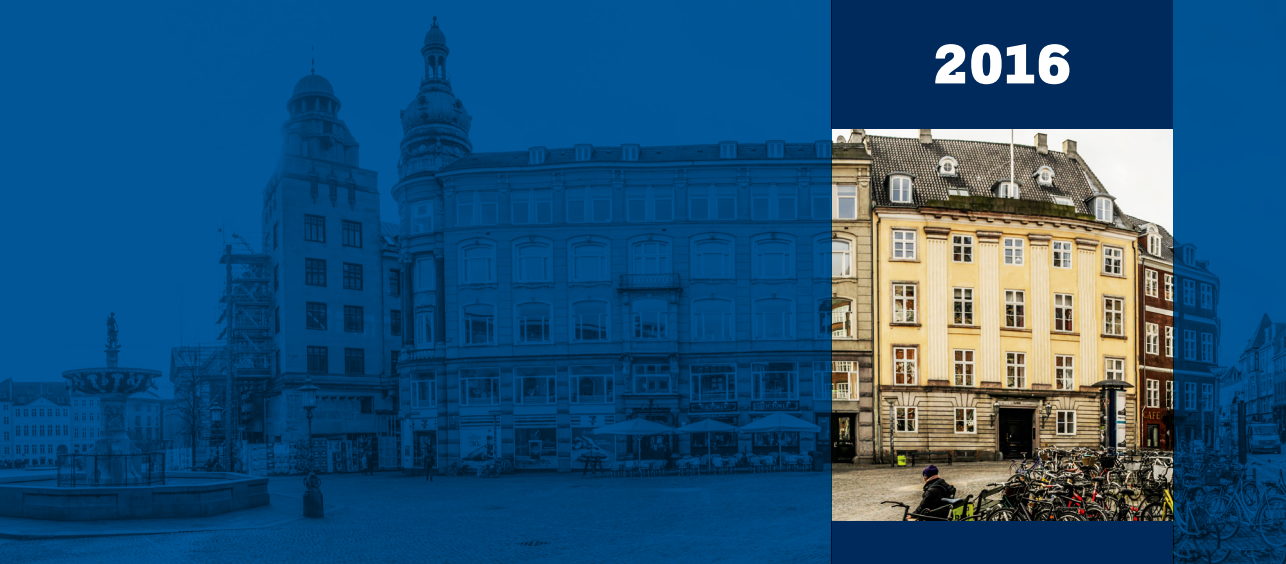




Annual Report

2016



TO PARLIAMENT

In accordance with section 11(1) and (2) of the Parliamentary Ombudsman Act (consolidating Act no. 349 of 22 March 2013), I am hereby submitting my Annual Report for the year 2016.

Copenhagen, March 2017



JØRGEN STEEN SØRENSEN

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THE OMBUDSMAN INSTITUTION IN 2016



Jørgen Steen Sørensen
Parliamentary Ombudsman

There are many words that may be used to describe the Ombudsman institution in 2016. One of the most important of those words is cooperation.

Some may think of the Ombudsman institution as a somewhat unapproachable place. A place where contact with the outside world is conducted in a way that is rather stiff and aloof. Without the parties ever really seeing each other.

This perception is utterly wrong.

An Ombudsman institution without formal power is dependent on the understanding, acceptance and respect of the outside world. Therefore, cooperation is a key word. Cooperation with Parliament. With relevant organisations. With the media. And not least with the administrative authorities. The last thing an Ombudsman institution can do is to barricade itself in stand-offishness.

It may sound strange to talk about ‘cooperation’ with the authorities. After all, the Ombudsman oversees the authorities. Surely this cannot be built on cooperation?

It is true that there has to be a considerable degree of formalism when it comes to the individual cases. The theme of the case must be defined. The authorities must explain themselves. The Ombudsman must give his statement. The authorities must follow up. This is not solved through idle chatter.

But the contact between the Ombudsman and the authorities reaches far beyond the individual cases. If an Ombudsman institution really wishes to influence the public administration, it must make itself available in a constructive way. Through seminars, conferences and informal discussions. The approx.

5,000 cases we see a year are a very small part of the real life. The millions of cases which the public administration processes and which we do not see are the major reality.

To the extent that we are able, we therefore always come forward when the authorities ask. And we are pleased to note that the authorities actually do ask. A couple of hours of well-prepared dialogue can prevent far more problems than we would ever be able to take care of in our investigations. For the benefit of those citizens who are at the centre of all this.

During my own time as ombudsman – now a little over five years – we have been working on prioritising cooperation higher still. With the authorities and with other interested parties. This was also a feature in 2016.

The rights of children were one area in which there continued to be an ever closer cooperation. Not just between the actors in the so-called Children's Ombudsman Cooperation – the National Council for Children, Children's Welfare and the Ombudsman's Children's Division – but also between the Children's Ombudsman Cooperation and other interested parties. In September, for example, the Children's Ombudsman Cooperation hosted a large dialogue meeting with 60 representatives from children's organisations in order to discuss children's rights. We will be doing that again in 2017.

In the field of monitoring, 2016 meant a further strengthening of the cooperation with DIGNITY – Danish Institute Against Torture, and the Danish Institute for Human Rights. We carry out 50-60 monitoring visits a year to institutions for the most vulnerable members of society, and the two organisations contribute with medical and human rights expertise at the very highest level. They have knowledge that we do not have. Together, we held a large meeting with the civil organisations where we shared our experiences and took on board new ideas for themes for our monitoring activities. This meeting will also be repeated.

2016 became the year when we truly began the project of developing an 'Information for Authorities' website module – a module in which we will provide information, in an easy to use and concentrated form, for authorities on the rules in administrative law areas of practical importance. This project, too, should be viewed in the spirit of cooperation – as a tool from the Ombudsman for authorities with the aim of preventing errors. We expect to launch the 'Information for Authorities' website module in the second half of 2017.

The articles in this Annual Report very much concern our cooperation with the world around us. On page 42, Director of International Relations Klavs Kinnerup Hede and Special Legal Advisor Christian Ougaard write about an extensive project with the Chinese authorities. On page 70, General Director Jonas Bering Liisberg writes about the comprehensive cooperation within the monitoring field. And on page 52, I endeavour to provide the authorities with some guidelines on how to handle cases involving freedom of speech for public employees.

Enjoy your read.



Jørgen Steen Sørensen

Juliane Marie Centret, neonatal clinic of Rigshospitalet (Copenhagen University Hospital): for premature babies, children with congenital deformities etc., and children needing intensive treatment from the neonatal period and up to two years afterwards, and their parents



CASE NO. 16/02555

One of the Ombudsman's legal case officers was on duty for 32 hours when he was monitoring the police's forced deportation of an Afghan man. The journey went from Denmark via Istanbul to Kabul. But the Afghan authorities refused to accept the man, and he therefore had to travel back the same way.

The Ombudsman later concluded the case without criticism of the police.

Each year, the Ombudsman monitors, fully or partially, 10 to 12 of the police's forced deportations of foreign nationals who do not have legal residence in Denmark. Further information about the Ombudsman's monitoring of deportations can be found on pages 108-112.

CASE NO. 15/04474

After a home visit to a young man with autism, the municipality decided that he no longer needed 37 hours of socio-educational support each week, but only five. 'Not with the best will in the world am I able to understand how suddenly overnight my son can get even close to being well', his mother wrote to the Ombudsman. The mother herself had tried to explain to the municipality as well as to the National Social Appeals Board how things were with her son. But without success. The Ombudsman sent the mother's complaint to the National Social Appeals Board in order for the Board to consider whether the case had been investigated adequately. The National Social Appeals Board then asked the municipality to reassess the case since the municipality had not examined the young man's need for support sufficiently.

In a number of cases, the Ombudsman tries to help a citizen by asking the authority to reassess the citizen's enquiry. Sometimes, the Ombudsman asks to be informed of the authority's reply to the citizen. However, in most cases he does not take any further action unless the citizen makes another enquiry.

CASE NO. 16/00692

A housing association did not find it problematic that a neighbour was permitted to tear down his house and build a new one. But the tenants who lived closest to the neighbour did. They were of the opinion that the new adjoining house would block out the sunlight and also cause 'privacy concerns'. They were also dissatisfied because neither the municipality nor the regional state administration found that they had a right of appeal.

The Ombudsman could not help the tenants. Building projects are decided in accordance with the Building Act, and the Building Act considers the interests of homeowners, not tenants. The Ombudsman therefore agreed with the authorities that only the housing association, not the tenants, had a right of appeal.

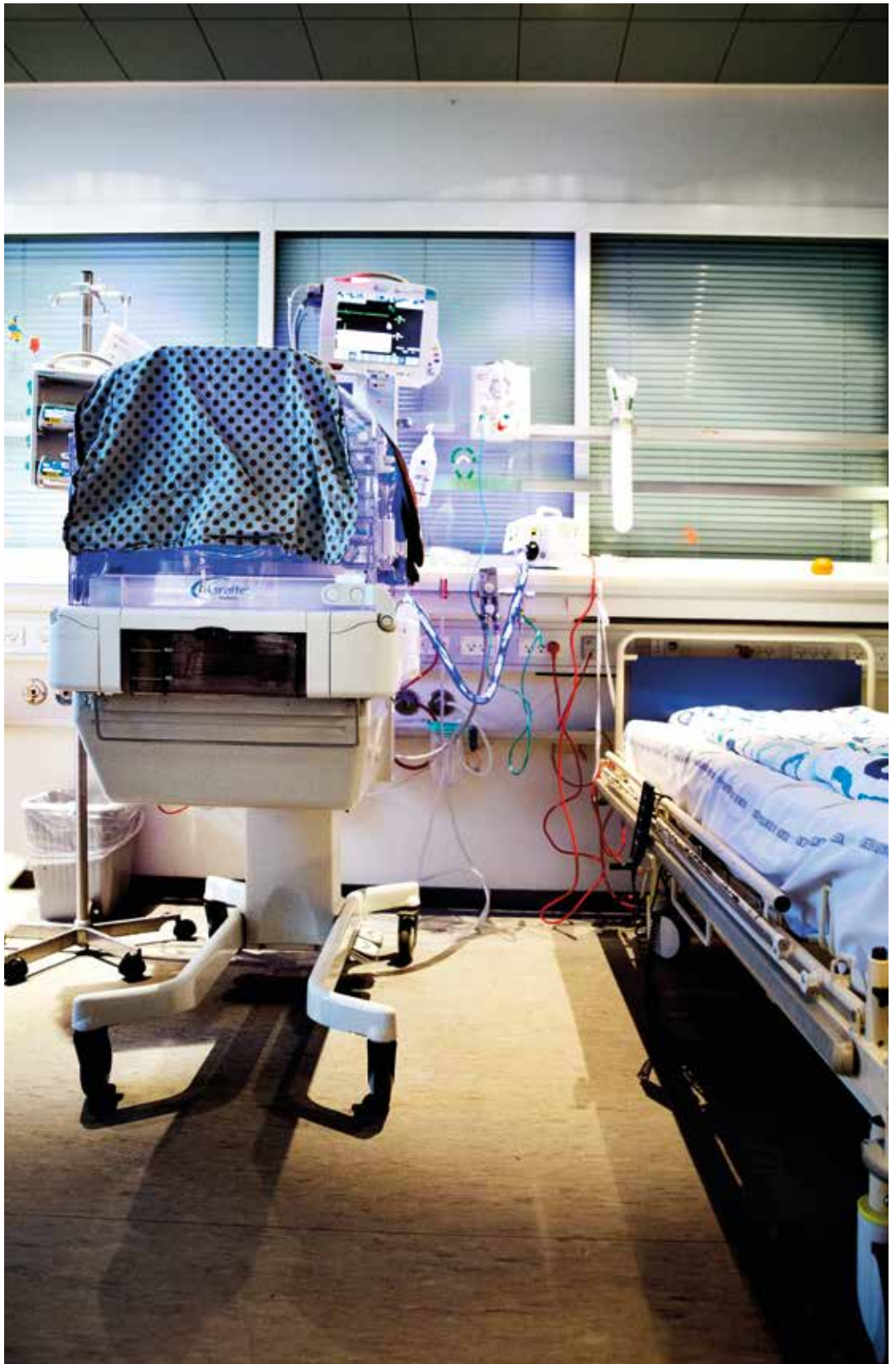
Anybody can complain to the Ombudsman, and there are no specific formal requirements: You can write a letter, send an e-mail or use the electronic complaints form on www.ombudsmanden.dk.

CASE NO. 16/01689

For 22 years, a man had been driving a car without a valid driver's license. He had not discovered the executive order from 1992 about the mandatory replacement of non-EU driver's licenses. The police did not want to issue a new driver's license until the man had passed a driving test. The man was of the opinion that he ought to be exempt from the driving test requirement because he had not been informed of the replacement of the non-EU driver's licenses and because he had driven 15,000-16,000 kilometres annually in his car without problems.

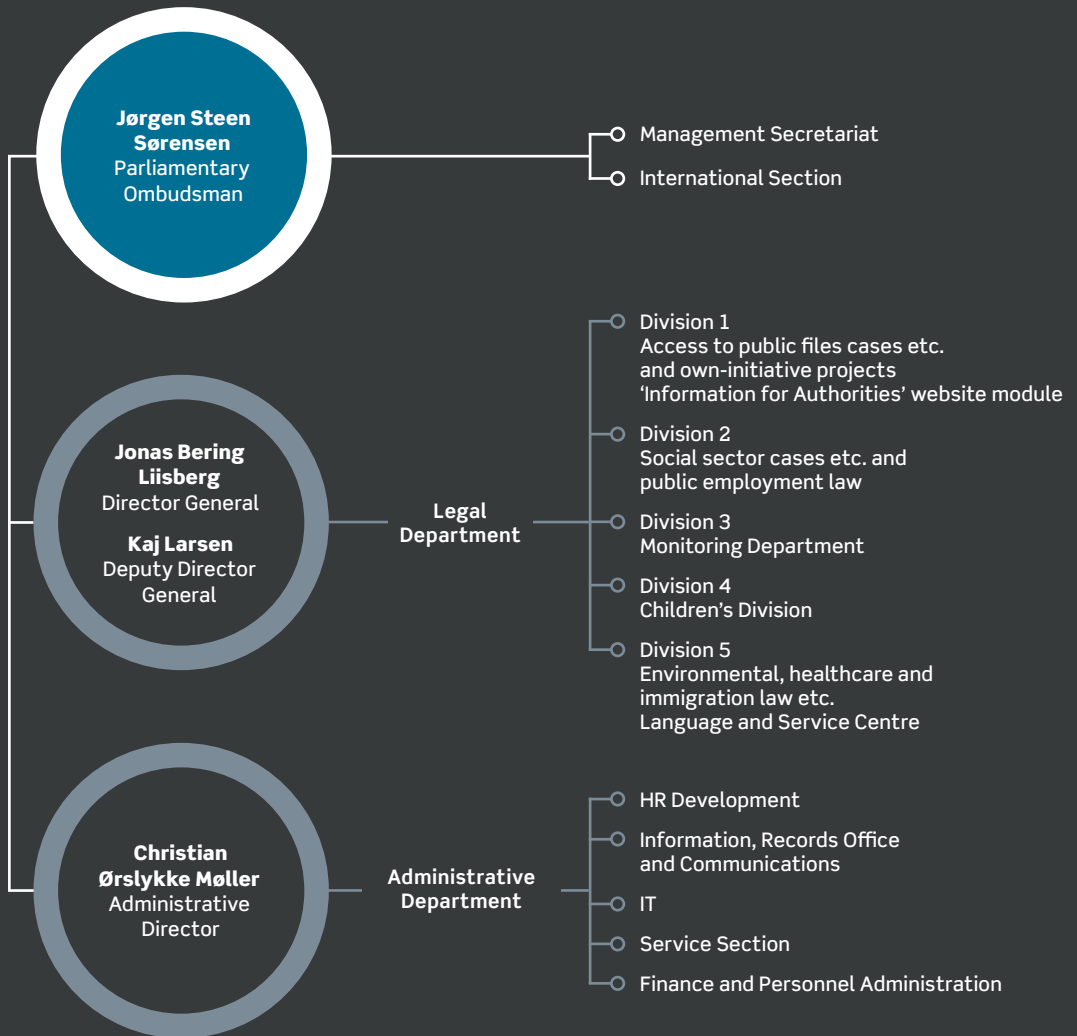
The Ombudsman found that he could not help the man. According to the rules, the man should have been aware that he needed to replace his driver's license, and it made no difference that he had been driving without a valid driver's license for all those years. The Ombudsman concluded the case without further investigation.

If the Ombudsman finds that he cannot help in regard to a complaint, he may choose to conclude the case with a brief explanatory statement to the complainant.



ORGANISATION

MANAGEMENT



DEPARTMENTS

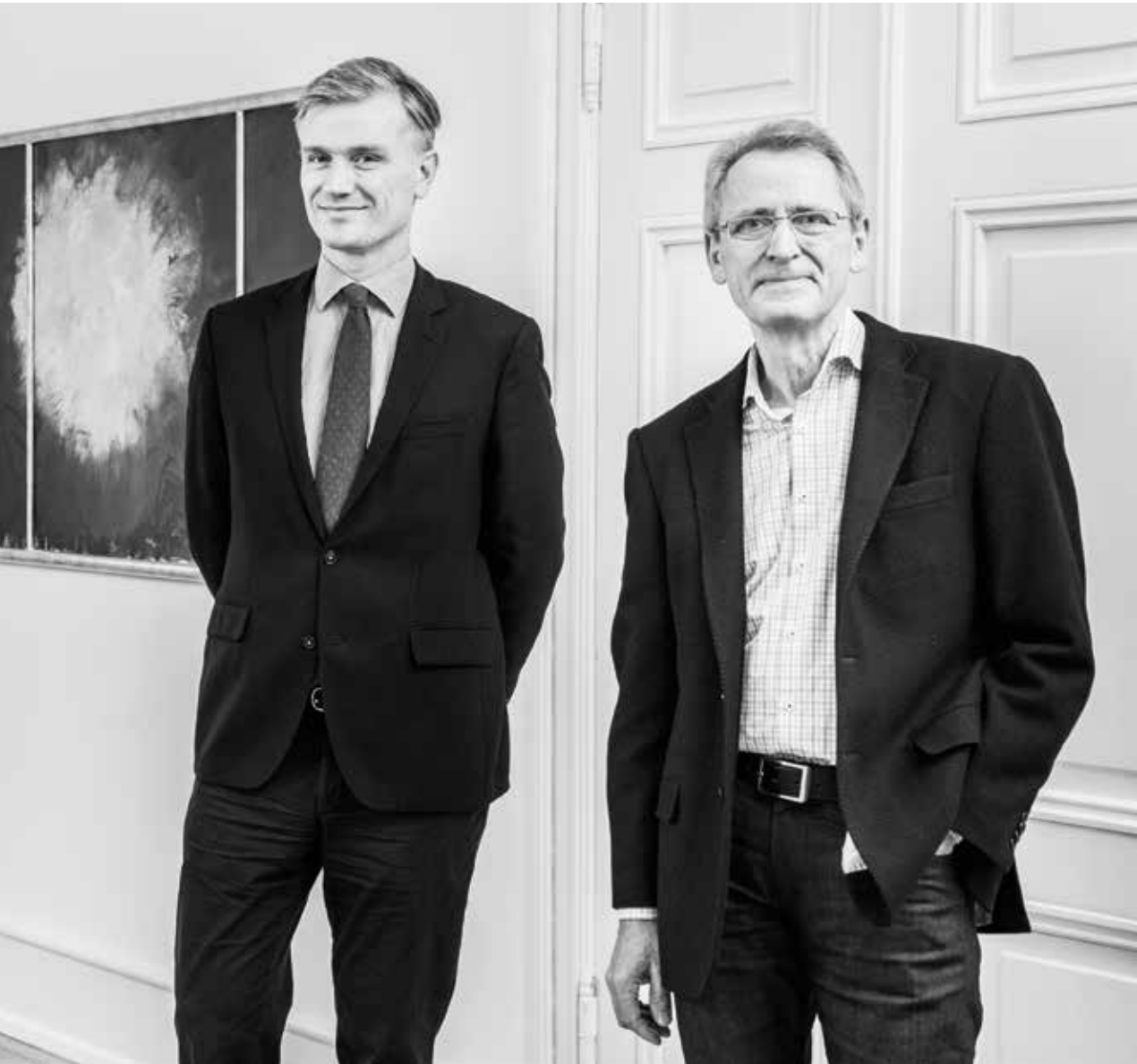
Christian Ørslykke Møller
Administrative Director

Jørgen Steen Sørensen
Parliamentary Ombudsman



Jonas Bering Liisberg
Director General

Kaj Larsen
Deputy Director General



MANAGEMENT SECRETARIAT

Jens Møller, Chief Legal Advisor

Jon Andersen, Chief Legal Advisor

Jacob Berner Moe, Special Communications Advisor

Linette Granau Winther, Management Coordinator

Jannie Svendsen, Executive Secretary



INTERNATIONAL SECTION

Klavs Kinnerup Hede, Director of International Relations

Christian Ougaard, Special Legal Advisor

Axel Crüger, International Relations Student Assistant



DIVISION 1

– ACCESS TO PUBLIC FILES CASES ETC. AND OWN-INITIATIVE PROJECTS
– ‘INFORMATION FOR AUTHORITIES’ WEBSITE MODULE

Karsten Loiborg, Senior Head of Division

Lisbeth Adserballe, Head of Division

Christina Ladefoged, Deputy Head of Division

Lise Puggaard, Special Legal Advisor

Michael Gasbjerg Thuesen, Special Legal Advisor

Ulla Birgitte Frederiksen, Special Legal Advisor

Janne Lundin Vadmand, Legal Case Officer

Karina Sanderhoff, Legal Case Officer

Kirsten Broundal, Legal Case Officer

Linette Granau Winther, Legal Case Officer

Lea Bruun, Legal Student Assistant

Professor Jan Pedersen, LLD, External Consultant,
Aarhus University



CORE RESPONSIBILITIES

- Access to public files cases
- Taxes, duties and recovery thereof etc.
- Market and consumer issues, companies etc.
- Elections, registration of individuals, weapons, passports, permissions to appeal etc.
- Transport, communication, roads, traffic etc.
- Education and research
- Ecclesiastical affairs and culture
- Own-initiative projects
- Special professional tasks

'INFORMATION FOR AUTHORITIES' WEBSITE MODULE

Louise Vadheim Guldborg, Senior Head of Division
Ulla Birgitte Frederiksen, Special Legal Advisor

RESPONSIBILITIES

- Formulation of information notes for authorities on key issues pertaining to administrative law



DIVISION 2

- SOCIAL SECTOR CASES ETC. AND PUBLIC EMPLOYMENT LAW

Kirsten Talevski, Senior Head of Division

Camilla Bang, Deputy Head of Division

Pi Lundbøl Stick, Deputy Head of Division

Bente Mundt, Senior Consultant

Elizabeth Bøggild Monrad, Special Legal Advisor

Ann Thagård Gregersen, Legal Case Officer

Christoffer Bruus, Legal Case Officer

Dennis Sørensen, Legal Case Officer

Mette Kildegaard Hansen, Legal Case Officer

Pernille Helsted, Legal Case Officer

Peter Kersting, Legal Case Officer

Julie Hilmand Christensen, Legal Student Assistant

Louise Strøyer Jensen, Legal Student Assistant

CORE RESPONSIBILITIES

- Social security and labour market law

- Public employment law





DIVISION 3

- MONITORING DEPARTMENT

Morten Engberg, Senior Head of Department

Erik Dorph Sørensen, Deputy Head of Department

Stine Marum, Deputy Head of Department

Anne Hveisel Djurhuus, Legal Case Officer

Katrine Rosenkrantz de Lasson, Legal Case Officer

Mai Gori, Legal Case Officer

Marie Nyborg Kvist, Legal Case Officer

Marjanne Kalsbeek, Legal Case Officer

Marta Warburg, Legal Case Officer

Mette Vestentoft, Legal Case Officer

Morten Bech Lorentzen, Legal Case Officer

Ulrik í Hjøllum, Legal Case Officer

Anders J. Andersen, Disability Consultant, MA (Laws)

