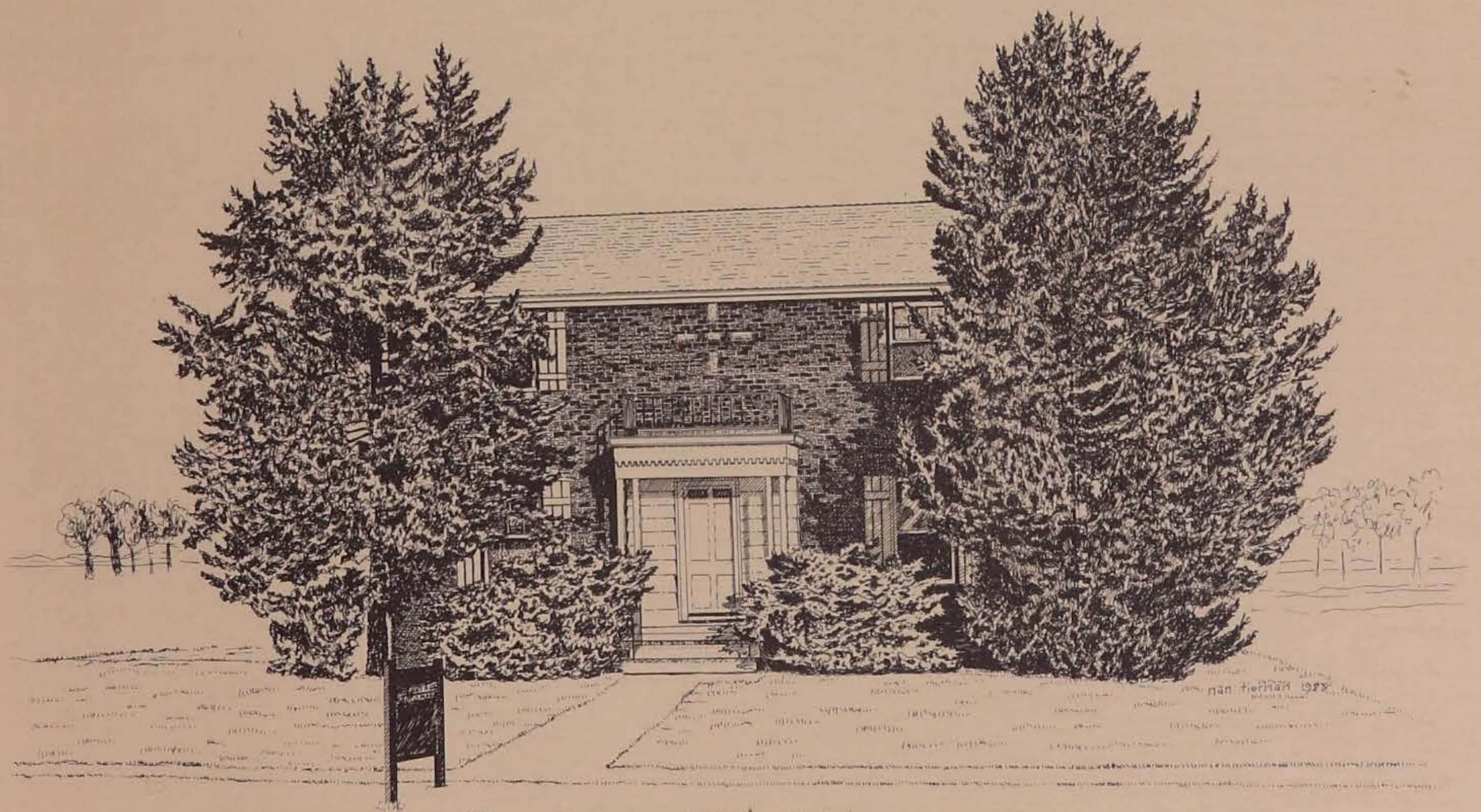


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REPORT TO
THE SEVENTY-SECOND IOWA GENERAL ASSEMBLY
AND
THE GOVERNOR OF IOWA
1987 ANNUAL REPORT

BY THE IOWA CITIZENS' AIDE/OMBUDSMAN



Office of Citizens' Aide Ombudsman
515 - East Twelfth Street, Des Moines, Iowa
1970 - 1988

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WILLIAM P. ANGRICK II
CITIZENS' AIDE / OMBUDSMAN

In reply, please refer to:

April 1, 1988

I am pleased to present the annual report of the office of Citizens' Aide/Ombudsman for calendar year 1987.

The preceding year was an extremely busy one for the Ombudsman staff. We entertained 5,668 contacts, the greatest number in the history of the office. Citizens were served from every county in Iowa.

April 1988 marks the tenth anniversary of my appointment as Citizens' Aide/Ombudsman for the State of Iowa. A decade in office provides the opportunity for insight into the workings of Iowa government and perhaps comment from perspective would be allowed.

Several changes and developments mark the history of the office over the past ten years. In 1978 the office handled 2,838 contacts, almost exactly one-half the number we dealt with ten years later. A goal we had in 1978 was to make the Ombudsman better known throughout the state. Each ensuing year has found more Iowans using the office and that pattern demonstrates a statewide distribution of awareness and contact. Since 1978 over 42,000 people have been served by the office of Citizens' Aide/Ombudsman.

Increased volume is not the only, nor even the primary, development experienced over the past decade. A continuously changing variety defines the workload of the office. As new programs are introduced in Iowa government, when significant modifications are made in established policies, or whenever governmental agencies, departments, and offices falter in the attainment of their goals -- the Ombudsman hears about it. The operation of the Child Support Collections Bureau, Department of Human Services generated many inquiries in 1987 and is discussed elsewhere in this report. The decade also found delays and backlogs in several other programs of Iowa government. It is not surprising that almost every contact received about the Iowa Civil Rights Commission complained about delay in case investigation or processing. I spoke publically on that problem in 1985 and the circumstances remain generally the same today. Surprising, though, have been the recently increased number of complaints about delays in the processing of Iowa tax returns, especially amended income tax returns. This truly appears to be a case of lack of personnel resources to adequately handle the volume of work. Occasional delays in completion of case investigations have been noted in child and adult protective services; especially noteworthy have been the problems of investigative closure and worker burnout.



In 1978 the Ombudsman did not have access to confidential information. That responsibility was granted by statutory amendment in 1981. With it the Ombudsman can fully investigate complaints about income and sales taxation, child abuse investigations, civil rights complaints, foster care placements, allegations of police misconduct, and the activities of the professional licensing and regulatory boards, among others. This expansion of authority was a major step forward in giving the Ombudsman the tools to do his job. It finally allowed the individual citizen an even chance to complain about administrative abuse and bureaucratic intransience.

Enhanced authority and increased activity by the Ombudsman in the 1980's marked the office for tests of immunity and confidentiality over our files. By law, the Ombudsman shares the same responsibilities and penalties as the custodial agency when reviewing confidential materials. Actions in state court were directly addressed under the provisions of Chapter 601G. Federal court actions, however, presented a different type of challenge. The results were unsettled until the Ombudsman sought successfully to protect the integrity of the office by intervening in a suit brought against the State by the family of an inmate murdered in the 1981 riot at the Iowa State Penitentiary. The legal issues of concern are discussed in a separate section of this report.

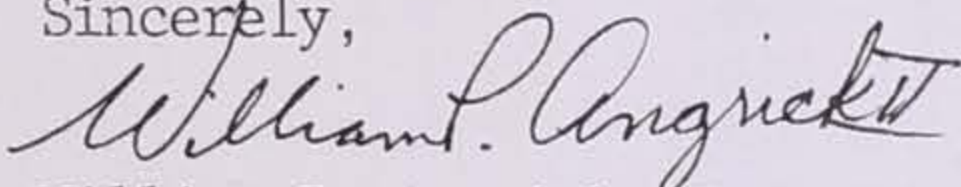
Challenges and changes into 1988. In late 1986 and early 1987 CA/O responded to requests from several advocates for the physically disabled about the lack of handicapped accessibility of the Ombudsman office. Department of General Services officials were approached and plans for an elaborate ramp were designed permitting wheelchair access to the building. Interior designs were drawn to accommodate restroom and workspace access within the building. The Director of General Services resisted the expenditure as too great and expressed his desire to relocate the office elsewhere on the Capitol Complex. As Ombudsman I had been through this scenario before. In a previous challenge several years ago I had argued successfully that the human scale of the building we occupied, pictured on the cover of this report, was an important counterpoint to the edifices of bureaucracy we battle daily. Yet times and resources change. Twenty-five or thirty thousand dollars is not a wise investment in a building that also requires a new roof and cannot adequately accommodate the staff necessary to entertain over 5,000 contacts annually. A different office location was selected, one which met our needs of independence, security and accessibility. The Legislative Council approved the move. Significant preparation and renovation was accomplished by the employees of the Department of General Services. A functional and cost-effective open office space system was designed and installed by Iowa Prison Industries. The building and space are wheelchair accessible. In addition, a TDD line allowing telephone communication with the deaf is being installed. By the time this report is released we will occupy our new quarters at 215 East Seventh Street in Des Moines.

Where a government agency is housed is not as important as how it delivers its service or fulfills its responsibility. During my ten years in office I have been fortunate to work with a staff of dedicated, inquisitive, caring co-workers. Their individual contributions have enhanced the collective integrity and credibility currently enjoyed by the office.

It was not always this way, however. Individuals who have joined the staff in recent years don't experience the frustration of having to justify the right of the Ombudsman to make inquiry. Patronizing comments, especially toward female investigative staff, are exceedingly rare nowadays. Care must be given before a suggestion or recommendation is made to agency personnel because it stands a good chance of being adopted. Referrals from state legislators, congressional representatives and many other elected and appointed officials are more frequent. The office and its role in Iowa government has matured.

Individual complaints and requests for advice are the mainstay of an ombudsman's existence. But the rationale for continued investment in the office requires more. Hopefully the contributions made by the staff of the Citizens' Aide/Ombudsman since 1971 made Iowa a better place to live. While arbitrary, capricious, unreasonable, and arrogant governmental actions will always be with us, the continued scrutiny of administrative behavior by an ombudsman reduces the tolerance for their acceptance.

Sincerely,



William P. Angrick II
Citizens' Aide/Ombudsman

WPA:jg



Left to right: William Angrick, Clarence Key, Jr., Ruth Mosher, Judy Green, Susan Voss, Patricia Nett, Randy Meline, Michael Ferjak. Not Pictured: James Peterson.

Cover illustration from original ink sketch by Nan Tiernan

ANNUAL REPORT NARRATIVE

During calendar year 1987 the office of Citizens' Aide/Ombudsman received 5,668 contacts from individuals with complaints or requests for information. These contacts were received from each of the 99 Iowa counties, 33 other states including the District of Columbia, and four foreign countries. A map illustrating the geographic distribution of the contacts originating from Iowa is included.

These contacts demonstrate a consistent and marked increase of complaints or requests brought to the Citizens' Aide/Ombudsman since the early years of the existence of the office. For comparative purposes a table of the number of annual contacts since 1971 is presented.

CITIZENS' AIDE/OMBUDSMAN TOTAL CONTACTS

1971 - 1,185	1979 - 4,458
1972 - 1,934	1980 - 4,237
1973 - 1,199	1981 - 3,846
1974 - 2,262	1982 - 3,512
1975 - 2,624	1983 - 4,330
1976 - 2,597	1984 - 3,660
1977 - 2,733	1985 - 4,471
1978 - 2,838	1986 - 5,231
1987 - 5,668	

Individuals may contact the office in any manner they find comfortable and convenient: by telephone, mail or in person. In order to facilitate contact with the office an Iowa In-WATS line was installed in 1985. Not only has this 800 number helped make the office more available to citizens throughout the state, it has also been less costly to operate than the previous policy to accept in-state collect calls. Flexibility is sought and there are no required forms to complete. However, complaints may be requested in writing when the issues are unusually complicated or sensitive. During 1987 contacts were initiated with the office in the following proportions:

Source	Total	Percent
Telephone	4,640	82%
Mail	414	7%
Office Visit	135	2%
Institutional Visit	442	8%
Site Visit	3	less than 1%
Self-Initiated	34	less than 1%
	5,668	99%*

*% not equal to 100% due to rounding

Contacts are received and investigated by individual staff members who, on a daily rotation basis, intake and are responsible for working the case to completion. Contacts from inmates of the Iowa correctional system are routinely assigned to the statutorily mandated Assistant for Corrections and other staff members who have been assigned specific institutions. Staff responsible for correctional complaints regularly travel to the institutions in order to receive, investigate, and resolve those complaints.

If the problem is jurisdictional and requires inquiry by the Ombudsman, arrangements are made to secure the necessary documentation, identify the relevant officials and review the appropriate law, rule or regulation. Cases are routinely worked by telephone or mail, and less frequently by site investigation.

If the Citizens' Aide/Ombudsman cannot help the individual, an immediate and accurate referral is made. Many times the person needs to be put in contact with the agency or official having jurisdiction to review and resolve the matter, such as the Attorney General's Consumer Protection Division or the Insurance Division of the Iowa Department of Commerce.

