

Ombudsman ANNUAL REPORTS

Barley



**Office of the Ombudsman
State of Alaska**

**Annual Report
1985**

Public Summary

RANGE 28E

Introduction

To better meet the varying needs and interests of a diverse audience, the Fiscal Year 1985 Annual Report of the Alaska Office of the Ombudsman is presented in two volumes.

This volume, the "Public Summary," introduces and summarizes its larger companion. The summary provides the general reader basic information about the ombudsman's office and answers some typical questions:

- What does the office do?
- How does the office operate?
- What has the office accomplished?

It concludes by setting out how the public may best use the office's services.

The second volume, available from any of the ombudsman's business offices, provides a more detailed review of the office's principal activities. It:

- examines the various types of complaints which were filed with and investigated by the office;
- reports numerous case illustrations;
- discusses significant recommendations not accepted by agencies;
- provides a more comprehensive statistical overview of the office's activities for fiscal Year 1985;
- explains changes made in the office's caseload management practices;
- devotes a chapter to the public's perception and criticism of the office's work;
- reviews the office's activities during its first decade of service; and
- points to projects yet to be completed.

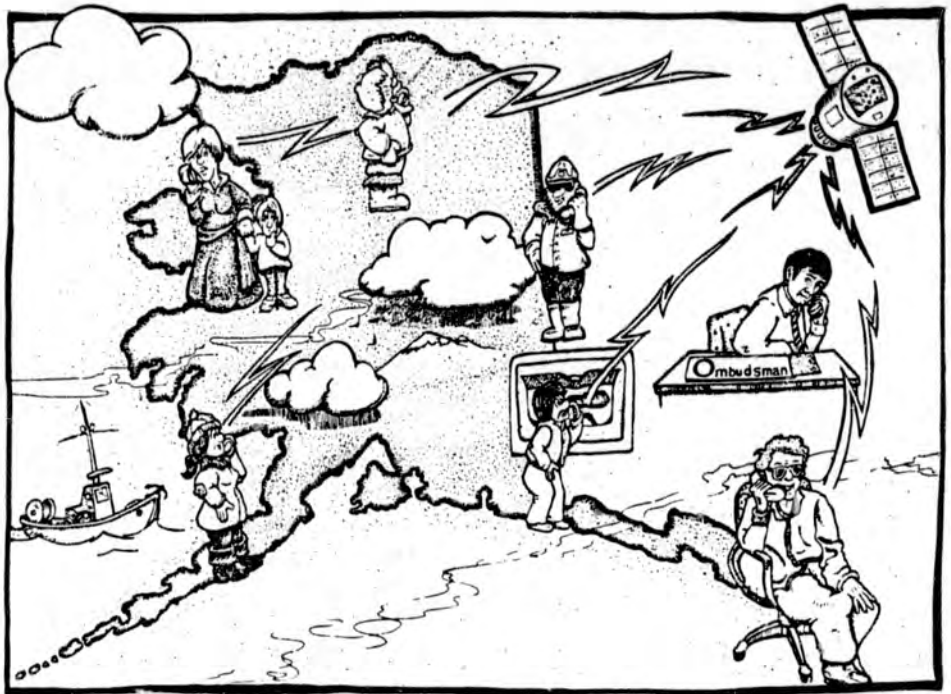
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Operation of the Office

The Ombudsman Act authorizes Alaska's ombudsman to receive and investigate public complaints about the administrative acts of state agencies and to recommend corrective action. The ombudsman also may initiate investigations and may publicize findings and recommendations.

Additionally, as many members of the public make it a point of first contact, the ombudsman office provides information about government agencies and referrals to appropriate services and programs.



Determining What Is To Be Investigated

By law, the ombudsman is authorized to investigate an agency's administrative act if he has reason to believe the act may be:

- contrary to law;
- unreasonable;
- unfair;
- oppressive;

- arbitrary;
- capricious;
- an abuse of the agency's discretion;
- unnecessarily discriminatory;
- based on a mistake of fact;
- based on improper grounds;
- based on irrelevant grounds;
- entirely without a legal basis;
- unsupported by an adequate statement of reasons;
- performed inefficiently;
- performed discourteously; or
- otherwise erroneous.

Statute and regulations also describe complaints which the ombudsman may not investigate. Since the law specifies that the office may consider only complaints involving the acts of state agencies, the office does not have authority to investigate:

- the action or decision of a federal agency;
- complaints against local governments, unless the local government has subjected itself to the ombudsman's jurisdiction; and
- complaints which only involve private parties.

The Ombudsman Act also excludes from the ombudsman's jurisdiction complaints against the following officials:

- an elected official (i.e., the governor, the lieutenant governor, a legislator);
- a justice, judge or magistrate; and
- an elected member of the school board of a regional educational attendance area.

