he had not asked for an oral hearing. (He did ask for an oral hearing the year before, showing he knew about that requirement.)

So why did the notice seem to indicate that he could attend an oral hearing if that wasn't the case? On this point, the assessor acknowledged that the form as sent out by her office was misleading. We obtained additional information from the Department of Revenue, which oversees the forms that are used by the county assessors' offices. We relayed this information to the county assessor. She spoke with their contracted vendor (who actually produces the forms) and promised that the forms would be revised so that they are no longer misleading.

WHISTLEBLOWERS *Continued from page 1*

Unfortunately, the protections have their limitations. That's because the 2006 law, as written, fails to cover the vast majority of public employees who might be in a position to uncover government waste and corruption.

In fact, Kelly Taylor would not have been eligible to benefit from these new protections at the moment they became law.

Taylor is not alone. The Ombudsman also lacks the legislative authority to investigate whistleblower claims from:

* Employees of Iowa's 947 cities
* Employees of Iowa's 365 public school districts
* Employees of Iowa's 99 counties
* State of Iowa employees covered by collective-bargaining agreements
* State of Iowa employees who are covered by the merit system

That leaves an extraordinarily large number of potential whistleblowers without a government agency to protect them.

And it has left a number of callers to the Ombudsman's office feeling frustrated, betrayed and helpless. In the words of one school employee who was openly scorned after he notified authorities about a misuse of funds, "If I had to do it again, forget it. It was not worth it at all."

The statistics tell the story:

Since the Ombudsman assumed its new whistleblower authority on July 1, 2006, the office has received 21 contacts from whistleblowers seeking help. Nine of those whistleblowers said they were punished or harassed for reporting problems within their organizations.

Not one of their cases fell within the Ombudsman's jurisdiction. In some of those cases, lawmakers demanded to know why the Ombudsman had not opened investigations in defense of the workers.

These lawmakers apparently did not know that the law they passed in 2006 failed to cover the employees they now wished to help.

The Ombudsman asked the Legislature during debate on the law to extend its whistleblower authority to all state and local government employees, but for now, those workers remain excluded.

Nevertheless, those employees are not without some protections. Iowa Code sections 70A.28 and 70A.29 generally say that a local or state government official shall not discharge an employee or fail to promote or provide an advantage to that employee "as a reprisal for" disclosing information to any other public official "if the employee believes the information evidences a violation of law or rule, mismanagement, a gross abuse of funds, an abuse of authority, or a substantial and specific danger to public health or safety."

Employees who are subject to those retributions may file civil action for reinstatement, back pay, attorney's fees and other relief. Employees also may seek a court injunction to prevent such acts from occurring or continuing. Violation of these provisions also constitutes a simple misdemeanor.

Employees who are covered by collective bargaining agreements usually can call upon a union to protect their interests after they have made disclosures as a whistleblower. The state's labor contracts include a protective provision modeled after the two laws cited above.

Law enforcement

City addresses citizens' complaints against sole police officer

A woman's teenaged children attend high school in a nearby small town. The mother contacted our office and said the town's only police officer was threatening and harassing her children.

The woman and other witnesses alleged the officer acted unprofessionally, especially around teenagers. One incident with the officer occurred after he received a complaint about how a friend of the woman's son was driving. The officer went to the boy's house to discuss it, and her son was with the boy. The woman said her son and another boy tried to explain the situation to the officer and the officer yelled at them and pushed her son into the other boy's house.

Citizens who lived in the town also complained about the officer. One woman whose son was in an automobile accident alleged the officer did not file an accident report until nine months after the accident. This caused difficulty in recovering damages from the other driver's insurance company. Iowa law requires an officer to file a report with the Department of Transportation within 24 hours of completing an investigation.

A man complained the officer had contacted his employer and provided false information, trying to get him into trouble with the employer. The man alleged the officer did this because he was upset with the man's son. Another woman complained the officer did not follow through on a child abuse allegation. The town received so many complaints that the city council established a grievance committee.

We viewed a video of the incident between the officer and the boys. We also spoke with the officer and many other witnesses, and attended the grievance committee meeting. We were unable to substantiate that the officer pushed the woman's son, because the video was recorded at the wrong angle to show the incident. We were able to substantiate the officer's unprofessional conduct based on the recorded conversation of the video.

We also substantiated the officer's failure to file the accident report within the proper time period. The complaints were resolved because the town instituted a grievance process, and listened to and acted on the complaints. The grievance committee recommended, and the city council agreed, to discipline the officer. Citizens report the officer is now behaving in a more professional manner.

Mistake costs police $600

A police department agreed to pay more than $600 in vehicle impoundment fees because it failed to send a certified letter to the owner of an impounded truck, as required by Iowa law.

The owner said it all started when he reported his truck had been stolen. A few weeks later, law enforcement in a nearby town spotted the truck. They had the driver pull over and arrested him. The arresting officer (a county sheriff's deputy patrolling the small town at the time) had the truck impounded.

Within a few days, the owner was able to figure out that his truck had been impounded in the other town. But he said that his attempts to locate the truck were unsuccessful. He called local law enforcement agencies and towing companies, but said nobody knew where his truck was.

Two months later, he received a phone call from one of the towing companies, asking whether he would ever be getting his truck. (The truck owner claimed this was the first time anyone acknowledged this. We spoke with the tow company owner, who believed his staff had long ago confirmed this to the truck owner, although there was no documentation of such a communication.)

