ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit

P.O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
FAX (907) 465-2347
legaudit@legis.state.ak.us

July 13, 2011

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA'S
OFFICE OF THE OMBUDSMAN
MANAGEMENT REVIEW

June 15, 2011

Audit Control Number
31-30062-11

The objective of this report is to summarize the results of a review conducted on the operations of the Office of the Ombudsman. Both the Division of Legislative Audit and the Office of the Ombudsman are organizationally placed within the Legislative Branch in Alaska. As a result, the Division of Legislative Audit is not independent of the Office of the Ombudsman and, consequently, cannot conduct an audit of the Office of the Ombudsman in accordance with professional standards.

Therefore, to provide the legislature with an independent evaluation of the Office of the Ombudsman's activities, we contracted the services of Christine Phillips, an independent consultant, to perform a management review. This review is not an audit and is not done in accordance with professional auditing standards.

Pat Davidson, CPA
Legislative Auditor

STATE OF ALASKA
LEGISLATIVE AUDIT DIVISION

Management Review – Operations
State of Alaska's Office of the Ombudsman

Table of Contents

Introduction…….. 3

Staffing…….…….... 4

Data Analysis…….…….. 9

Management Review Questions…….…… 10

Tables:

Table 1 – Cases Logged into the CMS 1/1/06 – 12/31/10…… 9
Table 2 – Average of Cases Logged……. 10
Table 3 – Closed Cases Open over 180 Days……... 11
Table 4 – Remaining Cases Open …… 11
Table 5 – Cases Per Investigator……... 21
Table 6 – Status Codes for Currently Open Cases …….…….. 25
Table 7 – Closed Cases and Corresponding Closing Codes…….. 33
Table 8 – Aging of Open Cases……. 35
Table 9 – Average of Cases Open……. 36
Table 10 – Summary Data…….……. 37

Appendix A – Ombudsman Duties…….…... 43

Appendix B – Meet the Staff…….……. 49

Appendix C – Frequency of Agency Complaints…….…… 52

Appendix D – Various Ombudsman Definitions…….……. 53

Appendix E – Code of Ethics…….…… 55

Appendix F – Contacts and Interviews…….…… 56

Agency Response

Office of the Ombudsman ……. 57

STATE OF ALASKA
LEGISLATIVE AUDIT DIVISION
P.O. BOX 113300
JUNEAU, AK 99811-3300

Management Review – Operations
State of Alaska's Office of the Ombudsman

INTRODUCTION

The Alaska Office of the Ombudsman is located in the legislative branch of state government as an independent agency. The office was established in 1975 by the passage of 1 chapter 32 SLA 1975, the "Ombudsman Act." The act can be found in AS 24.55 in the Alaska Statutes. It is empowered to adopt regulations under the state Administrative Procedure Act (AS 44.62). Ombudsman regulations are found in Title 21 in the Alaska Administrative Code. The Alaska ombudsman is part of the legislative branch in exempt service under AS 39.25.110. The Office of the Ombudsman is a non-partisan, neutral, fact-finding agency and, by definition, should take no side in a dispute. The ombudsman has the authority to receive and investigate, for no fee, citizen complaints against state government agencies and employees. They are tasked with determining whether state government actions are fair and reasonable. It is essential that the nonpartisan nature, integrity, and impartiality of the ombudsman's functions and services be maintained. These factors, when implemented by a staff with compassion and understanding for the concerns of the citizens who come seeking help, make this a unique office in government. The ombudsman will determine first whether the complaint is jurisdictional, that is, whether the office has authority under its statutes and regulations to review the issue. If the complaint is jurisdictional, an investigator will review the complaint and determine how to proceed.

The basic assumption is that the state system is not perfect and the ombudsman is, through citizen complaints, looking for ways to improve it. After reviewing a case, discussing it with state officials and witnesses when necessary, and researching state laws and regulations, an investigator will report back to the complainant. This may occur informally or within a formal process that leads to an investigative report. Questions and complaints are kept confidential.

The ombudsman shall, by regulations adopted under Administrative Procedure Act (AS 44.62), establish procedures for receiving and processing complaints, conducting investigations, reporting findings, and ensuring that confidential information obtained by the ombudsman in the course of an investigation will not be improperly disclosed. Because the Office of the Ombudsman has limited resources, it does not investigate every complaint brought to it. For this reason, the ombudsman requires that attempts to resolve problems begin with the agency before involving the ombudsman unless the ombudsman believes there is a compelling reason to intervene or if the complaints involve health and safety issues that

require immediate action. The ombudsman can also initiate their own investigation if warranted due to issues they feel are systematic.

The ombudsman is required to maintain confidentiality with respect to all matters and the identities of the complainants or witnesses coming before the ombudsman except insofar as disclosures may be necessary to enable the ombudsman to carry out their duties and to support recommendations. However, the ombudsman may not disclose a confidential record obtained from an agency.

If an ombudsman investigation finds that an agency has made a mistake or could be doing a better job, the ombudsman may recommend corrective action. Before giving an opinion or recommendation that is critical of an agency, the ombudsman shall consult with that agency or person. The ombudsman may make a preliminary opinion or recommendation available to the agency for review, but the preliminary opinion or recommendation is confidential and may not be disclosed to the public by the agency.

Agencies usually follow ombudsman recommendations, but the law does not require them to do so. After a reasonable time has elapsed, the ombudsman shall notify the complainant of the actions taken by the ombudsman and by the agency.

Within a reasonable amount of time after the ombudsman reports the opinion and recommendations to an agency the ombudsman presents the opinion and recommendations to the governor, the legislature, and/or the public. The ombudsman shall include with the opinion any reply made by the agency. In most cases, the ombudsman works quietly with the citizen and the agency. Public (redacted) reports of full investigations are posted on the ombudsman website, fulfilling the office's obligation to report on its activities. By law, the ombudsman also makes regular reports to the Alaska legislature.

STAFFING

The Office of the Ombudsman has changed over the years since it was first established. The office began with a staff of three and a budget of $144,000 in 1975, grew to a staff of 26 in 1985, was reduced to 11 in 1986 and slowly grew to a staff of 22 in 1991. The office processed their own personnel, budgeting, contracting, procurement, and accounting tasks. At the height of its size the office had as many as 26 – 28 employees with offices in Fairbanks, Anchorage and Juneau. However, staff size and budgets were severely cut in 1995 and again in 1997. The office was then reduced to seven employees (including the ombudsman), the Fairbanks office was closed, and positions were eliminated including the deputy ombudsman and all regional managers. Also, in 1995, in an effort to reduce costs and consolidate services, the legislature directed that the Legislative Affairs Agency assume responsibility for the administrative functions of the Office of the Ombudsman. This included budgetary support and all payroll, accounting, and supply functions. The Office of the Ombudsman now works in coordination with the Legislative Affairs Agency to see that these functions are properly conducted. Much of the way the office operates today stems from the result of budgetary and staff reductions in 1995 and 1997.

The current ombudsman was appointed in 2002 and is currently in her second term. In 2006, the staff was seven people including the ombudsman and has since grown to the current staff of nine, the ombudsman, six assistant ombudsman/investigators, two located in the main office

in Anchorage, with three investigators located in Juneau, and one investigator in Fairbanks. The designated intake secretary and intake officer (associate ombudsman) are both located in the Anchorage office. Intake in the Juneau office is shared by the staff of three professional investigators.

The ombudsman has substantial responsibility for exercising independent judgment in the day to day management of the caseload, including but to limited to, the assignment and review of the work in accordance with acceptable standards of performance as determined by the ombudsman and outlined in the policies and procedures manual which follows the administrative code. The ombudsman's day to day tasks are provided in a detailed outline attached as Appendix A.

Contracted services are used to employ casual labor to update the web page and occasionally review preliminary findings and reports as assigned by the ombudsman. This person is a retired state employee with long term ties to the ombudsman office. Additional part time labor is used from time to time to assist in administrative duties, filing, and assembling copies and information for investigators and/or the ombudsman and to complete special research projects that other ombudsman employees lack the time to accomplish.

INTAKE

Due to staff losses and system restructuring, a system called centralized intake was implemented in 1997 and operates similarly today. The goal of centralized intake is to route complaints to one location to be screened by the least number of staff, thereby freeing most staff to conduct comprehensive complaint reviews and investigations.

Currently, the screening components of centralized intake are conducted primarily by the intake secretary in Anchorage. The intake secretary provides the first level of screening of all calls. The intake secretary works under the informal supervision of the intake officer, and accepts assignments from the ombudsman.

The intake secretary determines what action needs to be taken in response to each initial complaint received. Issues are evaluated and a course of action taken based on criteria and standards established by the ombudsman.

More specifically, the intake secretary and/or intake officer:

- **Responds to inquiries by mail, telephone, or personal contact; explains office policies and procedures; recommends alternative referral sources, maintains documented records of inquiries;**
- **Accepts collect phone calls if received; however, people are encouraged to use the 800 in-state calling line. Intake can ask a long distance caller if they used the toll free line, if not the intake secretary will offer to call them back on the office line. However, it is important the complainant is treated in such a way that they do not feel they are being shuffled around impersonally. Collect calls are accepted from time to time, especially if calls are previously scheduled or expected.**
- **Conducts intake interviews: determines the jurisdiction and timeliness of complaints; conducts preliminary interviews to establish the basis of an allegation; obtains documents and information relating to complaints;**

- **Conducts initial complaint processing, organizes file documents, determines whether a complaint may be handled as an assist or decline;**
- **Examines all relevant facts that the complainant provides or that are revealed in documents related to the complaint; and communicates by telephone, in person, or through correspondence with agency employees or others who may have direct knowledge about the complaint;**
- **Conducts research of issues surrounding the complaint by using appropriate sources such as:**
    - **Office resource files and agency policy and procedure manuals;**
    - **Law library facilities and materials;**
    - **Appropriate office and state computer data bases; and**
    - **Specialists in the subject area from other jurisdictions.**
- **Consults supervisor and other employees as appropriate.**

While the principal work of the Office of the Ombudsman involves the investigation and resolution of complaints about state agencies, the Office of the Ombudsman receives many different kinds of inquiries. Notable among them are inquiries about state agencies and sources of information relating to state government operations.

Many requests for information are not reviewed for jurisdiction. Reasonable efforts are made to provide accurate, prompt information and referrals to other assistance whether or not the inquiry concerns a state agency.

While there is an intake secretary and intake officer located in the Anchorage office, intake is routinely routed to others in the Anchorage office based on leave schedules, appointments, work hours etc. The investigators located in the Juneau office also schedule and rotate intake duties for those calls directly routed to the local Juneau phone number and also to provide assistance those individuals that walk into the Juneau office. This intake processed by individual investigators is considered additional cases to their current caseload.

All intake calls are input into the ombudsman's case management system (CMS), the complaint documentation program, primarily by the intake secretary. Calls are initially documented by the intake secretary into a preformatted Microsoft (MS) Word document, preset with necessary questions and for ease of use. The case is then logged into the CMS, typically through the "cut and paste" method from the MS Word document to the CMS. This procedure is used primarily for safety and assurance reasons, so that complaint information is saved in a Word document and not dropped from the CMS before all information can be logged and case specifics are saved in the CMS.

Some intake calls are received in Fairbanks. People that have had past experience with the Fairbanks ombudsman will call him directly, or pass along his phone contact to others. On occasion, because of security reasons, the ombudsman will direct some complainants to speak to a male assistant ombudsman in the Anchorage or Fairbanks office. While small in number, these calls can result in a minor additional increase in caseload for the Fairbanks assistant ombudsman.

After complaints have passed initial screening, the intake secretary and/or intake officer presents complaints to the ombudsman who provides a more comprehensive level of case

review. The ombudsman assesses each case's priority according to the regulations, ascertains the availability of relief to complainants, assesses the investigative value of policy issues, and identifies potential issues to investigate. The ombudsman then assigns cases that warrant further examination to an assistant ombudsman investigator for preliminary investigative review.

Assistant Ombudsman/Investigators

Before initiating a formal investigation, the ombudsman will, in his/her discretion, attempt to resolve a complaint informally by expediting agency consideration or action or by investigating and providing an explanation of the agency's administrative act to the complainant.

Cases that are referred to preliminary investigative review receive a comprehensive examination of the information and evidence surrounding complaints to ascertain whether there is enough specific and credible information to warrant proceeding to formal investigation. Preliminary reviews also include re-evaluation of basic priority thresholds (conducted during earlier complaint intake) to reconfirm that complaints continue to meet important standards.

Some complainants return to the ombudsman's office three or four times with the same complaint in the same form and under the same circumstances as first presented. While this may, in some instances, indicate investigators assigned to these cases have not provided enough assistance to the complainant, it often reflects persistent or difficult complainants who refuse to accept the answer given and are "shopping" for an answer more to their liking.

Three ombudsman policies provide help in reducing repetitive processing of informally handled complaints:

> **(1) When a complaint is received and the intake officer/investigator has <u>any</u> reason to believe that the complainant has contacted the office previously on the same matter, the investigator should ask the complainant if there has been a previous contact. If there has been previous contact on the matter, the investigator will try to get details and check the closed complaint file to see how the earlier contacts were handled. They will check to see if an earlier complaint was entered and closed, and what disposition was made at that time. Did the complainant provide pertinent information? Is the call back to the office for further assistance reasonable in light of the earlier disposition? Did the agency drop the ball on their response?**
>
> **(2) Investigators should know or be able to determine processing time limits for programs most often complained against. If, in a complaint asserting unreasonable delay in the handling of a benefit, it is clear that the time span in which the agency must make decision has not been exceeded, the investigator must advise the complainant. The investigator will not make an effort to "run interference" for the complainant with the agency to expedite agency consideration if the agency has not exceeded its time limit for deliberation.**

(3) If the agency promises action within some number of days, the investigator may ask to be advised of the action taken and ask to receive a copy of any correspondence or a brief explanation be phoned to the investigator. Unless the investigator senses that the agency may not meet its commitment to act, the complaint is closed. The investigator will advise the complainant that the agency has promised to act and that if it does not act within a reasonable period of time after the date it said it would act, the complainant may return to file another complaint. If the investigator senses any reason that the agency will not follow through, a short note to the agency will be drafted noting the conversation and asking to be advised of the action or decision. A copy will be sent to the complainant. The documented record may better serve to keep an agency to its commitment.

At the conclusion of preliminary reviews, investigators though discussions with the ombudsman determine whether to advance these complaints to formal investigation.

In making a decision on whether to formally investigate, the ombudsman reviews procedural plans and weighs this information against the relevancy of the issues raised, the potential number of people impacted, the availability of appropriate remedies, the need for accountability, and the availability of office resources.

Under the Ombudsman Act, the ombudsman is required to provide notice of investigation to the agency being investigated, except if the ombudsman determines there are compelling reasons to the contrary. Formal investigations often include interviews with multiple witnesses, extensive documentary review and research, legal research, review of standards and lengthy investigative reports which require time to write, edit and revise prior to issuing a preliminary report. In one case, staff spent a month of staff time copying files. The ombudsman often encounters delays in receiving requested documents or in contacting witnesses.

The Ombudsman Act requires that after the investigation phase of the complaint review process the ombudsman provide a preliminary finding and preliminary recommendations to the agency. The agency then has 30 days to respond to the findings and recommendations. Agencies can request extensions to response time and their requests are usually granted. That response must be incorporated into the finding of record and closure. On occasion, the agency response will necessitate additional investigation – interviews, document research, etc. This adds to the time it takes to complete an investigation.

Ombudsman investigators carry more than one investigation at a time on their caseload. Complaints approved for formal investigation are assigned to an investigator who is then responsible for conducting the investigation, generating preliminary and final reports, in consultation with the ombudsman. Investigators are expected to balance ongoing formal investigations with incoming intake; to assess incoming intake and make initial contact with new complaints within 15 days and resolve or close informal complaints as soon as possible if they are not deemed appropriate for formal investigation. All of this serves to delay completion of the formal investigations.

The average number of investigative complaints can rise and fall depending on the nature of calls at intake. Average case loads in early 2011 were approximately 13 formal investigative

cases for each of six investigators and the associate ombudsman, during which they are also expected to resolve assigned informal complaints and process and complete their own intake calls.

DATA ANALYSIS

- **For purposes of this management review, data was requested as of 2/22/11 of all cases logged into the ombudsman's case management system (CMS) for the five year period from 01/1/06 – 12/31/10.**

- **CMS entries extracted from the CMS from 01/1/06 – 12/31/10 numbered 9,600 cases, plus an additional 109 cases that were open prior to 01/1/06, and were still open on 01/1/06, the beginning of the data period. Total cases 9,600 + 109 = 9,709 intake information, referrals, complaints and cases logged into the CMS were examined. Each intake is assigned a unique case identification number (here the generic word "case" is used for all types of calls, inquiries, complaints and formal investigations).**

- **Although there were 9,709 individual case numbers reviewed there were an additional 833 interested parties logged on those same 9,709 cases (additional subject of a complaint, witness, contact or additional complainant on the same case) or 10,542 case contacts.**

- **While the principal work of the Office of Ombudsman involves the investigation and resolution of complaints about state agencies, the Office of Ombudsman receives many different kinds of inquiries. Notable among them are inquiries about state agencies and sources of information relating to state government operations. When a person contacts the ombudsman's office, and requests information, direction or explanation of process, that contact is treated as a "request for information." Inquiries received through the mail are also promptly acknowledged. The ombudsman staff member tries to quickly provide the information or referral to the person. Requests for information are not reviewed for jurisdiction. Reasonable efforts are made to provide accurate, prompt information and referrals, sometimes whether or not the inquiry concerns a state agency.**

Table 1 – Cases Logged into the CMS 1/1/06 – 12/30/10

	2006	2007	2008	2009	2010	Total
Total intake calls logged into the CMS:	1477	2057	2187	1930	1949	9600
Number of cases opened to investigate: (informal and formal)	609	680	916	942	980	4127
Information and referrals:	868	1377	1271	988	969	5473
Information and referrals as a % of total calls:	58%	67%	58%	51%	50%	57%

Question #1 -

1. **Analyze if complaints are being resolved in a timely manner. If not, determine if the delays can be clearly associated with:**
    a. **Overly lengthy investigations**
    b. **Extended periods of inactivity on the investigation**
    c. **Overly lengthy report writing**
    d. **Size of staff compared to workload**
    e. **Other**

Analyze if complaints are being resolved in a timely manner.

