

**2006 CHARTER REVIEW COMMISSION  
OMBUDSMAN SERVICES II  
JUNE 14, 2007**

**Prepared by:  
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## **Background:**

The Commission has requested staff for additional information related to their deliberations related to Ombudsman Services. Specifically they wanted to know:

- Does it exist in local government other than King County (Other Counties/Cities)
- Inclusion of Whistleblower Language
- Structuring the Office for independence; comparisons with other entities.

## **Does it exist in local government other than King County?**

King County is the only local government entity in Washington State that has an Ombudsman.<sup>1</sup> The only other local government entities in the Northwest are City of Portland and a Sheriff's ombudsman in Boise according to Ms Calderwood.

## **Inclusion of Whistleblower responsibility for the Ombudsman.**

The Commission at their discretion could add the responsibility for Whistleblower oversight in the Charter language or could request council to add it via ordinance if the issue makes it to the ballot and the voters approve. In King County it was added via ordinance in the 90s.

## **Option for Structuring the Office.**

There is nothing in the Charter that precludes Council from creating an Ombudsman or the Executive to implement through his current departments as long as Council concurs with the budgets. The office should be structured to maximize independence. In Portland the Ombudsman reports to the elected Performance Auditor. In King County the Ombudsman is appointed to a five year term of office by the King County Council. Ms Calderwood reports to the Chair of the Council. The national professional association United States Ombudsman Association recommends placing the Ombudsman under the legislative authority.<sup>2</sup> Therefore:

1. Place the Ombudsman under the County Council. The Ombudsman is appointed to a term of office and can only be removed for cause. The Ombudsman is granted subpoena authority and has full access to departments and staff as needed to complete their investigations.

### **Budget Impact**

Costs would be comparable to adding County Council members as described in the Size of the County Council Briefing Paper.

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<sup>1</sup> PC with Amy Calderwood; King County Ombudsman

<sup>2</sup> Governmental Ombudsman Standards, United States Ombudsman Association

<b>Line Item</b>	<b>Cost</b>
Ombudsman/Director	\$106,205
Aid	\$78,752
Ombudsman	\$91,000
Other Costs including Overhead	\$25,200
<b>Totals</b>	<b>\$301,157.00</b>

Adding the second Ombudsman would occur incrementally as workload increases.

Placement in the Executive branch may have the potential of creating conflicts of interest; lack of independence and access not unlike has been reported with the performance auditor.

**Placement in the Charter**

A new section could be added to Article 2 creating the Office of Ombudsman, with specific language, related to appointment to a term of office, access to staff and records, reasonable budget, subpoena powers as needed. Confidentiality would meet the requirements of the laws of Washington including Public Disclosure.

Attachments:

- Public Sector Ombudsman
- Governmental Ombudsman Standards



## United States Ombudsman Association

<http://www.usombudsman.org>

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### Public Sector

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## PUBLIC SECTOR OMBUDSMAN

For as long as government has existed, guaranteeing citizens fair and equitable treatment under the law has been an issue and various protections have been utilized over the years. In modern times the public sector Ombudsman, where instituted, has been a successful and valuable guarantor of citizens' rights. By impartial and independent investigation of citizens' complaints, it have provided an informal and accessible avenue of redress.

The first public sector Ombudsman was appointed by the Parliament of Sweden of 1809. The Swedish Constitution divided and balanced power between the King and Parliament with the King having executive powers and Parliament retaining legislative power. The Ombudsman, who was appointed by and responsible to Parliament, was to protect individual rights against the excesses of the bureaucracy.

This first Ombudsman's Office, since its creation, has been the model for the public sector Ombudsman, and set the definition that is still accepted today: a public official appointed by the legislature to receive and investigate citizen complaints against administrative acts of government. These acts may or may not include the administrative acts of the judiciary or the legislature, depending upon the statute. Ombudsman is a gender neutral term, used through out the world by women and men who hold the office.

The Ombudsman concept spread through Europe, and to this continent with the first offices being established in the United States in the mid 60's. This was a time in the USA when exposure of government secrecy and scandal, and when movements such as civil rights and good government created a political atmosphere more favorable to openness, and to establishing recourse for the aggrieved.

Hawaii established the first office in 1967. Since then a number of states, counties and municipalities have followed suit by establishing offices of general jurisdiction. The Ombudsman movement in the U.S.A. has also been characterized by offices that represent a departure from the Swedish model. These variations would include offices with general jurisdiction but appointment by a governor or mayor, legislative offices with special jurisdiction such as corrections, single agency ombudsman with statutory authority.

### Characteristics of the Ombudsman

Early in the Ombudsman movement, the American Bar Association recognized the value of the institution and wrote in 1969 the criteria that remain the guidelines for creating an Ombudsman Office.

The American Bar Association recommends:

1. That State and local governments of the United States should give consideration to the establishment of an ombudsman authorized to inquire into administrative action and to make public criticism.