Trouble was, the impound bill had grown to more than $1,000. And the truck owner believed he shouldn't have to pay all of that.

We found that under Iowa Code section 321.89(3), the police department was required to send a certified letter to the truck owner within 20 days of impoundment. We spoke with the police chief and he confirmed that such a notice was not sent to the owner. As a result, the chief decided that the owner should only have to pay the towing bill and for 20 days of storage fees. The chief agreed that his department would cover the remaining costs, which totaled more than $600. We confirmed this with the truck owner, who was satisfied with the police chief's decision.

New York driver gets refund and apology

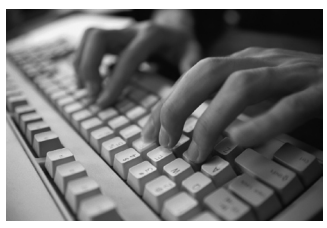
The Ombudsman is not empowered by Iowa law to investigate the courts, but sometimes, the office can help solve problems there with a little research and a telephone call.

Last December, a New York resident contacted the Ombudsman after her husband was forced to pay a traffic-ticket fine twice, with a late fee, in order to keep his driver's license. A court clerk had acknowledged to the complainant that the first check was received and cashed in the wrong county but did not volunteer to pursue the problem any further.

When the Ombudsman pulled the court records and the traffic tickets, the information suggested that a police officer mistakenly provided an envelope for a different county than the one in which the ticket was issued. The wrong clerk then accepted the driver's payment but did not relay that information to the correct county, which had reported the driver to the Department of Transportation for nonpayment. That report ultimately led to the suspension of the driver's license in New York, which could only be lifted by a second payment to the correct county clerk.

A court administrator, seeing the errors, immediately arranged for an apology to the driver, as well as a refund of the second check and the late fee.

Top Ten: Government websites



We've put together a list of 10 websites that will quickly put you in touch with almost any facet of state and local government in Iowa. This is certainly not an exhaustive list, but one that should help you get started in finding whatever you might be looking for.

1. Official State of Iowa website — www.iowa.gov/state/main/index.html
2. State agencies — www.iowa.gov/state/main/govagenciesfl.html
3. Legislative — www.legis.state.ia.us
4. Judicial — www.judicial.state.ia.us
5. Cities — www.iowa.gov/state/main/livingcitiesfl.html
6. Counties — www.iowa.gov/state/main/govcountiesfl.html
7. Public school districts and Area Education Agencies — www.ia-sb.org/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

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	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	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

Eight steps for resolving your own complaints

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

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

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

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

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

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

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

5. Plan your questions. Write down your questions before calling or visiting the agency. Be sure to specifically ask which law, rule or policy authorized the agency's actions. Then ask for a copy of the law, rule or policy (so you can read it for yourself, to see whether you agree).

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

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

8. Read what is sent to you. Carefully read everything from the agency, front and back 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 don't have authority to investigate any federal agency.

Small businesses

Major revisions to competitive bidding laws

Kristie Hirschman
Assistant for Small Businesses

Competing for customers or market share is an integral part of the formula for succeeding in the world of commerce. Government agencies become part of the equation when businesses compete against each other for government contracts.

Iowa's competitive bidding laws were significantly revised in 2006 with the passage and enactment of House File (HF) 2713, the *Iowa Construction Bidding Procedures Act,* creating a new chapter of the Iowa Code, Chapter 26. In addition to clarifying current law, HF 2713 created three tiers of bidding requirements for projects entered into on or after January 1, 2007: formal competitive bidding, quotation process and informal process. The estimated cost of the project, along with the nature of the project and the population served by the government body, determines the applicable tier.

In the past, our office has received complaints that bid specifications were not followed or that some portion of the process was unfair and biased. There has also been the perception in some instances that the successful bidder had inside connections, regardless of the merit and competitiveness of their bid. To avoid similar complaints under the new law, government and businesses should carefully review and implement the new bidding requirements for future construction projects.

Our office also receives complaints when businesses find themselves competing against those same government agencies for customers or market share. Chapter 23A of the Iowa Code generally prohibits competition by government with private enterprise. There are, however, exceptions, as illustrated in a case reviewed by the Ombudsman at the request of the Government Oversight Committee. The Ombudsman gathered information regarding competition by four county Soil and Water Conservation District (SWCD) offices in central Iowa: Dallas, Greene, Guthrie and Jasper. The Ombudsman focused on whether the Iowa Department of Agriculture and Land Stewardship (IDALS) employees in these counties were assisting SWCDs in competing with private contractors, in violation of Iowa law.

In addition, the Ombudsman reviewed whether these four SWCDs were profiting at the expense of contractors by furnishing labor, machinery, seed and other materials financed in part with state and federal monies.

The Ombudsman found SWCDs are authorized by statute to sell products and services, and that the IDALS employees could legally assist with the sale of products and services. The Ombudsman concluded that the inherent and perceived advantages the SWCDs have in the sale of products and services may be difficult for a small business to overcome, especially if the SWCD had already acquired a significant portion of the market.