Jeanette Hansen, Senior Administrative Assistant

Mia Larsen, Legal Student Assistant

Thea Flem Dethlefsen, Legal Student Assistant



THE DEPARTMENT IS IN CHARGE OF THE OMBUDSMAN'S MONITORING ACTIVITIES, WHICH INCLUDE IN PARTICULAR:

- State prisons
- Local prisons
- Halfway houses under the Prison and Probation Service
- Detention facilities for intoxicated persons
- Psychiatric wards
- Social and social-psychiatric accommodation facilities
- Non-discrimination of persons with disabilities
- Forced deportations of foreign nationals

THE DEPARTMENT ESPECIALLY PROCESSES SPECIFIC CASES INVOLVING:

- Sentence enforcement and custody
- Police and criminal cases
- Psychiatry
- Social care institutions



DIVISION 4

- CHILDREN'S DIVISION

Susanne Veiga, Senior Head of Division
Mette Ravn Jacobsen, Deputy Head of Division
Nina Melgaard Ringsted, Deputy Head of Division
Irene Rønn Lind, Special Advisor on Children's Issues
Rikke Ilona Ipsen, Special Legal Advisor
Hanne Nørgård, Legal Case Officer
Mai Vestergaard, Legal Case Officer
Signe Berg, Legal Case Officer
Yasaman Mesri, Legal Case Officer
Julie Brøndby Ørbeck, Legal Student Assistant

THE DIVISION CARRIES OUT MONITORING VISITS TO PUBLIC AND PRIVATE INSTITUTIONS FOR CHILDREN, SUCH AS:

- Social care institutions and privately run accommodation facilities for children placed in residential care
- Foster families
- Schools, including private schools
- Asylum centres
- Hospital wards and psychiatric wards for children
- Daycare facilities



**THE DIVISION ESPECIALLY PROCESSES SPECIFIC
CASES INVOLVING:**

- Support measures for children and juveniles
- Social services for children
- Family law (visitation rights etc., child support and adoptions)
- Primary and lower secondary schools, continuation schools and private schools
- Institutions for children
- Other cases with a particular bearing on children's rights



DIVISION 5

- ENVIRONMENTAL, HEALTHCARE AND IMMIGRATION LAW ETC.
- LANGUAGE AND SERVICE CENTRE

Johannes Martin Fenger, Senior Head of Division

Jørgen Hejstvig-Larsen, Deputy Head of Division

Vibeke Lundmark, Deputy Head of Division

Kristine Holst Hedegaard, Special Legal Advisor

Camilla Schroll, Legal Case Officer

Christine Hagelund Petersen, Legal Case Officer

Morten Juul Gjermundbo, Legal Case Officer

Sofie Hedegaard Larsen, Legal Case Officer

Tina Andersen, Legal Case Officer

Cecilie Rahbek, Legal Student Assistant

CORE RESPONSIBILITIES

- Environment and planning
- Building and housing
- Energy
- Food and agriculture
- Municipalities and regions etc.
- Health services except psychiatry
- Foreign nationals
- The law of capacity, the law of names, foundations, trusts and the law of succession



LANGUAGE AND SERVICE CENTRE

Vibeke Lundmark, Deputy Head of Division

Lisbeth Nielsen, Senior Language Officer

Gurli Søndergaard, Senior Language Officer

Marianne Anora Kramath Jensen, Senior Language Assistant

CORE RESPONSIBILITIES

- Production data

- Translation

- Proofreading

- Letters of confirmation

- Replies to communications sent for our information

- Contact to external translators



ADMINISTRATIVE DEPARTMENT

CORE RESPONSIBILITIES

- Annual Report
- Finance and personnel administration
- Contracts and purchases
- HR development
- Organisational development
- Information and communications
- IT
- Service and maintenance
- Records and case management

Christian Ørslykke Møller, Administrative Director

HR DEVELOPMENT

Lisbeth Kongshaug, Head of HR and Development

INFORMATION, RECORDS OFFICE AND COMMUNICATIONS

Karen Nedergaard, Head of Information, Records Office and Communications

Eva Jørgensen, Senior Communications Officer

Julie Gjerrild Jensen, Senior Communications Officer

Anne Mathilde Chavez Svendsen, Senior Records Assistant

Birgit Kehlet-Hansen, Senior Library Assistant

Carsten Christiansen, Senior Records Assistant

Denise Schärfe, Senior Records Assistant



Harriet Lindegaard Hansen, Senior Records Assistant
Stine Holst Gamain-Nørgaard, Senior Records Assistant

IT

Seyit Ahmet Özkan, IT Administrator
Uffe Larsen, IT Officer
Kevin Pedersen, IT Student Assistant

SERVICE SECTION

Jeanette Schultz, Head of Service
Lisbet Pedersen, Receptionist
Flemming Wind Lystrup, Service Assistant
Niels Clemmensen, Service Assistant

Annitta Lundahl, Housekeeper
Charlotte Jørgensen, Housekeeper
David Jensen, Housekeeper
Kirsten Morell, Housekeeper
Suphapon Nielsen, Housekeeper

FINANCE AND PERSONNEL ADMINISTRATION

Torben Frimer-Larsen, Head of Finance and Personnel
Mette Vestentoft, Legal Case Officer
Jeanette Schultz, Head of Service
Jannie Svendsen, Senior Personnel Officer
Lone Gundersen, Senior Personnel Officer
Neel Bjellekjær, Senior Administrative Assistant





CASE NO. 12/00188

An inmate in a local prison died in hospital after the local prison officers had used force against him. The Ombudsman read about the death in a newspaper and asked the Department of the Prison and Probation Service to send him the results of the subsequent investigation into the death.

At the time of the death, the Ombudsman, Jørgen Steen Sørensen, was the Director of Public Prosecutions. Because he had made decisions in parts of the case in that capacity, he wrote to Parliament's Legal Affairs Committee that he could not investigate the case himself. Instead, the Legal Affairs Committee appointed an ad hoc ombudsman to investigate the case.

When an ad hoc ombudsman investigates cases in the Ombudsman's place, the Ombudsman institution provides secretariat assistance.

CASE NO. 15/05524

A sewage pumping station approx. 10 metres from the bedroom window of the holiday house. This was what a man and his family had to expect because all of a sudden the construction works started. The man asked the municipality why he had not been involved in the case, but in his opinion his questions were not answered. So he complained to the Ombudsman.

Aided by the Ombudsman, the man received new answers, but he was still of the opinion that they were not satisfactory.

The Ombudsman sent the man's complaint to the municipality again, but the municipality did not reply. After that, the Ombudsman wrote several times to the municipality, but still the man did not receive an answer.

When more than 15 months had passed since the Ombudsman's first letter to the municipality, the Ombudsman criticized the municipality for not addressing the man's questions.

Subsequently, the man received an answer. The municipality wrote that the case would now be reassessed.

Even though the Ombudsman cannot process a complaint until the authority has finalised its processing of the matter, it is still possible to lodge a complaint with the Ombudsman about the authority's processing time.

CASE NO. 16/02631

In June, a father complained to the Ombudsman because he could not get his summer holiday access with his children extended from two weeks' continuous holiday to three weeks which would not be continuous. The State Administration and the National Social Appeals Board had assessed that it was best for the children not to change the extent of the holiday access for the upcoming summer holiday, as the holiday was already planned and the children knew about it. The assessment of a child's best interest is based on a balancing of a number of different considerations and circumstances, and the Ombudsman was unable to make another or better assessment than the authorities. The Ombudsman was therefore of the opinion that he had no prospect of being able to help the father to another result in the case.

Complaints from and about children are usually processed by the Ombudsman's Children's Division which was established in 2012.

CASE NO. 16/00527

'Two ladies from the municipality came and asked us if we would like to move. I said, 'No, but do we have a choice?'. 'No', they replied.' This is what a 15-year-old boy wrote in his complaint to the Children's Division after having been moved to a new foster family with his 13-year-old brother. The boys and their parents had not used their option to appeal within a deadline of four weeks to the National Social Appeals Board about the municipality's decision to change their placement. As the case had not been processed by the National Social Appeals Board, the Ombudsman could not investigate the boys' complaint.

The boys were also dissatisfied with conditions at the new foster family. They wrote, among other things, that they were treated like little children. The Ombudsman sent this part of the complaint on to the municipality and asked the municipality to reply to the boys' complaint.

The Ombudsman can only investigate a complaint if all other channels of complaint or appeal have been exhausted. This also applies if a complaint or appeal option no longer exists, for instance because an appeal deadline has expired.



ARE THE LEGAL RIGHTS OF CHILDREN IN CARE UNDER THREAT?

A number of cases indicate that the municipalities sometimes have difficulties observing the legislation in cases involving children placed in care. On several points, the children are not given the legal rights they are entitled to.



Susanne Veiga
Senior Head of Division

Being removed from your mother and father is a big disruption to a child's life. The decision therefore has to be founded on very thorough, professional assessments of the child's best interests. Depending on the child's age, he or she must be involved, be given an explanation for the decision and be informed of his or her legal rights, obviously in a language that the child can understand.

However, in some instances it is in the child's best interest to be removed from the parents. And then begins a period of life as a child placed in care in an institution. A situation which can also be difficult and intense for the child.

The Ombudsman's Children's Division tries to help as many children as possible, but we pay special attention to children placed in care. The reason is that they are especially at risk and are some of the most vulnerable children in Denmark. They do not necessarily have parents, relatives or a network to help and support them. It is fair to say that these children are completely dependent on the system. It is therefore absolutely essential that the adults – the municipality case workers, the placement facility staff, teachers and therapists – are very careful that the children get what they need and have the right to. Sadly, that is not always the case, as seen in several major cases from 2016 in the Children's Division.

>>

When a child is placed outside the home, it may be due to the parents' lack of care, neglect, abandonment or abuse. It may also be because the child has a mental or physical impairment which is best handled in an institution or at a residential facility.

A placement may start with a notification to the authorities, for example from the child's school or doctor. It may also be the child's parents or the child itself who turn to the municipality to ask for help.

THE LEGAL BACKBONE

In 2014, approx. 11,000 children under the age of 18 were placed outside the home. This is the equivalent of one per cent of all Danish children. More than half were between 13 and 17 years old.

Before a municipality decides to place a child outside the home, the municipality has to conduct a child protection examination. This means that the municipality examines the child's circumstances, for example in relation to family, school and health, and assesses which course of action the child needs. As part of the examination the municipality starts off by consulting the child. When the municipality has decided to place the child in care, an action plan needs to be made. The action plan must state the purpose of the measure and which measure is necessary. The child's placement facility must receive the relevant parts of the action plan in order to be able to work actively towards the objectives in the plan.

You can say that the child protection examinations, consultations with the children and action plans form part of the legal backbone which guarantees that children are treated by the book when placed in care. Nevertheless, in the Children's Division we have during the course of the year processed cases which show that the rules which are part of the legal backbone are sometimes not observed in the municipalities.

Also the National Audit Office and the Public Accounts Committee have recently taken an interest in the children and young persons placed in care. In the comments to the National Audit Office's Annual Report from August 2016, the Public Accounts Committee criticises the municipalities for not observing specifically the legislative requirements regarding child protection examinations, consultations with the children and action plans in many placement cases.

CHILDREN AGED 12 OR OVER HAVE A RIGHT OF APPEAL

A grandfather of a 14-year-old girl wrote to the Children's Division that the municipality had decided to remove the girl from her foster family and instead place her in a socio-educational residential facility. He wrote that she was very upset and that it had been traumatic for her to lose 'the only family' she had. The girl had been placed with the foster family when she was around one year old. The grandfather explained that the municipality had not informed the girl that she could appeal the decision.

According to the Social Services Act, children aged 12 or over can appeal a decision to place them outside the home or to change their placement.

In a statement to the municipality, the Ombudsman said that a decision to change a placement is of such vital importance that it should be given in writing and with guidance on appeal. After the Ombudsman had opened the case, the girl was informed by the municipality that she could appeal the decision.

This case is not unique. The Children's Division has also investigated other cases where children and young persons have not been given guidance about their appeal options. This suggests that the municipalities sometimes neglect to inform children and young persons aged 12 or over that they have a right of appeal. However, having a right of appeal is not just a legal quibble. The right to lodge an appeal gives a higher guarantee that everything has happened according to the rules. And if the municipality does not inform a 14-year-old girl in care that she has a right of appeal, how is she to know?

CHILDREN PLACED IN CARE MUST HAVE AN 'ACTION PLAN'

In 2015, the theme for the Children's Division's monitoring visits was institutions for children and young persons with disabilities. These are also children placed in care. In connection with the monitoring visits, the Children's Division focused on whether action plans for the children are drawn up.

It turned out that in a number of cases, the municipalities had not made action plans for the children placed in care or had not revised the plans on an ongoing basis. In other cases, the relevant parts of the action plans were not sent to the placement facility.

According to the Social Services Act, the municipalities have a duty to draw up an action plan for a child who is placed outside the home. An action plan contains important information about the background for and the purpose of the placement. The action plan also needs to include objectives for the child's development and welfare. In other words, the action plan is an important tool for the placement facility to become familiar with the objective of the placement and to know which course of action to take in relation to the child. This is why the relevant parts of the action plan must be given to the placement facility.

After monitoring visits in 2014 and 2015, the Children's Division have opened 25 cases about action plans. The municipalities have either not drawn up the

action plan or neglected to revise it, or the action plan has not been given to the placement facility. In a number of cases, the Ombudsman has expressed criticism of the municipalities. In one of these cases, a 10-year-old boy had been placed outside the home since the age of one, at first with a foster family and afterwards in an institution. During all of those years, the municipality had not drawn up an action plan.

ALL CHILDREN HAVE THE RIGHT TO EQUAL SCHOOLING

Many children in placement attend an ordinary primary and lower secondary school. It is, however, possible for a municipality to refer children in placement to special needs teaching in an in-house school, typically in the institution or facility where the child lives.

Regardless of whether children are placed in care, it is imperative that they are given access to proper schooling. Education is usually an important stepping stone for them later on in life.

According to an amendment of the Primary and Secondary Education Act (the Folkeskole Act) in 2013 with the aim of strengthening the quality of teaching in in-house schools, the pupils must receive schooling equal to the normal requirements of the primary and lower secondary school. This entails that children and young persons placed in care who attend in-house schools have the right to schooling in the same subjects as pupils in primary and lower secondary schools. It is also evident from the Primary and Secondary Education Act that pupils are only to be exempt from one or more subjects if a pedagogical-psychological assessment of the individual pupil has been made.

In connection with monitoring visits in 2014 to placement facilities with in-house schools, the Children's Division found that some in-house schools did not observe the rules on teaching the full range of subjects and on exemption from teaching in one or more subjects. Hence, the Ombudsman expressed severe criticism of the schools.

The two municipalities responsible for the schools have subsequently stated that the in-house schools now observe the rules about teaching the full range of subjects and about exemption from teaching. After the Ombudsman described the issues to the Ministry of Education, the Ministry has sent a so-called 'circular letter' to all the municipalities in the country inculcating the rules on schooling of children placed in care.

CHILDREN PLACED IN CARE CANNOT BE MOVED WITH PHYSICAL FORCE

Children placed in care typically live in several different places throughout their upbringing. So it happens on a regular basis that a child placed in care moves from one placement facility to another. Sometimes it happens against the child's will.

A recent case revealed that it is not only sad but also extremely difficult to move a child against the child's will, because authorities are not allowed to use force to move a child to another placement facility. One municipality moved an 11-year-old girl by force. She was placed in care with a foster family and had to be moved to a residential facility because 'there was an evident risk that the girl's development and welfare would be seriously damaged'. However, the girl did not want to move, and the municipality tried to move her several times without success. In the end, the municipality resorted to physical force, and the municipal social workers carried the girl to a waiting car.

The Ombudsman understood the difficult situation, but it was unacceptable to use physical force. He stressed that there was no authority for it in the Social Services Act, nor in any other parts of the legislation. In the Social Services Act, there is only authority for removing a child by force if the child lives with the adults who have custody of the child.

The Ombudsman has asked the Ministry of Social Affairs and the Interior (now the Ministry for Children and Social Affairs) to consider if the law should be amended so that municipalities can use force in certain cases to move a child placed in care – also in cases where the child is living with others than those who have parental custody of the child. The Ombudsman has not received a reply from the Ministry yet.

RESOURCE SHORTAGE OR MISUNDERSTOOD REGARDS?

The various cases show that the municipalities sometimes have difficulties observing the legislation in cases involving children placed in care. But why the problems in this area?

The cases investigated by the Children's Division do not give a definite answer. However, we do know that the children's social care sector has been in focus in several municipalities when cutbacks have to be made. And cut-backs can of course influence the social workers' working conditions.

One might also imagine that social workers sometimes do not comply with legislation because they do not want to expose children to too much information which may cause confusion or give the children unrealistic expectations about the outcome of their case.

There may be many other explanations. It is therefore important that the municipalities and other relevant authorities consider thoroughly why they sometimes have trouble complying with the legislation in regard to children placed in care. At the end of the day, the rules are made to safeguard the children's legal rights and to provide as much security as possible in an everyday life which is often hard.





CASE NO. 16/01757

A citizen complained to the Ombudsman about SKAT (the Danish Customs and Tax Administration) having imposed an additional tax on him because he had filed his income tax return too late. During the year, he had had some activities which meant that he had to file an actual income tax return and not merely adjust his annual statement on SKAT's website, www.skat.dk.

The citizen was of the opinion that he had filed his income tax return on SKAT's website. In his complaint, he wrote that he had entered the relevant information and pressed 'Save'. However, he had not received any confirmation that the information he had entered had been registered in SKAT's system.

The citizen believed that the lacking registration of entered information was a technical error and that he was not to be held responsible for this.

The authorities held that it was up to the citizen to provide documentation that he had filed correctly, for instance in the form of a receipt that the information he had entered had been registered in SKAT's system. Therefore, the citizen's application for exemption from the additional tax was turned down.

The Ombudsman reviewed the material sent to him by the citizen. But he did not find that there was any prospect that he would be able to criticize the authorities for refusing to exempt the citizen from the additional tax.

In January 2017, the Ombudsman institution was extended with a division of 11 staff members who will be processing taxation cases. The Taxation Division is in line with the Ombudsman's other divisions.

CASE NOS. 16/02826 AND 16/04685

A man complained to the Ombudsman about the Disciplinary and Complaints Board for Licensed Building Experts. The Ombudsman cannot investigate complaints about the Board and rejected the complaint.

The man contacted the Ombudsman again and requested access to the Ombudsman's previous case files regarding complaints about the same Board. With a few exceptions, the Ombudsman sent copies of the case files from the previous cases.

The Ombudsman is not subject to the rules of the Access to Public Administration Files Act and the Public Administration Act. However, he observes the principles of the Acts in practice.

CASE NO. 16/03995

A fee for board duties in an association resulted in a jobless family father being ordered to repay DKK 50,000 which he had received in unemployment benefit. The man appealed more than three months too late to the Unemployment Insurance Complaints Centre. He explained that the case – which had also led to a report to the police about fraud – had resulted in a serious relapse of deep depression. He therefore claimed that he had been unable to appeal. But the authority disagreed that his illness had prevented him from appealing within the time stated and therefore rejected his appeal.

The Ombudsman did not think that he was able to change the authority's assessment of whether the man had been prevented from appealing due to his illness. This meant that the man had not made use of his channel of appeal, therefore the Ombudsman was precluded from considering the decision that the man was to repay DKK 50,000.

The social sector plays a big part in the Ombudsman's work. In 2016, the Ombudsman concluded approx. 650 cases about various kinds of social benefits and payments alone.



CAN THE DANISH OMBUDSMAN ELIMINATE CORRUPTION IN CHINA?

Over the present years, the Ombudsman's biggest international project is being launched. China wishes to study how a public sector like the Danish one has become almost free of corruption.



Klavs Kinnerup Hede
Director of International
Relations



Christian Ougaard
Special Legal Advisor

Every so often, stories pop up in the media about the Danish Ombudsman helping the Chinese authorities to fight corruption in China. Something which has no doubt surprised many people. Because what does a Danish Ombudsman really know about corruption? And what difference can a relatively small institution such as the Ombudsman's office make in the enormous country that is China?

The short answer is that the Ombudsman knows only a little about corruption in China and that the Ombudsman certainly cannot eliminate corruption in China. On the other hand, the Ombudsman has a sound knowledge of one of the world's least corrupt systems – the Danish public administration. And it is to this system that China looks for inspiration.

COMMUNICATOR OF ADMINISTRATIVE CULTURE

Ever since the Danish Ombudsman institution was created in 1955, successive ombudsmen have travelled the world and told the story of the Danish Ombudsman institution and its work on legal rights for citizens. This has taken place in such diverse countries as Ghana, Albania, Jordan, Vietnam, Iran – and indeed China.

Usually, the Ombudsman's international involvement is based on an invitation from ombudsman institutions and authorities in other countries. The objective is not a 'system export' but an exchange of knowledge and experiences and a subsequent dialogue which leaves each party free to draw their own conclusions.

It is fundamental to the Ombudsman's involvement that he is always completely apolitical. This means, among other things, that it is not our task to judge the systems of other countries or to advise other countries on how they should organise their systems.

Our international counterparts often have systems which are markedly different from the Danish approach and which are, on some points, incompatible with our legal tradition. This also applies to China where the fight against corruption incorporates for instance the death penalty in very grave cases.

The point of the cooperation is not to seek consensus on the right model but to share knowledge and to make available experiences as inspiration. In the cooperation, we do not conceal the values of a state governed by law – for instance openness, trust and legality – on which the Danish administrative system is based. How much or how little the counterpart can use in the final analysis, is up to the country itself.

HOW DENMARK BECAME (ALMOST) CORRUPTION-RESISTANT

According to Transparency International, Denmark is one of those countries in the world where the citizens' perception of corruption is the lowest. Though the index uses the term *perceived* and not *actual* corruption, studies do show that there is a match between perceived corruption and actual corruption. If a citizen were to offer a public servant a gift, the public servant's knee-jerk reaction would be to say no thanks.

But why is that?

Historical research shows that the present-day low incidence of corruption within the Danish public administration is the result of a long and uneven historical development. Since 1660, successive monarchs have implemented a large number of measures and reforms with the aim of fighting corruption and making professionals out of the civil servants. In 1671, for instance, King Christian V decided that commoners who were loyal and conscientious civil servants would be rewarded with honourable titles which had previously been reserved for the nobility. Corruption was made a punishable offence, and even high-ranking persons were prosecuted.

On 26 May 1676, Chancellor Peter Schumacher Griffenfeld was sentenced for selling government posts and receiving bribes. Griffenfeld was sentenced to death, but the sentence was later commuted to imprisonment for life. Increasingly

up through the 18th century, citizens began to lodge complaints about corrupt civil servants. From the end of the 18th century, the majority of civil servants was hired on the basis of formal qualifications within the legal profession, and a society based on the rule of law was emerging to a significant extent. Control of the Civil Service was intensified, and salary and pension conditions for the civil servants were improved in the middle of the 19th century. According to research, these factors and a marked commitment on the part of the regime have contributed to the development of the Civil Service ethics which today is part of the reason for the low level of corruption in Denmark.

