

S B

416

SENATE STATE AFFAIRS COMMITTEE

BILL NUMBER SB 416

SPONSOR Rules

BILL TITLE powers and duties of the ombudsman

DATE REFERRED 1-29-90

HEARING SCHEDULED 2

FISCAL NOTE PREPARED Req. Duncan

SPONSOR CONTACTED Duncan ✓

INTERESTED PARTIES CONTACTED

Mike Davis 2-23-90 - 4930

P H O N E	TO	Jusie	DATE	2/2	TIME	8:15	AM
	FROM	Gen Stranbary	AREA CODE				PM
	OF		NO.	264-8228	EXT.		
M E S S A G E	re SB 416 — on court system						
PHONED		CALL BACK	RETURNED CALL	WANTS TO SEE YOU	WILL CALL AGAIN	SIGNED	URGENT

OTHER

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 1/29/90

FURTHER: Finance

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED
INTO OFFICE: _____

State Affairs

Committee considered

SB 416

"An Act relating to the office of the ombudsman and to the powers and duties of the ombudsman."

and recommended:

- replace with _____ CS SB 416 same title
- attached amendment(s) new title
- _____ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

ATTACHES NEW FISCAL NOTE(S):

Department(s)/Date:

Department(s)/Date:

fiscal note(s) _____

zero fiscal note(s) office of Ombudsman 2-7-90

appropriation-no fiscal note

Governor's bill w/fiscal note

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

Paul He
Pat Adams
Jan Mills

Tim Kelly - No Rec

Pat Adams do pass
Chair: Signature and Recommendation

Alaska State Legislature

Sen. Pat Pourchot, Chairman

Sen. Jan Faiks, Vice Chairman
Sen. Al Adams
Sen. Tim Kelly
Sen. Rick Uehling



P.O. Box V
State Capitol
Juneau, Alaska 99811

907-465-3712

Senate State Affairs Committee

MEMORANDUM

TO: Senate State Affairs Committee Members
FROM: Senator Pat Pourchot
RE: Friday, February 23 Committee Hearing
DATE: February 22, 1990

On Friday, February 23 at 1:30 p.m. in the Beltz Room the Senate State Affairs Committee will hold a teleconference hearing on the following bills:

CS SB 384. An Act relating to election campaigns and providing for an effective date.

Continuation of Wednesday hearing. Scheduled for final action.

Proposed CS for SS SB 150. An Act establishing a senior housing office and loan program in the Department of Community and Regional Affairs; and authorizing the issuance of bonds for senior housing.

Continuation of Wednesday hearing, brief update.

SB 416. An Act relating to the office of the ombudsman and to the powers and duties of the ombudsman.

This bill was introduced by the Legislative Council at the request of Duncan Fowler, State Ombudsman. The major provisions are to keep reports to agencies confidential while the agencies prepare responses to preliminary ombudsman reports; to ensure the ombudsman's access to confidential records; and general administrative changes such as requiring the appointment of a designee should the ombudsman become incapacitated, formalizing the office's relationship with the LAA and clarifying how school districts could opt for ombudsman services.

SJR 61. Relating to persons immigrating to and requesting asylum in the United States. Sponsored by Senator Faiks, this resolution urges the U.S. Immigration and Naturalization Service to allow political asylum to persons from Eastern Bloc countries, regardless of date of application and to not revoke political asylum already granted to persons from those Eastern Bloc countries of Hungary, Poland, East Germany, the Union of Soviet Socialist Republics, Czechoslovakia, Bulgaria and Romania. A copy of the companion house bill, CS HJR 63 is attached, showing the amendments.

Alaska State Legislature

Sen. Pat Pourchot, Chairman

Sen. Jan Faiks, Vice Chairman

Sen. Al Adams

Sen. Tim Kelly

Sen. Rick Uehling



P.O. Box V
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Juneau, Alaska 99811

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Senate State Affairs Committee

MEMORANDUM:

TO; Senate State Affairs Committee Members

FROM; Senator Pat Pourchot

RE; CS HB 452, An Act relating to the office of the ombudsman

DATE; March 5, 1990

CS HB 452 has been referred to Senate State Affairs Committee. We passed out the companion bill, SB 416 on February 23, 1990 with changes matching those of the House State Affairs Committee. CS HB 452 was amended on the house floor, at the request of the Department of Public Safety and the Prosecutor's office to add a restriction which reads:

(a) In an investigation, the ombudsman may
(4) notwithstanding other provisions of law, have access at all times to records of every state agency, including confidential records, except sealed court records, production of which may only be compelled by subpoena, and except for records of active criminal investigations and records that could lead to the identity of confidential police informants.

The Senate Finance Committee has scheduled SB 416 for Tuesday, March 6th. I would like to know the committee's wishes concerning these two bills.



State of Alaska
Ombudsman

Duncan C. Fowler

March 2, 1990

Mike Davis, Chair
Alaska Legislative Council
Alaska State Legislature
Box V
Juneau, Alaska 99811-3100

RE: FY'91 Ombudsman Budget

Dear Representative Davis:

I understand there were some questions about the Ombudsman FY'91 budget request at the last Legislative Council meeting. Hopefully this letter will answer them. If not, please let me know. I would be happy to meet with you. The figure provided to Pam Stoops of Legislative Affairs was off my spreadsheet. Staff of the finance committees have advised me the final budget is not needed for another two or three weeks. If you wish, I will be happy to send you a copy of the final document.

My FY'91 budget request is the product of two significant issues. First is the remarkable 26% increase in citizen inquiries we have experienced this year. Most of that increase has come from residents of the Anchorage bowl area. To put this unexpected growth in perspective, our workload has increased 117% in the past two years. In part, this has been due to the reopening of the Fairbanks office. However, staffing has not increased commensurate with this unexpected demand. I note that this FY'91 General Fund request is similar to our FY'83 appropriation yet significantly less than given the office in FY'85.

The second issue is a response to recommendations made by the Governor's Conference on Small Business. Ninety-nine Alaska men and women from around the state met to seek solutions to small business problems. Their efforts were sponsored by significant grants from Alaska's private sector and some state assistance. The group identified 156 problem areas. They focused on the top 20 and recommended ways to solve them. Solutions for three of the top 20 problems involved the Office of the Ombudsman. The conference recommended that *each* of my offices have a specialist assigned only to small business issues. Because of budget implications, I only included an Assistant Ombudsman position to deal with small business issues for the Anchorage office. I was pleased the Governor's formal response to the recommendations relating to this office was positive. I was even more pleased by the vote of confidence by Alaska's business community in the ombudsman concept.

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I am aware that asking for budget increases is not a popular thing to do. However, I believe I would be derelict as Ombudsman and as this program's manager in not advising the legislature of the increased citizen demands on this office. Further, I feel obligated to request the resources necessary to *minimally* fulfill the statute's mandate for this office.

Although my final figures may vary slightly as they move from the spread sheet to budget forms, the increases will reflect the following. I have shown the equipment costs separately as they are one time cost items.

FY90 appropriation	1033.3
Staff increase to maintain service level (Anch 2.5, Fbks 1, Juneau 1)	239.7
Equipment for new staff	42.7
Small Business pilot project	65.8
Equipment for Small Business	<u>7.3</u>
Total FY'91 Request	1426.4
Revenues from Municipal contracts	<u>42.0</u>
FY'91 General Fund request	1384.4

The Alaska Ombudsman Act allows municipalities to contract with this office for ombudsman services. However, it also requires they pay the *full* cost of that service. Contracts currently exist with the City and Borough of Juneau and the cities of Palmer and Wrangell. I have had requests for cost figures from the North Slope Borough and the Fairbanks North Star Borough as well.

I have attached a sheet with several graphs to give you an overview of this office's operation. Please note the following:

- * The number of citizen complaints and requests for assistance has never been higher. Alaskans ask the ombudsman for help at the rate of 1 out of every 50 of the state's population.
- * FY'91 Inquiry figures have been minimally projected.
- * Southcentral Alaska citizens use of this office is breaking records.
- * There is an increasing and disturbing upward trend in the number of days needed to close complaints, a direct reflection on existing staff resources.
- * Current FY'90 staff workloads are 70% higher than they should be. The FY'91 request will improve but not eliminate the problem.

Currently, individual staff workload is almost double what it should be. It should not exceed 750 inquiries per investigator per year. When it exceeds that figure investigators must limit the attention given to any one complaint. Some issues do not get the review they deserve. The potential for making errors increases. Opportunities to fix systemic problems affecting large numbers of Alaskans are limited as staff are busy band-aiding individual problems. Although they cannot do the job of a trained investigator, students and volunteers are being sought to help with some of our volume.

It is important you know we require individuals who seek help from this office first try and fix the problem on their own. If they do not know how, staff point them in the right direction. The Office of the Ombudsman acts as a refuge of last resort for thousands of Alaskans having trouble with government. Inadequate staffing of this office can effectively prevent many Alaskans unfairly treated by government from receiving the services properly due them.

