



Alaska Ombudsman 2015 Annual Report

March 21, 2017

OCS and DOC Complaints Surge in 2015

In accordance with our statutory reporting requirements, the Office of the Ombudsman is pleased to post the Alaska Ombudsman's 2015 Annual Report.

As part of the ombudsman's reporting requirement, we are continuing to post summaries of Ombudsman investigations in the matrix of Ombudsman investigations on the Ombudsman website. The matrix includes summaries of formal Ombudsman investigations from 1995 to the present. It also includes summaries of some cases where Ombudsman intervention resulted in systemic changes without formal investigations. The matrix can be found at:

<http://ombud.alaska.gov/Matrix.pdf>

We also continue to post examples of other complaint resolutions on the Case Notes section of the website. Case Notes contains brief vignettes about a variety of complaints presented to the Ombudsman, the ombudsman's efforts to resolve the complaints and the resolution. As representatives of the Ombudsman's work, not all vignettes represent "happy endings" but do represent a thorough review of the issues presented. Case Notes can be found at:

<http://ombud.alaska.gov/Case-Notes.pdf>

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Ombudsman Updates Administrative Regulations

After the Alaska Legislature passed much-needed updates to the Ombudsman Act in 2014, the ombudsman began revising and reorganizing office regulations. Unlike most legislative offices, the ombudsman is required to have regulations, as Alaska Statute 24.55.090(a) provides that:

The ombudsman shall, by regulations adopted under AS 44.62 (Administrative Procedure Act), 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.

The previous regulations dated from a period when the ombudsman's office had three regional offices (instead of just Juneau and Anchorage), and twice as many employees. The regulations did not match the current needs and structure of the ombudsman's office. Along with obvious changes, such as deleting reference to a Fairbanks office, the new regulations revised the

complaint intake process to match our office's current staffing level and our use of a centralized intake model. We also updated the regulations addressing protection of confidential records received from an agency, including how the Ombudsman will resolve a dispute if we do not believe that the agency can validly withhold the record from public view.

One section of the 2014 legislation specifically allows agencies to provide the ombudsman's office with attorney-client privileged communications without generally waiving the privileged status of the communication. Therefore, the new regulations contain a section specifying how such material is to be labeled and segregated by the ombudsman's office.

Also, under AS 24.55.275, the ombudsman is mandated to adopt procurement regulations based on legislative procurement procedures. Prior to 2014, AS 24.55.270 required the ombudsman to adopt procurement regulations "consistent with AS 36.30 to be followed by the office of the ombudsman in contracting for services." Given that AS 36.30 encompasses a huge variety of projects, the structure of AS 36.30 was overkill for our office. The 2014 statute change allowed us to simplify our procurement regulations by adopting the legislative procurement procedures by reference, and the change made our procurement practices consistent with those of other legislative branch agencies.

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Calendar Year 2015 saw a significant 17 percent increase in the number of complaints filed with the Ombudsman's office. Ombudsman staff handled 1,886 complaints in 2015, compared to 1,610 complaints filed in 2014.

Complaints closed in 2015 increased by 18.3 percent over 2014 case closures. Ombudsman staff closed 1,883 complaints in 2015 compared to 1,591 in 2014.

As in past years, the largest portion of complaints filed in 2015 were filed against four Departments and their high-profile divisions: the Department of Corrections (DOC) Division of Institutions; the Department of Health and Social Services Office of Children's Services (OCS) and Division of Public Assistance (DPA); the Department of Revenue Child Support Services Division (CSSD), and Permanent Fund Division (PFD); and the Department of Administration Division of Motor Vehicles (DMV), Public Defender (PD), and Office of Public Advocacy (OPA).

In 2015, 780 complaints were filed against the Department of Corrections; complaints against the Department of Health and Social Services totaled 408; Department of Administration complaints totaled 211; and 96 complaints were filed against the Department of Revenue. Complaints against the Department of Public Safety numbered 74. The Department of Law garnered 44 complaints in 2014. The Department of Labor had 38 complaints filed. No other Executive Branch department in state government registered more than 30 complaints in 2015. Court System complaints totaled 71. Complaints against the various Alaska Boards and Commissions totaled 61.

Although the Ombudsman has no jurisdiction over municipalities and boroughs unless they contract for Ombudsman services, the office received 137 complaints and 45 requests for information against various municipalities, boroughs, cities, and towns. All complaints were declined as non-jurisdictional with referrals to appropriate entities

The Ombudsman also lacks authority to investigate complaints against private companies or persons, but we were contacted on 217 occasions by folks seeking assistance in handling those

problems and on 111 occasions by folks seeking information about private entities. Ombudsman staff declined all of these complaints with referrals to appropriate entities.

Complaints about jurisdictional agencies – State of Alaska administrative offices and staff – numbered 1,886 in 2015 compared to 1,610 in 2014. The top level agency category breakdown follows in the chart below. Also listed are categories of non-jurisdictional complaints that people bring to the Ombudsman as well as simple inquiries seeking information.