In addition, by statute and regulation, the ombudsman may not investigate:

- complaints for which there is an adequate alternative remedy;
- complaints for which the complainant has had knowledge for more than one year;
- complaints where insufficient personal interest on the part of the complainant is indicated;
- trivial complaints;
- complaints presented in bad faith;
- complaints for which the complainant has also filed for administrative or judicial relief;
- complaints which can be handled as grievances under a collective bargaining agreement;
- complaints for which the complainant does not deal candidly with the agency complained against or with the office; and
- complaints for which the resources of the office are insufficient for adequate investigation.

Types of Complaints Handled by the Office

Complaints handled by the office may be categorized into two general fields of inquiry. One group of complaints focuses on the procedures underlying an agency's action or decision, while a second challenges the effect or result of an agency's action or decision.

Complaints about an agency's procedures typically involve one of five topical areas. Many simply involve a complainant's confusion about an agency's procedures. Others allege delay in action by an agency. Still others focus on the issue of access to information: They may allege that an agency has refused to provide public information, that it has released confidential information, or that it has provided misleading or inaccurate information. A fourth type of complaint of a procedural nature centers on the matter of due process. These complaints typically raise questions about the right to a hearing, adequate notice for a hearing, the fairness of a hearing, or the reasons behind decisions made in a hearing. Finally, some complaints allege that an agency has failed to follow procedures required by statute, regulation, or its own procedural guidelines.

Complaints challenging the effect or result of an agency's action or decision generally concern one of six areas. First, some complainants allege they have been harmed because an agency has acted on the basis of inadequate operating guidelines. Others complain of unfair or inequitable treatment by a state agency. Third, a large number of complaints come from residents of state institutions—jails, Pioneers' Homes, mental health and residential care facilities, and youth facilities—who contend that their rights have been violated or that they have been treated poorly. A fourth type of complaint comes from persons not residing in institutions who claim infringement on their personal rights. This type of complaint typically includes expressions of concern about individual rights, the right to privacy, the right to participate in the political process, or the protection of property rights.

A fifth area of complaint focuses on government decision-making. In this type of complaint, the complainant challenges the outcome or result of the decision-making process. Often, as part of the complaint, the complainant alleges abuse of discretion by a government official. Finally, there are complaints which raise serious questions about accountability in government. These complaints include such matters as governmental contracting, bidding, or purchasing practices; conflict of interest; discourteous or rude behavior or personal misconduct by a government official or employee; governmental waste or inefficiency; or improper or inadequate enforcement of law.

Filing a Complaint

The ombudsman's office maintains business offices in Anchorage, Fairbanks, and Juneau. The office accepts and acts on inquiries it receives by phone, visit, or letter. There are no forms to fill out and no fees charged.

Inquiries fall into two broad categories, requests for information and filed complaints. If the person contacting the office does not have a complaint but simply requests information, staff will provide the information. When appropriate, staff refer the person to the proper authority. Every effort is made to provide prompt and accurate information and referral, whether or not the inquiry concerns a state agency.

Complainants must identify themselves. This helps assure that the complaint is being filed responsibly and provides a means of future contact. All information, as well as the identities of complainants or witnesses, is kept confidential unless disclosure is necessary for the completion of an investigation.

or for the support of recommendations. Complaints alleging misconduct by state employees must be specific and in writing. Staff will assist any complainant who has difficulty putting his or her complaint in writing.



Ombudsman staff first review a complaint for jurisdiction. If the complaint is clearly outside the ombudsman's jurisdiction, staff will inform the complainant within 15 days after receiving the complaint and, when appropriate, refer the complainant. If the complaint is declined for any other reason, staff will inform the complainant within 15 days and give reasons for the action. If the complaint is clearly within the ombudsman's jurisdiction, staff will ask the complainant what has been done to rectify the problem. The office encourages attempts to resolve the problem through existing agency grievance procedures. Staff will often suggest a specific officer or employee of a state agency for the complainant to contact.

Not all complaints warrant a formal investigation. Many may be resolved informally. Typically, informal efforts involve the attention and cooperation of line personnel or field officers of various agencies. Because these people can frequently resolve problems or give an adequate description of the situation, the complaint is not often brought to the attention of the program manager, division, director, or agency commissioner. For example, complaints of unreasonable delay—in the payment of vouchers for contract services, consideration of appeals, determination of benefits, or award of loans—lend themselves to informal resolution. On the other hand, when an agency's decisions or actions are fully defensible, informal resolution involves a brief explanation to the complainant of the reason or reasons for those decisions or actions.