Response: Using six months as a "timely" definition, yes, most cases are resolved timely; approximately 4% of the cases are not resolved timely.

In general, timeliness of performance is a frequent and major problem in contracts for services. Timeliness is in the eye of the beholder. "Timely manner" without specifics, is a very subjective terms and means a different time frame to different people. Some people equate timely manner within 24 hours of the request for information. Someone might say timely manner is one day, someone might say one week, depending on the circumstances. A legal definition states that timely manner usually means within 30 to 60 days depending on laws in your state. Some courts use the definition "as in 21 days or less." Other dictionaries define timely as "at the right time," or "suitable time," or "opportune time." If a written understanding lacks specific deadlines or even general concepts of timeliness, courts generally will read in an implied promise to deliver the results "within a reasonable time." What's reasonable? That would be up to the common sense of those in similar situations and circumstances. Each person contacting the ombudsman's office could probably provide a different definition of "timely manner" depending on their issue, question or situation. "Timely manner" to the ombudsman depends on the circumstances of the complaint and the complainant. For purposes of this review, a complete breakdown of complaint resolution timelines is provided.

From 1/1/06 – 12/31/10, a five year period, 9,709 cases were logged (9,600 cases logged and 109 already open and yet unresolved cases on 1/1/06) into the CMS. Over 68% or 6,628 of these cases were open and closed in one day, primarily due to providing the individuals with information and or referral numbers, or cases that were premature according to guidelines. However, there were many other cases that are highly complex issues that take considerable time to address.

Table 2 – Average of Cases Logged

	2006	2007	2008	2009	2010	Total	Average
Number of intake calls logged into the CMS:	1477	2057	2187	1930	1949	9600	1920
Number of calls closed in one day:	844	1586	1542	1315	1341	6628	1326
Percentage of calls closed in one day:	57%	77%	71%	68%	69%		69%
Open prior to 1/1/06 and still open:	109					9709	
Percentage of total calls analyzed in one day:							68.3%

- **68.3% of all calls/cases (or 6,628 of 9,709) logged (opened) over five years ending 12/31/10 are "closed" or resolved within one day. Approximately 57% (as noted previously) of these calls are information/referrals - involve providing information to the caller or answering questions or referrals to the proper location.**
- **87.6% of all calls/cases are closed within 30 days (or another 1,879 cases).**
- **96.3% of all calls/cases are closed within 180 days (or another 839 cases)**
- **The remaining 2.8% or 280 cases closed take over 6 months to conclude and of those:**

Table 3 – Closed Cases Open over 180 Days

Days to close	Closed Cases	% of total
270 days (9 months)	68	0.7%
365 days (12 months)	46	0.5%
1.5 years (18 months)	60	0.6%
2 years (24 months)	33	0.3%
3 years	32	0.3%
4 years	15	0.2%
5 years	14	0.1%
> 5 years	12	0.1%
Total closed cases:	**280**	**100%**

- **On 12/31/10, of all 9,709 cases logged and open during this period, 83 (.9%) cases were still open (as of 2/22/11); of all 109 cases open prior to 1/1/06, 12 cases remained open over this five year period.**

Table 4 - Remaining Cases Open

Days open	Open Cases	% of total
180 days (6 months)	14	16.9%
365 days (12 months)	22	26.5%
Open 2 years	22	26.5%
Open 3 years	5	6.0%
Open 4 years	5	6.0%
Open 5 years	3	3.6%
Open > 5 years	12	14.5%
Total open cases	**83**	

As noted above, over 68.3% of intake calls received by the ombudsman staff are resolved within a one day period. These calls are not all complaints. An overwhelming number of these calls are asking for information and/or the ombudsman's office refers the caller to the proper location for their needs. Another 19.3% of the callers have complaints investigated and closed within 30 days. Another 8.7% of the calls to the ombudsman's office are closed within 180 days or six months. This means over 96% of calls for information, referrals or

complaints are addressed and/or resolved within 180 days. Given the volume of calls and the ombudsman staffing, this volume seem to be considered successful. Less than 4% of the intake calls from 2006 – 2010 (including open cases as of 1/1/06) are seemingly unresolved in a timely manner. Given the nature of some of the ombudsman's types of complex cases, there are many reasons for lengthy investigations. However, if you are one of the complainants that fall in the less than 4% of the cases that are unresolved within 180 days you may not believe the ombudsman is resolving cases or operating in a timely manner. Complaints open over 180 days are typically complex and quite often involve the Office of Children's Services or complaints involving the Department of Corrections. Lengthy investigations occur and typically investigators have elevated these complaints to formal systematic investigative issues and are involved in lengthy complex fact finding and formal report writing. These complex cases are informally prioritized by the ombudsman staff and formally prioritized through the monthly case load conferences with the ombudsman. However, while the complex cases are investigated, staff are also processing many other routine, informal complaints which are being addressed and closed much more quickly.

If complaints are not resolved timely, determine if the delays can be clearly associated with:

a. **Overly lengthy investigations**

Yes, although small in number, some investigations drag on too long, much longer than they should.

Centralized complaint intake was implemented in 1997; by which all complaints were routed to the Anchorage office. The intake secretary in Anchorage provides the first level of screening. She receives and processes new complaints, provides agency procedural guidance, gathers and provides information and checks on further administrative procedures for callers. The more straightforward issues are handled by the intake secretary. All other, more complicated cases are logged by the intake secretary and are further reviewed and assigned by the ombudsman to various assistant ombudsman/investigators located in Anchorage, Juneau and Fairbanks. The Juneau ombudsman's office currently handles a smaller number of local intake calls and also assists individuals that walk into their office. The Fairbanks investigator receives a very small number of direct intake calls; particularly if the complainant has worked with the Fairbanks investigator in the past.

Cases that are chosen for preliminary investigative review are assigned to assistant ombudsman investigators in Juneau, Anchorage or Fairbanks. Assignments are based on prior experience, current caseload and, in some instances, proximity. Investigators provide due diligence and comprehensive examination of the case information and evidence surrounding complaints to determine whether the case can be informally resolved and closed or if there is enough specific and creditable information to warrant proceeding to formal investigation. This analysis can take considerable time in contacting various witnesses, returning calls, gathering information, copying, receiving and reviewing documents, etc. Informal investigations typically rely on the use of unsworn testimony, telephone calls and some limited gathering of evidence and documents.

Cases chosen for formal investigations follow procedural guidelines and can take a considerably long time to complete.

Complaints which are jurisdictional and which are "appropriate subjects for investigation" may be investigated. An investigation is a thorough and systematic attempt to learn all the facts about a complaint and any directly related policy issues. A complete investigation describes the factual basis of the alleged grievance, examines the principles applicable to making a determination, and attempts to define a proper remedy. Investigation "starts with the complaint and ends only when every avenue of inquiry has been exhausted." There is no single outline of investigative procedures that would cover all points.

Ombudsman staff help citizens identify the root causes for their concerns, identify the issues which need to be reviewed, and identify if there is an appeal or alternative way to resolve their complaint. The complainant should give the agency complained of an opportunity to correct the situation prior to involving the ombudsman's office. With reference to any complaint, there is usually a particular concern or situation that caused the complainant to contact the ombudsman's office and a general underlying policy that deserves attention apart from disposition from the particular circumstance that gave rise to the complaint. The ombudsman office is especially sensitive in cases for those who do not have sufficient English or verbal skills to express their complaint.

In most investigations, investigators:

- **Obtain from the complainant a statement of the complaint and all the facts bearing on investigation of the compliant;**
- **Define the problem(s) to be investigated;**
- **Plan the investigation;**
- **Conduct the investigation;**
- **Evaluate the complaint, the facts obtained, and the applicable law, and presenting a suggested finding to the ombudsman for disposition of the complaint;**
- **Evaluate the agency's response to findings and recommendations returned by the agency;**
- **Manage the complaint file; and**
- **Conclude the investigation.**

When it investigates a state agency, the Office of the Ombudsman uses written standards to determine whether the complaint against the agency is justified. State law (AS 24.55.150) empowers the ombudsman to investigate 16 types of inappropriate actions by state agencies.

An appropriate subject for investigation by the ombudsman is an administrative act of an agency that the ombudsman has reason to believe might be

- **Contrary to law;**
- **Unreasonable, unfair, oppressive, arbitrary, capricious, an abuse of discretion, or unnecessarily discriminatory, even though in accordance with law;**
- **Based on a mistake of fact;**
- **Based on improper or irrelevant grounds;**
- **Unsupported by an adequate statement of reasons;**
- **Performed in an inefficient or discourteous manner; or**
- **Otherwise erroneous.**

The ombudsman developed definitions for all 16 actions based on statute, case law, and administrative best practices. These definitions are called standards because ombudsman investigators measure agency actions against them. The ombudsman investigates any complaint that is an appropriate subject for investigation unless the ombudsman reasonably believes that:

- **There is presently available an adequate remedy for the grievance stated in the complaint;**
- **The complaint relates to a matter that is outside the jurisdiction of the ombudsman;**
- **The complaint relates to an administrative act of which the complainant has had knowledge for an unreasonable length of time before the complaint was submitted;**
- **The complainant does not have a sufficient personal interest in the subject matter of the complaint;**
- **There are no grounds for agency action;**
- **The complaint is trivial or made in bad faith; or**
- **The resources of the ombudsman's office are insufficient for adequate investigation.**

Investigative strategy involves relevant background research on the complaint and the related agency practices and policies. This includes checking with other ombudsman staff via electronic mail to see if the issue is familiar to them, and reviewing open and closed complaints on the CMS and various other internal reports to find if other staff is currently, or have reviewed the same issue. Also physical evidence is obtained, typically records, especially documents and electronic mail or computer records, are the chief source of the evidence, but other support material may be included. Several interviews are conducted with witnesses and officers, and employees of the agency or agencies concerned. Case files can include lengthy reports of documentation of evidence and can take months to review and piece together.

It is the responsibility of the investigator to understand the subject matter of the complaint and the legal basis for the agency's actions. Complex investigations take considerable time to complete. Obtaining documents, contacting witnesses, delays in return calls, delays in obtaining appropriate copies of records, waiting for court documents all take months and sometimes years to complete examination. As complete information is put together, witnesses and complainants may sometimes need to be contacted several times, people move, agency personnel change, telephone numbers are discontinued, etc. This prolongs the investigative process.

Given the number of calls that are taken throughout the ombudsman's offices, there is sufficient evidence that the office delivers a needed service and fulfills a role for the State of Alaska. All employees seem generally happy with their chosen profession and want to assist the public with their questions, complaints, or understanding of the state systems.

However, regardless of the case and the complexity, some cases take over five years to investigate and conclude. A conclusion at after five years seems too long to be relevant. One wonders about the significance of the outcome at that point or the weight that the argument, even if there is a justified finding and agency involved could have done a better job and/or ambiguities addressed, the time that has passed makes the conclusion moot. Agency personnel have likely changed, policies and procedures within the agency have evolved, and sometimes complainants have moved on with no forwarding address.

If complaints are not resolved timely, determine if the delays can be clearly associated with:

b. Extended periods of inactivity on the investigation

Under 21 AAC 20.150, "A report of the status of the complaint under investigation must be provided to a complainant 120 days after the acceptance of the complaint and, thereafter, at 120 day intervals until the investigation of the complaint is completed. A status report must be provided to a complainant in response to the complainant's request at any time." Analyses of open cases over 120 days, or 4.7% of cases that are not resolved within 120 days are typically not updated with "status reports" at 120 day intervals. Many times the case notes indicate no activity for long periods of time. Some cases show activity that involves fact finding, but there is no evidence shown that the complainant is provided with status reports every 120 days. Therefore, this administrative code is not practically followed.

As noted above, cases open for extended periods of time are small in number compared to the overall number of calls and/or complaints received by the ombudsman's office.

Lengthy cases, those open for long periods of time are typically complex and involve sensitive matters surrounding cases within the Office of Children Services (OCS) or similar. Also, many times cases that have been open for long periods of time are "bumped" to the bottom of the pile because they are not related to health and safety issues. OCS cases are often considered health and safety issues, and they themselves are long and grueling cases to investigate. Prioritizing health and safety cases for an investigator is difficult and discussion between the investigators and the ombudsman are ongoing.

In reviewing cases that have been open for long periods of time, there is certainly periods of inactivity on these cases. Sometimes six months to a year can go by without activity. In reviewing these cases, inactivity can be linked to:

- **Long and difficult report writing – labor intensive and time consuming investigative report process - when reports are in the writing stage, it is easy to bump the task for intake issues that are quick to investigate and resolve. It appears that report writing is a long, arduous task and can take up to a year or more to draft, review and complete.**
- **Calls are made to contacts that cannot be reached and messages are left, but without a formal follow up or tickler system it is easy to forget that a case is waiting for a return call.**
- **Internal staff turnover leaves unresolved cases hanging. The ombudsman herself has sometimes taken over orphaned cases which then languish because of other management duties.**
- **Investigators log their case activity in the CMS; however, if the case is reassigned internally, it is difficult to take over a case from another investigator who has all the history and knowledge of working the case. It takes time for a new investigator to gain an understanding of the status of a case.**
- **Scheduled personal leave or long medical leave has left cases hanging open during the leave periods. This can happen at the ombudsman office or at the corresponding agency.**

Cases that are investigated and indicative of a pattern of systematic issues are lumped together as additional evidence for a final formal report. Cases that are slotted into this type of queue for integration into other formal case reports, to provide additional examples of

systematic issues, cause these cases to stay open longer while formal reports are in process. Reporting in this manner is a lengthy process in itself, and this "aggregation" of summarizing cases can take a prolonged period of time. Once a draft report is completed by the investigator, it is then reviewed by another internal staff member and the ombudsman. This review process can also be lengthy, due to personal work schedules, and can sometimes lead to further investigation and editing of the report, which again lengthens the reporting process.

There has been internal staff turnover in the ombudsman's office that results in a case languishing until the case can be reassigned. As in any state agency with a small staff, loss of a staff person can cause considerable delay in progress on remaining staff workload. The outgoing staff member's cases must be delegated to someone. Caseloads have continued to increase, and the ombudsman must determine the best person to take over a case, sometimes with a lengthy history compiled by the prior assistant ombudsman investigator. Although all investigators are professional, they do not all approach their investigations in the same way. Therefore, reassignment of a case can lead to more work for an investigator that was not involved with the specifics of the case from the beginning.

Staff turnover at the state agency involved can result in reassignment of duties at the agency and historical facts that are unknown need to be researched. The ombudsman's office has many complaints involving the Office of Children's Services (OCS). OCS case workers have an average tenure in their positions of 18 months. Many times, the ombudsman may have more knowledge about a child's case history than the assigned OCS case worker. The ombudsman's CMS case notes sometimes indicate long periods of inactivity, where the ombudsman's office may be waiting for information from a complainant court's outcome or information from a case worker conference. Information may also be needed from another agency involved in its own investigation. A case may be waiting for an outcome from an appeal and in the meantime complainants move and correspondence is not forwarded and new addresses are unknown. Children involved become older and emancipated before the case can be resolved.

In the past, ombudsman investigators would wait for copies of agency files, which could take considerable time. OCS frequently has turnover, making remaining case workers spread thin on existing cases. This leaves little time to copy files for the ombudsman's office. OCS management is aware of their turnover rates and staffing issues within OCS. Given the nature of the job, OCS turnover is higher than most other state agencies. Turnover also has an impact on services to families. Responding to the ombudsman's inquiries also takes the case worker's time away from services to families. Some cases workers have considerably long files on children and/or families and the ombudsman investigator would need copies of complete files to understand case history.

The ombudsman investigators now have access to the ORCA system, the system used by the Office of Children's Services (OCS) to log their case notes. While this cuts down on the number of calls the ombudsman needs to make to the OCS case workers and files that need to be copied and delivered, the ombudsman finds that the ORCA system is not typically updated with the most recent details and information provided by complainants. Therefore, it is difficult to depend on the ORCA system for all needed information. This necessitates direct calls to OCS personnel anyway. There are many instances when it is necessary to track an agency's performance over time in order to draw comparisons between the handling of the

subject matter of your complaint against other similar situations, which requires a review of a volume of records.

The cases selected by the ombudsman for formal review are far more complex than they were when procedural guidelines were developed. Ombudsman regulations were drafted in the mid 1980s and the corresponding policy and procedures manual directs the investigators to have a goal of providing investigations to agencies within 90 days. According to the current ombudsman, no medium or complex investigation has been completed within those timeframes since 1989. The investigators handle simple complaints as "assists" and close the cases with informational letters, thus many cases are not raised to formal investigative levels. This is the ombudsman's method of resolving and closing simple complaints promptly.

Recommendations include requiring clear legal or statutory assistance in the ombudsman's ability to obtain necessary records and information; make the ombudsman's authority to obtain records more clear and obvious to state personnel. While authority is provided in statutes, it is not clearly stated, and some state agencies invoke attorney client privilege and do not provide requested documents to ombudsman staff. This happens often and delays the production of documents and information.

If complaints are not resolved timely, determine if the delays can be clearly associated with:

c. Overly lengthy report writing

As discussed above, many calls are handled quickly and many complaints are addressed without formal reports. However, there are several cases that rise to the level of full investigation with a formal report required by statute.