In 1987, approximately 25 percent of the 1,628 jurisdictional complaints investigated were found to be justified or partially justified; 47 percent not justified; and 28 percent were either withdrawn or there was no basis to evaluate the merits of the complaint. Non-jurisdictional complaints accounted for 1,074 of the contacts received in 1987. Jurisdictional and non-jurisdictional information requests numbered 2,859 during the year.

Of the 5,668 contacts received in 1987, 98 percent were completed and closed during that year. Eighty-six cases remained open and under investigation into 1988.

The length of time a contact remained open - that is, until the complaint was evaluated as justified or not justified, and if determined to be justified, an equitable resolution achieved, the information located and provided, or an appropriate referral made - varied considerably. Statistics demonstrate that 97 percent of the contacts were completed in 60 days or less. The average length of time that a contact remained open during 1987 was five and one-half days.

<u>Days Open</u>	<u>Number of Contacts</u>	<u>Percent</u>
10 days or less	5,013	88%
11 - 30 days	361	6%
31 - 60 days	118	2%
61 - 90 days	41	less than 1%
91 - 140 days	26	less than 1%
141 - 180 days	10	less than 1%
181 days or more	13	less than 1%
Remained open into 1987	86	1%
	<u>5,668</u>	<u>98%*</u>

*% not equal to 100% due to rounding

The range of contacts with the office continues to be quite varied. Issues requiring investigation have involved minor local offices to the directors and policies of the large state agencies.

The greater proportion of contacts tend to involve those agencies and levels of government most directly involved in providing services to or regulating or controlling behavior of large numbers of citizens. Approximately 17.7 percent of the 1987 contacts dealt with divisions, institutions, or programs of the

Department of Corrections. Lesser numbers involved the Department of Human Services (6.8 percent); the Department of Employment Services (4.5 percent); the Department of Transportation (3.4 percent); the Department of Commerce (1.8 percent); and the Department of Revenue and Finance (1.5 percent). Municipal and county governments each accounted for approximately five percent of the 1987 contacts and less than one percent pertained to schools and school districts. A complete listing of the agencies, levels of government, and other problems areas about which the Ombudsman received contacts during 1987 are presented elsewhere in this report.

The Citizens' Aide/Ombudsman has statutory authority to issue reports regarding governmental officers and agencies. These reports may be either critical or special in nature. A special report details investigative findings that are not critical of an officer, agency or department yet involves matters sufficiently important or which have generated public attention to the degree that the Ombudsman believes a public statement is necessary. In 1987 the office of Citizens' Aide/Ombudsman released one critical report:

87-1, Investigation of the Intensive Supervision Program with Specific Attention to the Parole Management of Patrick Bert Riley.

In January 1987 five legislative recommendations were made to the Iowa General Assembly. Four have been enacted into law by the Legislature thereby relieving Iowa citizens of certain administrative grievances. The Ombudsman's recommendations which became law in 1987 and 1988 are:

An amendment to the Administrative Procedures Act providing that a person's request or demand for a contested case proceeding shall be considered filed by the agency in question on the date of the United States postal service postmark or the date personal service is made.

An amendment prohibiting the discretion of a notary public to condition the performance of notarial services upon the requirement that the person served be a customer or client of the establishment by which the notary is employed.

An amendment to the motor vehicle financial responsibility statute regarding the continuance of the suspension of an operator's license until judgment paid and proof given so that Iowa law be consistent with federal case law.

Amendments to Section 19A.19 and Section 79.28, The Code, prohibiting reprisals against governmental employees who bring allegations of wrongdoing to the attention of the office of Citizens' Aide/Ombudsman and the Computer Support Bureau.

BUDGET

The office of Citizens' Aide/Ombudsman employs seven investigative (including the director) and two clerical staff. Funding is authorized for a third clerical staff person, however the position remains vacant at the present time.

During Fiscal Year 1986-87 the state appropriation plus cost-of-living salary adjustment was \$275,884. In Fiscal Year 1987-88 the agency will be operating on a budget of approximately \$424,309. This expenditure increase is accounted for by the addition of two full-time positions (one investigative and one clerical); cost-of-living, merit increase, and comparable worth salary adjustments, office relocation expenditures, and the general costs of handling more contacts than in previous years.

STAFF

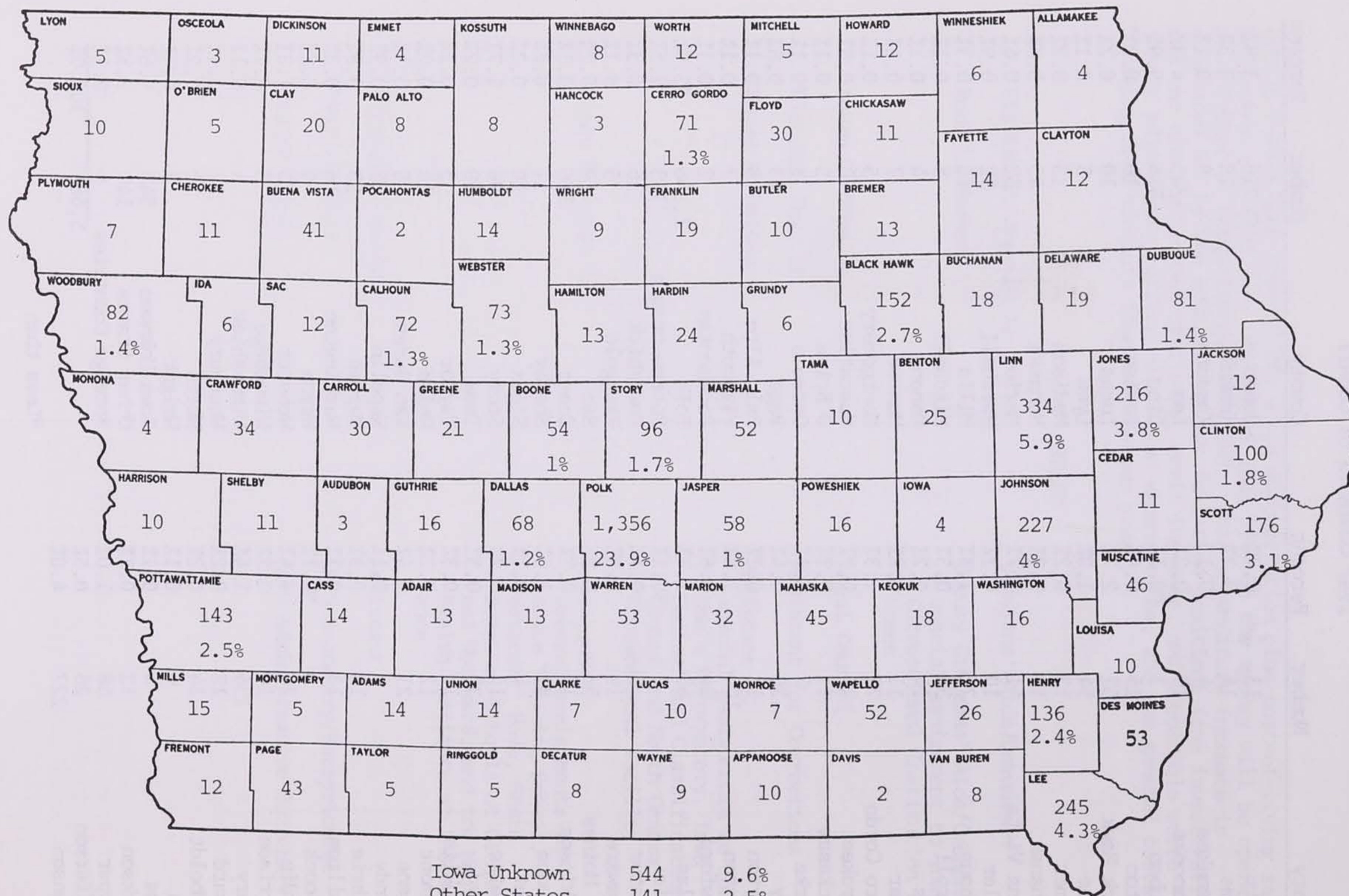
William P. Angrick II	Citizens' Aide/Ombudsman
Ruth L. Mosher	Deputy Citizens' Aide/Ombudsman - special assignment to Iowa Correctional Institution for Women
Susan E. Voss	Legal Counsel
Clarence Key, Jr.	Assistant for Corrections
Randy A. Meline	Assistant II - special assignments to Iowa Men's Reformatory, Iowa Medical and Classification Center and North Central Correctional Facility
James Peterson	Assistant II - special assignments to State Training School, Veterans' Home, State Hospital-Schools at Glenwood and Woodward, and the Mental Health Institute at Independ- ence
Michael J. Ferjak	Assistant I
Patricia Nett	CA/O Secretary/Receptionist
Judith Green	CA/O Administrative Secretary

1987 CONTACTS BY COUNTY

County	Number	Percent	County	Number	Percent
Adair	13	0.2%	Jones	216	3.8%
Adams	14	0.2%	Keokuk	18	0.3%
Allamakee	4	0.1%	Kossuth	8	0.1%
Appanoose	10	0.2%	Lee	245	4.3%
Audubon	3	*0.1%	Linn	334	5.9%
Benton	25	0.4%	Louisa	10	0.2%
Black Hawk	152	2.7%	Lucas	10	0.2%
Boone	54	1.0%	Lyon	5	0.1%
Bremer	13	0.2%	Madison	13	0.2%
Buchanan	18	0.3%	Mahaska	45	0.8%
Buena Vista	41	0.7%	Marion	32	0.6%
Butler	10	0.2%	Marshall	52	0.9%
Calhoun	72	1.3%	Mills	15	0.3%
Carroll	30	0.5%	Mitchell	5	0.1%
Cass	14	0.2%	Monona	4	0.1%
Cedar	11	0.2%	Monroe	7	0.1%
Cerro Gordo	71	1.3%	Montgomery	5	0.1%
Cherokee	11	0.2%	Muscataine	46	0.8%
Chickasaw	11	0.2%	O'Brien	5	0.1%
Clarke	7	0.1%	Osceola	3	*0.1%
Clay	20	0.4%	Page	43	0.8%
Clayton	12	0.2%	Palo Alto	8	0.1%
Clinton	100	1.8%	Plymouth	7	0.1%
Crawford	34	0.6%	Pocahontas	2	*0.1%
Dallas	68	1.2%	Polk	1,356	23.9%
Davis	2	*0.1%	Pottawattamie	143	2.5%
Decatur	8	0.1%	Poweshiek	16	0.3%
Delaware	19	0.3%	Ringgold	5	0.1%
Des Moines	53	0.9%	Sac	12	0.2%
Dickinson	11	0.2%	Scott	176	3.1%
Dubuque	81	1.4%	Shelby	11	0.2%
Emmet	4	0.1%	Sioux	10	0.2%
Fayette	14	0.2%	Story	96	1.7%
Floyd	30	0.5%	Tama	10	0.2%
Franklin	19	0.3%	Taylor	5	0.1%
Fremont	12	0.2%	Union	14	0.2%
Greene	21	0.4%	Van Buren	8	0.1%
Grundy	6	0.1%	Wapello	52	0.9%
Guthrie	16	0.3%	Warren	53	0.9%
Hamilton	13	0.2%	Washington	16	0.3%
Hancock	3	*0.1%	Wayne	9	0.2%
Hardin	24	0.4%	Webster	73	1.3%
Harrison	10	0.2%	Winnebago	8	0.1%
Henry	136	2.4%	Winneshiek	6	0.1%
Howard	12	0.2%	Woodbury	82	1.4%
Humboldt	14	0.2%	Worth	12	0.2%
Ida	6	0.1%	Wright	9	0.2%
Iowa	4	0.1%	Iowa Unknown	543	9.6%
Jackson	12	0.2%	Other States	142	2.5%
Jasper	58	1.0%	Foreign Countries	4	0.1%
Jefferson	26	0.5%		5,668	100.0%
Johnson	227	4.0%			

*Less than

1987 Contacts by County



Iowa Unknown 544 9.6%
 Other States 141 2.5%
 Other Countries 4 0.1%

1987
CITIZENS' AIDE/OMBUDSMAN
CONTACT STATISTICS

JURISDICTIONAL AGENCIES, DEPARTMENTS AND OFFICES	TOTAL NUMBER OF CONTACTS	PERCENT OF TOTAL CONTACT
State of Iowa (general)	382	6.7%
- Iowa Law/Bill Status	[203]	[3.6%]
- Governmental Financial Assistance	[15]	[0.3%]
- Open Meetings/Public Records	[6]	[0.1%]
Attorney General	46	0.8%
- including Consumer Advocate office and Prosecuting Attorneys Training Coordinator office		
Auditor of State	3	less than 0.1%
Secretary of State	43	0.8%
- Notaries Public	[12]	[0.2%]
Treasurer of State	9	0.2%
Executive Council	0	0.0%
Department of Agriculture & Land Stewardship	25	0.4%
Office Citizens' Aide/Ombudsman	65	1.1%
Civil Rights Commission	44	0.8%
Department of Commerce	101	1.8%
- Alcoholic Beverage Division	[7]	[0.1%]
- Banking Division	[8]	[0.1%]
- Credit Union Division	[0]	[0.0%]
- Insurance Division	[48]	[0.8%]
- Professional Licensing & Regulation Division	[7]	[0.1%]
- Racing and Gaming Division	[6]	[0.1%]
- Savings and Loan Division	[2]	less than [0.1%]
- Utilities Division	[16]	[0.3%]
Department of Corrections	1,003	17.7%
- Community Services Division	[121]	[2.1%]
-- Community Based Corrections	(54)	(1.0%)
-- Jail Inspector	(3)	less than (0.1%)
-- Parole and Probation	(26)	(0.5%)
-- Work Release	(30)	(0.5%)

Bracketed figures indicate divisional totals, figures in parenthesis represent intra-divisional totals.