Informal resolution of a complaint is termed an "assist." Generally, an assist is intended to secure a result specific to the complainant. Communication is nearly always by phone or face-to-face with agency personnel. The aim is to secure a result without determining fault. No formal report is prepared and, typically, except for notations into the office's computer caseload management system, no written or documentary record of the complaint is prepared.

Informal Resolution of Complaints

Conducting an Investigation

If a complaint cannot be adequately addressed informally, it is fully investigated. Investigation usually involves a review of relevant documents, informal interviews with employees responsible for the action or decision in question, and research into applicable statutes, regulations, agency guidelines, and precedents applicable to the administrative act. An investigation may be extended, however, to include private hearings, the taking of statements under oath, and the inspections of premises.

An investigation may consider issues beyond the specific grievance presented by the complainant. It may examine one or more related policy issues that affect a number of people, or it may consider whether the complainant and others were significantly harmed or put at a disadvantage because of an agency's policy.

A fully investigated complaint concludes with a report of finding or opinion and may include corrective recommendations. An investigation is concluded with one of four possible findings:

- "unsupported" if the evidence does not support an allegation against an agency;
- "justified" or "partially justified" if there is sufficient evidence to support a finding that an agency has erred; or
- "indeterminate" if there is insufficient evidence on which to make a determination.

When an investigation is completed, the ombudsman submits a preliminary report to the agency involved. If the finding is critical of the agency's performance, the agency is given an opportunity to respond.

After considering the response, if any, the ombudsman issues a formal finding and may submit recommendations to the agency. When this exchange is complete, the ombudsman notifies the complainant of actions taken.

If an agency rejects the ombudsman's recommendations, the ombudsman may present his opinion and recommendations to the governor, the legislature, a grand jury, or the public. In doing so, he must include any reply an agency makes to his opinion and recommendations.

Even if the agency accepts the ombudsman's recommendations, the office's involvement may not end. Commitment to regular followup of accepted recommendations is an integral part of the office's investigative process. On a regular basis—generally three to six months after closing an investigation—office staff recontact agencies to assess the degree to which recommendations have been implemented.

Office Activities

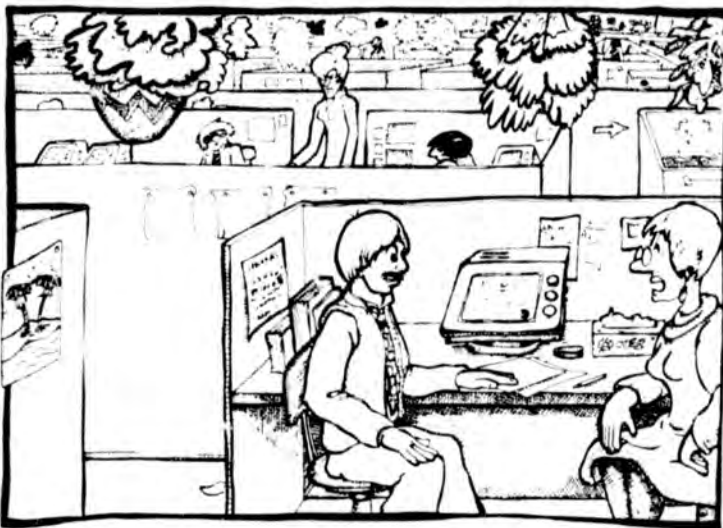
Public contacts with each of the ombudsman's three business offices continued at a brisk pace during Fiscal Year 1985. There were 4,138 contacts in which individuals requested information, an increase of 15 percent over the previous fiscal year. In addition, the number of complaints filed rose to 5,433, an increase of nearly 11 percent over the previous fiscal year.

The continuing high demand for the office's services has shifted the manner in which the office conducts its business.

First, as the complaint load has increased, the office has been more selective in accepting complaints for processing. Consistent with the Ombudsman Act, the office frequently refers complainants to appropriate available remedies, both within and outside state government, for resolution of their problems.

Second, office practice has been to emphasize informal resolution of complainant grievances rather than formal investigation of complaints. Of the total number of complaints closed during the fiscal year, one in four were closed as "assists." The emphasis on informal resolution rather than formal investigation reduced the number of fully investigated complaints to 281, an 11 percent drop from the previous fiscal year.

Third, with fewer complaints concluded as investigations, there was a greater premium on assuring agency implementation on recommendations which the agencies have accepted. Followup confirmed that agencies generally met their promises: In about 90 percent of the cases involving followup activity, the ombudsman assistant reviewing the agency's actions determined the agency had satisfactorily implemented recommendations.