Internally, investigators have discussed the length of their formal reports. Some feel the draft reports should be short and succinct, five pages in length or less. They themselves question the effectiveness of reports that are 140 pages in length. Does the agency spend the time to read the report and understand the issues and recommendations? However, investigators are aware that their only statutory power is the "power of persuasion." Some drafts of the formal complaint can be lengthy, which includes all the important chronological detail of the case history and discovery information. In order to fully flush out their investigative reasoning when informing the agency, the investigator must relay, in writing, that they have considered all information available by including a review of the standards, policy, law and fully questioned witnesses. The preliminary report to the agency is also considered part of the investigative process.

When questioned, most investigators would rather have shorter formal reports that get to the point. However, if the investigator does not report all avenues of information considered, the agency personnel will frequently dismiss the preliminary report as incomplete, respond defensively, and state that all data and/or processes were not fully examined, or the agency will request additional information which can prolong the timing and length of a preliminary report. Therefore, the preliminary report process is quite lengthy. A comprehensive and detailed report adds to the time necessary to complete the report.

Investigators anguish about report writing. It takes considerable effort, concentration, and quiet time, time typically unavailable in a small office, to respond to all incoming calls. Historically, ombudsman reports would go through many reviews by other internal staff, which was considered cumbersome for a small office. Currently, an investigator prepares a draft of the preliminary report and the preliminary report goes to another investigator for review, then on to the ombudsman for evaluation. If the ombudsman is not satisfied with the preliminary finding in the report, it is returned to the initial investigator for more fact finding and editing. If the ombudsman herself takes on the preliminary report for additional editing, the process is prolonged even longer as the ombudsman has many other duties that result in the report being additionally delayed.

While report writing is necessary, it frequently takes a back seat to responding to current calls and complainants. Intake continues and investigators are assigned to cases that are quick to resolve. All current investigations and report writing is "bumped" for complaints involving health and safety issues. There can also be typical office personnel issues within the ombudsman's office; people on personal, family or sick leave, vacation, jury duty, turnover, etc. Work is distributed in consideration of these issues and schedules. As cases become more and more stale due to report writing, the focus on the report becomes that much more difficult. It becomes a matter of how effective the report will be when completed, which causes old reports further delay. Agency commissioners and directors change or move on and grounds for complaints become moot and remedy relevance becomes questioned.

Preliminary reports can be received by the agency involving cases that have taken years for the ombudsman to investigate and routinely involved personnel or policies from long times past. Agency employees involved in the investigation are no longer employed with the agency, polices have evolved and it is difficult to recall chronological events. It is frustrating for agency personnel to receive copies of documentation from long ago and to recall historical details. Therefore timeliness in reporting would help all parties involved to feel their work is relevant, both by the investigator and the agency wanting to implement recommended changes.

Most agencies are aware of ombudsman investigations, obviously through provided notices, but also because investigators contact agency staff and request documentation. On initial assessments, they feel the process has worked well. Agencies do feel that the ombudsman provides some needed perspective and direction in their investigative reports. Agencies read and respond to reported findings. Most of the time, OCS believes the ombudsman findings are reasonable, but typically involve issues or deficiencies already known that the agency is aware of and sometimes resolution steps are in already in progress. Staff retention, training, and over assignment of case loads are areas OCS tries to constantly address. Nevertheless, OCS is surprised at the length of time and specific detail that goes into the formal reports. Many times, OCS is aware of the shortcomings in their processes and improvements to systemic issues are already in development and stale reports seem moot.

Ombudsman reports to agencies are quite lengthy and are cumbersome to read. The office does provide an introductory letter with each report. Each report has a summary of the complaint, allegations, background, chronology of calls and events, standards of practice and an analysis and findings of the complaint. Long reports sometimes have a table of contents and an appendix with supplementary information. The ombudsman believes it is important

for the agencies to read the entire report to understand the specifics of the findings and recommendations. It may be easier to provide an abstract summary with an initial summary of the compliant and findings; however, this may not ensure the agency reads the entire document. Nevertheless, agency personnel are busy people with many priorities. An abstract summary allows the important information to be received, and the details of document can be read at a later date. However, the agency has 30 days to respond to the draft recommendations. This is to give the agency a reasonable opportunity to point out mistakes the ombudsman may have made and to consider and respond to findings and recommendations, either by accepting and agreeing to implement the recommendation or rejecting it.

Yes, the ombudsman's formal report writing process is too lengthy and cumbersome. Recommendations include shorter, more succinct reports. The ombudsman should have the statutory power to conduct exit conferences with appropriate agency personnel and summarize findings and recommendations in less formal investigative reports. Exit conferences ensure that the agency understands the extent and detail of the ombudsman's investigation, and allows the final written report to be shorter with a succinct conclusion.

If complaints are not resolved timely, determine if the delays can be clearly associated with:

d. Size of staff compared to workload

The ombudsman was created by the Alaska legislature in 1976. When the office first opened, it had three employees and a budget of $144,000 serving a population of 430,000. From 1976 to 1985, the staff increased to 26 full time employees, but then during economic downturns, the budget was cut in half in 1986 with corresponding staff cut and regional offices closed. The staff increased slowly over time and by 1991 the ombudsman office had 22 positions with offices in Fairbanks, Anchorage and Juneau, with a deputy ombudsman and regional managers. The Alaska legislature again cut the ombudsman's budget in half in FY 95 with additional cuts in FY 97. Many changes occurred following these budget cuts, including closing the Fairbanks office and designating Anchorage as the statewide intake office. Live intake was discontinued and all calls were directed to voicemail which were cleared by ombudsman staff twice a day. Also more affordable office space was secured. Other changes included a change from printing annual reports to state agencies to implementing a website which also serviced as an ongoing annual report to the public. This web site contains a matrix of ombudsman investigations which include allegations, ombudsman findings and recommendations, and agency responses. The legislature also directed that the Legislative Affairs Agency assume responsibility for the administrative functions of the ombudsman's office, including budgetary support and all payroll accounting, and supply functions.

Linda Lord-Jenkins was appointed as ombudsman and took office on June 24, 2002. She moved the administrative office and secretary position to Anchorage and continued a prior agreement establishing the telecommuting office in Fairbanks staffed by a single investigator. She also reinstated live intake on the phones in Anchorage and Juneau, eliminated a cumbersome five person peer review reporting system and expanded the role of the intake officer to handle some straightforward complaints. The total statewide staff at this time was seven, including the ombudsman, intake officer and a secretary. In 2006, based on increased complaints, the ombudsman requested one additional assistant ombudsman for the Juneau

office. The legislature granted the request and the investigator was recruited and hired in November 2006.

Ms. Lord-Jenkins was reappointed in 2007 after the ombudsman selection committee recommended reappointment without going through the recruitment process. The ombudsman requested an additional assistant ombudsman position for FY 09 to be located in the Anchorage office, again based on increased complaints. This request was granted bringing the total staff to nine, which continues today, although some duties are reallocated.

The ombudsman's office of nine professionals includes the primary intake secretary who handles the initial screening of intake calls in the Anchorage office and logs most cases into the CMS. The ombudsman, also in Anchorage manages the caseload, staff recruitment, training and possible reassignment of cases, public outreach, legislative inquires and presentations, prepares an annual budget, reports on fiscal issues, and consults with her investigative staff . Please see Appendix A for a more specific task list of the ombudsman. Rarely does the ombudsman have direct involvement in investigating a new case. The ombudsman also handles all highly volatile visitors to the office and sometimes responds to "frequent fliers" or individuals that call the ombudsman's office as a matter of routine. In reviewing case files for a five year period, a number of individuals have contacted the ombudsman's office as many as 10, 15, 20 and up to 24 times. This frequency can be attributed to prior successful experiences with the ombudsman along with some folks who are chronic complainers. The intake secretary does take the time at intake to flush out legitimate complaints from chronic complainers. The ombudsman herself will get involved with abusive and/or chronic complainers. Several abusive or chronic complainers have been limited to filing complaints in writing and/or, in rare instances, informed their issues will no longer be addressed by the ombudsman.

In FY 12, the authorized budget maintains the nine FTE positions with some funds allocated to casual labor. Casual labor funds provide for occasional special project work and back up front desk coverage in Anchorage. The ombudsman's web page has been updated and serviced for nearly a decade by a prior ombudsman investigator who has since retired and provides the service four hours a week as contract labor.

Employees are hired because of their strong ability to reason and question social and governmental decisions. As a group they tend to be employees with extended experience in various government positions, backgrounds and education as attorneys and social workers, and/or previous media investigators. Please see Appendix B to meet the current ombudsman staff. During personal interviews, they seem to be people of high moral and ethical principles, and are generally able to articulate observations, concepts and feelings, while serving as special watchdogs. They are careful to keep their independence and not maintain a bias. They take their positions seriously, preserve confidentiality, and believe they make a difference in the lives of the people they are helping.

Case load conferences between the ombudsman and the staff investigators are typically held monthly but may trend longer between conferences due to various staff schedules and absences. The ombudsman allocates new assignments to investigators based on current caseload. During case conferences, she also suggests assistance and resolution of current cases and consults with investigators on perceived priorities. Lengthy cases are always discussed.

The ombudsman is aware of cases long overdue for closure and advises investigators on methods to move cases along to completion.

Table 5 – Cases Per Investigator

	2006	2007	2008	2009	2010	Average
Number of intake logged into the CMS:	1477	2057	2187	1930	1949	1920 yr
Number of cases opened to investigate:	609	680	916	942	980	825 yr
Information and referrals:	868	1377	1271	988	969	1095 yr
Investigators (total staff, less ombudsman/intake secretary):	5	6	6	7	7	
Average # of cases per investigator:	122	113	153	135	140	

The above calculation is rather simplistic but provides a general observation that many cases are resolved quickly. Each investigator handles well over 100 cases per year along with their periodic intake duties. Given vacation, holidays, and other medical/family emergencies investigators handle many cases within a few days. In 2010, investigators were assigned 969 cases. Given that there are over 200 cases that have shown to take more than two years to complete; this proves that other open cases are clearly resolved quickly.

Employees within the ombudsman's office occasionally experience burnout given that the nature of their work centers on people with complaints and acting as a mediator and/or fact finder. Employees can talk about their concerns and feelings regarding cases to each other only, as all aspects of cases are kept confidential, and cannot be discussed with anyone outside the office. Staff recognizes quickly that the simplest problem for them to resolve may have been a major roadblock in the citizen's life. The demanding nature of the work creates a challenge for all investigators. Investigators share their education and experience with others in the office, suggest ways to improve office communication and efficiency, and identify issues for ombudsman-initiated investigations or expansion of existing investigations with special findings. They also learn from each other and discuss ways to improve professional skills and performance.

Formal evaluations by the ombudsman must include a value judgment on the employee's human and technical skills, intuitions, patience, talents, flexibility, loyalty, honesty and judgment. The ombudsman also sets personnel improvement goals.

The largest numbers of complaints received by the ombudsman are filed against four State of Alaska departments and their high profile divisions:

- **The Department of Health and Social Services primarily the Office of Children's Services (OCS) and the Division of Public Assistance (DPA)**
- **The Department of Revenue, primarily the Child Support Services Division (CSSD) and Permanent Fund Dividend Division (PFDD)**
- **The Department of Corrections (DOC), primarily the Division of Institutions**
- **The Department of Administration, primarily the Division of Motor Vehicles, the Public Defender, and Office of Public Advocacy**

These types of complaints and issues involve heightened emotions, complexity and sensitive issues. Investigators want to be sure to understand all the facts and circumstances from all parties to render a case summary and recommendation. See Appendix C for the number of cases opened for the high profile State of Alaska Departments over the last five years.

I believe it would be suitable to add one more intake officer to assist with the resolution and completion of simple complaints. This would allow the assistant ombudsman/investigators more time to complete complex investigations. Investigators should also use closing conferences and summary reports to replace formal investigative reports as appropriate.

If complaints are not resolved timely, determine if the delays can be clearly associated with:

e. Other

In discussing reports with agencies, some believe the ombudsman complaint avenue is a necessary process; however, during questioning of the agency staff, agency personnel do not always understand, nor is it clear to the agency what the ombudsman is researching. Some feel the ombudsman is just on a "fishing expedition." When the ombudsman calls front line agency staff directly, employees become alarmed and uneasy about responding. Front line agency staffs, which are sometimes newly hired employees, are not aware or clear about the ombudsman's office function or role. OCS does provide orientation and on the job training; however, the larger office in Anchorage does not have the same turnover issues as the smaller regional offices. Although the ombudsman is certainly authorized to contact front line employees directly, the agencies feel the ombudsman should go through the supervisory level when making initial contact and inquiries with agency personnel.

All state and local government agencies should have a system in place to receive and respond to citizen or employee grievances. This is a basic and important management practice. The ombudsman should not become a substitute or replacement for an agency's normal complaint resolution mechanism.

Typically, the ombudsman's office asks the complainant if they have tried to resolve their grievance with the agency. However, in the cases involving OCS, the ombudsman ignores their own procedures manual. OCS does have a grievance process; however, the ombudsman's office believes it to be ineffective. The ombudsman's office does direct the complainants to first contact their case workers for resolution. However, the ombudsman does not feel that the complainant should follow an ineffective OCS grievance process. OCS complaints are then typically shuffled to the top of the ombudsman's "working" cases as they typically involve health and safety issues for children. Not following their own procedural manual implies the ombudsman is sidestepping their own rules. Two weeks can be a long time in a child's life and the ombudsman feels other complaints can be set aside for important OCS cases. However, this definitely appears outside their boundaries as complaint calls should be initially routed to OCS to resolve complaints. The ombudsman's office does not allow OCS's due process. OCS should be responsible in addressing their own complaints and attempt initial resolution. The ombudsman should work with OCS administrators to direct complaints to the proper complaint resolution area and OCS should improve their internal complaint process.

2. **Evaluate whether the systems used by the Office of the Ombudsman are sufficient for management to monitor:**

    a. **The number of complaints taken.**

The case management system (CMS) used by the Alaska ombudsman staff was originally built with a consortium of users from Alaska, Iowa, Hawaii, and King County, Washington; Hawaii no longer uses the system, but the system is still in use today in Iowa and King County. In discussions with all users, the system seems fairly useful and user friendly. The last system upgrade was several years ago, and the system is no longer expected to have software upgrades.

The CMS does have system administration support and oversight through the Legislative Affairs Agency. Like all system software, the CMS does have its drawbacks. The system does not have a "tickler" system; a prompt mechanism to remind the investigator to expect information or to follow up on a complaint witness or contact, or to follow up on information or paperwork at a designated time. There is no built in way in the system to remind the investigator to follow or review court transcripts at designated times or processed documents that are waiting completion. It is up to the investigator to determine their own method of remembering requests for information and calls expected from contacts and witnesses. This can cause delays in the case or the investigator fails to remember to follow up on complaints and postpone resolution while other priorities and complaints continue to be assigned.

Currently the software data and system is "backed up" and supported by information technology provided by legislative affairs. The CMS is available in both the Juneau and Anchorage offices. This allows two people, from different offices, or within the same office to view the same case at the same time, but two individuals cannot input data into the same case at the same time. The CMS will not allow that, and when it does happen, it will "kick" out one user or the user's screen will freeze. The CMS program also has had a lot of connectivity problems which occur when the internet link is broken. When the link is broken the program may appear on the screen but it does not respond and the case on the screen is locked up. The user will have to exit the program and sign on again. Connectivity issues are the main reason that the Anchorage intake secretary enters all information in a preformatted MS Word document shell and transfers the information through the "copy and paste" function into the CMS. The MS Word document serves as a spell checker and also a double check that the case is logged into the CMS. Should the CMS go down or become unavailable, the Word document is a place holder for the complaint until it is officially logged in the CMS and assigned a case number. It seems inefficient to document the case in Word and then copy and paste the information into the CMS; however, the CMS is not reliable enough to initially log all intake information as received. Since the intake secretary handles the majority of intake, this system works for her and provides backup documentation for complaints. Other investigators who periodically perform intake use their own methods for entering complaints into the CMS, some typing the complaint right into the CMS while taking the initial information over the phone. Others use hand written notes during a call and log cases when the calls are completed.

Losing connectivity prior to saving initial case data in the CMS can also cause the system to "drop" case numbers. In 2009, there were 128 blank case numbers with no corresponding data in the system; in 2008, 75 case numbers were blank. Case numbers with no associated data are attributed to initial staff training and internet breaks. The blank case numbers are not included in the case/complaint totals provided in this document, but are provided here for informational purposes only. In discussions with other users of the CMS, Iowa would lose connectivity on a regular basis, King County, Washington also had this issue come up recently; they were "missing" upwards of 150 cases in 2010. They did an internal audit and determined that it happened primarily when their secretary had started entering a case, and then had to cancel out of the CMS due to an interruption. The case was entered into the CMS later, but the cancelation had resulted in the assignment of a CMS case number without any corresponding data.

All users of the CMS seem generally content with the system and are used to, or have their own workarounds, for the few shortcomings in the software. Minor compatibility issues generally occur with the system when upgrades are implemented to Microsoft software. Data from the CMS can be extracted easily to excel for statistical analysis. Given the lack of software support and that no further upgrades are expected, there will come a time when a new software system to track ombudsman complaints will need to be researched and purchased.

2. Evaluate whether the systems used by the Office of the Ombudsman are sufficient for management to monitor:

b. A current status of all active cases.

The CMS can produce a current list of active or "open" cases at any time. Open cases can also be sorted by the investigator assigned to the case. Each open case also has a status code and a status date. However, the actual status of each active case cannot be quickly determined by the assigned status codes. The user would have to review case notes for each open case to determine its current status. The user needs to read the case notes in chronological order to understand the investigators next step or determine if the investigator is waiting for new or additional information. The case notes can be quite extensive and sometimes need to be read in their entirety to have a full understanding of the case. The CMS allows for scanned documents to be attached to the case file. Some investigators choose to "copy and paste" documents into the case notes rather than attach a document.