Regardless of these inherent advantages, the success of SWCD ventures, just like that of contractors, hinged on program participation and funding, quality work, dedication, and promotion. Since each of the 100 SWCDs in Iowa has its own elected commissioners and each has different practices, priorities and fundraising activities, the Ombudsman's findings may not apply to all SWCDs.

The Ombudsman's report to the Government Oversight Committee can be found on the Ombudsman's webpage at www.legis.state.ia.us/ombudsman.

Regardless of who the competition may be, if public monies are involved, it is critical that all parties, government and businesses alike, monitor their actions and decisions to comply with the law and avoid any appearance of bias.

Sparks fly for electrician

A constituent's e-mail was forwarded to our office by a legislator. In the e-mail, the man complained that he was having problems getting a Master Electrician license in a specific city. He also alleged a conflict of interest, as the city's Electrical Board included local contractors whose profitability could go down if more licenses were issued.

Our numerous inquiries with the city yielded inconsistent answers regarding what documentation the complainant needed to provide to get a new license or a license by reciprocity. Our inquiries revealed that city staff also had difficulty in communicating with the Board, our office and the man about the status of his application.

We finally contacted the department supervisor and the city sent the man a letter, apologizing for the confusion and approving his application for a Master Electrician reciprocal license. The city asked the man to submit the annual $40 license fee but waived the $25 reciprocal license application fee.

We also confirmed through independent research that the membership of electrical boards in other Iowa communities is similar to that of this city. We found no evidence that the Board was denying a disproportionate number of licenses compared to other communities with a similar licensing process.

In addition, license denials could be addressed through an existing appeal process conducted by a separate appeals board.

School district violates law in roofing contract

Iowa law governs competitive bidding procedures for awarding construction project contracts for governmental entities, including school districts, for public improvements, non-emergency repair or maintenance work not done by school district employees, and structure demolition.

It is not uncommon for the Ombudsman to receive information requests or complaints from citizens, contractors and governmental entities related to a contract award disagreement. The disagreements reported are generally related to a government agency's failure to properly publish notice to potential contract bidders, the failure to require bidders to submit bid security with their bids and concerns about whether the contract was actually awarded to the lowest responsive, responsible bidder.

In March 2006, Governor Vilsack signed the Iowa Construction Bidding Procedures Act, making numerous changes to the existing requirements that government entities must follow in awarding construction projects, including raising the threshold when formal bidding is required. The Act, embodied in House File 2713, created a new chapter of the Code of Iowa (Chapter 26). The Act applies to public improvement contracts entered into on or after January 1, 2007.

At the time the Act was pending approval from the Iowa General Assembly and Governor Vilsack, a contractor contacted the Ombudsman to report a school district had awarded a substantial roofing contract to another contractor in violation of the existing competitive bidding procedures. The contractor had been in contact with the Superintendent and School Board regarding the required bidding procedures, but had been unsuccessful in getting the school to acknowledge the roofing project had been awarded in violation of the law.

Following an investigation, the contractor's complaint was substantiated by the Ombudsman. It was recommended that the school reject the awarded contract and start the competitive bidding process over on the roofing contract.

The school acknowledged its noncompliance with the contract bidding requirements, but did not accept the Ombudsman's recommendation to relet the roofing contract. The roofing project had already begun and the school alleged it was unable to relet the contract without risk of legal action from the project contractor. The school agreed to comply with the bidding procedures, as required, on all applicable and future projects.

During the investigation, the Ombudsman discovered that the State Auditor's office had received and substantiated a similar complaint against another school district. The Ombudsman worked with the Department of Education to provide school districts with information on the Iowa Construction Bidding Procedures Act to reduce project disagreements between contractors and school districts.

How to reach us

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

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

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

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

TTY: (515) 242-5065

Fax: (515) 242-6007

Corrections

Transfer to non-Iowa jail leads to medication problems

Overcrowding is a challenge for many Iowa jails. To manage the issue, some have resorted to transferring offenders to other jails. These transfers are usually to other jails in Iowa, but a handful of jails have also been transferring some offenders to jails in adjacent states.

We received a complaint from a woman who was transferred to a jail in a neighboring state. She alleged that a staff member (of the non-Iowa jail) denied her request for a prescribed medication. Our office does not have direct authority to review complaints about non-Iowa facilities. But we do have authority to review the actions of Iowa jails, including their response to complaints like this.

So we relayed the complaint to the administrator of the Iowa jail and asked him to look into the complaint. He called us back and said he'd spoken with the jail nurse, who had provided documentation showing the offender had received all of her medications on the day in question.

But when we reviewed that documentation, we found it did not show that she'd received all of her medications on that day. We recontacted the Iowa jail administrator and received permission to contact the nurse at the non-Iowa jail. We contacted the nurse and explained the discrepancy. She called back and agreed that it was unclear whether the offender had received any medication at all on the day in question. She also said the officer involved could not recall whether she'd provided the medication that day.

We followed-up with the Iowa jail administrator and told him that we were concerned with how the non-Iowa jail was handling this offender's medication requests.

Less than two weeks later, our office received a similar complaint from the same offender. This time, she said the non-Iowa jail had run out of one of her prescribed medications, and she didn't receive it for several days as a result. We contacted the nurse at the non-Iowa jail. She confirmed that the jail did run out of the medication, but only for "a day or so." The nurse also claimed it wouldn't have caused any significant problems. But we found information stating that an abrupt withdrawal of that medication may result in "occasional convulsions."