- Institutions Division	[837]	[14.8%]
-- Iowa State Penitentiary, John Bennett Correctional Center, and Farms	(245)	(4.3%)
-- Iowa Men's Reformatory and Luster Heights Facility	(213)	(3.9%)
-- Medium Security Unit - Mount Pleasant	(125)	(2.2%)
-- Iowa Correctional Institution for Women - Mitchellville	(76)	(1.3%)
-- North Central Correctional Facility - Rockwell City	(75)	(1.3%)
-- Iowa Medical & Classification Center - Oakdale	(52)	(0.9%)
-- Riverview Release Center - Newton	(20)	(0.4%)
- Prison Industries Division	[2] less than	[0.1%]
Board of Parole	75	1.3%
Department of Cultural Affairs	8	0.1%
- Arts Division	[3] less than	[0.1%]
- Historical Division	[3] less than	[0.1%]
- Library Division	[1] less than	[0.1%]
- Public Broadcasting Division	[0]	[0.0%]
Department of Economic Development	53	0.9%
Department of Education	22	0.4%
- Area Schools Division	[7]	[0.1%]
- Vocational Rehabilitation	[10]	[0.2%]
College Aid Commission	15	0.3%
Professional Teaching Practices Commission	0	0.0%
Department of Elder Affairs	17	0.2%
Department of Employment Services	256	4.5%
- Industrial Services Division	[34]	[0.6%]
- Job Services Division	[101]	[1.8%]
- Labor Services Division	[114]	[2.0%]
Department of General Services	9	0.2%
Department of Human Rights	18	0.3%
- Blind Services Division	[1] less than	[0.1%]
- Children, Youth & Families Division	[1] less than	[0.1%]
- Community Action Agency Division	[6]	[0.1%]
- Deaf Services Division	[0]	[0.0%]
- Persons with Disabilities Division	[1] less than	[0.1%]
- Spanish Speaking Peoples' Division	[1] less than	[0.1%]
- Status of Women Division	[5]	[0.1%]
Department of Human Services	388	6.8%
- Community Services Division	[182]	[3.2%]
- Iowa Veteran's Home Division	[3] less than	[0.1%]

- Mental Health, Mental Retardation, & Developmental Disabilities Division	[14]		[0.2%]
-- Mental Health Institute - Cherokee	(3)	less than	(0.1%)
-- Mental Health Institute - Mount Pleasant	(3)	less than	(0.1%)
-- Mental Health Institute - Independence	(3)	less than	(0.1%)
-- Mental Health Institute - Clarinda	(0)		(0.0%)
-- State Hospital-School - Glenwood	(3)	less than	(0.1%)
-- State Hospital-School - Woodward	(1)	less than	(0.1%)
- Social Services Division	[186]		[3.3%]
Department of Inspections and Appeals	9		0.2%
State Appellate Defender	0		0.0%
Department of Management	2	less than	0.1%
Campaign Finance Disclosure Commission	0		0.0%
State Appeal Board	2	less than	0.1%
Department of Natural Resources	51		0.9%
Department of Personnel	28		0.5%
Public Employment Relations Board	1	less than	0.1%
Department of Public Defense	3	less than	0.1%
Department of Public Health	62		1.1%
(Independent) Professional Licensure Boards	20		0.4%
- Board of Dental Examiners	[4]		[0.1%]
- Board of Medical Examiners	[11]		[0.2%]
- Board of Nursing Examiners	[2]	less than	[0.1%]
- Board of Pharmacy Examiners	[2]	less than	[0.1%]
Department of Public Safety	39		0.7%
-- Crime Victim Reparation Program	(11)		(0.2%)
- Criminal Investigation Division	[7]		[0.1%]
- Fire Marshal Division	[3]	less than	[0.1%]
- State Patrol Division	[8]		[0.2%]
Law Enforcement Academy	1	less than	0.1%
Board of Regents & Regents Institutions	37		0.7%
- University of Iowa	[17]		[0.3%]
- Iowa State University	[11]		[0.2%]
- University of Northern Iowa	[1]	less than	[0.1%]
- Iowa Braille & Sight Saving School	[1]	less than	[0.1%]
- Iowa School for the Deaf	[1]	less than	[0.1%]
Department of Revenue & Finance	84		1.5%
- Lottery Division	[8]		[0.2%]

Department of Transportation	195	3.4%
- Highway Division	[16]	[0.3%]
- Motor Vehicle Division	[157]	[2.8%]

LOCAL GOVERNMENTS

Schools and School Districts	35	0.6%
Municipal Government	242	4.3%
-- Police and Jails	(74)	(1.3%)
-- Mayor and Council	(45)	(0.8%)
-- Housing and Zoning	(23)	(0.4%)
-- Public Works	(19)	(0.3%)
County Government	260	4.6%
-- Sheriff and Jails	(100)	(1.8%)
-- County Attorney	(24)	(0.4%)
-- Board of Supervisors	(20)	(0.4%)
-- General Relief	(14)	(0.2%)
Metropolitan and Area Governmental Entities	5	0.1%
Quasi-governmental, private non-profit Agencies	1	less than 0.1%

NON-JURISDICTIONAL

Governmental		
Iowa Government (Governor, Legislature, Courts)	94	1.7%
States other than Iowa	15	0.3%
Federal Government	178	3.1%
Foreign and International Governments	2	less than 0.1%
Non-governmental	2,052	36.2%
- Consumer problems	[284]	[5.0%]
- Employee-employer problems	[837]	[14.8%]
- Financial institutions	[28]	[0.5%]
- Insurance problems	[78]	[1.4%]
- Landlord-tenant problems	[126]	[2.2%]
- Private legal problems	[491]	[8.7%]
- Medical problems	[44]	[0.8%]
- Private nursing homes	[4]	[0.1%]
- Utility problems	[52]	[0.9%]
Undetermined	27	0.5%

6,027*

*Total greater than the 5,668 recorded contacts because some contacts dealt with more than one agency, office, or level of government.

OMBUDSMAN ADDRESSES CONFIDENTIALITY OF INFORMATION QUESTIONS

The Citizens' Aide/Ombudsman (CA/O) office occasionally becomes involved in legal action surrounding information obtained in the course of its duties. The CA/O statute provides that information within the files of the office may be held confidential. Further information, if confidential by any other statute or law, is also confidential when maintained by the Citizens' Aide/Ombudsman office. Therefore, any other agencies, attorneys or citizens requesting copies of that confidential information would be denied access.

In recent years the Citizens' Aide/Ombudsman has faced the issue of confidentiality in a number of venues. In a 1986 case, the CA/O was denied a copy of a confidential child abuse investigation report. The Department of Human Services (DHS) claimed that their confidentiality statute did not allow access of that information to the CA/O. CA/O claimed otherwise stating access to information within state agencies based on Iowa Code Section 601G.9. The CA/O requested the information in writing and when that was denied, subpoenaed the information. DHS officials respectfully declined to obey the subpoena, at which time the CA/O filed a petition in District Court asking the court to command DHS officials to attend a meeting and present the information or be held in contempt of court. An out-of-court agreement was entered into between DHS, the Attorney General's Office and the CA/O. CA/O now has access to that type of Human Services information.

The issue of confidentiality of information within the CA/O office was raised in a different forum in 1987. A former employee was named as an expert witness in a case in the Federal District Court in Des Moines. Specifically, the former employee was to testify for the plaintiff in regard to a civil rights case involving the riot at the Iowa State Penitentiary in 1981. The former employee was the Assistant for Corrections in 1981 and was present at the Penitentiary at the time of the riot. The former employee was to testify as a witness for the party who was suing prison officials, although he was quoted in a number of contemporaneous newspaper stories vindicating the riot response actions of corrections officials.

It was the belief of the CA/O that the certain information the former employee would rely on for his testimony was confidential information he had obtained as an employee in the office. CA/O contended that that information remains confidential regardless of the status of the employee. CA/O requested intervention in the Federal District Court matter and argued that the confidentiality of the information in the office should be recognized in federal court. The Federal District Court ruled that information obtained in records of the CA/O or information known to employees of the CA/O office remains confidential even after the employment is terminated. In other words, the information always remains confidential. Therefore, the former employee could not testify as to specific matters learned during tenure at the CA/O office. He was allowed to testify as to general matters only. The CA/O was allowed to sit in at the trial and to raise objections to evidence which might have been confidential in nature. CA/O also intervened in another federal court case based on the same issues as the above matter. That case is pending. The year 1987 saw a continued strengthening of the confidentiality of information in this office.

BACKLOG CONTINUES AT CIVIL RIGHTS COMMISSION

In 1985 the CA/O issued a Critical Report against the Iowa Civil Rights Commission concerning a growing backlog of cases which seemed to take an inordinate amount of time to resolve, particularly where there seemed to be little or no cause for continued investigation. Many reasons were cited for the backlog and it was hoped that new procedures would reduce the problem.

Since that Critical Report, the CA/O office has continued to monitor the processing of claims by the Civil Rights Commission as well as the backlog. A case filed in 1985, for example, has taken three years to get to the hearing process stage. Continually, CA/O has requested information on the status of cases and the reasons for such long delays. Case reassignments, staff turnover and staff promotions were just some of the reasons given for the slow movement of cases through the review system. While it is CA/O's understanding that the backlog has been somewhat reduced, concern still exists as to length of time to process a claim. This concern is not only for the complainant, who must wait to receive compensation, but also for the defendants who may feel the process is so slow they must settle the matter though they may have done nothing discriminatory.

CA/O will continue to monitor the Civil Rights Commission and the status of cases being filed in the hope that a better system will be implemented to quickly and accurately assess Civil Rights complaints and process them to a final determination.

CHILD SUPPORT SERVICE CENTER HAS ROCKY START

In 1986 the Legislature authorized a central bureau to collect and distribute child support payments statewide. The Bureau of Collections, Service Center was developed to streamline the collection and disbursement of support obligations. This work had historically been done by county clerks of court. The system was designed to be a computerized clearinghouse: payments received and quickly forwarded to recipients with records maintained in one central repository. The system went on line April 1, 1987.

CA/O immediately began receiving complaints. These included support payers complaining about having received incorrect balance due notices, payees reporting delays in receiving support payments and others. CA/O made numerous inquiries and sought frequent status reports from the bureau chief. It gradually became clear that during the system's implementation too many jurisdictions were added too quickly before operational problems could be worked out.

Bureau staff worked long hours to rectify the problems and accommodate those whose support payments were delayed. Toward the close of 1987 CA/O noted a marked decline in the number of complaints. It now appears that many program flaws have been corrected and the system is functioning more smoothly. CA/O believes the bureau chief and staff should be credited for recognizing system problems and diligently seeking solutions throughout the year.

SOME SPECIAL CITIZENS' AIDE/OMBUDSMAN ACTIVITIES

The role of the Ombudsman's office is not always to investigate complaints. The CA/O, for example, has recently conducted workshops and seminars at adult correctional institutions.

***CA/O arranged for a well-known watercolor artist to conduct a workshop/seminar for inmates at the Iowa Men's Reformatory. Twelve inmates participated - each received professional watercolor paints, brushes and paper at a minimal cost. CA/O and the inmate resident council subsidized the event. A follow-up revealed that several of these men continue to paint watercolors.

***CA/O assisted in coordinating a Family Violence Workshop/Seminar at the Iowa Correctional Institution for Women at which nearly 50 percent of the 100 inmates participated. Participants at this Workshop/Seminar heard from former victims of both sexual and physical abuse. They also learned that domestic abuse is no longer merely a family matter but rather a crime against the state. They learned that the new law provides for mandatory arrest after a domestic assault and that the victim is no longer required to file charges because such violent domestic acts are now considered public matters. The CA/O has been extremely active in working toward increased awareness of Iowa's new domestic abuse law and plans to continue involvement in this important work.

***CA/O organized a racial/ethnic awareness seminar for staff at the Iowa Men's Reformatory. All management and front-line supervisors participated in the all-day seminar which focused on dispelling racial stereotypes and giving staff new ideas on how to cope with racially motivated problems.

1987 CASE SUMMARIES

Non-jurisdictional employer/employee inquiries. CA/O received more than 800 inquiries in 1987 from employers and mainly employees (public and private), most of these referrals from the Department of Employment Services. CA/O strived to offer factual information concerning state and federal law or accurate referrals to government agencies. Typical topics of inquiry included overtime pay guidelines, minimum wage standards, workers' rights to choose work hours, hiring and firing rights and dozens of others. CA/O believes there is a need for a central employer/employee clearinghouse to field citizens' inquiries which may not be jurisdictional to state or federal labor agencies and in 1988 a legislative recommendation was offered toward this end.

