



INVESTIGATIVE REPORT

EXECUTIVE SUMMARY

Ombudsman Complaint A2013-0859

December 18, 2014

(This summary has been edited and redacted to remove information made confidential by Alaska Statute and to protect the privacy interests of those citizens involved.)

The Ombudsman has determined per AS 24.55.160 that it is in the public interest to release an executive report on the findings in this complaint. However, the Ombudsman is constrained under AS 24.55.160(b) to hold confidential all information that is confidential by law.

Because of these statutory constraints and because the Ombudsman determined that the privacy interests of all the parties involved could be jeopardized if extensive details were included, this report has been altered to protect those interests. Therefore, the names of the people in the report have been changed to conceal their identity, with the exception of State of Alaska employees whose actions were not the subject of the complaint.

A Goose Creek Correctional Center (GCCC) inmate filed a complaint with the ombudsman on July 11, 2013, alleging that two other inmates assaulted him after a Goose Creek correctional officer (CO) posted a message about him on a dry erase board that was visible to other inmates. The Complainant said that immediately after the CO wrote the note, other inmates started asking if he knew about the note, and if he was ratting or snitching on other inmates.

The inmate said approximately two days after the note had been posted, he spoke with the CO and his Sergeant and requested it be removed because it was causing him problems with the other inmates. The Complainant said they refused. Subsequently, two other inmates who had read the note on the dry erase board accused him of being a snitch and assaulted him.

The Complainant claimed the two inmates beat him up because the posted message implied he was giving guards information about other workers for preferential treatment. He also asserted that another CO witnessed the assault but did nothing to stop it.

The ombudsman investigated the Complainant's allegation and added a second allegation on her own motion under AS 24.55.120:

Allegation 1: Unreasonable: Goose Creek Correctional Center staff publicly posted a note about the Complainant that led other inmates to believe he was giving GCCC guards information about other inmates. This in turn resulted in the inmate being assaulted.

Allegation 2: Unreasonable: Goose Creek Correctional Center staff improperly screened an inmate grievance alleging staff misconduct contrary to Department of Corrections' policy.

The ombudsman found both allegations **justified**. She proposed three recommendations to DOC:

Recommendation 1: [Redacted in accordance with Alaska confidentiality statutes]

Recommendation 2: The superintendent should issue a written directive to all staff prohibiting the posting of notes about inmates in areas that are visible to the inmate population.

Recommendation 3: The superintendent should clarify with the facility standards officer that all inmate grievances alleging misconduct should be handled in accordance with existing DOC Policy 808.03.

Goose Creek Superintendent John Conant responded to the ombudsman's proposed findings and did not object to any of the ombudsman's findings. He partially objected to the first recommendation, which has been redacted in accordance with Alaska confidentiality statutes, and proposed an alternative recommendation. The ombudsman agreed that the alternative proposed action complied with the intention of Recommendation One. DOC accepted the second and third recommendations.

The complaint was closed as **justified** and **rectified**.

INVESTIGATION

Method of Investigation

The ombudsman investigator obtained and reviewed portions of the Complainant's institutional file, as well as the files of the other two inmates involved in the June 29, 2013 assault. She also reviewed the Alaska Correctional Offender Management System (ACOMS) (DOC's computerized records system), and videotape footage from the assault.

According to the incident report written by a third CO, at approximately 1:05 p.m. on June 29, CO Hartley was seated at the podium in the C-mod when he witnessed Inmates X and Z assault the Complainant. CO Hartley observed Inmate X hold the Complainant while Inmate Z, "punched, kicked, and kneed [the Complainant] in the side of his body." The ombudsman investigator's review of the video footage confirmed the CO's observations, specifically noting that Inmate X was clearly observed restraining the Complainant while Inmate Z assaulted him repeatedly.

CO Hartley wrote that the incident took place in front of the Complainant's cell and lasted approximately 10 seconds. After the assault, he observed Inmates X and Z walk back to their cells, and the Complainant return to his cell. Sergeant Byrd and CO Corkill responded to the assault and escorted all three inmates to segregation. Inmates X and Z were both cited for a B-6

violation, assault by a prisoner upon another prisoner under circumstances that creates a substantial risk of physical injury. 22 AAC 05.400(b)(6).