We asked the nurse for a copy of this offender's medication sheets for the month in question. Upon reviewing that information, we found that it showed no documentation of the offender receiving the medication in question for a period of nine days. Our office subsequently requested a copy of the offender's entire medical file from the non-Iowa jail. The nurse agreed to provide it to our office.

After several follow-up requests, our office finally received a copy of the medical file — more than three months later. It supported the offender's second complaint, that she had gone several days without the medication.

In the meantime, our office received a third complaint from the same offender, again alleging that she had gone several days without receiving prescribed medications. We investigated and concluded that her third complaint also had merit.

In the end, the Ombudsman recommended that the Iowa jail "find another jail for which to transfer female offenders, particularly anyone taking a prescribed medication." The recommendation was based on the Iowa jail's responsibility to provide for the health and safety of offenders, and also to avoid the prospect of a liability lawsuit.

Jail fails to provide prompt medical and mental health treatment in several cases

In 2006, several medical and mental health complaints prompted our office to review one Iowa county jail.

Offender given another offender's medication

A mother called on behalf of her incarcerated son and alleged that he received another person's medication. The nursing supervisor reviewed the complaint and discovered the woman's son had the same last name as an offender who had been released from jail. The released offender's medical flowsheet stayed, and was mistakenly placed with her son's medical information.

Medical staff failed to notice the offenders had different first names. The two offenders had resided in different areas of the jail. Nursing staff had faxed the medication sheet for the released offender to another area of the jail and it was placed within the remaining inmate's medical file. The offender who stayed in the jail was not on any medications.

The jail has since hired a health administrator who will hopefully ensure prompt medical and mental health treatment.

Nursing staff dispensed medication to our complainant's son and he complied by taking the medication. The second time a nurse tried dispensing the medication, he refused and said he was not on any medication. He then noticed the name of the discharged offender on the medication flowsheet.

The medical department already had steps in place to reduce medication errors. However, the nurses who dispensed the medication did not ask the offender his name, as required. Since the medication flowsheet was faxed between the jail buildings, the offender's pictures affixed to the original flowsheet were not on the faxed version. This is another safeguard.

Our office suggested that all nursing staff be informed of this situation and that the nursing supervisor urge medical staff not skip the step of asking an offender their name before dispensing medication. We also suggested that if staff faxes a medication flowsheet, to include the picture.

The nursing supervisor also stated they would be utilizing a new medication system that includes identifying bracelets and a bar code system. However, it was agreed that simply asking a person's name is the first step in preventing errors.

Insulin delayed for diabetic offender

Another case involved an offender admitted to the jail during the evening with an elevated blood sugar level. While being booked in, he informed medical staff he was diabetic. He told them what type of insulin he needed, as well as the dosage. Even though medical staff continued to monitor his blood glucose levels, they did not notify the on-call physician until the next morning. Medical staff failed to give him his evening dose of insulin. He received insulin the next day, but not before his blood sugar reached an elevated level.

Our office substantiated his allegation that nursing staff failed to notify the physician of his booking blood sugar level. The nursing supervisor revised the diabetic policy to correct this problem. Nurses are now required to notify the jail physician when a diabetic offender is admitted into the jail.

The jail voluntarily opted to review their diabetic diet in this case. In working with a dietician from a local hospital, they revised the amount of carbohydrates given to diabetic offenders. They also increased the number of snacks and stopped differentiating between insulin dependent diabetics and non-insulin dependent diabetics when providing snacks. Medical staff felt this would be easier for correctional staff.

40-day delay for offender to see physician

Another offender alleged he was assaulted by transport and booking officers and then denied timely medical treatment. We decided not to review the assault allegations because the offender intended to file a lawsuit to resolve that portion of the complaint. We contacted the jail and reviewed the offender's medical records. After reviewing medical records, meeting with medical staff, and the jail administrator, we determined that an unreasonable delay occurred for the offender to see a doctor.

We found the offender entered the jail on April 11, 2006. A nurse saw him that day and gave him a pain reliever. The next day, the jail transported him to another county jail, due to overcrowding. He returned to the original jail on April 20 for a court date. He immediately requested medical treatment again. He saw a nurse on April 22 and was put on a list to see a doctor. He was transported to another county the following day. He did not see a doctor until June 2.

We suggested that offenders who need to see a doctor must stay in the original jail until they see a doctor — unless jail staff makes specific arrangements with the second jail to see a doctor there. The suggestions were accepted and the jail agreed to make a concerted effort at better communication between medical services and other jail staff. The jail administrator informed us of plans to hire a health administrator to ensure this happens.

12-day delay for offender to see mental health professional

About a month later, another offender from this same county jail complained that he requested mental health treatment but did not receive it promptly.

We reviewed documentation provided by the offender and spoke with jail staff. We found the offender had been transported to another county jail due to overcrowding. The county where he was placed did not provide mental health services for offenders. The offender first requested mental health services from the second jail on July 26, 2006. Jail staff contacted the original jail the next morning. On July 28, the offender again requested mental health treatment. We received the complaint from the offender on August 3. We brought the situation to the jail administrator's attention on August 4. The offender was transported back to the original county on August 7 and was able to see a mental health professional immediately.