Technology has evolved somewhat in that the investigators currently have electronic access to other state systems including "ORCA," the OCS data program that tracks caseworker notes and CourtView, a research tool frequently used for Department of Corrections and OCS complaints. This on-line information access is helpful to the ombudsman's investigators, but this information is often not duplicated in its entirety into CMS case notes. Therefore, sometimes case notes can be quite extensive (with all external notes duplicated) and other times, the investigator only summarizes the information they have obtained from ORCA or CourtView into CMS case notes.

The last case note in the CMS chronology of notes typically discusses the current status of the case, i.e. expected follow-up, waiting for information, writing summary letter or report, in

review status, etc., and does not necessarily correspond with the assigned status code. However, there are a few open cases with incomplete notes that would have to be discussed face to face with the investigator or ombudsman to clearly understand the true status of the case. The CMS allows a search by contact name for investigators to determine whether the complainant has prior history or contact with the ombudsman. The ombudsman does have monthly case load conferences with each investigator to determine open caseload details, status and priorities.

Of the open 9,709 cases pulled from 1/1/06 to 12/31/10, there were 83 remaining open cases (.85% of all cases) as of 2/22/11. These cases were open for an average period of 732 days. The status codes used to document the status of these cases on the date the data was extracted (2/22/11) are shown below. The status codes along with their corresponding description are the current status codes used in the CMS. However, in researching some of the open cases, as noted earlier, the status code used did not seem to relate to the final entry in the chronology of events. The status code for open cases does not seem to be relevant; once the case is actually closed there is an appropriate corresponding closing code (closing codes are described later in this document).

Recommendation: Investigators should be required to update status codes as appropriate and keep them current on each case, until the case is closed.

Table 6 – Status Codes for Currently Open Cases

Code	Status Codes of Open Cases	# of Cases
1	Complaint entered	16
2	Complaint reopened	1
3	Transfer of case in progress	3
4	Waiting agency information or response	18
5	Waiting complainant info or response	3
6	Needing review, inquiry, research or notice	8
7	Monitoring agency action	0
8	Pending management or legal review	9
9	Preparing investigative report	13
10	Awaiting agency reply to report	0
11	Needing closing communication	4
12	Waiting closure	8
	Total open cases, data through 12/31/10 (open as of 2/22/11)	83

2. **Evaluate whether the systems used by the Office of the Ombudsman are sufficient for management to monitor:**

   c. **The length of time for the investigation.**

It is easy to determine the length of time each case is open using the CMS. Intake calls are typically logged into the CMS the day they are received. The intake secretary initially logs all calls into a MS Word document and then transfers all information into the CMS along with

all her notes, dates opened, witnesses, contacts, etc. The investigators all maintain their case notes in the CMS, in various levels of detail. The dates closed along with closing codes are fields found on the case's "main" information screen. The case notes are kept in a long narrative log in the CMS; complex cases can have many "pages" of notes that become quite lengthy. Dates and investigator initials are entered along with case note entries. E-mail communication can be copied into the CMS. Also letters can be scanned into the "notes" section or attached as a document. It is cumbersome for any user to find particular notes or find communication if you do not know the approximate date of the particular entry, as all notes are provided in a long, chronological string of information. Lengthy notes can take time to refresh the investigator's memory, as it is necessary to read through chronological notes; there is no way to find something important unless you do a "key word" search, if the investigators know what word to search for. Some investigators have taken to highlighting particular notes in colored font so that important notes are easily caught by the eye as you scroll through the long narrative string of case notes.

The CMS has a reporting and case management function. Open case reports can easily be obtained from the CMS reporting system, which provides a summary of the complaint, the allegation and the status code of the cases, i.e. waiting for information or response, needing research, pending review, need closing letter, or complaint just entered, and the number of days open (status codes do not appear to be periodically updated). This report can be used by the various investigators to monitor their open cases as well as the ombudsman for use during monthly case management conferences. Case load reports can also be found in the CMS for the ombudsman to review the number of open cases by investigator for further assignment information. There is also a viewing screen that allows for the ombudsman to view all open cases and sort by number of days open. Therefore, it is easy to determine the number of cases open and the length of time the open cases have been open. Another quick reference is the case numbering system. Case numbers all begin with the four year number of the year the case was initially opened. By knowing an open case number you can sometimes tell how long the case has been open just by the case number.

Case data from various data fields can also be extracted into excel, and data sorts can be done on case numbers and various date fields, status codes, contact names, etc for various analysis. The user can determine which cases have been open for the longest period and for how many days, closing codes, used, etc. using the data extracted.

However, for all cases open by 12/31/10, 83 cases were still open on 2/22/10 for an average open period of 732 days, or over two years.

2. **Evaluate whether the systems used by the Office of the Ombudsman are sufficient for management to monitor:**

   d. **Any interruptions or periods of inactivity on a complaint.**

Investigators case notes are logged into the CMS. When case notes are entered, the date and ombudsman investigator initials precede the notes entered. Therefore, the CMS provides case notes in chronological order. In reviewing the case notes, there are many times where periods of inactivity or interruptions on a complaint are obvious in the CMS. Communication between the ombudsman investigators and complainants, collaborative complainants,

witnesses, other necessary contacts, agency personnel, etc. can be quite lengthy, with periods of inactivity waiting for returned calls and requested information. Some periods of inactivity are obvious - when waiting for written material, copies of correspondence, phone messages are left, individuals are out of town, unavailable, do not have a phone or computer e-mail access, all which can lengthen the investigative process. Vacations and family matters for ombudsman personnel and complainants can prolong the length of time between communications. While it might seem reasonable to expect quicker resolution of cases, when reviewing periods of inactivity on a case by case basis, most periods of inactivity seem reasonable. Having said that, there are definitely cases, although few in number, with prolonged periods of inexplicable inactivity. It would require a review of the actual case notes for each open case in the CMS to find these cases, then additional follow-up discussion with appropriate ombudsman staff would need to happen to determine accurate status.

The ombudsman conducts monthly one on one case load conferences with each staff member, and reviews the open cases and their status. Sometime cases are then redistributed. Redistribution of a case is rare and does not necessary lead to faster resolution. This decision is not taken lightly, as the original case worker has typically spent time on the case and has the historical memory of the case and the individuals involved. There have been times when an ombudsman investigator has left the organization and cases do need to be reassigned. Sometimes the ombudsman herself, with little or no extra time, takes on these cases because of limited staff. These cases tend to languish with the ombudsman before, once again, being reassigned to an appropriate investigator.

2. **Evaluate whether the systems used by the Office of the Ombudsman are sufficient for management to monitor:**

   e. **The resolution of all complaints (e.g. no jurisdiction; complaint substantiated; complaint unsubstantiated; complaint withdrawn).**

The resolutions of all complaints are coded to a closing code (status code of the resolution) from code 90 -95. Below are their descriptive definitions from the ombudsman's policy and procedure's manual. However, these closing codes do not directly correspond to the categories posed in the question above. To determine specific reasons for closing a case, each case would need to be individually reviewed.

90 – Information, provided/referral
91 – Non jurisdictional – declined/advised
92 – Jurisdictional – declined/advised
93 – Jurisdictional – assist
94 – Jurisdictional – discontinued investigation
95 – Jurisdictional – completed investigation

90 – Information, provided/referral –

While the principal work of the Office of Ombudsman involves the investigation and resolution of complaint about state agencies, the Office of Ombudsman receives many different kinds of inquiries. Notable among them are inquiries about state agencies and sources of information relating to state government operations. When a person

contacts the ombudsman's office, and requests information or advice, that contact is treated as a "request for information." Inquiries received through the mail are also promptly acknowledged. The ombudsman staff member properly provides the information or referral to the person. Requests for information are not reviewed for jurisdiction. Reasonable efforts are made to provide accurate, prompt information and referrals, sometimes whether or not the inquiry concerns a state agency.

91 – Non Jurisdictional, declined/advised –

Non jurisdiction matters involve an elected state official, governor, lieutenant governor, legislator, a justice judge or magistrate, an elected municipal official, member of an elected school board, federal agency matter, and complaints which wholly involve private parties (all outlined in Statute or Administrative Code). This does not mean there is not a complaint, just that the complaint is not jurisdictional. It may take various phone calls and additional information to determine the complaint is non jurisdictional. If the complaint is clearly outside the jurisdiction of the ombudsman, the complainant should be informed within 15 days of the receipt of the complaint (21 AAC 20.040) and a referral may be made if appropriate.

92 – Jurisdictional, declined/advised –

Cases that are jurisdictional but are premature for investigation are declined and closed. The Office of the Ombudsman should not be a substitute or replacement for an agency's normal complaint resolution mechanism. All state and local government agencies should have a system in place to receive and respond to citizen or employee grievances that involve them. The ombudsman's goal is to ensure those internal grievance systems are used effectively and objectively to resolve differences. The ombudsman office will advise citizens to seek resolution through these grievance systems as a first remedy.

If the complainant is a private citizen, they will be asked if they have contacted the state agency involved. If not, they are advised to do so, and the complaint is declined as "premature." Ombudsman staff should help the complainant understand what he or she needs to know in order to resolve the problem on his or her own.

If the ombudsman investigator feels that adequate alternative administrative remedy exists for resolving the grievance and is available to the complainant, the ombudsman will verify that remedy and make sure that the complainant may still exercise his rights under the procedures which have been established. The matter will be closed as a "declined/premature" complaint. Complainants are advised to re-contact the ombudsman's office, if after going through the agency process, they feel they have been treated unfairly.

Investigators make every possible effort to help complainants understand why their complaint is declined. Information is given to complainants so, if appropriate, they can further pursue resolution of their concern through the appropriate process or

agency. Complaints which are declined as "premature" must be closed within 15 days of receipt of the complaint (21 AAC 20.040).

93 – Jurisdictional, assist –

Assists are for relatively uncomplicated complaints which can be resolved with minimal inquiry, by expediting agency consideration or action or by providing an explanation of the status of an administrative act to the complainant, and for which it is not necessary to issue a finding or determination of fault (21 AAC 20.050).

"Assists" are authorized by 21 AAC 20.050 and may be used when the investigator finds it convenient to "... resolve a complaint informally by expediting agency consideration or action or by providing an explanation of the status of the administrative act to the complainant." Administrative acts that lend themselves to handling as "assists" are typically those in which the complainant has encountered or experienced delay; the complainant usually either wants action on the administrative act expedited or some reasonable explanation of the reason for the delay. Hence, the key factor in disposing of a complaint as an "assist" may well be the perception by the investigator that the complainant wants prompt appropriate action (even if that action can be no more than a meaningful explanation) without a determination of whether or not the administrative act of the agency that is the subject of the complaint is erroneous. The characteristic of an "assist" is its informality and its orientation toward obtaining a result. The common features of processing a complaint as an "assist" are:

(1) The investigator strives for an informal resolution of the grievance through the active involvement of the office;
(2) "Minimal" inquiry is made of the agency; and
(3) The ombudsman does not formally make nor publicly issue a determination of fault.

Procedurally, in handling a complaint as an "assist:"

(1) Notice to the agency of receipt of the complaint is typically given informally (usually by telephone directly to the person who is responsible for the decision or who has custody of the records);

(2) The inquiry should focus solely on the complainant's problem (not any related program or policy concern);

(3) The inquiry is typically conducted by phone or in-person and almost always would not involve efforts to verify or substantiate the correctness of the explanation offered by the agency employee responsible for the administrative act; and

(4) The investigator strives to affect a resolution satisfactory to both the complainant and the agency.

The closure of "assists" is limited to situations in which the investigator may determine that some form of assistance was rendered – agency consideration of the matter was expedited or the complainant was provided an explanation or information. Since "assists" signify a resolution of the complaint as presented, before closing a complaint as an "assist" the investigator is assured that he or she has achieved or obtained a resolution. Resolution should constitute the best efforts of the three parties – the complainant, the agency, and the investigator – to come to grips with, and find a remedy to the problem. For an "assist" to be validly closed, the investigator is expected to take action sufficient to address the administrative act complained of.

There is some change in the respective positions of the complainant or the agency so that the complainant obtains specific information about the agency's procedures and the agency gives careful attention to the subject of the complaint.

Resolution of a complaint as an "assist" does not compel the agency to make a particular decision or reach a particular conclusion, though it may require the agency to indicate the current status of a pending act, action, or decision. Consequently, resolution as an "assist" may not be in a form that the complainant necessarily accepts or that secures for the complainant all that he or she may be seeking.

To assure that an "assist" provides some measure of assistance, before closing the complaint file, the investigator determines that the complainant is not able to come back to the office with the same complaint in the same form and under the same circumstances as that complaint was first presented.

94 – Jurisdictional, discontinued investigation –

Cases that have gone through preliminary review but are not approved for full investigation or which are initiated but stop prior to completion. (21 AAC 20.200)

Discontinue (Case Status "94") a complaint if you determine that:

(1) Preliminary review of the complaint leads you to conclude that little remedy is available or no substantive policy issues exist in the case. Therefore, there would be little gained from devoting office resources to a full investigation;

(2) The matter is non-jurisdictional (21 AAC 20.200(a)(1)), premature, etc., only after investigation commences;

(3) Disclosure of the complainant's name is necessary to enable the ombudsman to carry out an investigation or to support recommendations, and the complainant refuses to allow disclosure of his or her name (21 AAC 20.200(a)(2));

(4) Information or a record is requested from the complainant and the complainant fails to produce the information or record within the time specified by the ombudsman (21 AAC 20.200(a)(3));

(5) The complainant withdraws the complaint (21 AAC 20.200(a)(4));

(6) The subject matter of the complaint is excluded from an investigation by 21 AAC 20.010(1)-(7) or 21 AAC 20.200(b)(1); or

(7) The complaint relates to a matter that has become the subject of an administrative or judicial proceeding (21 AAC 20.200(b)(2). (If the complainant commences a civil action as an investigation is in progress, the ombudsman will discontinue the investigation and prepare a closing letter. Letters to the complainant will cite AS 24.55.110(1) and the decision by the complainant and the complainant's attorney to elect use of an alternative means of proceeding.)

The distinction between a "decline/advise" complaint and a "discontinued" investigation is based largely on the degree of effort given after intake. If the ombudsman does not accept the matter for investigation and determines that the matter is to be closed, the complaint is "declined." Note that 21 AAC 24.040 requires that complainants be informed of decisions to decline/advise their complaint within 15 business days of receipt of the complaint. Typically, complaints older than 15 days are considered in "preliminary review" status. Closure of complaints designated for formal investigation requires that they be "discontinued" or that an investigation be completed.

95 – Jurisdictional, fully investigated –

The ombudsman has completed investigations in which findings and/or recommendations are issued (21 AAC 20.210 – 21 AAC 20.250). Cases selected for formal investigation are those that involve health and safety issues, or that have potential to affect agency policy, affect large numbers of citizens, or involve serious allegations that warrant independent review such as allegations of police brutality or employee misconduct. A summary of fully investigated complaints and subsequent resolution are typically provided to the legislature in the ombudsman's annual report and available on the ombudsman's website.

When preparing findings, investigators prepare a report detailing the complaint, its constituent allegations, the issues considered, the agency's position, the investigator's activity, the findings, and any recommendations. The investigator also prepares a cover letter from the ombudsman to the agency manager summarizing the complaint, the findings, and the recommendations. These documents are first reviewed by the ombudsman and then submitted to "the appropriate officer or employee." AS 24.55.180 requires that the preliminary report not be released to the public. This is to give the agency a reasonable opportunity to point out potential mistakes made and to consider and respond to the ombudsman's findings and recommendations. The consultation may result in the agency acting to rectify the complaint. At this point, however, the complaint is not closed as discontinued and resolved but rather, it must be concluded with a full report, within which mention must be made of the agency's action to rectify the problem.

An agency may seek modification of a finding or opinion presented in the preliminary report. 21 AAC 20.220 and 230 set out the timelines for an agency response and provisions for extension of deadlines at the ombudsman's discretion. If an agency does not request modification, the preliminary findings become final. The agency has 30 days to respond to recommendations, advising the ombudsman of its decision either to accept and implement a recommendation or to reject it.

If the agency seeks modification of a finding, the ombudsman notifies the agency of her acceptance or rejection of the request for modification. If the ombudsman accepts a request for modification, she may present a modified recommendation to the agency in the form of a second preliminary report. Again, the agency has 30 days to respond to the recommendation, either accepting and agreeing to implement the recommendation or rejecting it.

3. **Evaluate whether the Office of the Ombudsman has a formal or informal priority ranking for investigating complaints. If so, determine what is the effect of that ranking on**
    a. **The types of complaints.**
    b. **the complainants.**

<u>21 AAC 20.100. Priority for investigating complaints</u>

(a) When the resources of the Office of the Ombudsman are not sufficient to adequately investigate all pending complaints within reasonable time limits, investigations must be conducted according to the following priority rankings:

(1) Complaints of an emergency nature in which disposition according to normal handling would subject the complainant to a substantial risk of serious and irreparable harm;

(2) Complaints in which there is an allegation or evidence of prejudice, harm, or disadvantage and for which investigation should be undertaken at an early opportunity because of an actual or potential time constraint;

(3) Complaints in which there is an allegation or evidence of recurring systematic prejudice, harm, or disadvantage, or of the possibility of recurring systematic prejudice, harm, or disadvantage, as a result of an administrative act or decision;

(4) Complaints in which there is an allegation or evidence of a single or isolated instance of prejudice, harm, or disadvantage as a result of an administrative act or decision.