Examination of complaints filed against the various state departments during FY 85 reveals several trends:

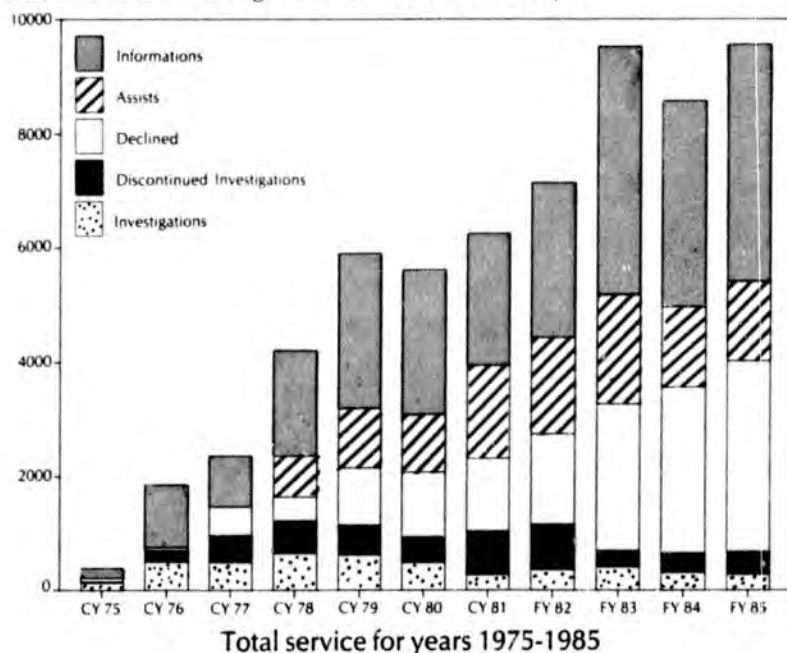
- After a three-year period of sharp increases, there was a leveling of complaints filed against the Department of Corrections. There was also a reduction by half in the number of complaints against the department that were concluded as full investigations.

- There were significant decreases in the number of complaints filed against two programs with substantial public interest—the state's public assistance programs and the permanent fund dividend program.
- There was a substantial increase in the number of complaints filed regarding delay and denial of student loans and unemployment benefits.
- There was a growing number of complaints against state agencies and corporations responsible for providing housing services (i.e., Alaska State Housing Authority, Alaska Housing Finance Corporation, and the Division of Housing Assistance of the Department of Community and Regional Affairs).
- There was a notable increase in the number of complaints involving agencies with discretionary powers, including, especially, complaints filed against the Alaska State Troopers and the Division of Family and Youth Services.

Finally, distribution of the complaints closed during the fiscal year confirms wider public demand for the office's services. The number of closed complaints from several of the rural areas increased dramatically. Complaints from the northwest portion of the state—from the North Slope, Kobuk, and Nome areas—increased by 133 percent. Similarly, complaints from the Interior increased by almost 83 percent, while those from Southwest increased by almost 55 percent.

Years 1975 through 1985

Through its first decade of operation, the Office of the Ombudsman generally has served a growing number of people each year. That growth is demonstrated in the following graph, which illustrates the office's total efforts from Calendar Year 1975 through Fiscal Year 1985. (Until 1982 office statistics were reported by calendar year and thereafter were reported by fiscal year.) The graph shows the total number of requests for information plus the number of complaints closed as declined, as assists, as discontinued investigations, and as full investigations for each of the ten years.



With two exceptions, since the office's inception, public demand for the office's services has followed a steady upward trend. Part of that trend resulted from increased public awareness about the office and the services available. Moreover, as the legislature appropriated funds for additional programs and services during the past decade, the ombudsman's jurisdiction—the number of programs against which complaints could be filed—substantially expanded. The trend was also influenced by the state's dramatic population growth during the 10 years, a period in which Alaska's population increased by approximately 30 percent. Finally, the increased number of individuals housed in correctional facilities significantly added to the number of corrections-related complaints that have been filed with the office.

The numbers do not reflect the office's emphasis on the timeliness and quality of investigations. The main volume of this report relates in detail significant efforts made over the past four years to improve both. Among the noteworthy changes that occurred are the following:

- Regulations were revised to more clearly indicate to the public and to state agencies the manner of receiving and processing complaints, conducting investigations, reporting findings and recommendations, and handling confidential information secured from agency files.
- Regular rotation of ombudsman assistants between intake and investigation was scheduled.
- Caseload management elements of the Legislative Affairs Agency's computer support system were extended, allowing regional representatives and ombudsman assistants to more effectively use the system to monitor progress, meet deadlines, respond to caseload imbalances, and combine investigations of like issues.
- Standard definitions were given to the various "appropriate subjects for investigations" identified in the Ombudsman Act, and standard procedures were applied to the reporting of findings and recommendations at the conclusion of investigations.



