



State of Alaska
ombudsman

RE: Ombudsman Complaint A2010-1326
Finding of Record and Closure

July 20, 2011

This investigative report has been edited and redacted to remove information made confidential by Alaska Statute and to protect privacy rights.

A South-Central Alaska man contacted the Office of the Alaska Ombudsman to file a complaint filed against the Office of Children's Services (OCS) in October 2010. The complainant alleged that an OCS caseworker unnecessarily required that his four children undergo forensic interviews and examinations for sexual abuse. He contended that the interviews/exams were unnecessary because his children had not been sexually abused and he objected to the invasiveness of the exam. He believed that subjecting his children to such an exam would be tantamount to sexual abuse.

This complaint was assigned to Assistant Ombudsman Kate Higgins who opened an investigation into the following allegations stated in terms that conform with AS 24.55.150.

Allegation One: Arbitrary, OCS required the complainant's children to undergo forensic exams and interviews without a sufficient basis for requiring such an invasive evaluation.

During the course of the investigation, the ombudsman investigator added the following allegations:

Allegation Two: Based on irrelevant grounds, OCS relied on another person's criminal history when taking action against the complainant.

Allegation Three: Based on a mistake of fact, OCS's plan to reunify the complainant's children with their biological mother is based on an incorrect assumption about the proven length of the mother's sobriety.

Allegation Four: Unfair, OCS assigned a protective services report for investigation to the worker who made the report.

On May 3, 2011, the ombudsman provided OCS Director Christy Lawton with the preliminary investigative report stating that, based on our review and for reasons more

fully explained in the following report, the ombudsman found Allegations One, Three, and Four to be *justified*, and Allegation Two to be *not supported*.

Ms. Lawton responded on behalf of OCS on May 30, 2011, and asked that the ombudsman modify the findings on Allegations One, Three, and Four to reflect a finding of not supported. OCS also accepted the recommendations included in the preliminary report.

After careful review, the ombudsman is declining to modify the findings from the preliminary report. We have included the OCS requests and rationale and the reasons we are declining to modify the findings in the body of the report.

BACKGROUND

The Complainant's Family Background

The complainant is the father of four small children; born between 2004 and 2008. The complainant and the children's mother were divorced in 2010 and the complainant was granted sole legal and primary physical custody of the children.

The complainant is engaged to another woman, who is the mother of a teenaged daughter. At the time that OCS became involved with this family in July 2010, the complainant, his fiancée and their five children were living together as a family. Another couple and their child were also living with the family at the time OCS became involved in July 2010. It is our understanding that the other family moved out of the household shortly thereafter.

The complainant is a registered sex offender and has been twice convicted of sexual abuse of a minor (SAM).

- On January 8, 1999, the complainant pleaded guilty to one count of sexual abuse of a minor in the 3rd degree. Based on the information in the court files, the complainant was 19 and his victim was 15 at the time of the crime. The complainant was initially indicted on two counts of SAM in the 2nd degree; one of the counts alleged that the complainant also had sexual contact with the 15-year-old victim's 10 year-old sister but that count was subsequently dismissed.
- On January 17, 2000, the complainant pled guilty to one count of SAM in the 3rd degree. At the time of second crime, the complainant was 21 and his victim was 15.

OCS's History with the Complainant's Family

According to ORCA, the OCS case management system, OCS has had multiple contacts with the complainant's family. OCS received its first PSR on November 18, 2005, alleging *neglect*. The PSR noted that the case "does not meet criteria for [a non-profit service provider's services] as the father has a sex offense conviction." Presumably, this note means that OCS was considering referring the report to the service provider as part of the Differential Response program that was in effect during that time. This report was investigated and, although the report was not substantiated, OCS opened a case for ongoing services. OCS kept the case open for almost one year while providing services to the family. The ORCA notes do not indicate that OCS staff had any concerns about the complainant's sex offense convictions.

On **May 8, 2009**, OCS received another PSR on the family alleging *neglect*. This PSR also noted that the complainant was a registered sex offender. This report was investigated and not substantiated. The investigation summary described the complainant's convictions:

[The complainant] has 4 convictions; 4/05 – DWI, 12/97 – possession of stolen property, and 10/96 – sexual abuse of a minor. SW discussed in length with [the complainant] and collaterals regarding this charge. [The complainant] was 20 years old at the time and was dating a 17 year old female. When the female's parents found out about the relationship, they contacted the authorities.

The summary contains factually inaccurate information: 1) the complainant has two sex offense convictions and 2) his victims were both 15 at the time of the crime, not 17.

OCS staff did not investigate for potential child sexual abuse.

On **July 6, 2009**, OCS screened out a PSR alleging *neglect, lack of supervision* after the complainant contacted the Anchorage Police Department (APD) to report that his child, age 4, had gotten out of the family's trailer and was missing. The child was located within minutes of APD's arrival at the home. The report was screened out because it did not meet initial assessment (IA) criteria; however, the intake worker noted that there was a pending investigation involving the May 8 PSR. The July 6 report did not note the complainant's criminal history.

On **February 16, 2010**, OCS received a report alleging *physical abuse*, which was screened in and given a P1 priority rating. The report alleged that one of the complainant's children arrived at school with a facial mark or bruise and some neck scratches. The investigation summary described the complainant's criminal convictions as follows:

In 1999 [the complainant] was cited for sexual abuse of a minor 3. [The complainant] said this was the first girl he had ever dated; she was 15, he was 18. And during their relationship her age was questioned and she was interviewed and she admitted to having sex with him and he was charged. In 2000, [the complainant] was also charged with the same offense, sexual abuse of a minor 3 and he said this was actually the third girl he ever dated and she was 15.