We determined the jail did not have proper communication between the medical or mental health department and other jail staff. We suggested the jail improve communications between departments and the out-of-county jails. We suggested staff have clear instruction, especially with mental health requests, to communicate quickly and thoroughly with all necessary departments.

The jail administrator accepted our suggestions. He assured us that once an offender is approved for transfer to another county, the transfer can usually happen within 24 hours of notifying the transportation staff.

The jail has since hired a health administrator who will hopefully ensure prompt medical and mental health treatment and improved communications between departments and out-of-county jail staff.

Ombudsman persuades prison to return restraint board

In their daily travels, assistants for the Ombudsman occasionally discover issues in unlikely ways.

While on her way to a meeting last February, an assistant Ombudsman crossed paths with a deputy warden who mentioned that a new restraint bed was going into use at a state prison in central Iowa. The assistant asked the warden for information on the new device, which followed days later.

The purpose of the bed was to prevent mentally ill inmates from injuring themselves or guards during outbursts or episodes. However, upon reviewing the information, the assistant Ombudsman identified the device as a restraint *board*. Restraint boards, in some cases, have been known to inadvertently suffocate inmates because of the awkward positioning of their bodies.

The assistant shared her observations with the state's newly appointed mental-health director, who agreed to examine the device that day during a scheduled visit to the institution.

Two days later, prison officials concluded that the board was inappropriate for use and informed the Ombudsman that the Department of Corrections would attempt to return the device to the manufacturer.

Facilities should contact Public Health for isolation guidelines

Work release residents contacted the Ombudsman to complain the facility where they were housed was not taking proper steps to isolate other residents who were suspected to have contracted mumps.

The Ombudsman contacted the facility and learned it was isolating suspected residents by making them wear masks, wash their hands often, eat after other residents had eaten, and restrict contact with other residents. However, the suspected residents were not quarantined. As a result, suspected residents still had access to the same areas as other residents.

The Ombudsman suggested the facility contact the Department of Public Health (DPH) and provided a contact person at the agency for guidance on isolating the suspected residents.

The facility thereafter followed DPH isolation guidelines by restricting resident movement to their individual rooms and having no contact with other residents until after the test results had come back.

Does gang activity in prison justify a "lock 'em up and throw away the key" approach?

Gangs and prisons don't mix well. The violence associated with gangs gives prison administrators a good reason to have a zero tolerance approach to gangs and gang activity.

But is it possible for prisons to go too far in their efforts to remove gang activity from inside the walls? Yes, as illustrated by an Ombudsman investigation involving one such program.

It started with a woman who called our office on behalf of a man serving a life sentence. He had been in administrative segregation (ad seg) for about two years. The prison was refusing to put him back into general population until he completed a program designed to discourage offenders from associating with gangs. One of the requirements was for participants to disavow their gang membership.

According to the woman, the man was not a gang member, so he refused to enter a program which would require him to renounce a falsehood. The prison, in turn, put him in ad seg, indefinitely.

Our investigation found that the prison had sufficient information for identifying the man as a gang member. But we also found that the way in which he was being segregated was tantamount to isolation. He had little contact with staff, and no contact with other offenders, day after day, week after week, and month after month.

We considered that he had been segregated in those conditions for about two years, with no changes planned for the foreseeable future. We also considered that several other offenders were being segregated the same way .

This caused us to pose two questions to a deputy warden who oversaw the program:

1. Are you comfortable that some offenders are kept in ad-seg status indefinitely simply because they refuse to participate in the gang-renunciation program?

2. Is that the most appropriate way to handle such cases, or is there a better way?

In response, the deputy warden initiated a months-long review of the entire program, including the manner in which some offenders were being segregated in near isolation for years at a time. This review triggered several developments:

We wondered what such a long-term placement would do to any particular person's mental health.

· The offender in this case was removed from segregation status several months after we first contacted the prison about his situation.

· The prison put together a statewide committee, charged with recommending improvements for working with offenders who had been identified as gang members.