2. That each statute or ordinance establishing an ombudsman should contain the following twelve essentials:

- (1) authority of the ombudsman to criticize all agencies, officials, and public employees except courts and their personnel, legislative bodies and their personnel, and the chief executive and his personal staff;
- (2) independence of the ombudsman from control by any other officer, except for his responsibility to the legislative body;
- (3) appointment by the legislative body or appointment by the executive with confirmation by a designated proportion of the legislative body, preferably more than a majority, such as two-thirds;
- (4) independence of the ombudsman through a long term, not less than five years, with freedom from removal except for cause, determined by more than a majority of the legislative body, such as two-thirds;
- (5) a high salary equivalent to that of a designated top officer;
- (6) freedom of the ombudsman to employ his own assistants and to delegate work to them, workout restraints of civil service and classifications acts;
- (7) freedom of the ombudsman to investigate any act or failure to act by any agency, official, or public employee;
- (8) access of the ombudsman to all public records he finds relevant to an investigation;
- (9) authority to inquire into fairness, correctness of findings, motivation, adequacy of reasons, efficiency, and procedural propriety of any action or inaction by any agency, official, or public employee;
- (10) discretionary power to determine what complaints to investigate and to determine what criticisms to make or to publicize;
- (11) opportunity for any agency, official, or public employee criticized by the ombudsman to have advance notice of the criticism and to publish with the criticism an answering statement;
- (12) immunity of the ombudsman and his staff from civil liability on account of official action.

3. That for the purpose of determining the workability of the ombudsman idea within the Federal government, the Federal government should experiment with the establishment of an ombudsman or ombudsmen for limited geographical area or areas, for a specific agency or agencies or for a limited phase or limited phases of Federal activity.

4. That establishment of a Federal government-wide ombudsman program should await findings based on the experimentation recommended.

The United States Ombudsman Association, the national organization of public sector Ombudsman, has incorporated these criteria in its By-laws. They also are integral to the USOA annotated Model Statute for Ombudsman Offices which builds on 30 years of experience with the concept in the U.S.A.

An Ombudsman's power and responsibilities

The essential characteristics of an Ombudsman's Office are independence, the ability to

investigate complaints which often includes subpoena power, the ability to criticize government agencies and to recommend changes that may be issued in public reports. An Ombudsman, however has no enforcement or disciplinary powers.

The Ombudsman is a paradox, being both powerful and powerless at the same time. They can investigate complaints, choosing which are the most important and initiate investigations without complaints. They set an agenda by what they choose to investigate. They can determine whether a complaint is justified and seek remedies for it. They can compel people to talk to them and produce records, subject to the protections witnesses have in court. But they cannot make an agency do anything. They can, however, make their reports public. Aside from choosing what questions to ask and issuing subpoenas, their powers are mainly persuasion and publicity.

An ombudsman generally does not have the power to investigate the people who appoint the ombudsman and other elected officials, and does not have the power to look at the judicial acts of courts. Voters have remedies such as recall or impeachment for elected officials. Unfavorable court decisions can be appealed to a higher court. Complaints about judicial misconduct may result in an administrative sanction of a judge or rejection of an incumbent at the polls. The ombudsman is not an alternative to these traditional remedies.

#### Ombudsman Jurisdiction

This varies according to the law creating an office. For a general jurisdiction Ombudsman, the administrative acts of most, if not all, agencies in a local or state government are within an ombudsman's mandate. A specialty ombudsman looks at the acts of a single agency or a group of agencies that work in a single area of concern such as children issues.

#### Appointment of an Ombudsman

Enabling legislation will determine the appointment process of an Ombudsman. As this office of an Ombudsman is one that must operate with the trust and respect of the community, it is recommended that the selection process be one that is not unilateral but is shared by appropriate legislative and/or administrative committees and bodies. The efficacy of an office is largely dependent upon a widely held view of the Ombudsman as a person of integrity, who works with non partisan fairness and ethical behavior.

#### Confidentiality

Enabling legislation for many ombudsman offices requires the complainant's identity be kept confidential. People need to be able to talk to the ombudsman and staff in confidence. Some choose not to file complaints. Others want their complaints recorded but not pursued. Confidentiality is critical to creating confidence that complainants can talk to the ombudsman without their identity being disclosed against their will.

#### Complaint Handling

Complaints that come to an Ombudsman's Office are screened to determine if the complaint is in the jurisdiction of the Ombudsman, whether the complainant has utilized the government agency's established complaint process, and whether there is validity under the law to the complaint. The Ombudsman helps citizens understand how government agencies operate, what are the appropriate laws, rules, policies, or

how citizens may handle complaints themselves.

Those complaints that are accepted are objectively investigated by the Ombudsman. Informal resolution is often attempted with the agency. When this is not possible, the full power of the office may be utilized, which could result in a public report containing recommendations to the agency or to the legislature. Many jurisdictions provide whistleblower protection for both complainants and witnesses who may contact or be interviewed by the office. This is done to ensure the ombudsman has access to all of the facts in a matter and prevent retaliation against those who seek help from the office.