And, finally, I believe this office plays an important role in providing legislative oversight of governmental agencies. Adequate staffing helps assure we can continue in that role. I would appreciate your support of this budget request. Let me know if you have questions about this budget or suggestions for the office.

Sincerely,

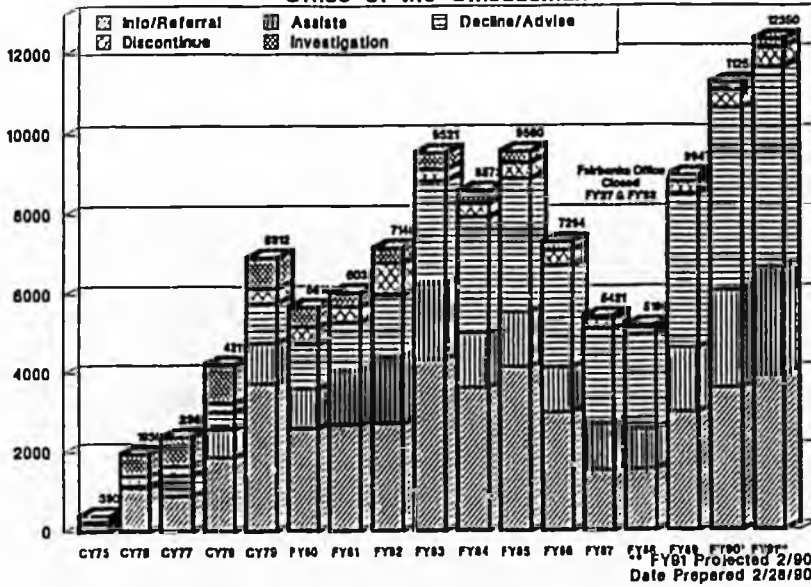
Duncan C. Fowler
Ombudsman



Ombudsman

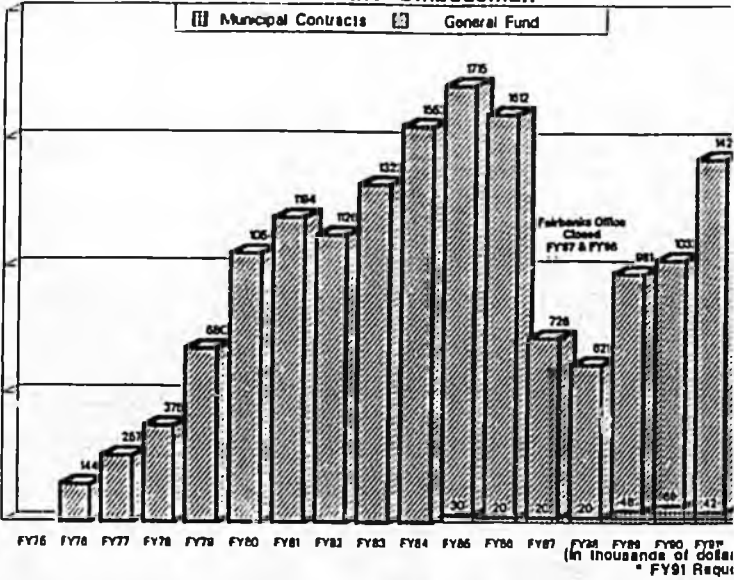
Inquiries by Type and Year

Office of the Ombudsman

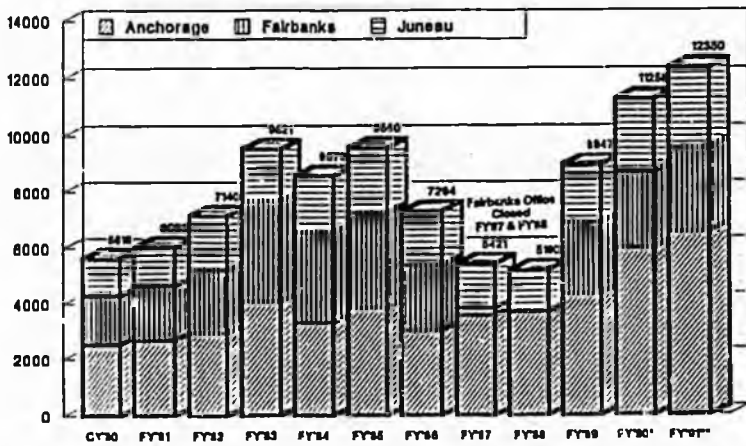


Fiscal Year Expenditures

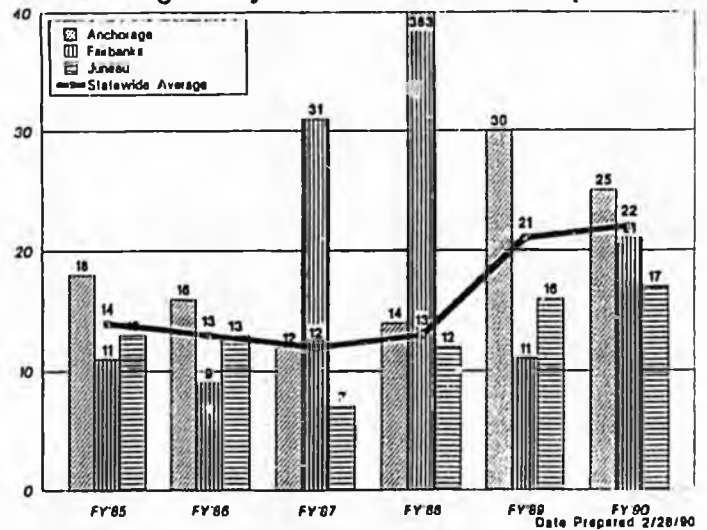
Office of the Ombudsman



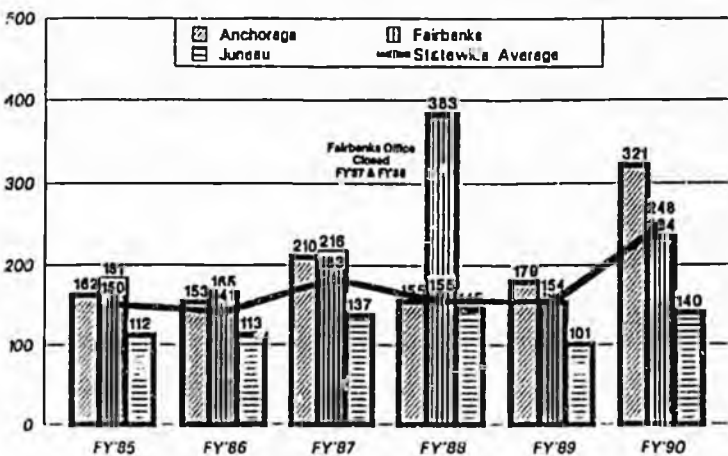
Source of Inquiries



Average Days to Close All Complaints

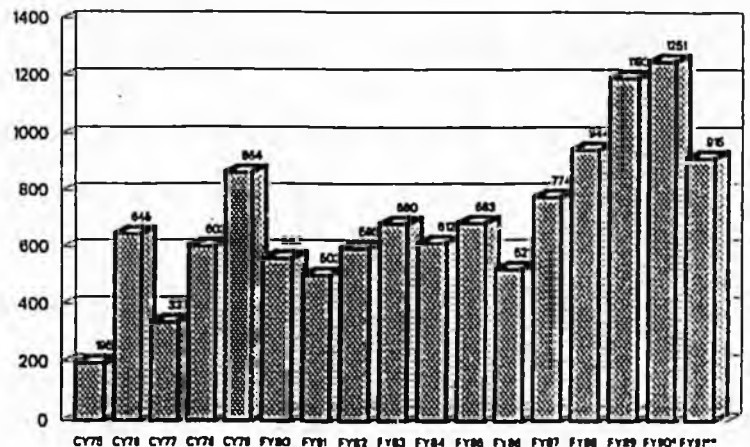


Average Days to Close Full Investigations



Inquiries Per Investigator

Ratio should not exceed 750





State of Alaska
Ombudsman

Duncan C. Fowler

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March 9, 1990

Senator Steve Frank
Senate Finance Committee
Post Office Box V
Juneau, Alaska 99811-3100

RE: CSHB 452(SA)am

Dear Senator Frank:

You asked my opinion about amending the Ombudsman Act to require my budget submission be given to the Legislative Council each year. Current law requires submission be directly to the House and Senate Finance Committees for review. I not only see advantages to your suggestion but support it.

I surveyed other states with legislative ombudsman to learn their practice. Nebraska and Iowa ombudsman do submit their budgets to bodies similar to our council. Hawaii does not have a council but is establishing one in response to recommendations by the National Council on State Legislatures. The Hawaii Ombudsman will have her budget reviewed by the new body.

Personally, I would enjoy the opportunity to work more closely with the legislative leadership. I believe it would benefit both this office and the work of the legislature if more members of the legislature understood and could support the work we do. This has not always been the case.