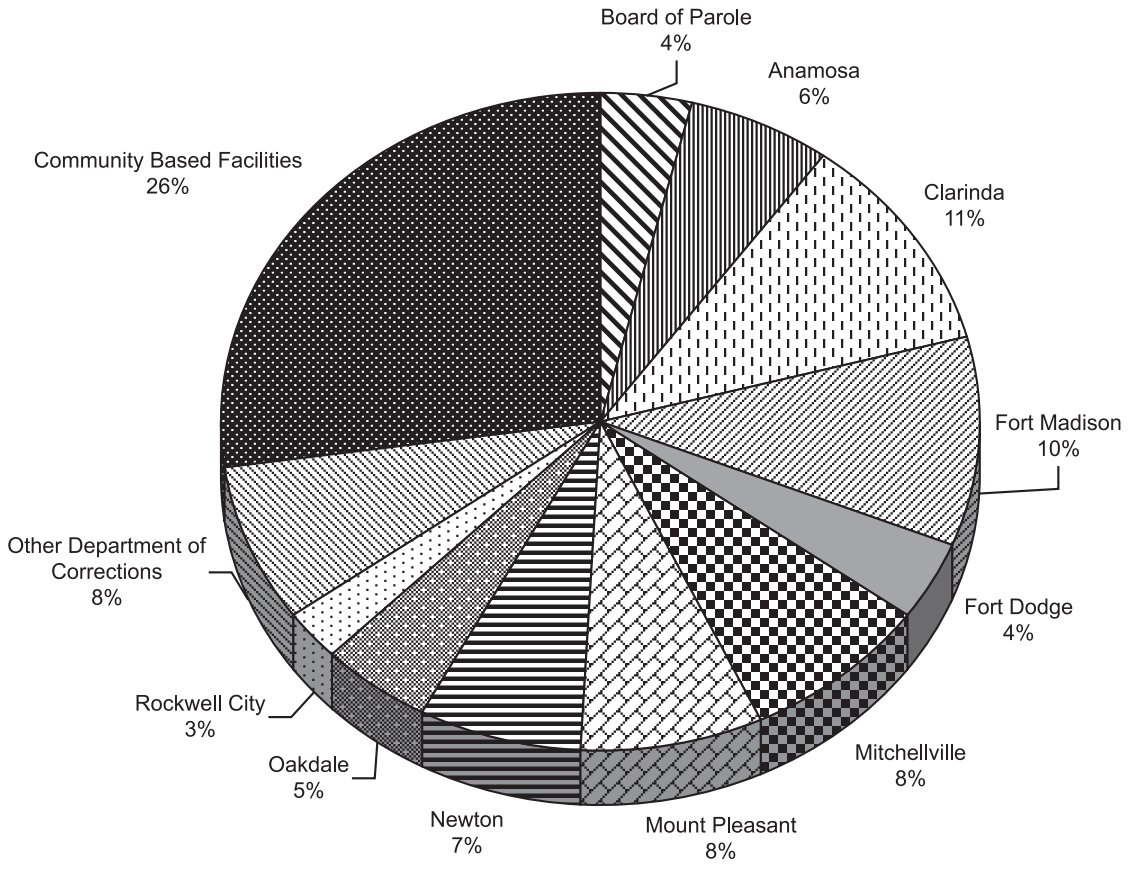
· Our office was invited to a meeting of the committee, and we were impressed that the participants were interested in making genuine improvements to the program.

· This also allowed us to emphasize our concerns, particularly regarding the fact that those who refused to participate had been in isolation or quasi-isolation status for months or even years at a time. We wondered what such a long-term placement would do to any particular person's mental health.

· A small group of offenders was in the process of completing the program. Once they were finished, the program ceased to exist.

· In its place is a new program, available to any offender classified in "Administrative Segregation 8" status (not just those with gang affiliations).

Sources of corrections contacts



This chart shows the proportion of contacts opened by the Ombudsman's office in 2006 involving various corrections-related agencies.

***MENTAL HEALTH** Continued from page 1*

Most of those fortunate enough to receive treatment in prison have little or no access to continued care in the community once released. This gap often results in a relapse and an eventual return to prison.

As these stark realities become clearer, with little response from our government officials, it begs the question whether Iowans care about the fates that befall our prison and jail populations.

Do we really believe people should be denied nitroglycerine for heart problems, insulin for diabetes, and psychotropic drugs for mental illness simply because they are incarcerated and cannot afford to pay for it?

Do we really believe mental illness is a crime?

Have we completely lost our heart?

Iowa needs to look seriously at how we fund mental health services. Under the current system, the level of care varies widely from county to county. This disparity should not continue to exist. This should be a state-funded service.

Iowa has only one mental health court. We need to divert more mentally ill from the criminal justice system rather than widening the net of offenders.

Iowa currently ranks 47th in the nation in the number of psychiatrists it employs per resident, according to a study by the Iowa Civic Analysis Network at the University of Iowa.

We must do a better job of recruiting psychiatrists to Iowa. To accomplish this goal, officials should consider forgiving a portion of student loans for students who agree to stay in Iowa after completing their education. Other incentives could also be offered to recruit and retain this essential resource.

Amid all these challenges, there are some glimmers of hope. The DOC, acting on the recommendations of a 2004 Ombudsman's task force report, has developed an online training course for correctional officers to better recognize symptoms of mental illness. Approximately 25 people signed up to participate in the first offering and provided feedback to DOC and the American Corrections Association (ACA), which helped to develop the course. This course has become the first in the ACA Correctional Medical and Mental Health Issues series offered to correctional staff across the country.

The course has the potential to become hugely successful because it is easy for corrections officers to work the online training into their schedules. The online classes are also cheaper than conventional classroom training, and thus, are more attractive to the DOC.

So far, the ACA has issued 30 certificates to DOC staff for successfully completing the course. An additional 17 certificates were issued during the testing phase of the course. As the Ombudsman's assistant for corrections, I also took the course and offered suggestions for improvements.

Iowa Administrative Code on obligation to provide medical care

Medical services. The jail administrator shall establish a written policy and procedure to ensure that prisoners have the opportunity to receive necessary medical attention for the prisoners' objectively serious medical and dental needs which are known to the jail staff. A serious medical need is one that has been diagnosed by a physician as requiring treatment or is one that is so obvious that even a lay person would easily recognize the necessity for a physician's attention. The plan shall include a procedure for emergency care. Responsibility for the costs of medical services and products remains that of the prisoner. However, no prisoner will be denied necessary medical services, dental service, medicine or prostheses because of a lack of ability to pay.

New batteries for disabled inmate's wheelchair

A double amputee feared he would no longer be able to get around prison on an electric wheelchair, until the Ombudsman interceded.