After what appears to be a thorough investigation, the allegations were not substantiated. OCS did not investigate for child sexual abuse.

On **April 23, 2010**, OCS received a PSR alleging *neglect*. This report was screened out, most likely because OCS was still in the process of investigating the February 16 PSR. However, the report did note that the complainant is a sex offender and the sole caregiver for his children.

OCS's Recent Involvement with the Complainant's Family

On **July 27, 2010**, OCS received two PSRs involving the complainant and his fiancée's children. The first report alleged that the complainant was not providing court-ordered visitation for his children and asserted that "information was provided to the court by the

complainant that the boys were touching their sister and each other and that it was due to the biological mother's behavior when the children are with her." The mother is listed as the reporter. The PSR was entered as *neglect, other*. The OCS intake worker contacted an OCS caseworker with prior knowledge of the family for collateral information. The report noted the complainant's criminal convictions and his two older children's developmental disabilities. The report was screened out for investigation because it did not meet initial assessment (IA) criteria. Even though the PSR alleged that the children were engaging in sexualized activity and noted the complainant's criminal history, OCS staff screened-out the report and did not investigate for possible child sexual abuse.

The second report received on July 27 alleged that the complainant's fiancée neglected her daughter by failing to protect her from a sex offender. The sex offender named in the PSR was the complainant. This report was screened-in for investigation and given a response priority of P3 which requires OCS to make contact with the victim within seven days, and is the priority given to the least serious reports of harm. The reporter is listed as "anonymous" but it is likely that the reporter was also the mother of the complainant's children as this report was received at the same time as the report she made involving her own children. After investigation, OCS worker Lindsay Bothe substantiated the PSR.

OCS did not assume custody of the fiancée's daughter, however, because the fiancée entered into a voluntary, out-of-home safety plan with OCS. The plan required the teenage daughter to live with her maternal grandmother and have no contact with the complainant. The plan also contemplated that OCS would fund a sex offender assessment for the complainant. The complainant's children remained in the home under his care.

The case was subsequently transferred from the initial assessment worker to in-home services worker Virginia Ramsey, a Children's Services Specialist II. On **August 17, 2010**, Ms. Ramsey entered a transfer summary in ORCA, stating that a safety plan was completed and set to last through October 12, 2010. The summary also states, in reference to the complainant's children, "other children no safety threats. The other children never disclosed anything."

On **August 30, 2010**, Ms. Ramsey conducted a home visit and noted that the complainant's children "all looked healthy and clean and were observed playing appropriately."

On **September 2, 2010**, Ms. Ramsey scheduled a sex offender assessment for the complainant. The ORCA note indicates that the assessment was scheduled for "7/15 at 9:00 AM." This appears to be a typographical error for September 15 because on September 7, 2010, then-OCS staff manager Phil Kaufman denied funding to pay for the assessment, stating in an e-mail message:

Gina, we historically have not provided these for convicted SAMs in non-custody cases. The protection issue is not so much with him, we know he is unsafe, the work is with the mom who is not protective. I can get up on the stand and tell the judge he has been convicted, twice, and has failed to correct his behavior, has failed to access and complete those services designed to fix his behavior, therefore he is dangerous to children. While I believe the eval would be beneficial, he can pay for his eval somehow. He could have had tx [treatment] for free in jail. He is likely a gamer – typical S.O. ... [the complainant] needs sex

offender treatment, he has two convictions, we don't need to pay thousands of dollars to tell us what we already know for certain.

In a subsequent e-mail on **September 7**, Ms. Ramsey's supervisor Lori Kennell wrote:

We can change from assessment to treatment. He will need to pay for his own treatment. We never pay for treatment. We can let him know that since he had a prior assessment but never finished treatment, he needs to follow recommendations of that assessment. Do we have a copy of it? If not, we need to get it.

Ms. Ramsey replied, on **September 22, 2010**, "Not sure if she tried to get this yet." Presumably, the "she" Ms. Ramsey was referring to is Lindsay Bothe, who was the initial assessment worker assigned to the case.

A copy of the complainant's sex offender assessment, dated June 7, 2002, was located in the OCS file for his fiancée's case. The assessment was not date-stamped by OCS and so the ombudsman cannot determine when, exactly, OCS received it, but it may have been sometime after September 22 because of Ms. Ramsey's e-mail above. The assessment states in part:

While the first offense may not have supported a need for treatment, the second offense, occurring while on probation for the first is a clear indicator of emotional/sexual immaturity and one-sided thinking focusing on his own wants.

The provider recommended that the complainant enter the full program to assess his amenability to treatment for a period of 60-90 days. There is no documentation in the file about how the complainant's treatment progressed or how many sessions he attended. There is, however, a progress note from his treatment provider, dated June 23, 2003, stating that the complainant is "Off paper, did not continue SOTP [sex offender treatment program]. Discharged incomplete." "Off paper" presumably refers to the fact that the complainant had completed probation and was no longer supervised by the Department of Corrections (DOC).

On **September 7, 2010**, Ms. Ramsey contacted the DOC, Division of Probation and Parole and learned that, as of June 2003, the complainant was no longer on supervised probation for his sex offenses.

On **September 8, 2010**, Ms. Ramsey spoke to the custody investigator assigned to the complainant's divorce who confirmed that the judge was aware of the complainant's criminal history when he granted custody to the complainant. The custody investigator's report, which was located in the OCS file, notes that OCS failed to respond to her request for information on the complainant's family, writing:

Both parties report OCS was involved during their marriage. The agency did not respond to requests for information. It would stand to reason OCS would have access to Father's criminal history and apparently has not removed the children from his care because of it.