Sergeant Byrd prepared an informational report concerning the Complainant. According to the informational report, CO Hartley contacted Sergeant Byrd at approximately 1 p.m. on June 29 to report the incident. Sergeant Byrd went to the Complainant's cell, requested that he lift his shirt, and checked his knuckles. He indicated in the report that the Complainant's torso "had obvious hit marks all over it" but his face and hands looked uninjured. The Complainant was not charged with any infraction.

Officers Hartley and Corkill inspected Inmates X and Z and "found both to have a lot of redness on their knuckles and elbows." According to Sergeant Byrd's report and review of the video footage, "it was determined that Inmates [X and Z] went to Inmate [Complainant]'s cell and attacked him."

The Complainant filed a written request for protective custody and wrote that Inmate Z had "beat up his ribs." In response to a question on the form asking "why," he wrote, "accused me of being a snitch and causing him to loose [sic] his job." Sergeant Byrd granted the Complainant's request for protective custody and the Complainant was moved to administrative segregation at approximately 1:16 p.m.

On June 29 immediately following the assault, Inmate Z was placed in administrative segregation for "presenting a substantial and immediate threat to the security of the facility or the public."¹ Inmate X was also placed in administrative segregation.

Sherrie Daigle, then DOC's Criminal Justice Planner, stated that the Complainant did not file any cop-outs about the incident, and did not request medical attention after the assault.

The ombudsman investigator reviewed ACOMS on September 17, 2013, and determined that the Complainant had filed a grievance about this matter on July 18, 2013² approximately three weeks after the incident. On July 23, 2013, Sergeant Caitlin Price screened out the grievance as not a grievable action or decision and because it raised unrelated issues that should be presented in separate grievances.

According to a copy of the Complainant's written grievance, he claimed that he had already sent copies of a statement for legal assistance. It is unclear what the inmate meant by this, however, attached to the July 18, 2013, grievance, he included a copy of an eight page letter addressed "To whom it may concern" dated July 7, 2013. The Complainant also sent this letter to the ombudsman in support of his ombudsman complaint.

In this grievance, the Complainant alleged he was harmed physically, mentally, and emotionally because of "deliberate, willful . . . intentional actions of certain staff members at GCCC." In the July 7 letter attached to the grievance, he further alleged that he was assaulted as a result of a note written on the whiteboard in the C-mod by the CO. He requested that DOC release him from custody, or alternatively place him at a halfway house, pay him for lost wages, present and future mental health expenses, gate money upon release; and grant him a pre-release furlough. It is unclear from ACOMS whether the Complainant challenged or appealed the screening decision.

¹ Administrative Segregation Admission, 6/29/13.

² GCC13000471

Review of the disciplinary records for the Complainant and the two assailants indicated Inmates X and Z initially were charged with a B-6 infraction for assaulting the complainant, but only Inmate Z was found guilty. However, the GCCC hearing officer reduced the original B-6 infraction (a major charge), to a C-1 infraction (a high moderate charge) for mutual fighting. The hearing officer sanctioned Inmate Z to 30 days punitive segregation. Inmate Z did not appeal the finding.

The ACOMS comments to the disciplinary case for Inmate X indicated that the hearing officer found him not guilty of a B-6 infraction “based on video evidence.” The B-6 charge was dismissed and Inmate X received no further punishment. The ombudsman was unable to determine what the hearing officer saw in the video that caused him to dismiss the charge.

The ombudsman investigator requested the audio recordings from the assailants’ disciplinary hearings on August 2, 2013 to determine if either inmate referenced the note written on the whiteboard by the CO as a justification for the Complainant’s assault. On August 15, 2013, Ms. Daigle responded that the hearing tapes were no longer available. According to an email Hearing Officer Neal Sanderlin sent to Sergeant Price on August 15, 2013, the audio footage was no longer available because more than 30 days had elapsed since the hearing, and neither inmate appealed the findings.

Alaska Administrative Code 22.05.420(b)(1) requires DOC to tape-record all disciplinary proceedings involving low-moderate, high-moderate, and major infractions. DOC Policy 809.04(K)(1) provides that if a prisoner appeals a disciplinary decision to court, the tape recording of the disciplinary proceeding must be kept until all judicial proceedings are complete.