* * *

Iowa Civil Rights Commission - Open Meetings Law. It was discovered by CA/O that the Civil Rights Commission entered into a closed session outside of the provisions of Iowa Code Chapter 21, The Open Meetings Law. The closed session commenced after a motion had been made to adjourn the meeting. CA/O made inquiry with the Civil Rights Commission questioning the action and its non-compliance with Chapter 21 and usual parliamentary practices. The Commission acknowledged that an error had been made and corrected the error at a subsequent meeting.

* * *

Inmate Muslim name-change policy scrutinized. Several inmates at the Iowa State Penitentiary have changed their names to reflect their Muslim beliefs. They complained to CA/O because departmental policy requires inmates to use their "sentence committed name" on correspondence. CA/O undertook an exhaustive search of case law on this issue but could find nothing to support the inmates' stance that they did not wish to use their former names on correspondence. CA/O informed inmates correspondence may be addressed with their committed name, followed by A.K.A. (also known as) and then the Muslim name.

* * *

Privately used boats exempted from registration. Complainant was the owner-operator of a campground which included a lake. The campground owner was cited by a conservation officer for non-registration of boats on the campground pursuant to Iowa Code Chapter 106. CA/O reviewed the issue of whether an owner-operator must register his own boats when their only location is on his privately owned lake. CA/O met with the Attorney General's Office and members of the Natural Resources Department Enforcement Division. A communication from the Fish and Wildlife Division of the Department of Natural Resources stated that the complainant's boats would fall under a statutory exemption under the definition of a farm pond. Therefore, he would not be required to register the boats.

* * *

Are fishing licenses required to fish in a privately owned reservoir? The same campground owner as above complained that a conservation officer entered the campground and announced that he would be checking for fishing licenses on the

campgrounds. CA/O requested an opinion of the Attorney General which revealed that campground tenants are exempt from fishing licensure while fishing on a private reservoir. However, non-tenant guests of the campground owners and tenants need to possess a valid fishing license if they fish the waters. The Opinion revealed that there is difference between definitions of "waters of the state" and "private waters."

* * *

Iowa Juvenile Home staff chides guardian's reputation. Staff at the Iowa Juvenile Home, Toledo prepared a report to the court in which extremely untenable information was portrayed as fact in criticizing a 30-year-old, male guardian of a youth committed to Toledo. The report's intent was to discredit the young man for consideration of continued guardianship. CA/O conducted an investigation of this complaint, interviewing each juvenile justice professional which had been utilized in the report to the court. Several site visits were made. CA/O's investigation revealed that the report was completely erroneous and unjustly defamed the young man. CA/O prepared a lengthy report rebutting each area of the Juvenile Home's report and recommended that this subsequent document be provided to the court. Juvenile Home staff complied and issued a written apology to the young man. The youth (as of this writing) is back residing with the young man and attending high school. CA/O has assigned a staff member to monitor such future activity at the Toledo Juvenile Home.

* * *

CA/O assists many inmates with time credit queries. Dozens of prison inmates sought help from the CA/O in 1987 with credit for time served questions. Typical of these queries was an inmate serving time for attempted burglary at the Medium Security Unit, Mt. Pleasant who told CA/O he had been incarcerated previously at a mental health institute and a residential facility while on probation for his crime. Section 907.3(2), Code of Iowa, 1985 provides offenders credit for time served while incarcerated at an alternate jail site while on probation. CA/O inquired with both facilities and verified that the inmate had been confined a total of 225 days at both facilities. CA/O informed clerk of sentencing court, the data was verified and the inmate was credited with the additional time.

* * *

Court-ordered medical expenses paid. Citizen complained that the Linn County Department of Human Services (DHS) had denied payment of medical expenses for a juvenile court-ordered treatment of her son's chemical dependency and behavioral problems. Payment was initially denied by DHS because the citizen was not covered by Medicaid (Title XIX) when the services were provided. The CA/O made inquiry with the DHS county director. It was discussed whether the citizen was eligible to receive medical payments through the juvenile, county-based program. The medical expenses totaling \$5,738 were submitted to the chief juvenile court officer and the application for payment through reimbursement funds was approved. All expenses were paid.

* * *

Problem inmate's behavioral turnaround is complete. CA/O became immediately involved two years ago when Illinois transferred a female inmate with a severe, behavioral problem to the Iowa Medical and Classification Center at Oakdale. This young inmate had entered the Illinois system with a 2-year sentence but in a short time lengthened it to 21 years through acts of physical violence, arson and destruction of property. At Oakdale the pattern of poor behavior initially continued but gradually through friendship, understanding and positive reinforcement programming the inmate began to let go of her anger and accept help from a group of excellent staff members at Oakdale and the CA/O. Today she holds the most responsible inmate work position at Oakdale; through CA/O's and others' efforts Illinois has reduced her sentence considerably. Credit needs also be given to Steve Punis of the Illinois Inmate Advocate Office for providing this young woman with consistent positive feedback. She now awaits imminent parole in 1988 and her dream of life on a farm in Iowa.

* * *

CA/O advocates for life sentence commutation. An inmate serving a life sentence asked CA/O in 1986 for assistance in seeking a commutation of her sentence. CA/O is extremely careful when reviewing such requests. In this case an exhaustive inquiry was made of the inmate's crime, sentence, background and especially progress in prison. (She had served 12 years of a life sentence and was a model inmate.) CA/O decided to advocate for the inmate but with a new Parole Board and chairman the issue of commutation was deferred until late 1987. The new board was in complete agreement (as was their new policy) to recommend to the Governor for commutation. CA/O coordinated a visit to the prison for a member of the Governor's staff. The Governor turned down the commutation recommendation because she had not served enough time but said he would look more favorably towards commutation after her next board interview in May, 1989.

* * *

CA/O reviews police brutality complaint. Nearly 200 complaints and inquiries regarding police departments, county sheriffs' departments and jails were handled by the CA/O in 1987. Typical of those was the case of a young man, his face covered with dried blood, who came to the CA/O office and complained that he had been beaten by an arresting officer after being booked into a municipal jail on a public intoxication charge. CA/O monitored the police department's internal affairs investigation which revealed the following: Upon placing the man into a cell, he cursed loudly at the officer and reportedly spit on him. The officer became enraged and re-entered the cell - having already locked the door. The man reportedly swung at the officer and the officer brought him to the ground with five forceful strikes with his sap (a leather-covered, metal filled, striking device.) The man was taken to a local hospital where 15 stitches were required to close the wounds. There was further concern about this officer because he had been involved in previous excessive force incidents. Internal affairs found he had clearly acted inappropriately. He was suspended for 20 days without pay, reassigned to desk duty and warned that he would be discharged if a founded excessive use of force complaint was ever brought against him again.

* * *

Human Services/Employment Service snafu causes hardship on daycare operator. State law prohibits persons with founded child abuse reports from working at licensed daycare centers. In a routine check the Department of Human Services discovered such a case at a Des Moines-area center and ordered that the worker be discharged. The worker promptly applied for and was awarded unemployment benefits. The employer appealed the Employment Services decision, losing at each step. The employer failed to enlist the help of Human Services to substantiate that the discharge had been ordered. The Employment Services hearing officer claimed that without substantiation he must find for the claimant. The employer complained to CA/O a year later when he noted a dramatic increase in his unemployment insurance tax rate. CA/O argued that hearing officers should have authority to investigate employer's statements. Employment Services argued that hearing officers are not investigators and rely solely on the employer's documentation. Human Services agreed to provide proof in future instances but Employment Services maintains that the employer must be responsible for requesting such documentation. Employer's 1988 tax rate was returned to its previous level.

* * *

Lifer inmate at Reformatory seeks honor unit. CA/O was asked by an inmate serving a life sentence to advocate for all lifers at the Iowa Men's Reformatory. The inmate said the approximately 40 lifers at the Reformatory wanted a separate living unit and expanded privileges based on the expected lengthy duration of their incarceration. CA/O met with a group of four lifers and brought their concerns to then Warden Cal Auger, who passed away later in 1987. It was Warden Auger's stance that lifers seeking special treatment could be transferred to the Iowa State Penitentiary where approximately 240 lifer inmates have access to an honor lifer program. The introduction of lifers at the Reformatory is a recent phenomena and Warden Auger believed it would be counter-productive to treat these inmates any differently than the 850 other inmates serving time at his prison. CA/O concurred with this thinking, noting also that many other lifers at the Reformatory he'd had contact with had no particular complaint with their living arrangement. Most were, in fact, pleased to be in the reduced security status (medium) at the Reformatory.

* * *

Used books prohibited at Penitentiary. CA/O self-initiated an inquiry of why used fiction/non-fiction books are not available for purchase by inmates at the Penitentiary. Prison administration claimed that used books entering the institution could contain encoded materials or messages which may breach prison security. CA/O suggested that institutional policy should reflect this prohibition - such policy prohibiting the purchase of used books was implemented.

* * *

Case of the shattered backboard. Iowa State Penitentiary inmate was charged \$320 after "dunking" a basketball and shattering a fiberglass backboard. Inmate claimed the damage was accidental and he should not be forced to pay. CA/O investigated the incident and learned that though there was no institutional rule against basketball "dunking," the inmate in question had been repeatedly warned by recreation staff to refrain from this activity. CA/O recommended that a firm policy outlawing "dunking" be written and posted in the

gym - such a policy was implemented in April, 1987. CA/O informed inmate that the damage resulted from his intentional action and thus he could appropriately be held responsible. The warden later dismissed the repair bill.

* * *

Hunting licenses to clarify habitat stamp requirements. Complainant was cited by a conservation officer because he had failed to purchase a habitat stamp to make his hunting license valid. CA/O found that although the law requires the habitat stamp to make the license valid, the license itself does not reflect that requirement. CA/O contacted the Fish and Wildlife administration suggesting appropriate language be used on the license to inform the licensee that stamps may be required. Administration officials agreed to this and such wording was placed on all licenses beginning with the 1988 season.

* * *

CA/O investigation of intensive supervision parole. Following the deaths of a parolee under intensive supervision and his hostage during a police shootout, CA/O investigated how the parolee had been supervised and revealed in a critical report that the supervision had been inadequate. The investigation revealed that the parole agent was unaware of key factors of the parolee's living and work circumstances. It was also revealed that the parolee was using drugs and shielding this fact from the agent. Subsequent to CA/O's critical report a task force was set up through the Governor's Office to further scrutinize the intensive supervision parole program. Legislative and administrative changes were recommended. Intensive supervision parole agents now make a more vigorous effort to meet or surpass minimum program standards (frequent contacts, accurate drug testing, etc.).

* * *

Fence viewing decision sent to citizen. Citizen complained that a group of township trustees had failed to provide him with notice of a fence viewing decision. The citizen had requested a fence viewing by the Board of Trustees in January of 1987 and five months later had not received the decision. CA/O made inquiry with the clerk who indicated that a decision had been rendered approximately a month and a half after the initial request. In the board minutes of that decision it appeared that the Board of Trustees had not informed the citizen of the decision. CA/O encouraged the clerk to send the citizen a copy of the fence viewing decision. A copy was sent.

* * *

Fees charged for police employment applications. Citizen alleged that two police departments were charging a fee for applications for employment. These departments had interpreted Law Enforcement Academy's authorization to charge fees to extend to local departments. CA/O requested an Attorney General's Opinion for clarification. The response stated that the Law Enforcement Academy authorization to charge applicants one-half the cost of administering tests did not extend to local law enforcement agencies. CA/O contacted both city police departments and provided them with the interpretation of the Attorney General. One department agreed that they would discontinue the practice. The other department stated that they used a written examination

which was mandated by the Iowa Law Enforcement Academy Council. There was a test fee rental of \$15. The written examination was developed by a private concern. The city did not charge for the test. Each applicant mailed payment for the test directly to the private concern. This test score could be used throughout the state in lieu of retesting. The city further stated that they paid the entire rental fee for testing and interpretation and that they do not charge the applicants for the privilege of testing for any position in the city. CA/O informed the citizen and provided copies of the law and the Attorney General's interpretation to the Sheriff's Association, the Association of Police Chiefs and the Iowa League of Municipalities.

* * *

Suspect needs Spanish-speaking interpreter. Suspect was arrested for theft of a motor vehicle and several traffic charges. CA/O was contacted by an assistant city attorney who stated the defendant did not understand English and needed a Spanish interpreter. CA/O obtained the assistance of an interpreter for a court appearance. CA/O then contacted the Supreme Court of Iowa concerning the promulgation of rules on interpreters as required by Iowa Code Chapter 622A. The court informed CA/O that the rules in question would only cover the compensation and qualifications of interpreters, not the actual interpreter service itself. The court did not state that they would be promulgating rules on the issue.

* * *

More timely parole violation hearings sought. CA/O conducted an inquiry into the timeliness of probable cause hearings for parolees who had been arrested for new crimes. The Board of Parole stance was not to revoke paroles until the new charge had been adjudicated. Because of two key cases investigated by the CA/O and brought to the Board's attention, and after a Governor's Task Force studied effectiveness of the Intensive Supervision Parole program, the Board has changed its stance. The Board now conducts many probable cause and revocation hearings soon after parolees are arrested and charged with new offenses - rather than waiting for adjudication, which can cause considerable delay.