So history shows that it was not self-generated. And there is no doubt that a low level of corruption requires constant alertness and control.

Today, we do not have a specific anti-corruption authority in Denmark. Instead, a large number of authorities and institutions participate in the prevention of and fight against corruption in the public administration. The police, the Crown Prosecution Service, the courts of law, the administrative appeal bodies, the Agency for Modernisation, the Auditor General, the Parliamentary Ombudsman and the media all play a part. In addition, there are the authorities' own internal control mechanisms, the high professional integrity of the civil servants and an open administrative culture. All are cogs in the machinery which in Denmark has shown a high degree of resistance to corruption.

And this machinery, developed over several hundred years, draws attention today. Every year, the Danish Ombudsman receives delegations from various parts of the world, all wanting to know how Denmark largely escapes corruption. And so also from China.

THE INITIAL CONTACT

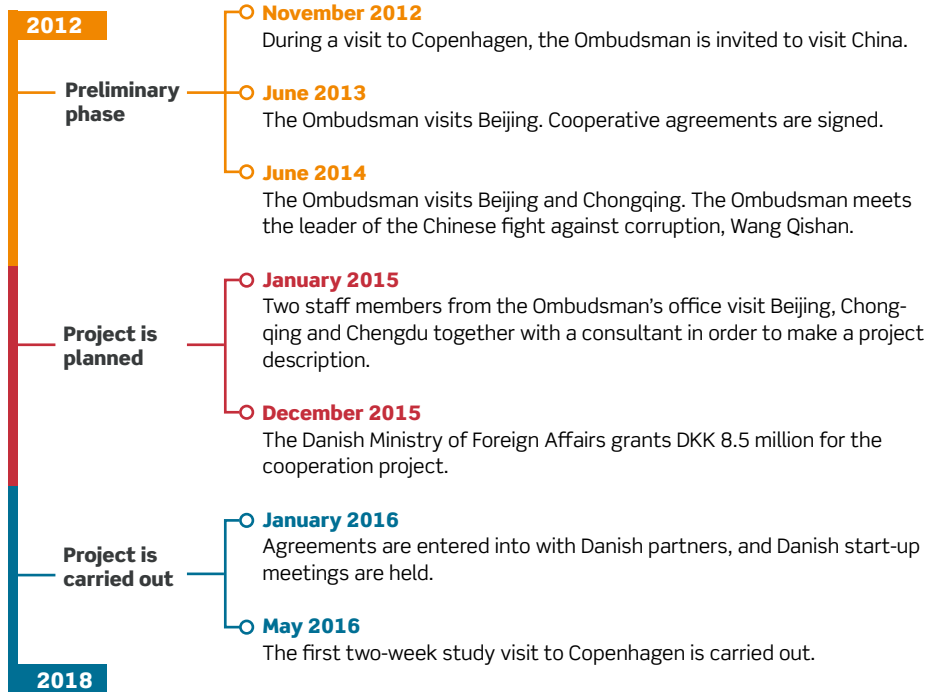
China has big problems with corruption. The Chinese Government has recognised this, and it has declared war on corruption. The Chinese Government uses the image that corruption must be fought both among 'tigers' and 'flies', meaning that corruption must be eradicated both in the top of the Party and among the more 'ordinary' civil servants.

The Chinese Government has formulated a general strategy. Corruption will be prosecuted and rendered difficult so that it is harder to carry out and easier to detect. At the same time, an understanding that corruption is morally wrong must be developed. So the aim is to develop both a system and a culture where corruption does not thrive – and in Denmark we have long experience in that field.

That is why the Ministry of Supervision, which fights corruption in China, visited the Ombudsman in November 2012. The leader of the delegation passed on a Chinese wish to learn about the Danish model and the Danish experiences. The following year, the Ombudsman went to China to sign a cooperative agreement – a so-called Memorandum of Understanding.

Since then, contact has been frequent. Eleven delegations from various Chinese authorities have visited Denmark, and staff from the Ombudsman's office have visited China five times. And the interest is not limited to anti-corruption measures. China is also interested in how the Danish authorities handle complaints from citizens about errors and derelictions committed by the public administration. This is another important component in the cooperation project with China.

The phases of the project



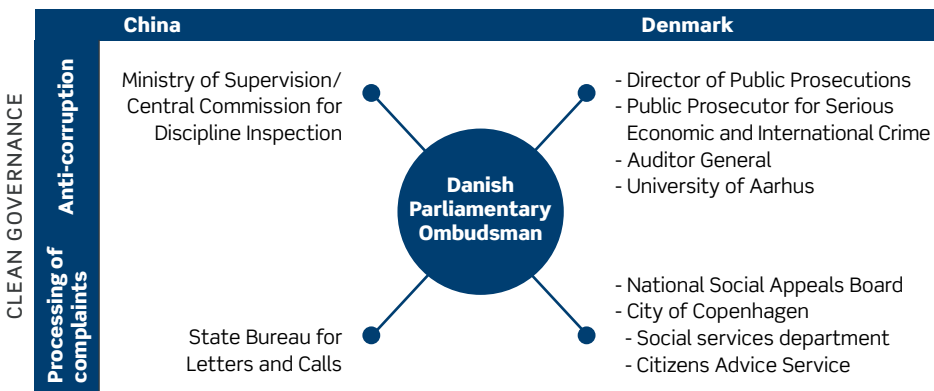
MORE DANISH COLLABORATORS

It quite quickly became clear that the project would become more extensive than the Ombudsman's usual international activities. The Danish Ministry of Foreign Affairs therefore granted DKK 8.5 million over a three-year period from 2015 till 2018. The grant allowed, among other things, the possibility of drawing on staff – and thereby important knowledge – from other Danish institutions.

We have entered into collaboration with the Director of Public Prosecutions, the Public Prosecutor for Serious Economic and International Crime (SØIK) and the Auditor General. In addition, our Chinese partners have shown a great interest in the historic development of Denmark. Therefore, we have also started a cooperation with Mette Frisk Jensen from Aarhus University, a historian specialising in corruption.

In this way, we are now giving the Chinese the possibility of studying how Denmark has fought corruption throughout history, how we have today organised the public administration in such a way as to avoid corruption, and how we investigate and prosecute corruption. The main form of the cooperation is that delegations from China visit the various institutions in Denmark. But we also go to China to see how the Chinese work. That we, too, understand the reality in China is crucial to building a constructive dialogue on the fight against corruption.

Actors in the project



HOW CAN CORRUPTION BE ELIMINATED IN CHINA?

We have succeeded in achieving a very low level of corruption in Denmark, but that does not mean that we can tell the Chinese how to emulate us.

China is a huge country. China is more than double the size of the EU and has more than half again as many inhabitants as the EU and the USA together. Even though we share the ambition of fighting and preventing corruption, there are great differences between our systems. For instance, in Denmark we see independence as a strength in an institution. In China, all authority ultimately lies with the Communist Party, and the power and influence of an institution are therefore, broadly speaking, dependent on the Party. Therefore, when communicating with the Chinese authorities, one must realise that the high-ranking Chinese civil servants also have a political role in the Party.

With regard to the question of whether the Ombudsman can eliminate corruption in China, the answer is no. By no means. Only the Chinese themselves can do that. Our task is to make available our knowledge and experiences in the hope that the Chinese can use them in their fight against corruption and in the continuous reforms in this field.

After a long period of preparation, the cooperation with China started in earnest in 2016. And it will continue until at least the end of 2017. What happens afterwards is still too soon to say. But the Danish Parliamentary Ombudsman will also in future be ready to cooperate with authorities and institutions interested in our knowledge and experiences.





CASE NO. 16/01058

An artist complained to the Ombudsman that a municipality had stopped a planned art project for which he had already prepared a draft proposal.

The decision to discontinue the art project was made by a special group of arts professionals which had been appointed by the municipality's cultural affairs committee in order to ensure quality and versatility in the municipality's art purchases.

The Ombudsman decided that he would not initiate an investigation of the matter. He stressed the fact that the professional evaluation of the artist's project proposal was decisive in the case. The Ombudsman could not look into this evaluation.

According to the rules governing the Ombudsman's work, the Ombudsman can only to a limited extent look into decisions etc. which are to some degree or entirely based on special expertise. The reason is that the Ombudsman lacks the necessary specialist knowledge.

CASE NO. 16/02948

The Ombudsman does not merely receive letters from dissatisfied citizens. A nursing home resident wrote a letter of tribute to the nursing home staff. His message to the Ombudsman was that he was extremely happy and content to live at the nursing home. The Ombudsman noted that the man valued the nursing home staff highly and wrote back that he would take no further action in the matter.

The Ombudsman frequently receives letters from citizens which are merely sent for his information and concern specific as well as general matters.

CASE NO. 15/04299

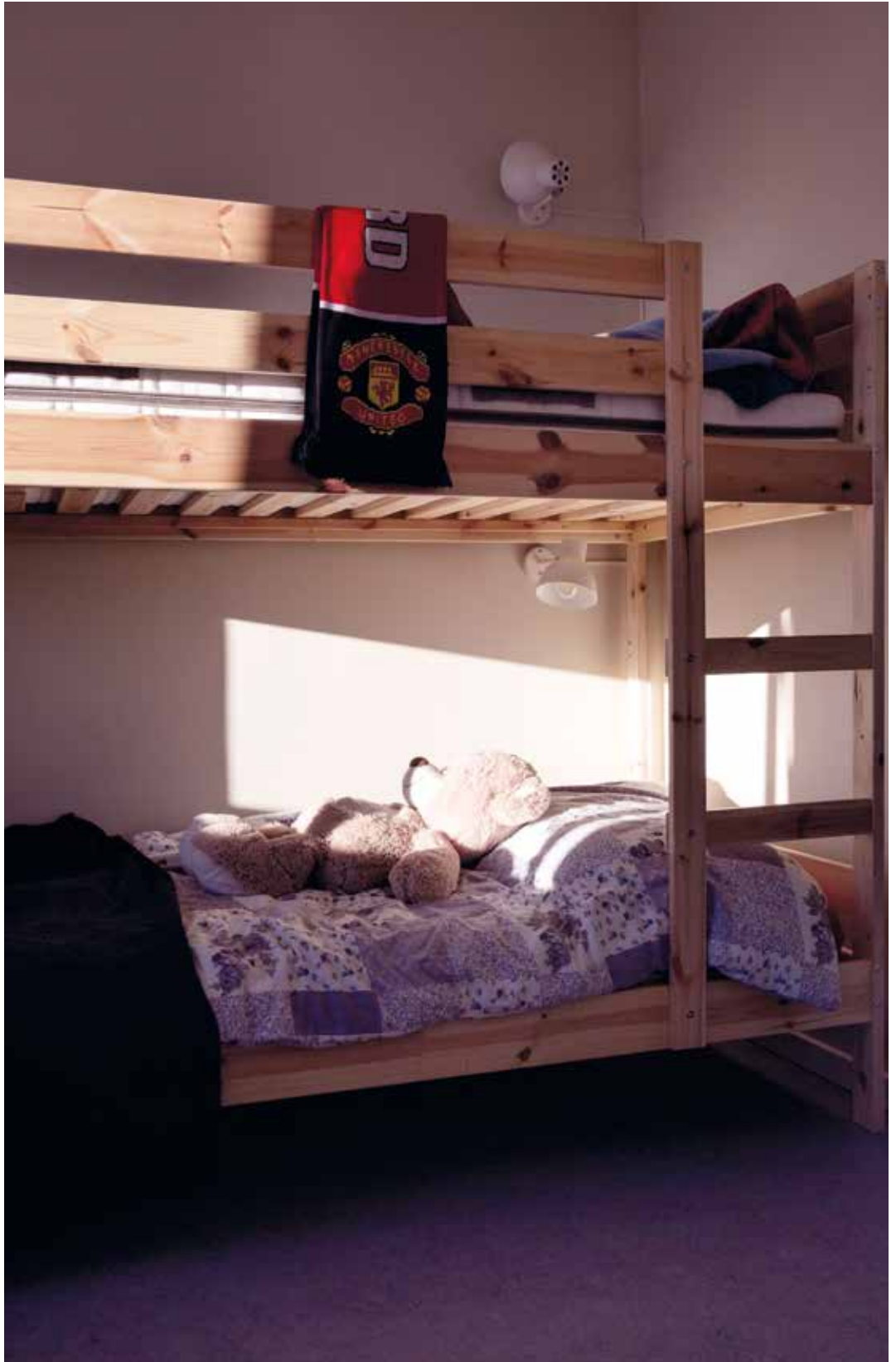
A man complained to the Ombudsman that ATP (the Danish Labour Market Supplementary Pension Scheme) had calculated his employment rate incorrectly, which meant that he was unable to obtain a tax credit for seniors.

ATP had declined to consider the man's complaint since he had lodged it too late. The Appeals Board for ATP agreed that the complaint was to be rejected.

The man referred the Ombudsman to a number of documents in his tax folder which the authorities had not considered in connection with his complaint.

Therefore, the Ombudsman sent the complaint and the documents to the authorities so that they could assess whether the documents gave reason to reopen the case. Subsequently, ATP made a new assessment of the case.

The Ombudsman does not consider questions which the authorities have not had the opportunity to consider. This applies, for example, if there is information in the complaint to the Ombudsman which is unknown to the authorities.



FREEDOM OF SPEECH ALSO FOR MANAGEMENT

Public sector employees have an extensive freedom of speech. On the other hand, management is entitled to reply. But this has to be done with care.



Jørgen Steen Sørensen
Parliamentary Ombudsman

There is focus on the freedom of speech of public sector employees. The nurse has a right to describe the consequences of cutbacks. The schoolteacher has a right to give his or her version of restructuring activities. And the policeman has a right to explain how management by objectives and results affects public services.

This is, among other things, due to concern for each of the approx. 800,000 public sector employees in Denmark. If they are not allowed to speak out about matters at their workplace, that is a massive restriction in a society which holds freedom of speech in high regard.

But it is also due to concern for our level of information. We have a public sector which carries out tasks of fundamental importance to our society. It is important to know how things stand. You do not necessarily know this if management has a monopoly on telling the truth.

That is why society protects the employees' freedom of speech. And that is why the Ombudsman institution puts a lot of effort into these cases.

THE MANAGEMENT'S PERSPECTIVE

But let us try to see the matter from the management's perspective.

It may be that the management is well aware that the employee has been perfectly entitled to make the statement, but would still like to respond. Not by implementing sanctions but by taking it up with the employee. By commenting on the criticism to the rest of the workplace. Or by commenting in the public sphere.

FREEDOM OF SPEECH OF PUBLIC SECTOR EMPLOYEES

For public sector employees who are not close to the authority's management level the following largely applies:

- You have to make it clear that you are speaking on behalf of yourself and not on behalf of the authority.
- You cannot breach your duty of confidentiality.
- You cannot express yourself in a defamatory way or in a way that invades someone's privacy, for instance by making slanderous statements.
- You cannot express yourself in an unreasonably rude way or put forward clearly wrongful information about important matters within your own area of work.

If you keep within these limits, you can basically say whatever you want. Even if it is critical, and even if you have not raised your criticism internally or otherwise notified your superior beforehand. And the management is not allowed to let the statement be detrimental to the employee – for instance, by:

- dismissing or transferring the employee
- passing over the employee in the wage policy.

A TALK THAT WENT BELLY-UP

In a contribution on the debate pages of a national newspaper, an employee at the Royal Danish Arsenal Museum had criticised that Danish museums had more focus on experiences for the public than on research. She was summoned to a meeting with the management. It could not be established precisely how the meeting had gone, but it was certain that the talk had been about her 'loyalty' towards the museum. In my statement on the case, I said that under these circumstances the purpose of summoning the woman to a talk could not be considered to be legitimate, but that the talk could on the contrary create uncertainty with regard to the right of the employees to make public statements (the Ombudsman's Case No. 2012-26).

It is likely that many authorities are uncertain about this. For instance, is it implied in the respect for the employee's freedom of speech that the management cannot contact him or her at all? Or retort in public?

The basic rule is that the management is allowed to react to an employee's public criticism as long as the reaction has a legitimate purpose and is put forward in a legitimate manner.

This applies if the management embraces the criticism and would like to follow up on it. But it also applies if the management does not consider the criticism justified and would like to give its own version of the issue. As previously mentioned, one of the regards behind the right to freedom of speech for the employees is that the management should not have a monopoly on the truth about the public sector. But neither should the employees.

It is, however, a difficult issue because experience shows that the employee can easily feel under pressure. That is why the management's reactions must not in any way be – or leave room for the perception that they are – a criticism of the fact that the employee has used his or her freedom of speech at all. This would not only be unlawful towards the individual but may also deter other employees from expressing their opinions.

Let us deal with the practical questions one at a time.

IS THE MANAGEMENT ALLOWED TO CONTACT THE EMPLOYEE?

The management is of course allowed to contact the employee if the aim is to become wiser, for instance so as to define the criticism in order to assess whether it should cause the authority to change its plans. Should necessary cuts be implemented differently than first planned in order to avoid the consequences which the employee has pointed out?

Such contact will rarely cause problems. On the contrary, it will support one of the fundamental purposes of the public sector employees' right to freedom of speech – to utilise the employees' knowledge in order to make the public sector work better. And it will encourage other employees to use their freedom of speech constructively as well.

It can be more difficult if the management does not agree with the employee's criticism. For instance, because the management thinks that the criticism is based on a misunderstanding.

On the one hand, the management should not be precluded from contacting an employee in order to, for instance, put right what the management considers to be misunderstandings. On the other hand, one should not underestimate how many employees will feel when summoned to a talk with the management. In reality, the employee may quickly perceive this as a criticism of the fact that he or she has used their freedom of speech at all. There may also be a gradual transition between misunderstandings on the part of the employee and cases where the employee just has a different outlook than the management.

It is therefore important that, as a management, you realise what purpose a talk with the employee should serve. What is it precisely that you wish to accomplish? How do you ensure that the employee does not feel criticised and intimidated?

Therein also lies that as management you have to consider whether a summons to a talk is the right way to proceed. If the aim is to avoid the spreading of misunderstandings, then it should for instance be considered whether this can be done in a more delicate – but just as effective – way by making a general statement to the workplace on the issue in question (please see below).

There is no simple recipe in these situations, and a lot depends on the actual case and the skill in managerial handling. But as management you have to realise that there may be serious pitfalls in 'critical' talks directly with the employee, and that such talks may require great care, precision and empathy in order not to go wrong. The employee must not feel that the management in reality wants to shut him or her up.

CAN THE MANAGEMENT COMMENT ON THE CRITICISM TO THE OTHER EMPLOYEES?

Public criticism will often attract attention in the workplace – and will sometimes cause concern among the employees. What does the management say to the criticism? And was the employee wrong to put it forward?

The regard for calm and clarification in the workplace may cause a wish in the management to comment on the criticism to the other employees and explain how the management has dealt with the situation.

Normally, the management can of course do so, regardless of whether the message is that the employee's criticism has been taken on board and that the management has taken the consequences of that criticism, or that the management does not agree with the criticism. But here also, the management must be very careful to show that it has responded to the employee's opinion – and not criticised the fact that he or she has made the statement in the first place.

CAN THE MANAGEMENT COMMENT ON THE CRITICISM IN PUBLIC?

Criticism from employees will often also attract attention from the general public. And if the criticism is taken as fact without any contradiction, it may affect the public's trust in the authority.

Also in this situation, the management is perfectly entitled to comment on the employee's criticism. The freedom of speech of public employees does not imply that they are the only ones who are entitled to be heard in public. And trust in the authorities can depend on unwarranted criticism being countered quickly and efficiently.

Therefore, the same essentially applies here as in relation to the workplace. Meaning that it is important, among other things, to be very clear about your intentions.

Sometimes, the case or issue which the employee's criticism concerns contains confidential information. And the management may be in a position where a complete countering of the criticism will depend on such information being mentioned.

In such cases, the management must remember the duty of confidentiality. For instance, confidential information about identifiable individuals clearly cannot be revealed. So here the management has to explain in a more general form – and still without criticising the employee – why it does not agree with the criticism.

IMPORTANT POINTS

- Public sector employees have extensive freedom of speech. But they do not have a monopoly on the truth.
- The authority's management is therefore entitled to respond to the employee's criticism
 - as long as the response has a legitimate aim and is put forward in a legitimate manner.
- This applies to the employee, to the workplace and to the general public.
- The management must be very careful to ensure that its reaction cannot be taken as a criticism of the fact that the employee has used his or her freedom of speech at all. Not least, caution must be exercised if the management speaks directly with the employee.
- If the case in question contains confidential information, the management must remember its duty of confidentiality.



CASE NO. 16/03700

After a self-employed man had been on unemployment benefit for two years, it turned out that he had not changed the purpose of his previous business to 'asset administration' as the rules required. There had been no active operations in the business while the man had received unemployment benefit, but he was still told to repay the full amount of unemployment benefit which he had received.

The man wrote to the Ombudsman that the authorities had not assessed whether he had in fact closed his business, as they ought to have done. Instead, they had focused only on the one rule that had been violated. On the basis of the Ombudsman's hearing, the authorities reached the conclusion that the man was entitled to unemployment benefit after all.

The Ombudsman asked the authorities to investigate whether there were other cases in which they had omitted to carry out an individual assessment of the right to unemployment benefit for self-employed persons.

If the Ombudsman becomes aware of general errors in the practice of an authority, he can ask the authority to review all cases of the same type and to rectify any errors.

CASE NO. 15/05574

'If you were to give the staff at the ward some good advice, what would it be?' This is what the Ombudsman's special advisor on children's issues asked a 17-year-old girl in an interview during a monitoring visit to a psychiatric ward for children and young persons. The girl replied that it is important that the staff see the patients as young people and not just as sick people. She added that she was lucky to have a good contact person who also saw her as the individual she is and who could joke around with her. The girl's advice was passed on to the ward's management during the monitoring visit.

When the Children's Division go on monitoring visits, a special advisor on children's issues is always part of the visiting team, in addition to legal case experts. Prior to a monitoring visit, the special advisor sends letters to each child and young person at the institution to tell them that it is very important to the monitoring team to talk with them about what it is like to live there. During the monitoring visit, the special advisor interviews the children and young persons.

CASE NO. 16/03785

All citizens are required to check their online digital mailbox ('e-Boks') unless they are exempt from receiving digital post from public authorities, stated the Ombudsman in a specific case which was posted on his website, www.ombudsmanden.dk. An elderly man complained – not about the Ombudsman's statement but about the legislation on digital post which, according to the man, corresponded badly with Denmark's obligations pursuant to the Convention on Human Rights. In the man's opinion, Danish legislation discriminates against the rights of elderly people by not taking into account that they may find it difficult to keep up with technological developments.

The Ombudsman cannot process complaints about Parliament – and therefore not about legislation passed by Parliament, either. The complaint was therefore rejected.

The Ombudsman regularly posts significant statements on his website, www.ombudsmanden.dk – a total of 66 statements in 2016.



THE NEW SECTION ON DATA EXTRACTION IN THE ACCESS TO PUBLIC ADMINISTRATION FILES ACT HAS ITS LIMITATIONS

One of the new creations in the 2014 Access to Public Administration Files Act was the right to request extractions from databases. The media and others can now ask the authorities to extract large quantities of public data. However, several cases at the Ombudsman institution show that a number of circumstances can limit that possibility in practice.



Lisbeth Adserballe
Head of Division

Section 11 of the Access to Public Administration Files Act on the right to data extraction has been highlighted with good reason as one of the provisions in the Act which establishes more openness. Before, it was not possible to get access to the public administration's numerous databases. Now it is.

It was – and it is – beyond dispute that the provision on data extraction has opened up new opportunities for access to information which journalists and others did not have before.

