



May 26, 2005

INVESTIGATIVE REPORT
A2004-1138 Finding of Record

Redacted to remove confidential information or information that would identify the complainant

SUMMARY OF THE COMPLAINT

An inmate complained to the Office of the Ombudsman in November that the Department of Corrections (DOC) denied her a prerelease furlough without good reason. She alleged that DOC retaliated against her because she had informed on a correctional officer who was having a sexual relationship with an inmate at a correctional center.

Assistant Ombudsman Mark Kissel investigated this complaint and opened an investigation into the following allegation stated in terms that conform with AS 24.55.150:

Allegation 1: DOC unfairly denied the complainant a pre-release furlough to a halfway house in retaliation against the complainant for informing the agency that a correctional officer was having a sexual relationship with another inmate.

The facts reviewed in this investigation did not support the inmate's claim of retaliation. She was serving a sentence for felony DUI. She had been furloughed to a halfway house as soon as she became eligible. This occurred after she had provided information about the correctional officer, which indicates that she was not being treated harshly as a result of her disclosures. DOC returned her to jail in April of 2004 on a parole violation for smoking marijuana. When she again became eligible for furlough, she applied under DOC Policy and Procedure 818.02.

That policy states:

A prisoner who has previously been removed from a furlough or other CRP [Community Residential Program] placement for cause during the current incarceration is ineligible for further furlough consideration for a period of at least 90 days following the date of removal. Return to furlough status is subject to the approval of

Central Classification, irrespective of who may have approved the initial furlough.

On October 26, 2004, the inmate received a memo from Ken Braz, chief classification officer, stating that her request for another furlough was denied. Under the comments section of the memo was typed: “Per Dep. Com. Stolworthy – I/M is to serve the remainder of sentence at AMCC.” The memo notified her that the denial could be appealed “only to the Deputy Commissioner.”

The complainant appealed the next day and three weeks later received the following denial from Deputy Commissioner Don Stolworthy:

Your criminal history and prior conduct while on furlough indicate that you have failed to address the issues that make you a threat to the public safety. You had your opportunity to furlough [information removed to protect complainant’s confidentiality] and had this furlough terminated in April 2004 for a hot UA¹. Combined with your abscond/escape...behaviors, I can find no mitigators to afford you another furlough. Appeal Denied. No further review.

The complainant disputed Mr. Stolworthy’s facts regarding the escape behaviors to which he referred. However, her use of marijuana while on furlough seems reason enough for Mr. Stolworthy to deny her appeal, especially because it constituted a return to the substance abuse problem that brought her to prison in the first place: felony DUI.

The complainant alleged that DOC unreasonably denied her a furlough because she had informed on a correctional officer. The facts do not support the allegation. DOC’s decision to deny the complainant’s furlough was defensible, and consequently, this allegation is found to be **not supported**.

The ombudsman was, however, uneasy with the appeal process afforded the complainant following the initial denial of her request for furlough. The following allegation was added:

Allegation 2: DOC failed to provide the complainant with a reasonable appeal process.

The complainant has since been released (and again incarcerated for parole violations) so the issue is moot as far as her particular situation. However, I will make a finding on this allegation in order to forward a recommendation to your office that may improve your appeal procedures.

The October 26 memo from Mr. Braz to the complainant makes it clear that Mr. Stolworthy made the decision to deny the prerelease furlough—“Per Dep. Com.

¹ The urinalysis tested positive for drugs or alcohol

Stolworthy” it stated. When the complainant appealed, Mr. Stolworthy was again the person who denied her.

This process violates ombudsman standards for appeals and DOC’s own policies. Ombudsman standards for appeals, as set forth in the publication *Devising a Government Complaint System*², require that appeals be reviewed “by someone who has not previously been involved in the matter.” This concept is approached in DOC Policies and Procedures at 760.01, where an appeal is defined as “a process by which a prisoner may have a classification action reviewed at an administrative level higher than that at which the original action was taken.”

In this case, Mr. Stolworthy made the original decision and the appeal of that decision returned directly to him with no further appeal permitted. Consequently, the allegation that DOC failed to provide the complainant with a reasonable appeal process was found to be ***justified***.

It is not clear why Mr. Stolworthy became involved in the initial denial of the complainant’s request. Mr. Stolworthy no longer works for DOC and is unavailable for interview. To prevent further occurrences, though, the ombudsman recommend the following:

Recommendation: DOC should amend Policy and Procedure 760.01 by adding the words “by someone not previously involved in the decision under appeal” to the end of the appeal definition.

DOC accepted the ombudsman’s findings and recommendation. Commissioner Antrim wrote:

Policy 760.01 is scheduled to be reviewed and rewritten as necessary in the near future. I will direct staff to reword the definition of ‘appeal’ with wording similar to that suggested in Recommendation 1.

In complaints with more than one allegation, the ombudsman issues a final finding of *partially justified* if at least one—but not all—allegations are found to be justified. Consequently, this complaint has been closed as ***partially justified*** and ***rectified***.

² <http://www.state.ak.us/local/akpages/LEGISLATURE/ombud/complsys.htm>