Although the audio recording was not available, a review of the disciplinary hearing reports for both inmates X and Z indicated that they testified the assault on the Complainant was prompted in part by the note on the whiteboard in the C-mod. This is confirmed by the investigator’s review of the Reports of Decision for both inmates.

- A summary statement of Inmate Z’s testimony indicated that, “**All started w/ statement on whiteboard in Charlie Mod.** [Complainant] made statements to Inmate Z, about his shaved head. Inmate Z confronted [Complainant], [Complainant] provoked and Inmate Z hit him.”
- The summary statement of Inmate X’s testimony stated “**writing on the whiteboard.** Day before got fired. Confronted [Complainant], told him not to do that. [Complainant] became aggressive. [Inmate Z] went off on [Complainant].”

The ombudsman investigator contacted the CO involved in this incident who acknowledged writing a note concerning the Complainant on a dry erase board in June 2013. According to the CO, he wrote that if the Complainant complained about the televisions, he would be fired. He asserted that he wrote the note to:

. . . make a Staff/Shifts aware of inmate [Complainant’s] constantly complaining to correctional staff about the TVs when he was informed that he could fill out a cop out to the housing Sergeant about this matter and so he could [be] moved into the worker mod. Inmate [Complainant] would ask different staff member (Staff Shopping) in hopes he [would] get a different answer.

ANALYSIS AND FINDINGS

Allegation 1: Unreasonable: Goose Creek Correctional Center staff publicly posted a note about the Complainant that led other inmates to believe he was giving GCCC guards information about other inmates. This in turn resulted in the inmate being assaulted.

As set forth in DOC policy 202.15 Standards of Conduct, DOC employees are prohibited from “intentionally or negligently endangering or breaching security.” This policy provides that an employee who engages in egregious misconduct may be dismissed on a first offense. Thus, even an employee who negligently endangers or breaches security, may be found to have engaged in egregious misconduct. Failure to abide by the DOC Standards of Conduct can result in corrective, disciplinary, or other appropriate action.

Posting a disparaging note concerning an inmate anywhere visible to other inmates is not only unwise, but poses a potential security risk to the inmate and the facility. In this instance, because of the note the CO wrote on the board about the Complainant, the evidence is clear that two other inmates assaulted him. While it does not appear that the Complainant was seriously injured by the assault since he did not seek medical attention, he easily could have been seriously injured.

The CO indicated that he wrote the note to inform staff of the Complainant’s constant complaints to correctional staff about the televisions after the inmate was informed that he could file a cop-out to the housing sergeant about the televisions. However, there was a far better way to communicate this information to fellow DOC staff without risking the safety of the inmate.

The Alaska Supreme Court recently held in the decision of *Richard Mattox v. State of Alaska, Department of Corrections* (S-14587, April 18, 2014) that DOC has a duty to protect inmates in its care from all reasonably foreseeable harm, including assaults by other inmates. The Court also stated in this decision that DOC’s duty to protect an inmate is not limited by an inmate’s inability to predict the precise nature and time of the assault, or the identity of his attacker. In the *Mattox* case, an inmate told officers that he was afraid of his roommate and the roommate’s friends due to racial tensions in his housing module and threats he had received from his roommate “that something would happen.” He requested to be moved to a different module. DOC denied the inmate’s request, and shortly thereafter, his roommate’s friend assaulted him, resulting in serious injuries.

In Ombudsman Complaint A2013-0859, the Complainant put DOC on notice that the note written on the whiteboard by the CO was causing him problems with other inmates. He spoke with the CO who wrote the note and the CO’s Sergeant. According to the Complainant, he asked to have the note on the board removed because it was causing him problems with the other inmates, but the CO refused. Two other inmates subsequently assaulted him as he predicted and later admitted that the note on the board was the reason. He also said that the note was erased from the board after the assault.

The CO’s posting of a note on the whiteboard about the Complainant therefore appears to have resulted in an assault on the inmate, as well as a potential security risk to the facility.

Accordingly, the ombudsman finds Allegation 1 **justified**.

Allegation 2: Goose Creek Correctional Center staff improperly screened an inmate grievance alleging staff misconduct contrary to Department of Corrections’ policy.