I would be happy to answer any additional questions you may have regarding the impact of your amendment on our operation. We both know it is important this office remain a nonpartisan and independent agency. This reputation allows our work to be viewed as credible by both the public and those agencies we investigate.

Sincerely,

Duncan C. Fowler
Ombudsman

DCF:pjc

AMENDMENT

IN THE SENATE

BY SEN. FRANK

TO: CS SB 416 (STATE AFFAIRS)

IS AMENDED BY ADDING A NEW SECTION TO READ:

" * SEC. 5. AS 24.55.080 (C) IS AMENDED TO READ

(c) the ombudsman shall submit a budget for each fiscal year to the Alaska Legislative Council [Finance Committees of the Legislature] and the council shall annually submit an estimated budget to the governor for information purposes in the preparation of the executive budget."

renumber the following bill sections accordingly.

SB 416, An Act relating to the office of the ombudsman and to the powers and duties of the ombudsman.

HB 452, the House companion bill is on the floor today.

*Duncan Fowler will testify.

The Alaska Court System supports this bill with amendment. Amendment is in the packet.

No objections have been stated on the house side to this bill nor have I received any calls.

Ombudsman charges agency stonewalling

By JOHN TETPON
Times Writer

The state Department of Corrections has stonewalled for months regarding what it has done about a complaint of employee misconduct and may not have taken action against the offender, state Ombudsman Duncan Fowler said Wednesday.

The case involves a 20-year staff member of the parole and probation office in Juneau who took five weeks of leave and did not deduct it from his vacation time,

Fowler said.

The man was turned in by his fellow workers.

Fowler refused to identify the employee because of confidentiality rules, but said the man makes more than \$4,000 a month.

Although Corrections Commissioner Susan Humphrey-Barnett said Tuesday she has reprimanded the worker, department personnel officer Beth Lassiter of Juneau said Wednesday she did not know

See Agency, page A-8

Agency

Continued from page A-1

if any action had been taken. "I'm not aware of anything," Lassiter said.

The ombudsman's office, created in 1975 by the state legislature, has authority to investigate citizen complaints about the way state agencies do their jobs. If wrongs are found, the ombudsman makes recommendations to the agency to correct them.

The watchdog office can also ask the agency to tell the ombudsman what it will do in response to a problem and, if nothing is done, take the matter to the legislature and the governor, Fowler said.

The case has been on the books for eight months and has been a longstanding source of frustration, according to Fowler. Until Fowler sees a report from the Corrections commissioner, he will consider that nothing has been done.

"That it took eight months for

the Department of Corrections to do something, that's the most disturbing of all," Fowler said.

Another bone of contention is whether the ombudsman has the authority to obtain records of personnel actions from state agencies. Fowler said he understands his office has that right.

But Assistant Attorney General Larry McKinstry said Fowler does not have such authority. "That's my reading of the (state) statute," he said.

Deputy Ombudsman Rosa Garner said her Anchorage office has had several opinions from the attorney general's office over the years supporting Fowler's position.

Deputy Corrections Commissioner Frank Prewitt said the Corrections Department is not trying to hide anything.

"There's more going on behind the scenes on this," Prewitt said, referring to the involvement of Corrections, the attorney general and the state Division of Labor Relations. He blamed the snail's pace on the wheels of government. "It's the bureaucratic machinery," he said.

But Fowler said the case is not the first time Corrections

Commissioner Barnett has failed or refused to cooperate.

"It has happened before," Fowler said. "Other state commissioners usually get their investigations and resolutions to problems back to me in four to six weeks."

Barnett said Tuesday the case has dragged on because it involved a confidential personnel matter. She also refused to name the man.

The employee was turned in by fellow workers in the Juneau parole and probation division in May 1988. He is also accused of coming to work late and leaving early.

Deputy Ombudsman Garner said Tuesday she has written a letter to Barnett asking what kind of disciplinary action has been taken. But because of confidentiality in personnel matters, Garner said she may not get a reply.

Fowler said after finding the accusations by Corrections employees had some truth to them, he offered several recommendations. He said he asked Corrections to set up a system to monitor vacation time taken by its employees. He said that was done.



State of Alaska
ombudsman

Duncan C. Fowler

February 25, 1990

Members of the house
Alaska Legislature
Box V
Juneau, Alaska 99811

RE: HB 452 Ombudsman Act amendment

Dear Representative

Amendment No.2 to HB 452 was offered on the floor last Friday. It virtually eliminates the ombudsman's jurisdiction over the Department of Corrections. It would significantly decrease legislative oversight over one of the largest departments in state government. The Office of the Ombudsman does not support this amendment. I would appreciate your support of my position.

The Alaska Ombudsman Act is a model act. HB 452 was proposed to correct problems identified over the past 15 years. The Ombudsman Act contains specific provisions to insure persons held in state custody (whether it be mental, medical or correctional) have rapid and uncensored access to this office. Persons who are held in state facilities are in an unusual position. The state has virtually total control over all aspects of their daily life. Despite the fact most state employees do a good job, humans do error. And sometimes the wrong person is hired to do a job. Abuses of patients and inmates can and do occur in Alaska facilities. It is unfortunate that some have even died because of errors made.

The ombudsman fixes problems between the "keepers" and the "kept" on a daily basis both formally and informally. There are times we support decisions made by correctional managers. There are other times we find the inmate was wronged and we recommend that the agency make things right. We provide an external review and offer solutions to problems. Our review of an issue, even on an informal level, gives an air of legitimacy to many of the department's decisions in the eyes of the inmates. We are not part of that system.

No matter who the complainant is, staff are required to see what the person has done to resolve the problem. If they haven't done anything about it we explain how to fix it on their own. With inmates, this is done very quickly. With the exception of emergencies involving health or safety issues, inmates are required to go through corrections' internal grievance process. Ombudsman staff are very familiar with those procedures and can quickly provide advice to the inmate.

Ombudsman staff are urged to attempt to resolve all complaints as quickly as possible. This means that a large number of significant issues are resolved at an informal level. This is especially true with inmate complaints. Internally we use

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terminology like "Assist" or "Decline/Advise" to describe the informal complaint resolution process. Here are examples of issues that have been resolved informally:

Denial of medical treatment or prescription drugs. Ombudsman staff resolve these with institutional supervisors and medical personal.

Inmate personal property and funds kept in the departments custody being lost, damaged, stolen or unaccounted for.

An officer used MACE on inmates several times without cause. No action was taken until advised we would pursue it if they didn't.

Inmate *court* papers being "lost", "destroyed" or "misplaced" by correctional staff.

We receive frequent complaints about "lost" or "never received" grievances. We review grievances that are summarily denied without reasons given. We have even received a "cop out" (preliminary grievance form) with a big red "NO" stamped on the form without further explanation. Corrections holds inmates to appeal and grievance time lines but is not obligated to do likewise. It is important that the state play by the rules. The ombudsman acts as a check on the fairness of that process.

In the past 5 years we have formally investigated 103 corrections complaints. Fifty-six percent were fully or partially justified. Examples of inmate complaints where allegations were found to be "Justified" or "Partially Justified" are:

Failure to comply with fire safety requirements in jail cell area. Inoperable smoke alarms, sprinklers and fire extinguishers.

Inmate placed in Maximum Security because superintendent had personal grudge. Appeal to the director was unfairly handled.

Staff placing untruthful incident reports in inmate's file.

Jail food was unsanitary. It had bugs crawling in it.

Agency refusal to allow an inmate to attend a civil court hearing.

Refusal to allow inmates in lock down to contact their attorneys.

Loss of engagement ring. This resulted in restitution to the inmate and significant revisions to institutional property control procedures.

Unfair and inconsistent disciplinary penalties including loss of months of "good time" and use of punitive segregation.

Many complaints involving the internal agency grievance and appeal system.

Improper handling of inmate mail. Refusal of agency to investigate resulting misconduct complaint.

Several of these complaints had the potential for litigation. Ombudsman intervention can eliminate the need for an inmate to look to the courts for relief. Alaska is already subject to a growing number of inmate law suits. In 1983 only 13 were filed. But, in *each* of the past three years more than 100 new suits have been filed. With appropriate resources, I believe the ombudsman office is a cost effective way to help stem the growing number of law suits.

Alaska is not alone in its frustrations of having to care for criminals. Three states, Michigan, Kansas and Minnesota, have only corrections ombudsman. They have recognized the liability of an improperly monitored correctional system. The states of Nebraska, Iowa and Hawaii have general jurisdiction ombudsman as in Alaska. All of the states are challenged by a large number of inmate complaints. I note that the Hawaii legislature was so frustrated with the large number of inmate complaints to their ombudsman, they passed a resolution directing the Department of Corrections to improve its grievance system.