But after three years of experience with the new provision at the Ombudsman institution, it is also obvious that the provision has its limitations.

For example, the authorities have to be absolutely certain that no confidential data is hidden among the large quantity of information in a requested data extract. If it is resource-intensive to examine whether there is any confidential information, the authority is entitled to refuse a request for data extraction.

REQUEST FOR PRODUCTION OF NEW DOCUMENTS

When the Access to Public Administration Files Act was presented back in 2013, the argument for the new possibility of obtaining access to databases was the technological development. The public administration increasingly uses databases in its work, and it was felt that the Act ought to be adapted to this development.

It should be mentioned that before the new Access to Public Administration Files Act, it was already possible to obtain access to databases concerning environmental information.

Still, the new rules in the Access to Public Administration Files Act did not give full access to the authorities' databases just like that. The databases as such are still exempt from access. But with section 11 it is now possible under certain circumstances to demand that the authorities make a data extraction.

With that, the provision also broke with the principle that access is only given to existing documents. With section 11, the possibility was opened for journalists and others to ask the authorities to produce new documents in the shape of data extracts.

Out of consideration for the authorities' resources, it was decided that it must be possible to carry out the extraction using 'few and simple commands'.

At the Ombudsman institution, we have from 2014 till 2016 received approx. 700 complaints about access to information pursuant to the Access to Public Administration Files Act of which approx. 25 have been about denied access to data extracts. There are different reasons why the authorities have denied access to data extracts from a database. In some instances, the extracts could not be effected by few and simple commands, but there have also been other barriers.

WHAT IS A DATABASE?

For one thing, evidence has shown that it is not always clear what a database is. Previously, the fear of being overtaken by the advances in technology made it undesirable to define a database in detail in the Access to Public Administration Files Act.

Section 1(2). Authorities etc. which are encompassed by the Act must ensure that the consideration mentioned in subsection (1) above concerning openness is safeguarded to the greatest extent possible when choosing, establishing and developing new IT solutions.

Section 11. Anyone can demand that an administrative authority create and give access to a compilation of existing information in the authority's databases if the compilation can be made using few and simple commands. If the information is subject to sections 19-35, the right to a compila-

tion only applies if the considerations mentioned in these provisions can be observed via anonymisation or the like by few and simple commands. The right to have a compilation made does not apply if the information has already been published in a suitable form or format.

(2) The provision in subsection (1) above does not apply to personal data subject to section 10 of the Act on Processing of Personal Data.

(Unauthorised translation)

However, in the white paper which forms the basis for the Act, the following is stated about databases:

‘(...) they contain a mass of data which is organised and structured in a way that makes it possible to generate from this mass of data certain data in accordance with specific criteria which are determined by the user.’
(Unauthorised translation)

At the Ombudsman institution, there have been two cases where there could be doubt as to whether they concerned a database or not.

In one of the cases, a man wanted to know who had looked up his name in the Central National Register. This information existed in the security log of the Central National Register. However, the Ministry for Economic Affairs and the Interior did not think that the security log was a database even though it contained big masses of data. The Ministry denied the man’s request because it was not covered by section 11. The Ombudsman could not help. He pointed out, among other things, that section 11 – according to the legislative history – is not intended for registers which are ‘kept to serve internal administrative purposes’ (the Ombudsman’s Case No. 2014-16).

In the other case, the Ombudsman reached the opposite conclusion. A journalist requested information about, among other things, names and pay for all employees of the City of Aarhus and for certain categories of managerial staff of the City of Copenhagen. The Ombudsman determined that the two municipalities’ payroll systems were databases. He emphasised that the payroll systems met the technical requirements of databases and that the information in the systems was used in the case processing, for instance when wages and salaries were set and paid (the Ombudsman’s Case No. 2016-5).

CONFIDENTIAL INFORMATION SHUTS DOWN DATABASE EXTRACTION

Another vital proviso of section 11 is that you cannot give access to confidential information in connection with a data extraction. There is, however, a duty to anonymise information to the extent possible in order to give access after all, but also anonymisation must be done using ‘few and simple commands’.

We have had several cases where confidential information in a data extract hinders access.

For example, a journalist wanted information about the number of employees in various companies. He needed the information in order to ‘shed light on the working environment of the companies, which must be said to be of an obvious public interest as well’. The information could actually be extracted from the so-called Central Business Register by ‘few and simple commands’. Nevertheless, the journalist was denied access, and the Ombudsman agreed. The explanation was that a provision in the Act on the Central Business Register does not allow access to exact information about the number of employees – due to competitive conditions, among other things – but only that information is given in ‘larger unit groups’ (the Ombudsman’s Case No. 2014-32).

In another situation, a citizen wanted key figures about Danish housing co-operatives from a particular database. However, the problem was that some of the information was subject to a specific confidentiality provision in the Financial Business Act. Therefore, a data extraction required anonymisation. The Ombudsman agreed with the Ministry of Housing, Urban and Rural Affairs that it would take more than ‘few and simple commands’ to anonymise the information. Therefore, the citizen was not granted access to a data extract in this case either (the Ombudsman’s Case No. 2016-35).

Both cases are examples that rules on confidentiality in either the Access to Public Administration Files Act or in any other legislation can prevent data extraction.

EVEN A SLIGHT RISK IS ENOUGH

As shown, authorities can refuse to make a data extraction if it is too extensive to either make the data extraction itself or to anonymise the result of the extraction.

But two cases (the Ombudsman’s Case No. 2016-47 and Case No. 2016-48) also show that even a *risk* that there may be confidential information in a requested data extract involving masses of data is sufficient grounds for denied access.

The fact of the matter is this: In the two cases, the Ombudsman has said that section 11 is to be interpreted to mean that the estimation of an authority’s resource use can also include the time it takes to carry out the case processing steps which are necessary to determine *if* a data extract contains confidential information.

The previously mentioned journalist, who requested information about names and pay of employees at the Cities of Aarhus and Copenhagen, was denied access on these grounds. Pursuant to the rules in the Access to Public Administration Files Act, there is normally access to such information in specific personnel files, but there may be special cases where the information is not disclosed. If an employee is harassed by an ex-spouse, information on the employee's work place ought to be confidential, for example.

The two municipalities did indeed refuse the journalist's request for access, and this was upheld by the Supervision Unit of the State Administration. The grounds were that it would be necessary to consult all employees in order to make sure the data extract did not contain confidential information. The Ombudsman approved this explanation.

The case shows that just a slight risk that confidential information is contained in the requested data extract can cause a refusal of access to the entire extract.

PAYMENT RULES

One last limitation worth mentioning concerns payment: It appears from the white paper which forms the basis for the Access to Public Administration Files Act that section 11 does *not* apply if an authority is entitled to demand payment for compiling information.

In a case about data extracts from the OIS (the Public Information Server, a data warehouse managed by the then Ministry of Housing, Urban and Rural Affairs), a journalist had asked for information about all Danish properties and land sites. The Ministry wrote to the journalist that he would have to pay DKK 72,000 to obtain access to the database if he wished to become a so-called data distributor like for example estate agents. Or he could apply to one of the existing data distributors and get the extract considerably cheaper.

The journalist was of the opinion that he was entitled to the data extract pursuant to section 11 of the Access to Public Administration Files Act. However, the Ombudsman could not criticise the Ministry's decision exactly because the Ministry had the authority to demand payment for the sale of compiled information, and this special statutory provision overrules section 11 (the Ombudsman's Case No. 2015-1).

IT SYSTEMS CAN BE MADE 'EXTRACTION FRIENDLY'

The Ombudsman informed Parliament's Legal Affairs Committee about the cases concerning confidential information in databases because their interpretation of section 11 limited the right of access to data extracts.

At the same time, the Ombudsman directed the authorities' attention to their obligation – in accordance with the provision in section 1(2) of the Access to Public Administration Files Act – to include openness when developing new IT systems or reviewing existing ones. Among other things, the Ombudsman pointed to the option of marking confidential information in databases, thereby speeding up the process of anonymisation of a data extract.



Skansegården's night shelter: shelter for homeless people who need a place to spend the night or are waiting for a room at Skansegården's care home



CASE NO. 16/02610

Two prisons had abolished the Muslim prayer rooms, banned Friday prayer and threatened inmates with transfer if they still wanted to pray together. This appeared from a post on Facebook which a citizen had seen and passed on to the Ombudsman.

Two members of the Ombudsman's staff phoned the prisons to find out whether the information was correct. One prison dismissed the story. The other prison said that the visiting facility, where the prayer room was located, was undergoing renovation, and therefore the room could not be used temporarily. Instead, the prison arranged joint transportation to an Islamic religious centre nearby for inmates who wished to participate in the Friday prayer.

After receiving this information from the prisons, the Ombudsman decided that he would take no further action in the matter.

The Ombudsman determines whether a complaint gives sufficient grounds for further investigation. He also decides whether he will investigate a matter on his own initiative.

CASE NO. 15/04417

'I'm risking inhuman and degrading treatment', wrote a young man who had been sentenced to deportation from Denmark by court order. For 17 years, he had not visited his former homeland to which he now faced repatriation. The man referred, among other things, to the European Convention on Human Rights and asked for help to change the deportation order.

Since the jurisdiction of the Ombudsman does not extend to the courts of law, it was not possible for him to look further into the man's case.

Citizens who address the Ombudsman sometimes refer to legal rights according to international conventions, for instance the European Convention on Human Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities. The conventions are part of the Ombudsman's basis for assessment.

CASE NO. 16/00249

A shop owner was left with a back injury after a car accident. Therefore, he was granted a subsidy for personal assistance in accordance with the Act to Compensate Disabled Persons in Employment, etc. At one point, the municipality was of the opinion that the subsidy was to be reduced and that the shop owner was to repay some of the subsidy. The National Social Appeals Board agreed with the municipality that the subsidy was to be reduced. However, the National Social Appeals Board did not consider itself competent to consider the shop owner's appeal against the decision that he was to repay more than DKK 40,000.

One of the Ombudsman's staff members called the National Social Appeals Board and found out that it was an error that the Board had not considered the decision on repayment. The complaint was therefore returned to the National Social Appeals Board, which subsequently concluded that the man was not to repay any of the subsidy.

It saves work for the authorities as well as the Ombudsman if a case can be solved through a telephone call – and typically the citizen gets a speedier clarification of his or her case. Hence, the Ombudsman uses the telephone increasingly in his case processing.

'Can the staff take my computer when I'm not misusing it?', a 16-year-old boy asked on the Children's Division's chat line. He wrote that he was living in an accommodation facility and was placed in care voluntarily. He had his computer all day, but he had to hand it over to the staff at 10 pm. As agreed with the boy during the chat, a legal case officer from the Children's Division called him and explained the relevant rules to him – for example that an accommodation facility can have house rules specifying when computers may be used.

The Children's Division's chat line is open Tuesdays and Thursdays from 3 pm till 5 pm. The chat line is staffed by two employees, most often a legal case officer and the special advisor on children's issues. Normally, no case is opened and nothing written down concerning a chat.



MORE OPENNESS IN THE OMBUDSMAN'S MONITORING ACTIVITIES

Over the years, the Ombudsman's monitoring activities have increased to 50-60 annual monitoring visits to prisons, psychiatric wards and other institutions. In future, the outcome of the visits will be made public on a continuing basis, and a more methodical contact with civil society will be introduced. This is the result of a comprehensive in-house evaluation of the Ombudsman's monitoring concept.



Jonas Bering Lüsberg
Director General

Since 1955, the Ombudsman has visited public institutions in order to experience with his own eyes and ears how the authorities are treating citizens. The focus of these inspections, as they were originally called, is institutions where persons are deprived of their liberty or have to stay due to difficult circumstances in their lives.

Over the years, the scale of the visiting activity has gone up quite a lot. This is not least due to the Ombudsman's responsibility for preventing violation of the UN Convention against Torture in Denmark, a task with which he was entrusted in 2009. The task as 'national preventive mechanism' (NPM) was given to the Ombudsman in continuation of Denmark's ratification of the Optional Protocol to the UN Convention against Torture, abbreviated as OPCAT. The establishment of a special Children's Division in 2012 meant an expansion of the monitoring activity. Today, the Ombudsman carries out a total of 50-60 annual monitoring visits in close collaboration with DIGNITY – Danish Institute Against Torture and the Danish Institute for Human Rights.

Thus, the monitoring activities constitute a considerable part of the Ombudsman's overall activities. But this kind of activity has been less publicly exposed than our other activities. This is probably first and foremost due to the fact that to a great extent the aim is preventive and based on informal recommendations and dialogue with the individual institutions during the visits rather than formal recommendations and criticism after thorough, written investigations. A quiet diplomacy, you could say.

Also in future, we shall emphasise the quiet and efficient diplomacy but at the same time create as much transparency as possible. Therefore, since the turn of the year we have published the outcome of the individual monitoring visits on www.ombudsmanden.dk on a continuing basis.

Increased openness and knowledge sharing are a connecting thread in the few but important changes in the Ombudsman's monitoring concept which are the result of an in-house evaluation implemented by the Ombudsman in 2016 together with his collaborators within this field, DIGNITY – Danish Institute Against Torture and the Danish Institute for Human Rights.

NEWS STORIES ARE CONSIDERED AFTER EACH MONITORING VISIT

Sometimes, we publish news stories about specific visits. One of the reasons for doing so may be that during a visit we have become aware of particular, serious matters in an institution, or that the general public has great focus on a specific institution or issue.

In 2016, we have published a number of these kinds of news stories on www.ombudsmanden.dk and submitted the news to the approx. 3,200 subscribers – for example when, at the beginning of the year, we visited a girl who was held in solitary confinement and later on in connection with a monitoring visit to Vridsløselille, where detained asylum seekers are placed (The Ombudsman's Case No. 2016-56).

As an institution, we have previously been very cautious about posting news stories concerning the individual visits. Instead, we have focused our attention on communicating the outcome of the visits in a broader perspective, especially in connection with annual thematic reports. It has now been decided that it must always be taken into consideration when we conclude a monitoring case whether a news story should be published.

It is probable that also in the future relatively few monitoring cases will have the potential to become news stories. But there are ways of opening up, sharing

NEWS STORY PUBLISHED 4 FEBRUARY 2016 ON WWW.OMBUDSMANDEN.DK

Staff of Ombudsman's Children's Division visit 15-year-old girl held in solitary confinement

Staff of the Ombudsman's Children's Division have, together with representatives of the Institute for Human Rights and DIGNITY – Danish Institute Against Torture, visited a 15-year-old girl who has been in solitary confinement since 14 January 2016. It is extremely rare for minors to be held in solitary confinement.

The purpose of the monitoring visit was to check that the girl was treated in a dignified and considerate manner and in accordance with her rights. During the visit, the visiting team focused on aspects such as the girl's health situation and her access to activities, including leisure activities, and education.

...

knowledge and engaging in dialogue with the surrounding world which can contribute towards the primarily preventive aim of the monitoring activities.

2012 MONITORING CONCEPT CONFIRMED

The evaluation has largely confirmed the existing monitoring concept, which was introduced in 2012 and fundamentally changed our approach to the task at the time.

The changes in 2012 were aimed at concentrating our efforts on significant and serious matters and focus our attention on general problems, for example health services in all prisons in the country rather than matters quite specific to the individual institution, such as the physical layout of a prison.

In 2012, a number of focus areas were defined – among others forcible measures and other restrictions, interpersonal relations and health issues – which constitute the backbone of a standard monitoring visit. In addition to this, it was decided that every year one or more themes will be selected across institution types. In past years, we have published reports on, for instance, the prevention of violence and threats among users (theme in 2013) and placements in security cells (theme in 2015).

The changes effected in 2012 also meant that we now use fewer resources on long written procedures; instead we are able to visit more places in the course of a year and conclude the individual cases faster, primarily on the basis of verbal dialogue.

The conclusion of the 2016 evaluation is that the concept from 2012 basically works as intended and ensures an efficient utilisation of our resources for the task.

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NEWS STORY PUBLISHED 20 SEPTEMBER 2016 ON WWW.OMBUDSMANDEN.DK

Greatly improved conditions for foreign nationals detained at Vridsløselille

Following the Ombudsman's two monitoring visits and his dialogue with the responsible authorities, the conditions for the foreign nationals who are detained at Vridsløselille have been greatly improved.

They are no longer locked up in prison cells almost around the clock but are now able to move around

communal areas and spend time with each other there. In addition, a number of leisure and work activities are now available.

'These people were detained under unnecessarily hard conditions which could have harmful effects on some of them. So I am pleased that the authorities have responded quickly and at least improved conditions in a number of important respects', says the Parliamentary Ombudsman, Jørgen Steen Sørensen. (...)

MONITORING VISITS GIVE RISE TO IMPORTANT INVESTIGATIONS

It happens that during visits we become aware of issues which cannot be dealt with on the spot but require further investigations and follow-up. Eventually, these issues may end up as separate Ombudsman cases. Thus, the monitoring visits are an important source of investigations opened on the Ombudsman's own initiative.

In 2016, we have published news stories about several investigations which originate in monitoring visits, for example investigations within the children's social care sector concerning, respectively, the lack of action plans for children placed in care (the Ombudsman's Case No. 2016-44) and insufficient teaching of children placed in care (news stories on 14 January and 23 December 2016).

Today, monitoring visits are normally concluded with a relatively short letter from the Ombudsman. If the visiting team has given verbal recommendations, these will be summarised in the letter. If the visit has resulted in separate investigations, this will usually also appear from the letter. These are the letters which, as a new thing this year, we will post on www.ombudsmanden.dk on a continuing basis.

In this way, those interested can stay updated on which institutions the Ombudsman has visited and the outcome of the visits. Publication of the letters will hopefully also contribute to boost the effect of recommendations because the media, civil society and – last but not least – inmates and users are given the possibility of 'assisting' with the implementation of the recommendations.

MEETINGS WITH CIVIL ORGANISATIONS

Another initiative towards more openness and knowledge sharing for which the evaluation prepares the ground is the preparation of a 'live' catalogue of standard informal recommendations. The catalogue is to function partly as a source of inspiration, partly as a general guideline for institutions and authorities.

In addition, in his efforts to increase openness about the monitoring activities, the Ombudsman will in future to a larger extent involve organisations from civil society; both actual user organisations and organisations working with civil rights and human rights on a broader scale. Typically, this will happen at annual meetings where inspiration for the monitoring work can be found and knowledge shared about the Ombudsman's activities. The first meeting of this kind was held in May 2016 with participation of representatives from approx. 20 organisations.

MONITORING TEAMS WILL PAY VISITS TO USERS TO A LARGER EXTENT

As far as preparation and execution of the visits are concerned, our colleagues in the other Nordic countries have inspired us to make an important change: In future, the visiting teams will to a larger extent select the inmates and residents they wish to talk to. This will ensure that the visiting teams obtain as true and fair a view as possible. There may, for example, be prison inmates who do not actively seek an interview but nevertheless have important information to share with the visiting team. These could be foreigners who do not speak Danish, persons with a disability, or inmates in a punitive cell.

So far, we have primarily received input from users who have requested an interview with the Ombudsman, if the visit was announced beforehand. However, notices will still be posted prior to the visit in which users are told about the possibility of an interview. As a main rule, a wish for an interview will be met.

The new practice with proactive talks with inmates and users will require more time. We shall therefore in future undertake visits of varying extent and intensity, including shorter but more focused visits, so that we can reach the same number of visits as before.

The Ombudsman has published the new general manual for monitoring activities on www.ombudsmanden.dk. Here you can read in detail how the visits are planned and carried out.

MONITORING ACTIVITIES

- Adults
- Children

THE OMBUDSMAN'S MONITORING VISITS

Where The Ombudsman carries out monitoring visits to public and private institutions, especially institutions where persons are or may be deprived of their liberty, such as, for example, prisons, social care institutions and psychiatric wards.

Why The purpose of the Ombudsman's monitoring visits is to help ensure that daytime-users of and residents at institutions are treated with dignity and respect and in compliance with their rights.

The monitoring visits are carried out in accordance with the Ombudsman Act as well as the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). Pursuant to this Protocol, the Ombudsman has been appointed 'national preventive mechanism'. The task is carried out in collaboration with DIGNITY – Danish Institute Against Torture and the Danish Institute for Human Rights who contribute with medical and human rights expertise.

The Ombudsman has a special responsibility to protect the rights of children in accordance with, among others, the UN Convention on the Rights of the Child.

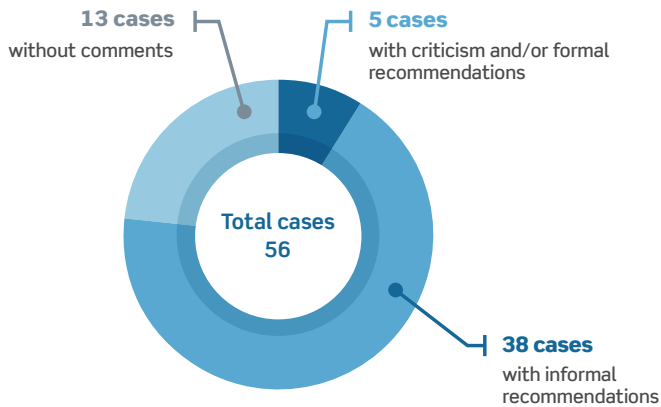
How During the monitoring visits, the Ombudsman often makes informal, verbal recommendations to the institutions. The recommendations are typically aimed at improving conditions for users of the institutions, including adjustment of conditions in order to comply with the rules. They can also be aimed at preventing, for example, degrading treatment.

Monitoring visits may also cause the Ombudsman to investigate general problems.

Who The Monitoring Department carries out monitoring visits to institutions for adults, whereas the Ombudsman's Children's Division carries out monitoring visits to institutions for children. The Ombudsman's special advisor on children's issues participates in monitoring visits to institutions for children and, if deemed relevant, also in monitoring visits to institutions for adults.

Usually, a medical doctor from DIGNITY – Danish Institute Against Torture participates in the visits, and a human rights expert from the Danish Institute for Human Rights will often participate too.

MONITORING CASES CONCLUDED IN 2016



In regard to institutions for adults, the Ombudsman also concluded:

14 monitoring-related cases taken up by the Ombudsman on his own initiative.
7 cases resulted in criticism or formal recommendation.

29 cases about suicide attempts, deaths etc. at Prison and Probation Service institutions or in police custody. Criticism was expressed in 1 case.

In regard to institutions for children, the Ombudsman also concluded:

22 monitoring-related cases taken up by the Ombudsman on his own initiative.
Criticism was expressed in 8 cases.

International activities

In 2016, three meetings were held with representatives from the other Nordic ombudsmen, and eight meetings were held with other foreign ombudsmen etc. with discussion and exchange of experiences about the monitoring activities.

In addition, the Ombudsman had a meeting in 2016 with a representative from the United Nations High Commissioner for Refugees (UNHCR) about the Ombudsman institution's monitoring visits.

Other activities

In 2016, the Ombudsman carried out an in-house evaluation of his concept of monitoring visits in collaboration with DIGNITY – Danish Institute Against Torture and the Danish Institute for Human Rights. Please see the Ombudsman's manual for monitoring activities on the website www.ombudsmanden.dk under 'Monitoring visits'. Please also see the article on pages 70-75.

As a new thing in 2016, the Ombudsman invited representatives from civil society to an information meeting about the Ombudsman's monitoring activities.