In resolving complaints, it is also the responsibility of the Ombudsman to identify patterns of abuse of power or negligence by government that would require legislative attention.

### Reporting

Most public sector Ombudsmen are required to report annually to the appointing authority. With much of the Ombudsman's work being done quietly and in confidentiality, the Annual Report is an opportunity for the Ombudsman to speak publicly on issues of concern. Annual Report will contain statistical information on the contacts by citizens during the prior year, an analysis of these statistics, and recommendations that flow from this analysis.

### Advocacy

Ombudsmen perform an unusual role in government. While they receive complaints from the public, their job is not to become an advocate for the complainant or the governments they have jurisdiction over. Ombudsmen are charged with collecting and evaluating all of the facts regarding a matter as a neutral investigator. They determine if there was an error, unfairness or harm by the agency involved, or no basis to the complaint. Ombudsmen make recommendations to correct wrongs done to individuals to improve the administration of government. If their recommendations are not accepted and good reasons not given, the ombudsman may become an advocate for their implementation.

### Summary

With an Ombudsman's Office, people who have problems with government, have a place to seek solutions, independent explanations, investigations and recommendations.

An Ombudsman's Office, by providing a direct and informal avenue for the mediation of citizen grievances is a valuable tool for enhancing the relationship between a government and its citizens and ultimately for improving the administration of government itself.

For additional information about the public sector ombudsman, contact the **United States Ombudsman Association**.

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# **GOVERNMENTAL OMBUDSMAN STANDARDS**

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United States Ombudsman Association  
Governmental Ombudsman Standards  
October 2003

Drafted by the Standards Committee of the  
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Approved October 14, 2003 by the  
United States Ombudsman Association's Board of Directors

For more information on the United States Ombudsman Association,  
please visit [www.usombudsman.org](http://www.usombudsman.org)

## PREFATORY NOTE

At the 2001 annual United States Ombudsman Association (USOA) conference, the creation of standards for the establishment and functioning of an Ombudsman office emerged as a top priority for the membership. USOA representatives had worked on a steering committee of the American Bar Association (ABA) to create what the ABA adopted in August 2001 as Standards for the Establishment and Operation of Ombuds Offices. The 2001 ABA standards modify and expand on the ABA's 1969 Resolution (as amended in 1971) regarding the essential characteristics of an Ombudsman. However, the USOA did not support the ABA standards in their entirety. The USOA then decided to establish its own standards for Governmental Ombudsman offices.

In early 2002, the USOA Board of Directors created a three-member Standards Committee made-up of a long-time "classical" Ombudsman (Angrick), an executive Ombudsman (Adcock), and a municipal Ombudsman located in the city auditor's office (Chiao). The committee was charged with developing standards which could be used as a means to educate and provide advice or guidance to legislators, state officials and the public about the roles and core principles of Governmental Ombudsman offices.

After initial conference calls and a review of relevant materials including "Essential Characteristics of a Classical Ombudsman" by Dean M. Gottehrer and Michael Hostina, the USOA's Model Ombudsman Act, and the General Accounting Office's Government Auditing Standards "Yellow Book," the committee convened in July 2002 in Des Moines, Iowa for two days. The committee balanced the goal of providing a standard measure of what a Governmental Ombudsman should be with practical ideas that would be useful to individuals in offices that are not general jurisdiction in scope or established in the legislative branch.

The result was a first draft of the Standards, submitted to the USOA Board in August and to the USOA membership in October 2002 at the association's annual conference. Participants at the conference and other members made helpful suggestions that were incorporated into a second draft. We also received a comment that Ombudsman offices in government agencies that address solely internal matters along the lines of an Organizational Ombuds model were not included under what we labeled a "Governmental Ombudsman." Footnote 2 was added to the final draft to address this concern.

The second draft of the Standards was presented to the USOA Board and membership at the 2003 annual conference. After incorporating minor changes to the draft presented at the conference, the USOA Board approved the Standards in the present form. We expect that this document may be used as a starting point for other projects, such as a "best practices" manual or a handbook for establishing a Governmental Ombudsman office. We hope that these Standards will be useful to individuals and organizational entities interested in how a Governmental Ombudsman can serve the public and improve administrative efficiency and fairness.

# United States Ombudsman Association Governmental Ombudsman Standards

## I. PREAMBLE

The title "Ombudsman" has gained popularity in both the public and private sectors to describe various types of problem-solvers.<sup>1</sup> The United States Ombudsman Association (USOA) promotes a model that defines a Governmental Ombudsman (hereinafter Ombudsman) as:

an independent, impartial public official with authority and responsibility to receive, investigate or informally address complaints about government actions, and, when appropriate, make findings and recommendations, and publish reports.<sup>2</sup>

The standards in this document, which has been produced by the USOA, lay out basic principles, guidelines, and best practices for Ombudsman offices. Existing Ombudsman offices can evaluate how they conform to these guidelines with the goal of working towards the best practices described below. Government policy makers may use them to establish new Ombudsman offices. The general public can use this document to understand more fully the role of the Ombudsman.