The number of complaints about the Department of Corrections will double this year to 1272 and I am concerned about it. Many of you know I worked in corrections for several years. Please accept my observation that managing a correctional system is not an easy task. *They have the legal responsibility to be the fairest of the fair.* And to make things more difficult, when you hire humans to *contain* other humans, conflicts will naturally arise. To keep order, an effective internal and external dispute resolution process is required in a correctional setting. I believe the ombudsman is a key in that external review. We are a cost effective tool that helps insure fair and humane treatment in our correctional facilities. It helps to reduce the states liability exposure. We help increase the security of the prisons by helping to reduce conflict.

In closing, it is important for you to understand the roll of the Cleary Monitors. They are Corrections employees who are supervised and evaluated by the local institution's superintendent. They do a good job in resolving many problems and are invaluable to my staff. But, they only provide an internal review and it does make sense to keep your boss happy. In fact it is not unusual for us to get a call from a monitor asking us to pursue a problem they have been unable to resolve internally.

This past week the media reported that Corrections has been less than cooperative with this office in a couple of recent issues. I believe passing Amendment No.2 could send an unintended message to managers in the executive branch. I would appreciate your support of my position in this matter.

Sincerely,

Duncan C. Fowler
Ombudsman



State of Alaska
ombudsman

Duncan C. Fowler

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February 16, 1990

Senator Pat Pourchot, Chairman
Senate State Affairs Committee
Post Office Box V
Juneau, Alaska 99811-3100

RE: SB 416, Proposed ombudsman legislation

Dear Senator *DP* Pourchot:

This bill is scheduled to come before the Senate State Affairs Committee at its February 23 meeting. I thought it might be useful for you to receive some background on the matter prior to the meeting. You may be interested to know a similar bill, HB 452, has passed from House State Affairs to Rules. They adopted a helpful amendment offered by the Court System. I would appreciate similar consideration by the Senate State Affairs Committee.

The Legislative Council introduced this bill at my request January 29, 1990. It serves to rectify weaknesses identified in the original Alaska Ombudsman Act over the past 15 years.

You might be interested to know that I asked the council to introduce the bill. I was seeking the support of a non-partisan body legislative group for the bill. This bill is a product of review and modification by the council. If passed, it would significantly improve and strengthen my office's ability to function as an independent investigative agency within the legislative branch of government. There is a zero fiscal note with this proposal.

Despite the fact the Alaska Ombudsman Act is considered model legislation, weakness have been identified over the past 15 years. The proposed bill offers solutions to those weakness.

The improvements include: a provision to keep reports to agencies confidential while the agencies prepare responses to preliminary ombudsman reports; a provision to ensure the ombudsman's access to confidential records; and general administrative changes such as requiring the appointment of a designee should the ombudsman become incapacitated, formalizing the office's relationship with the Legislative Affairs Agency (LAA) and clarifying how school districts could opt for ombudsman services.

The following is a discussion of each section of the proposed legislation.

Sec 1-3, 12) Appointment of an acting ombudsman

These sections require the ombudsman to designate a person to act in his/her place to ensure the orderly continuation of the Office of the Ombudsman should the ombudsman become incapacitated. Current law makes such an appointment permissive. All but one of the previous ombudsmen have chosen to make such an appointment. Not having a designated successor creates the potential of a crisis within the office. In that case, no person would have the statutory authority necessary to issue findings or recommendations as required by the Ombudsman Act should the ombudsman become incapacitated.

Sec 4) Administrative support - Legislative Affairs Agency

This section formalizes the relationship the ombudsman has enjoyed with the Legislative Affairs Agency (LAA) for the past 15 years. Current law was really intended to help open the doors of the Office of the Ombudsman in 1975, its first year of operation. It required the Legislative Council to provide the ombudsman "suitable space and equipment." Currently the LAA provides data processing support both with our main frame applications and some of our equipment. The Legal Division provides occasional advice and opinions.

Sec 5, 8, 9, & 13) Access to Confidential Information

These sections clarify the ombudsman's access to confidential records in the possession of state agencies. Currently we rely on regulations to provide agencies with the assurance that their confidential records and information will be properly handled. It would be more appropriate to clarify our access in statute.

Clear access to confidential records is critical for the ombudsman to do a credible job investigating several types of citizen complaints. This issue has also been the source of the majority of Attorney General Opinions involving the ombudsman's office in the past 15 years.

In most cases we are able to receive releases for access to confidential medical, financial or case record data from those citizens who complain about their treatment. Many times while we investigate those complaints we find what appears to be system-wide problems but are prevented from verifying our suspicions. We are unable to access the names or files of other Alaskans in similar situations to test our concerns. I believe that in several of those cases we could have prevented problems for many more citizens other than just our complainants.

It should be noted that just because the ombudsman has greater access to confidential information, it does not allow the ombudsman to release that information to the public or other government agencies. The ombudsman would have no additional privilege to release that information than the agency that is the original custodian of the data. It should be noted also that ombudsman investigative files are confidential and staff are prevented by statute from testifying in court about matters brought before them.

The terminology used in Sec. 8 is similar in concept to Legislative Audit's statute. Section 5 makes it clear the ombudsman may implement regulations to provide the mechanisms to protect the confidentiality of the records we access. Sections 9 and 13 help define what a "record" is for the purposes of these sections.

I have enclosed copies of our existing regulations for handling confidential records and information. These regulations describe in detail how this office handles confidential information. Please note a process exists to mediate disagreements with agencies about the confidentiality of records. A provision allows for the courts to determine whether or not a record is in fact confidential.

Both the Attorney General and Court System have reviewed this bill. The Attorney General found no objections to this bill. The Court System offered what I believe to be a constructive amendment to Sec. 8 and ask this committee to include it in SB 416. The amendment is:

On page 3, line 9 add the following sentence: "*Sealed court records must be subpoenaed.*"

This amendment provides the court system a familiar mechanism to challenge our attempts to review records sealed by court order. If the court took issue with our attempt to access those records we would work it out in a court hearing. Such requests would be rare and I see the amendment as appropriate. I have included their letter to the Chairman of the House State Affairs Committee for your information.

Sec 6 & 7) Oral Notification

Each year the Office of the Ombudsman receives thousands of complaints and inquiries. We will exceed 10,000 this year. Most are received by telephone and a large number of these complaints are handled as "assists" or are "decline/explain" as premature complaints. We either "fix" the citizen's complaint with the state agency or provide the necessary guidance during that phone call. Citizens often know the disposition of their complaint by the time they hang up the phone. Current law requires written notification of the complaint's disposition to all complainants. Current staffing does not make this practicable. Further, even if given extra staff, I do not believe maintaining such a requirement would provide a better service to Alaskans.

These amendments allow oral or telephonic notification of either the intent to investigate or to decline a complaint. This has been the practice for the past 14 years and would bring our historical practice into compliance with the statute.

Sec 10 & 11) Preliminary Report Confidential

The Ombudsman Act makes it clear that records of the ombudsman are confidential and can only be released "insofar as disclosures may be necessary to carry out [the ombudsman's] duties." The problem comes when a preliminary report which is critical of an agency is sent to the agency for review and comment. It is important to understand that there are many parallels between our preliminary investigative report and a preliminary

audit report issued by Legislative Audit. That process should allow an orderly process for an agency to dispute "facts" found in an ombudsman preliminary report and offer alternative methods of correcting our proposed recommendations.

Currently the preliminary report, once in the agency's hands, becomes subject to access through the public information regulations (6 AAC 95). In the past, some agencies have felt compelled to release our preliminary report even though it contained areas of potential factual disagreement.

This legislation prohibits the release of the preliminary report to the public by any of the participants. It offers protection to the agencies during the period of comment and review. This is similar to the handling of Legislative Audit reports.

Sec. 13) Municipalities and School Districts


This section provides a mechanism for a school board to choose ombudsman services *independently* from the local governments' assembly or city council.

Recently, the City and Borough of Juneau School Board became the first school board to consider ombudsman services. When we considered the procedures necessary to implement such jurisdiction, it became apparent that no simple or independent method was provided to allow school boards the ability to make that decision. This is despite the fact the Alaska Ombudsman Act seems to envision such services for schools. This amendment to the Ombudsman Act allows school boards to choose or terminate jurisdiction by the Office of the Ombudsman by resolution independently from decisions made by another elected body. Neither the Alaska Council of School Administrators nor the Association of Alaska School Boards found objection to this provision.

Please let me know if you have any questions regarding the Office of the Ombudsman or this proposed legislation. As I have mentioned, the Attorney General and the Court System have reviewed the bill. They do not object to its approach with the proposed amendment.

I will be calling your office before the meeting in case you have questions about this bill. I am anxious to work with you and the committee to assist the passage of this bill. I would appreciate your support of what I believe to be important improvements to Alaska's Ombudsman Act.