Closing status for Major Jurisdictional Categories

Agency	Information & Referral	Non-Jurisdictional Decline	Jurisdictional complaints	Totals
Boards and Commissions	69	5	61	135
Court System	30	0	72	102
Executive	172	8	1735	1915
Federal	42	29	0	71
REAA	0	0	0	0
University System	1	0	9	10
Legislature	28	2	9	39
Municipalities/ Boroughs	45	92	0	137
Private	111	217	0	328
Total	497	353	1886	2737

DHSS: After 2014 decline, Complaints Against H&SS Surge

The Ombudsman saw a significant increase in the number of complaints filed against Health & Social Services agencies in 2015. Citizens filed 408 complaints against DHSS in 2015, compared to 345 in 2014, which represents an 18 percent Departmental increase in one year.

Although the number of DHSS complaints increased 18 percent in 2015, the Department's portion of the overall 2015 Ombudsman caseload increased only .02 percent, largely because of the dramatic increase in total complaints received during that time. Complaints against all DHSS agencies comprised 21.6 percent of the total Ombudsman caseload in 2015. In 2014, DHSS's 345 complaints constituted 21.4 percent of all Ombudsman complaints opened.

Office of Children's Services

Complaints about the Office of Children's Services declined in 2013 and 2014 but increased by 59 percent in 2015. The Ombudsman opened 250 new citizen complaints against OCS in 2015, compared to 174 complaints in 2013 and 157 complaints opened in 2014. In 2015 OCS

Complaints totaled 13 percent of overall ombudsman caseload compared to 2014 when it constituted 10 percent of new complaints opened.

OCS complaints constituted 61 percent of all H&SS complaints filed and 13 percent of all ombudsman complaints filed in 2015. The Ombudsman closed 257 complaints against OCS in 2015 compared to 150 in 2014.

Of the complaints closed, 31 percent were closed as assistance, 61 percent were closed as declines with referrals to the agency grievance or court process, 16 percent were discontinued after extensive review, and no investigative reports were issued.

The Ombudsman did not complete any formal investigations of OCS in 2015.

2015 Office of Children Services Complaint Categories

Allegation Categories	Number of issues raised in complaint	Percentage of overall total
Unfair, Insufficient Cause to Remove Child	106	18%
Placement, Relative, Tribal	91	15.5%
Delay	80	13.6%
Grandparent Involved	70	11.9%
Visitation	58	9.9
Unresponsive	50	8.5%
Insufficient documentation/Misinformation	45	7.7%
Foster Parent/Foster Home	38	6.6%
Discourteous/Discriminatory/Threatening/Retaliatory	38	6.5%
Grievance/Appeal Actions	20	3.4%
ICWA Related Complaint	20	3.4%
Lack of Notice	14	2.4%
Breach of Confidentiality	11	1.9%
Reimbursement	11	1.9%
Failure to Investigate ROH	10	1.7%
Adoptions	6	1%
Access to records	5	.09%
Eligibility	3	.05%

Many complainants present more than one allegation to the Ombudsman and not all issues are included in the above chart, therefore the numbers above do not add up to 100 percent.

Wasilla OCS complaints drop slightly in 2014

Complaints against the Wasilla OCS office reflected the overall surge in complaints against OCS as Wasilla complaints more than doubled in 2015. Complaints against Wasilla OCS numbered 64 in 2015, a 237 percent increase over the 27 complaints filed in 2014. Complaints against Wasilla OCS in 2015 totaled 26 percent of all OCS complaints, compared to 17 percent for 2014.

Division of Public Assistance Complaints More Than Doubled in 2014

Complaints against the Division of Public Assistance (DPA) in 2015 dropped from 116 in 2014 to 94 complaints in 2015. DPA complaints comprised 5 percent of all 2015 Ombudsman complaints and 23 percent of DHSS complaints in 2015. In 2014 DPA complaints comprised 34 percent of DHSS complaints and 7.2 percent of all Ombudsman complaints in 2014. None of the DPA complaints required a formal finding and report.

Complaints against the Division of Public Assistance dropped to 94 in 2015 and accounted for 23 percent of DHSS complaints filed in 2015; compared to 2014 when the 116 complaints against DPA constituted 34 percent of all DHSS complaints. DPA complaints in 2015 comprised 5 percent of all Ombudsman complaints, a slight drop from 2014 when DPA comprised 7.2 percent of all ombudsman complaints.

A review of DPA complaints showed that a significant number of complaints dealt with delay either in initial benefits approval, delay in recertification, or in responding to applicant's calls to determine the status of their benefits. The largest portion of complaints about DPA programs involved food stamps. The remainder of the programs and issues were equally spread among the programs.

The remaining 16 percent of DHSS complaints were spread among the other DHSS divisions in 2015.

Department of Corrections Complaints Skyrocket in 2015

Complaints filed against Alaska's prison system in 2015 continued to increase dramatically. Corrections complaints jumped from 616 complaints received in 2014 to 780 complaints received in 2015, a 27 percent increase. DOC complaints filed in 2015 constituted 41 percent of all Ombudsman complaints filed as compared to 38 percent of all complaints filed in 2014.

The 657 complaints filed against the **DOC Division of Institutions** comprised 84 percent of all complaints filed against the DOC in 2015. Complaints against the Division of Institutions numbered 512 in 2014 or 83 percent of all DOC complaints for 2014.