(b) Within each priority category set out in (a) of this section,

(1) Investigation of a complaint alleging or giving evidence of prejudice, harm, or disadvantage to a class of people has precedence to an investigation of a complaint alleging an individual instance of prejudice, harm, or disadvantage; and

(2) Investigation of complaints must be substantially in accordance with an order based on priority of the date on which the complaint was received.

Priority rankings for cases are typically based on health and safety related issues, as defined in the administrative code, which always push a case to a higher priority level. If an open case is not health and/or safety related it may be "bumped," and bumped several times, no matter how long the complaint has been open.

There is a complexity rating that can be automatically assigned by the CMS; however, this is not used by the Alaska office, nor used in the Iowa office. This complexity ranking, which could be used as a priority ranking, is automatically assigned by the CMS itself and is based on a consideration of various factors presented at the time of the complaint intake and case documentation procedure in the CMS. These factors include the timeliness of the complaint, the number of people affected, frequency of the event complained about, and the estimated complexity of the investigation. However, once the complexity code is assigned at initial intake, the CMS cannot recalculate the algorithm used to produce the complexity code upon new information. Rarely is there complete and full information at intake; therefore, the CMS complexity code is not used.

Priority of cases and investigators case load is always discussed and decided at the monthly case conferences between the ombudsman and the investigators. The ombudsman and the investigator are both aware, through these monthly caseload conferences, of open cases and which should take priority over others. Monthly caseload conferences are considered the office's informal priority ranking system.

4. **Provide a breakdown of the complaints that have been closed in the last 5 years – were they closed because of: no jurisdiction, complaint substantiated, complaint unsubstantiated, or complaint withdrawn.**

   From 1/1/2006 –12/31/2010 – 9,709 cases were extracted from the CMS.
   - **This included 109 cases still open on 1/1/06 and 9,600 cases logged into the CMS during the five year period.**
   - **Data was pulled from the CMS database on 2/22/11. Therefore of the 9,709 open cases, 9,626 were shown as closed with corresponding closing status codes below.**

Table 7 – Closed Cases and Corresponding Closing Codes

Cases Logged as of 12/31/10

%	Cases Closed	Closing Status	Ave # Days to Close	Closing Description
42.2%	4,058	90	2	Information - provided/referred
14.6%	1,410	91	4	Non-jurisdictional - declined/advised
26.5%	2,550	92	21	Jurisdictional - declined/advised
12.9%	1,241	93	39	Jurisdictional - assist
3.3%	322	94	347	Jurisdictional - discontinued investigation
0.5%	45	95	749	Jurisdictional - completed investigation
100.0%	9,626			Total cases closed
	83		732	Cases still open and calculated as of 2/22/11
	9,709			Total open cases analyzed (1/1/06 - 12/31/10)

A brief reminder of the descriptions of closing codes follows. None of the closing codes directly correspond to the categories in the question other than non-jurisdictional, code 91.

90 – Information, provided/referred – The ombudsman's office provides information to the caller and/or referral to proper assistance or information on where to call to address problems with entities not subject to ombudsman jurisdiction. Front-desk intake staff usually handles these calls. Ombudsman staff does their best to provide the best, most accurate referral information so citizens can address their problems with the proper entity.

91 - Non-jurisdictional, declined/advised – declines are complaints to the ombudsman about agencies over which the office has no statutory jurisdiction such as a private party, the federal government, Social Security Administration or a city and borough government. If a complaint is not proper for ombudsman review, agency staff strives to make the most appropriate referral to the proper venue.

92 – Jurisdictional, declined/advised – complaints that are not pursued because of lack of jurisdictional or due to other statutorily prescribed reasons such as a complaint being premature for review. (21 AAC 20.040).

93 – Jurisdictional, assist – resolution without investigation - for relatively uncomplicated complaints which can be resolved with minimal inquiry, by expediting agency consideration or action or by providing an explanation of the status of an administrative act to the complainant, and for which it is not necessary to issue a finding or determination of fault (21 AAC 20.050).

94 – Discontinued – Complaints closed or discontinued after the ombudsman has resolved the issue with a change in agency action or policy, because the matter was subject to a court ruling, because the ombudsman lacked resources to purse the complaint to full formal investigation, or for other reasons defined in 21 AAC 20.200.

95 – Fully investigated – The ombudsman has completed investigations in which findings and/or recommendations are issued (21 AAC 20.210 – 21 AAC 20.250). Cases selected for formal investigation are those that involve health and safety issues, or that have potential to affect agency policy, affect large numbers of citizens, or involve serious allegations that warrant independent review such as allegations of police brutality or employee misconduct.

A summary of fully investigated complaints and their corresponding findings are provided to the legislature in the ombudsman's annual report and available on the ombudsman's website.

5. **Determine whether the Office of the Ombudsman has general categories of the reasons why some complaints are unsubstantiated? If so, provide a breakdown of the reasons complaints have been closed as unsubstantiated over the last 5 years.**

Individual CMS case notes would have to be specifically reviewed to determine the exact reason for closing each case.

Once complaints are logged into the CMS, discussion ensues and decisions are made on how to proceed on each case based on the facts of the complaint, the Alaska Statutes and the

Alaska Administrative Code and the ombudsman's policy and procedures manual. Cases are closed for various reasons, using the closing codes previously described (90 – 95). There are cases that are not chosen for full investigations, and are closed as unsubstantiated; however, this is not a specific closing code. Therefore, closing case notes would have to be specifically reviewed to determine the reasons cases are closed as unsubstantiated.

6. **Please provide an aging of open cases at the ombudsman. Identify the number of cases that have been open:**

Table 8 – Aging of Open Cases

Aging of Open Cases	Number of Cases	% of Cases
a) Less than 6 months	9346	96.3%
b) More than 6 months	114	1.2%
c) More than 12 months	60	.6%
d) More than 18 months	33	.3%
e) More than 24 months	32	.3%
f) More than 3 years	15	.2%
g) More than 4 years	14	.1%
h) Longer than 5 years	12	.1%
i) Cases still open on 12/31/10	83	.9%
Total open cases	9709	100%

As possible, identify and summarize the reasons for cases that have been opened for more than 6 months.

There is a variety of status codes used for open cases during their various stages of investigation. When the case is closed the status code is changed to a "closing code," from 90 – 95, (closing code descriptions were provided in a previous response above). 3.7% of all cases logged take longer than six months to resolve, and there are several cases that take a seemingly unreasonable length of time to complete. The most frequent reasons have already been discussed in this paper:

- **Overly lengthy investigations;**
- **Arduous and difficult report writing;**
- **Cases that languish without attention due to having lower priority than health and safety issues;**
- **Cases that have been reassigned due to ombudsman staffing issues; and**
- **Timing of the investigative process, i.e. waiting for return telephone calls and necessary information and/or documentation.**

7. **Determine the average number of cases opened annually over the last 5 years.**

Table 9 – Average Number of Cases Opened

	2006	2007	2008	2009	2010	Average
Number of complaints logged into the CMS:	1477	2057	2187	1930	1949	1,920
Number of cases opened to investigators:	609	680	916	942	980	825
Information and referrals:	868	1377	1271	988	969	1,095

The average number of cases logged into the CMS over the last five years was 1,920 per year. Of these, information and referrals averaged 1,095 and other cases opened averaged 825 per year.

8. **Determine if the race/ethnicity of the complainant can be identified. If so, please provide the information under #4 and #6 above organized by the race/ethnicity of the complainant.**

Race/ethnicity information is not information obtained from the complainant.

9. **The contractor will prepare a written report that includes the results of the analysis of the Office of the Ombudsman based on items 1- 8 discussed above. Additionally, the contractor will include recommendations in the report that will either address deficiencies identified during the review or that would make improvements to existing operations. Under no circumstances will the report contain any legally confidential information.**

The Office of the Ombudsman fulfills a necessary function for the State of Alaska. There are various definitions of ombudsman and various rolls of ombudsman throughout the world (Appendix D), but they all have a common thread. The title ombudsman has gained popularity in both the public and private sectors to describe various types of problem-solvers or impartial reviewers for the users of their services.

The State of Alaska provides many public services, and the ombudsman has the authority to investigate citizen complaints about the administrative acts of state government. Contrary to what many people might believe, the ombudsman does not act as an advocate, but rather a neutral investigator of their complaints. This role properly implies that the ombudsman is not an advocate for the governmental agencies investigated. The ombudsman's office provides a needed service, as indicated by the number of intake calls received. Another question that is unknown may be the financial savings to the state. The work of the ombudsman may help in keeping the state out of court, which ultimately saves Department of Law time and potential resources, as litigious as some people may be. Also, the ombudsman is an outlet for referrals of last resort. Legislators, native corporations, other agencies and state employees can direct citizens to the ombudsman for final complaint resolution. The ombudsman's office can take the time to explain the situations which can be useful when people are dissatisfied with an agency's response. Even if the ombudsman's response is the same, some people are satisfied with the sympathetic ear alone.

The ombudsman's intake calls have evolved over the recent years. Although the total number of intake calls has stayed fairly constant, the calls logged requesting information and/or referrals has gone down over the last few years, and the number of cases logged needing more

investigation has increased. Below are many observations that result from reviewing various investigative cases.

Table 10 – Summary Data

	2006	2007	2008	2009	2010
Number of intake logged into the CMS:	1477	2057	2187	1930	1949
Number of cases opened to investigate:	609	680	916	942	980
Information & referrals:	868	1377	1271	988	969
Percent of open cases:	41%	33%	42%	49%	50%
Percent of information & referrals:	59%	67%	58%	51%	50%

People in general have become proficient in the use of the internet to obtain information and answers to their questions or obtain proper referral numbers. With computer usage becoming much more common, people can find their way to the information they need through computer searches. However, the chart above shows the open cases for investigative review have increased since 2007. The frequency of certain types of complaints within state departments (Appendix C) has increased, cases, which by their very emotional nature, can be understood to increase.

The number of complaints has maintained or increased for the Department of Corrections, Division of Institutions and the Department of Health and Social Services, Office of Children's Services. Through reviewing specific case notes, for complaints involving these two divisions, the complainants are emotionally charged and typically have the highest personal stake and complex issues to investigate. The Department of Revenue is also represented on the frequency chart.

Other recommendations for consideration:

1. **The ombudsman could report findings to the media, provided in summary. Redacted information could be provided to newspapers or media could be directed to the ombudsman's website. Included in the published reports should be responses from the state agency or division.**
2. **Legislators could require annual reports and responses, in the form of oral testimony, from representatives from the ombudsman's office, OCS and the Department of Corrections regarding supported recommendations from the ombudsman.**
3. **Tie authorization for additional budget requests for OCS and DOC to important recommended procedural changes within the agencies.**
4. **The Legal Services Division, Legislative Affairs Agency could get more involved in requesting timely agency responses and/or incorporating final recommendations in new procedures or changes in processes due to particularly important ombudsman findings.**
5. **The ombudsman should be particularly selective in which cases they take to full investigations. The ombudsman has staffing authorized through the legislative budget process. Cases cannot be sufficiently closed without completed investigations which require adequate staff, and staff funding is ultimately approved by the legislature. If the public wants faster resolution, they have to ask their legislators for proper funding.**

6. **Ombudsmen sometimes feel they know the agency statutes and administrative procedures better than the agency staff. This remedy begins with better training at the agency level to try to resolve issues before they become a complaint. The legislature needs to support adequate training and funding particularly for OCS and the Department of Corrections. This includes providing for proper incentives for personnel to keep from having high vacancy rates. High vacancies rates produce training challenges and lead to a high volume of complaints.**
7. **Realize that OCS is a source of highly emotional, personal and problematic issues. Complaint resolution is always going to be an issue. The ombudsmen feel the current complaint resolution process in OCS is not effective. Quarterly meetings between the OCS supervisor/management level and ombudsman investigators may help to shed more light on the OCS issues. The Wasilla office, in particular, has more complaints than any other location. This type of obvious regularity should be communicated to the state agencies and joint resolution through the legislative process should be addressed.**
8. **The ombudsman should realize that long final investigative reports will not have the desired impact – it is human nature to tune out on long narrative dissertations. Reports should be shorter and bullet points used that get to the point and provide visual cues. "Report creep is self defeating" and reports must be read and understood by the layperson. The ombudsman should determine other methods to relay the extent and details of their investigation, such as exit conferences, to keep the reports short and succinct. Shorter reports are imperative to the success of the ombudsman's mission.**
9. **Reports need to be timely or they will carry no weight. How much is the issue worth? Long overdue narrative reports will lose their utility. Find a way to be more timely and succinct while, at the same time, ensuring the agency you have fully vetted the issues.**
10. **Provide ombudsman outreach to departments with frequent complaints, particularly when they are not conducting a formal investigation. Open, informal dialogue between the ombudsman's office and state agencies is essential. This way, the ombudsman can help improve internal agency complaint processes. Agencies must try to maintain a respect for the ombudsman's mission, and the ombudsman should provide assistance to agencies rather than disciplinary discussions.**
11. **Alaska Statutes and the administrative code require communication with complainants every 120 days. This is not currently maintained on lengthy cases and should be acknowledged and resolved or changed.**
12. **Ombudsman reports mention several instances in case notes that cited lack of personnel and resources in a state agency, particularly OCS, but the ombudsman is not without fault in lengthy open cases. Some cases languish and do not indicate recent activity. Attention to open cases must be a priority so that all ombudsman cases and subsequent reports are completed in a reasonable time.**

Some specific departmental comments follow:

Department of Revenue, Permanent Fund Dividend Division (PFDD)

Some state agencies are much more automated, and as a result have less room for error. Also, information across state departments is becoming seamless. The Department of Revenue, Permanent Fund Divided Division (PFDD) application process is much more automated now than it has been in the past. The personnel in the PFDD have more time to resolve issues, follow up on complaints, and provide information to applicants. The most frequent complaint around the PFDD involves dividend garnishments, and resolution can sometimes be through an explanation of the process and statutes. Other historical complaints were generated by the Energy Rebate which tied eligibility for the rebate to eligibility for the PFD. The division director is willing to recognize any citizen complaints and attempt to resolve issues or disagreements promptly. Most complaints to the ombudsman regarding the PFDD are unjustified and/or promptly resolved. The frequency of PFDD complaints have recently been few in number.

Department of Revenue, Child Support Services Division (CSSD)

In the past, CSSD personnel were on a first name basis with various ombudsman investigators. Over the last few years, the Department of Revenue, the CSSD has implemented better processes in their own internal complaint resolution department. The complaints are routed to a three person resolution department who has established experience within the CSSD. The ombudsman feels more confident in routing complaints to the CSSD for resolution. The CSSD complainant resolution department has had great success because of authority granted within the department to make accommodations and implement changes to resolve issues. Since that time, the ombudsman investigators have noticed a change in the complaints regarding the CSSD. Intake still receives CSSD complaints but the majority are closed as declines, usually because the complainant had not addressed the issue with the agency's complaint resolution process or because the issue had been decided in court, or discontinued as resolved.

Health and Social Services, Office of Children's Services (OCS)

The ombudsman continues to receive frequent complaints about the OCS. The majority of all open and active cases are OCS cases. By the nature of the types of complaints, they take a long time to investigate and resolve. The complainant may call regarding an issue, and once investigated, the investigator may be aware of several other areas where regulations or policies were not followed correctly. There is tremendous turnover in OCS and most of the time the ombudsman investigators feel they know the policies much better than OCS case workers. There are systemic issues that resurface time and time again on intake, typically, regarding removal of a child, visitation, relative placement, foster placement, and inadequate case plans.

The ombudsman finds OCS caseworkers and supervisors so busy that they cannot return calls to the ombudsman for several weeks. Case evidence needs to be supported, and OCS ORCA notes are not complete. Simple, unanswered inquiries can prolong an open case. If OCS personnel do not provide information to the investigators, the case may stay open for

long periods and become stale. Sometimes case workers are told not to discuss issues with ombudsman unless the supervisor is also on the phone, or supervisors call back to the ombudsman on behalf of the case worker. Ombudsmen sometimes get very conflicting scenarios of the same story from various staff. Some of the details just do not add up with very obvious divergent facts; this leads to further investigation.

OCS supervisors realize they have personnel retention issues, and division directors try to stay on top of hiring and vacancy rates. When case workers leave, the open OCS cases are redistributed to existing personnel, meaning more cases per caseworker, which leads to more turnover; a very real domino effect. The average tenure of an OCS caseworker is 18 months.

The OCS tries to solicit comments from their staff and maintain an open door policy. OCS conducts an annual survey of staff to request responses regarding experiences in training and other staff development activities. They also ask for indications in which areas their staff would like to receive additional guidance and ongoing education. OCS tries to obtain feedback and information, through these surveys, about overall agency operation and distribution of information, awareness of training, clear direction of goals, model of practice, internal communication, working relationships, etc. This does not change the fact that OCS has personnel retention issues which is something that might never get better. OCS wants to hire more people, but even higher salaries do not necessarily fill positions. This type of work takes dedicated people with education, experience in social work, and incredible patience. Some OCS personnel feel that ombudsman do not have the credentials to question educated social workers on their job performance and processes. OCS staff surveys indicate their service to the community is fulfilling, and they cite a loyalty to the families they serve. They feel an importance in serving as advocates for children and are thankful for the opportunity to assist children in becoming productive members of society.

From OCS' point of view, they feel that case reports from the ombudsman's office should be more summarized, provide an abstract at the beginning of each report to show the complaint, the main issues, and the specific recommendations for the agency. Reports to OCS should be timelier, provided within a year of the complaint, and more suitably timed to the issue being addressed. Some ombudsman draft reports are received by the agency so late that policies and procedures and /or training the ombudsman recommends have already been implemented changes. Also, OCS is typically aware of the areas that need attention, which follow the ombudsman findings and recommendations in their draft report.