Sincerely,



Duncan C. Fowler
Ombudsman

DCF:pjc
Enclosures



State of Alaska
ombudsman

Duncan C. Fowler

Letter # 1

February 6, 1990

Senator Pat Pourchot, Chairman
Senate State Affairs Committee
Post Office Box V
Juneau, Alaska 99811-3100

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Fairbanks, AK 99707
(907) 452-4001
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RE: SB 416, Proposed ombudsman legislation

Dear Senator Pourchot:

The Legislative Council introduced this bill at my request January 29, 1990. It serves to rectify weaknesses identified in the original Alaska Ombudsman Act over the past 15 years.

You might be interested to know that I asked the council to introduce the bill. I was seeking the support of a non-partisan body legislative group for the bill. This bill is a product of review and modification by the council. If passed, it would significantly improve and strengthen my office's ability to function as an independent investigative agency within the legislative branch of government. There is a zero fiscal note with this proposal. A similar bill, HB 452, has been introduced in the House.

Despite the fact the Alaska Ombudsman Act is considered model legislation, weaknesses have been identified over the past 15 years. The proposed bill offers solutions to those weaknesses.

The improvements include: a provision to keep reports to agencies confidential while the agencies prepare responses to preliminary ombudsman reports; a provision to ensure the ombudsman's access to confidential records; and general administrative changes such as requiring the appointment of a designee should the ombudsman become incapacitated, formalizing the office's relationship with the Legislative Affairs Agency (LAA) and clarifying how school districts could opt for ombudsman services.

The following is a discussion of each section of the proposed legislation.

Sec 1-3, 12) Appointment of an acting ombudsman

These sections require the ombudsman to designate a person to act in his/her place to ensure the orderly continuation of the Office of the Ombudsman should the ombudsman become incapacitated. Current law makes such an appointment permissive. All but one of the previous ombudsmen have chosen to make such an appointment. Not having a designated successor creates the potential of a crisis within the office. In that

case, no person would have the statutory authority necessary to issue findings or recommendations as required by the Ombudsman Act should the ombudsman become incapacitated.

Sec 4) Administrative support - Legislative Affairs Agency

This section formalizes the relationship the ombudsman has enjoyed with the Legislative Affairs Agency (LAA) for the past 14 years. Current law was really intended to help open the doors of the Office of the Ombudsman in 1975, its first year of operation. It required the Legislative Council to provide the ombudsman "suitable space and equipment." Currently the LAA provides data processing support both with our main frame applications and some of our equipment. The Legal Division provides occasional advice and opinions.

Sec 5, 8, 9, & 13) Access to Confidential Information

These sections clarify the ombudsman's access to confidential records in the possession of state agencies. Currently we rely on regulations to provide agencies with the assurance that their confidential records and information will be properly handled. It would be more appropriate to clarify our access in statute.

Clear access to confidential records is critical for the ombudsman to do a credible job investigating several types of citizen complaints. This issue has also been the source of the majority of Attorney General Opinions involving the ombudsman's office in the past 15 years.

In most cases we are able to receive releases for access to confidential medical, financial or case record data from those citizens who complain about their treatment. Many times while we investigate those complaints we find what appears to be system-wide problems but are prevented from verifying our suspicions. We are unable to access the names or files of other Alaskans in similar situations to test our concerns. I believe that in several of those cases we could have prevented problems for many more citizens other than just our complainants.

It should be noted that just because the ombudsman has greater access to confidential information, it does not allow the ombudsman to release that information to the public or other government agencies. The ombudsman would have no additional privilege to release that information than the agency that is the original custodian of the data. It should be noted also that ombudsman investigative files are confidential and staff are prevented by statute from testifying in court about matters brought before them.

The terminology used in Sec. 8 is similar in concept to Legislative Audit's statute. Section 5 makes it clear the ombudsman may implement regulations to provide the mechanisms to protect the confidentiality of the records we access. Sections 9 and 13 help define what a "record" is for the purposes of these sections.

I have enclosed copies of our existing regulations for handling confidential records and information. These regulations describe in detail how this office handles confidential information. Please note a process exists to mediate

disagreements with agencies about the confidentiality of records. A provision allows for the courts to determine whether or not a record is in fact confidential.

Sec 6 & 7) Oral Notification

Each year the Office of the Ombudsman receives thousands of complaints and inquiries. We will exceed 10,000 this year. Most are received by telephone and a large number of these complaints are handled as "assists" or are "decline/explain" as premature complaints. We either "fix" the citizen's complaint with the state agency or provide the necessary guidance during that phone call. Citizens often know the disposition of their complaint by the time they hang up the phone. Current law requires written notification of the complaint's disposition to all complainants. Current staffing does not make this practicable. Further, even if given extra staff, I do not believe maintaining such a requirement would provide a better service to Alaskans.

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Sec. 13) Municipalities and School Districts

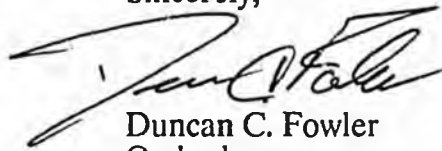
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February 6, 1990

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Please let me know if you have any questions regarding the Office of the Ombudsman or this proposed legislation. You may be interested to know the Attorney General's office has reviewed the bill. They did not object to its approach. I am anxious to work with your committee to assist the passage of this bill. I would appreciate your support of what I believe to be important improvements to Alaska's Ombudsman Act.

Sincerely,



Duncan C. Fowler
Ombudsman

DCF:pjc
Enclosure

agency, the agency has initiated corrective action or commits itself to take corrective action substantially as recommended.

(b) If an agency does not initiate corrective action or does not commit itself to take corrective action substantially as presented in the ombudsman's recommendation or modified recommendation, the ombudsman will, in his or her discretion, after considering any response received from the agency, submit a report of the matter to the chief executive officer of the agency or to the governor, and then make a report to the legislature, to the press, or to the public, as the ombudsman considers appropriate.

(c) The provisions of (b) of this section do not limit the ombudsman from making a report on any investigation to the legislature, the press, or the public, as the ombudsman considers appropriate. (Eff. 9/16/84, Reg. 91; am 3/28/86, Reg. 97)

Authority: AS 24.55.090
AS 24.55.200

21 AAC 20.250. COMPLAINANT TO BE INFORMED. Within 15 days after receipt of an agency's acceptance or rejection of an ombudsman's recommendation or modified recommendation, the ombudsman will notify the complainant of the result of the investigation and of the action taken or proposed to be taken by the agency. (Eff. 9/16/84, Reg. 91)

Authority: AS 24.55.090

**ARTICLE 4.
CONFIDENTIAL INFORMATION**

Section

- 300. Disclosure of confidential information
- 310. Disclosure with written consent
- 320. Disclosure of information from public sources
- 330. Disclosure as statistical information
- 340. Disclosure to agency
- 350. Assertion of privacy interest by agency
- 360. Disclosure to the complainant
- 370. Disclosure to governor, legislature, or grand jury
- 380. Public disclosure
- 390. Definitions

21 AAC 20.300. DISCLOSURE OF CONFIDENTIAL INFORMATION. A confidential record provided by an agency or a person to the office of the ombudsman during the course of an ombudsman's investigation may not be disclosed by the office of the ombudsman except as provided in 21 AAC 20.310 - 21 AAC 20.390. (Eff. 9/16/84, Reg. 91)

Authority: AS 24.55.090
AS 24.55.160

Art. I, sec. 22, Alaska Constitution

21 AAC 20.310. DISCLOSURE WITH WRITTEN CONSENT. The ombudsman will, in his discretion, disclose a confidential record if the ombudsman first obtains the written consent of the person about whom information in the confidential record relates. (Eff. 9/16/84, Reg. 91)

Authority: AS 24.55.090
AS 24.55.160

Art. I, sec. 22, Alaska Constitution

21 AAC 20.320. DISCLOSURE OF INFORMATION FROM PUBLIC SOURCES. The ombudsman will, in his discretion, disclose a confidential record if the information contained in the record is reasonably obtainable from other public sources without the consent of the person about whom the information relates. (Eff. 9/16/84, Reg. 91)

Authority: AS 24.55.090
AS 24.55.160

Art. I, sec. 22, Alaska Constitution

21 AAC 20.330. DISCLOSURE AS STATISTICAL INFORMATION. The ombudsman will, in his discretion, disclose information contained in a confidential record as a statistical report if the person about whom the information relates is not identifiable in the statistical report. (Eff. 9/16/84, Reg. 91)

Authority: AS 24.55.090
AS 24.55.160

Art. I, sec. 22, Alaska Constitution

21 AAC 20.340. DISCLOSURE TO AGENCY. Except as provided in 21 AAC 20.350, the ombudsman will, in his discretion, disclose to an agency a confidential record produced by the agency or a confidential record used by the agency in the conduct of its business in order to enable the ombudsman to present a finding,

opinion, or recommendation made to the agency. (Eff. 9/16/84, Reg. 91)

Authority: AS 24.55.090

AS 24.55.160

Art. I, sec. 22, Alaska Constitution

21 AAC 20.350. ASSERTION OF PRIVACY INTEREST BY AGENCY. If the ombudsman receives written notice from an agency which has provided a confidential record that it asserts a privacy interest in the record, the ombudsman