MONITORING ACTIVITIES – ADULTS

MONITORING VISITS, ADULTS					
No.	Date	Name and location of institution	DIGNITY participated	Danish Institute for Human Rights participated (IMR)	
1	13 January	'Københavns Fængsler', Vestre Hospital (follow-up visit)	✓	✓	
2	20 January	'Blegdamsvejens Fængsel', Copenhagen	✓	✓	
3	21-22 January	'Kofoedsminde', Rødby	✓		
4	2 February	'Højsletten', Herlev	✓		
5	3 February	'Psykiatrisk Center Sct. Hans', Roskilde	✓		
6	29 February	'Institution Vridsløselille', Albertslund (unannounced visit)	✓	✓	
7	9-10 March	'Horserød Fængsel', Elsinore	✓	✓	
8	15 March	'Psykiatrien Syd', Vordingborg	✓		
9	16 March	'Sønderborg Arrest'			
10	17 March	'Aabenraa Arrest'			

- 1) Number of inmates, residents and patients etc. who had talks with the visiting teams.
- 2) Number of relatives, guardians, social security guardians and patient advisors who had talks with the visiting teams.
- 3) The users' level of function made talks impossible.

	Talks with users ¹	Talks with relatives and others ²	Type of institution and target group
	8	0	Prison section, especially for mentally ill remand prisoners during investigation of their case
	5	0	Prison, especially for remand prisoners during investigation of their case
	16	0	Secure sections in a special institution for persons with mental disabilities who have been sentenced to placement in an institution
	0 ³	4	Municipal accommodation facility for adults with considerably and/or permanently impaired functional capacity
	5	1	Two bed units for general psychiatric patients
	9	0	Closed Prison and Probation Service institution for foreign nationals who are detained under the Aliens Act
	16	0	Open prison for persons serving time, including a closed section
	9	5	Two bed units for general psychiatric patients
	7	0	Prison, especially for remand prisoners during investigation of their case
	5	0	Prison, especially for remand prisoners during investigation of their case

MONITORING VISITS, ADULTS

No.	Date	Name and location of institution	DIGNITY participated	Danish Institute for Human Rights participated (IMR)	
11	30-31 March	'Jyderup Fængsel'	✓	✓	
12	7 April	'Brønderslev Psykiatriske Sygehus'	✓		
13	19 april	'Hellebo Hus', Holbæk	✓	✓	
14	26 April	'Hedegaard', Skjern			
15	27 April	'Nørholm', Herning			
16	9 May	'Botilbuddet på DNS', Ulfborg	✓		
17	10 May	'Botilbuddet Vestergård', Hornslet	✓		
18	10 May	'Lille Eje', Hornslet	✓		
19	11 May	'Politigårdens Fængsel', Copenhagen (unannounced visit)	✓	✓	
20	13 May	'Psykiatrisk Center Nordsjælland', Hillerød	✓	✓	
21	26 May	'Regionspsykiatrien Horsens'			

	Talks with users ¹	Talks with relatives and others ²	Type of institution and target group
	25	0	Open prison, especially for persons serving time, including a section for young persons and a prison section
	4	3	Two bed units for general psychiatric patients
	2	1	Private accommodation facility for adults with a combination of problems, such as mental disability combined with a psychiatric disorder and/or abuse
	3	0	Private 24-hour institution for mentally disabled young persons and adults who need special support
	6	0	Regional accommodation facility for adults with permanently impaired mental functional capacity
	3	4	Private accommodation facility for adults with impaired physical and/or mental functional capacity
	1	1	Municipal accommodation facility for adults with impaired mental functional capacity
	1	1	Municipal accommodation facility for adults, especially for convicted persons with mental disabilities
	1	0	Special prison unit for, among others, negatively strong inmates. The monitoring visit concerned the conditions for a particular inmate who had been excluded from association for more than 90 days
	4	3	Two bed units for general psychiatric patients
	4	6	Two bed units for general psychiatric patients

MONITORING VISITS, ADULTS

No.	Date	Name and location of institution	DIGNITY participated	Danish Institute for Human Rights participated (IMR)	
22	3 June	The police detention facility in Odense (unannounced visit)	✓		
23	4 June	The custody reception area at police headquarters in Aarhus (unannounced visit)	✓		
24	4 June	The police detention facility in Aarhus (unannounced visit)	✓		
25	6 June	The police custody reception area at Vagar Airport, the Faroe Islands	✓	✓	
26	7 June	The local prison in Tórshavn, the Faroe Islands	✓	✓	
27	8 June	The police detention facility in Klaksvík, the Faroe Islands	✓	✓	
28	8 June	The police custody reception area in Tórshavn, the Faroe Islands	✓	✓	
29	9 June	The police detention facility at Tvøroyri, the Faroe Islands	✓	✓	
30	22 June	'Vridsløselille Fængsel', Albertslund (follow-up visit)	✓		
31	23 August	'Møgelkær Fængsel', Juelsminde	✓		

	Talks with users ¹	Talks with relatives and others ²	Type of institution and target group
	0	0	Police detention facility, especially for persons who are unable to care for themselves due to intoxication and who have been encountered by the police in a dangerous situation
	0	0	Police custody reception area, especially used for short detention purposes for persons taken into custody and awaiting further interrogation
	2	0	Police detention facility, especially for persons who are unable to care for themselves due to intoxication and who have been encountered by the police in a dangerous situation
	0	0	Police custody reception area, especially used for short detention purposes for persons taken into custody and awaiting further interrogation
	3	0	Local prison, especially for remand prisoners during investigation of their case but also sections for persons serving time
	0	0	Police detention facility, especially for persons who are unable to care for themselves due to intoxication and who have been encountered by the police in a dangerous situation
	0	0	Police custody reception area, especially used for short detention purposes for persons taken into custody and awaiting further interrogation
	0	0	Police detention facility, especially for persons who are unable to care for themselves due to intoxication and who have been encountered by the police in a dangerous situation
	19	0	Closed Prison and Probation Service institution for foreign nationals who are detained under the Aliens Act
	34	0	Sections in an open prison, including a section for women

MONITORING VISITS, ADULTS					
No.	Date	Name and location of institution	DIGNITY participated	Danish Institute for Human Rights participated (IMR)	
32	24 August	Aarhus University Hospital, Risskov	✓		
33	29 August	'Københavns Fængsler', Vestre Prison	✓	✓	
34	6 September	Asylum Centre Herning	✓	✓	
35	28 September	'Udrejsecenter Sjælsmark', Hørsholm	✓	✓	
36	4 October	'Station Vest A/S', Brovst (unannounced visit)	✓	✓	
37	13 October	'Alternativet', Hjørring ⁴			
38	26 October	The police detention facility in Albertslund (unannounced visit)	✓	✓	
39	26 October	The police detention facility in Næstved (unannounced visit)	✓	✓	
40	31 October	'Udrejsecenter Kærshovedgård', Ikast	✓	✓	
Total	40 visits		DIGNITY participated in 34 visits	IMR participated in 20 visits	

- 4) The monitoring visit was carried out under the direction of Henrik Bloch Andersen, High Court Judge, as ad hoc Ombudsman, because the Ombudsman declared himself disqualified. The Ombudsman's office provided secretariat assistance.

	Talks with users ¹	Talks with relatives and others ²	Type of institution and target group
	4	0	Two bed units for general psychiatric patients
	6	0	Prison, especially for remand prisoners who are isolated by order of the courts, with compulsory or voluntary exclusion from association or sentenced to placement in a punitive cell
	5	0	Accommodation facility for asylum seekers who are awaiting processing of their case
	8	0	Departure centre, especially for rejected asylum seekers who must leave the country
	4	0	Accommodation facility for asylum seekers who cannot currently be accommodated in the ordinary asylum system
	3	2	Individual support programmes ⁵ in private accommodation facilities, especially for adults with considerably impaired mental functional capacity – often combined with other problems
	0	0	Police detention facility, especially for persons who are unable to care for themselves due to intoxication and who have been encountered by the police in a dangerous situation
	0	0	Police detention facility, especially for persons who are unable to care for themselves due to intoxication and who have been encountered by the police in a dangerous situation
	17	0	Departure centre for rejected asylum seekers, among others
	239 talks	31 talks	

5) The term 'individual support programmes' is used as a general term for special accommodation facilities for citizens with challenges which make it impossible to accommodate them in other specialised facilities – for instance, when they require a staffing level of at least 1:1.

EXAMPLES OF IMPORTANT RESULTS

Themes

Every year, the Ombudsman selects one or more themes for the Monitoring Department's monitoring visits in collaboration with the Danish Institute for Human Rights and DIGNITY – Danish Institute Against Torture.

You can learn more about the themes and find the thematic reports at www.ombudsmanden.dk (choose English) under 'Publications'.

THEME IN 2016: BODY SEARCHING AND URINE SAMPLING

The Ombudsman's key conclusions and recommendations

- After monitoring visits to 24 Prison and Probation Service institutions, psychiatric institutions and social services institutions, the Ombudsman concluded that body search and urine sampling were generally undertaken in accordance with the rules and – to the extent possible – carried out in a manner that was dignified and respectful towards the citizens.
- As far as the Prison and Probation Service institutions are concerned, the visits identified a need for further information to the inmates on why and how a body search is undertaken and how urine sampling is carried out together with information about complaint options. The Ombudsman provided one or more recommendations regarding this issue to all the institutions.

Discussions with key authorities

Placement in security cells: Further to the Ombudsman's thematic report of 2015 regarding placement in security cells, the Department of the Prison and Probation

Service informed the Ombudsman at a meeting that a number of initiatives had been implemented to ensure that rules are observed. The Department had, among other things, written to the regional offices of the Prison and Probation Service requesting an individual plan on this matter. The Department also issued a new guide.

Radicalisation: At his annual meeting with the Department of the Prison and Probation Service, the Ombudsman discussed the procedures for reporting inmates' radicalisation and extremism to the Prison and Probation Service. The Ombudsman pointed out the importance of ensuring the inmates' legal rights in this connection. Subsequently, the Ombudsman opened a case about the issue on his own initiative. The case was still pending at the end of the year

Balance between force and care: The Ombudsman's theme in 2015 about individual support programmes in the social services sector uncovered a number of dilemmas, especially about the balance between force and care. At a meeting, the Ministry for Children and Social Affairs stated that in 2017 the rules on the use of force will undergo a service check – with focus on the balance between force and care, among other things. The Ombudsman also discussed his findings with the Ministry of Health so they could be incorporated into future initiatives concerning health treatment of permanently incapacitated persons.

Asylum centres: After monitoring visits to a number of asylum centres, the Ombudsman discussed various issues which the monitoring visits had raised, among others accommodation conditions at some places and the need for written instructions to the staff about the use of force and the prevention of violence and threats. The Danish Immigration Service took note of the Ombudsman's comments and indicated that they would consider the questions.

Cases (concluded in 2016) opened after monitoring visits

Use of force in halfway houses of the Prison and Probation Service: During a monitoring visit to one of the Prison and Probation Service's halfway houses, it emerged that force and handcuffs had been used on a resident. The Ombudsman opened a case regarding the legal basis for this procedure. The outcome of the case was that the Department of the Prison and Probation Service changed its administrative regulations. (The Ombudsman's Case No. 2016-18).

Investigation of inmates' complaints about rough treatment: During a monitoring visit to a local prison, a number of inmates said that an inmate had been pushed several times by a prison officer. The Ombudsman opened a case, especially regarding the authorities' investigation of the incident. The case was concluded with criticism. At the same time, the Ombudsman asked the Department of the Prison and Probation Service to consider implementing rules in their protocol on investigation of complaints from inmates about rough treatment – also based on two other cases about the same subject which the Ombudsman concluded in 2016. (The Ombudsman's Case No. 2016-52).

Detained foreign nationals: Two monitoring visits to one of the Prison and Probation Service institutions for foreign nationals who are detained pursuant to the rules of the Aliens Act caused the Ombudsman grave concern. Therefore, the Ombudsman entered into a dialogue with the Department of the Prison and Probation Service. Subsequently, the conditions for the detainees were changed and improved on a number of important points. (The Ombudsman's Case No. 2016-56).

The Prison and Probation Service in Greenland: Further to monitoring visits to four Greenland institutions for convicted persons, the Ombudsman inquired into, among

other things, the handling of underage persons and women and forcible measures. The case was closed with criticism. The Ombudsman also noted that the Ministry of Justice had stated that in connection with the next amendment of the Greenland Criminal Act, steps would be taken to change the Act's rules on forcible measures.

Placement in police detention facilities: Unannounced monitoring visits to two police detention facilities for intoxicated persons resulted in criticism, among other things because the police reports on detention were in general insufficient. The Ombudsman also noted that the police had initiated a number of measures to ensure that similar inadequacies were avoided in future and that the Danish National Police would follow up on the effect of the measures. (The Ombudsman's Case No. 2016-21).

Use of special harnesses etc.: A monitoring visit to a municipal accommodation facility raised doubts about the facility's authority to use various types of harnesses and other protective measures towards a resident. Therefore, the Ombudsman took up a case against the municipality. When the municipality later stated that it had stopped using the harnesses etc., the Ombudsman concluded his processing of the case.

Verbal recommendations to the institution's management

Body searching and urine sampling: Recommendations were given to the Prison and Probation Service to, among other things, increase the level of information to the inmates as well as the management's follow-up in connection with body searching and urine sampling. The management at a number of psychiatric institutions was recommended to adjust the information material and in-house instructions so that the information is in accordance with current rules.

Forcible measures: At a number of institutions, the management was recommended to introduce, review or broaden instructions regarding forcible measures.

Pepper spray: At a number of Prison and Probation Service institutions, the management was recommended to ensure that the staff have the requisite authorisation when carrying pepper spray.

Coercion: A number of institutions were given recommendations about the contents of the systematic follow-up sessions after use of coercion in psychiatric care, including improvement of documentation in that respect.

Violence and threats: At a number of institutions, the management was recommended to introduce or broaden policies on violence and threats among the users.

Medicine management etc.: A number of Prison and Probation Service institutions and social services institutions were recommended to introduce or adjust instructions on medicine management etc. Moreover, a number of institutions were given recommendations regarding safekeeping of medicine, systematic examination of the medicine cupboard, focus on unintended incidents and the inmates' contact with the doctor.

Work and leisure time activities: Recommendations were given to a few institutions regarding opportunities for specific work and leisure time activities for the users, for instance to improve the users' access to the gym.

Placement in police detention facilities: At a few institutions, the management was recommended to improve the supervision of persons placed in police detention facilities for intoxicated persons, and a number of institutions were given recommendations about formal matters, including the documentation in detention reports.



MONITORING ACTIVITIES – CHILDREN

MONITORING VISITS, CHILDREN

No.	Date	Name and location of institution	DIGNITY participated	Danish Institute for Human Rights participated (IMR)	
1	12 January	'Afdeling for Børne- og Ungdomspsykiatri', Roskilde			
2	12 January	The school at 'Afdeling for Børne- og Ungdomspsykiatri', Roskilde			
3		15-year-old girl held in solitary confinement	✓	✓	
4	22-23 February	'Børne- og Ungdomspsykiatrisk Center', Bispebjerg Hospital, Copenhagen	✓	✓	
5	22-23 February	The school at Bispebjerg Hospital, Copenhagen	✓	✓	
6	14-15 March	'Børne- og Ungdomspsykiatrisk Center', Risskov			
7	14-15 March	The school at 'Børne- og Ungdomspsykiatrisk Center', Risskov			
8	24-25 May	'Børne- og Ungdomspsykiatrisk Center', Glostrup Hospital		✓	

1) Number of children and young persons who had talks with the visiting teams.

2) Number of parents, patient advisors and personal representatives who had talks with the visiting teams.

	Talks with users ¹	Talks with relatives and others ²	Type of institution and target group
	4	8	Three bed units for general psychiatric patients
	*	*	School with classes for hospitalised patients of compulsory school age
	1	0	Custody on remand in solitary confinement of underage child
	9	13	Three bed units for general psychiatric patients
	*	*	School with classes for hospitalised patients of compulsory school age
	3	3	Three bed units for general psychiatric patients
	*	*	School with classes for hospitalised patients of compulsory school age
	4	3	Four bed units for general psychiatric patients and one bed unit for both general psychiatric patients and patients with a disorder relating to forensic psychiatry

*¹) Talks with users and relatives and others at the psychiatric ward were also related to the school.

MONITORING VISITS, CHILDREN					
No.	Date	Name and location of institution	DIGNITY participated	Danish Institute for Human Rights participated (IMR)	
9	24-25 May	The school at Glostrup Hospital		✓	
10	3-4 October	'Børne- og Ungdomspsykiatri Odense', Odense			
11	3-4 October	The school at 'Børne- og Ungdomspsykiatri Odense', Odense			
12	31 October - 1 November	Aalborg University Hospital, 'Psykiatrien', 'Klinik Børn og Unge', Aalborg	✓	✓	
13	31 October - 1 November	The School at 'Klinik Børn og Unge', Aalborg	✓	✓	
14	24-25 November	'Børnecenter Hundstrup', Vester Skerninge	✓	✓	
Total	14 visits		DIGNITY participated in 6 visits	IMR participated in 8 visits	

	Talks with users ¹	Talks with relatives and others ²	Type of institution and target group
	*	*	School with classes for hospitalised patients of compulsory school age
	2	4	One bed unit for general psychiatric patients
	*	*	School with classes for hospitalised patients of compulsory school age
	4	6	One bed unit for general psychiatric patients
	*	*	School with classes for hospitalised patients of compulsory school age
	13	2	Asylum centre for unaccompanied underage asylum seekers
	40 talks	39 talks	

EXAMPLES OF IMPORTANT RESULTS

Themes

Every year, the Ombudsman selects a theme in collaboration with the Danish Institute for Human Rights and DIGNITY – Danish Institute Against Torture for the monitoring visits carried out by the Children's Division.

You can learn more about the themes and read the thematic reports at www.ombudsmanden.dk (choose English) under 'Publications'.

THEME IN 2016: CHILDREN AND YOUNG PERSONS IN PSYCHIATRIC CARE WITH FOCUS ON

- **immobilisation**
- **teaching**
- **involvement and participation in decision making**

The Ombudsman's key conclusions and recommendations

- The Ombudsman found that children and young persons in psychiatric care were involved in the preparation of individual/personal strategies in order to prevent self-harm.
- The Ombudsman found that teaching was given priority as an important part of the children's and young persons' treatment, and that teaching was planned after consultation with the children and the young persons.
- There was a need for improvement of the wards' information to custodial parents that parents do not have to make a decision about the use of coercion or force against their children under the age of 15. The Ombudsman gave recommendations on this to all institutions/wards.

Discussions with key authorities

Abuse: At a meeting, the Ministry for Children and Social Affairs and the National Board of Social Services stated that the Board had launched a number of initiatives in order to prevent sexual abuse at institutions for children and young persons with disabilities. The background for doing so was, among other things, the 'Anti-Abuse Package' in 2013 and the Ombudsman's general recommendation in a thematic report of 2015 to introduce guidelines on how institutions for children and young persons with disabilities prevent sexual abuse and which procedures the institutions should follow if they suspect abuse. The Board was working on a manual and had initiated an investigation which was carried out by the SFI – The Danish National Centre for Social Research.

IT aids: At a meeting with the Ministry for Children and Social Affairs and the National Board of Social Services, it was discussed whether there was a need to extend people's knowledge of the IT aids which support the communication for children and young persons with disabilities who have limited or no verbal language. The discussion was based on the Ombudsman's thematic report in 2015 about institutions for children and young persons with disabilities. The authorities stated that a knowledge portal about alternative communication aids will be launched and that IT aids will be included in a manual.

Health: During a meeting with the Danish Immigration Service, the Ombudsman asked whether the asylum centres were fully aware that children seeking asylum basically have the same rights to preventive health services and healthcare benefits as children residing in Denmark. The Danish Immigration Service indicated that they would follow up on this.

Use of force: During a meeting with the Danish Immigration Service, the Ombudsman asked how it is ensured that the asylum centres have knowledge of the rules

on the use of force against children and young persons. The Danish Immigration Service said that they had discussed this issue with the centres and would now undertake further follow-up on this.

Cases (concluded in 2016) opened after monitoring visits

Action plans: Following monitoring visits, the Ombudsman took up a number of cases about the lack of action plans for children and young persons placed in care. Seven out of 13 cases were concluded with criticism. (The Ombudsman's Case No. 2016-44).

In-house schools: Following monitoring visits, the Ombudsman investigated the teaching at four in-house schools for children and young persons at placement facilities. The Ombudsman criticised that three schools did not provide teaching in the full range of subjects and that two schools did not observe the rule that pupils may only be exempt from classes in one or more subjects on the basis of a specific pedagogical and psychological evaluation of the individual pupil. Formal recommendation was given in two cases. (News item of 14 January 2016).

Supervision of teaching: Following monitoring visits, the Ombudsman investigated three municipalities' supervision of the teaching at in-house schools in placement facilities for children and young persons. One case was concluded with criticism. After being contacted by the Ombudsman, the Ministry of Education impressed on all municipalities the rules on teaching at in-house schools for children and young persons in placement facilities. Furthermore, the Ministry also emphasised that municipalities are required to supervise the teaching. (News items of 14 January and 23 December 2016).

Verbal recommendations to the institution's management

Coercion: Psychiatric wards were recommended to ensure that information was always given to the custodial parent that parents do not have to make a decision about the use of coercion or force against their children under the age of 15. Some wards were recommended to make written information about this issue available.

Documentation: Psychiatric wards were recommended to be more careful to complete protocols on the use of coercive measures. It was also recommended that the ward makes sure to enter into the protocol the names of the staff participating in forced immobilisation.

Teaching: It was recommended at several places that the school at the psychiatric ward adjusted its practice so that teaching was planned after consultation with the parents. The schools were also recommended to ensure that the person in charge of the teaching during hospitalisation obtains information about the pupil's classes so far.

Involvement and participation in the decision-making: It was recommended to ensure that the patient is involved and consulted about the contents of the treatment plan and also consulted on advance directives. It was also recommended to ensure that follow-up sessions are offered to patients and parents who have consented to the treatment of their children under the age of 15.

Rights: Recommendations were given that the ward consider introducing material with information about the rights of children and young persons in psychiatric care which is written in a language aimed at children and young persons and possibly adapted to more than one age group.

>>

Use of force: One asylum centre was recommended to be aware that only the rules of the Danish Criminal Code on self-defence and *jus necessitas* apply in connection with the use of force – and not the rules of the Social Services Act.

Health: One asylum centre was recommended to ensure that its health service in future observes the rules, including that child asylum seekers basically have the same rights to preventive health care services and health care benefits as children residing in Denmark.

House rules: One asylum centre was recommended to have the house rules translated into other relevant languages than English. Psychiatric wards were recommended to consider whether the practice described in the house rules about compensation (according to which the ward could not be held liable for damages) was true and fair.

Residents' council: One asylum centre was recommended to assist the residents in setting up a residents' council.

Other results

The Danish Act on Adult Responsibility (voksenansvarsloven): In 2016, Parliament passed the bill on adult responsibility for children and young persons at a placement facility. The Act is to a great extent based on recommendations from the Committee on the Use of Force Towards Children and Young Persons at Placement Facilities. The Committee was set up after the Ombudsman had raised questions about the rules on the use of force on the basis of monitoring visits.

MONITORING ACTIVITIES DISABILITY ACCESSIBILITY

MONITORING VISITS ON ACCESSIBILITY

Where The Ombudsman monitors the accessibility of public buildings, such as primary and lower secondary schools, educational institutions, town halls, libraries, hospitals and polling stations.

Why At the request of Parliament, the Ombudsman monitors developments regarding equal treatment of persons with disabilities. In this connection, the Ombudsman monitors, among other things, the physical accessibility for persons with disabilities. The aim is to check that the rules ensuring that public buildings are accessible to everybody are observed.

How During the monitoring visits, the Ombudsman's monitoring team will be shown round the buildings. The Ombudsman's monitoring team brings along measuring equipment to check, for example, whether ramps for wheelchair users have a degree of inclination which is in accordance with building regulations.