OCS knows their personnel turnover rate is high; turnover leads to a redistribution of active cases to even fewer case workers, who typically already have a heavy case load. This leads to even more turnover, which happens periodically. Also, the Wasilla OCS office has a higher frequency of complaints than any other office. This can potentially be attributed to a higher success rate of case resolution (word gets around) or the fact that the ombudsman's poster with their phone number is hung in the lobby of the Wasilla OCS office, or, perhaps, the Wasilla OCS office is in need of additional training, personnel, or more supervision from the Anchorage office.

OCS has an annual conference and last year invited the ombudsman to be on the agenda. The ombudsman was there to educate case workers and to discuss systemic issues, patterns of behavior, and why individuals resurface through various cases. This was an excellent

opportunity for the ombudsman to interact with the front line agency caseworkers, outside the investigative environment. This was an occasion to communicate an understanding of each other's role, and introduce the ombudsman's mission to OCS staff and management. This type of interaction should continue.

Department of Corrections, Division of Institutions

Inmate complaints about medical issues are the highest portion of DOC complaints. Other common complaints are about actions or discourteous, rude or assaultive behaviors of correctional officers. Other fairly common grievances involve disciplinary actions and problems with mail, and communications with attorneys.

(AS 24.55.260) "A letter to the ombudsman from a person held in custody by an agency shall be forwarded immediately, unopened, to the ombudsman. A letter from the ombudsman to a person held in custody by an agency shall be delivered immediately, unopened, to the person." This allows for frequent mailings to the ombudsman from inmates that need responses. Incarcerated complainants have nowhere to go and lots of time to wait. Inmates have also been known to call investigators they have had past success with but have also been known to "shop around" for a sympathetic ear within the ombudsman's office.

Many times, upon receipt of a final report, the facts and ultimate findings are not disputed by the DOC. Recommendations are given and replies are required, but replies are neutral, "we understand your issues and we do not dispute your findings." However, DOC complainants continue to be of high frequency and require ombudsman's investigative services. Complaints tend to be difficult to research and complex, highly emotional issues. The DOC deputy director is commonly drawn into case investigations and works well with ombudsman investigators.

Summary

Legislative committees involved with OCS, the Department of Corrections, and other high frequency departments should require their legislative aid or staff to assemble a summary of the ombudsman complaints along with a summary of recommended resolutions of systemic issues and include any ombudsman proposed solutions to the departments to reduce the frequency of complaint issues. There are a variety of sources to obtain ombudsman's specific agency reports of resolved cases. Redacted public versions of ombudsman's investigative reports are available upon request. Public reports are also provided on the ombudsman's website. In addition, the ombudsman currently provides an annual report to the legislature summarizing the important issues raised with various state agencies. Evaluating the impact of ombudsman recommendations is difficult as it not always clear how much impact an ombudsman office has had on a situation. Even when procedures are changed it is not always clear that behavior has changed. Ombudsman recommendations followed up by questions from legislators or their aids may ignite more interest by the agencies.

Only a small percent of final outcomes make a difference, and since there is no real success rate to point to, it may seem like a thankless job. The ombudsman cannot make anything happen; they can only provide the agencies with information and findings along with

recommendations using their power of persuasion. Hopefully the agencies will be open to constructive criticism and want to fix the important issues. The ombudsman finds that departments can also have a culture and personality that change over time. Sometimes agency personnel have a defensive posture (not on my watch), or sometimes they have a director open to suggestions who wants to ensure their staff does what's right, and agency culture can even alter through the years with changes in personnel.

Finally, there is frequent misunderstanding on the attorney/client privilege between agencies and their AG representative when providing requested information to the ombudsman. This issue has been addressed, most recently through an opinion by Legal Services Division, Legislative Affairs; however, it continues to resurface by agency personnel unaware of the legal opinions. Agency personnel will cite attorney/client privilege and not provide information or documents to the ombudsman's office which results in a records dispute. The ombudsman has the authority to receive this information. This can cause considerable delays in the progress of ombudsman's investigations. As mentioned, this issue has already been decided through the Legal Services Division, but turnover in agency personnel always causes this issue to resurface. It is a constant area of education for the ombudsman investigators. It is important to ensure this is not a continuing source of frustration for the ombudsman's office.

The resolution rate of ombudsman calls and complaints is quite high. However, the ombudsman currently has communication deadlines that are not being met. The ombudsman may not be able to fix or resolve all of the state's complaints. They may need to surrender some stale complaints with no meaningful resolution. The ombudsman should decide to discontinue these types of investigations, without a formal report, apologize and move on to those issues that could have a more relevant outcome. After long periods of time, sometimes over five years, how relevant can a lengthy report and suggested findings be to the complainant? The answer to these questions seems obvious. Long, languishing complaints, with little recent information or contact need to be addressed, completed and/or closed.

The ombudsman can use professional organizations to compare notes and case statistics with other similar ombudsman offices and get definitions of what they consider to be successes. However, the Alaska ombudsman is currently president of the board of directors of the United State Ombudsman Association (USOA) and has participated in panels with several of her peers. She has had many networking opportunities with her professional collogues and no doubt has made use of this knowledge to improve the Alaska ombudsman's office. Alaska has benefitted from ties to the national organization and should be proud of what they have accomplished through the ombudsman's office.

Appendix A

State of Alaska - Ombudsman Task List

Case Supervision

Intake

- Review incoming complaints after entered by intake secretary.
- Assign cases to investigators.
- Recommend course of action
- Review the CMS for similar cases and issues to see if problem spots or trends are developing.
- Review caseload reports weekly:
  - For content/form of allegations and closing summaries.
  - For editing, typos, language errors.
  - To ensure the cases are opened and closed with the proper designation (i.e. assist vs. discontinued).

Complaint supervision

- Review incoming complaints.
- Consult with investigative staff on the course of action in complaint.
- Direct staff questions to in-house counsel as necessary.

Formal Investigations

- Consult with staff during preliminary review on whether complaint will become formal investigation.
- Review case notes and other documentation through course of investigation.
- Review and sign Notice of Investigation drafted by investigators.
- Determine if it is necessary to issue subpoenas.
  - Approve wording of subpoenas and sign subpoenas.
- Intervene with agency commissioners or directors if necessary during investigation to resolve problems in obtaining information and cooperation.
- Direct staff legal questions to in-house counsel.
- Direct part-time project assistant/researcher to assist in staff tasks as necessary.

Preliminary Investigative Report Review

- Review and edit draft of preliminary report for:
  - Content.
  - Language.
  - Style.
  - Formatting.
- Edit preliminary finding to determine possible holes in evidence or analysis of facts.
- Review preliminary recommendations to determine if they resolve the problems uncovered.
- Direct investigator via edits in document and conversations on the course that document should take.
- Review and edit preliminary finding cover letters for:
  - Content.
  - Language.

- Style.
- Formatting.

Finding of Record Report Review

- Review and edit draft of Finding of Record for:
  - Content.
  - Language.
  - Style.
  - Formatting.
- Edit Finding of Record finding to determine possible holes in evidence or analysis of facts.
- Review Finding of Record recommendations to determine if they resolve the problems uncovered.
- Direct investigator via edits in document and conversations on the course that document should take.
- Review and edit Finding of Record cover letters for:
  - Content.
  - Language.
  - Style.
  - Formatting.
  - Forward preliminary and cover letters to intake secretary for final proofreading.

Public Reporting

- Determine how report will be handled after investigation closed.
- Determine form of the report to complainant, agency:
  - Redacted or not redacted.
  - Consider AS 24.55.160 and the nature of evidence in the report.
    - Involves consideration of complainants', witnesses privacy interests.
    - If redacted, ombudsman does the redacting from finalized Finding of Record document.
- Ombudsman Matrix of Investigations
  - Decide if report will be included in total or summarized.
  - Edit text to be included in matrix.
  - Forward final versions of documents to ombudsman webmaster to place in matrix.
  - Public/press notification
  - Determine if investigative report will be released to press.
  - Draft press release
  - Sign off on press list.
  - Serve as agency spokesman as necessary.

<u>Staff Supervision and Training</u>

Case Staffing

- Discuss complaints on investigators caseload as deemed necessary by ombudsman or investigator.
- Ombudsman often but not always reviews case notes as part of staffing.

Caseload Conferences

- Monthly meetings between ombudsman and investigator to discuss progress on complaints/investigations.

- Ombudsman creates and updates monthly caseload conference document for investigators so everyone is on same page.
- Ombudsman often but not always reviews case notes as part of staffing.
- Annual Staff Merit Reviews:
  - Ombudsman drafts annual merit review of investigator.
    - Reviews numbers of complaints handled by investigator.
    - Reviews quality of case documentation.
    - CMS case notes.
    - Ongoing review of allegation and closing summary.
    - Ongoing review of closing letters.
    - Ongoing review of investigative reports.

Internal training

- Help train new ombudsman hires.
- Revise ombudsman P&P manual and train staff on changes.
- Set agenda for the weekly staff meetings for ongoing staff training.
  - Case staffing as training.
  - CMS training.
  - Case handling training.

Training in ombudsman style for report writing

- Annual meeting:
  - Select outside speakers who will meet with staff.
  - Select on-site inspections for meeting.
  - Set agenda for meeting outside of speakers, inspections.
- External training
  - Seek out and research training opportunities for staff in:
    - Ombudsman focused training.
    - USOA annual training conference.
    - Skills training.
    - Interviewing.
    - Mediation.
    - Writing.
    - Investigator certification training .
    - Bar Association Continuing Law Education seminars.
    - Serve on faculty of USOA New Ombudsman Training.

Other

Outreach

- Public Speaking:
  - Speak before civic groups at group invitation.
  - Speak on occasional requests to participate on radio programs.
  - Speak on request before school/university groups.

Legislative Contact

- Conduct biannual legislative staff orientation on ombudsman's office .
- Meet with new legislators to educate them on role of ombudsman in state government.
- Meet with legislative leadership to report on ombudsman activities.
- Meet with legislative committees:

- Legislative Council for budget request.
- House Finance Legislature Subcommittee.
- House Finance Committee.
- Senate Finance Legislature Subcommittee.
- Senate Finance Committee.
- Legislative Budget and Audit Committee
- House/Senate HS&S committees.
- Other committees requesting information on specific issues

- Individual legislators:
  - Meet with each new legislator after their election.
  - Meet annually as possible with all members of the legislature to determine their concerns and district concerns.
  - Provide and discuss annual report in person as possible.
- Legislative inquiries:
  - Ombudsman responds to legislative inquiries about specific cases.
  - Ombudsman responds to legislative inquiries about general issues in state government.

Budget and Fiscal Matters

- Budget Development:
  - Gather and/or review information necessary to develop annual fiscal year budget for office.
  - Set budget priorities for office.
  - Until FY 10, ombudsman drafted and finalized budget document for presentation to the legislative council. (In years of status quo, budget request is included in LAA general budget request.)
  - Testify before the Legislative Finance Committee on budget request as necessary.
  - Revise budget as necessary to realign budget goals if legislature reduces budget amounts.
- Fiscal oversight:
  - Supervise spending and familiarize self with LAA fiscal policy to ensure expenditures meet statute, AAC, and LAA fiscal policy.
  - Direct and approve major procurement for Anchorage, Juneau, and Fairbanks office.
  - Review and sign off on invoices for all expenditures.
  - Review and sign timesheets, leave slips.
  - Review and approve monthly audit performed by intake secretary.
  - Review, approve, and monitor office expenses to ensure they adhere to budget appropriations.
  - Calculate and provide year end spending estimates to Legislative Accounting.

Public Records requests

- Receive and respond in writing to all requests for records.
  - Assess request.
  - Determine if the request is governed by AS 24.55.160.
  - Research, request, or assign staff to research, request, and obtain records as necessary.
  - If staff assigned to research request, review information obtained.
  - Determine what records can be provided.
  - Draft response letter to person making request.
  - Research, request, or assign staff to research, request, and obtain records as appropriate:
    - If staff assigned, review information being provided.

        - Determine what records can be provided.
        - Draft response letter to person making request.

Legislative Budget and Audit Division requests

- Delegate and sign off on information sought by Legislative Budget and Audit in connection with that agency's audit function.

Caseload Management System (CMS)

- Liaison between the ombudsman and Legislative Affairs Agency, the information technology office and other partner offices in the CMS group:
    - Consult with other CMS group members as problems arise.[1]
    - Consult with others on training as needed.
    - Establish CMS accounts for new staff.
    - Inform LAA to create account on their side.
    - Set security codes.
    - Establish new agency codes.
    - Do analysis of the CMS for agency trend information.

Grievance Response

- Research and respond to grievance filed against ombudsman staff within 15 working days per ombudsman regulation.
- Review grievant's complaints:
    - Case notes.
    - Documentary evidence.
    - Applicable standards.
    - Interview grievant's written complaint.
    - Interview investigator.
    - Draft response to grievance.

Review incoming information pertinent to office tasks and to professional development:

- Regulations.
- Governor's directives.
- Agency policy changes.
- Track legislative bills during session.
- Proposed regulations.
- Supreme Court slip opinions/rulings.
- Proposed executive agency policy and procedures.
- USOA Google Group information.
- News accounts of other state/federal issues important to Alaskans.

Staff recruitment

- Review and update job descriptions as appropriate.
- Review and update job announcement.
- Post information on Workplace Alaska.

---

[1] The ombudsman case management system was developed in 1999 by a group of ombudsman offices which contributed equal amounts of funding to develop a complaint system software program to meet the needs of the four offices. The member offices are Iowa, Alaska, Hawaii and King County, Washington. Hawaii in 2005 purchased a different "off the shelf" system. The three remaining members continue to use the CMS but the software developer no longer updates the program.

- Review and update interview questions.
- Review and update interview question assessment.
- Review and update writing exercise.
  - Mini investigation for assistant ombudsman position.
  - Information for closing letter for intake officer position.
  - Information for proofreading exercise for intake secretary.
  - Information for letter writing exercise for intake secretary.
- Review and update overall assessment criteria :
  - Assign value to various segments of recruitment:
    - Application.
    - Cover letter.
    - Resume of experience.
    - First interview question.
    - Writing sample.
    - Second interview.
    - Writing exercise.
    - References.
- With 2 other employees on recruitment team:
  - Review and rank application packet to determine who to interview on first round:
    - Cover letter.

Appendix B

Meet the Staff
----------Anchorage----------

OMBUDSMAN
Linda Lord-Jenkins was appointed ombudsman in June 2002 and reappointed to a second term in 2007. She had worked as an assistant ombudsman in Anchorage since 1989. A graduate of the University of Wisconsin, Oshkosh, she worked for 20 years as a journalist in Florida and Alaska before joining the ombudsman's office. Ms. Lord-Jenkins was editor of the Tundra Times newspaper in the 1980s and worked as the USA Today Alaska correspondent. She is a member and Past President of the United States Ombudsman Association, the professional association for public sector ombudsmen. The ombudsman is the head of the office, and all staff officially report directly to the ombudsman.

INTAKE SECRETARY
Linda Ritchey is the ombudsman intake secretary in Anchorage, hired in August 2008. Before working for the ombudsman, she was employed in the insurance industry. Informal supervision is provided by the intake officer, but most assignments come through the ombudsman or acting ombudsman.

ASSOCIATE OMBUDSMAN/INTAKE OFFICER
Denise Duff is the intake officer in Anchorage, hired in December 2002. Denise receives routine investigative assignments and handles informal peer consulting with all staff on intake issues and provides informal supervision to the intake secretary and assists in intake as needed. She has lived in Alaska for 39 years and worked in state government for 16 years.

ASSISTANT OMBUDSMAN, INVESTIGATORS
Charlsie Huhndorf-Arend is an assistant ombudsman in Anchorage, hired as an intake officer in November 2000 and promoted to assistant ombudsman in 2002. A lifelong Alaskan, she has worked in state government for 11 years and is delegated as acting ombudsman in the ombudsman's absence. Charlsie handles difficult complainants who require elevated handling and provides informal consultation on Child Protective Services complaints.

Pete Spivey is an assistant ombudsman in Anchorage, and has been with the ombudsman's office since March, 2008. Pete spent 10 years in newspaper reporting and editing. He was a governor's press secretary, special assistant to a speaker of the house and a state commissioner, and a writer-consultant. Pete is a retired Tier 1 state employee and provides peer consulting with staff on Department of Correction issues.

----------Juneau----------

ASSISTANT OMBUDSMAN, INVESTIGATORS

Gwen Byington is an assistant ombudsman in Juneau since March 2008. A lifelong Alaskan, she was born and raised in Juneau, but has lived and worked also in the Fairbanks and Anchorage communities. Gwen has a Bachelor of Science degree in social work. She has over 18 years work experience with the State of Alaska. Gwen has previously worked for the Office of the Ombudsman. She worked as an assistant ombudsman for two years in the Fairbanks office and five years in the Anchorage office. She has experience with the Department of Law and the Alaska Parole Board.

Jennifer Christensen is an assistant ombudsman in Juneau. Before joining the ombudsman's office in 2008, Jennifer was self-employed as a contract attorney from 2004-2008, and also spent several years in private practice. She received her law degree from Gonzaga University School of Law and is currently licensed to practice law in Alaska. Jennifer provides legal council to ombudsman and other staff as needed and peer review of investigative drafts and complicated correspondence as requested. Jennifer also serves as ombudsman legal counsel in Beth Leibowitz's absence.

Kate Higgins is an assistant ombudsman in Juneau. Although born and raised in Alaska, she left in 1996 to attend college and law school. She received her law degree in 2007 from Lewis and Clark Law School in Portland, OR and is currently licensed to practice law in Alaska. Hired in May 2008, Kate also provides legal council to ombudsman and staff and provides peer review of investigative drafts and complicated correspondence as requested.

Mark Kissel is an assistant ombudsman in Juneau, as needed on a contractual basis, and works ½ day per week as the office webmaster. He received a degree in journalism from the University of Wisconsin Madison and worked on newspapers and magazines for several years. He has lived in Alaska since 1977 and worked for state government most of that time. He has been with the Office of the Ombudsman since 1996 and retired from full time work in 2007.