* * *

Whistleblower law utilized. This was a complaint from a state employee about the possible illegal issuance of birth certificates. According to the complainant, birth certificates were being issued to people who were not the legal parent and full certificates were being issued to people who were adopted. This was in violation of Iowa Code Chapter 144. The complainant was fearful that any action on his/her part might subject him/her to possible personnel reprisals. CA/O notified Department of Public Health of implementation of Iowa Code Section 19A.19, the whistleblower statute, prohibiting reprisals for notification of possible violation of law. The department in question took corrective action on the matter and assured CA/O that the law would be followed concerning issuance of birth certificates to legally entitled persons.

* * *

Inmate small claims fund created at Penitentiary. CA/O advocated implementation of a property claim (under \$25) procedure at the Iowa State Penitentiary

which would provide faster, more efficient responses to inmates. Inmates were sometimes waiting up to six months for processing of a minor, small amount tort claim pursuant to Chapter 25A, Code of Iowa. CA/O drafted language for legislation to implement such a fund - it became effective July 1, 1987 and allows inmates a quick, fair response to property loss claims.

* * *

Assaultive student readmitted to school. A grade-school student was out of class for several weeks after exhibiting assaultive behavior. CA/O advocated that the child be allowed into an appropriate school setting pending residential placement. The child was readmitted to school after a brief hospitalization and voluntarily adjudicated a child in need of assistance to expedite the residential placement.

* * *

English as 2nd language offered. Citizen complained to CA/O that their child, adopted from an non-English-speaking country, needed English as a 2nd language study. It was not being offered by this particular school district. Iowa law requires such instruction when needed. CA/O encouraged the public school superintendent to establish such programming - it commenced within 30 days.

* * *

Paraplegic attains in-home Clinitron bed goal. CA/O assisted a paraplegic [bed-ridden for 23 years and suffering from serious decubitus ulcers (bed sores)] in convincing the Department of Human Services (Title XIX bureau) that home use of an air-fluidized, Clinitron bed would improve her wounds, curtailing the amount of time each year she spent in the hospital for surgeries and sharply reducing the amount of state and federal dollars spent on her care. A year-long effort resulted in a special Title XIX waiver allowing the home use of the special bed which eliminates pressure on the patient's skin. Other problems delayed installation until 1987. It was the first such Title XIX home installation in Iowa. Since its introduction the patient's bed sores have improved dramatically. About one fifth the amount spent to care for this patient in 1985 is expected to be expended in 1988.

* * *

CA/O accesses Foster Care Review Board meeting. Complainant called about the removal of a foster care child from her home and her exclusion from a Citizens' Foster Care Review Board hearing on the removal. The Citizens' Foster Care Review Board, after contact by the CA/O agreed to allow the complainant and an assistant CA/O to attend the meeting for a review of the removal. Initially, the Citizens' Foster Care Review Board declined to review the permanency plan in the presence of the CA/O. However, CA/O informed the board that CA/O had access to the information and could attend the meetings under the authority of Iowa Code Chapter 601G. CA/O did agree to sign a confidentiality agreement and attended the review of the permanency plan for the child.

* * *

CA/O intervenes in foster care plan. A complaint was lodged against the foster care program in Scott County in the Davenport District Office of the Department of Human Services. The complainants had provided foster care for a child who had been in their home for 364 days. The child was removed from the home under emergency procedures even though no apparent emergency existed. Although the foster parents had been approached about concerns in their parenting techniques, no effort was made to develop and implement corrective action by the Department of Human Services staff. Concerns were raised by the last in a series of contract social workers about those parenting techniques. However, CA/O was informed that the social worker was having a conflict of personalities which perhaps clouded her judgment of the situation. The Department of Human Services did not have a grievance mechanism in place to allow the foster parents to voice their concerns about the social worker and the conflict that was arising. CA/O felt that many of the problems were due to a continuous series of social workers responsible for the case over a short period of time. A meeting was held with the couple, the district administrator and the acting deputy director for DHS and moderated with the assistance of the CA/O. As a result of the meeting a corrective action plan was developed by the district administrator to address the issues raised by the couple. The couple continued their participation in the program and implementation of the corrective action plan. The child remained in the current placement.

* * *

Female inmate's property returned. An inmate at the Iowa Correctional Institution for Women (ICIW) in Mitchellville requested the assistance of the CA/O in obtaining personal property which was held by the Pottawattamie County Attorney. The personal property included clothing that the inmate was wearing at the time of her arrest and her purse. Generally, personal property seized at the time of arrest is held by the County Attorney until all appeals have run their course. The inmate informed CA/O that the appeal time had run and that she would like those items returned to her. CA/O contacted the County Attorney who agreed to return the property if the inmate would write requesting the property be released to a responsible person. The County Attorney refused, however, to mail the property. Since the inmate had no one to pick up the property, a member of the CA/O staff agreed to pick up the items while in Pottawattamie County on other business. The inmate was allowed to have, among various possessions, an electric typewriter and an electric sewing machine because she is in the honor cottage.

* * *

Timely publication of council minutes queried. Complainant alleged that city council minutes were not being published until some six months after the meeting. Iowa Code Section 372.12(6) states that a city must publish their minutes within 15 days of the meeting. When contacted the city council stated that the local newspaper was not properly publishing the minutes. However, CA/O learned that the city council had adopted a resolution which required that they not publish the minutes until they had been corrected. This automatically made delivery to the newspaper late. The city then passed a resolution correcting the previous resolution and assured the CA/O that minutes would be taken to the newspaper promptly. Complainant contacted the CA/O later and reported the council minutes were published five days late. CA/O did not feel that this was an inordinately long delay. The complainant also made inquiry as

to whether other governmental entities were required to publish minutes. Pursuant to Iowa Code Section 347.18 the county must publish after adjournment of a meeting. Also, pursuant to Section 388.4(4), the Board of Water and Light Trustees are required to publish a condensed statement of the proceedings immediately following a regular or special meeting of the City Utility Board. CA/O contacted the County Auditor who was responsible for publishing the minutes of the Board of Supervisors. The Auditor assured CA/O that minutes would be published timely. The Water Board of Trustees also assured CA/O that they would be published timely. CA/O also contacted the Iowa Newspaper Association. The Association provided in their Question of the Week flyer that is sent to member newspapers that there was a need for prompt publishing of minutes. CA/O believed that all concerned, when they were apprised of their statutory responsibilities, took appropriate action.

* * *

University Hospitals billing snafu unraveled. Complainant had been contacted by a collection agency for unpaid bills due the University of Iowa Hospitals. Those costs included a hospital car, lodging and meals. Complainant believed these expenses were covered by state papers. CA/O contacted the University of Iowa Hospitals and learned that the hospital had referred the unpaid bills to a collection agency. CA/O learned that the county from which the state papers would have been issued had not used its quota for the fiscal year in which the service was provided. CA/O contacted the County Department of Human Services. The director agreed to issue papers retroactive to cover the additional expenses. The University of Iowa Hospitals agreed to inform the collection agency to take no further action on the bill. CA/O advised the complainant to go to the local Department of Human Services office to make payment arrangements. The bills were paid.

* * *

Female inmate has multiple concerns. Complainant charged that Department of Human Services officials were not responding to her request for information about her children who were in foster care. In addition, complainant, who is a resident of the Iowa Correctional Institution for Women (ICIW), raised concerns that the father of a child she is expecting was being denied visitation. She also requested that CA/O assist her in contacting her mother who lives in Nebraska. The Department of Human Services officials agreed they would submit periodic reports to the complainant. The superintendent of ICIW informed CA/O that the father should submit a corrected application for visitation. CA/O located complainant's mother and provided her with the address of her daughter.

* * *

CA/O seeks Title XIX override. Complainant/patient was informed by University of Iowa Hospitals staff that she needed vestibuloplasty and that the process would not be covered by Medicaid. This is a condition which usually develops in older people as a natural deterioration. The complainant is 20 years old and the condition exists from chemical burns to the mouth, gum and tongue. CA/O contacted Department of Human Services Medical Services requesting a medical override. CA/O was informed that the patient's doctor should write the medical review team describing the complainant's condition and proposed surgery. This was done and an override was approved. CA/O then asked whether the

surgery could be done locally or had to be done in Iowa City. DHS officials informed CA/O that a local doctor could send in a description of the service for prior approval, possibly allowing the surgery to be performed locally.

* * *

Lost food stamps prompt rule change. Due to an agency error complainant's food stamps were sent to the wrong address and presumably lost in the mail. The complainant/recipient was told that for the next six months she would have to personally pick up her food stamps at the local office because of a state food stamp rule based on federal guidelines. CA/O believed the recipient was being penalized for an agency error. Federal guidelines allow for some flexibility in the distribution of food stamps, especially in a case such as this. CA/O met with Department of Human Services officials who agreed to change the administrative rule to not require a change in the method of issuance of food stamps if they were lost in the mail due to agency error. In other words, the recipient would not be penalized for agency error. That rule was changed in early 1988.

* * *

Female jail inmate denied trusty status. Female inmate at a county jail alleged that she was being discriminated against because she was not allowed to serve as a trusty in the jail. Inmate also inquired about good time and whether it applied to her situation. CA/O contacted chief jailer who stated he did not allow females to serve as trustees because they cannot be appropriately protected in the facility. CA/O explained concern that the female inmate was being denied opportunity to serve as a trusty because there may be a liberty issue involved. The State of Iowa does not have an Equal Rights Amendment to the Constitution and the Attorney General issued an Opinion in 1982 stating that jails or other penal institutions are not public accommodations within the meaning of Iowa Code Chapter 601A.2(10) of the Civil Rights Act. While sharing the frustration of the inmate, CA/O also had to weigh the dilemma facing county jail officials and concluded that the safety afforded female inmates by strict adherence to the law requiring separation of male and female inmates outweighed giving female inmates the opportunity to earn time off for good behavior through the trusty program. The inmate also inquired about good time and whether this applied to her situation in the jail. CA/O reviewed Iowa Code Section 903A.2 regarding good conduct time. Good time applies only when in a facility and under the direction of the Department of Corrections. The inmate was confined in a county jail and therefore the good time issue did not apply to her.

* * *

Prader-willi victim placed in Wisconsin facility. A 25-year-old Iowa woman, the victim of a rare disease marked by uncontrollable appetite, mild retardation and other less-severe abnormalities, was ultimately placed temporarily at a Prader-willi residential facility in Wisconsin after the Department of Human Services and the woman's home County Board of Supervisors agreed on a shared payment plan. There are about 40 such Prader-willi victims in Iowa, all relatively young because they have historically not survived to middle age. Though there are about 20 Prader-willi facilities in the United States, none are in Iowa and state funding for out-of-state placement is extremely rare.

CA/O assisted the woman's parents and others in advocating for this specialized placement. Whereas the county was willing to place her in an Iowa nursing home, the woman deserved care designed for her unique needs. Only mildly retarded, she suffered physically and emotionally in environments tailored for severely retarded clients. CA/O continues to assist in efforts to establish a Prader-willi facility in Iowa.

* * *

County attorney aids 10-year-old witness. A mother complained to CA/O that her 10-year-old son's name had been provided to the attorney representing two, slightly older boys accused of serious vandalism at an elementary school, after her son gave police information which led to the two youths' apprehension. CA/O investigated and learned that juvenile code requires that parents (or their attorney) be notified (for discovery purposes) of witnesses, even if they are minors. However, the county attorney agreed with CA/O that the 10-year-old (who had been threatened by the other youths) deserved some protection. County attorney instructed the juvenile probation officer to warn the older boys and their parents that harassment of the 10-year-old would result in further criminal charges. The complainant mother was greatly relieved.

* * *

Complaint against correctional officer. An inmate at the Iowa Correctional Institution for Women at Mitchellville alleged that a correctional officer used inappropriate behavior towards her including physical contact. The incidents in question took place in the Summer of 1986, but, inmate was reluctant to come forward with the information at that time. The correctional officer in question worked the night shift and while the incidents had ceased with this inmate, they had allegedly continued with other inmates. Several inmates filed grievances. CA/O spoke with superintendent and security director at the institution and was informed that the correctional officer was on leave. Institution staff stated that they had met with the correctional officer who had denied the allegations. CA/O suggested the correctional officer be moved out of the unit in question. That request was denied. CA/O suggested there be some type of monitoring system in place to establish whether or not the officer was, in fact, dealing with inmates in an unprofessional manner. CA/O later learned that another inmate brought complaints to the superintendent regarding the correctional officer. The correctional officer was reassigned pending investigation.

* * *

Mail now delivered Saturdays at Veterans' Home. A client at the Iowa Veterans' Home in Marshalltown complained about not receiving mail on Saturdays. Upon contacting the Commandant of the Iowa Veterans' Home, CA/O was informed there was no one available to process mail on Saturday. CA/O suggested that a position to be filled in the print shop be used to process the mail on Saturdays. The position was filled and residents now receive mail on Saturdays. A CA/O staff member has now been assigned to the Veterans' Home.

* * *

Lease problem emerges when liquor stores close. Citizen owned a building which the state had leased for a liquor store. In 1986 the Iowa Legislature passed legislation to phase out state ownership of the liquor business. The Alcoholic Beverage Division entered into subleases throughout the state for the remainder of the lease period. Complainant alleged the sublease was entered into illegally. First, the complainant had not been contacted about the sublease agreement; second, the complainant had not been consulted about the sublessor; finally, the sublessor, an auto parts store, would cause excessive damage to the building. CA/O contacted the Department of Commerce and the Attorney General's Office. General landlord tenant principles under the Iowa Code provide for such subleases. The only issue which could be raised would be damage to the building. However, that issue can only be raised should damage occur. The complainant would have to show damage to recover and at this point no damage could be shown. Complainant was informed of the landlord tenant law on the issue and that based on other landlord tenant laws the Alcoholic Beverage Division, Department of Commerce had not breached the original lease.