Complaints against the **DOC Division of Probation and Parole** totaled 55 in 2015 compared to 49 in 2014. Because a fair portion of inmates are housed in Community Restitution Centers (CRC), the ombudsman has no jurisdiction to intervene in complaints. The CRCs are private contractors to the state and, by law, the ombudsman has no jurisdiction over the actions of private businesses or contractors.

Department of Corrections Division Breakdown

	2012	2013	2014	2015
All DOC complaints	298	397	616	780
Division of Institutions	254	357	512	657
Division of Probation and Parole	36	31	48	55
Remaining Divisions	10	27	55	68

2015 Department of Corrections Complaints Sorted by Institution

An institutional breakdown of complaints shows that ACC-East and West in Anchorage garnered the highest number of complaints in 2015.

FACILITY	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
ACC-EAST	33	24	34	12	21	25	88	122	158	126
ACC-WEST	18	20	10	13	10	10	33	55	31	71
ANVIL MTN.	2	4	2	1	8	3	5	4	4	0
AZ. CNTRL	1	4	10	3	1	–	–	–	–	–
FCC	13	10	6	3	3	4	7	10	5	17
GCCC	0	0	0	0	0	0	8	32	71	168
HMCC	3	6	7	16	15	35	22	25	74	79
HUDSON	–	–	–	1	23	30	3	2	0	–
KCC	1	4	4	3	12	8	5	4	4	10
LCCC	6	4	9	17	15	12	8	13	32	31
MAT-SU	2	2	3	1	6	5	7	6	6	13
MDW. CREEK	1	–	–	–	–	–	–	–	0	
PCC	3	6	7	6	14	2	9	29	65	44
PT. MACK	3	0	1	1	2	2	2	2	0	0
SCCC	14	21	19	44	28	26	23	16	26	47

Wildwood Correctional	2	4	4	6	15	12	2	9	16	18
Wildwood Pre-Trial	4	10	6	6	4	1	5	3	4	9
YKCC	2	2	1	0	2	7	4	–	4	5
Institution Miscellaneous	19	27	20	12	27	17	20	6	19	19
TOTAL	119	132	112	133	185	199	254	338	504	638

DOC Complaint Category Breakdown

Allegation Categories	Number of Complaints	Percentage of all allegations
Failure to Respond to questions, requests	232	30 %
Health Issues: general medical care, medications, dental and Mental Health Care	182	23 %
Time Accounting Inaccuracies or Delay	140	18 %
Disciplinary Actions	88	11 %
Segregation	86	11 %
Classification, custody level	86	11 %
Physical Abuse or assault	53	7 %
Inmate Property	45	6 %
Access to law library, legal computers, records, forms	40	5 %
Parole	29	4 %
Transfers	19	2 %

Many complainants present more than one allegation to the Ombudsman and not all issues are included in the following, therefore the numbers do not add up to 100 percent.

Of the 767 DOC complaints **closed** in 2015, 78 percent were *declined*, usually with referral to the DOC grievance or appeal process; 17 percent were closed with some form of *assistance* or advice, usually about the DOC grievance/appeal process; review was *discontinued* in 4.6 percent

of the complaints in accordance with Ombudsman regulatory guidelines after a more extensive review; and 1 percent were *fully investigated*.

Fully Investigated DOC Complaints

The fully investigated cases involved the following allegations:

In **Complaints A2014-0895, A2014-1059, and A2014-1275**, three inmates at Palmer Correctional Center complained that a disciplinary committee found them and four other inmates guilty of the disciplinary infraction of attempted escape based on the report of a confidential informant with no corroborating evidence whatsoever. The inmates' appeals of the verdict was denied up the chain of command to the deputy Commissioner of Corrections. After investigation the ombudsman found the complaint to be *justified* and *not rectified*.

In Complaint **A2014-1425** an inmate at Palmer Correctional Center complained that the PCC Superintendent changed the complainant's not guilty disciplinary finding to guilty to create justification for overriding his custody level. The complaint was found to be *justified* and *not rectified*.

In Complaint **A2015-0320** a federal inmate being held at the Anchorage Correctional Complex West complainant that ACCW had held him in segregation for nearly two-years even though he was not in protective custody and had no disciplinary infractions at the institution. The complaint was found to be justified and not rectified.

The fully investigated cases will be discussed in more depth later in this Annual Report.

Department of Revenue

Complaints filed against Department of Revenue agencies decreased slightly in 2015. Citizens filed 96 complaints against Revenue agencies in 2015, a two percent decrease from the 98 complaints filed in 2014. The percentage of complaints filed against Revenue agencies also dropped from 6.1 percent of all Ombudsman complaints opened in calendar year 2014, to 5.1 percent in 2015 because of the overall increase in Ombudsman complaints.

Child Support Services Division (CSSD)

The 62 complaints filed against the Child Support Services Division (CSSD) in 2015, totaled 65 percent of all complaints filed against the Department of Revenue in and 3 percent of all Ombudsman complaints filed in 2015. In comparison, the 53 complaints filed against CSSD in 2014 constituted 3 percent of all 2014 Ombudsman complaints and 54 percent of complaints about Revenue agencies that year.