An Agenda for the Office

Alaska's short-term state revenue projections are not bright. With petroleum revenues in decline, state agencies will almost certainly begin to feel the pinch of resource limitations or reductions; some agency staffs will be pared, and the quality and breadth of programs and services may diminish.

Experience confirms that, when agency programs are significantly altered, the public often experiences dissatisfaction with the services received. That dissatisfaction, of course, often takes the form of complaints to the ombudsman. In response to anticipated reductions and dislocations of services, the volume of complaints brought to the ombudsman's attention through the next several years will surely grow.

Despite an anticipated increase in public demand for services, the office needs to be attentive to its current efforts. In a critical evaluation of his own office, Hawaii Ombudsman Herman Doi wrote:

A government which is responsive and responsible to the people must be responsive and responsible to individuals in [its] society. One way [to do that] is for government to provide its individual citizens with an informal, inexpensive, and efficient mechanism whereby their individual complaints against administrative decisions can be thoroughly investigated, researched and evaluated against the requirements of the law. That, in short, is the task of the Ombudsman's Office.

An ombudsman's office, Ombudsman Doi surely would have agreed, is only as effective as its ability to examine and to respond to each and every complaint which warrants attention. The Alaska Office cannot fail to meet that objective.

Within the constraints of available resources, the office should also extend its initiatives. For example, contacts with residents living away from the state's urban centers should be expanded; the office must assure that these residents receive proper attention and fair treatment from state agencies. Similarly, the office should step up its contacts with persons confined to the state's institutions so that those who are directly dependent on the state for housing, food, and related services are properly and responsibly cared for.

The value of an ombudsman's office, however, is more than the number of persons assisted or the office's ability to intercede on behalf of particular complainants and their specific grievances. A significant element is the office's opportunity—even without the authority to compel an agency to reverse a decision or undo an action—to build public confidence in state government programs and institutions. That opportunity derives from the office's responsibilities to receive public criticism of government performance and to determine whether that criticism is well-founded. When investigation of a complaint discloses no fundamental error by an agency, the office can confirm the correctness of a particular action or decision. For agency personnel, then, the office's investigations can serve to endorse the agency's program management practices. On the other hand, the public has every right to demand high standards of performance from its public servants. When investigation confirms the validity of a complainant's criticism of an administrative act, the ombudsman's finding or opinion should fully relate reasons for criticism, and the recommendations should spark corrective action and—in some instances—essential program reform.

How to Best Use the Offices Services

In times of program change and tight agency budgets, we anticipate continued high demand for the services of the ombudsman's office. We ask your cooperation in making your contacts with the office more effective.

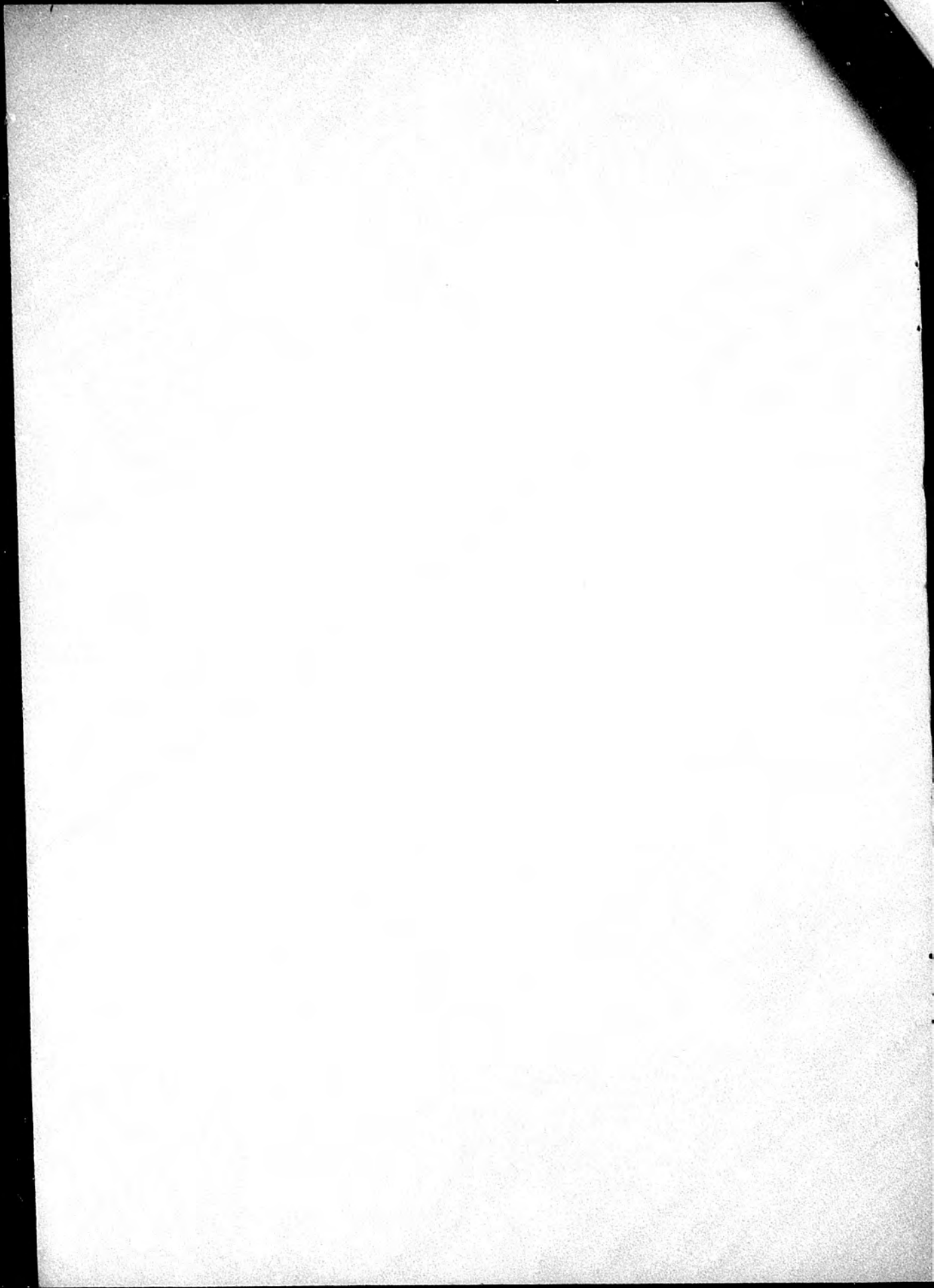
Before calling upon the ombudsman, you should first register your complaint with the agency causing your problem. You should use the following guidelines:

- **BE PREPARED.** Write down your questions and fill in the answers as you get them. Use the phone before you go in person. Sometimes a few questions over the phone can save hours waiting in line.
- **KEEP RECORDS.** Take good notes. Write down the names of the public employees you speak to and make copies of the documents you may later need.
- **FIND OUT WHY.** If service or benefits are denied, find out the reasons. Ask for specific references to law or policy and, if necessary, ask for copies.
- **TALK TO THE RIGHT PEOPLE.** Don't get angry with "rank and file" employees. They cannot change agency policies. Find out the names of the people who can change a decision and, when possible, talk to them.
- **CAREFULLY READ WRITTEN DECISIONS.** Many decisions have appeal procedures and deadlines stated in them. *You may lose your appeal rights if you do not meet these deadlines.*
- **DON'T BE INTIMIDATED.** Be persistent. If you can't understand what the agency is telling you, even after discussing the matter with agency employees, contact the ombudsman.
- **IN YOUR CONTACTS WITH AGENCY PERSONNEL, BE PLEASANT.** People perform best when a positive approach is used.

If, after attempting to resolve a problem with an agency, you are dissatisfied, you may file a complaint with the ombudsman's office. You should be prepared to provide:

- A description of the problem, with as many details (names and dates) as possible. Be prepared to send any relevant documents. These will be returned on request.
- A summary of the attempts you have made to resolve the problem. Who has been contacted? When? With what results?
- A summary of what you want to occur.
- Your name, address, and phone number.
- If the complaint involves confidential records, a signed release authorizing the ombudsman to examine and copy them.

Please understand that, by filing the complaint, the office does not become your advocate. Office staff need and expect your cooperation, but reserve judgment on the merit of the complaint until the facts can be carefully examined. If staff conclude that your position has merit, the office can "advocate" for you in the sense that it can present one or more corrective recommendations for the agency's consideration.