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CHAPTER 601G

CITIZENS' AIDE

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601G.1 Definitions.

As used in this chapter:

1. "Person" means an individual, aggregate of individuals, corporation, partnership, or unincorporated association.
2. "Agency" means all governmental entities, departments, boards, commissions, councils or institutions, and any officer, employee or member thereof acting or purporting to act in the exercise of official duties, but it does not include:
 - a. Any court or judge or appurtenant judicial staff.
 - b. The members, committees, or permanent or temporary staffs of the Iowa general assembly.
 - c. The governor of Iowa or the governor's personal staff.
 - d. Any instrumentality formed pursuant to an interstate compact and answerable to more than one state.
3. "Officer" means any officer of an agency.
4. "Employee" means any employee of an agency.
5. "Administrative action" means any policy or action taken by an agency or failure to act pursuant to law.

[C73, 75, 77, 79, 81, §601G.1]

601G.2 Office established.

The office of citizens' aide is established.

[C73, 75, 77, 79, 81, §601G.2]

601G.3 Appointment — vacancy.

The citizens' aide shall be appointed by the legislative council with the approval and confirmation of a constitutional majority of the senate and with the approval and confirmation of a constitutional majority of the house of representatives. The legislative council shall fill a vacancy in this office in the same manner as the original appointment. If the appointment or vacancy occurs while the general assembly is not in session, such appointment shall be reported to the senate and the house of representatives within thirty days of their convening at their next regular session for approval and confirmation.

The citizens' aide shall employ and supervise all employees under the citizens' aide's direction in such positions and at such salaries as shall be authorized by the legislative council. The legislative council shall hear and act upon appeals of aggrieved employees of the office of the citizens' aide.

[C73, 75, 77, 79, 81, §601G.3]

601G.4 Citizen of United States and resident of Iowa.

The citizens' aide shall be a citizen of the United States and a resident of the state of Iowa, and shall be qualified to analyze problems of law, administration and public policy.

[C73, 75, 77, 79, 81, §601G.4]

601G.5 Term — removal.

The citizens' aide shall hold office for four years from the first day in July of the year of approval by the senate and the house of representatives, and until a successor is appointed by the legislative council, unless the citizens' aide can no longer perform the official duties, or is removed from office. The citizens' aide may at any time be removed from office by constitutional majority vote of the two houses of the general assembly or as provided by chapter 66. If a vacancy occurs in the office of citizens' aide, the deputy citizens' aide shall act as citizens' aide until the vacancy is filled by the legislative council.

[C73, 75, 77, 79, 81, §601G.5]

601G.6 Deputy — assistant for penal agencies.

The citizens' aide shall designate one of the members of the staff as the deputy citizens' aide, with authority to act as citizens' aide when the citizens' aide is absent from the state or becomes disabled. The citizens' aide may delegate to members of the staff any of the citizens' aide's authority or duties except the duty of formally making recommendations to agencies or reports to the governor or the general assembly.

The citizens' aide shall appoint an assistant who shall be primarily responsible for investigating complaints relating to penal or correctional agencies.

[C73, 75, 77, 79, 81, §601G.6]

84 Acts. ch 1046, §1

601G.7 Prohibited activities.

Neither the citizens' aide nor any member of the staff shall:

1. Hold another public office of trust or profit under the laws of this state other than the office of notary public.

2. Engage in other employment for remuneration with an agency against which a complaint may be filed under this chapter or that could create a conflict of interest or interfere in the performance of the person's duties under this chapter.

3. Knowingly engage in or maintain any business transactions with persons employed by agencies against whom complaints may be made under the provisions of this chapter.

4. Be actively involved in partisan affairs.

[C73, 75, 77, 79, 81, §601G.7]

84 Acts, ch 1046, §2

601G.8 Closed files.

The citizens' aide may maintain secrecy in respect to all matters including the identities of the complainants or witnesses coming before the citizens' aide, except that the general assembly, any standing committee of the general assembly or the governor may require disclosure of any matter and shall have complete access to the records and files of the citizens' aide. The citizens' aide may conduct private hearings.

[C73, 75, 77, 79, 81, §601G.8]

601G.9 Powers.

The citizens' aide may:

1. Investigate, on complaint or on the citizens' aide's own motion, any administrative action of any agency, without regard to the finality of the administrative action, except that the citizens' aide shall not investigate the complaint of an employee of an agency in regard to that employee's employment relationship with the agency. A communication or receipt of information made pursuant to the powers prescribed in this chapter shall not be considered an ex parte communication as described in the provisions of section 17A.17.

2. Prescribe the methods by which complaints are to be made, received, and acted upon; determine the scope and manner of investigations to be made; and, subject to the requirements of this chapter, determine the form, frequency, and distribution of the conclusions and recommendations of the citizens' aide.

3. Request and receive from each agency assistance and information as necessary in the performance of the duties of the office. The citizens' aide may examine the records and documents of any agency unless its custodian demonstrates that the examination would violate federal law or result in the denial of federal funds to the agency. If the document sought is required by law to be kept confidential, the agency may refuse access until the citizens' aide demonstrates that the document is relevant or material to an investigation authorized under subsection 1. If the citizens' aide is provided access to the confidential document, the citizens' aide is subject to the same policies and penalties regarding the confidentiality of the document as an employee of the agency. The citizens' aide may enter and inspect premises within any agency's control.

4. Issue a subpoena to compel any person to appear, give sworn testimony, or produce documentary or other evidence relevant to a matter under inquiry. The citizens' aide, deputies, and assistants of the citizens' aide may administer oaths to persons giving tes-

timony before them. If a witness either fails or refuses to obey a subpoena issued by the citizens' aide, the citizens' aide may petition the district court having jurisdiction for an order directing obedience to the subpoena. If the court finds that the subpoena should be obeyed, it shall enter an order requiring obedience to the subpoena, and refusal to obey the court order is subject to punishment for contempt.

[C73, 75, 77, 79, 81, §601G.9; 82 Acts, ch 1026, §1]

601G.10 No charge for services.

No monetary or other charge shall be levied upon any person as a prerequisite to presentation of a complaint to the citizens' aide.

[C73, 75, 77, 79, 81, §601G.10]

601G.11 Subjects for investigations.

An appropriate subject for investigation by the office of the citizens' aide is an administrative action that might be:

1. Contrary to law or regulation.

2. Unreasonable, unfair, oppressive, or inconsistent with the general course of an agency's functioning, even though in accordance with law.

3. Based on a mistake of law or arbitrary in ascertainties of fact.

4. Based on improper motivation or irrelevant consideration.

5. Unaccompanied by an adequate statement of reasons. The citizens' aide may also be concerned with strengthening procedures and practices which lessen the risk that objectionable administrative actions will occur.

[C73, 75, 77, 79, 81, §601G.11]

601G.12 Complaints investigated.

The citizens' aide may receive a complaint from any source concerning an administrative action. The citizens' aide shall conduct a suitable investigation into the administrative actions complained of unless the citizens' aide finds substantiating facts that:

1. The complainant has available another remedy or channel of complaint which the complainant could reasonably be expected to use.

2. The grievance pertains to a matter outside the citizens' aide power.

3. The complainant has no substantive or procedural interest which is directly affected by the matter complained about.

4. The complaint is trivial, frivolous, vexatious, or not made in good faith.

5. Other complaints are more worthy of attention.

6. The citizens' aide resources are insufficient for adequate investigation.

7. The complaint has been delayed too long to justify present examination of its merit.

The citizens' aide may decline to investigate a complaint, but shall not be prohibited from inquiring into the matter complained about or into related problems at some future time.

[C73, 75, 77, 79, 81, §601G.12]

601G.13 No investigation — notice to complainant.

If the citizens' aide decides not to investigate, the complainant shall be informed of the reasons for the decision. If the citizens' aide decides to investigate, the complainant and the agency shall be notified of the decision. After completing consideration of a com-

plaint, whether or not it has been investigated, the citizens' aide shall without delay inform the complainant of the fact, and if appropriate, shall inform the administrative agency involved. The citizens' aide shall on request of the complainant, and as appropriate, report the status of the investigation to the complainant.

[C73, 75, 77, 79, 81, §601G.13; 82 Acts, ch 1026, §2]

601G.14 Institutionalized complainants.

A letter to the citizens' aide from a person in a correctional institution, a hospital, or other institution under the control of an administrative agency shall be immediately forwarded, unopened to the citizens' aide by the institution where the writer of the letter is a resident. A letter from the citizens' aide to such a person shall be immediately delivered, unopened to the person.

[C73, 75, 77, 79, 81, §601G.14]

601G.15 Reports critical of agency or officer.

Before announcing a conclusion or recommendation that criticizes an agency or any officer or employee, the citizens' aide shall consult with that agency, officer or employee, and shall attach to every report sent or made under the provisions of this chapter a copy of any unedited comments made by or on behalf of the officer, employee, or agency.

[C73, 75, 77, 79, 81, §601G.15]

601G.16 Recommendations to agency.

If, having considered a complaint and whatever material the citizens' aide deems pertinent, the citizens' aide finds substantiating facts that:

1. A matter should be further considered by the agency;
2. An administrative action should be modified or canceled;
3. A rule on which an administrative action is based should be altered;
4. Reasons should be given for an administrative action; or
5. Any other action should be taken by the agency, the citizens' aide shall state the recommendations to the agency. If the citizens' aide requests, the agency shall, within twenty working days notify the citizens' aide of any action taken on the recommendations or the reasons for not complying with them.

If the citizens' aide believes that an administrative action has occurred because of laws of which results are unfair or otherwise objectionable, the citizens' aide shall notify the general assembly concerning desirable statutory change.

[C73, 75, 77, 79, 81, §601G.16]

601G.17 Publication of conclusions.

The citizens' aide may publish the conclusions, recommendations, and suggestions and transmit them to the governor, the general assembly or any of its committees. When publishing an opinion adverse to an administrative agency or official the citizens' aide shall, unless excused by the agency or official affected, include with the opinion any unedited reply made by the agency.

Any conclusions, recommendations, and suggestions so published may at the same time be made available to the news media or others who may be concerned.

[C73, 75, 77, 79, 81, §601G.17]

601G.18 Report to general assembly.

The citizens' aide shall by April 1 of each year submit an economically designed and reproduced report to the general assembly and to the governor concerning the exercise of the citizens' aide functions during the preceding calendar year. In discussing matters with which the citizens' aide has been concerned, the citizens' aide shall not identify specific persons if to do so would cause needless hardship. If the annual report criticizes a named agency or official, it shall also include unedited replies made by the agency or official to the criticism, unless excused by the agency or official affected.

[C73, 75, 77, 79, 81, §601G.18; 82 Acts, ch 1026, §3]

601G.19 Disciplinary action recommended.

If the citizens' aide believes that any public official, employee or other person has acted in a manner warranting criminal or disciplinary proceedings, the citizens' aide shall refer the matter to the appropriate authorities.

[C73, 75, 77, 79, 81, §601G.19]

601G.20 Immunities.

No civil action, except removal from office as provided in chapter 66, or proceeding shall be commenced against the citizens' aide or any member of the staff for any act or omission performed pursuant to the provisions of this chapter unless the act or omission is actuated by malice or is grossly negligent, nor shall the citizens' aide or any member of the staff be compelled to testify in any court with respect to any matter involving the exercise of the citizens' aide's official duties except as may be necessary to enforce the provisions of this chapter.

[C73, 75, 77, 79, 81, §601G.20]

601G.21 Witnesses.

A person required by the citizens' aide to provide information shall be paid the same fees and travel allowances as are extended to witnesses whose attendance has been required in the district courts of this state. Officers and employees of an agency shall not be entitled to such fees and allowances. A person who, with or without service of compulsory process, provides oral or documentary information requested by the citizens' aide shall be accorded the same privileges and immunities as are extended to witnesses in the courts of this state, and shall also be entitled to be accompanied and advised by counsel while being questioned.

[C73, 75, 77, 79, 81, §601G.21]

601G.22 Penalties.

A person who willfully obstructs or hinders the lawful actions of the citizens' aide or the citizens' aide's staff, or who willfully misleads or attempts to mislead the citizens' aide in the citizens' aide's inquiries, shall be guilty of a simple misdemeanor.

[C73, 75, 77, 79, 81, §601G.22]

601G.23 Citation.

This chapter shall be known and may be cited as the "Iowa Citizens' Aide Act".