These standards are divided into the following four categories: Independence, Impartiality, Confidentiality, and Credible Review Process.

### A. Independence

The Ombudsman's office, in structure, function and appearance, should be free from outside control or influence. This standard enables the Ombudsman to function as an impartial and critical entity that reports findings and makes recommendations based solely on a review of facts and law, in the light of reason and fairness.

### B. Impartiality

The Ombudsman should receive and review each complaint in an objective and fair manner, free from bias, and treat all parties without favor or prejudice. This standard instills confidence in the public and agencies that complaints will receive a fair review, and encourages all parties to accept the Ombudsman's findings and recommendations.

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<sup>1</sup> Ombudsman is a gender-neutral term, used throughout the world by women and men who hold the office. However, some prefer the terms Ombuds or Ombudsperson.

<sup>2</sup> There are a number of Ombudsman offices, primarily in federal agencies and public universities, that address solely internal matters along the lines of an "Organizational Ombuds" model, and although governmental, may not see themselves as being included in this definition.

### C. Confidentiality

The Ombudsman should have the privilege and discretion to keep confidential or release any information related to a complaint or investigation. This standard balances the need to protect sensitive information so that a complainant can come forward, and witnesses and subjects can speak openly, with the need to disclose information as a part of an investigation or public report.

### D. Credible Review Process

The Ombudsman should perform his or her responsibilities in a manner that engenders respect and confidence and be accessible to all potential complainants. This standard is necessary for the work of the Ombudsman to have value and to be accepted by all parties to a complaint.

## II. STANDARDS

### A. Independence

Independence is a core defining principle of an effective and credible Ombudsman. The Ombudsman should be independent to the greatest degree practicable. Authoritativeness and permanency are two criteria by which to measure this standard.

The following are indicators of independence, the absence of any one of which may create functional problems:

1. The Ombudsman's authority should be established by law.
  - a) Establishment of the Ombudsman in an organic legal document such as a constitution or a charter provides the ultimate stature and protection. Creation by legislation through statute or ordinance gives the ombudsman a sturdy, enduring existence.
  - b) A legislative resolution would indicate a lesser degree of authority and permanence.
  - c) Creation by administrative fiat such as an executive order, administrative rule, or formal policy contains potential temporal limitations subject to changes in the mandating authority's term or whim.
  - d) When established to the greatest degree practicable, the existence, authority, and power of the Ombudsman are less apt to be challenged, compromised, or diminished.
2. The Ombudsman should be appointed by an entity not subject to the Ombudsman's jurisdiction and which does not have operational or administrative authority over the program(s) or agency(ies) that are subject to the Ombudsman's jurisdiction.
  - a) Appointment by a legislative body is the preferred means to ensure independence.
  - b) An Ombudsman who is appointed by an executive should seek operational and administrative independence from the entity over which the Ombudsman has jurisdiction.
  - c) The less independent Ombudsman will be suspect as unable to conduct a thorough and critical investigation by various clients from the outset; and vulnerable to retaliation or lasting animosity if aggressive inquiry is, indeed, carried out.

3. Prior to expiration of term, the Ombudsman may be removed from office for cause only.
  - a) Appointment of the Ombudsman for a defined term of office helps to insure the Ombudsman's ability to conduct investigations and make reports without external pressure, internal hesitancy, or timidity.
  - b) A fixed-term with the potential for reappointment allows an appointing authority to reappoint an effective Ombudsman and replace an ineffective Ombudsman.
  - c) Removal from office in retribution for carrying out an unpopular investigation or making a candid and critical report is often a real or indirect threat to the Ombudsman's independence. Accordingly, both the appointment and removal of the Ombudsman should be defined, transparent, and for cause. These indicators reduce the Ombudsman's vulnerability to retaliatory or political retribution.
  
4. The Ombudsman should be afforded sufficient compensation, status, budget, resources, and staff.
  - a) Affording the Ombudsman sufficient compensation, status, budget, resources, and staff gives indication that the office has meaning and importance.
  - b) Best practices may link the Ombudsman's compensation to that of other high level public positions such as senior judges.
  - c) Ideally, the Ombudsman's budget and resources should be sufficient to perform the duties prescribed by the establishing authority. Best practice would limit any reduction in resources to only general reductions and limitations when the legislative branch or chief executive self impose across-the-board limitations on themselves.
  - d) When the Ombudsman is not afforded appropriate status and compensation, the position may only attract and be filled by less experienced individuals who may not be as effective in carrying out the Ombudsman's duties. When the Ombudsman's budget, resources, and staff are insufficient to allow the office to meet its responsibilities, the office cannot operate in accordance with best practice.
  