(1) will, in his discretion, disclose the record only to the person or persons within the agency having custody of the record; and

(2) will, in his discretion, make any other disclosure of the record only in accordance with 21 AAC 20.380. (Eff. 9/16/84, Reg. 91)

Authority: AS 24.55.090

AS 24.55.160

Art. I, sec. 22, Alaska Constitution

21 AAC 20.360. DISCLOSURE TO THE COMPLAINANT. The ombudsman may not disclose information in a record to the complainant if federal or state law or regulation prohibits disclosure of the record to the complainant. (Eff. 9/16/84, Reg. 91)

Authority: AS 24.55.090

AS 24.55.160

Art. I, sec. 22, Alaska Constitution

21 AAC 20.370. DISCLOSURE TO GOVERNOR, LEGISLATURE, OR GRAND JURY. If the ombudsman determines that a confidential record produced by an agency should be disclosed under AS 24.55.200 to the governor, the legislature, or a grand jury in order for the ombudsman to seek review of a finding, opinion or recommendation, the ombudsman will, in his discretion, return the record to the agency that produced it and recommend its disclosure by the agency to the governor, the legislature, or the grand jury, as applicable. (Eff. 9/16/84, Reg. 91)

Authority: AS 24.55.090

AS 24.55.160

Art. I, sec. 22, Alaska Constitution

21 AAC 20.380. PUBLIC DISCLOSURE. (a) The provisions of this section apply to

(1) disclosure of a confidential record to a person within an agency other than the person having custody of a confidential record if that record has been provided to the ombudsman by the agency and the agency has asserted a privacy interest under 21 AAC 20.350; and

(2) public disclosure under AS 24.55.200 of a confidential record produced by an agency.

(b) Before disclosing a confidential record, the ombudsman will give written notice to the agency having custody of the record and to the person about whom information in the record

relates that the ombudsman intends to disclose the record at the expiration of a 15-day period. The period during which the agency or a person may object can be extended by the ombudsman at the request of the agency or person. In providing notice, the ombudsman will indicate the basis of the decision to disclose the record.

(c) The agency or person to whom notice is given under (b) of this section may object to disclosure of the record by filing with the ombudsman a written objection to the disclosure. The objection filed by the agency or person must identify the portion of the record that the agency or person believes should remain confidential and must state the reasons for the objections to disclosure.

(d) If objection to disclosure has not been filed with the ombudsman in accordance with (c) of this section at the end of 15 days from the date of notice, or of any extension of that period approved by the ombudsman, the ombudsman will, in his discretion, disclose the confidential record.

(e) If objection to disclosure is filed with the ombudsman in accordance with (c) of this section and if, despite the objection, the ombudsman believes that disclosure of the record is essential to obtain agency acceptance of a finding and implementation of a recommendation in order to correct an action, decision or omission of the agency that was detrimental to the complainant, the ombudsman will give written notice to the agency or to the person or persons making objection under (c) of this section that he intends to disclose the record. In his notice, the ombudsman will

(1) briefly state the reason or reasons for his decision to disclose;

(2) indicate the date on which the ombudsman expects to make public disclosure of the record, not sooner than 15 days from the date of his notice; and

(3) state that the date may be extended only by mutual agreement between the agency or person and the ombudsman.

(f) At any time before expiration of the date on which the ombudsman indicates that he will dis-

close the document to the public, an agency or a person to whom notice is required to be sent under (e) of this section may apply to the superior court for an order preventing the ombudsman from disclosing the record. In making a determination as to whether the ombudsman may disclose the record

(1) if the record contains both disclosable and confidential information and the confidential information cited by the agency or person objecting to disclosure of the record may be reasonably separated from confidential portions in a manner that will allow meaningful information to be disclosed, the court may determine that the confidential information identified under the authority cited by the agency or person objecting to disclosure of the information or record must be deleted and thereafter may allow the ombudsman to release the disclosable information;

(2) if the record is wholly confidential, or if the record contains both disclosable and confidential information and the confidential information cited by the agency or person objecting to disclosure of the record cannot be reasonably separated from confidential portions in a manner that will allow meaningful information to be disclosed, the court may allow the ombudsman to disclose the record if the court determines that the need for disclosure outweighs the nature and weight of the privacy interest asserted by the agency or person. (Eff. 9/16/84, Reg. 91)

Authority: AS 24.55.090
AS 24.55.160

Art. I, sec. 22, Alaska Constitution

21 AAC 20.390. DEFINITIONS. In 21 AAC 20.300 — 21 AAC 20.390

(1) "confidential" means a record or information in a record that is nondisclosable under a valid federal or Alaska statute or regulation, or by a privilege, exemption, or principle recognized by the courts, or by an agency protective order authorized by law;

(2) "person" has the same meaning as in AS 01.10.060(7);

(3) "record" means a document, paper, memorandum, book, letter, drawing, map, plat, photo, photographic file, motion picture, film,

microfilm, microphotograph, exhibit, magnetic or paper tape, punched card, or other item of any other material, regardless of physical form or characteristic, developed or received under law or in connection with the transaction of official business by an agency or person, and preserved as evidence of the organization, function, policies, decisions, procedures, operations, or other activities of the agency or person or because of the informational value in them; the term also includes staff manuals and instructions to staff that directly or indirectly affect the public. (Eff. 9/16/84, Reg. 91)

Authority: AS 24.55.090
AS 24.55.160

Art. I, sec. 22, Alaska Constitution

SB 416 —

Duncan requests this
amendment.

Alaska Court System

State of Alaska

303 "K" STREET
ANCHORAGE, ALASKA
99501

ARTHUR H. SNOWDEN II
ADMINISTRATIVE DIRECTOR

(907) 274-8611

(HAND DELIVERED)

February 12, 1990

Representative H. A. "Red" Boucher
Chairman, House State Affairs Committee
Room 102
Capital

Re: HB 452

Dear Representative Boucher:

After discussing with Mr. Fowler the Alaska Court System's concerns about the Ombudsman's access to court records, we have agreed that the need to maintain the confidentiality of sealed court documents can be met by amending Sec. 8, paragraph (a)(4) as follows:

(4) notwithstanding other provisions of law, have access at all times to records of every state agency, including confidential records. Sealed court records must be subpoenaed.

Thank you for your consideration of this amendment.

Sincerely,

Jan Strandberg
Jan Strandberg
Staff Counsel

c: Duncan Fowler

BY THE RULES COMMITTEE BY REQUEST OF THE LEGISLATIVE COUNCIL

AS AMENDED

1 IN THE SENATE

2

SENATE BILL NO. 416

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the office of the ombudsman and
7 to the powers and duties of the ombudsman."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 24.55.040(b) is amended to read:

10 (b) If the term of an ombudsman expires without the appointment
11 of a successor under this chapter, the incumbent ombudsman may con-
12 tinue in office until a successor is appointed. If the ombudsman
13 dies, resigns, becomes ineligible to serve, or is removed or suspended
14 from office, the person appointed as [DEPUTY OMBUDSMAN BECOMES] acting
15 ombudsman under AS 24.55.070(a) serves until a new ombudsman is ap-
16 pointed for a full term.

17 * Sec. 2. AS 24.55.070(a) is amended to read:

18 (a) The ombudsman shall [MAY] appoint a person to serve as
19 acting [DEPUTY] ombudsman in the absence of the ombudsman. The om-
20 budsman shall also appoint assistants and clerical personnel necessary
21 to carry out the provisions of this chapter.

22 * Sec. 3. AS 24.55.070(b) is amended to read:

23 (b) The ombudsman may delegate to the [DEPUTY OR] assistants any
24 of the ombudsman's duties except those specified in AS 24.55.190 and
25 24.55.200, however, during the ombudsman's absence from the principal
26 business offices, the ombudsman may delegate the duties specified in
27 AS 24.55.190 and 24.55.200 to the acting ombudsman [DEPUTY] for the
28 duration of the absence. The duties specified in AS 24.55.190 and
29 24.55.200 shall be performed by the acting [DEPUTY] ombudsman when

1 serving [AS ACTING OMBUDSMAN] under AS 24.55.040(b).

2 * Sec. 4. AS 24.55.080(a) is repealed and reenacted to read:

3 (a) Subject to restrictions and limitations imposed by the
4 executive director of the Legislative Affairs Agency, the administra-
5 tive facilities and services of the Legislative Affairs Agency, in-
6 cluding computer, data processing, and teleconference facilities, may
7 be made available to the ombudsman to be used in the management of the
8 office of the ombudsman and to carry out the purposes of this chapter.

9 * Sec. 5. AS 24.55.090 is amended to read:

10 Sec. 24.55.090. PROCEDURE. (a) The ombudsman shall, by regula-
11 tions adopted under the Administrative Procedure Act (AS 44.62),
12 establish procedures for receiving and processing complaints, conduct-
13 ing investigations, [AND] reporting findings, and ensuring that confi-
14 dential information obtained by the ombudsman in the course of an
15 investigation will not be improperly disclosed.