- Sixty-eight percent of the CSSD complaints included allegations of inefficiency by the agency for failing to properly credit payments to the support obligor, failing to process paperwork, failing to make timely payments to custodial parents, or failing to notify a case party of an event or requirement.
- Sixty-three percent of allegations filed against CSSD alleged a calculation error.
- Allegations about CSSD's garnishment of or failure to garnish an obligor's PFD or wages were included in 34 percent of complaints filed against CSSD in 2015.
- Allegations that CSSD staff didn't respond to the complainant's contacts or request for information totaled 37 percent of CSSD complaints.

- Twenty-one percent of complaints involved modification of the support amount in some form.
- Eighteen percent of complaints alleged CSSD error due to misinformation, i.e. a child support order was based on incorrect information, a support order was established despite evidence the child was in the custody of the non-custodial parent, the agency charged arrears for support already paid, or the agency improperly reported a child support debt to another agency.
- Complainants which involved support actions in other states totaled 13 percent.
- Other complaints included access to records, change of custody, discourtesy or discrimination by agency staff, grievances against staff, paternity, and retroactive enforcement.

Again, many complainants presented more than one allegation to the Ombudsman and not all issues are included in the preceding list, therefore the numbers do not add up to 100 percent.

Of the 62 CSSD complaints closed in 2015, 18 percent were closed with some form of assistance and review; 81 percent were declined, usually because the complainant had not spoken to his caseworker about the issue, hadn't used the CSSD complaint resolution process first, or because the issue had been decided in court. Two percent of the cases were discontinued as resolved; and none were formally investigated.

Permanent Fund Division

Citizens filed 32 complaints against the Permanent Fund Dividend Division in 2015. Those complaints constituted 1.7 percent of all Ombudsman complaints in 2015 and 33 percent of all complaints filed against Revenue in 2015. In 2014 the 41 complaints filed against PFD constituted 2.5 percent of all Ombudsman complaints and 42 percent of all complaints filed against Revenue agencies.

No single category of complaints against the PFD was significant. Only six complainants alleged they were improperly denied their PFD and six complainants complained about garnishment of their dividends.

Of the PFD complaints closed in 2015, 25 percent were closed with some form of assistance and review, and 72 percent were closed as jurisdictional declines, usually after providing referral information to the PFD complaint resolution process or because the complainant was already involved in the appeal process. None of the PFD complaints were discontinued or formally investigated.

Department of Administration

Citizens filed 211 complaints against the Department of Administration in 2015, an increase of 8.8 percent from the 194 complaints filed in 2014. Complaints against Administration constituted 11 percent of all Ombudsman complaints filed in 2015, compared to 2014 when complaints against Administration constituted 12 percent of all Ombudsman complaints. Four DOA agencies accounted for the most complaints: Retirement and Benefits, Division of Motor Vehicles, Office of Public Advocacy, and the Public Defender Agency.

Division of Retirement and Benefits

Complaints against the Division of Retirement and Benefits (R&B) numbered 24 in 2015, a 25 percent drop from the 32 complaints filed in 2014. R&B Complaints constituted 11 percent of all

Administration complaints in 2015 and 1.3 percent of all Ombudsman complaints that year. In 2014, R&B complaints constituted about 2 percent of all complaints filed with the Ombudsman and 16 percent of all complaints filed against Administration.

The relatively low number of complaints against R&B made assigning percentages to individual categories meaningless. Generally, complaints were filed about problems with insurance coverage, unresponsiveness by agency employees, misinformation provided by agency employees, the amount of premium payments for insurance, hardship withdrawals from retirement accounts, disability payments, and a failure of the agency to notify of reduction in benefits.

Twenty-six percent of R&B complaints were closed with some form of assistance; 74 percent were declined as premature, usually with a referral to the agency complaint process; no complaints were discontinued, nor were any closed as fully investigated.

Division of Motor Vehicles

Complaints against DMV comprised 11 percent of complaints filed against DOA and 1.3 percent of all Ombudsman complaints in 2015. In 2014, DMV complaints constituted 18 percent of all DOA complaints and 2.2 percent of all Ombudsman complaints.

Complaints alleged the agency provided incorrect information; unfairly revoked or suspended driver's licenses; made unfair requirements of drivers such as acquiring SR22 insurance, completing the Alcohol Safety Action Program, or retesting/retaking of the written examination; unreasonably refused to refund fees or charged unreasonable fees; required persons to provide unreasonable amounts of documentation in order to obtain a driver's license or state identification card; or that DMV staff were discourteous. Citizens also complained about unfair fees for in-person service, which is established by statute, and about offices being closed or not easily accessible.

Of DMV complaints closed in 2015, 13 percent were closed with assistance provided to the complainant usually by contacting the agency. Eighty-three percent were declined and closed with referral to the agency complaint/appeal process. Four percent (one complaint) were discontinued after extensive review. No complaints were formally investigated.

Alaska Public Defender

The 76 complaints filed against the Public Defender in 2015 constituted a 28 percent increase in complaints over 2014 when the Ombudsman received 59 complaints against the PD. The 76 complaints received in 2015 comprised 36 percent of the Ombudsman complaints filed against the Department of Administration and 4 percent of the total Ombudsman complaints received in 2015. The 59 complaints filed against the Public Defender in 2014 totaled 30 percent of the Department's total and 4 percent of the total ombudsman complaints received in 2014.