His wife called us and explained that the batteries were "about shot." New batteries would cost about $500 and they could not afford that. Without the wheelchair, the man could not get around. They figured the Department of Corrections (DOC) would pay for the new batteries.

They were very disappointed, however, upon learning that the prison doctor had decided DOC would not pay for the new batteries. We immediately contacted the doctor, who explained that his decision was based on an understanding that Medicaid might pay for the new batteries.

We called the man's wife. She said her husband had been on Medicare (not Medicaid) before going to prison. But Medicare dropped his coverage on the day he was initially incarcerated. She said there was no chance that Medicare or Medicaid would agree to pay for the new batteries, since he was in prison.

We relayed this to the prison doctor and the warden. The doctor called us and said it was his understanding that the decision of whether to pay for the batteries was actually up to the warden. We relayed this to the warden. Two weeks later, the prison agreed to purchase the new batteries for the man's wheelchair.

Jail makes improvements to comply with disabilities law

A disabled man who was jailed for 30 days for a traffic offense appealed to the Ombudsman for help with lingering issues over accessibility in a central Iowa lockup.

The man, who is partially paralyzed and walks with the aid of a cane, said he slipped in a jail shower and later fell off a toilet because the facilities had no grab bars to assist people with disabilities.

The Ombudsman discovered that the Americans with Disabilities Act, also known as the ADA, requires that such accommodations be made in jails and prisons. Institutions that fail to make those accommodations can be sued.

The jail administrator said he didn't know the jail was required to comply with the ADA. Nevertheless, after consultations with state and county officials, sheriff's officials agreed to install grab bars and a riser for the toilet, which were approved by state regulators. The jail also enacted a policy to screen all new inmates for disabilities to ensure they receive proper accommodations.

Other agencies

The check's in the mail

Does the taxman need new reading glasses?

That probably seemed like a fair question for a woman who was representing her mother in a dispute with the Department of Revenue (DOR). Her mother owed a tax debt from years past, and gave her daughter "power of attorney" to act on her behalf.

DOR sent a form to the daughter. The form's purpose is to allow the taxpayer to offer a payment, as a compromise. Following the instructions, the daughter enclosed a check for the offer amount, and importantly, she checked a box indicating that DOR was to return the check if it did not agree to her offer.

Instead, DOR accepted the check, credited the amount towards her mother's delinquent account, and turned the account over to the collections unit. The daughter contacted our office, noting that DOR's actions were pretty much the opposite of what she had requested on the form.

Our inquiry revealed that the check and the form had become separated in the mailroom. This resulted in the form being misplaced; it was then found on a staff member's desk. As a result, DOR agreed to accept the offer of compromise as the daughter originally made for her mother.

Taking an agency's "word for it" not always good enough

You open your mail to find a notice from the tax department. It says you're being fined $87 for making a late payment. You call in to report that the notice is wrong. Eventually, they agree, and tell you to ignore the notice.

So far, so good. You then ask for a second notice to confirm that the first notice was wrong, so that you have written proof. But they tell you a second notice isn't needed.

That was the situation for one Iowa taxpayer when he called the Ombudsman's office last year. He had opted to pay his income taxes through an electronic check handler. It would submit payments automatically, on a date set up by the taxpayer, to the Department of Revenue (DOR).

DOR sent a written notice saying one such payment was one day late, and he was being penalized $87 as a result. He contacted DOR and explained that the payment was not late. Eventually, a DOR manager acknowledged that the taxpayer was correct, and told him he no longer had to pay the penalty.

The taxpayer in turn asked for a notice confirming that the first notice was in error. To that, he said a DOR manager responded to the effect of, "We don't do that."

This refusal concerned the taxpayer. He noted that only two people were aware of the phone conversation in which the DOR representative stated that the notice was in error. "That guy could lose his job and I'd be left out in the cold," the taxpayer reasoned. "If they're going to send me letters saying I owe them money, and it gets fixed, I think they should be willing to send me a follow-up letter effectively rescinding it."

We immediately saw the logic in his request, and reasoned that the same logic would apply to all cases where DOR determines that a notice of a debt was in error. We sent an e-mail to the same DOR manager that he had been dealing with. Our e-mail stated that the taxpayer's request "sounds perfectly reasonable." The manager's response stated that a letter would go out to this taxpayer, specifically confirming that the first notice was in error and could be ignored.

We thanked the manager, and then expressed our interest in making this "an automatic practice in all such cases, department wide." The manager responded that DOR already had steps in place "to make appropriate contact with the taxpayer regarding these cases. Unfortunately, in this case it was mistakenly overlooked."

In response, we posed a number of specific questions to the manager, asking him to clarify the steps he was referring to and how they were "overlooked" in this case. Five days later, we received a phone call from a DOR administrator, promising to look into our request.

Two days after that, we received a letter from the administrator, saying DOR would start automatically sending follow-up notices to all taxpayers who receive a written notice of debt that was later found to be in error whether requested or not. Enclosed was a copy of such a letter to the taxpayer who brought this to the Ombudsman's attention.