5. The Ombudsman should retain sole authority to select, direct, and discharge staff.
  - a) Having the sole authority to select, direct, and discharge staff enhances the Ombudsman's independence. Restrictions or expectations placed upon staff hiring, assignment, evaluation, discipline, and termination could interfere with the Ombudsman's ability to conduct thorough, impartial, and critical investigations.
  - b) While it is preferable that the Ombudsman enjoy the general legislative prerogative of "employment at will", it is essential the Ombudsman not be required to hire the favorite of another governmental official, ignore performance shortcomings of a partisan protected staff member, or share supervisory responsibility with someone outside the office.
  - c) Some Ombudsman offices allow for employees to belong to unions or protect them under civil service or merit employment provisions, but even these protections could inhibit the Ombudsman's performance and duties if they inappropriately interfere with what an Ombudsman investigates and the findings and conclusions the Ombudsman makes.
  - d) The Ombudsman should have access to independent legal advice, either in-house or on a contract basis. It would compromise the Ombudsman's independence to be forced to rely on the attorneys representing the governmental entity in the event of a legal controversy.

- e) The Ombudsman should be empowered to contract with outside experts, such as physicians, when useful or necessary to conduct a thorough investigation.
6. The Ombudsman should have discretion to accept or reject matters for investigation, including the ability to initiate on the Ombudsman's own motion, subject only to the legally defined limits of jurisdiction.
- a) Legislated policy parameters can give guidance to the Ombudsman in applying this discretion.
  - b) However, the specific indicators should be general and flexible in nature so that the Ombudsman has freedom to select, prioritize, and emphasize the complaints accepted and investigations undertaken.
7. The Ombudsman should have discretion to prescribe how complaints are to be made, received, and acted upon, including the scope and manner of investigations.
- a) Independence is enhanced when the Ombudsman has discretion to prescribe how complaints are to be made, received, and acted upon, including the scope and manner of investigations.
  - b) The Ombudsman should not have to receive complaints through an intermediary.
8. The Ombudsman should have discretion to determine which conclusions and recommendations are reached, and freedom to determine what to publish.
- a) Inhibiting the Ombudsman by requiring a structured review procedure before speaking weakens the credibility and integrity of the office in both fact and appearance.
  - b) The Ombudsman should not be required to submit proposed findings, conclusions, recommendations, and reports to an editorial or review entity, including the appointing authority, which would weaken the force of them. Requiring the Ombudsman to inform a subject agency or official being criticized of his or her findings or expecting the Ombudsman to consult with the subject of a recommendation for comments on accuracy before public release is not the kind of practice being cautioned against. Those are fair and equitable process issues that when properly followed do not detract from the performance of the Ombudsman.
  - c) The Ombudsman's office should be physically and organizationally separated from those entities subject to an Ombudsman's jurisdiction.
  - d) Space should not be shared because to do so compromises the confidentiality of complainants and witnesses coming into the office. It also diminishes the protection afforded to the Ombudsman's files, and may reduce the confidence complainants, witnesses, and other stakeholders have in the ability of the Ombudsman to fulfill the duties and responsibilities of the office.
  - e) Similarly, the Ombudsman's communications and record keeping should be separate from and independent of those services under the Ombudsman's jurisdiction. When absolute independence cannot be achieved, sufficient separation, insulation, or firewalls should be sought and fundamental elements such as locking file cabinets, password protected email systems, keyed doors to enclosed offices, internally controlled surveillance systems, and confidentiality agreements with service providers, vendors and consultants should be ensured.

9. The Ombudsman should be immune from discovery and prosecution for claims arising out of the lawful performance of duty.
  - a) This principle, its indicators and best practices are based upon the concept that the Ombudsman represents an alternative to the formal administrative and legal procedures for resolving complaints. It is coupled with the limiting expectation that the Ombudsman should not be able to overturn or modify an action of a subject agency or officer.
  - b) Indicators of best practice include statutory based protections and immunities recognized in court and the legal community.
  - c) To a much lesser extent, administrative policy and practice may attempt to approximate this ideal protection.
  - d) Without this principle and effective indicators of best practice, the Ombudsman cannot effectively and responsibly offer and maintain the core principle of confidentiality.
10. The findings and recommendations of the Ombudsman are not appealable to any other authority.
  - a) If the Ombudsman's findings and recommendations can be appealed to another authority, then the Ombudsman's role is reduced to just another step in a series of administrative procedures.
  - b) This ideal principle sets the Ombudsman apart from routine administrative process and supports the Ombudsman's role as an impartial critic and opinion giver.
  - c) Because the Ombudsman ideally does not affect substantive rights and should not be able to impose binding decisions, the Ombudsman's findings and recommendations should stand alone and not be subject to modification or alteration upon appeal to some other body or authority.
  - d) The best practice is for this protection to be stated in the establishing document, ideally constitution, charter, or legislation.
  - e) Lesser indicators would find the protection in policy or commonly accepted practice.