Complainants primarily alleged that their public defender was non-responsive or ineffective or that the complainants wanted a different attorney.

Of those complaints received, 3 percent were closed as assists; 97 percent were declined, usually with a referral to the agency director, and no complaints were discontinued or fully investigated.

Office of Public Advocacy

The 77 complaints filed against the Office of Public Advocacy in 2015 represented 4.1 percent of the Ombudsman's overall caseload in 2015, a slight increase over 2014 when 68 complaints were filed against OPA for 4.2 percent of Ombudsman caseload. In 2015, OPA complaints comprised 36 percent of all Administration complaints, a slight increase compared to 2014 when the complaints comprised 35 percent of Administration caseload.

The dual nature of OPA's responsibilities as Public Guardian and conflict defense attorney for the state's indigent criminal defendant population was obvious in the category breakdown. Sixty-two percent of complaints received in 2015 concerned the actions of OPA conservators or public guardians, compared to 36 percent of complaints about OPA defense attorneys.

Complaints against the public guardian section of OPA included allegations that OPA guardians:

- placed unreasonable restrictions on finances of those under guardianship or conservatorship by withholding or stealing money,
- refused to increase their allowance,
- refused to buy requested items,
- refused to allow the person to live where they wanted,
- was non-responsive,
- failed to take appropriate actions to protect wards, and
- failed to provide adequate medical care to wards.

Complaints against the OPA conflict counsel section generally alleged OPA provided ineffective assistance or were unresponsive to clients. Because OPA often contracts with private attorneys to provide representation to clients, the Ombudsman cannot review many of those complaints. The Ombudsman has no statutory jurisdiction over the actions of private citizens, even if they contract to perform a task for the State.

Of all complaints filed against OPA in 2015, 19 percent were closed with assistance to the complainant, 79 percent were declined as premature and referred to agency complaint processes, 2.7 percent (two cases) were discontinued and none were fully investigated.

Department of Public Safety

Department of Public Safety (DPS) complaints increased in 2015 by more than 27 percent. Citizens filed 66 complaints against DPS agencies in 2015 compared to 52 in 2014. DPS complaints totaled 3.5 percent of all Ombudsman complaints filed in 2015 compared to 3.2 percent of overall Ombudsman complaints in 2014.

Of the 74 complaints filed against DPS in 2015, 65 (88 percent) were filed against the Alaska State Troopers. In 2014 complaints against AST constituted 91 percent of all DPS complaints.

Complaints against AST included allegations that Troopers failed to investigate or inadequately investigated a criminal complaint; harassed, assaulted or used excessive force during an arrest; were non-responsive or failed to provide information; or delayed action. The remainder of the complaints included employee misconduct, improper charges, falsifying evidence, and illegal confiscation.

Of complaints filed in 2015, 7.5 percent were closed as assists; 91.5 percent were declined as premature and referred to the AST complaint process. No cases were discontinued. One complaint (one percent) against DPS was fully investigated.

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The remaining complaints opened in 2015 were distributed among the other state agencies.

How Ombudsman Complaints are categorized

Ombudsman staff closed 1, 883 complaints in 2015.

Jurisdictional Assists: In 2015, staff closed 18 percent of all Ombudsman complaints as “jurisdictional assists.” In those cases staff contacted the agencies involved, researched statutes, regulations, policies, procedures and practices, and interviewed pertinent witnesses. This level of Ombudsman action is essentially a mini-investigation, but issues presented did not rise to the level of a full formal investigation involving major policy or systemic issues or affecting large numbers of people. Therefore, the complaints were closed as an assist with the issue resolved or relevant information provided to the complainant.

Jurisdictional Declines: In 2015, staff closed 78 percent of all complaints as “jurisdictional declines.” In those cases, staff reviewed the complaint and, if the complainant had an available grievance or appeal process available, the Ombudsman coached the complainant on how to use the agency complaint process.

Ombudsman staff tries to teach complainants how to deal with their government before we become involved. In such cases, the complainant is encouraged to return to the Ombudsman if they believe the agency handled their appeal or grievance improperly. In that way, the Ombudsman can review how the agencies handle complaints about their actions.

The Ombudsman also declines action if a complaint involves activities that occurred more than one year prior to the complaint; if the matter was the subject of a court action; if the complaint was trivial or made in bad faith; if the complainant lacks sufficient personal interest; if the issue is subject to a collective bargaining agreement; or if the Ombudsman lacks resources to investigate the complaint. (AS 24.55.110).

Discontinued: In 2015, 4.3 percent of all complaints closed were discontinued. This may occur for several reasons: the Ombudsman resolved the issue with the agency, the complaint became subject to a court ruling, the Ombudsman lacked resources to pursue the complaint to full formal investigation, or for other reasons as articulated in 21 ACC 20.200.

Fully Investigated: In 2015 the Ombudsman concluded six investigations with formal reports. Cases selected for formal investigation are those that involve health and safety issues, that have potential to affect agency policy, that affect large numbers of citizens, or that involve serious allegations that warrant independent review such as allegations of police brutality or employee misconduct.