[C73, 75, 77, 79, 81, §601G.23]

CITIZENS' AIDE[210]

(OMBUDSMAN)

Chapter 1-6 rescinded and the following chapter 1-8 published 9/16/81 and effective 10/21/81, adopted 9/16/81

CHAPTER 1 ORGANIZATION

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- 1.2(601G) Operation

CHAPTER 2 PROCEDURES

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- 2.2(601G) Jurisdiction
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CHAPTER 3 DECLARATORY RULINGS

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CHAPTER 5 CONFIDENTIALITY

- 5.1(601G,68A) Public information
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CHAPTER 6 PRIVILEGES AND IMMUNITIES

- 6.1(601G) Privileges and immunities

CHAPTER 7 PENALTIES

- 7.1(601G) Penalties

CHAPTER 8 FORMS

- 8.1(601G) Subpoena form
- 8.2(601G) Patient waiver form
- 8.3(601G) General information waiver form

CHAPTER 1 ORGANIZATION

210—1.1(601G) Function. The citizens' aide/ombudsman office was created pursuant to chapter 601G, The Code, and is charged with the responsibility to accept and investigate complaints and render an objective opinion or recommendation on a complaint from a member of the public about an action or inaction of an agency of the state or local government in Iowa, and by doing so, resolving citizens' complaints and improving administrative processes and procedures.

210—1.2(601G) Operation.

1.2(1) Location. The office of the citizens' aide/ombudsman is located at 515 E. 12th Street, Des Moines, Iowa 50319. The phone number is area code (515) 281-3592. Office hours

are 8:00 a.m. to 4:30 p.m., Monday through Friday.

1.2(2) Method of contacting citizens' aide/ombudsman. Citizens may contact the citizens' aide/ombudsman office by phone, mail or personal visit.

No appointment is necessary to visit the office of the citizens' aide/ombudsman. No specific form of complaint or inquiry shall be required. The citizens' aide/ombudsman may request that a complaint be reduced to writing. There is no charge to the citizen making the complaint to the citizens' aide/ombudsman office as provided in Iowa Code, section 601G.19.

1.2(3) Composition of staff. The office of the citizens' aide/ombudsman consists of:

a. The citizens' aide/ombudsman. The position of citizens' aide/ombudsman is created by section 601G.3, and he/she is appointed by the legislative council as directed in section 601G.3, The Code. The citizens' aide/ombudsman is generally responsible for employing and supervising all employees under his/her direction in the positions and at the salaries as shall be authorized by the legislative council. The citizens' aide/ombudsman may delegate to members of the staff any of his/her authority or duties except the duty of formally making recommendations to agencies or reports to the governor or the general assembly.

b. Deputy citizens' aide/ombudsman. The deputy is appointed by the citizens' aide/ombudsman and has the authority to act as citizens' aide/ombudsman when the citizens' aide/ombudsman is absent from the state or becomes disabled as provided in section 601G.6, The Code.

c. Assistant for corrections. The assistant for corrections shall be responsible for investigating complaints relating only to penal or correctional agencies as provided in section 601G.6, The Code.

d. Legal analyst. The legal analyst serves as chief legal counsel within the citizens' aide/ombudsman office.

e. Assistants. Assistant citizens' aide/ombudsmen receive and investigate citizen complaints and assume those responsibilities delegated by the citizens' aide/ombudsman as provided in section 601G.3.

[Filed 8/26/81, Notice 7/22/81—published 9/16/81, effective 10/21/81]

[Filed 8/1/84, Notice 6/20/84—published 8/29/84, effective 10/3/84]

CHAPTER 2 PROCEDURES

210—2.1(601G) Intake methods.

2.1(1) Review and evaluation of complaints. Complaints may be received from any source and shall be investigated unless:

a. The complainant has available another remedy or channel of complaint which he/she could reasonably be expected to use;

b. The complaint pertains to a matter outside of the citizens' aide/ombudsman authority;

c. The complainant has no substantive or procedural interest which is directly affected by the matter complained about;

d. The complaint is trivial, frivolous, vexatious or not made in good faith;

e. Other complaints are more worthy of attention;

f. The citizens' aide/ombudsman's resources are insufficient for adequate investigation;

g. The complaint has been delayed too long to justify present examination on its merits;

h. There is insufficient evidence to initiate investigation;

i. A previous determination has been made by the citizens' aide/ombudsman on the matter.

2.1(2) Self-initiation powers. Pursuant to the authority in section 601G.9(1), The Code, the citizens' aide/ombudsman may investigate on his/her own motion. The citizens' aide/ombudsman shall exercise discretion in investigating complaints from an anonymous source.

210—2.2(601G) Jurisdiction.

2.2(1) Exclusions. Notwithstanding the potential for administrative or judicial review and without regard to the finality of the agency action, the citizens' aide/ombudsman office has jurisdiction to investigate actions of agencies of state and local government in Iowa. "Agency" means all governmental entities, departments, boards, commissions, councils or institutions, and any officer, employee or member thereof acting or purporting to act in the exercise of his/her official duties, but it does not include:

- a. Any court or judge or appurtenant judicial staff. Appurtenant judicial staff does not include court agencies, e.g., clerk of court, friend of court;
- b. The members, committees, or permanent or temporary staffs of the Iowa general assembly;
- c. The governor or his/her personal staff;
- d. Any instrumentality formed pursuant to an interstate compact and answerable to more than one state;
- e. The complaint of an employee of an agency regarding his/her direct employment relationship with the agency as provided in section 601G.9, The Code;
- f. Agencies and officials of the federal government;
- g. The private sector.

2.2(2) Referrals. Citizens with complaints and information requests deemed to be outside the jurisdiction of the citizens' aide/ombudsman may be referred to the appropriate governmental agency or other appropriate body.

2.2(3) Information requests. Information about state and local government may be given upon request.

210—2.3(601G) Investigations.

2.3(1) Subjects for investigation. An appropriate subject for investigation by the citizens' aide/ombudsman shall include but not be limited to administrative actions that might be:

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

2.3(2) Notice of decision to investigate.

- a. If a decision is made not to investigate, the complainant shall be informed of the reasons for the decision.
- b. If a decision is made to investigate, the complainant and the agency shall be notified of the decision.
- c. The citizens' aide/ombudsman may make a verbal or written investigative inquiry to determine whether need exists for further investigation.

2.3(3) Investigative tools. In investigating a complaint, the citizens' aide/ombudsman may utilize the following methods:

- a. Inspection of relevant records;
- b. Witness statements, informal or under oath;
- c. An on-site visit or inspection;
- d. A review of applicable law and regulation;
- e. A public or private hearing;

- f. The issuance of a subpoena to compel testimony or the production of records;
- g. A request for a statement from the agency providing reasons why an administrative action was taken.

This rule is intended to implement Iowa Code chapter 601G as amended by 1982 Iowa Acts, chapter 1026.

210—2.4(601G) Hearings.

2.4(1) Definitions.

a. **Hearing.** A hearing conducted under Chapter 601G, The Code, is not a contested case hearing as described in Chapter 17A, The Code. A hearing is the taking of testimony relative to a matter before the citizens' aide/ombudsman where one, some, or all parties may be present. A hearing before the citizens' aide/ombudsman does not affect the substantive rights of a citizen or the agency. The hearing is an internal device used by the citizens' aide/ombudsman to gather information and to assist in arriving at conclusions or recommendations regarding an agency's action.

b. **Party.** The complainant or the person or agency complained against.

c. **Counsel.** A party may be represented by anyone whom he/she may authorize to act in his/her behalf, including a member of the Iowa bar.

d. **Witness.** Any person who may be called to give testimony relating to a matter before the citizens' aide/ombudsman.

2.4(2) Scheduling of hearings. Hearings may be held at the discretion of the citizens' aide/ombudsman and may be requested, arranged, and conducted informally. Hearings may be conducted at the office of the citizens' aide/ombudsman or elsewhere at the discretion of the citizens' aide/ombudsman.

2.4(3) Witnesses.

a. If a witness fails to attend a hearing after being notified, the hearing may be postponed or the citizens' aide/ombudsman or designated deputy may choose to proceed. A subpoena may be issued to compel a witness to appear and give testimony. The subpoena may be delivered either by personal service as in civil actions or by certified mail return receipt requested. If a witness fails to respond to the citizens' aide/ombudsman's subpoena, action may be taken to enforce the subpoena through the district court.

b. A witness may be orally examined under oath. Any witness has the right to have counsel present during the hearing. Counsel may advise the witness during questioning and may register objections to questions asked. Objections shall be noted but the witness shall answer all questions except when the witness asserts the right against self-incrimination or when the witness asserts some other privilege or immunity that would normally be extended to a witness in the courts of this state.

2.4(4) Manner of conducting hearing. The order for the taking of evidence shall be at the discretion of the citizens' aide/ombudsman or his/her designated deputy. Questions shall be posed by the citizens' aide/ombudsman or deputy. At the citizens' aide/ombudsman or deputy's discretion, the witness or witnesses may be examined privately or may be sequestered. At the conclusion of the citizens' aide/ombudsman or deputy's examination of a witness, a party or his/her counsel may be permitted to examine the witness, after which the citizens' aide/ombudsman or deputy may inquire into new matters so raised. The citizens' aide/ombudsman or deputy may limit questions and exclude witnesses or other persons in order to maintain proper decorum.

2.4(5) Evidence. Strict rules of evidences shall not apply; the probative nature of any evidentiary matter shall be determined by the citizens' aide/ombudsman or his/her designated deputy. Irrelevant, immaterial or unduly repetitious evidence may be excluded.

2.4(6) Record. A record of the hearing may be made on tape or by a certified court reporter. Witnesses shall be permitted to record any testimony that they may give. A written transcript of the hearing may be made at the discretion of the citizens' aide/ombudsman. If a transcript is made, witnesses shall be permitted to obtain, upon request, a written copy of any testimony that they may give. If no transcript is made, tapes shall be preserved for at least sixty calendar days.

2.4(7) Ex parte communication.

a. The office of the citizens' aide/ombudsman does not hold contested case hearings as described in Chapter 17A, The Code. Communications made to the citizens' aide/ombudsman by any party, hearing officer, witness or counsel shall not be considered to be ex parte communication as defined in section 17A.17, The Code.

b. The office of the citizens' aide/ombudsman has the authority under section 601G.9, The Code, to investigate without regard to the finality of the administrative action. Communications made by the citizens' aide/ombudsman during the course of its investigation of an agency's administrative action shall not be considered as ex parte communications.

210—2.5(601G) Case disposition after investigation.

2.5(1) Conclusions and recommendations. At the conclusion of an investigation, the citizens' aide/ombudsman shall take the matter under advisement. Any conclusions or recommendations shall be reported to the complainant and to the agency, if appropriate. If the agency's action is deemed appropriate and pursuant to applicable law and rule, no further action shall be taken. As provided in section 601G.16, The Code, if the agency action was deemed to be inappropriate or not pursuant to the applicable law or rule, the citizens' aide/ombudsman may recommend that:

- a.* The matter be further considered by the agency;
- b.* An administrative action be modified or canceled;
- c.* A rule on which an administrative action is based be altered;
- d.* Reasons be given for an administrative action;
- e.* Any other action be taken by the agency; or
- f.* Disciplinary or criminal proceedings be initiated.

2.5(2) Reports. At the conclusion of an investigation, the citizens' aide/ombudsman may formally issue a report to an agency which may include recommendations to the agency. The report containing the conclusions, recommendations and, in the case of critical reports, comments from the agency, shall be reported to the governor and general assembly. After reporting to the governor and general assembly, reports become public information and may be disseminated by the citizens' aide/ombudsman to the media and the general public.

a. The citizens' aide/ombudsman may issue a report critical of an agency. Prior to a report critical of an agency being issued, the affected agency must first be given the opportunity to comment on the conclusions and recommendations. The affected agency shall be given not less than five days to comment. The citizens' aide/ombudsman reserves the right to comment on the response of the agency.

b. The citizens' aide/ombudsman may issue a special report containing observations, recommendations and conclusions which are not critical of an agency.

c. The citizens' aide/ombudsman may issue a report to the general assembly or its committees. The citizens' aide/ombudsman may also present oral testimony to the general assembly or its committees.

210—2.6(601G) Review. A person wishing a review of any action taken or decision made by a deputy of the citizens' aide/ombudsman or staff may do so by contacting the citizens' aide/ombudsman directly.

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CHAPTER 3 DECLARATORY RULINGS

210—3.1(17A) General. Any interested person may solicit oral or written advice from the citizens' aide/ombudsman concerning the application or interpretation of any statute or administrative rule dealing with the office of citizens' aide/ombudsman. However, unless the request is made pursuant to section 17A.9, The Code, petition for declaratory ruling, any advice is not binding upon the citizens' aide/ombudsman. Petitioners for a declaratory ruling

must have a real and direct interest in a specific fact situation which may affect their legal rights, duties or responsibilities under statutes or rules administered by the citizens' aide/ombudsman.

210—3.2(17A) Petition for declaratory rulings. A petition for a declaratory ruling shall be filed in the office of the Citizens' Aide/Ombudsman at 515 E. 12th Street, Des Moines, Iowa 50319. The petition shall either be mailed certified, return receipt requested or delivered in person. An additional copy may be provided if the petitioner wishes to retain a filed stamped copy of the petition. The petition may be typewritten or legibly printed in ink and must substantially conform to the following:

CITIZENS' AIDE/OMBUDSMAN
Capitol Complex
515 East 12th Street
Des Moines, Iowa 50319

Petition by _____ (Name))	
For a Declaratory Ruling on _____)	
(state statute, rule citation _____))	
to be ruled on)		PETITION FOR DECLARATORY RULING

(petition must state in separate, numbered paragraphs)

1. Petitioner's name, address and phone number.
2. A clear, concise and complete statement of all relevant facts on which the ruling is requested.
3. A clear and concise statement of the controversy or uncertainty.
4. Reference to the statutory authority or rules in question, along with attached copies.
5. The reasons for prompting the petition and a full disclosure of petitioner's interest.
6. Whether petitioner is currently a party to an investigation by the citizens' aide/ombudsman, rulemaking or judicial proceeding involving the controversy or uncertainty.
7. The names and addresses, when known, of other persons who may be affected by the declaratory ruling.