## B. Impartiality

Impartiality is at the heart of the Ombudsman concept. Both the complainant and the agency are able to place confidence in the Ombudsman knowing that the Ombudsman has no vested interest in the outcome of a complaint investigation. If the Ombudsman is not perceived to be impartial by the complainant, the complainant will not seek the Ombudsman's assistance. If the Ombudsman is not perceived to be impartial by the agency, the agency will be resistant to the investigation and unlikely to accept the Ombudsman's criticism and recommendations. It is not sufficient for the Ombudsman to avoid actual conflict of interest but also to avoid the appearance of such a conflict to instill the utmost confidence. Members of staff acting under delegated power should also be subject to the same high standards.

The following are indicators of impartiality; the absence of any one of which may create problems of credibility and effectiveness:

1. The Ombudsman refrains from partisan and political activities, and employment and business relationships and transactions that may create a conflict of interest, or may create the appearance of a conflict of interest.

- a) The Ombudsman as citizen may, of course, exercise his or her right to vote in partisan elections. However, because the Ombudsman works within a political environment, it is essential not to be perceived as favoring one political person or group over another. This limits the ability of the Ombudsman to speak publicly in favor of or against any candidate for elective or appointive office, make or solicit contributions to political candidates or parties, put partisan signs on vehicles or in yards, or other similar political activities.
  - b) It is equally important that the Ombudsman not enter into any business or employment relationship that might, rightly or wrongly, cause others to question the Ombudsman's ability to be impartial and fair.
2. The Ombudsman holds no other public office that has the potential of creating a conflict of interest or the appearance of a conflict of interest.
- a) It may be possible for the Ombudsman to hold a non-partisan public office. But, great care must be taken to assure that there is no potential for a conflict of interest.
  - b) The Ombudsman must not seek or accept a public office over which the Ombudsman has jurisdiction, or an office that may have a contractual or other relationship with an agency or agencies over which the Ombudsman has jurisdiction.
3. The Ombudsman absents himself or herself from involvement in complaints where a conflict of interest or the appearance of a conflict of interest may exist.
- a) If the Ombudsman does receive a complaint with which there is a potential for a conflict of interest or the appearance of a conflict of interest, the Ombudsman must remove himself or herself completely from that complaint and turn it over to a staff member or other party for appropriate action.
  - b) It must be understood that the Ombudsman will not interfere in any investigation or the production or publication of recommendations.
4. The Ombudsman does not allow personal views regarding the subject matter or the parties involved to affect decisions as to what complaints to accept or how they are investigated.
- a) It would be unrealistic to think that an Ombudsman would never have personal values and opinions that may relate to the subject of a complaint. It is imperative, however, that the Ombudsman be able to set aside his or her personal views and approach the complaint in an impartial, unbiased manner.
  - b) It is important that the Ombudsman be aware of his or her personal views and guard against letting those views influence whether or not a complaint will be accepted and how it will be treated.
5. The Ombudsman is not predisposed as an advocate for the complainant nor an apologist for the government, however the Ombudsman may, based on investigation, support the government's actions or advocate for the recommended changes.
- a) The Ombudsman has no client. The Ombudsman is not the complainant's representative, and is not the protector of the public agency.
  - b) The Ombudsman's primary interest is in assuring that laws, rules, and policies are adhered to, and that the outcome is fair.

- c) While the Ombudsman may advocate changes that benefit a complainant, it is the objective of the Ombudsman to improve government performance.

### C. Confidentiality

Confidentiality is an Ombudsman's tool. It may be offered, at the Ombudsman's discretion, to complainants, agency employees, and witnesses when such an offer is necessary to elicit needed information or to protect the source of needed information. The Ombudsman must take care, however, that more is not offered than can be delivered. Each Ombudsman must carefully review the legislation establishing his or her office to determine what, if any, confidentiality protections are afforded. These may vary greatly from jurisdiction to jurisdiction. An Ombudsman located in the legislative branch may have more protections than one located in the executive branch. An Ombudsman established by law may have more protections than one established by executive order. An Ombudsman created by state law or local ordinance also needs to determine if the protections the Ombudsman has within his or her political jurisdiction would be honored or sustained by federal courts.

The following are indicators of the appropriate use of the Ombudsman's discretion:

1. The Ombudsman should not reveal information when confidentiality has been promised.
  - a) In most situations, it should be the Ombudsman who determines whether or not confidentiality will be offered to a complainant, agency employee, or witness.
  - b) The Ombudsman may choose not to raise the issue, but if the Ombudsman, the complainant, or a party from whom information is being sought raises the issue, the Ombudsman has a responsibility to advise that person as to any limitations to confidentiality that may apply.
  - c) Once confidentiality has been promised, and its known limits explained, the Ombudsman must honor the promise within those limits.
2. The Ombudsman should not release information where confidentiality is required by law, or where unnecessary harm would result.
  - a) During the course of an investigation, the Ombudsman may come into possession of information that federal and/or state law prohibits being made public.
  - b) The Ombudsman must treat information with the same degree of confidentiality as would be legally required of the agency being investigated.
  - c) Further, if the Ombudsman has reason to believe that release of information, though legal, would result in unnecessary harm to one or more persons, the Ombudsman should protect that information and/or its source.
3. The Ombudsman should not be compelled to testify or to release records.
  - a) In the establishment of the Ombudsman's office, the Ombudsman should seek statutory protection from being compelled to testify in a legal or administrative proceeding, or from having to release information gathered during the course of an investigation.
  - b) A promise of confidentiality would be of limited value if the Ombudsman could be required to testify in a proceeding or to release information as a part of a discovery process.