Informational Referrals and Non-Jurisdictional Declines: In 2015, the Ombudsman documented 851 contacts from citizens seeking Ombudsman assistance or information on how to address problems with entities not subject to Ombudsman jurisdiction. This is a 1 percent increase from 2014. Ombudsman front-desk/intake staff usually handles these calls.

Ombudsman staff does its best to provide the best, most accurate referral information so citizens can address their problems with the proper entity. Non-jurisdictional declines are complaints to the Ombudsman about agencies over which the office has no statutory jurisdiction such as a private party, the federal government, the Social Security Administration, or local government. If a complaint is not proper for Ombudsman review, agency staff strives to make the most appropriate referral to the proper venue.

Fully Investigated Complaints

Summaries of complaints that were fully investigated and resolved follow below:

Ombudsman Complaints A2014-0895, A2014-1059, A2014-1275

PCC Convicts Seven Inmates of a ‘Great Escape’ that Evidence Didn’t Support

The Alaska Department of Corrections (DOC) punished seven Palmer Correctional Center (PCC) inmates for attempting to escape based solely on the word of a confidential informant with a sketchy disciplinary record, and refused to allow the inmates to question the informant or challenge any of the supposed evidence against them, according to a report released in September 2015 by the Alaska Ombudsman. The complainants contended that they could not defend themselves against the charges, because they were not told what specific acts they had allegedly committed that constituted an offense, or when and where any misconduct had occurred.

The Ombudsman investigated complaints filed by three of the seven inmates who were found guilty by DOC of attempting to escape from PCC in May 2014. The other four did not file complaints but the Ombudsman reviewed their circumstances as part of the investigation. The seven were never charged criminally. They were accused by a confidential informant who told a PCC guard that the seven were planning to kill a male guard, kidnap two female guards, steal a key to a prison tractor then use the tractor to crash through a PCC perimeter fence, hike out to the Glenn Highway then hijack a vehicle to make their get-away.

Ombudsman investigation found PCC presented no credible evidence that any of the inmates had ever spoken to each other, or anyone, about escaping, or taken any steps that would indicate intent to escape. There was no evidence to contradict the inmates’ assertions that some of them didn’t even know each other. Ombudsman analysis of the evidence presented at the seven hearings showed that there was no credible evidence linking any of the seven accused inmates to any act of possible misconduct. Four of the defendants were long-time mentors in a drug abuse recovery program. One of the alleged conspirators was over 70 and used a walker to get around.

The seven were found guilty in disciplinary hearings that individually lasted no more than 15 minutes, including formalities. The inmates were not allowed to question their accuser or present prepared questions to witnesses prior to the hearing. Relevant questions to the correctional officer (CO) who had supposedly investigated the matter were overruled as irrelevant. One inmate’s request to question a witness in his favor was denied either on the grounds that there was no such person in custody or on the grounds that questioning the witness would somehow be a threat to security. The Ombudsman determined that the witness was, in fact, in custody, and that the Department had violated the law by not explaining how questioning the witness would have threatened the security of the prison. Given that DOC did not allow the informant to be

questioned, and given the lack of any other evidence, the Ombudsman concluded that DOC failed to present credible evidence in the disciplinary hearings, even given the lower standard of proof for prison disciplinary proceedings.

DOC initially refused to identify the confidential informant to the Ombudsman, even though the Ombudsman has statutory authority to access confidential information held by the state. The Director of Institutions at the time characterized the informant as a reliable witness and the defendant inmates as dangerous and a threat to the institution and the informant.

After the Ombudsman served the Department with a subpoena, then-Commissioner Joe Schmidt ordered full records of the proceedings to be released to the Ombudsman. Ombudsman investigators reviewed the informant's records and determined he had been charged with 13 disciplinary offenses, including lying to prison officers, in the four months around the informant's reporting of the alleged escape. The confidential informant's prison record indicated he had been sentenced to 265 days in punitive segregation for his multiple offenses but served only 20 days of that time. The informant told an ombudsman investigator he hoped to get something out of reporting the alleged plot to prison officials.

Although the inmates had appealed their guilty findings to the PCC superintendent and then to the Director of Institutions, DOC asserted that it was not aware of the matter until one of the inmates appealed to Superior Court. That appeal was dropped before a court ruling when DOC held another disciplinary hearing on the inmate's case. The hearing officer in that case dismissed the charges because the informant refused to testify and the CO who investigated the case admitted he found no supporting evidence against the inmates beyond taking the informant's word. DOC ultimately reversed the findings of guilt against the inmates, as the Ombudsman recommended, but only after all of them had served substantial periods of time in punitive solitary confinement. The seven also were moved from PCC and were being held in institutions with a higher security status.

The Department did not respond to the Ombudsman's findings that it had repeatedly violated state law and the inmates' constitutional rights, except to say that "any prisoner has the right to have their disciplinary decision reviewed by the superior court to determine, if any violation of due process has occurred. This is a remedy that was available to each of these inmates, and should be considered an adequate remedy."

The Ombudsman's report pointed out that the PCC disciplinary committee did not provide sufficient information on the hearing record to show the basis for the guilty findings other than occasional one and two word entries such as "record," "memos" and "testimony." The Alaska Supreme Court has criticized the Department in the past for providing an insufficient record of the rationale for its disciplinary rulings for a Superior Court to rule on in an appeal.