16 (b) The [HOWEVER, THE] ombudsman may not charge fees for the
17 submission or investigation of complaints.

18 * Sec. 6. AS 24.55.130 is amended by adding a new subsection to read:

19 (c) Notice given under this section may be oral but the om-
20 budsman shall state in writing the reasons for not investigating a
21 complaint if requested by the complainant.

22 * Sec. 7. AS 24.55.140 is amended to read:

23 Sec. 24.55.140. NOTICE TO THE AGENCY. If the ombudsman decides
24 to investigate a complaint, the ombudsman shall notify the agency of
25 the intention to investigate unless the ombudsman believes that ad-
26 vance notice will unduly hinder the investigation or make it ineffec-
27 tual. Notice given under this section may be oral or written, at the
28 discretion of the ombudsman.

29 * Sec. 8. AS 24.55.160(a) is amended to read:

reflects amendments

Amendment
→

- 1 (a) In an investigation, the ombudsman may
2 (1) make inquiries and obtain information considered neces-
3 sary;
4 (2) enter without notice to inspect the premises of an
5 agency, but only when agency personnel are present; [AND]
6 (3) hold private hearings; and
7 (4) notwithstanding other provisions of law, have access at

8 all times to records of every state agency, including confidential
9 records, *except sealed court records, production of which*
10 *can only be compelled by subpoena.*

* Sec. 9. AS 24.55.170(a) is amended to read:

11 (a) Subject to the privileges that [WHICH] witnesses have in the
12 courts of this state, the ombudsman may compel by subpoena, at a
13 specified time and place, the

14 (1) [COMPEL BY SUBPOENA, AT A SPECIFIED TIME AND PLACE,
15 THE] appearance and sworn testimony of a person who the ombudsman
16 reasonably believes may be able to give information relating to a
17 matter under investigation; and

18 (2) production by [COMPEL] a person of a record *or object* that [, BY
19 SUBPOENA, TO PRODUCE DOCUMENTS, PAPERS, OR OBJECTS WHICH] the ombuds-
20 man reasonably believes may relate to the matter under investigation.

* Sec. 10. AS 24.55.180 is amended to read:

22 Sec. 24.55.180. CONSULTATION [WITH AGENCY]. Before giving an
23 opinion or recommendation that [WHICH] is critical of an agency or
24 person, the ombudsman shall consult with that agency or person. The
25 ombudsman may make a preliminary opinion or recommendation available
26 to the agency or person for review, but the preliminary opinion or
27 recommendation is confidential and may not be disclosed to the public
28 by the agency or person.

* Sec. 11. AS 24.55.190 is amended by adding a new subsection to read:

1 (c) The report provided under (a) of this section is confiden-
2 tial and may not be disclosed to the public by the agency. The om-
3 budsman may disclose the report under AS 24.55.200 only after provid-
4 ing notice that the investigation has been concluded

5 (1) to the agency; and

6 (2) if the investigation was conducted in response to a
7 complaint, to the complainant under AS 24.55.210.

8 * Sec. 12. AS 24.55.310 is amended to read:

9 Sec. 24.55.310. CONFLICT OF INTEREST. The ombudsman, the acting
10 [DEPUTY] ombudsman and their professional staff are subject to AS 39.-
11 50 (conflict of interest).

12 * Sec. 13. AS 24.55.320 is amended to read:

13 Sec. 24.55.320. MUNICIPALITIES AND SCHOOL DISTRICTS. A munic-
14 ipality or school district may [BY ORDINANCE] elect to become subject
15 to the jurisdiction of the ombudsman appointed under this chapter. If
16 a municipality or school district so elects, it shall notify the
17 ombudsman of that election and shall thereafter be considered an
18 agency for the purposes of this chapter. If a municipality or school
19 district subjects itself to the jurisdiction of the ombudsman, the
20 municipality or school district shall pay its pro rata share of the
21 cost of the operation of the office of the ombudsman based on the
22 number of complaints or the case load emanating from that municipality
23 or school district, as prescribed by the ombudsman. If a municipality
24 or school district elects to remove itself from the jurisdiction of
25 the ombudsman, it [SHALL DO SO BY ORDINANCE,] shall notify the ombuds-
26 man of that election and shall not thereafter be considered an agency
27 for the purposes of this chapter. A municipality that elects to
28 become subject to the jurisdiction of the ombudsman or to remove
29 itself from that jurisdiction must do so by ordinance. A school

1 district that elects to become subject to the jurisdiction of the
2 ombudsman or to remove itself from that jurisdiction must do so by
3 resolution.

4 * Sec. 14. AS 24.55.330 is amended by adding a new paragraph to read:

5 (4) "record" means a document, paper, memorandum, book,
6 letter, file, drawing, map, plat, photo, photographic file, motion
7 picture, film, microfilm, microphotograph, exhibit, magnetic or paper
8 tape, punched card, or other item developed or received under law or
9 in connection with the transaction of official business, but does not
10 include an attorney's work product.



Alaska Court System

State of Alaska

303 "K" STREET
ANCHORAGE, ALASKA
99501

ARTHUR M. SNOWDEN II
ADMINISTRATIVE DIRECTOR

(907) 274-8611

(HAND DELIVERED)

February 12, 1990

Representative H. A. "Red" Boucher
Chairman, House State Affairs Committee
Room 102
Capital

Re: HB 452

Dear Representative Boucher:

After discussing with Mr. Fowler the Alaska Court System's concerns about the Ombudsman's access to court records, we have agreed that the need to maintain the confidentiality of sealed court documents can be met by amending Sec. 8, paragraph (a)(4) as follows:

(4) notwithstanding other provisions of law, have access at all times to records of every state agency, including confidential records. Sealed court records must be subpoenaed.

Thank you for your consideration of this amendment.

Sincerely,

Jan Strandberg
Jan Strandberg
Staff Counsel

c: Duncan Fowler

agency, the agency has initiated corrective action or commits itself to take corrective action substantially as recommended.

(b) If an agency does not initiate corrective action or does not commit itself to take corrective action substantially as presented in the ombudsman's recommendation or modified recommendation, the ombudsman will, in his or her discretion, after considering any response received from the agency, submit a report of the matter to the chief executive officer of the agency or to the governor, and then make a report to the legislature, to the press, or to the public, as the ombudsman considers appropriate.

(c) The provisions of (b) of this section do not limit the ombudsman from making a report on any investigation to the legislature, the press, or the public, as the ombudsman considers appropriate. (Eff. 9/16/84, Reg. 91; am 3/28/86, Reg. 97)

Authority: AS 24.55.090
AS 24.55.200

21 AAC 20.250. COMPLAINANT TO BE INFORMED. Within 15 days after receipt of an agency's acceptance or rejection of an ombudsman's recommendation or modified recommendation, the ombudsman will notify the complainant of the result of the investigation and of the action taken or proposed to be taken by the agency. (Eff. 9/16/84, Reg. 91)

Authority: AS 24.55.090

**ARTICLE 4.
CONFIDENTIAL INFORMATION**

Section

- 300. Disclosure of confidential information
- 310. Disclosure with written consent
- 320. Disclosure of information from public sources
- 330. Disclosure as statistical information
- 340. Disclosure to agency
- 350. Assertion of privacy interest by agency
- 360. Disclosure to the complainant
- 370. Disclosure to governor, legislature, or grand jury
- 380. Public disclosure
- 390. Definitions

21 AAC 20.300. DISCLOSURE OF CONFIDENTIAL INFORMATION. A confidential record provided by an agency or a person to the office of the ombudsman during the course of an ombudsman's investigation may not be disclosed by the office of the ombudsman except as provided in 21 AAC 20.310 - 21 AAC 20.390. (Eff. 9/16/84, Reg. 91)

Authority: AS 24.55.090
AS 24.55.160

Art. I, sec. 22, Alaska Constitution

21 AAC 20.310. DISCLOSURE WITH WRITTEN CONSENT. The ombudsman will, in his discretion, disclose a confidential record if the ombudsman first obtains the written consent of the person about whom information in the confidential record relates. (Eff. 9/16/84, Reg. 91)

Authority: AS 24.55.090
AS 24.55.160

Art. I, sec. 22, Alaska Constitution

21 AAC 20.320. DISCLOSURE OF INFORMATION FROM PUBLIC SOURCES. The ombudsman will, in his discretion, disclose a confidential record if the information contained in the record is reasonably obtainable from other public sources without the consent of the person about whom the information relates. (Eff. 9/16/84, Reg. 91)

Authority: AS 24.55.090
AS 24.55.160

Art. I, sec. 22, Alaska Constitution

21 AAC 20.330. DISCLOSURE AS STATISTICAL INFORMATION. The ombudsman will, in his discretion, disclose information contained in a confidential record as a statistical report if the person about whom the information relates is not identifiable in the statistical report. (Eff. 9/16/84, Reg. 91)