- c) The inability of the Ombudsman to maintain control over the information gathered during an investigation may well have the effect of discouraging cooperation and openness on the part of complainants, agency employees, and/or witnesses.

#### D. Credible Review Process

The concept of a credible review process encompasses the authority granted to the Ombudsman and the Ombudsman's responsibilities towards the complainant, the subject of a complaint, the appointing entity, and the public. If the process the Ombudsman uses to investigate complaints is flawed, the resulting recommendations are more likely to be ignored.

The following are powers and responsibilities inherent in a credible review process:

1. The Ombudsman should be qualified to analyze issues and matters of law, administration, and policy.
  - a) Describing what qualities are necessary for an Ombudsman is difficult because there are many intangible factors that go into making an Ombudsman a person whose judgment and recommendations will be respected.
  - b) In addition to being independent and impartial, the basic qualification for an Ombudsman is an ability to analyze issues and matters of law, administration, and policy.
  - c) In some positions, expertise, knowledge, or experience in a particular subject matter may be useful. This would be more true for a limited jurisdiction office set up to monitor an area like corrections, for example, than for someone who investigates complaints about a wide array of government activities.
  - d) Where there are reasons for specialized qualifications, they should be detailed in the authorizing law.
  - e) Where the Ombudsman also functions as the manager of others, he or she should also possess adequate managerial skills--the ability to hire and supervise qualified staff.
2. The Ombudsman should have the discretion to act informally to resolve a complaint.
  - a) Conducting investigations is the primary function of an Ombudsman, but not all inquiries and complaints are appropriate for formal investigation.
  - b) Other options include providing information and referrals, expediting individual matters, coaching people to take action on their own behalf, mediating, or providing other assistance.
  - c) The choice of the right approach to use should remain with the Ombudsman.
  - d) The number of cases formally investigated is usually a small proportion of the number of contacts. Not all complaints require full investigation to resolve and most likely, there are not enough resources to investigate every complaint. However, if most members of the public are turned away without any assistance, confidence in the value of bringing a matter to the Ombudsman will be lost.
3. The Ombudsman should have the authority to delegate power to a deputy or acting Ombudsman.
  - a) The powers and duties of the Ombudsman should be delegable during periods when the Ombudsman is unavailable.

- b) The only powers not delegable should be the power to delegate and the reporting responsibilities.
  - c) This authority to delegate and its limits serves to maintain confidence that someone will always be there to fill the role of Ombudsman and that the Ombudsman still remains ultimately responsible for the office and the reports that are issued.
4. The Ombudsman provides for sufficient access for any person to make a complaint known to the Ombudsman directly without a fee.
- a) An Ombudsman is of little value if not visible and readily accessible.
  - b) The Ombudsman is responsible for making public the existence and role of the Ombudsman.
  - c) The Ombudsman must assure that complainants have direct and timely access to the Ombudsman and that there be no barriers, such as fees, that may discourage a complainant from making their complaint known.
  - d) The Ombudsman should make provisions to accept complaints from those with access difficulties, for example those with disabilities or for whom English is not their first language.
5. The Ombudsman's jurisdiction should be clearly defined and the Ombudsman should not act outside of that jurisdiction.
- a) The government agency or agencies whose acts are subject to review by the Ombudsman should be described in the authorizing statute (or other document).
  - b) Limits on the Ombudsman's jurisdiction should be made clear to the public.
  - c) Legislation or regulations to create an Ombudsman to provide services in a more limited area should also clearly define the entities and individuals covered in the Ombudsman's jurisdiction and exceptions that apply in the particular situation.
  - d) An Ombudsman should not have jurisdiction over those officials who have supervisory or funding authority over the Ombudsman.
  - e) Once established, an Ombudsman should not act outside jurisdictional limits.
6. The grounds for Ombudsman review should be stated broadly.
- a) An Ombudsman's review of administrative acts should not be limited narrowly to whether or not the act was legal or consistent with policy.
  - b) The standard list of appropriate subjects of review includes administrative acts which fall into the following categories: contrary to law or regulation, based on mistaken facts or irrelevant considerations, unsupported by an adequate statement of reasons, performed in an inefficient manner, unreasonable, unfair, or otherwise erroneous even though in accordance with law.
  - c) The Ombudsman should be granted authority to review an administrative act from the broadest perspective with the goal of improving government.
  - d) An Ombudsman should be empowered to act in pending matters, as well as after a final action has been taken by an administrative agency, provided the Ombudsman is not asked to act in anticipation of an action on an assumption that it will be wrong.