Who The Monitoring Department carries out the monitoring of accessibility. A wheelchair user who works as a consultant for the Ombudsman participates in the monitoring visits. Furthermore, the Ombudsman's special advisor on children's issues has participated in monitoring visits to primary and lower secondary schools.

MONITORING VISITS ON ACCESSIBILITY IN 2016

Date	Name and location of institution	Type
30 March	'Brændkjærskolen', Kolding	Primary and lower secondary school with a specialist centre
28 September	'Rosengårdskolen', Odense	Primary and lower secondary school with a specialist section

EXAMPLES OF IMPORTANT RESULTS IN 2016

Outcome of the monitoring visits on accessibility

The monitoring visit on accessibility to 'Brændkjærskolen' resulted in a number of recommendations on parking, accessibility and signposting. The Ombudsman also recommended that – in connection with a future renovation – play areas are established which are made more accessible to pupils with a mobility impairment, and that a future renovation of the shower room and the sauna also includes a wider door and a lowering of the doorstep so that wheelchair users also can get access.

The case concerning the accessibility inspection at 'Rosengårdskolen' was still pending when the Annual Report was submitted.

In 2016, the Ombudsman also concluded a case about a monitoring visit on accessibility to 'Skovvangskolen' in Allerød which was carried out in 2015. The monitoring visit resulted in a number of recommendations, among other things about accessibility, signposting and shielding. Pursuant to the rules laid down in the UN Convention on the Rights of Persons with Disabilities and the UN Convention on the Rights of the Child, it was recommended to furnish the school's outdoor playground with play facilities for the school's pupils with various forms of mobility impairment.

In addition to this, the Ombudsman also formally recommended that the school and Allerød Municipality at the very first opportunity ensure accessibility for pupils with a mobility impairment to the school's special subject rooms.

More information about the Ombudsman's work on equal treatment of persons with disabilities and the Ombudsman's reports on accessibility inspections can be found at www.ombudsmanden.dk/handicap (in Danish only)

Other activities

Accessibility of train stations for persons with disabilities: The case, which was taken up by the Ombudsman on his own initiative, was concluded in 2016 and comprised 13 long-distance and regional train stations around the country where the only access to the platform was via stairs from a tunnel or a bridge.

Based on a reply from the Ministry of Transport (now Ministry of Transport, Building and Housing), the Ombudsman found, among other things, that on 12 of the stations there were still significant obstacles as regards the accessibility for persons with mobility impairment. Installation of lifts or ramps at the 12 train stations could not be required under legislation, including the relevant EU legislation, but the Ombudsman considered it very important that the efforts to improve accessibility at train stations continue pursuant to the UN Convention on the Rights of Persons with Disabilities.

Meetings: The Ombudsman collaborates with the Danish Institute for Human Rights and the Danish Disability Council in order to facilitate, protect and monitor the implementation of the UN Convention on the Rights of Persons with Disabilities. As part of this collaboration, the Ombudsman held two meetings with these institutions in 2016.

MONITORING ACTIVITIES FORCED DEPORTATIONS

MONITORING OF FORCED DEPORTATIONS

What The Ombudsman monitors forced deportations by the police of foreign citizens without legal residence in Denmark.

Why The monitoring is especially aimed at ensuring that police activities are carried out with respect for the individual and without unnecessary use of force. Thus, the Ombudsman assesses whether the police act in accordance with current law – including EU law and international human rights conventions – and good administrative practice.

How The monitoring covers the time from the decision on forced deportation until the deportation is completed.

The Parliamentary Ombudsman examines police reports and a number of concluded deportation cases. The Ombudsman's monitoring staff also participate in specific deportations.

The Ombudsman's monitoring is concentrated on the following focus areas: use of force, separation of families, vulnerable groups, for example persons with health problems, preceding contact and information, security assessment prior to the deportation, aborted deportations and the deportation report.

Who The Monitoring Department carries out the monitoring of the forced deportations.

For more information about the Ombudsman's monitoring of forced deportations, please see www.ombudsmanden.dk/udsendelser (in Danish only).

FORCED DEPORTATIONS MONITORED IN 2016^{1,2}

Date	Number of persons	Use of force?	Deportation completed?
8 February	1	Yes	Yes
17 February	4	No	Yes
20 March	1	No	Yes
13 April	1	No	No
14 June	1	Yes	No
6 September	1	Yes	No
13 September	4	Yes	Yes (partly)
14 September	1	Yes	Yes
22 September	1	Yes	Yes
18 October	2	No	Yes

- 1) Deportation of foreign nationals who do not depart voluntarily can either be carried out through a supervised departure, where the departure from the country is supervised by the police, for example when the foreign national boards a plane, or through an escorted departure where the police escort the foreign national out of the country to the foreign national's home country or a third country where the foreign national is entitled to take up residence. In 2016, all deportations monitored by the Ombudsman were escorted departures.
- 2) In 2016, the destinations of the deportations monitored by the Ombudsman were the following countries, among others: Tunisia, Nigeria, Afghanistan, Libya, Japan, the Democratic Republic of Congo and China.

Comments

Forced deportation by scheduled flight of a 31-year-old man. Force was used in the form of restraint belt with tied hands. The forced deportation was only partly monitored by an Ombudsman legal case officer, since the monitoring was carried out from the time when the police picked up the foreign national until boarding at the airport.

Forced deportation of three men aged 23-32 years and a 40-year-old woman. The forced deportation was partly organised by the EU border control agency, Frontex.

Forced deportation by scheduled flight of a 32-year-old man.

Forced deportation by scheduled flight of a 26-year-old man.

Forced deportation by scheduled flight of a 69-year-old man. Force was used in the form of a bodycuff³ with tied hands and manual restraint.

Forced deportation by scheduled flight of a 37-year-old man. Force was used in the form of manual restraint and a bodycuff with tied arms and hands and with limited mobility of one leg. The case was still pending when the Annual Report was submitted.

Forced deportation by chartered plane of a 21-year-old man and a family consisting of a 31-year-old man, a 29-year-old woman and a three-year-old son. Force was used against the 21-year-old man in the form of manual restraint, a helmet and bodycuff with tied arms, hands and legs. Force was used against the 31-year-old man in the form of manual restraint, helmet and a bodycuff with tied hands. Force was used against the 29-year-old woman in the form of manual restraint and a bodycuff with tied hands. The case was still pending when the Annual Report was submitted.

Forced deportation by scheduled flight of a 42-year-old woman. Force was used in the form of manual restraint and a bodycuff with tied hands. In addition to this, the woman had to wear an adult diaper. The forced deportation was only partly monitored by an Ombudsman legal case officer since the monitoring was carried out from the time when the police picked up the woman until boarding at the airport. The case was still pending when the Annual Report was submitted.

Forced deportation by scheduled flight of a 26-year-old man. Force was used in the form of manual restraint. The forced deportation was only partly monitored by an Ombudsman legal case officer, since the monitoring was carried out from the time when the police picked up the foreign national until boarding at the airport.

Forced deportation by scheduled flight of a 58-year-old man and a 60-year-old woman.

3) A bodycuff is a type of restraint belt where wrists, arms, knees and ankles can be restrained by means of Velcro closure/click lock.

EXAMPLES OF IMPORTANT ACTIVITIES IN 2016

Specific deportations

In 2016, the Ombudsman monitored 10 forced deportations of foreign nationals. In none of the seven cases concluded in 2016 did the Ombudsman criticise the police work. The Ombudsman assessed that the deportations were carried out according to Danish and international guidelines, with respect for the individual and without unnecessary use of force. In addition to this, the Ombudsman did not have any comments on the documentation of the cases. Three deportation cases were pending when the Annual Report was submitted.

Discussions

In 2016, the Ombudsman had dialogue meetings with the National Police, 'Nationalt Udlændingecenter' (NUC – National Immigration Centre), North Zealand Police and 'Udlændingecenter Nordsjælland' (North Zealand Immigration Centre) about the Ombudsman's monitoring of forced deportations carried out by the police. In addition to this, meetings have also been held with the Danish Refugee Council and the then Ministry of Immigration, Integration and Housing.

International collaboration

In 2016, the Ombudsman participated in two European workshops on forced deportations. The Ombudsman also attended a European course on monitoring of forced deportations.



CASE NO. 16/04738

Two young men complained to the Ombudsman that a haircut had gone wrong to such an extent that it had been necessary for both of them to buy caps to wear. They had not at all got the haircut they asked for.

A member of the Ombudsman's staff phoned one of the young men and explained that the Ombudsman could not assist them in this matter. Instead, they could try phoning the Consumer Hotline which provides guidance on consumer matters.

The young man said that they did not need a written reply from the Ombudsman, and the case was therefore concluded on the basis of the telephone conversation.

It happens that the Parliamentary Ombudsman is mistaken for the Consumer Ombudsman by citizens who wish to complain about commodities or services.

CASE NO. 16/00356

A man hanged himself in a secure psychiatric ward on the same day he had been sentenced to psychiatric care and received a hospital order in court. The Ombudsman read in the daily newspapers that this had made the Region of Southern Denmark initiate an internal investigation.

The Ombudsman asked the Region for the result of the investigation. After he received the result, the Ombudsman requested more information about the case. However, the Region would not give access to the information, since it was confidential. The Ombudsman wrote to the Region and stated the rules for passing on information to the Ombudsman. The Ombudsman also explained that he himself and his employees are under a duty of confidentiality. After this, the Region gave the Ombudsman access to the information.

The Ombudsman is entitled to access to all documents belonging to an authority.

CASE NO. 16/00271

A journalist had asked the Ministry of Environment and Food for access to public files regarding relocation of central government jobs. In the documents given to the journalist, some of the information had been blocked out because the Ministry assessed that the information was exempt from access to public files.

The journalist complained to the Ombudsman who sent a number of questions to the Ministry. The Ombudsman also wrote to the Ministry that he would be pleased to participate in a meeting about the case, should the Ministry wish him to do so.

Subsequently, a meeting was held with participation of staff from the Ombudsman institution and the Ministry of Environment and Food, respectively.

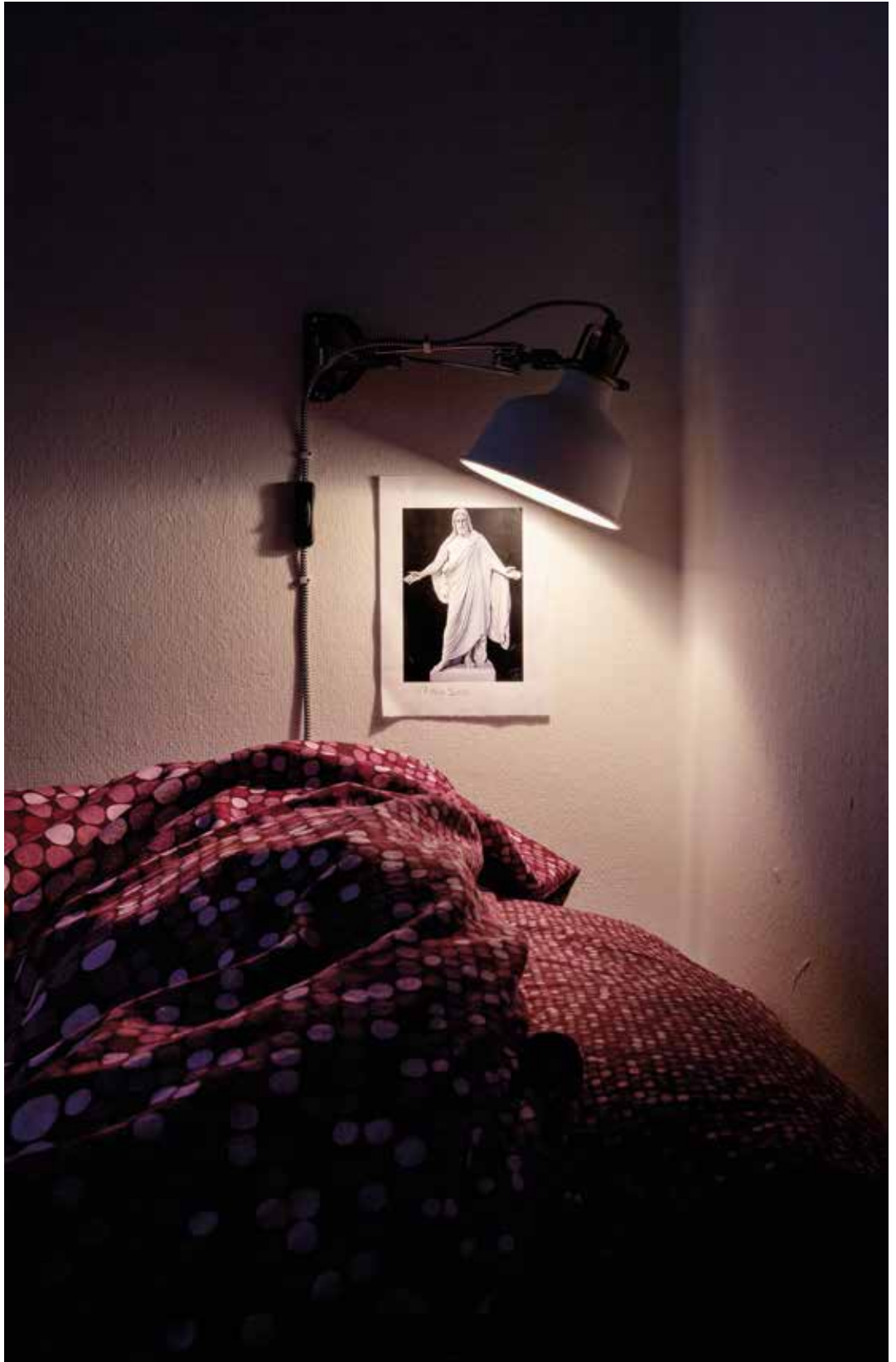
The Ministry said after the meeting that it had been decided to reopen the case and make a new decision. The information which had previously been held back by the Ministry was now given to the journalist.

The Ombudsman and his staff regularly meet with authorities to discuss specific cases. The Ombudsman also holds annual meetings with some of the authorities that the institution is most frequently in contact with, such as the National Social Appeals Board and the Department of the Prison and Probation Service.

CASE NO. 16/00597

Now and then, the Ombudsman has to ask, 'What is the complaint about?'. A citizen forwarded a decision from the State Administration regarding rejection of a name change, but he did not enclose a complaint to the Ombudsman. In that situation, the Ombudsman often asks the citizen to write in more detail what he or she is dissatisfied with. However, in this case the Ombudsman rejected the enquiry without further notice because it appeared from the documents that the citizen could appeal to the Family Law Department of the National Social Appeals Board.

In 2016, the Ombudsman concluded 252 cases in which it was either unclear what the complaint was about, or the complaint was withdrawn.



OVERVIEW OF THE

YEAR

2016



THE YEAR IN FIGURES

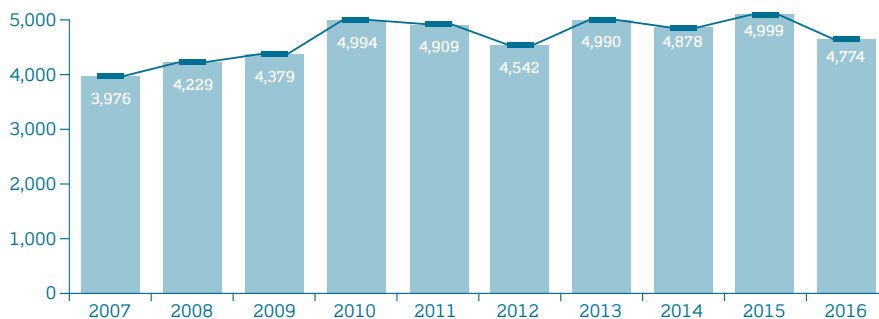
The following pages contain key figures for the cases processed by the Ombudsman in 2016. More information about the Ombudsman's work and the rules governing the Ombudsman's activities can be found on www.ombudsmanden.dk.

NEW CASES

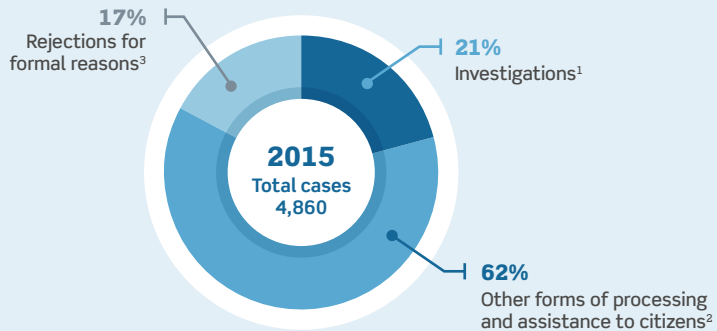
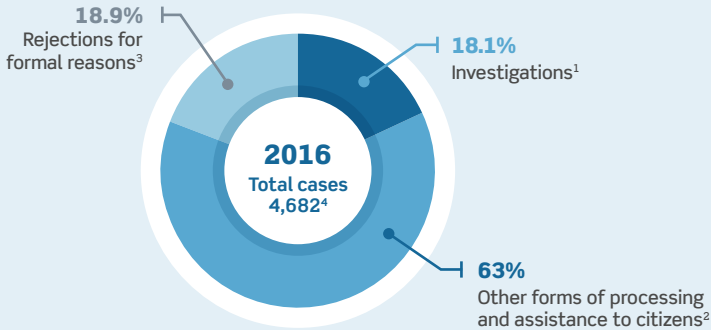
Cases opened in 2016 ¹	
Complaint cases	4,525
Cases opened by the Ombudsman on his own initiative	180
Monitoring cases ²	69
Total	4,774

- 1) The table does not include administrative cases, for instance cases concerning requests for access to documents of Ombudsman cases, cases connected with international cooperation, cases concerning the Ombudsman's work and cases requested by the Ombudsman in connection with general investigations opened on the Ombudsman's own initiative of authorities' processing of cases etc.
- 2) Comprise cases concerning monitoring visits to institutions for adults and for children, monitoring visits regarding physical accessibility for persons with disabilities and monitoring of forced deportations of foreign nationals. See pages 70-112 for information about the Ombudsman's monitoring activities.

Developments in the number of cases opened



CONCLUDED CASES



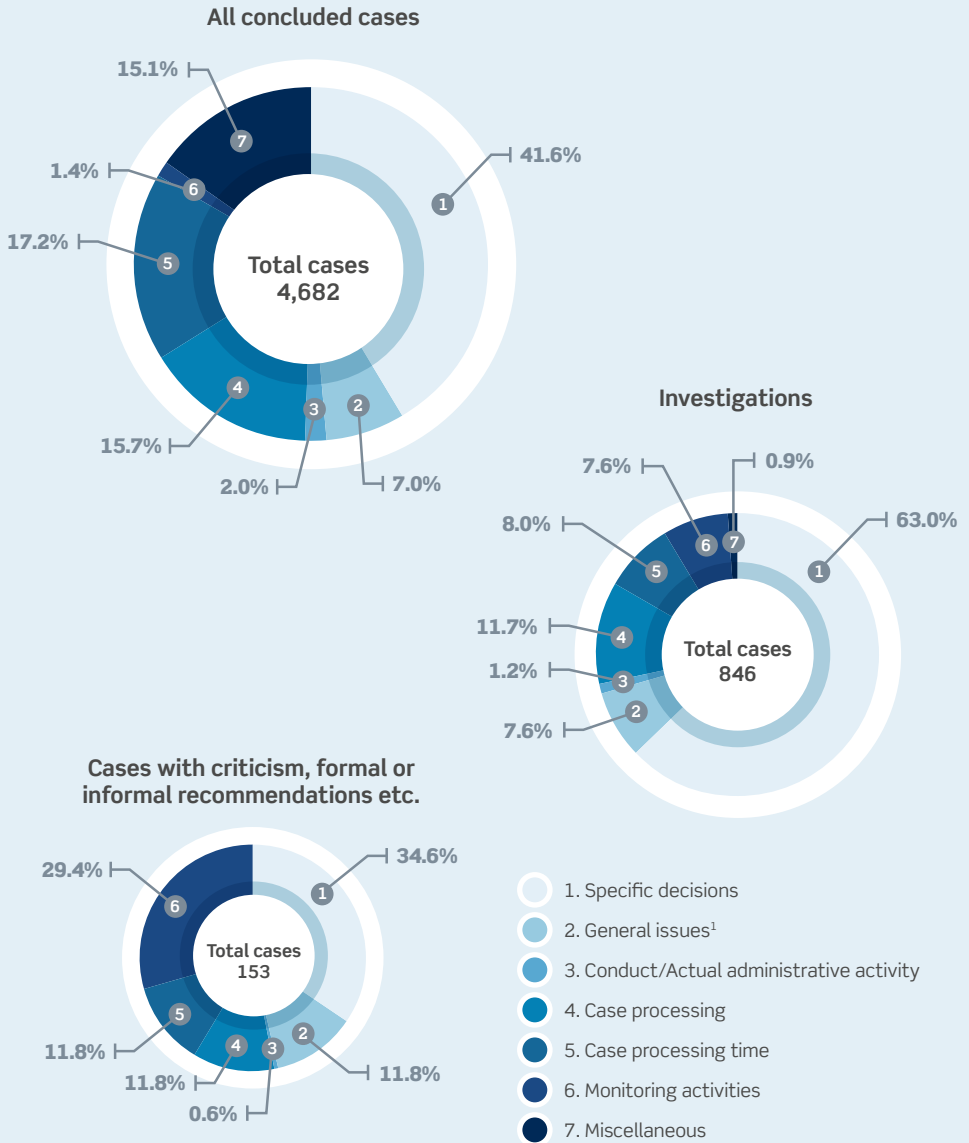
- 1) The overall category 'Investigations' comprises cases in which the Ombudsman made various investigations and assessments, including cases where the Ombudsman carried out an in-depth investigation after obtaining statements from the authorities involved.
- 2) The category 'Other forms of processing and assistance to citizens' comprises cases processed differently than by way of investigation. For instance, the Ombudsman may have provided guidance to the citizen or forwarded the case to the authorities – for example as a complaint, in order that the citizen would be able to get more details of the grounds for a decision, or with a view to the authorities expediting the case.
- 3) Cases are rejected for formal reasons if, for instance, the authority etc. to which a complaint relates is outside the Ombudsman's jurisdiction, if a citizen has exceeded the one-year deadline for lodging a complaint with the Ombudsman or if an appeal option has not been used and can no longer be used. See the table on page 121 for further information.
- 4) In addition, the Ombudsman reviewed 30 specific cases in connection with a general investigation which he concluded in 2016 of ministries' use of the provisions of the Access to Public Administration Files Act on ministerial advice and assistance and extended openness.

WHAT WAS THE OUTCOME OF THE CASES?

	Total concluded cases
1. Investigations	
1. Full investigations – of which cases with criticism, formal or informal recommendations etc.	254 153
2. Shortened investigations ¹	592
Investigations, total	846
2. Other forms of processing and assistance to citizens	
1. Various forms of intervention in cases where the possibilities of having them processed by authorities had not been exhausted – of which cases forwarded to authorities	1,740 1,061
2. The Ombudsman's review of the cases did not result in further investigation	764
3. Answers to inquiries, guidance etc.	448
Other forms of processing and assistance to citizens, total	2,952
3. Rejections for formal reasons	
1. Complaints which were submitted too late to the Ombudsman	113
2. Cases where the complaint/appeal options to authorities had not been used – and could no longer be used	46
3. Cases which related to courts, judges or matters on which a court had made or could be expected to make a decision – and which were thus outside the Ombudsman's jurisdiction	116
4. Cases which concerned matters relating to Parliament, including legislative issues, and which were thus outside the Ombudsman's jurisdiction	78
5. Complaints which related to other matters outside the Ombudsman's jurisdiction, including private legal matters	240
6. Complaints which were not clarified sufficiently to enable investigation and complaints which were withdrawn	252
7. Cases in which the Ombudsman declared himself disqualified	8
8. Anonymous approaches	31
Rejections for formal reasons, total	884
Total (1-3)	4,682

- 1) Shortened investigations especially comprise cases in which the Ombudsman reviewed a complaint but decided not to obtain statements from the authorities because it was unlikely that a full investigation would result in criticism or recommendations. The category of shortened investigations also includes, among others, cases which were reopened by the authorities following a request from the Ombudsman for a statement.