DOC Policy 808.03.C. Grievances Against Staff, requires that the Facility Standards Officer record grievances alleging staff misconduct and then forward them directly to the Facility Manager. The Facility Manager has 15 working days to investigate the grievance and provide a written decision to the inmate through the Facility Standards Officer, or the Facility Manager may promptly return the grievance to the Facility Standards Officer for informal resolution or assignment to an investigator.

According to the ombudsman investigator's review of grievance GCC 13-471, the Facility Standards Officer (Sergeant Price) did not follow this policy requirement. Instead, she inappropriately screened out the inmate's grievance for not raising a grievable issue and raising unrelated issues. The Complainant's grievance and eight-page letter attached to the grievance clearly stated it *was* a grievance alleging staff misconduct by DOC employees. Staff misconduct *is* a grievable issue according to this policy and the inmate is required to submit a formal grievance packet. Sergeant Price should have forwarded the grievance to the Superintendent (Facility Manager) for a response instead of screening it out. She failed to do so. Accordingly, the ombudsman finds Allegation 2 **justified**.

Recommendations

Recommendation 1: [Redacted in accordance with Alaska confidentiality statutes]

Agency Response: *[Redacted in accordance with Alaska confidentiality statutes]*

Ombudsman Comment: Superintendent Conant's response fulfills the intent of the recommendation.

Recommendation 2: The superintendent should issue a written directive to all staff prohibiting the posting of notes about inmates in areas that are visible to the inmate population.

Then-Superintendent Amy Rabeau told the ombudsman investigator that she had verbally informed GCCC staff not to post inflammatory notes about inmates where other inmates can see them. Superintendent Rabeau said she did not consider the problem to be widespread and therefore declined to issue a written directive. The ombudsman finds verbal directives to be an ineffective and inefficient way of communicating with large groups of people such as those employed at GCCC. Employees are transferred in and out of the institution. New employees arrive after the directive is issued and no one mentions it to them, so the directive is forgotten. Or the message that is being transmitted verbally to staff ends up like a children's game of "telephone," mangled in fact and intent. Government agencies have policy and procedure manuals so no one can say "Oh, gee, I didn't know *that* was wrong."

The ombudsman therefore recommends that Commissioner Schmidt direct GCCC to include a provision in the institutional manual to direct staff not to post inflammatory notes about inmates anywhere that can be seen by an inmate.

The ombudsman understands that the Complainant presented management problems to GCCC staff with what the CO apparently thought was incessant whining. Nevertheless, the outcome of posting the note where it could be seen by other inmates and refusing to remove it was easily foreseeable even to a new CO. DOC and GCCC were fortunate that the Complainant was not more seriously injured.

Agency Response:

Amy Rabeau, who was GCCC superintendent when the incident occurred, retired in May of 2014. John Conant was named superintendent upon her departure. He responded to the ombudsman's preliminary finding on behalf of the department:

A memorandum to all Goose Creek Correctional Center Staff is a reasonable recommendation. While there is no GCCC handbook for staff at this point, this directive can be addressed in the new employee orientation and placed within the training program until such time that the employee handbook is established.

Ombudsman Comment: Superintendent Conant's response fulfills the intent of the recommendation. Therefore, Allegation One is closed as **justified** and **rectified**.

Recommendation 3: The superintendent should clarify with the facility standards officer that all inmate grievances alleging misconduct should be handled in accordance with existing DOC Policy 808.03.

When this incident occurred GCCC was a relatively new institution with a high percentage of new staff who were not trained in all the nuances of misconduct as it relates to discipline. Senior staff must be the ones to keep the new correctional officers on the straight and narrow. Ignoring allegations about their transgressions does not do that and can lead to serious consequences.

Agency Response:

The Ombudsman met with Superintendent Conant and the Facility Standards Officer who responded to the Complainant's grievances. Since the complainant filed his grievance the Facility Standards Officer has attended additional training on handling grievances.

Ombudsman Comment: The additional training satisfies the intent of Recommendation 3. Therefore Allegation 2 is closed as **justified** and **rectified**.

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FINDING OF RECORD

The ombudsman closed this investigation against DOC as **justified** and **rectified**.