Authority: AS 24.55.090
AS 24.55.160

Art. I, sec. 22, Alaska Constitution

21 AAC 20.340. DISCLOSURE TO AGENCY. Except as provided in 21 AAC 20.350, the ombudsman will, in his discretion, disclose to an agency a confidential record produced by the agency or a confidential record used by the agency in the conduct of its business in order to enable the ombudsman to present a finding,

opinion, or recommendation made to the agency. (Eff. 9/16/84, Reg. 91)

Authority: AS 24.55.090

AS 24.55.160

Art. I, sec. 22, Alaska Constitution

21 AAC 20.350. ASSERTION OF PRIVACY INTEREST BY AGENCY. If the ombudsman receives written notice from an agency which has provided a confidential record that it asserts a privacy interest in the record, the ombudsman

(1) will, in his discretion, disclose the record only to the person or persons within the agency having custody of the record; and

(2) will, in his discretion, make any other disclosure of the record only in accordance with 21 AAC 20.380. (Eff. 9/16/84, Reg. 91)

Authority: AS 24.55.090

AS 24.55.160

Art. I, sec. 22, Alaska Constitution

21 AAC 20.360. DISCLOSURE TO THE COMPLAINANT. The ombudsman may not disclose information in a record to the complainant if federal or state law or regulation prohibits disclosure of the record to the complainant. (Eff. 9/16/84, Reg. 91)

Authority: AS 24.55.090

AS 24.55.160

Art. I, sec. 22, Alaska Constitution

21 AAC 20.370. DISCLOSURE TO GOVERNOR, LEGISLATURE, OR GRAND JURY. If the ombudsman determines that a confidential record produced by an agency should be disclosed under AS 24.55.200 to the governor, the legislature, or a grand jury in order for the ombudsman to seek review of a finding, opinion or recommendation, the ombudsman will, in his discretion, return the record to the agency that produced it and recommend its disclosure by the agency to the governor, the legislature, or the grand jury, as applicable. (Eff. 9/16/84, Reg. 91)

Authority: AS 24.55.090

AS 24.55.160

Art. I, sec. 22, Alaska Constitution

21 AAC 20.380. PUBLIC DISCLOSURE. (a) The provisions of this section apply to

(1) disclosure of a confidential record to a person within an agency other than the person having custody of a confidential record if that record has been provided to the ombudsman by the agency and the agency has asserted a privacy interest under 21 AAC 20.350; and

(2) public disclosure under AS 24.55.200 of a confidential record produced by an agency.

(b) Before disclosing a confidential record, the ombudsman will give written notice to the agency having custody of the record and to the person about whom information in the record

relates that the ombudsman intends to disclose the record at the expiration of a 15-day period. The period during which the agency or a person may object can be extended by the ombudsman at the request of the agency or person. In providing notice, the ombudsman will indicate the basis of the decision to disclose the record.

(c) The agency or person to whom notice is given under (b) of this section may object to disclosure of the record by filing with the ombudsman a written objection to the disclosure. The objection filed by the agency or person must identify the portion of the record that the agency or person believes should remain confidential and must state the reasons for the objections to disclosure.

(d) If objection to disclosure has not been filed with the ombudsman in accordance with (c) of this section at the end of 15 days from the date of notice, or of any extension of that period approved by the ombudsman, the ombudsman will, in his discretion, disclose the confidential record.

(e) If objection to disclosure is filed with the ombudsman in accordance with (c) of this section and if, despite the objection, the ombudsman believes that disclosure of the record is essential to obtain agency acceptance of a finding and implementation of a recommendation in order to correct an action, decision or omission of the agency that was detrimental to the complainant, the ombudsman will give written notice to the agency or to the person or persons making objection under (c) of this section that he intends to disclose the record. In his notice, the ombudsman will

(1) briefly state the reason or reasons for his decision to disclose;

(2) indicate the date on which the ombudsman expects to make public disclosure of the record, not sooner than 15 days from the date of his notice; and

(3) state that the date may be extended only by mutual agreement between the agency or person and the ombudsman.

(f) At any time before expiration of the date on which the ombudsman indicates that he will dis-

close the document to the public, an agency or a person to whom notice is required to be sent under (e) of this section may apply to the superior court for an order preventing the ombudsman from disclosing the record. In making a determination as to whether the ombudsman may disclose the record

(1) if the record contains both disclosable and confidential information and the confidential information cited by the agency or person objecting to disclosure of the record may be reasonably separated from confidential portions in a manner that will allow meaningful information to be disclosed, the court may determine that the confidential information identified under the authority cited by the agency or person objecting to disclosure of the information or record must be deleted and thereafter may allow the ombudsman to release the disclosable information:

(2) if the record is wholly confidential, or if the record contains both disclosable and confidential information and the confidential information cited by the agency or person objecting to disclosure of the record cannot be reasonably separated from confidential portions in a manner that will allow meaningful information to be disclosed, the court may allow the ombudsman to disclose the record if the court determines that the need for disclosure outweighs the nature and weight of the privacy interest asserted by the agency or person. (Eff. 9/16/84, Reg. 91)

Authority: AS 24.55.090
AS 24.55.160

Art. I, sec. 22, Alaska Constitution

21 AAC 20.390. DEFINITIONS. In 21 AAC 20.300 — 21 AAC 20.390

(1) "confidential" means a record or information in a record that is nondisclosable under a valid federal or Alaska statute or regulation, or by a privilege, exemption, or principle recognized by the courts, or by an agency protective order authorized by law;

(2) "person" has the same meaning as in AS 01.10.060(7);

(3) "record" means a document, paper, memorandum, book, letter, drawing, map, plat, photo, photographic file, motion picture, film,

microfilm, microphotograph, exhibit, magnetic paper tape, punched card, or other item of any other material, regardless of physical form or characteristic, developed or received under law or in connection with the transaction of official business by an agency or person, and preserved as evidence of the organization, function, policies, decisions, procedures, operations, or other activities of the agency or person or because of the informational value in them; the term also includes staff manuals and instructions to staff that directly or indirectly affect the public. (Eff. 9/16/84, Reg. 91)

Authority: AS 24.55.090

AS 24.55.160

Art. I, sec. 22, Alaska Constitution

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: An Act Relating to the Office of the Ombudsman
 Sponsor: _____
 Requestor: Office of the Ombudsman

Agency Affected: Legislative
 BRU: Office of the Ombudsman
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

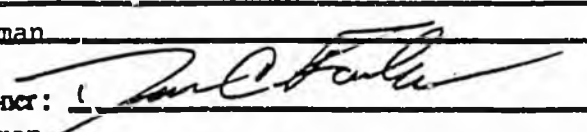
GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

This bill has no fiscal impact on the State Operating budgets

Prepared by: Duncan C. Fowler Phone: 465-4970
 Division: Ombudsman Date: 2-7-90
 Approved by Commissioner:  Date: 2-7-90
 Agency: Ombudsman

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

Pat _____ Ombudsman Bill....

One Amendment on House Floor
added wording at Swackhammer's
request and Dept of Public Safety
and prosecutors requested.

Fowler: Didn't foresee this being
a problem, amendments OK.

Requests you WAIVE.

S.

OK
Write
me a
note

1 (a) In an investigation, the ombudsman may

2 (1) make inquiries and obtain information considered neces-
3 sary;

4 (2) enter without notice to inspect the premises of an
5 agency, but only when agency personnel are present; [AND]

6 (3) hold private hearings; and

7 (4) notwithstanding other provisions of law, have access at
8 all times to records of every state agency, including confidential
9 records, except sealed court records, production of which may only be
10 compelled by subpoena, and except for records of active criminal
11 investigations and records that could lead to the identity of confi-
12 dential police informants.

13 * Sec. 9. AS 24.55.170(a) is amended to read:

14 (a) Subject to the privileges that [WHICH] witnesses have in the
15 courts of this state, the ombudsman may compel by subpoena, at a
16 specified time and place, the

17 (1) [COMPEL BY SUBPOENA, AT A SPECIFIED TIME AND PLACE,
18 THE] appearance and sworn testimony of a person who the ombudsman
19 reasonably believes may be able to give information relating to a
20 matter under investigation; and

21 (2) production by [COMPEL] a person of a record or object
22 that [, BY SUBPOENA, TO PRODUCE DOCUMENTS, PAPERS, OR OBJECTS WHICH]
23 the ombudsman reasonably believes may relate to the matter under
24 investigation.

25 * Sec. 10. AS 24.55.180 is amended to read:

26 Sec. 24.55.180. CONSULTATION [WITH AGENCY]. Before giving an
27 opinion or recommendation that [WHICH] is critical of an agency or
28 person, the ombudsman shall consult with that agency or person. The
29 ombudsman may make a preliminary opinion or recommendation available