WHAT DID THE CASES CONCERN?



1) The category 'General issues' comprises, for instance, the overall conditions in an institution, whether the enabling act provides a sufficient legal basis for the provisions of an executive order or whether an authority's general practice in a specific area is acceptable.

WHICH AUTHORITIES ETC. WERE INVOLVED?

Cases concluded in 2016 – by authority etc.

Authority etc. with prime responsibility ¹	Investigations		Other forms of processing and assistance to citizens	Rejections for formal reasons	Total cases
	With criticism, formal or informal recommendations etc.	Without criticism, formal or informal recommendations etc.			

A. Central authorities etc. (within the Ombudsman's jurisdiction)

a. Ministry of Employment

The Department	0	4	9	4	17
Labour Market Insurance	1	1	52	9	63
ATP (Danish Labour Market Supplementary Pension Scheme)	0	0	1	2	3
Council of Appeal on Health and Safety at Work	0	0	1	0	1
Danish Working Environment Authority	0	0	5	0	5
Appeals Board for ATP	0	9	2	1	12
Unemployment Insurance Complaints Centre	0	1	0	0	1
National Research Centre for the Working Environment	0	0	1	0	1
Board of Equal Treatment	0	1	5	0	6
LD (Employees' Capital Pension Fund)	0	2	1	0	3
Employees' Guarantee Fund	0	0	1	0	1
Danish Agency for Labour Market and Recruitment	0	0	4	1	5
Total	1	18	82	17	118

b. Ministry for Children and Social Affairs

The Department	1	2	8	1	12
Danish Supervisory Board of Psychological Practice	0	1	2	0	3
The State Administration ²	1	11	104	12	128
Total	2	14	114	13	143

- 1) The cases in section A of the table have been classified under the ministries existing at the end of the year. Concluded cases relating to authorities which have been moved to another ministry, closed down or reorganised have as a general rule been classified under the ministries which had the remit for the relevant areas at the end of the year.
- 2) The figures comprise all cases in which the State Administration was the authority with prime responsibility, with the exception of cases processed by the Psychiatric Patients' Board of Complaints or the unit of the State Administration supervising municipalities' and regions' observance of the legislation applying specifically to public authorities. Those cases have been classified under the Ministry of Industry, Business and Financial Affairs and the Ministry for Economic Affairs and the Interior, respectively.

Continued next page

Cases concluded in 2016 – by authority etc.

Authority etc. with prime responsibility ¹	Investigations		Other forms of processing and assistance to citizens	Rejections for formal reasons	Total cases
	With criticism, formal or informal recommendations etc.	Without criticism, formal or informal recommendations etc.			

c. Ministry of Energy, Utilities and Climate

The Department	0	1	1	0	2
Geological Survey of Denmark and Greenland	0	2	2	0	4
Energy Board of Appeal	0	2	0	0	2
Energinet.dk	0	0	1	0	1
Danish Energy Agency	0	0	2	0	2
Danish Energy Regulatory Authority	0	1	0	0	1
Total	0	6	6	0	12

d. Ministry of Industry, Business and Financial Affairs

The Department	1	1	3	0	5
Psychiatric Patients' Board of Complaints	0	2	11	3	16
Company Appeals Board	0	0	2	0	2
Danish Business Authority	0	1	5	1	7
Danish Financial Supervisory Authority	0	2	6	2	10
Danish Competition and Consumer Authority	0	2	4	0	6
Total	1	8	31	6	46

e. Ministry of Finance

The Department	3	2	1	0	6
Agency for Digitisation	0	0	3	0	3
Public servants' disability pension board	0	0	4	0	4
Agency for Modernisation	0	3	3	1	7
Agency for Governmental Administration	0	0	1	0	1
Total	3	5	12	1	21

f. Ministry of Defence

The Department	3	3	5	0	11
Danish Defence Estates and Infrastructure Organisation	0	0	1	0	1
Danish Defence Personnel Organisation	0	0	3	1	4
Total	3	3	9	1	16

Cases concluded in 2016 – by authority etc.

Authority etc. with prime responsibility ¹	Investigations		Other forms of processing and assistance to citizens	Rejections for formal reasons	Total cases
	With criticism, formal or informal recommendations etc.	Without criticism, formal or informal recommendations etc.			
g. Ministry of Justice					
The Department	10	19	38	8	75
Local prisons	1	3	11	1	16
Department of Civil Affairs	0	3	10	1	14
Danish Data Protection Agency	0	3	14	0	17
Independent Police Complaints Authority	0	6	6	6	18
Department of the Prison and Probation Service	4	43	27	5	79
Criminal Injuries Compensation Board	0	3	7	2	12
State prisons	6	12	92	9	119
Prison and Probation Service in Greenland	1	1	1	0	3
Regional offices of the Prison and Probation Service	3	8	20	2	33
Prison and Probation Service institutions	0	1	1	0	2
The police	5	3	113	11	132
Danish Security and Intelligence Service (PET)	0	0	8	0	8
Chief of Police in the Faroe Islands	4	1	0	0	5
Danish Medico-Legal Council	0	0	1	1	2
Director of Public Prosecutions	0	2	10	3	15
National Police	4	12	18	4	38
Regional Public Prosecutors	0	21	38	4	63
Danish Intelligence Oversight Board	0	0	1	0	1
Total	38	141	416	57	652

h. Ministry of Ecclesiastical Affairs

The Department	0	1	2	0	3
Parish church councils	0	0	1	0	1
Parishes	0	0	2	0	2
Dioceses	0	0	3	0	3
Total	0	1	8	0	9

Cases concluded in 2016 – by authority etc.

Authority etc. with prime responsibility ¹	Investigations		Other forms of processing and assistance to citizens	Rejections for formal reasons	Total cases
	With criticism, formal or informal recommendations etc.	Without criticism, formal or informal recommendations etc.			

i. Ministry of Culture

The Department	0	3	5	1	9
Danish Broadcasting Corporation (DR)	1	6	6	3	16
Royal Danish Library	0	0	2	0	2
Royal Danish Academy of Fine Arts	0	1	0	0	1
Allocation Committee for the Pool for Certain Magazines and Periodicals	0	0	1	0	1
Media Board	1	0	2	0	3
Radio and Television Board	0	0	1	1	2
Agency for Culture and Palaces	0	0	5	1	6
Total	2	10	22	6	40

j. Ministry of Environment and Food

The Department	0	3	8	3	14
Energy Board of Appeal	0	0	2	0	2
Danish Veterinary and Food Administration	0	0	5	0	5
Complaints Centre for Food, Agriculture and Fisheries	0	4	7	0	11
Danish Coastal Authority	0	0	2	1	3
Environmental Protection Agency	0	0	5	0	5
National parks	0	1	0	0	1
Environmental Board of Appeal	2	8	17	3	30
Danish AgriFish Agency	0	1	7	2	10
Danish Nature Agency	0	0	6	0	6
Danish Agency for Water and Nature Management	0	0	1	0	1
Total	2	17	60	9	88

k. Ministry of Taxation

The Department	2	2	8	1	13
National Tax Tribunal	0	4	4	2	10
Regional motor vehicles appeals boards	0	0	1	0	1
Danish Customs and Tax Administration (SKAT)	0	6	92	23	121
Regional tax appeals boards	0	3	1	0	4
Tax Appeals Agency	0	6	20	2	28
Total	2	21	126	28	177

Cases concluded in 2016 – by authority etc.

Authority etc. with prime responsibility ¹	Investigations		Other forms of processing and assistance to citizens	Rejections for formal reasons	Total cases
	With criticism, formal or informal recommendations etc.	Without criticism, formal or informal recommendations etc.			
l. Prime Minister's Office					
The Department	0	1	4	0	5
High Commissioner of the Faroe Islands	0	0	1	0	1
Total	0	1	5	0	6
m. Ministry of Health					
The Department	1	2	13	0	16
National Committee on Health Research Ethics	0	1	0	0	1
Danish Council on Ethics	0	0	1	0	1
Psychiatric Appeals Board	0	1	2	1	4
Danish Medicines Agency	1	0	3	0	4
SSI (Statens Serum Institut)	0	0	1	1	2
Danish Patient Safety Authority	2	11	25	3	41
National Health Data Agency	0	0	1	0	1
Danish Health Authority	0	2	10	0	12
Disciplinary Board of the Danish Healthcare System	0	2	9	1	12
Total	4	19	65	6	94
n. Ministry of Transport, Building and Housing					
The Department	9	7	19	3	38
Banedanmark (Rail Net Denmark)	0	1	2	0	3
Building and Property Agency	0	0	2	0	2
Danish State Railways	1	0	8	2	11
Commissioners' Offices (authorities administering the legislation on compulsory acquisitions in respect of land)	0	0	2	0	2
Danish Transport, Construction and Housing Authority	0	6	9	1	16
Danish Road Directorate	0	2	3	1	6
Total	10	16	45	7	78
o. Ministry of Higher Education and Science					
The Department	3	0	2	0	5
State Educational Grant and Loan Scheme Board of Appeal	0	3	2	0	5
Danish Agency for Higher Education	0	6	10	4	20
Educational establishments	0	1	21	6	28
Danish Committees on Scientific Dishonesty (DCSD)	0	1	0	0	1
Total	3	11	35	10	59

Continued next page

Cases concluded in 2016 – by authority etc.

Authority etc. with prime responsibility ¹	Investigations		Other forms of processing and assistance to citizens	Rejections for formal reasons	Total cases
	With criticism, formal or informal recommendations etc.	Without criticism, formal or informal recommendations etc.			

p. Ministry of Foreign Affairs

The Department	6	4	8	1	19
Danish embassies, consulate generals etc. in foreign countries	0	0	3	0	3
Total	6	4	11	1	22

q. Ministry of Immigration and Integration

The Department	4	13	24	26	67
Asylum centres	0	0	3	0	3
Danish Agency for International Recruitment and Integration	0	0	3	0	3
Immigration Appeals Board	1	4	15	5	25
Danish Immigration Service	1	3	64	11	79
Total	6	20	109	42	177

r. Ministry of Education

The Department	1	4	7	0	12
Appeals Board for Special Needs Education	0	1	1	0	2
National Agency for Education and Quality	0	2	4	0	6
Educational establishments	0	4	4	0	8
Total	1	11	16	0	28

s. Ministry for Economic Affairs and the Interior

The Department	2	2	4	2	10
National Social Appeals Board	3	193	284	87	567
Statistics Denmark	0	0	1	0	1
Unit of the State Administration supervising municipalities' and regions' observance of legislation applying specifically to public authorities	6	16	20	0	42
Total	11	211	309	89	620

Central authorities etc., total

95	537	1,481	293	2,406
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B. Municipal and regional authorities etc. (within the Ombudsman's jurisdiction)

Municipalities	37	115	929	145	1,226
Regions	12	18	82	16	128
Joint municipal or regional enterprises	0	4	4	0	8
Special municipal or regional entities	2	0	1	1	4
Total	51	137	1,016	162	1,366

Cases concluded in 2016 – by authority etc.

Authority etc. with prime responsibility ¹	Investigations		Other forms of processing and assistance to citizens	Rejections for formal reasons	Total cases
	With criticism, formal or informal recommendations etc.	Without criticism, formal or informal recommendations etc.			

C. Other authorities etc. within the Ombudsman's jurisdiction³

Other authorities etc. within the Ombudsman's jurisdiction	7	19	107	17	150
Total	7	19	107	17	150

D. Authorities etc. within the Ombudsman's jurisdiction, total

Central authorities etc., total (A)	95	537	1,481	293	2,406
Municipal and regional authorities etc., total (B)	51	137	1,016	162	1,366
Other authorities etc. within the Ombudsman's jurisdiction, total (C)	7	19	107	17	150
Total	153	693	2,604	472	3,922

E. Institutions etc. outside the Ombudsman's jurisdiction

1. Courts etc., cf. section 7(2) of the Ombudsman Act	0	0	5	77	82
2. Dispute tribunals, cf. section 7(3) of the Ombudsman Act	0	0	0	15	15
3. Other institutions, companies, businesses and persons outside the Ombudsman's jurisdiction	0	0	7	273	280
Total	0	0	12	365	377

F. Cases not relating to specific institutions etc.

	0	0	336	47	383
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Grand total (A-F total)	153	693	2,952	884	4,682
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- 3) The figures comprise private institutions which fall within the Ombudsman's jurisdiction in connection with OPCAT or in the children's sector and other institutions etc. which have been included under the Ombudsman's jurisdiction, for instance Udbetaling Danmark (100 cases in 2016), an authority responsible for a number of public benefits. In 2016, the Ombudsman made no decisions in pursuance of section 7(4) of the Ombudsman Act that his jurisdiction was to extend to a specific company, institution, association etc.

PROCESSING TIMES

Types of cases and outcomes		Average processing time ¹	Targets and results
Complaint cases and cases opened by the Ombudsman on his own initiative	Investigations	4.4 months	Concluded within 6 months Target: 70% Actual: 77%
			Concluded within 12 months Target: 90% Actual: 94%
	– of which access to public files cases ²	31 working days (from maturity date)	Investigated access to public files cases concluded within 20 working days from maturity date Target: 45% Actual: 37%
			Investigated access to public files cases concluded within 40 working days from maturity date Target: 90% Actual: 78%
	Other forms of processing and assistance to citizens and rejections for formal reasons	41 days	Concluded within 3 months Target: 90% Actual: 86%
			Concluded within 6 months Target: 98% Actual: 97%
Monitoring cases ³	2.3 months (from date of monitoring visit)	Concluded within 6 months from date of monitoring visit Target: 80% Actual: 90%	

- 1) Processing times are stated in *calendar days*, except for access to public files cases, where processing times are stated in *working days* – as in the Access to Public Administration Files Act. The 'maturity date' for a case is the date on which it was ready for final processing after the Ombudsman had received the necessary information and statements from the citizen and the authorities.
- 2) Complaint cases concerning access to files under the Access to Public Administration Files Act, the Environmental Information Act, the Administration of Justice Act etc., with the exception of cases concerning the right of a party to a case to obtain access to documents of the case and cases concerning persons requesting access to information about themselves.
- 3) Monitoring cases comprise concluded cases concerning monitoring visits to institutions for adults, monitoring visits regarding physical accessibility for persons with disabilities and monitoring of forced deportations of foreign nationals. Cases concerning monitoring visits to institutions for children were not covered by targets for case processing times until 1 October 2016 and are therefore not included in the table.

OTHER FACTS

The Ombudsman declared himself **disqualified** in eight cases, including one monitoring case, in 2016. Parliament's Legal Affairs Committee assigned these cases to Henrik Bloch Andersen, High Court Judge. The Ombudsman's office provided secretariat assistance in connection with the processing of the cases.

The Faroese Lagting (the Parliament) asked the Ombudsman to act as **ad hoc ombudsman** for the Faroese Parliamentary Ombudsman in one case in 2016. The Inatsisartut (the Parliament of Greenland) did not ask the Ombudsman to act as ad hoc ombudsman for the Ombudsman for Inatsisartut in any cases in 2016.

STATEMENT OF REVENUE AND EXPENDITURE – 2016

The Ombudsman's ordinary activities

DKK

Revenue

Subsidy from Ministry of Foreign Affairs	900,000
Other revenue	0
Total revenue	900,000

Expenditure

Wages and salaries, pension costs	54,800,000
Rent	4,059,000
Staff and organisation, including staff welfare	446,000
Continuing training/education	643,000
Books and library	118,000
Specialist databases	874,000
Newspapers and journals	229,000
Communication	513,000
Computer systems – operations and development	2,760,000
Computer hardware	1,150,000
Telephony and broadband	655,000
Premises – repairs and maintenance	449,000
Furniture, fixtures and fittings	494,000
Cleaning, laundry and refuse collection	244,000
Heating and electricity	497,000
Premises – other expenditure	236,000
Travel	423,000
Entertainment and meals	104,000
Contribution to financial support scheme for trainees	278,000
Stationery and office supplies	163,000
Postage	141,000
Other goods and services	1,445,000
Total expenditure	70,721,000
Total expenditure (net)	69,821,000
Government appropriation	70,300,000
Result for the year	479,000

Public service pension payments

	DKK
Pension payments for former public servants	1,929,000
Public service pension contributions	1,601,000
Public service pension payments, total	328,000

Cooperation project with China

	DKK
Revenue	2,275,000
Expenditure	2,275,000
Result for the year	0



SUMMARIES OF SELECTED STATEMENTS

The Ombudsman regularly publishes statements (in Danish) on certain types of cases on www.ombudsmanden.dk and on www.retsinformation.dk, the official legal information system of the Danish state.

Summaries are provided below (by ministerial area¹) of the statements which have been published on cases concluded in 2016.

A. MINISTRY OF EMPLOYMENT

The following statement on a case concluded in 2016 has been published:

2016-36. Unsatisfactory processing times in cases about compensation claims for loss of earning capacity

An investigation showed that the processing times of the National Board of Industrial Injuries in new cases about compensation claims for loss of earning capacity had increased from approx. 16 months to approx. 26 months since 2012.

The Ombudsman found the long processing times unsatisfactory.

It was uncertain whether the Board's plan for reducing its case processing times was sufficient to bring about satisfactory processing times in the foreseeable future. For this reason, the Ombudsman asked the Ministry of Employment to inform him – by the end of January 2017 – how the process of reducing processing times in these cases was progressing.

The Ombudsman pointed out, among other things, that a further element of uncertainty as to whether the plan for reducing case processing times would succeed had been introduced with the change in the hierarchy of authorities which would take place as from 1 July 2016 in connection with the shift of the Board's responsibilities to Labour Market Insurance, a new independent institution.

1) The summaries have been classified under the ministries which had the remit for the relevant areas at the end of the year.

On concluding his investigation, the Ombudsman notified, among others, Parliament's Employment Committee and Parliament's Legal Affairs Committee of the case.

B. MINISTRY FOR CHILDREN AND SOCIAL AFFAIRS

The following statement on a case concluded in 2016 has been published:

2016-51. Uncertainty regarding rules of Social Services Act on appeals from legal guardians etc.

The National Social Appeals Board declined to consider an appeal from a father who was the legal guardian of his mentally retarded daughter. The father wished to appeal a decision by the municipality not to take restrictive measures against his daughter as he wanted a decision under section 125(1) of the Social Services Act that she was to have a GPS tracker on her in order that she would not leave the institution in which she lived.

The Ombudsman could not criticise the refusal by the National Social Appeals Board to consider the father's appeal. However, the Ombudsman found that it was uncertain how the rules on appeals in section 133(1) and (3) of the Social Services Act were to be understood and whether the Board was right that it would defeat the purpose of the provisions of the Act on forcible measures and other restrictions if legal guardians etc. had a right of appeal against a municipality's refusal to use forcible or otherwise restrictive measures.

The Ombudsman therefore notified Parliament and the Ministry for Children and Social Affairs of the case in pursuance of section 12(1) of the Ombudsman Act in order that they might consider whether there was a need for clarification of the law in this respect by legislation.

C. MINISTRY OF ENERGY, UTILITIES AND CLIMATE

No statements on cases concluded in 2016 have been published.

D. MINISTRY OF INDUSTRY, BUSINESS AND FINANCIAL AFFAIRS

The following statement on a case concluded in 2016 has been published:

2016-35. No right to extract of data from IT system containing key information about housing co-operatives. Specific confidentiality obligation

When the then Ministry of Housing, Urban and Rural Affairs denied a man access to data forming part of the basis for an analysis of aspects of the debts of housing co-operatives, the man complained to the Ombudsman.

The Ministry had taken for its basis that the man had asked for access to key information about housing co-operatives which had been reported by the co-operatives themselves and by mortgage credit institutions etc. for inclusion in the Ministry's IT system containing such information about housing co-operatives.

As the information was not available in physical or electronic documents, the Ministry had considered whether the man was entitled to an extract of information from the IT system under the provision in section 11 of the Access to Public Administration Files Act.

The grounds given by the Ministry for denying the man access to an extract of information included that it would not be possible to anonymise confidential information by few and simple commands, as required by section 11(1) of the Act. In this connection, the Ministry took for its basis that the key financial information reported by mortgage credit institutions etc. was subject to a specific confidentiality obligation within the meaning of section 35 of the Act, cf. section 117 of the Financial Business Act, and was therefore to be anonymised if access was to be granted to an extract of such information.

The Ombudsman noted that, viewed in isolation, section 117(1) of the Financial Business Act is not a specific confidentiality provision within the meaning of the Access to Public Administration Files Act as the provision is not aimed at public authorities but at employees etc. of financial services enterprises. However, the Ombudsman agreed with the authorities that, among other reasons because under subsection (2), recipients of confidential information are also subject to the confidentiality obligation, section 117 was to be regarded as a specific confidentiality provision.

The Ombudsman also agreed that the key financial information fell within the scope of section 117 and was therefore to be anonymised. As he further concurred that it would require more than few and simple commands to compile the information and anonymise it sufficiently, he found, as did the authorities, that the man was not entitled to an extract of this information.

In addition, the Ombudsman agreed with the authorities that it would not be possible to extract the total data requested by few and simple commands and that for this reason, the data was not to be released to the man.

E. MINISTRY OF FINANCE

The following statements on cases concluded in 2016 have been published:

2016-26. Ministries' implementation plans for relocation of central government jobs. Ministerial advice and assistance documents. Extraction of information

A journalist complained to the Ombudsman because the Ministry of Finance had denied him access, with reference to section 23(1)(i) and section 24(1) of the Access to Public Administration Files Act, to the implementation plans which the individual ministries had been asked to send to the Ministry of Finance in connection with the Government's plan to relocate a large number of central government jobs to other regions.

The Ombudsman could not criticise the Ministry's refusal of access to the implementation plans as they were internal documents (section 23(1)(i) of the Access to Public Administration Files Act) and ministerial advice and assistance documents (section 24(1) of the Act), respectively.

However, the Ombudsman found that the implementation plans, which consisted primarily of standardised questionnaires sent out by the Ministry of Finance and completed by the individual ministries, contained more information than the Ministry of Finance had concluded which was subject to extraction under section 28(1), first sentence, of the Access to Public Administration Files Act on information about the factual basis of a case.

The questionnaires contained a number of main headings (Facts, Overall time schedule, Costs, Quality measures and Contact person) under which various questions were listed which were to be answered by the ministries for each of

the institutions affected by the relocations. The replies given consisted of purely factual information, of information about things which had already taken place or been decided and of assessments for the future, such as the expected costs of the relocations.

In the Ombudsman's opinion the purely factual information and the information about things which had already taken place or been decided was to be regarded as in principle subject to extraction. Conversely, the information which was based on assessments for the future, such as the expected costs of the relocations, was in principle not subject to extraction.

The Ombudsman recommended that the Ministry of Finance reopen the case in order to consider whether the case contained more information which was subject to extraction. The Ombudsman also asked the Ministry to consider whether the journalist could be granted further access – including according to the principle of extended openness – to information because some of the information in the implementation plans had subsequently become publicly available.