On **September 10, 2010**, Ms. Ramsey initiated a PSR involving the complainant's children. She alleged that, as an untreated sex offender, the complainant should not be around children, not even his own children. OCS entered the report with allegations of

sexual abuse by the complainant against all four children. OCS initial assessment workers screened this report out for investigation, noting information gathered from prior investigations, as multiple referrals on the same incident.

Ms. Ramsey was out of the office for approximately a month between mid-September and mid-October 2010 on medical leave.

On **October 6, 2010**, the complainant spoke to Ms. Ramsey's supervisor, Lori Kennell, and requested that his fiancée's daughter be allowed to come home. Ms. Kennell explained that the complainant needed to engage in treatment before OCS would consider allowing the daughter back into the home.

On **October 19, 2010**, OCS received copies of the court files related to the complainant's criminal convictions.

On **October 20, 2010**, Ms. Ramsey conducted a home visit with the complainant and his fiancée. During that visit, the fiancée told Ms. Ramsey that the safety plan for her daughter expired on October 12 and that she wanted her daughter to return to the home. In response, Ms. Ramsey scheduled a team decision making (TDM) meeting for October 22, 2010, two days later.

At the conclusion of the **October 22 TDM**, OCS assumed emergency custody of the fiancée's daughter and placed her with her maternal grandmother. Although OCS did not have any open PSRs regarding the the complainant's children and had not documented any concerns regarding their safety since becoming involving with the fiancée's family, Ms. Ramsey raised the issue of the the complainant's children at the October 22 TDM and established a safety plan that prohibited any unsupervised contact between the complainant and his children. The complainant was told to leave the home until his mother could fly to Anchorage to supervise contact the following week. The plan also required that the complainant submit his children to forensic interviews and examinations at AlaskaCares.

On **October 28**, the complainant filed his current complaint with the ombudsman, which was assigned to ombudsman investigator Kate Higgins. Ms. Higgins reviewed the notes in ORCA which indicated that OCS did not have any open PSRs involving the the complainant's children. Additionally, all of the prior history between OCS and the complainant showed that the agency was aware of the complainant's criminal background and that OCS documented no concerns of sexual abuse involving his children.

The ombudsman investigator contacted Ms. Ramsey to ask why OCS wanted all of the complainant's children interviewed and examined at AlaskaCares. Ms. Ramsey said that she was concerned because of the children's limited ability to communicate and because she had recently learned that the complainant had been charged with SAM involving a 10-year-old child. As noted earlier in this report, the charge involving the 10-year-old was later dismissed by the prosecution.

When asked why OCS was suddenly concerned about the complainant's history in connection with his own children, Ms. Ramsey said she had been concerned about the complainant and his children since she was assigned to the case two months earlier but

she had been out of the office for an extended period of time for medical reasons and had not been able to follow up on her concerns earlier.

The ombudsman investigator also spoke with Ms. Ramsey's supervisor, Lori Kennell. Ms. Kennell explained that, in her view, OCS had "dropped the ball" in its earlier investigations involving this family by not conducting interviews/exams to ensure that the children were not being sexually abused. She reinforced Ms. Ramsey's position that the children needed to be interviewed.

Ombudsman Linda Lord-Jenkins also spoke with then-Acting OCS Director Christy Lawton on **October 28**.¹ Ms. Lawton confirmed that OCS's position was that the complainant's children needed to be seen at AlaskaCares.

On **October 29, 2010**, a Friday, the complainant's children were examined at AlaskaCares. The following Monday, November 1, 2010, OCS held a TDM for the family. OCS alleged that the complainant violated the safety plan by having unsupervised contact with his children, an allegation that the complainant denied. OCS assumed emergency custody after trying, and failing, to agree on an alternate safety plan.

On **November 2, 2010**, Ms. Ramsey filed an emergency child in need of aid (CINA) petition alleging that the complainant's children were children in need of aid pursuant to Alaska Statute (AS) 47.11.011(7), (9), (10) and (11).

AS 47.10.011. Children in need of aid. Subject to AS 47.10.019, the court may find a child to be a child in need of aid if it finds by a preponderance of the evidence that the child has been subjected to any of the following:

* * *

(7) the child has suffered sexual abuse, or there is a substantial risk that the child will suffer sexual abuse, as a result of conduct by or conditions created by the child's parent, guardian, or custodian or by the failure of the parent, guardian, or custodian to adequately supervise the child; if a parent, guardian, or custodian has actual notice that a person has been convicted of a sex offense against a minor within the past 15 years, is registered or required to register as a sex offender under AS 12.63, or is under investigation for a sex offense against a minor, and the parent, guardian, or custodian subsequently allows a child to be left with that person, this conduct constitutes prima facie evidence that the child is at substantial risk of being sexually abused;

* * *

(9) conduct by or conditions created by the parent, guardian, or custodian have subjected the child or another child in the same household to neglect;

(10) the parent, guardian, or custodian's ability to parent has been substantially impaired by the addictive or habitual use of an intoxicant, and the addictive or habitual use of the intoxicant has resulted in a substantial risk of harm to the child; if a court has previously found that a

¹ Ms. Lawton was appointed Director in April 2011.

child is a child in need of aid under this paragraph, the resumption of use of an intoxicant by a parent, guardian, or custodian within one year after rehabilitation is prima facie evidence that the ability to parent is substantially impaired and the addictive or habitual use of the intoxicant has resulted in a substantial risk of harm to the child as described in this paragraph;

(11) the parent, guardian, or custodian has a mental illness, serious emotional disturbance, or mental deficiency of a nature and duration that places the child at substantial risk of physical harm or mental injury

It appears that provisions (7) and (9) applied to the complainant and provisions (10) and (11) applied to the children's biological mother.