Beth Leibowitz is an assistant ombudsman in Juneau and is also the office legal specialist. She has been admitted to practice law in Alaska since 1997. She received her law degree from the University of Michigan Law School. Beth Leibowitz is currently on family leave sabbatical.

----------Fairbanks----------

ASSISTANT OMBUDSMAN, INVESTIGATOR

Tom Webster joined the office as assistant ombudsman in 1984. He left Alaska in 1989 to attend graduate school and returned to the office in 1993. From 1999 through 2000 he was associate ombudsman at the University of California, Santa Cruz. He returned to the Juneau office in December 2000 and has worked in Fairbanks since July 2002, currently in a telecommuting capacity. Tom handles difficult complainants who require elevated handling. Tom also provides informal peer consulting on letter reviews and case issues with the ombudsman staff in Juneau and Anchorage.

Appendix C

Agency frequency - cases logged	2006	2007	2008	2009	2010
Health and Social Services	**130**	**123**	**232**	**222**	**223**
	29.3%	**24.8%**	**35.9%**	**32.7%**	**30.3%**
Office of Children's Services	78	75	140	125	139
Division of Public Assistance	19	29	49	60	56
Other HHS	33	19	43	37	28
Dept of Revenue	**54**	**70**	**114**	**118**	**83**
	12.2%	**14.1%**	**17.6%**	**17.4%**	**11.3%**
Child Support Services Division	41	40	52	69	60
Permanent Fund Dividend Division	10	25	58	42	21
Other DOR	3	5	4	7	2
Dept of Corrections	**154**	**176**	**173**	**180**	**251**
	34.8%	**35.5%**	**26.8%**	**26.5%**	**34.1%**
Division of Institutions	129	153	146	146	214
Other DOC	25	23	27	34	37
Dept of Administration	**76**	**92**	**94**	**119**	**129**
	17.2%	**18.5%**	**14.6%**	**17.5%**	**17.5%**
Division of Motor Vehicles	16	26	30	31	27
Public Defender	22	20	29	39	46
Office of Public Advocacy	17	23	21	24	32
Other DOA	21	23	14	25	24
Dept of Public Safety	**29**	**35**	**33**	**40**	**51**
	6.5%	**7.1%**	**5.1%**	**5.9%**	**6.9%**
Total - agency frequency	443	496	646	679	737
Informational, referrals and non jurisdictional complaints	**868**	**1377**	**1271**	**988**	**969**

Appendix D

Various ombudsman definitions from websites:

1. An appointed official whose duty is to investigate complaints, generally on behalf of individuals such as consumers or taxpayers, against institutions such as companies and government departments.
2. An individual charged with the duty of investigating and redressing the sources of complaints lodged by private citizens against businesses, institutions, and officials.
3. An official appointed to look into complaints especially against a government.
4. A man who investigates complaints and mediates fair settlements, especially between aggrieved parties such as consumers or students and an institution or organization.
5. (Government, Politics & Diplomacy) a commissioner who acts as independent referee between individual citizens and their government or its administration.

Other types of ombudsman

Long Term Care Ombudsman - Mandated by the Federal Older Americans Act, the Long-Term Care Ombudsman Program protects and promotes the rights and quality of life for people who reside in nursing homes. Ombudsmen have a hands–on working relationship with the residents and staff of the facilities in their areas and inform nursing home residents and their families of their rights. The nursing home ombudsmen program is available to all current residents and prospective residents. Also sometimes known as a **Nursing Home Ombudsman.**

The Office of the Taxpayer Ombudsman was created by the Internal Revenue Service in 1979 to serve as the *primary advocate*, within the IRS, for taxpayers.

Taxpayers' Ombudsman – Government of Canada

Federal Student Aid Office of the Ombudsman – Incorporates generally accepted ombudsman values and ethics into every aspect of it s problem resolution, those being neutrality, independence, informality, confidentiality and professionalism.

University Ombudsman, University of South Carolina – Serves as a confidential, neutral, informal and independent resource for faculty concerns and conflicts.

Montana Citizen's Advocate Office - Informal complaint department that asks in fairness to the agency involved, the complainant should first try to resolve the problem directly with the agency. Many times, agency officials are eager to explain what they did and why they did it, or will correct the problem to your satisfaction. In many cases, you will be able to settle the problem on your own.

Municipality of Anchorage Ombudsman - The ombudsman's office was established in addition to other remedies or rights of appeal, as an independent, impartial municipal office, readily available to the public, responsible to the assembly, empowered to investigate the acts of municipal agencies and Anchorage School District, and to recommend appropriate changes toward the goals of safeguarding the rights of persons and of promoting higher standards of competency, efficiency, and equity in the provision of municipal services.

International Ombudsman Institute - The role of the ombudsman is to protect the people against violation of rights, abuse of powers, error, negligence, unfair decisions and maladministration in order to improve public administration and make the government's actions more open and the government and its servants more accountable to members of the public.

International Ombudsman Association - The mission of the International Ombudsman Association is to support and advance the global organizational ombudsman profession and ensure that practitioners work to the highest professional standard. The association supports organizational ombudsmen worldwide working in corporations, universities, non-profit organizations, government entities and non-governmental organizations.

Appendix E

THE INTERNATIONAL OMBUDSMAN ASSOCIATION
CODE OF ETHICS

PREAMBLE

The IOA is dedicated to excellence in the practice of ombudsman work. The IOA Code of Ethics provides a common set of professional ethical principles to which members adhere in their organizational ombudsman practice.

Based on the traditions and values of ombudsman practice, the Code of Ethics reflects a commitment to promote ethical conduct in the performance of the ombudsman role and to maintain the integrity of the ombudsman profession.

The ombudsman shall be truthful and act with integrity, shall foster respect for all members of the organization he or she serves, and shall promote procedural fairness in the content and administration of those organizations' practices, processes, and policies.

ETHICAL PRINCIPLES

Independence
The ombudsman is independent in structure, function, and appearance to the highest degree possible within the organization.

Neutrality and Impartiality
The ombudsman, as a designated neutral, remains unaligned and impartial. The ombudsman does not engage in any situation which could create a conflict of interest.

Confidentiality
The ombudsman holds all communications with those seeking assistance in strict confidence, and does not disclose confidential communications unless given permission to do so. The only exception to this privilege of confidentiality is where there appears to be imminent risk of serious harm.

Informality
The ombudsman, as an informal resource, does not participate in any formal adjudicative or administrative procedure related to concerns brought to his/her attention.

Appendix F

Conducted interviews with the following individuals:

- State of Montana – citizens advocate
- All current State of Alaska ombudsman staff
- Iowa, ombudsman's office
- King County, Washington, Ombudsman's Office
- State of Alaska, Department of Corrections, division director
- State of Alaska, Department of Health and Social Services, Office of Children's Services, acting director
- State of Alaska, Department of Health and Social Services, Office of Children's Services, Anchorage regional director
- State of Alaska, Department of Revenue, administrative services director
- State of Alaska, Department of Revenue, director of the Permanent Fund Dividend Division
- State of Alaska, Department of Revenue, director of the Child Support Services Division
- State of Alaska, Department of Revenue, Child Support Services Division, Complaint Resolution Office

State of Alaska
Ombudsman

Reply to:

☐ P.O. Box 101140
Anchorage, AK 99510-1140
(907) 269-5290
(800) 478-2624
(FAX) 269-5291

☐ P.O. Box 113000
Juneau, AK 99811-3000
(907) 465-4970
(800) 478-4970
(FAX) 465-3330

RECEIVED
AUG 0 9 2011
LEGISLATIVE AUDIT

August 9, 2011

Pat Davidson, Legislative Auditor
Legislative Budget and Audit Division
Legislative Affairs Agency
State Capitol
Juneau, Alaska 99801

Re: Legislative Budget and Audit Management Review of the State of Alaska Ombudsman

Dear Ms. Davidson,

Thank you for the opportunity to respond to the preliminary audit entitled, "Management Review – Operations, State of Alaska Office of the Ombudsman," conducted by independent auditor Christine Phillips under contract to the State of Alaska Legislative Audit Division.

The audit was conducted in response to several questions posed by a member of the Alaska Legislature regarding the timeliness of ombudsman investigations, the causes of any investigative delays, and questions about correlation between delayed investigations and ethnicity of complainants.

Auditors Recommendations and Ombudsman Response

The auditor embedded several implicit recommendations in the "data analysis" portion of her report (pp 9-42) as well as a list of "other recommendations for consideration" near the end of the report (pp. 37-38). In the cases where the data analysis text includes embedded recommendations that supplement the separate recommendation list, the recommendations have been combined for purposes of this response. The other implicit recommendations are addressed below.

Orphaned Cases

While not stated specifically as a recommendation, the auditor's report included the implicit recommendation that the Ombudsman not take over cases "orphaned" when the primary case investigator leaves the office. The auditor found that in some cases, this led to unreasonable delays in completion of investigations.

> **Ombudsman Response:** This practice occurred in 2007 and 2008 when caseload increased and staff turnover occurred. The ombudsman recognizes that this practice, while intended to relieve strain on staff taking over transfer cases, can lead to unreasonable delays for complainants. The ombudsman has discontinued this and the

ombudsman will take on no "orphaned" cases in the future. Cases "orphaned" when staff leaves the office will be transferred to other investigative staff, not the ombudsman. The ombudsman has discontinued review of all but two cases on her caseload. The ombudsman is finalizing preliminary investigative reports in those cases and has determined the subject matter is too complex and evidence too extensive to pass on to an investigator for finalization. The ombudsman has scheduled the weeks of August 29 and September 5 for work on these reports.

Aggregation of Secondary Cases as a Cause of Delay

Several of the old cases on the ombudsman's caseload had been resolved in substance by investigator action but remained open for inclusion in another complaint that exemplified a systemic issue. In order to demonstrate that a specific complaint constituted a systemic issue and was not a single instance of harm, the other cases were included in summary at the end of the report to give the issue emphasis. The auditor did not make a formal recommendation on aggregating reports but did comment on the detrimental effect that this delay has on complainants and recommended that the ombudsman address the issue.

Ombudsman Response: The ombudsman believes this recommendation has merit and will no longer hold secondary cases open pending completion of the primary investigation. Summaries from closed "secondary" cases will still be included in the primary investigative report when appropriate. The complainants will be notified when their complaint is closed and notified again when the investigative report of the primary case containing the summary of their case is released.

Additional Intake Staff

The Auditor wrote: "I believe it would be suitable to add one more intake officer to assist with the resolution and completion of simple complaints. This would allow the assistant ombudsman/investigators more time to complete complex investigations. Investigators should also use closing conferences and summary reports to replace formal investigative reports as appropriate. "

Ombudsman Response regarding additional staff: The ombudsman agrees with this recommendation and will request an additional intake position in Fiscal Year 2013.

Regarding closing case conferences: Ombudsman investigators have for several years discontinued cases where resolution of an issue has been accomplished with substantive agency action. The ombudsman often asks the question "What can we accomplish" when considering direction of a potential investigation. We continue in that practice. Discussion of discontinuing investigations occurs during monthly caseload conferences and the recommended option will be explored regularly. The method of closing cases will be discussed in greater detail later in this response.

Caseload Management System

The Auditor wrote: "All users of [the Ombudsman Caseload Management System][1] CMS seem generally content with the system and are used to, or have their own workarounds, for the few

[1] The CMS was commissioned and paid for by four ombudsman offices in 1999: Iowa, Alaska, Hawaii and King County, Washington. The group continued to fund updates until 2007 when the programmer stopped servicing the program.

shortcomings in the software. Minor compatibility issues generally occur with the system when upgrades are implemented to Microsoft software. Data from the CMS can be extracted easily to Excel for statistical analysis. Given the lack of software support and that no further upgrades are expected, there will come a time when a new software system to track ombudsman complaints will need to be researched and purchased."

> **Ombudsman Response:** The ombudsman is treating this statement as an implicit recommendation. As the CMS program ages and develops more problems with the corresponding Microsoft upgrades, the ombudsman will request funds from the Legislature and search for a new case management program.

Case Status Update Codes

The Auditor wrote: "Investigators should be required to update status codes as appropriate and keep them current on each case, until the case is closed."

> **Ombudsman Response**: The ombudsman agrees with this recommendation and has included this in monthly caseload discussions with investigators. Increased emphasis will be placed on this issue during monthly case conferences between the ombudsman and investigators. As of this writing all case status codes have been updated to reflect the accurate case status.

* * *

The following numbered recommendations were listed on Page 37 and 38 of the auditor's report.

Auditor Recommendation 1

The Auditor wrote: "The ombudsman could report findings to the media provided in summary. Redacted information could be provided to newspapers or media could be directed to the ombudsman's Website. Included in the published reports should be responses from the state agency or division."

> **Ombudsman Response:** AS 24.55.200 authorizes the ombudsman to release reports to the Legislature, the governor, or the public at the ombudsman's discretion. The ombudsman office routinely posts redacted reports on the ombudsman home page on the State of Alaska Website at http://ombud.alaska.gov/ The ombudsman has notified the news media of newly released reports sparingly depending on the ombudsman's historical understanding of what the news media considers to be newsworthy.[2] The ombudsman has considered offering a weekly or monthly ombudsman column to news outlets but the issue of manpower has delayed that project.

Auditor Recommendation 2

The Auditor wrote: "Legislators could require annual reports and responses, in the form of oral testimony, from representatives from the ombudsman's office, OCS, and Department of Corrections regarding supported recommendations from the ombudsman."

[2] The current ombudsman worked for 20 years as a reporter and editor at newspapers in Wisconsin, Florida and Alaska. She also worked as Alaska correspondent for US Today newspaper.

Ombudsman Response: The ombudsman has provided information and testified before interested legislative committees as requested and stands ready to respond to requests from any legislator or legislative committee requesting information or testimony.

Auditor Recommendation 3

The Auditor wrote: "Tie authorization for additional budget requests for OCS and DOC to important recommended procedural changes within the agencies."

Ombudsman Response: Operating budgets are the province of the Alaska Legislature, not the ombudsman. However, the ombudsman Matrix of Investigations lists outcomes of recommendations which can be used as a research tool for legislative budget committees. The ombudsman also periodically conducts a survey of recommendations outcomes which can also be used as a research tool for legislative offices. The ombudsman will respond to requests from any legislator or legislative committee requesting information or testimony about a specific issue, agency or department.

Auditor Recommendation 4

The Auditor wrote: "The Legal Services Division, Legislative Affairs Agency could get more involved in requesting timely agency responses and/or incorporating final recommendations in new procedures or changes in processes due to particularly important ombudsman findings."

Ombudsman Response: While the ombudsman has, on rare occasions, asked for and received informal advice on various issues from LAA Legal Services, we believe Recommendation 4 to be unnecessary and inappropriate on an ongoing basis. The ombudsman has in-house counsel who provides legal guidance as needed.

The ombudsman understands that all direction for Legislative Legal activity must come from the Legislative Council. This recommendation, if implemented, also has the potential to create delay in ombudsman investigations while obtaining Legislative Council permission. Additionally, Legislative Legal does not exist to involve itself in day-to-day operations of other legislative agencies.

The auditor also wrote on Page 17: "Recommendations include requiring clear legal or statutory assistance in the ombudsman's ability to obtain necessary records and information; make the ombudsman's authority to obtain records more clear and obvious to state personnel. While authority is provided in statutes, it is not clearly stated, and some state agencies invoke attorney/client privilege and do not provide requested documents to ombudsman staff. This happens often and delays the production of documents and information."

Ombudsman Response: The ombudsman believes that AS 24.55.160 is very clearly stated and extremely difficult to misinterpret.

AS 24.55.160. Investigation procedures.

(a) **In an investigation, the ombudsman may**

(1) **make inquiries and obtain information considered necessary**;

(2) enter without notice to inspect the premises of an agency, but only when agency personnel are present;

(3) hold private hearings; and

(4) notwithstanding other provisions of law, have access at all times to records of every state agency, including confidential records, except sealed court records, production of which may only be compelled by subpoena, and except for records of active criminal investigations and records that could lead to the identity of confidential police informants.

(b) **The ombudsman shall maintain confidentiality with respect to all matters and identities of the complainants or witnesses coming before the ombudsman except insofar as disclosures may be necessary to enable the ombudsman to carry out duties and to support recommendations. However, the ombudsman may not disclose a confidential record obtained from an agency.** [Emphasis added]

It is true the ombudsman has sometimes encountered delays in obtaining requested records, especially from high impact agencies such as the Office of Children's Services and Department of Corrections. Some of those problems can be attributed to agency manpower problems; others to executive branch personnel's misunderstanding of ombudsman statutory access. And, in some few cases, we have found that some in the Department of Law appear to simply disagree with the mandate of the ombudsman to exercise oversight authority and advise their clients accordingly. Despite that, the ombudsman believes the clarity of AS 24.55.160 is not the source of the problem.

But for whatever reason, Ombudsman staff often have to educate executive branch employees on the ombudsman's statutory role in Alaska government. For that reason we will create a "Frequently Asked Questions" handout to provide to agency staff and to post on the ombudsman's Website.

*

However, the ombudsman also has been experiencing ongoing problems with AS 24.55.330 which prohibits ombudsman access to attorney-client communications.

AS 24.55.330 (3) "record" means a document, paper, memorandum, book, letter, file, drawing, map, plat, photo, photographic file, motion picture, film, microfilm, microphotograph, exhibit, magnetic or paper tape, punched card, or other item developed or received under law or in connection with the transaction of official business, **but does not include an attorney's work product, material that is confidential as a privileged communication between an attorney and client under rules adopted by the supreme court,** or confidential oil and gas geological and geophysical data.