The Ombudsman also pointed out that the case goes beyond protecting the rights of inmates. "DOC's only response to allegations that it is failing to do its job is that dissatisfied inmates can go to court. Well the Court System and the state's lawyers have enough on their plates right now. The people of Alaska cannot afford this attitude, literally and figuratively." Ms. Lord-Jenkins also pointed to costs other than excess litigation. "In this case alone, six of the seven inmates had been assessed a year of their statutory good time. Had this case not been reversed, these men would have served a collective six years of jail time for something they didn't do. At a \$158 per person per day cost to the state who do you think would have paid for that?"

The Ombudsman recommended that DOC review a number of other suspect disciplinary hearings that had been conducted at PCC over the previous year, and that DOC develop measures beyond a standard one-day training class for certain employees to ensure that these kinds of problems are not repeated. While the Department stated that it agreed with the recommendations, it did not act on them.

The Ombudsman recommended that DOC apologize to the inmates for punishing them without cause and ignoring their pleas for justice; the Department declined to do so.

According to Ms. Lord-Jenkins, this is not an isolated case. “My office has received a number of complaints about DOC disciplinary hearings, particularly at PCC, and a number of them appear to be justifiable complaints” Ms. Lord-Jenkins said.

UPDATE

Several months after the Department rejected the Ombudsman’s findings and recommendations in the three ‘great escape’ complaints, Interim Commissioner Walter Mohegan and his staff directed that all DOC Superintendents, disciplinary committee members, and several central office staff attend two days of training on the DOC disciplinary process and appeals, as well as on the DOC grievance procedure. The ombudsman attended the training in person and two of her staff attended on a statewide web presentation. This satisfied one aspect of the ombudsman’s recommendations.

PCC has since been closed, primarily because of budget cuts.

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A2014-1425

PCC Inmate Given Double Conviction for Same Disciplinary Infraction

A PCC inmate complained to the Ombudsman that the PCC Superintendent illegally reversed a hearing officer’s decision to dismiss charges against the inmate because he had been written up twice for essentially the same incident. The DOC hearing officer dismissed the first charge because of the duplication and found the inmate guilty of the second charge arising from the event. He sentenced the inmate to 10 days in punitive segregation (solitary confinement) and 60 days loss of commissary privileges for the second charge. The inmate did not appeal dismissal of the first charge. A week later the superintendent reversed the dismissal of that charge and imposed a penalty of 20 days solitary confinement and 60 days loss of good time, bring the total penalty for the two charges to 30 days solitary confinement, 60 days loss of good time and 90 days loss of commissary privileges. The superintendent stated she reversed the dismissal because the hearing officer dismissed the case “in error” but she failed to state on the record what the error was. The inmate was not allowed to appeal the decision because the appeal deadline for the first charge had tolled.

The Ombudsman found that the superintendent relied on an incorrect interpretation of DOC regulations which allows appeals officers – in this case the Superintendent – to overturn their original ruling on an appeal but does not allow appeals officers to reverse a disciplinary ruling and sanctions if there is no appeal.

The Ombudsman recommended that DOC vacate the superintendent's illegal action. DOC agreed but also stated the superintendent's illegal actions did not allow the inmate "to have a rehearing of the infraction with the required due process required under the Department's disciplinary process." The ombudsman responded that because the superintendent's ruling was illegal, no rehearing should be held.

DOC agreed to the Ombudsman's second recommendation that the complainant's disciplinary charges should be reversed. This did not, of course, undo the 30 days in punitive solitary confinement that the inmate had already served. DOC restored the inmate's lost good time.

The ombudsman also recommended that the Superintendent and Deputy Director of Institutions attend the same training on the disciplinary and appeals process that hearing officers are required to take. DOC responded that it had "redesigned the disciplinary process, provided training to all of our hearing officers and reemphasized the importance of the disciplinary procedures and process throughout the chain of command from the Division Director to the facility Hearing Officers." The ombudsman also requested the Department provide specific information on the disciplinary process "redesign" but DOC did not provide that information.

The ombudsman pointed out that the problem in this case was not with the mid-level hearing officer who ruled correctly in dismissing the duplicate charge but with the superintendent who reversed the officer's ruling and with the Deputy Director of Institutions who affirmed the superintendent's illegal ruling upon appeal.

This case was closed as *justified* and *not rectified*.

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A2015-0320

Federal Inmate Held in Segregation for Nearly Two Years

A federal inmate who was held in administrative segregation at the Anchorage Correctional Complex for 647 days complained to the ombudsman that he didn't know why he was held and was given no opportunity to appeal the terms of his sentence. The ombudsman found that DOC held monthly hearings on the inmate's segregation status as required but the hearings were pro forma because DOC never told the inmate why he was being held in segregation. Without that information, the inmate could not challenge the reason for his segregation.

The inmate was finally released to the Marshals Service after his federal trial and sentencing in late spring 2015. The ombudsman issued her preliminary finding and recommendations to the Department in April 2015 and asked DOC to respond in May but the Department requested and received an extension to respond by June 15. The Department did not respond by that date nor did it respond to two additional ombudsman requests for comment on the proposed finding. The ombudsman closed this case as *justified* and *not rectified*.