Ms. Ramsey did not provide the ombudsman with a copy of the AlaskaCares report, as promised, but the results were detailed in the CINA petition. The ombudsman investigator was later able to review the report after receiving a complete copy of OCS's file from the permanency worker, Talia Robinson. The report states that AlaskaCares staff were unable to interview the three younger children due to developmental delays and age, but the oldest child was interviewed and did not make any disclosures of sexual abuse. The physical exams did not reveal evidence of sexual abuse, but did reveal that the children were dirty and their "private areas were red, sore and irritated with feces."²

On **November 2, 2010**, the same day that OCS filed the CINA petition for the complainant's children, Ms. Ramsey initiated a new PSR involving the children alleging *sexual abuse*, with the complainant listed as the perpetrator. The report narrative was exactly the same as the report narrative for the September 10, 2010 PSR that was screened out for investigation, except that the new report noted that the children had been placed in emergency foster care the day before.

Notably absent from the PSR narrative was any information relating to the results of the AlaskaCares interview/exams. However, Ms. Ramsey verbally relayed the results of the AlaskaCares interview/exams to the ombudsman investigator on **November 2** at approximately 12:15 p.m., only two hours after the PSR was entered in ORCA. Additionally, on November 1 at approximately noon, the complainant told the ombudsman investigator that he had just received the AlaskaCares results from Ms. Ramsey. It appears that Ms. Ramsey knew that the interview/exams had not revealed any evidence of sexual abuse but did not relay that information to the intake worker when submitting this PSR.

This omission could have caused the intake unit to assess this PSR differently than it would have had Ms. Ramsey provided all of the relevant information. This report was subsequently assigned to Ms. Ramsey for investigation even though she is an in-home service worker and not an initial assessment worker.

On **November 5, 2010**, OCS screened out a PSR about the the complainant's children alleging *physical abuse* by an unknown perpetrator after receiving information from the Anchorage Police Department (APD). The complainant apparently called APD to report

² CINA petition at pg. 3.

an incident that occurred several months earlier in which an ex-roommate had tied the complainant's children up while the complainant was at work. OCS screened out the report as law enforcement jurisdiction only.

On **November 6, 2010**, OCS screened out another PSR relating to the family. This report was entered as *neglect: failure to protect from sex offender*. Ms. Ramsey reported that, during her October 20 home visit, there was an unknown man in the home watching the two youngest children. Ms. Ramsey later found out that the man was a registered sex offender and that the complainant knew of the man's convictions. The report was screened out as multiple referrals on same incident.

Despite being screened out, this information was also relayed to Anchorage Police and the complainant was subsequently charged with two counts of endangering the welfare of a child (AS 11.51.100(a)(2)). The complainant was convicted of the charges at a May 2011 trial. He is awaiting sentencing which is scheduled for Fall 2011.

On **November 30**, Ms. Ramsey completed her investigation of the November 2 PSR she had initiated. She did not substantiate any of the sexual abuse allegations against the complainant "due to no evidence that [the complainant] has sexually abused his children." At the time that Ms. Ramsey filed the PSR against the complainant alleging sexual abuse, however, it is likely that she already had the results of the AlaskaCares exams which noted that there was no evidence of sexual abuse.

Ms. Ramsey did, however, substantiate additional allegations of *neglect* against the complainant for all four children. The investigation summary is not entirely clear about the basis for the neglect allegations, but it appears that it may be because the children's genitals were dirty when they were examined at AlaskaCares. Ms. Ramsey also substantiated allegations of *neglect, failure to protect from a sex offender* because the complainant allowed a registered sex offender to have unsupervised contact with the two youngest children.

At the time of this writing the ombudsman understands that the CINA case involving the the complainant's family is ongoing. The ombudsman investigator reviewed the court's case file and it appears that, after several court hearings, both parents stipulated to probable cause and removal. Additionally, it appears from the documentation in ORCA that OCS is currently working toward reunifying all four children with their mother, and not with the complainant, and anticipates beginning a trial home visit soon.

OCS's Policies and Procedures

OCS's Child Protective Services (CPS) Manual does not explicitly address initial assessments involving a sex offender parent where there are no allegations that the parent has sexually abused their child, or children.

The CPS manual states, at Section 2.1 Protective Services Reports:

C. Gathering and Recording PSR Information

* * *

4. Records Search:

- a. The Intake worker will check Prober/ORCA for any previous contact or previous PSR and document in ORCA, searching every person named by the reporter as being involved with the family, including the alleged maltreater.
- b. Relevant information from the record search (e.g. type of maltreatment, screen decision, results of any previous investigations/initial assessments, etc.) will be reviewed.
- c. The following additional procedures apply to PSRs where:
 - the reporter states that a registered sex offender is in the home but does not allege any specific sexual abuse, or
 - where the allegation is that the child's care provider has left the child unsupervised in the presence of a registered sex offender, or
 - there is a person in the home who is under investigation for sexual abuse.
 - 1) The CA/N [child abuse/neglect] allegation should initially be entered as "neglect: failure to protect from sex offender."
 - 2) Search the Alaska Department of Public Safety Sex Offender Registration Central Registry for important information, e.g., nature of offense, date of offense, etc.;
 - 3) Conduct a 'court view' search on the Alaska Trial Court Case website;
 - 4) Review the National Sex Offender Public Registry if the alleged sexual offender is thought to have been convicted of a sex crime outside of Alaska; and
 - 5) Document whether or not the alleged maltreater is listed on a sex offender registry.