(Petitioner's signature)

210—3.3(17A) Procedure after petition is filed.

3.3(1) Initial review. Upon filing of the petition the citizens' aide/ombudsman shall inspect the petition for substantial compliance with the recommended form, and may, in his/her discretion, reject a petition which fails to contain one or more of the required statements.

a. The citizens' aide/ombudsman shall conduct an initial review of the petition and may request the petitioner to provide additional facts or provide greater specificity and detail in the questions posed. A request shall be made within fourteen days of the filing of the petition. If the requested information is not provided within thirty days of the receipt of the request, the petitioner will be deemed to have withdrawn the petition.

b. The citizens' aide/ombudsman shall then issue a ruling or declination to rule within thirty days of the receipt of additional information or of the filing of the petition, whichever is later.

3.3(2) Citizens' aide/ombudsman action. After due consideration, the citizens' aide/ombudsman may decline to issue a ruling upon one or more of the following grounds:

- a. The issue in question is currently involved in a rulemaking, investigative, legislative or judicial proceeding.
- b. The petition does not contain sufficient facts to demonstrate that the petitioner will be aggrieved or adversely affected by failure to issue a declaratory ruling.
- c. The petitioner presents issues or facts which are unclear, overbroad or otherwise inappropriate as a basis upon which to issue a declaratory ruling.
- d. The petition indicates the petitioner seeks to obtain approval to engage in activities so borderline as to be of dubious legality, although perhaps marginally proper.
- e. The issue in question has been rendered moot by a change in circumstances, fact or law.
- f. The issue in question depends upon peculiar facts which cannot be predicted or accurately described in advance.
- g. Other good and sufficient reasons, which shall be detailed in writing.

3.3(3) Effect of declaratory ruling. A declaratory ruling by the citizens' aide/ombudsman is binding upon both the citizens' aide/ombudsman and the petitioner on the questions of law dealt with in the ruling.

3.3(4) Declaratory rulings issued by the citizens' aide/ombudsman shall be public record and shall be maintained in the office of the citizens' aide/ombudsman in chronological order.

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CHAPTER 4 RULEMAKING

210—4.1(17A,601G) Commencing rulemaking. The citizens' aide/ombudsman shall give notice of its intention to adopt, amend or repeal a rule by publishing the text of the proposed change, or a summary of the issues and subject matter to be considered and the time, place, and manner in which interested persons may comment upon the proposal, in the Iowa administrative bulletin. In the event the text is too voluminous for publication, the notification shall state the subject matter of the proposed rule, a summary of changes from the existing rule, if any, and the location and telephone number where interested persons may obtain the actual text. The notice shall also include the name and address of a person to whom interested persons may present written views and arguments, and the deadline by which these submissions may be submitted. This person shall be responsible for the review and summarization of all submissions.

210—4.2(17A,601G) Oral presentations. When requested by the persons or groups enumerated in section 17A.4(1)“b”, The Code, an opportunity for an oral presentation shall be scheduled. The request must be presented at the citizens' aide/ombudsman office within twenty days of the publication of the Notice of Intended Action and must identify the proposed rule subject to the request by ARC number and by the specific citation to the proposed rule upon which presentations are to be made.

4.2(1) Notice. When so requested under the provisions of rule 4.2(17A,601G) or in his/her discretion, the citizens' aide/ombudsman shall schedule an opportunity for oral presentations by publishing a notice of the opportunity in the Iowa administrative bulletin, which shall refer to the ARC number and citation of the proposed rule, and which shall give the public not less than twenty days notice of the date, time and place of the meeting. Additional notice shall be mailed to all persons who have requested the opportunity for an oral presentation.

4.2(2) Conduct of meetings. The citizens' aide/ombudsman or designee shall serve as the presiding officer at the meetings. At the commencement of the meeting the presiding officer shall request any person wishing to make an oral presentation to advise the presiding officer of his/her name, address and affiliation.

a. At the commencement of the meeting the presiding officer shall give a brief synopsis of the proposed rule, a statement of the statutory authority and the reasons for the proposed rule. When necessary in the interests of time, the presiding officer may limit individual presentations as necessary to ensure that all persons who have requested an opportunity to speak may do so.

b. To facilitate the exchange of information and if time permits, the presiding officer may open the floor to questions or general discussion.

c. Persons who disrupt or obstruct the meeting either by their behavior or by the use of a camera or recording device shall be requested to cease. The presiding officer shall exclude any person who fails to comply with the request.

d. The presiding officer shall, when practical, receive all relevant physical and documentary evidence presented by witnesses. All evidence becomes the property of the citizens' aide/ombudsman office.

e. A record shall be prepared consisting of the minutes or verbatim record, and all evidence submitted. The presiding officer shall then prepare a summary of the content of all comments received at the meeting.

210—4.3(17A) Conferences or consultation. In addition to the required rulemaking procedures, the citizens' aide/ombudsman or designee may obtain viewpoints or advice concerning proposed rulemaking through informal conferences or consultations as he/she may deem desirable.

210—4.4(17A) Adoption. Not less than thirty-five days after the publication of notice, the proposed rule may be adopted in final form, and, if so adopted, shall be made effective pursuant to the provisions of section 17A.5, The Code.

210—4.5(17A) Statement of reasons. If so requested by any interested person, pursuant to the provisions of section 17A.4(1), The Code, and upon adoption of any proposed rule, the citizens' aide/ombudsman shall prepare a statement of principal reasons for and against the proposed rule containing the reasons for overruling considerations urged against the rule.

210—4.6(17A) Petition for rulemaking. A petition for rulemaking shall be filed in the Citizens' Aide/Ombudsman Office, 515 E. 12th Street, Capitol Complex, Des Moines, Iowa 50319. The petition shall either be mailed certified, return receipt requested, or may be delivered in person. An additional copy may be provided if the petitioner wishes to retain a filed stamped copy of the petition. The petition shall be either typewritten or legibly printed in ink and must substantially conform to the following form:

CITIZENS' AIDE/OMBUDSMAN
 Capitol Complex
 515 East 12th Street
 Des Moines, Iowa 50319

Petition by _____ (Name))	
)	
to (Amend, Adopt, or Repeal)	
)	PETITION FOR RULEMAKING
Rules Relating to (state)	
)	
subject matter))	

(petition must state in separate, numbered paragraphs)

1. Petitioner's name, address and phone number.
2. The nature of petitioner's interest in the matter.
3. The text or substance of any requested rule adoption, amendment or repeal including the text and citation for any current rule in effect.
4. The reasons for seeking the requested action, including any statute, rule, data, evidence or arguments which are relevant to the request. Copies of any statute, rule, evidence, etc. should be attached to the petition.

 (Petitioner's signature)

210—4.7(17A) Procedure after petition is filed.

4.7(1) Inspection by the citizens' aide/ombudsman. Upon filing of the petition the citizens' aide/ombudsman shall inspect the petition to ensure substantial compliance with the recommended form. If the petition does not contain the text or substance of the proposed amendment or any reasons for the proposed amendment or fails to include copies of any cited statute, rule or evidence, the citizens' aide/ombudsman may reject the petition and return it to the petitioner along with the reasons for the rejection. Petitioner may then correct the reasons for rejection and refile the petition.

4.7(2) Citizens' aide/ombudsman action. Within sixty days of the filing of a petition the citizens' aide/ombudsman shall either grant the petition and commence rulemaking, or deny the petition and notify the petitioner in writing of the grounds for the denial.

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CHAPTER 5
 CONFIDENTIALITY

210—5.1(601G,68A) Public information. Any information held by the citizens' aide/ombudsman that is public information as defined by chapter 68A, The Code, shall be released by the citizens' aide/ombudsman's office upon request.

5.1(1) Citizens' aide/ombudsman public reports, annual reports, and declaratory rulings are public information and shall be released upon request.

5.1(2) Information in citizens' aide/ombudsman's files that is public under chapter 68A, The Code, and has been provided by another agency may be released by the citizens' aide/ombudsman.

a. Anyone requesting such a document may be directed to obtain that document from the agency that is the custodial agency.

b. If it is not certain whether information held by citizens' aide/ombudsman is public

information under chapter 68A, The Code, the citizens' aide/ombudsman shall require the request to be made directly to the custodial agency.

210—5.2(601G) Private information. Section 601G.8, The Code, provides that the citizens' aide/ombudsman may maintain secrecy regarding the records and files of the office of the citizens' aide/ombudsman. Accordingly, private information is that which is not public information under chapter 68A, The Code, and is not specifically confidential by some other section of the Code.

5.2(1) The name of a citizen contacting the citizens' aide/ombudsman is private information and this name shall not be released to any person not directly involved in the handling of the case unless the citizen has authorized the release of that fact either orally or in writing or unless it has been determined that the citizen has waived this right by his/her actions. However, complaints and requests for information which are nonjurisdictional to the citizens' aide/ombudsman or that will not be handled by the citizens' aide/ombudsman may be referred to another agency or organization by the citizens' aide/ombudsman without prior approval of the complainant.

5.2(2) A citizen may request that his/her identity be held as private. Such requests will be respected unless it would be impossible for the citizens' aide/ombudsman to pursue the complaint without identifying the complainant. In such cases, the citizens' aide/ombudsman shall contact the citizen, before investigation, to determine if he/she would like to withdraw the complaint.

5.2(3) The citizens' aide/ombudsman has no affirmative duty to inform one providing information that it can be held as private. If a request is made that information be held as private, the citizens' aide/ombudsman will determine, under his/her authority in Iowa Code section 601G.8, whether he/she will respect this request. If a determination is made to hold certain information as private by the citizens' aide/ombudsman, such information may later become public if a report made pursuant to 2.5(2) is issued.

5.2(4) When the citizens' aide/ombudsman believes that any public official, employee or other person has acted in a manner warranting criminal or disciplinary proceedings, he/she shall refer the matter to the appropriate authorities. The citizens' aide/ombudsman has an affirmative duty to disclose this obligation to any person at any time he/she realizes that information about such acts may be proffered.

210—5.3(601G) Confidential information. Confidential information is any information defined as confidential by state or federal law. Confidential information cannot be released by the citizens' aide/ombudsman except to those persons having lawful access. The citizens' aide/ombudsman is subject to the same policies and penalties regarding the confidentiality of the information as an employee of the agency that provided the information. The citizens' aide/ombudsman case closings, internal notes, memoranda and correspondence shall be considered confidential information pursuant to Iowa Code section 601G.8.

210—5.4(601G) Request for information in citizens' aide/ombudsman files.

5.4(1) All public information shall be disclosed upon request.

5.4(2) All information that a citizen has provided to the citizens' aide/ombudsman or that he/she has previously received shall be released to a citizen or his/her counsel. All information that a governmental official has provided to the citizens' aide/ombudsman or that he/she has previously released shall be released to the official or his/her counsel.

5.4(3) Confidential information shall not be provided to any person unless that person has lawful access.

5.4(4) All requests for information from the citizens' aide/ombudsman files shall be in writing. Costs for reproduction of documents may be assessed as provided in Iowa Code section 68A.3.

5.4(5) The citizens' aide/ombudsman will provide open access to the files, at the written request of the governor, the general assembly or standing committee of the general assembly pursuant to Iowa Code section 601G.8.

These rules are intended to implement Iowa Code chapter 601G as amended by 1982 Iowa Acts, chapter 1026.

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CHAPTER 6 PRIVILEGES AND IMMUNITIES

210—6.1(601G) Privileges and immunities.

6.1(1) No civil action, except removal from office, as provided in chapter 66, The Code, or proceeding shall be commenced against the citizens' aide/ombudsman or any member of his/her staff for any act or omission performed pursuant to the provisions of this chapter unless the act or omission is actuated by malice or is grossly negligent.

6.1(2) The citizens' aide/ombudsman or any member of his/her staff shall not be compelled to testify in any court with respect to any matter involving the exercise of his/her official duties except as may be necessary to enforce the provisions of chapter 601G, The Code.

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CHAPTER 7 PENALTIES

210—7.1(601G) Penalties. Any person who willfully obstructs or hinders the lawful actions of the citizens' aide/ombudsman or a member of the citizens' aide/ombudsman's staff or who willfully misleads or attempts to mislead the citizens' aide/ombudsman in his/her inquiries shall be guilty of a simple misdemeanor. The citizens' aide/ombudsman shall refer all violations of this section to the county attorney in the county where the obstruction or hinderance occurred.

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CHAPTER 8 FORMS

210—8.1(601G) Subpoena form. Citizens' aide/ombudsman form number CA/O-1 is a subpoena/subpoena duces tecum form.

210—8.2(601G) Patient waiver form. Citizens' aide/ombudsman form number CA/O-2 is an authorization for medical or hospital information form.

210—8.3(601G) General information waiver form. Citizens' aide/ombudsman form number CA/O-3 is an authorization for release of information form.

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