- e) The Ombudsman should be empowered to investigate complaints from any sources and to initiate an investigation into a matter when there has not been a complaint from the public.
  - f) The Ombudsman should retain discretion over which complaints to accept or deny within the Ombudsman's jurisdiction.
7. The Ombudsman should have sufficient powers to conduct thorough investigations.
- a) Government entities and individual government employees that are the subjects of complaints may be resistant to cooperating in investigations. Therefore, the Ombudsman's authority to investigate must be clearly established.
  - b) Agency staff should be required to cooperate with the Ombudsman during the conduct of an investigation. The power to issue subpoenas and to take sworn testimony makes enforcement of such a requirement possible.
  - c) Supervisors should not interfere with an Ombudsman's ability to talk directly to staff.
  - d) An Ombudsman can allow a union representative to be present during an interview when an employee requests. But information obtained at such an interview should come from the employee directly.
  - e) The authority to examine government premises, documents and files, including electronic records, is crucial to the Ombudsman's role as an investigator.
  - f) The Ombudsman should be authorized to enter agency premises and inspect without notice.
  - g) The Ombudsman should have unlimited access to records and proceedings held by jurisdictional agencies, including records that are considered confidential or not otherwise open to the public.
8. The Ombudsman should have the authority and responsibility to publish findings, recommendations, and reports.
- a) It can be seen as a duty of the Ombudsman to make the public aware of investigation results to promote accountability.
  - b) If the results of an investigation and an Ombudsman's recommendations cannot be publicized, the function of the Ombudsman as a watchdog for the public interest is frustrated.
  - c) Identifying information of complainants and witnesses can be changed to protect confidentiality.
9. The subjects of the Ombudsman's reports should be consulted and afforded the opportunity to respond to the report prior to its being published.
- a) Prior to issuing a public report, the Ombudsman should give the agency and any of its officers or employees about whom the report is critical an opportunity to respond to the findings and recommendations.
  - b) It should be made clear that no one is authorized to release or publicize the Ombudsman's preliminary recommendations that have been shared for this purpose on a confidential draft basis.

- c) Once the Ombudsman has reviewed the agency's response, it is for the Ombudsman to release the final version.
  - d) The Ombudsman is sometimes specifically given the responsibility to publish the agency's response along with the Ombudsman's report.
10. The process for how complaints are to be made, received, and acted upon, including the scope and manner of investigations, should be defined and transparent.
- a) The process by which the Ombudsman accepts and acts upon complaints should be clearly defined for the public and the investigated agencies.
  - b) If there are specific requirements for the form complaints must be in to be accepted, or other intake rules, they should be made clear.
  - c) Guidelines for how the Ombudsman will proceed with investigations or dismiss complaints should be available to interested parties.
  - d) Clearly stated standard procedures let parties know what to expect from an Ombudsman's review and establish benchmarks to evaluate whether the office operates as it is intended.
11. The Ombudsman should state the reason a complaint is not accepted for investigation.
- a) The Ombudsman should provide an explanation to a complainant when a case is not accepted for investigation.
  - b) Examples of the reasons why cases are not accepted can include the following: the case is outside the Ombudsman's jurisdiction, the complainant has other available remedies, the complaint is made in bad faith or is vexatious, the complaint is trivial, the complainant will not provide information necessary to conduct an investigation, the office lacks sufficient resources, or the issue has been previously investigated.
12. The Ombudsman should keep both complainants and subjects apprised of the status of the investigation.
- a) Status updates should include information about whether a case will be accepted for investigation and the progress of the review.
  - b) The Ombudsman should advise the complainant and subject regarding the closing of any complaint and the reasons therefore if the complaint does not result in a published report.
  - c) Since many complaints to an Ombudsman will have to do with communication breakdowns between the government and members of the public, the Ombudsman should adhere to and model good communication.
13. The Ombudsman should complete investigations in a timely manner.
- a) Timely completion of investigations is important to the credibility of an Ombudsman's office.
  - b) Although an Ombudsman's investigation generally occurs after an administrative decision has been made, at the end of a process, the recommendations may lose their value if there is too long a delay.
  - c) Since the Ombudsman seeks to uphold standards of government efficiency, the office should be efficient itself.

14. The Ombudsman should, at least annually, report generally on the activities of the office to the Ombudsman's appointing authority, other policy makers, and the public.
  - a) There should be an obligation to inform the appointing authority and the public of the activities of the Ombudsman.
  - b) Most offices issue a report annually that describes the work of the previous year: the number of inquiries, the number of cases resolved informally, cases investigated and investigations pending, recommendations made, and whether or not they were followed.
  
15. The Ombudsman should, in practice and appearance, uphold the highest standards of public service.
  - a) As an advocate for good government, the Ombudsman must exemplify the standards used to measure the government agencies under his or her jurisdiction.
  - b) Complainants will come forward with complaints and suggestions and agencies will follow recommendations when they see that the Ombudsman can be trusted to behave appropriately.