EXTRA pLERS

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

Alicia Salick-Leeck, jail administrator at Hamilton County Jail — for her candor and initiative in addressing problems with the catered food being served to offenders. She responded by eating the same food served to prisoners and initiating dialogue with offenders, requesting their input and notification of any further problems. She was also very receptive to the Ombudsman's inquiry, participating in an open exchange of ideas towards treating offenders humanely.

Kelly Taylor, budget analyst, Iowa Workforce Development — for standing by the principles of accountable government despite great personal risk. Taylor disregarded the questionable directives of his superiors and contacted outside authorities about the misspending of hundreds of thousands of dollars by the job-training agency known as CIETC. Three of his superiors, responsible for monitoring CIETC, later resigned, and two were indicted on charges of conspiracy and obstruction. Taylor has since been promoted to a supervisory position. (*See "Whistleblower" column on page 1.*)

Ruth Vargas, Scott County Recorder — for her office's speedy response to the redacting of personally identifiable information on her agency's website.

Stu Vos, Department of Revenue — for quickly cutting through the "red tape" to set up a system whereby all taxpayers who receive a written notice of debt that is later found to be in error will automatically receive a follow-up notice from the department, effectively waiving the first notice. (*See article on this page.*)

State worker reminded about the rules of the road

The Ombudsman's office received an e-mail forwarded by another state agency. The woman who wrote the original e-mail advised a few days prior, she was on I-235, the freeway which runs east to west through Des Moines.

She stated the morning traffic was heavy. A Department of Transportation (DOT) pickup was merging onto the freeway and proceeded into her lane. She was unable to change lanes or make other adjustments. As the DOT driver was attempting to merge, his truck tapped her mirror. She described him as having a surprised look on his face. She proceeded to the next exit to check her vehicle.

She had no apparent damage to her vehicle. However, she wanted to report this incident so the DOT driver could be counseled about looking to his left before merging. She was able to get the license number of the truck.

We contacted the DOT and relayed the complaint. They asked for clarification of the date. By the time we reached the e-mail author and forwarded the information, the DOT said they had already tracked down the truck driver and addressed the issue. The woman was very pleased that the driver had been counseled to be more careful when merging into traffic.

DOT sends letter to the right address ... but wrong town

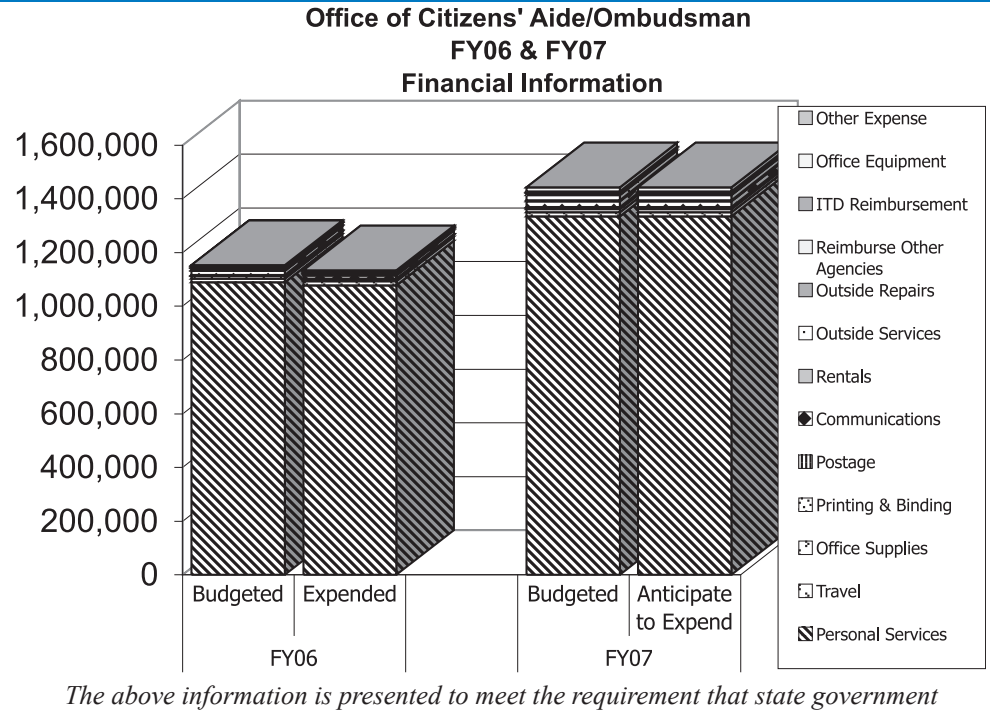
When a central Iowa man found out last fall that he'd lost his driver's license as a habitual traffic offender, he got the news from an unlikely source: his employer.

The state never informed the man about its decision, nor did it tell him he could keep his license if he enrolled in a driver's improvement class. But the Iowa Department of Transportation (DOT) believed it had.

When the man called the DOT to see what could be done, officials said he had already waived his right to the class since he had failed to respond to their letter. His only option, therefore, was an appeal, which could take some time. For the man, waiting to get a license was not an option—he needed a car for work.

When he called the Ombudsman in November, he insisted he had never received the DOT's letter. When the Ombudsman asked the DOT for information on the purported mailing, officials discovered they had sent the letter to the right street address but in the wrong town.

The DOT immediately worked to restore the man's license, but its complex computer network would not immediately recognize workers' entries. The Ombudsman persuaded the agency to issue the man a letter explaining that his license remained in good standing.



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