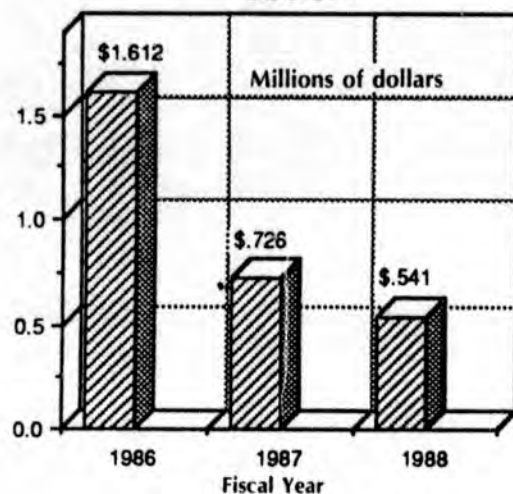


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The Alaska Ombudsman Report

Annual report of the Office of the Ombudsman, State of Alaska 1987-

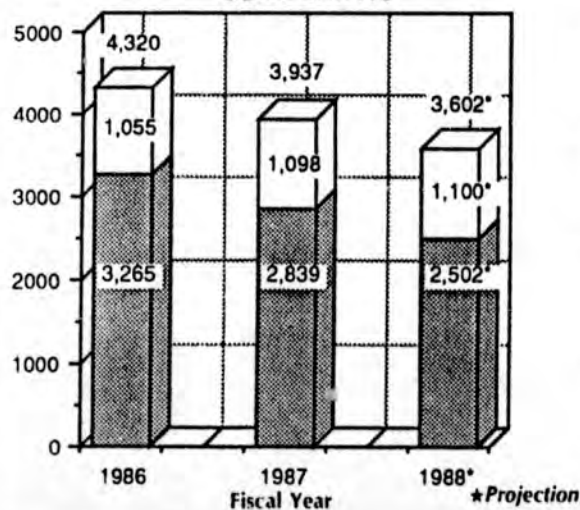
BUDGET



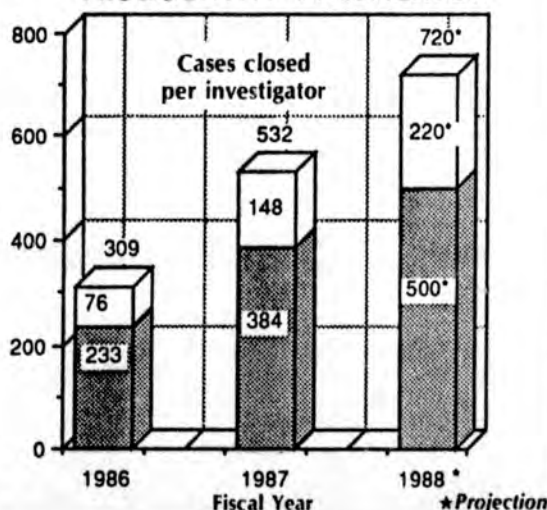
EMPLOYEES



COMPLAINTS



PRODUCTIVITY/ INVESTIGATOR



Office staff adjusts to shrinking budget and heavy caseload

Europeans use the term rationalization to describe the process of using fewer resources more effectively, and that certainly characterizes the activities of the Office of the Ombudsman this past year.

The current budget of \$541,000 for fiscal year 1988 is one-third the funding level two years ago and down 25 percent from last year's appropriation of \$725,600.

The reduced funding forced the closure of the Fairbanks regional office this past summer and the elimination of three and one half positions from the overall budget. The ombudsman now maintains offices in Anchorage and Juneau.

The Anchorage office is supervised by Deputy Ombudsman Sandra McGill, who has more than five years ombudsman experience as an investigator in the Fairbanks office. Serving as ombudsman assistants are Mary Southard, Steve Atkinson and Robyn Williams; Janet Barton is the secretary for the Anchorage office.

Complaints from Southcentral, Northern and Interior Alaska are routed to the Anchorage office using toll-free telephone numbers. Anchorage staff also accept complaints from deaf persons statewide, via a "tele-device for the deaf" (TDD) machine.

Persons also may file complaints by mail or in person at either Anchorage or Juneau.

Acting Ombudsman Bruce Aronson works in the Juneau office with Larry Persily and Dave Plaskett, who serve as ombudsman assistants, and Paula Cadiente, the administrative secretary. Plaskett transferred from Fairbanks when that office closed this past summer.

The Juneau office also accepts complaints on a toll-free phone line, serving all of Southeast.

"With nine employees, office resources are focused on important administrative policy issues which affect a significant portion of the public, as well as addressing individual com-

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The Alaska Ombudsman Report

Annual report of the Office of the Ombudsman, State of Alaska

1986

Report offers explanation of office task

Every annual report from every ombudsman's office around the world defines or redefines this rather odd sounding term. Yet, even after the Alaska ombudsman's office has been around for 11 years, many people in the state can't pronounce the word and don't fully understand the office.

It's enough to make any self-respecting ombudsman staff member cringe when the voice at the other end of the phone says "from the office of the what?"