* * *

6. Enhanced Intake: The intake worker will complete enhanced intake to gather additional information through collateral contacts or other research as needed to make appropriate fully informed screening decision.
 - a. Collateral contacts may include:
 - 1) individuals who have regular contact with the child;
 - 2) medical personnel, teachers, and other treatment providers, who have evaluated or maintain records on the child;
 - 3) the child's tribe;

- 4) people who are in an established personal or professional relationship with the parent or caregiver and who can judge the quality and nature of the parent or caregiver behavior; or
 - 5) those who have records or reason to know information about the parent or caregiver as a result of their involvement with or exposure to the parent or caregiver.
- b. The worker will document information received from collateral contacts under the section entitled "Other Sources of Information" under the PSR.

NOTE: Legally, confidentiality for collateral sources cannot be assured. Consequently, workers should discuss that OCS cannot guarantee that their identity will not be disclosed.

Ombudsman complaint A2009-1356

Recently, the ombudsman reviewed another complaint involving a sex offender parent. That case involved five children in state custody, but placed with their parents on a trial home visit under the supervision of the paternal grandmother. The children came into state custody due to the parents' neglect but, in the course of reviewing the case, the ombudsman investigator learned that one of the parents was a registered sex offender. There were no allegations, however, that the parent had sexually abused any of his children.

Assistant Ombudsman Charlsie Huhndorf-Arend asked OCS to clarify its procedures for handling reports of harm where one parent is a convicted sex offender. Then-OCS Staff Manager Tarrin Reed responded on behalf of the department and explained how OCS processes PSRs involving parents convicted of sexual offenses but where there are no allegations that the parent committed sexual abuse. Ms. Reed wrote, in part:

[W]e accept all intakes. The screening determination would be based upon allegations of sexual abuse occurring. If there were no allegations and there were no known restrictions placed upon the offender, then we would most likely not screen the report in for assessment as there is no alleged maltreatment. What we are assessing at intake is the alleged maltreatment of the child and by whom the maltreatment was caused.

In other words, if OCS receives a PSR that merely states that a parent is a convicted sex offender but does not include any allegations of sexual abuse, and there are no restrictions on the parent prohibiting him or her from having contact with the child(ren), then OCS would not investigate the PSR.

ANALYSIS AND PRELIMINARY FINDINGS

AS 24.55.150 authorizes the ombudsman to investigate administrative acts 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 may investigate to find an appropriate remedy.

Under 21 AAC 20.210 the ombudsman evaluates evidence relating to a complaint against a state agency to determine whether criticism of the agency's actions is valid, and then makes a finding that the complaint is *justified*, *partially justified*, *not supported*, or *indeterminate*. A complaint is *justified* "if, on the basis of the evidence obtained during investigation, the ombudsman determines that the complainant's criticism of the administrative act is valid." Conversely, a complaint is *not supported* if the evidence shows that the administrative act was appropriate. If the ombudsman finds both that a complaint is *justified* and that the complainant's action or inaction materially affected the agency's action, the complaint may be found *partially justified*. A complaint is *indeterminate* if the evidence is insufficient "to determine conclusively" whether criticism of the administrative act is valid.

In accordance with administrative law standards, the ombudsman makes findings based on a preponderance of the evidence.

The ombudsman may investigate to find a remedy.

The Office of the Ombudsman's Policies and Procedures Manual at 4040 addresses and defines the ombudsman standards for evaluating complaints. The policy at 4040(5), defines an administrative act as **arbitrary** if:

- (A) the agency's action or decision was not based upon an intelligible or understandable public policy decision;
- (B) the agency's action or decision was based on a delegation of authority to the agency under inadequate standards (standards are "inadequate" if they are unrelated to the fundamental purposes of the program or statute under which the action or decision is taken);
- (C) as a result of the agency's action or decision, the complainant was treated differently than others and the difference in treatment:
 - (a) was not based on a difference recognized in law or
 - (b) was not based on a difference having a fair and substantial relationship to the objective or purpose of the legislation under which the action or decision was taken; or
- (D) the agency's action or decision was not based on a conscientious consideration of all relevant factors

An agency's action is **based on irrelevant grounds**, per Policy 4040(11) if "the agency made a decision based on information or factors that had no reasonable relationship to or bearing on the matter under consideration."

The policy at 4040(9) describes an agency action as **based on a mistake of fact** as occurring when "a significant part of the agency's decision was based on a misperception or misunderstanding as to the existence of relevant facts."

An agency's decision is **unfair**, according to policy 4040(3) if "the decision maker was not without bias or other disqualification."

* * *

Allegation One: Arbitrary, OCS required the complaint to submit his children to forensic exams and interviews without a sufficient basis for requiring such an invasive evaluation.

On October 28, 2010, Ms. Ramsey told the ombudsman investigator that the complainant's children needed to be interviewed and examined at AlaskaCares because they were at risk of sexual abuse due to the complainant's criminal history and the vulnerability of his children—two are very young and the two oldest children have developmental disabilities which make communication difficult. The complainant subsequently acquiesced and submitted his children for the interviews and exams, making his complaint somewhat moot, but our review of the case prompted concerns about OCS's decision making in this case.

I. Ms. Ramsey's Beliefs Regarding Sex Offender Parents

On September 10, 2010, Ms. Ramsey submitted a PSR alleging that the complainant should not be caring for his children because:

. . . he is an untreated sexual offender and should not be able to be around the children as he is out of compliance with state regulations. The complainant was convicted of Sexual Abuse of a Minor 3 in both 1996 and 1999. In 2002 the complainant had an assessment completed and was recommended for treatment of which he did some of but did not complete. Due to his non-compliance he is a non-treated sex offender and should not have contact with children, even his own. [Emphasis added.]