Internal review of the limited legislative history of a 1990 amendment to AS 24.55, leads the ombudsman to believe that the amendment excluding attorney-client privileged information was added in response to concerns from the Public Defender and the Office of Public Advocacy about the ombudsman intervening in criminal defense matters. The ombudsman's review found no reference to excluding ombudsman investigators from reviewing all correspondence from the attorney general to client agencies.

Historically, the Department of Law did not hold the ombudsman to the provision until the late 1990s. However, the plain language of AS 24.55.330 has come to be interpreted as a

blanket prohibition on ombudsman investigators viewing communications between executive branch agencies and agency attorneys from the Department of Law, as well as between University of Alaska departments and University Counsel.

This exclusion limits the scope of ombudsman review and has the potential to thwart the intent of AS 24.55 in that the ombudsman has jurisdiction over the actions of all administrative agencies, including the Department of Law. If the ombudsman has no access to attorney-client privileged records, then the ombudsman is unable to properly investigate some complaints against agencies as well as complaints against the Department of Law. The ombudsman has discussed this issue with House and Senate Judiciary chairs and other legislatures in the past but pressing other legislative work prevented the discussion from going forward.

Auditor Recommendation 5

The Auditor wrote: "The ombudsman should be particularly selective in which cases they take to full investigations. The ombudsman has staffing authorized through the legislative budget process. Cases cannot be sufficiently closed without completed investigations which require adequate staff, and staff funding is ultimately approved by the legislature. If the public wants faster resolution, they have to ask their legislators for proper funding."

Ombudsman Response: All complaints which are taken to full formal investigation have been vetted for systemic issues or present individual issues so egregious that they demand formal investigation. Whenever possible and appropriate – if a complaint is resolved – ombudsman staff discontinue investigation without writing a formal report. However, the act of investigating the types of complex complaints that the ombudsman handles requires personnel. The ombudsman agrees that staffing levels need to be increased and will request an additional intake investigator for FY13. In addition, the auditor's review convinces the ombudsman that a second additional position should be requested to assist the ombudsman in management responsibilities which often slow ombudsman review of investigative reports.

Auditor Recommendation 6

The Auditor wrote: "Ombudsmen sometimes feel they know the agency statutes and administrative procedures better than the agency staff. This remedy begins with better training at the agency level to try to resolve issues before they become a complaint. The legislature needs to support adequate training and funding particularly for OCS and Department of Corrections. This includes providing for proper incentives for personnel to keep from having high vacancy rates. High vacancies rates produce training challenges and lead to a high volume of complaints."

Ombudsman Response: The ombudsman agrees with this assessment and has often discussed this problem with the former OCS director and more recently with the current OCS director, as well as with Department of Corrections administrators.

Auditor Recommendation 7

The Auditor wrote: "Realize that OCS is a source of highly emotional, personal and problematic issues. Complaint resolution is always going to be an issue. The ombudsman believes the current OCS complaint resolution process is not effective. Quarterly meetings between the OCS supervisor/management level and ombudsman investigators may help to shed

more light on OCS issues. The Wasilla office in particular, has more complaints than any other location. This type of obvious regularity should be communicated to the state agencies and joint resolution through the legislative process should be addressed."

On Page 23 the Auditor also wrote in part: "The ombudsman's office does not allow OCS due process. OCS should be responsible in addressing their own complaints and attempt initial resolution. The ombudsman should work with OCS administrators to direct complainants to the proper complaint resolution area, and OCS should improve their internal complaint process. "

> **Ombudsman Response:** Ombudsman staff are well aware of the emotional issues that OCS complaints present. The ombudsman agrees that OCS should be addressing their own complaint resolution but based on experience, the Ombudsman believes the OCS grievance process to be ineffective. The best example of this involves a complainant who contacted the ombudsman in November 2009 with a complaint about an OCS caseworker. He had already grieved the issue to OCS but received no response from OCS. When contacted, the office manager told the ombudsman investigator that the complainant had not filed a grievance. The complainant provided to the ombudsman a date-stamped receipt on the OCS grievance form to prove that he had indeed filed the grievance. The manager was unable to locate the document in OCS files so the ombudsman forwarded the grievance to him.
>
> The grievance was assigned to two lower level supervisors to review. They did not review it. The complainant contacted the ombudsman again and the manager assigned the review to other supervisors. They also did not act on the grievance and the complainant ended up contacting the governor's office. After the governor's contact, the grievance has finally worked its way to the OCS Regional Review panel 19 months after the grievance was filed. No hearing has yet been set.
>
> *
>
> In 2008, after an informal legislative inquiry the Ombudsman began reviewing complaints against OCS to determine how the grievance process was working. As complaints were filed, ombudsman staff questioned OCS complainants about their knowledge of and experience using the OCS grievance process. Our review included contacts with about 50 complainants and persons referred to the OCS grievance process. Unfortunately, the information garnered from this informal review indicated distrust in the grievance process. The results indicated that many persons who were referred to the grievance process did not use it. Of the grievances filed, three of the cases were deemed "ripe for the OCS Regional Review panel" by OCS.
>
> The ombudsman discussed this information with the former director and in many cases referred complaints to the OCS grievance process but in other cases, especially where an allegation of failure to respond to the complainant was one of the components, ombudsman staff contacted the agency to make inquiries.
>
> Based on the auditor's recommendation and our own on-going concerns, the ombudsman has opened an ombudsman-initiated comprehensive review of the OCS grievance process

to determine the system's effectiveness. Notice of investigation was sent to OCS Director Lawton on July 22, 2011[3] and the investigation has begun.

Auditor comments on OCS interaction with the Ombudsman

In summary text beginning on page 40, the auditor recounts comments and testimony from unnamed OCS staff. Included in those comments are the following:

1. Some OCS personnel feel that ombudsman investigators do not have the credentials to question educated social workers on their job performance and processes.
2. OCS would like case reports to be more summarized, provide an abstract at the beginning of each report to show the main issues and specific recommendations for the agency.
3. OCS would like timelier complaints provided within a year of the complaint being filed.

The auditor noted OCS's invitation to the ombudsman to speak at the annual statewide manager's meeting in 2009 and stated:

> This was an occasion to communicate an understanding of each other's role, and introduce the ombudsman's mission to OCS staff and management. This type of interaction should continue.
>
> **Ombudsman Response to OCS Comment # 1:** Ombudsman investigators do not second guess the professional opinion of trained licensed social workers but do measure their performance against existing OCS statutes, regulations, policies and procedures, and best practices. We often find that social workers do not understand statutes governing their duties such as providing notice of court hearings to relatives of children in OCS custody. If they don't understand their statutory obligations, they don't fulfill them. It does not take a MSW to measure that.
>
> Approximately two-thirds of OCS case workers are Children's Services Specialists, not "social workers" with appropriate education. Some actual social workers, moreover, may be poor managers of cases, as a recent special internal audit of the OCS Wasilla office by OCS Quality Assurance staff revealed. Managing a caseload is not the same thing as knowing how to work with a dysfunctional parent or vulnerable child. Further, very few OCS staff with social work degrees are licensed by the State of Alaska, and so may not be actively keeping up with best practices in their field.
>
> **Ombudsman response to OCS comment #2:** When the ombudsman sends a preliminary finding for agency review, we provide a cover letter outlining a short summary of the complaint, the complainant's allegations, our proposed finding, and proposed recommendations to help the agency understand what is inside the report. We can include an abstract with the formal investigative report but that adds creation of one more document for investigators to draft and the ombudsman to review and will serve to further delay reports.

[3] Ombudsman Complaint J2011-0222

Ombudsman Response to OCS comment #3: The ombudsman absolutely agrees with this comment and we have outlined steps to reduce older cases so staff can attend to more timely complaints on Page 10 of this response.

Regarding the auditor's comments on ombudsman interaction with OCS: The Ombudsman routinely sends quarterly or semi-annual public summary reports of complaints to OCS managers and to the Department of Corrections. The ombudsman and former OCS Director Tammy Sandoval met as needed to discuss issues faced by OCS. The ombudsman and current OCS Director Christy Lawton have agreed to initiate the same sort of relationship.

The ombudsman invited Ms. Lawton, OCS Wasilla Children's Services Manager Tim Bolles, and OCS Quality Assurance Section Head Bernita Hamilton to meet and talk with staff at the Ombudsman's Annual Meeting in June 2011. The wide-ranging discussions lasted the entire afternoon. They included an explanation of OCS initiatives to resolve issues as well as discussion of Ombudsman concerns.

The ombudsman has agreed to meet with Wasilla OCS staff when a new staff manager is hired and to send monthly public Ombudsman CMS complaint printouts to Mr. Bolles to better acquaint him with complaints against the Wasilla office.

At the June annual meeting, ombudsman staff also spent an afternoon with Susan Heuer, Chair of the Citizen's Review Panel, a group established by federal mandate, to review her panel's concerns about child protective services agencies throughout the country.

Finally, at the same meeting ombudsman staff also met with Aileen McInnis, director of the Alaska Center for Resource Families, which provides training for persons wishing to serve as foster parents for children in OCS custody.

The ombudsman also attended a recent legislative constituent meeting in Wasilla to listen to citizen concerns about OCS actions in their area. These efforts are ongoing.

In years past, the ombudsman has met with then-Director Sandoval, OCS ORCA staff managers, attorneys from the Attorney General and Public Defender's Office specializing in OCS cases, and Guardians ad Litem for children in OCS custody to get a more rounded view of the challenges facing OCS. The ombudsman also has attended public hearings on OCS in person or via the Internet.

Auditor Recommendation 8

The Auditor wrote: "The ombudsman should realize that long complaint investigative reports will not have the desired impact – it is human nature to tune out on long narrative dissertations. Reports should be shorter and bullet points used that get to the point and provide visual cues. "Report creep is self defeating" and reports must be read and understood by the layperson. The ombudsman should determine other methods to relay the extent and details of their investigation, such as exit conferences, to keep the reports short and succinct. Shorter reports are imperative to the success of the ombudsman's mission."

On Page 19 the Auditor wrote: "Recommendations include shorter, more succinct reports. The ombudsman should have the statutory power to conduct exit conferences with appropriate agency personnel and summarize findings and recommendations in less formal investigative reports."

Ombudsman Response: The ombudsman's role is to dig into the heart of extremely complex issues. This often requires lengthy impartial review, and necessitates equally lengthy reports. The difficulty is reaching a balance between readable brevity and compelling detail. The ombudsman is convinced that change is more likely if a human face can be put on an investigative report.

In response to this recommendation, the ombudsman asked other ombudsman offices for the average length of their formal investigative reports.

- The Iowa Citizen's Aide/Ombudsman office has publicly issued 24 formal investigative reports since 1992. The report lengths – excluding appendices – range from five pages to 146 pages. The average report length – excluding appendices – is 48 pages. Appendices range from two pages to more than 50 pages.
- The Arizona Citizen's Aide/Ombudsman reports that the average report ranges from five pages to more than 60 pages without adding agency responses or exhibits.
- The Nebraska Ombudsman estimates that his formal reports average 20-25 pages. Nebraska has no guidelines for report length.

There is no industry standard but it appears that investigative reports grow in length to match the complexity of the matter being investigated.

The ombudsman also should not be held responsible if an agency manager does not read an investigative report, no matter the length. The Alaska Legislature authorizes the ombudsman to investigate complaints, report, and make recommendations. It often takes quite a bit of space to explain a complex issue. In many cases it would be necessary to eliminate an evidence section entire in order to reduce the length of a report.

That said, ombudsman staff are discussing ways to shorten or restructure our investigative reports if appropriate so they are more easily understood by agency recipients without sacrificing the necessary level of detail to highlight errors in human terms.

We are unclear about the auditor's reference to exit conferences but believe that the auditor proposes the ombudsman verbally confer with agency managers about problems revealed by preliminary reviews or full formal investigations.

Ombudsman investigators often talk with agency supervisors about problems discovered in preliminary reviews that end in jurisdictional assists or declines. However, we have reservations about doing this verbally in the case of formal investigations.

Our concern is twofold: Undocumented informal discussions can easily be forgotten or ignored by the agency when other issues arise or staff change. This problem is exacerbated when agency employees quit or retire and the person with the historical memory leaves the agency. OCS, for example, has a caseworker turnover rate of about one-third per year.

The ombudsman has also witnessed numerous instances of this in dealings with the Department of Law over the years, most recently in a case involving a licensing matter out of OCS Wasilla. Despite extensive correspondence dealing with ombudsman access

to information covered by the Health Insurance Portability and Accountability Act, the ombudsman continues to fight to access information. The ombudsman must resurrect documentation to re-educate new AAGs about ombudsman access to documents. This is time consuming but far less time consuming than joining in a legal imbroglio again.

The ombudsman remains unconvinced that a verbal discussion alone would effect any long-term change. However, we will consider adding an exit conference as a component of agency notification in addition to written reports.

Second, we believe that report recipients are better able to understand complex issues when they can refer to the written findings rather than rely on memory of a brief conversation. Additionally, we believe an agency is more likely to implement recommendations when they are dealing with a written report. Government is driven by paper and documentation. Ombudsman staff often tell complainants to write their complaints in a letter to agencies because written complaints are more difficult to ignore. It would be truly ironic for the ombudsman to ignore that advice.

Recommendation 9

The Auditor wrote: "Reports need to be timely or they will carry no weight. How much is the issue worth? Long overdue narrative reports will lose their utility. Find a way to be more timely and succinct while, at the same time, ensuring the agency you have fully vetted the issues."

The auditor also wrote on page 42: The ombudsman may not be able to fix or resolve all of the state's complaints. They may need to surrender some stale complaints with no meaningful resolution. The ombudsman should decide to discontinue these types of investigations, without a formal report, apologize and move on to those issues that could have a more relevant outcome.

Ombudsman Response: The ombudsman agrees with this recommendation. On June 30 we developed a list of 24 cases that were opened prior to June 30, 2009. Of the 22 remaining open as of this writing

- Ten are slated to be discontinued with a letter to the complainant and the agency explaining what the ombudsman has found to date and what was accomplished in the review. In some cases, information from the discontinued cases will be incorporated into findings in other investigations.
- Six of those complaints have been written as preliminary investigative reports and are awaiting management review.
- Five reports are in the drafting stage.
- One complaint is in preliminary finding status and we are awaiting the agency's response.
- Target closing date for all cases opened prior to December 2009 is October 30, 2011.
- Target date for closing the 20 cases opened between December 31 2009 and January 1, 2010 is December 31, 2011.

Recommendation 10

The Auditor wrote: "Provide ombudsman outreach to departments with frequent complaints, particularly when they are not conducting a formal investigation. Open informal dialogue between the ombudsman's office and state agencies is essential. This way the ombudsman can

help improve internal agency complaint processes. Agencies must try to maintain a respect for the ombudsman's mission and the ombudsman should provide assistance to agencies rather than disciplinary discussions."

> **Ombudsman Response:** The ombudsman does outreach to the two highest impact agencies we deal with: Office of Children's Services and the Department of Corrections. The Ombudsman met as possible with the former OCS director and management staff and has arranged to continue that practice with the new director. The ombudsman or staff has meet with the DOC commissioner or deputy commissioner and high ranging DOC staff regularly through the past few years. DOC Deputy Commissioner Sam Edwards met with ombudsman staff during the 2010 annual meeting. The ombudsman has also offered to speak to training academies for OCS and non-profit agencies dealing with OCS and DOC. The ombudsman had regularly addressed DOC Correctional Officer training academy graduates but has not been invited to participate in the academies since 2000.
>
> Also, in partial response to information from this audit, the ombudsman is developing a Frequently Asked Questions brochure for agency staff to inform them of the ombudsman's role in state government. This brochure will be provided to agency staff and posted on the Ombudsman Website when completed.

Target date for completion of the FAQ is September 6. Ombudsman investigators also provide an informal explanation of the role of the ombudsman office when they contact agency staff, however, ombudsman staff also admit this is not as consistent as it should be.

The ombudsman will continue to emphasize the importance of explaining the ombudsman's role to encourage better agency understanding of the ombudsman's purpose and goals, as well as ways that the ombudsman can help agencies. Ombudsman staff frequently help complainants understand state agency policies and what agencies can and cannot do.

Recommendation 11.

The Auditor wrote: "Alaska Statutes and the Alaska Administrative Code require communication with complainants every 120 days. This is not currently maintained on lengthy cases and should be acknowledged or changed."

> **Ombudsman Response:** The ombudsman agrees with the auditor's assessment and recommendation and does not propose to change the requirements. This requirement will be included in monthly caseload conferences and given high priority. As of this writing complainants have been notified of the status of their complaints for all open complaints.

Recommendation 12.

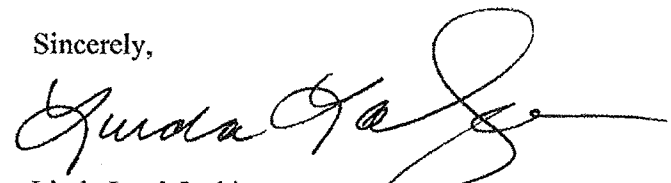
The Auditor wrote: "Ombudsman reports mention several instances in case notes that cited lack of personnel and resources in a state agency, particularly OCS. But the ombudsman is not without fault in lengthy open cases. Some cases languish and do not indicate recent activity. Attention to open cases must be a priority so that all ombudsman cases and subsequent reports are completed in a reasonable time."

> **Ombudsman Response:** The ombudsman agrees that notes in several CMS cases do not reflect regular activity. The ombudsman has focus additional attention to this problem and will routinely address this problem where appropriate.

* * *

Thank you again for the opportunity to respond to the management review of the Alaska Ombudsman Office. This has been an extremely instructive and helpful experience for me and the Office of the Ombudsman.

Sincerely,



Linda Lord-Jenkins
State of Alaska Ombudsman