A2013-1700

Decision Delayed on Doctor's Professional License Application

A Medical Doctor whose application for a license to practice in Alaska was tabled before the Alaska Medical Board for several years complained to the ombudsman in 2013 that he had not received a timely decision from the Board. The complainant also alleged the Board failed to record its interview of the complainant during an executive session, in violation of state law, and

that the Board coerced him into agreeing to be interviewed about his license application during a closed executive session rather than on the record. The ombudsman found the first two allegations to be supported but found insufficient evidence to prove that the Board had coerced the complainant.

The ombudsman recommended that the Board consider and issue a decision on the complainant's application for licensure at its next meeting. The Ombudsman also recommended that the Board consult with its legal counsel regarding the seeming inconsistency between Alaska Statute (AS) 08.64.255, which requires the Board to record applicant interviews, and AS 44.62.310, which allows the Board to enter executive session for several reasons, including discussions that may tend to harm the reputation of the person being discussed.

The Board accepted the first recommendation but rejected the second. As such, the complaint was closed as *partially justified* and *partially rectified*.

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UPDATES

A2014-1621 Inmate Disciplined for Mystery Class-A Felony –

An inmate at Palmer Correctional Center complained that his right to due process of law had been violated in a prison disciplinary hearing. The complainant stated that he had been disciplined for heroin that had allegedly been found in his cell while he was in segregation. The complainant alleged that a correctional officer had taken the alleged substance home, kept it overnight, and then brought it back to the facility the next day before testing it. The complainant said that the drug was not his and that he did not know how it came to be in his cell. The complainant asserted that there was no way for him to defend himself because he had no information about where the material came from and what the officer had done with it while it was outside of the institution.

Investigation revealed that the complainant had been accused and found guilty of committing a Class A or unclassified felony while in prison. Unclassified and Class A felonies are the most serious offenses in Alaska, and include crimes such as first degree murder, arson, and sexual assault. The complainant had never been told specifically which Class A or unclassified felony he supposedly had committed. Possession of heroin is a Class C felony and would not support the far more serious disciplinary finding that the complainant had committed an unclassified or Class A felony.

Also, contrary to well-established state and federal law, the disciplinary report had not been written by the person with the most direct knowledge of the alleged crime. As the charging document in a prison discipline case, it should have been written by the person who had direct knowledge of where the alleged contraband had come from and why it was believed to have belonged to the inmate. Instead, the report had been written by an officer who had been handed the substance for placement in an evidence locker. He was not present when the material was discovered and had no direct knowledge linking it to the complainant.

The agency did not call any witnesses at the complainant's disciplinary hearing. The only evidence was the report stating that the material had been handed to the reporting officer, who was told it belonged to the complainant. The report stated that the officer put the material in a

cargo pocket, took it home, brought it back the next day, and tested it, whereupon the officer learned that it was heroin.

Contrary to state law, the disciplinary committee did not make any findings of fact to explain what it believed the inmate did and why it believed he was guilty. While the facility has the burden of proving allegations by a preponderance of the evidence, in this case there was no evidence to support commission of any crime other than, potentially, possession of heroin. The finding that the complainant had committed an unspecified Class A or unclassified felony was plain error. Even for a Class C felony, the facility would have had to present evidence and make findings of fact before it could find the inmate guilty. In this case there had been no evidence presented that directly linked the inmate to the contraband.

While it was true that the correctional officer took the alleged contraband home before bringing it back to the facility for testing, the Ombudsman did not find that this constituted a violation of due process. The complainant could have called the officer to testify about the chain of custody, but did not. The Ombudsman found this part of the complaint to be unsupported.

The Ombudsman recommended that the inmate be released from punitive segregation and that the findings of guilt be vacated. While the agency did not dispute that it had violated the inmate's constitutional rights, it characterized the violations as minor technicalities. The agency stated that it had conducted a new hearing to remedy the errors in the first hearing, but it did not provide any documentation.

Update: The Ombudsman also recommended that DOC require disciplinary committee members and appeals officers to take refresher training to get a better understanding of due process rights under the law and court rulings but DOC rejected that recommendation in 2015. However, in the spring of 2015 the acting DOC Director of Institutions directed that all statewide disciplinary and appeals staff attend a mandatory two-day training on DOC disciplinary policies and procedure, as well as appeals process. The ombudsman and two staff members also attended the training.

The case closing was changed to *justified* and *rectified*. (A2014-1621)

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Public versions of the ombudsman reports can be found on the Ombudsman website at the following links:

Palmer Escape: http://ombud.alaska.gov/reports/A2014-0895_DOC-final-public.pdf

Superintendent Override: http://ombud.alaska.gov/reports/A2014-1425_DOC-final-public.pdf

647 Days in the Hole: http://ombud.alaska.gov/reports/A2015-0320_DOC-final-public.pdf

Matrix of Investigations

The Ombudsman's matrix of all fully investigated complaints since 1997 is located at: <http://ombud.alaska.gov/Matriox.pdf>

Case Notes

The Ombudsman also posts examples of cases that were resolved short of investigation on the Ombudsman's web site's **Case Notes page** at <http://ombud.alaska.gov/Case-Notes.pdf>

The site is updated regularly and contains cases closed since 2013.