The OCS intake unit screened out this PSR.

In submitting the PSR, Ms. Ramsey contended that, because the complainant had not completed his sex offender treatment, he was not allowed under state law to have contact with his own children.

The ombudsman is not aware of, and unable to find, any Alaska Statute or OCS policy to that effect. It is our understanding that the complainant's conditions of probation prevented him from contact with females under the age of 16, but his probation ended quite some time ago and we have some doubt that the condition would have prevented him from having contact with his own children.

It appears that Ms. Ramsey is operating under some false impressions about the status of the law, and OCS policy, regarding sex offenders' ability to parent their own children.

II. OCS's Rationale for Requiring the Interviews

Ms. Ramsey asserted that OCS needed to conduct forensic interviews and physical exams of the complainant's children to ensure that they were not being sexually abused by their father. She cited the complainant's status as an untreated sex offender as a risk factor. She also noted that all of the complainant's children have communication barriers that could prevent them from disclosing abuse.

Between November 2005 and September 2010, OCS received eight PSRs about the complainant's family. The complainant's criminal history was noted in all but one of the

PSRs. Additionally, six of the reports also noted that the children have developmental delays and have difficulties communicating, which would make them potentially vulnerable to abuse. OCS did not investigate for sexual abuse or require specialized interviews and exams in any of the agency's prior contacts with the complainant and his children, nor did any of the caseworkers who dealt with the family raise any concerns about potential sexual abuse.

When asked what prompted her request, which came approximately two months after she received the case assignment, Ms. Ramsey said that she had concerns about the potential for undisclosed sexual abuse as soon as the case was transferred to her. Please note that Ms. Ramsey was assigned to the fiancée's case in mid-August 2010 and, on August 17, 2010, Ms. Ramsey entered a transfer summary in ORCA stating that there were "no concerns" with the complainant's children.

Ms. Ramsey, of her own volition, did file a PSR on September 10, 2010, alleging that the complainant shouldn't be around children, even his own. But, other than filing that PSR, which was screened out by the intake unit, it does not appear that Ms. Ramsey documented in ORCA any of her concerns about potential sexual abuse.

Ms. Ramsey's supervisor, Lori Kennell, stated that OCS had "dropped the ball" in prior investigations by not having the children interviewed at AlaskaCares. Ms. Kennell supported Ms. Ramsey's request to have the children interviewed and examined.

OCS's intake policy, along with the interpretation offered by Tarrin Reed to another ombudsman investigator in 2010, indicate that OCS would not consider a parent's sex-offender status when conducting a child abuse or neglect investigation unless there was an allegation that the parent was sexually abusing one of his or her children. As such, we would not have expected OCS to investigate the complainant's family for potential sexual abuse in response to the PSRs received by the agency between 2005 and July 2010 because those PSRs alleged neglect, and in one instance physical abuse, not sexual abuse.

Contrary to Ms. Kennell's statement that OCS "dropped the ball," it appears that OCS acted according to policy in reviewing and investigating the earlier PSRs. The question this highlights is whether OCS was really 'picking up a dropped ball' or whether the new caseworker and supervisor simply had different concerns than previous OCS staff who managed the case. Either way, this discrepancy is troubling.

Additionally, it does not appear that Ms. Ramsey made an effort to distinguish the complainant, a person who was convicted as a teenager and young adult for having sex with 15-year-old girls, from a pedophile who is sexually attracted to children. Neither the OCS file nor OCS staff has explained the basis on which OCS believes the two situations should be treated in the same way.

OCS does not have a specific policy to guide intake and initial assessment workers when they receive PSRs involving parents who have been convicted of sex offenses. OCS investigates a myriad of situations involving allegations or aspects of a sexual nature but may not investigate them in the same way. For example, an allegation that a parent is sexually abusing her child would presumably be investigated differently than an allegation that a parent with a sex offence conviction had physically abused her child. Similarly, OCS might very well make a distinction between sex offender parents based

on the nature of the offense when evaluating a PSR and determining whether a child is at risk. These judgment calls are difficult to make and are even more so when there is no official agency guidance on the topic.

III. The Timing of the Request

On October 20, 2010, Ms. Ramsey documented in ORCA that the complainant's fiancée had requested that her daughter be allowed to move back into the family home due to the fact that the OCS safety plan involving her daughter had expired. In response, Ms. Ramsey scheduled a TDM for October 22, 2010.

During the October 22 TDM, and without prior notice, Ms. Ramsey informed the complainant that OCS wanted to have his children interviewed and examined at AlaskaCares. There were no open PSRs on the complainant's family at that time and OCS had already interviewed or observed all four children as part of its investigation of the PSR it received about the fiancée's family in July 2010.

The timing of Ms. Ramsey's request, which came almost immediately after the complainant's fiancée requested that her daughter return to the the complainant's household, suggests that the motivation for making the request might have been driven by something other than concern for the complainant's children. Viewed in this light, it is not difficult to understand why the family would think that Ms. Ramsey was retaliating against them merely because the complainant's fiancée wanted her daughter to return home.

OCS might very well have had legitimate concerns about the safety of the complainant's children in light of their inability to effectively communicate and their father's criminal history, but OCS knew about the complainant's criminal history and his children's communication problems for almost five years and did not investigate for sexual abuse. Additionally, at the time that Ms. Ramsey requested that the complainant's children undergo the interviews and very invasive exams, there were no pending PSRs relating to this family.