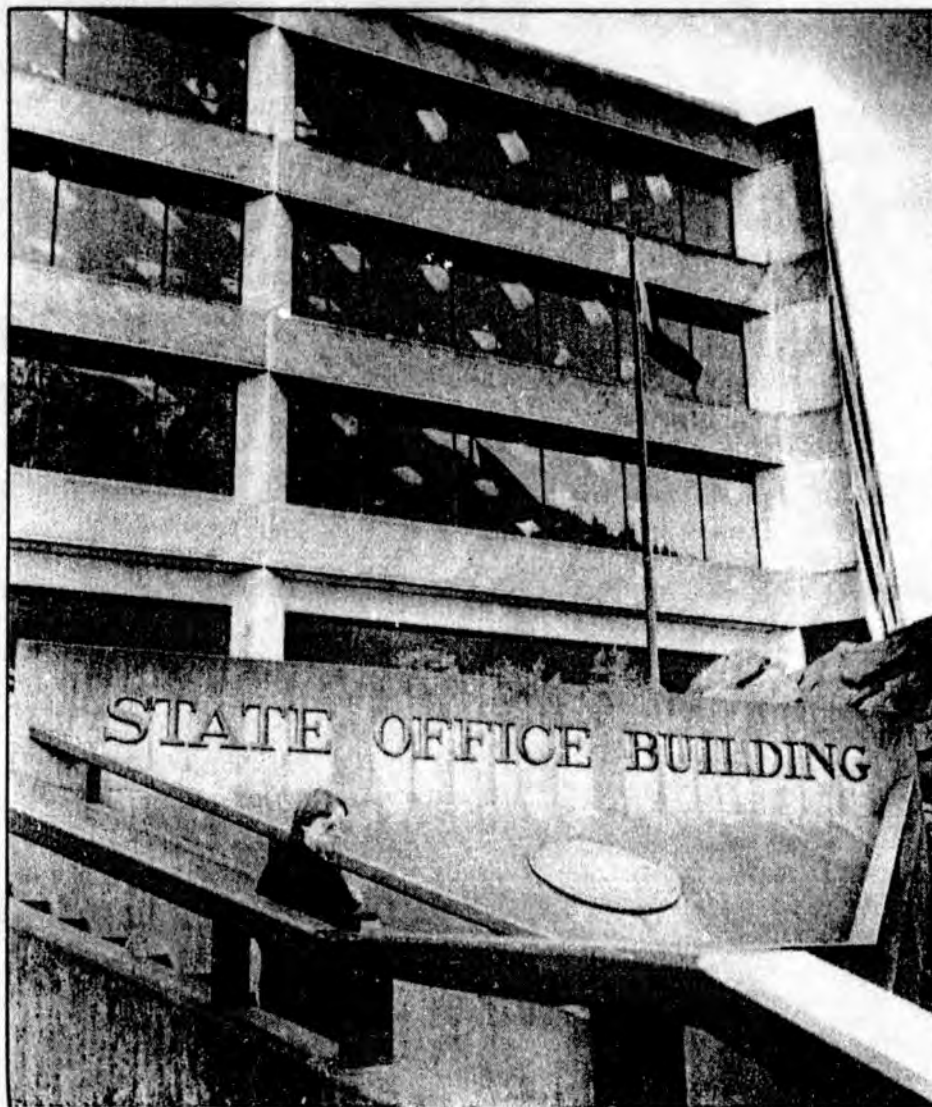
The principles that make the ombudsman's office unique are simple enough, yet they are not very widely understood by the public. Here are five words that describe the essence of the office:

- **Investigate** is a straightforward term; the ombudsman's office investigates citizen complaints against the government.

This means find the facts, analyze them in a logical and fair manner, and report the findings so that the citizen and the bureaucrat can understand how the decision was reached.

- **Independent** means free from political interference in making decisions.

In Alaska the ombudsman is appointed by the legislature for a five-year term and is well protected from the politics of lawmakers and the governor, although the legislature certainly can hack away at the budget or debate the appointment of the ombudsman.



Ombudsman works within lower budget

This past year was a traumatic time for Alaska, with a state budget deficit that a hundred thousand VISA cards couldn't cover.

The ombudsman's office took its turn and sat through a full chorus of the budget-cutting blues before opening the new fiscal year July 1 with half the cast of a year ago, yet just as many people in the audience to serve.

Acting Ombudsman Robert Walton said of the severe budget cut imposed on the ombudsman, "Rather than look at what we did not have, the office turned its attention to what we had to do."

Even with the loss of half its budget of a year ago, Walton said the office still provides a valuable service to the state, both in helping citizens and in helping government do a better job. The office handled more than 4,300 complaints in the past fiscal year, and an additional 2,900 requests for information.

Working to balance falling oil prices and a rising deficit, the legislature cut the ombudsman's office budget in half for the current fiscal year and gave notice that the office faces possible elimination next year.

Walton said staff members see this year as a challenge to show the legislature and the public what the office can do and why it should be funded in future years.

The office went from \$1.715 million in fiscal year 1985 to \$1.612 million in 1986, a