In our view, Ms. Ramsey's decision to require forensic interviews and exams of the complainant's children appears arbitrary in light of the evidence in ORCA, the OCS hard file, and the OCS policy for screening intakes involving sex offender parents. As such, we proposed to find this allegation *justified*.

OCS Response:

OCS Director Christy Lawton responded to the ombudsman proposed findings as follows:

OCS required the complainant's children to undergo forensic examinations only after determining that interviews would be unsuccessful due to the children's age and/or developmental delays. AlaskaCares staff confirms that the forensic physical examinations are not invasive to young children and are only done after a determination by the multi-disciplinary team consisting of the caseworker, the medical staff and law enforcement that a recognized risk of sexual abuse is present. In this case, [the complainant] knowingly allowed a registered sex offender to supervise his children. [The complainant] was recently convicted of

these crimes (3AN-10-13124CR). Based on these reasons, OCS requests a finding of *not supported*.

Ombudsman Reply:

OCS points to the complainant's decision to leave two of his children in the care of a convicted sex offender as evidence of risk of sexual abuse that would justify requiring forensic interviews and exams of his children. We do not disagree with that proposition. However, OCS did not know that the person that the complainant left his children with was a sex offender until 4 days *after* the children were interviewed and examined. The children were seen at AlaskaCares on October 29, 2010 and, according to her CINA petition, Ms. Ramsey did not find out that the caregiver was a registered sex offender until November 2, 2010.

Let us be clear: The ombudsman in no way approves of leaving children with sex offenders. The issue here is whether OCS based its decision to request a forensic examination on its knowledge that the children had been left with a sex offender. It did not base its decision on that because it didn't know about that until four days later.

Because OCS did not have knowledge that the caregiver was a registered sex offender at the time it requested that the complainant submit his children for interviews and exams, the agency cannot rely on that risk to justify its request. The OCS response does not convince the ombudsman to change this finding. Therefore, the finding to Allegation will remain *justified*.

Allegation Two: Based on irrelevant grounds, OCS relied on another person's criminal history when taking action against the complainant.

In reviewing OCS's hard file for both the complainant's and his fiancée's cases, the ombudsman investigator discovered that OCS had criminal conviction information for a different person with the same first and last name contained along with the information for the complainant. The OCS file contained information pertaining to one of the complainant's two sex offense convictions but it also contained information for the other person's criminal conviction.

Further review of the file revealed that OCS received the information from their attorney who had instructed her paralegal to request the incorrect court file.

Thus, it does not appear that OCS bears the blame for obtaining the incorrect criminal information, but the caseworker should have caught the differences in the defendants' birth dates and middle initials and removed the incorrect information from the file.

Upon review of the facts presented in the CINA petition, it does not appear that OCS relied upon the other person's criminal convictions when submitting its case to the court. As such, the complainant was not harmed by the error and the allegation is *not supported*.

It is troubling, however, that another person's criminal history appears in the Roth file and no one caught the error. OCS should be mindful to check the information it receives, even when that information originates with the Department of Law or the Alaska Court System, to be sure that it has the correct information.

OCS did not respond to the proposed finding of not supported therefore the finding of *not supported* will stand.

Allegation Three: Based on a mistake of fact, OCS's plan to reunify the complainant's children with their biological mother is based on an incorrect assumption about the proven length of the mother's sobriety.

According to the current case plan, OCS plans to reunify all four of the complainant's children with their mother. While this plan of action may be in the best interests of the children, the ombudsman investigator noted a statement in a recent supervisory staffing note that raised red flags. On March 31, 2011, OCS employee Jessica Ulrich wrote, in support of OCS's plan:

Mother does not have safety threats present at this time.

Divorce – MH [Mental Health] assessment and substance abuse assessment, completed and no recommendations.

2 months of UA's [urinalysis testing] that were clean. Children were not removed from her home.

No criminal concerns. [Emphasis added]

However, the OCS hard file only documents UA testing for the mother for a period of approximately three weeks, between December 11, 2010 and December 30, 2010. According to the file, the mother submitted to eight UAs during that three week period that came back negative. Additionally, she no-showed for two UAs on December 20 and December 30, which according to OCS practice, should be counted as a positive result, meaning that during the three weeks that OCS was checking the mother's sobriety, she was considered to have a positive result 20 percent of the time.

Possibly, OCS decided not to continue requiring UA testing after receiving the substance abuse assessment from Clitheroe, dated December 14, 2010, that did not recommend treatment of any kind. However, the assessment was also based solely on the mother's self-report. It does not appear that Clitheroe received any collateral information from OCS regarding the mother's history in order to prepare the assessment.

Regardless of OCS's decision-making regarding the utility of continued UA testing, the fact remains that the supervisor reviewing the case believes that the mother has had two months of clean UAs when that is clearly not accurate according to OCS's case file.

And, considering the fact that OCS's concerns with the mother involve her ability to keep and maintain sobriety, it is concerning that OCS is ready to start a trial home visit in preparation for reunification without first requiring a proven track record of sobriety.

It appears that a significant part of OCS's decision to reunify the the complainant's children with their mother is her demonstrated sobriety. However, the agency's conclusion is based on facts that are not supported by the documentation in the case file, and therefore we proposed to find this allegation to be *justified*.

OCS Response:

While OCS is actively planning for reunification of the complainant's children with their biological mother, this trial home visit is beginning in accordance with

OCS policy and procedure CPS 3.7. The children remain in out-of-home care and OCS continues to monitor the mother's sobriety and encourage her to demonstrate her ability to live a sober lifestyle. Based on these reasons, OCS requests a finding of *not supported*.

Ombudsman Reply:

OCS contends that the trial home visit "is beginning in accordance with OCS policy and procedure" but in its action plan for Proposed Ombudsman Recommendation #2, the agency agreed that "three weeks of partially demonstrated sobriety is not sufficient to support a decision to start a trial home visit." The agency's responses are contradictory – on the one hand, OCS maintains that the trial home visit is supported by policy when it disputes the ombudsman's finding but, on the other hand, OCS states that there is not enough evidence of the mother's sobriety to support a trial home visit when stating that it plans to adopt the ombudsman's recommendation.

Additionally, OCS has presented no evidence to contradict the meat of the finding – namely that OCS only had several weeks of UA's showing the mother's sobriety but that a supervisor mistakenly believed that there was two months of demonstrated sobriety when recommending that the agency begin a trial home visit with the mother. Whether OCS decides to begin a trial home visit with the biological mother is a decision that OCS will ultimately make, however, the agency should have accurate information before it when making that decision. The ombudsman declines OCS's request to change the finding to not supported. This allegation will be closed as *justified*.

Allegation Four: Unfair, OCS assigned a protective services report for investigation to the worker who made the report.

On November 1, 2010, Ms. Ramsey initiated a PSR alleging sexual abuse against the complainant. Subsequently, the PSR was assigned to her for investigation; notwithstanding that Ms. Ramsey is an in-home services worker and not an initial assessment worker.

This appears to be major conflict of interest. OCS should have assigned the investigation to another caseworker to avoid the appearance of bias and the possibility that the outcome of Ms. Ramsey's investigation would simply be a foregone conclusion, based on her allegations in the PSR.

Assigning the case to Ms. Ramsey appears patently unfair as Ms. Ramsey, the decision-maker for the investigation, had already demonstrated her conclusions by filing the PSR in the first place. As such, we propose to find this allegation *justified*.

OCS Response:

OCS policy and procedure CPS 2.2.5 directs that investigations shall be conducted by an OCS worker who has been trained to conduct child abuse and neglect investigations and trained in assessing safety. By practice, OCS assigns all PSRs on families who have open OCS cases to the current OCS worker, regardless of who made the report. Although the Ombudsman report asserts that this appears to be a major conflict of interest, OCS asserts that the worker with the most comprehensive information about the family is in the best position to accurately determine child safety. The Ombudsman report asserts that the

caseworker “demonstrated her conclusions by filing the PSR in the first place.” OCS policy and procedure CPS 2.1, directs any OCS staff person who receives information that alleges child maltreatment to forward it to the intake unit for documentation, decision-making, and determination, making no prior judgments about whether the concerns should be assigned for initial assessment or screened out. Additionally, the caseworker, after investigating, did not substantiate [the complainant] for sexual abuse of his children. Based on these reasons, OCS requests a finding of *not supported*.

Ombudsman Reply:

OCS appears to believe that simply because the caseworker did not substantiate the PSR in this case, that there was no conflict of interest. We disagree. It might very well make sense to assign PSRs received from third parties to the ongoing caseworker for initial assessment, but it does not make similar sense to assign a PSR to the very caseworker that reported the alleged harm. While it is most likely true that the ongoing caseworker has the most comprehensive information about a family, it is also possible that the ongoing worker harbors preconceived notions about a family or applicable law.

In this case, the caseworker filed a report alleging that, because the father had not completed sex offender treatment during his probation that he was prohibited from having contact with children, “even his own.” This was not accurate information about the law and, simply because the caseworker did not substantiate the PSR, does not mean that she did not have a conflict of interest. It is likely Ms. Ramsey failed to substantiate the PSR because the AlaskaCares report would not have supported a substantiated finding. And, by the time she completed her investigation, OCS had already taken custody of the complainant’s children. The ombudsman is not persuaded by the OCS argument and declines OCS’s request to change the finding in Allegation Four to not supported. This allegation will be closed as *justified*.

Under 21 AAC 20.210, investigation of a complaint with multiple allegations that results in some allegations being found *justified* and some *not supported* or *indeterminate* results in a finding of *partially justified* for the complaint taken as a whole. The ombudsman proposes to find Allegations One, Three and Four *justified* and Allegation Two *not supported*.

Therefore the ombudsman finds this overall complaint to be *partially justified*.

RECOMMENDATIONS

On May 30, 2011, OCS notified the Ombudsman that it intended to accept the following recommendations.

Recommendation One: OCS should establish guidance for caseworkers addressing intake and initial assessments involving families where one or more parent is a sex offender.

OCS’s Action Plan:

The Office of Children’s Services will provide refresher training for all current caseworkers regarding OCS policy and procedure CPS 2.1 and 2.2.5, clarifying that where one or more parent is an alleged, previously convicted, founded and/or

untreated sex offender and has immediate access to the child, a priority one rating should be considered and during an investigation where one or more parent is alleged, previously convicted, founded and/or untreated sex offender and has immediate access to the child, the initial assessment will include and consider that information when determining child safety.

Recommendation Two: OCS should assess whether three weeks of partially-demonstrated sobriety is sufficient to support its decision to begin a trial home visit between the Roth children and their mother in preparation for reunification.

OCS's Action Plan:

After discussion with the caseworker and supervisor, OCS has assessed that three weeks of partially demonstrated sobriety is not sufficient to support a decision to start a trial home visit between the mother and the children. In accordance with OCS policy and procedure 3.7, the caseworker and supervisor continue to encourage and monitor the mother's sobriety and develop a team of community support services to operate during the upcoming planned transition. An in-home safety plan coordinating these support services will ensure the children's safety during the trial home visit, when it begins.

* * *

OCS's proposed action plans address the intent of the recommendations. Therefore this investigation will be closed as *partially justified* and *rectified*.