The Ministry of Finance reopened the case and granted the journalist access to further information.

2016-43. Own-initiative investigation concerning the regulation on ministerial advice and assistance and the principle of extended openness

On 5 October 2016, the Ombudsman concluded an investigation opened on his own initiative of ministries' use of section 24 of the Access to Public Administration Files Act (on ministerial advice and assistance) and section 14 of the Act (on extended openness). The investigation was carried out under section 17(2) of the Ombudsman Act, which authorises general investigations by the Ombudsman of an authority's processing of cases.

The investigation is based on a total of 30 selected cases from the Ministry of Finance, the Ministry of Justice, the Ministry of Culture and the then Ministry of Economic Affairs and the Interior and on the Ombudsman's experience from investigating a large number of specific complaint cases since the new Access to Public Administration Files Act came into force on 1 January 2014.

In his report, the Ombudsman concludes the following: The ministries generally use the ministerial advice and assistance regulation legally correctly.

However, in practice, the regulation results in considerable restrictions on the right of access to public files, and in cases involving the regulation, the principle of extended openness often only results in the release of documents and information which cannot be presumed to be of particular interest to the public. It would be an advantage if in their daily practice the ministries would consider giving more weight to the principle of extended openness in cases involving the regulation.

One of the appendices to the Ombudsman's report outlines the specific complaint cases concerning access to documents exchanged in connection with ministerial advice and assistance which the Ombudsman has investigated since the new Access to Public Administration Files Act came into force on 1 January 2014.

2016-48. Extract of data from the public procurement database of the Agency for Modernisation

An enterprise had asked the Agency for Modernisation for an extract from the Agency's public procurement database of information on the total amounts invoiced by vendors to central government institutions in 2013 and 2014, respectively. The requested data extract contained information on amounts invoiced by more than 53,000 vendors to a total of approximately 140 central government institutions, including the Agency for Modernisation itself.

In the Ombudsman's opinion it was most likely that the provision in section 11(1) of the Access to Public Administration Files Act on extracts of data was to be interpreted as meaning that when an authority calculates the amount of resources it expects to require in order to extract (and if necessary anonymise etc.) requested data, the authority may include the time it will need for the processing steps necessary to establish whether the data extract contains information which is subject to sections 19-35 of the Act. Thus, anybody requesting an extract of data will only be entitled to the extract if all the processing steps necessary to ensure that the provisions on exemptions in sections 19-35 are complied with – and the actual extraction of data – can be carried out by 'few and simple commands'.

The Ombudsman therefore found no cause for criticising that the Agency for Modernisation had taken for its basis that when calculating the amount of resources which it expected to require in order to extract (and if necessary anonymise etc.) the data requested by the enterprise, the Agency was entitled under section 11(1) of the Access to Public Administration Files Act to include

the time it would need for the processing steps necessary to establish whether the data extract contained information which was subject to sections 19-35 of the Act.

The Ombudsman could not repudiate the Agency's assessment that it would be necessary to obtain information from the other central government institutions and possibly the vendors in order to be able to establish whether the data extract contained information on business matters or on matters pertaining to vendors' operations or information of significance to the security of the State or the defence of the realm to which access could be denied under section 30(ii) or section 31 of the Access to Public Administration Files Act.

In the light of the fact that the data extract contained information from more than 53,000 vendor agreements with approximately 140 institutions, the Ombudsman could not criticise the Agency's view that the resources which would be needed for the investigation steps mentioned above would exceed the resources which an authority could be required to use under section 11(1) of the Access to Public Administration Files Act.

2016-54. Access to bids made in connection with sale of shares in DONG Energy could be denied (section 30(ii) of Access to Public Administration Files Act)

A journalist asked the Ministry of Finance for access to bids made in connection with the sale of shares in DONG Energy (Denmark's largest energy company, in which the Danish Government has a majority share).

On receiving the Ministry's reply to his request for access, the journalist complained to the Ombudsman.

The Ombudsman criticised the wording of the Ministry's decision, which in the Ombudsman's opinion was in several respects inadequate and failed to meet the requirements of the Access to Public Administration Files Act and the Public Administration Act. Among other things, the decision did not state clearly that the journalist's request was partially refused. In addition, the grounds for the decision were not included, and the Ministry had not stated sufficiently precisely where the journalist could find the (publicly available) material to which he had requested access.

However, the Ombudsman could not criticise that the Ministry had denied the journalist access with reference to section 30(ii) of the Access to Public Ad-

ministration Files Act to the bids made in connection with the sale of shares in DONG Energy. Overall, the Ombudsman took for his basis that the information in the bids was business information etc. to DONG Energy and that the information was therefore, by virtue of its nature, subject to section 30(ii) of the Access to Public Administration Files Act.

The Ombudsman also gave weight to the rule of presumption described in the explanatory notes to the provision in section 30(ii). According to this rule, there is a 'clear presumption' that disclosure of information which by virtue of its nature is subject to the provision in section 30(ii) will involve a risk of financial loss.

As the case showed that the rule of presumption could be of considerable practical significance, the Ombudsman notified Parliament's Legal Affairs Committee of the case.

F. MINISTRY OF DEFENCE

The following statement on a case concluded in 2016 has been published:

2016-31. Statement made by Chief of Defence during speech was misleading and could cause uncertainty about employees' right to express critical views

During a presentation to the employees at an Armed Forces barracks, the Chief of Defence stated that he intended to dismiss employees who made disloyal remarks about the Armed Forces on social media. He added that he had asked the lawyers of the Armed Forces to investigate what consequences he could initiate against such employees.

The statement of the Chief of Defence was covered by the media, which reported that the statement had caused uncertainty among the employees of the Armed Forces about the scope of their freedom of expression.

In the Ombudsman's opinion the statement was misleading, and above all, it could easily cause uncertainty among employees about their right to express critical views of the Armed Forces in a private capacity.

The Chief of Defence had subsequently expressed his regrets about his statement and added that he did not intend to dismiss employees for expressing critical views.

In spite of that, the Ombudsman found it doubtful whether the Ministry of Defence and Defence Command Denmark, including the Chief of Defence, had taken sufficient steps to ensure that employees would not refrain from using their freedom of expression in future because of uncertainty about the legal scope of their freedom of expression or for fear of illegitimate reactions from the High Command.

For that reason, the Ombudsman recommended that the Ministry of Defence consider whether additional initiatives on the part of the High Command were needed to ensure that there was no doubt among employees of the Armed Forces about the scope of their freedom to express themselves in a private capacity, including their freedom to express critical views of the Armed Forces and its High Command.

G. MINISTRY OF JUSTICE

The following statements on cases concluded in 2016 have been published:

2016-7. An individual assessment is a condition for withdrawal of a right to temporary leave from prison. Inadequate case investigation

A prison inmate wore a T-shirt with text which a head prison guard perceived as a threat. As a result, the head guard asked the inmate to remove his T-shirt. The head guard saw the inmate's subsequent behaviour as a conscious provocation intended to lead to a confrontation, but the inmate himself and several of his fellow inmates disputed the head guard's perception. The incident was captured by video surveillance and was witnessed by several employees.

The authorities subsequently made a decision which included withdrawal of the inmate's right to temporary leave. In this connection, they attached importance to his behaviour during the T-shirt incident, which was described as seriously threatening.

The Ombudsman agreed with the Department of the Prison and Probation Service that in cases concerning withdrawal of the right to temporary leave, an individual assessment must always be made of the risk of abuse of the right.

In the Ombudsman's opinion the authorities' failure to investigate the contested description of the incident in the prison in more detail was an error. The case

could have been investigated in more detail by means of statements from colleagues of the head guard or by means of the video surveillance recordings, or both, depending on the specific circumstances.

2016-8. Refusal of access to documents which are expected to be included in work of commission of inquiry

Three journalists complained independently of each other to the Ombudsman because the Ministry of Justice had denied them access to documents which the Ministry expected to be included in the work of a commission of inquiry which it had been decided to set up. The journalists' requests were refused under the 'catch-all provision' in section 33(v) of the Access to Public Administration Files Act.

The grounds given by the Ministry of Justice for denying access to the documents were that a decision had been made to set up a commission of inquiry and that based on the available information about the subject matter and scope of the inquiry to be conducted, it was to be presumed that the documents would be included in – and be of central importance to – the work of the commission.

The Ombudsman could not criticise the Ministry's assessment. He gave weight to the fact that the setting up of a commission of inquiry was to be regarded as imminent at the time at which the Ministry made its decisions to refuse the journalists' requests. In addition, the Ombudsman found no grounds for repudiating the Ministry's assessment that the documents were of central importance.

The Ombudsman stated that at least when the criterion of imminence and the requirement of central importance of documents are met, an authority cannot be required to provide further grounds for an assessment that releasing requested material would be detrimental to an inquiry which is to be conducted.

2016-17. Security of prison staff and inmates was grounds for refusal of access to information about prison closure

A journalist complained to the Ombudsman because he had received a partial refusal from the Department of the Prison and Probation Service of access to documents about the background to the closure of the state prison Statsfængslet i Vridsløselille and had been denied access to documents about two incidents in 2015 where inmates had keys to the prison.

The grounds given by the Department for denying access to the documents were that they contained information about aspects of the security of the prison and that it was of vital importance for the security of prison staff and inmates that the information was not passed on. As authority for its refusal, the Department referred to section 33(1) of the Access to Public Administration Files Act, under which the right of access may be restricted if this is necessary to protect important considerations in regard to the prevention, investigation and prosecution of criminal offences and in regard to the enforcement of sentences.

In his complaint to the Ombudsman, the journalist argued that at the time of his request, the prison had virtually been closed down, which meant that there was no longer a security issue. The Department of the Prison and Probation Service countered that the prison was still run as a prison, although now for persons detained under the Aliens Act. In addition, the Department explained that in the closed prisons of Denmark, a high degree of uniformity of security measures is aimed for and that therefore knowledge of security measures in one prison could compromise the security of other prisons.

On going through the documents, the Ombudsman found no grounds for criticising the Department's assessment. However, he pointed out that as far as some of the documents relating to the incidents of inmates having keys to the prison were concerned, it might be considered whether access could (also) have been refused under section 19(1) of the Access to Public Administration Files Act, under which criminal procedure cases are exempt from access.

2016-18. Rules on use of force, use of handcuffs and placement in security cells in halfway houses under the Prison and Probation Service

During a monitoring visit to a halfway house under the Prison and Probation Service, the Ombudsman's visiting team learnt that a dog handler with the Department of the Prison and Probation Service and the manager of the halfway house had used force and handcuffs on a resident. The Corrections Act contains provisions authorising this. However, the Department had issued rules which in the Ombudsman's opinion were unclear regarding whether the use of force and handcuffs was authorised in halfway houses. The Ombudsman therefore asked the Department if the use of force and handcuffs on the resident was authorised.

The Department of the Prison and Probation Service informed the Ombudsman that there was no basis for permitting halfway house staff to use force under the Corrections Act as – unlike, for instance, dog handlers – they had

not been trained in this. The Department issued new rules, which included a distinction between Department staff and halfway house staff.

In a preliminary report, the Ombudsman stated that there were still some unclear points in the rules, and that he intended to recommend that the rules be amended. He also stated that he assumed that halfway house staff received adequate instruction in conflict management and the use of force. In addition, he commented on section 13(3) of the Criminal Code.

Following a meeting with the Ombudsman, the Department informed the Ombudsman that the rules would be amended. Among other things, clear directions would be issued to halfway house staff.

On that basis, the Ombudsman concluded the case. He pointed out that he assumed that halfway house staff were kept up-to-date on conflict management etc. In addition, he clarified the comments on section 13(3) of the Criminal Code which he had made in his preliminary report.

The Department of the Prison and Probation Office subsequently informed the Ombudsman that the amended rules would come into force on 1 May 2016.

2016-21. Monitoring visits to police detention facilities for intoxicated persons

The Ombudsman made two unannounced monitoring visits at night to the detention facilities for intoxicated persons of two police stations in Copenhagen. The monitoring visits, which were carried out in collaboration with the Danish Institute for Human Rights and DIGNITY – Danish Institute Against Torture, focused especially on the safety of persons placed in detention facilities, health issues, use of force and other restrictions and the rights of persons placed in detention facilities.

After the visits, the Ombudsman assessed the case material of eight cases about placement in detention facilities. The Ombudsman's assessment of the cases showed that in general, the police documentation in the cases was inadequate. For instance, it had not been sufficiently documented in all cases that the police had checked as stipulated on the persons placed in the detention facilities or that the persons had been given guidance about the possibility of complaining about the police.

Copenhagen Police and the National Police expressed their regrets and at the same time initiated a number of measures to avoid similar inadequacies occurring in other cases. The Ombudsman agreed with the police that it was regrettable that the documentation in the cases was inadequate. He noted the information from the police about measures to ensure improvements and pointed out that during future monitoring visits to detention facilities for intoxicated persons, he would follow up on the issues raised by his visits to the two facilities.

2016-23. Ministry of Justice entitled to decline to process journalist's request for access to documents for resource reasons

A journalist complained to the Ombudsman because the Ministry of Justice had declined to process a request for access to documents in its entirety with reference to the so-called resource provision in section 9(2)(i) of the Access to Public Administration Files Act.

The journalist had asked the Ministry for access to some assessments covering a period of three years of the threat of terrorism. However, the Ministry assessed that it would take more than 60 hours to process the request, which it considered a disproportionate amount of resources.

Firstly, the case raised a question of fundamental importance: can the provision on resources of the Access to Public Administration Files Act be applied at all to requests from journalists, who are generally presumed to have a particular interest in obtaining access to public records? In the Ombudsman's opinion the application of the provision to requests from journalists cannot be generally ruled out.

However, if the provision on resources is to be applied to requests from journalists, the time required to process a request must in the Ombudsman's opinion be at least considerably more than the approximately 25 hours which the explanatory notes to the provision state as the limit in the case of requests from persons who do not have a particular interest in obtaining access to the documents in question.

As the Ministry of Justice had estimated the time it would require to process the request to be over 60 hours, this condition appeared to be met. Further, the Ombudsman had no grounds to doubt the Ministry's calculation of the time which would be required. In addition, the Ombudsman gave weight to other

circumstances of the case, such as the Ministry's stating that it would consider parts of the journalist's request and determine whether he could be given access to selected assessments in which he had stated that he was particularly interested.

Based on a specific, overall assessment, the Ombudsman found no grounds for criticising the Ministry's refusal to process the journalist's request.

Media coverage of the Ombudsman's statement occasioned the Ombudsman to specify that in his opinion the time an authority expected to need for press handling could not be included in the authority's calculation of the amount of resources it expected to require in connection with its processing of a request for access. The Ministry of Justice concurred with this.

2016-29. Access to information for use in connection with the formation of a government. Section 33(v) of the Access to Public Administration Files Act

A journalist complained to the Ombudsman because the Ministry of Justice had denied him access under section 33(v) of the Access to Public Administration Files Act to information in a document and information about the document in the Ministry's list of the documents of the case. The Ministry had refused access to the document altogether with reference to section 34(i) of the Act.

The document in question had been exchanged between the Ministry of Justice and the Prime Minister's Office for use in connection with the formation of a government in June 2015. The Ministry of Justice was therefore of the opinion that there was a need to protect a political decision process of a special nature and that releasing the information would enable the public to get information about details of the scale of certain deliberations in connection with the discussions on a government platform and information about the duration of these deliberations. The Ministry also referred to section 24(1)(ii) and section 27(ii) of the Access to Public Administration Files Act.

The Ministry stated to the Ombudsman that granting access to material which was intended for use in connection with the formation of a government – and which would disclose the issues which were included or under consideration for including in the negotiations, and when and to what extent the issues were included or under consideration for including – would involve a risk that future leaders of negotiations to form a government would be reluctant to use assistance from the Civil Service. That would pose a risk of a weakening of the specialist knowledge foundation of the negotiations and, in turn, a risk of the

negotiations leading to results which would subsequently prove untenable or undesirable. The fact that the negotiations to form a government had been completed at the time of the request for access could not lead to a different outcome as the government formation process took place relatively recently and those involved were still central figures in Danish political life and the issues discussed were still current political issues.

The Ombudsman agreed that a government formation process was a political decision process of a special nature, and noting the information which he had received from the Ministry of Justice about the possible specific negative consequences of releasing the information, he could not criticise the Ministry's refusal to grant access with reference to section 33(v) and section 34(i) of the Access to Public Administration Files Act.

Nevertheless, the Ombudsman was of the opinion that time could be a factor and that the interests under section 33(v) would be less worthy of protection the more time had elapsed since the formation of a specific government.

2016-39. Tenured civil servant wished to withdraw acceptance of position which he was not obliged to accept. Section 39, second sentence, of the Contracts Act. Practice of the Supreme Court

In connection with a reform of the management of the police force, a police officer who was employed as a tenured civil servant was given the choice of being discharged with availability pay for three years or remaining with the police force in a position of a nature which meant that he was not obliged to accept it under the terms of his employment as a tenured civil servant.

The police officer accepted the position which he had been offered, but the following day, he informed the National Police that he wished to withdraw his acceptance. However, the National Police was of the opinion that he could not withdraw his acceptance.

The Agency for Modernisation, which the Ombudsman asked for a statement, found that the police officer's withdrawal of his acceptance was to be assessed in accordance with a lenient practice of the Supreme Court regarding the right of an employee to withdraw a resignation, cf. section 39, second sentence, of the Contracts Act, or the principles in that sentence.

In the Ombudsman's opinion it was most likely that the Agency's conception of the law was to be applied to the case. Based on the information available in

the case, the Ombudsman was further of the opinion that the police officer met the criteria according to the practice of the Supreme Court for being entitled to withdraw his acceptance: he had informed the National Police that he wished to withdraw his acceptance after a short time and before it had had a decisive effect on the National Police's course of action. In addition, there was no information about the existence of any circumstances which meant that the police officer's withdrawal of his acceptance was to be regarded as causing significant inconvenience to the National Police.

However, the issue was not indisputable, and as the Agency's general conception of the law had not been considered by the courts, the Ombudsman recommended that the Department of Civil Affairs grant the police officer free legal aid to have the case considered by the courts.

Following the statement from the Ombudsman, the Department of Civil Affairs granted the police officer free legal aid.

2016-43. Own-initiative investigation concerning the regulation on ministerial advice and assistance and the principle of extended openness

For a summary of the case, see under 'E. Ministry of Finance'.

2016-52. Use of force in local prison inadequately investigated

During a monitoring visit by the Ombudsman to a local prison, a number of inmates told the visiting team of an incident in which an inmate was pushed several times by a prison guard. The Ombudsman learnt that the prison management were not aware of the incident and for this reason had not looked into it. The Ombudsman asked the management for a statement on the matter and subsequently opened an investigation on his own initiative.

The Ombudsman found that several aspects of the authorities' investigation and assessment of whether illegal force had been used by staff of the local prison were matters for criticism.

Among other things, the Ombudsman criticised that the authorities did not investigate the incident further until after the video surveillance recordings had been deleted and that it was more than four months before the authorities sought to get accounts of the incident from the other inmates who had witnessed it.

In his statement, the Ombudsman referred to the ex officio investigation principle in Danish administrative law and to international norms and standards regarding investigation of information about mistreatment of persons deprived of their liberty.

2016-56. Greatly improved conditions at Vridsløselille after monitoring visit

A visiting team consisting of representatives from the Ombudsman's office and experts from the Danish Institute for Human Rights and DIGNITY – Danish Institute Against Torture made an unannounced monitoring visit in February 2016 to Vridsløselille, a former prison where detained foreign nationals are now placed. They have been detained to ensure their availability, for instance when they are to leave the country or when their asylum case is to be considered – they are not there to serve a sentence for a criminal offence. The Ombudsman had been tipped off about the conditions at Vridsløselille by Amnesty International and a doctor.

The visiting team noted that the persons detained at Vridsløselille were locked up in small prison cells almost around the clock, that there was a lack of leisure and work activities and that communication and information were inadequate. Thus, several of the foreign nationals did not know why they had to be in prison, and the staff had not received sufficient information and training to take care of them. The Ombudsman wrote to the responsible authorities that he was seriously concerned about the foreign nationals at Vridsløselille. The Department of the Prison and Probation Service agreed that the conditions at Vridsløselille were problematic and informed the Ombudsman that a number of changes and improvements were in the pipeline.

During a new visit in June 2016, it was evident to the visiting team that many aspects of the conditions at Vridsløselille had been greatly improved. Thus, the persons detained there were now able to move around communal areas and spend time with each other there in the daytime, and more leisure and work activities were available. However, the persons were still locked up in their cells from the evening until the morning and during some periods of time in the daytime, meaning that they were locked up for a total of more than 12 out of 24 hours. The Ombudsman asked for the reason for this. He compared this aspect of the conditions at Vridsløselille to the conditions at Ellebæk, another facility for detained foreign nationals, where the persons detained had greater freedom, and mentioned that also the availability of work activities differed between the two facilities.

The Department of the Prison and Probation Service subsequently reported that it had been decided that persons detained at Vridsløselille were no longer to be locked up at night and that efforts were being made to increase the availability of work activities. In November 2016, the Department informed the Ombudsman that since 1 October 2016, work had been available to all those detained at Vridsløselille. In addition, they could sleep two in a cell if they wished. The Ombudsman concluded the case, remarking that he assumed the authorities would continue to be attentive to the conditions for the foreign nationals detained at Vridsløselille.

H. MINISTRY OF ECCLESIASTICAL AFFAIRS

No statements on cases concluded in 2016 have been published.

I. MINISTRY OF CULTURE

The following statements on cases concluded in 2016 have been published:

2016-19. Payment by Danish Broadcasting Corporation of journalists' fines, legal costs etc.

Following an enquiry from a practising lawyer, the Ombudsman initiated an investigation of whether it was legal for the Danish Broadcasting Corporation (DR) to follow a practice of normally paying the costs (including fines, compensation and legal costs) which its employees are ordered to pay in connection with, for instance, criminal cases brought against them for offences committed in the course of their work.

Based on an overall assessment – of, among other things, the explanatory notes to the Radio and Television Broadcasting Act, details of the scope of DR's practice and information about the practice of the media industry in general in this respect – the Ombudsman found no grounds for considering DR's practice to be contrary to the law.

At the same time, the Ombudsman was of the opinion that it must be acknowledged that DR's practice of paying costs which its employees are ordered to pay as a result of punishable offences or other unlawful acts was an unusual use of

public funds. For instance, the practice could be regarded as conflicting with individual liability, which was the basis of the legal order in the instances in question.

As there was no information that Parliament had considered the issue – for instance when the Radio and Television Broadcasting Act was passed – the Ombudsman notified the Ministry of Culture, Parliament’s Legal Affairs Committee and Parliament’s Cultural Affairs Committee in order that the legislature might consider specifically addressing the issue at some point, for instance by including specific authority in the Radio and Television Broadcasting Act.

In addition, the Ombudsman recommended, among other things, that DR consider clarifying in its ethical guidelines that it will never be an option – regardless of the journalistic purpose it might serve – to, for instance, carry out or contribute to acts which are considered certain or likely to be punishable or otherwise unlawful.

2016-30. Danish Broadcasting Corporation entitled to refuse journalist’s request for access to overall budget information for radio channel

A journalist complained to the Ombudsman because the Danish Broadcasting Corporation (DR) had refused a request for access to information about its total expenditure on the programme activities of the radio channel P1 and about its total revenue from the channel.

DR had considered the request on the basis of the principle of extended openness and rejected it, giving weight to the intentions behind section 86(1) of the Radio and Television Broadcasting Act. Under the provision, cases and documents concerning DR’s programme activities and business matters relating to these activities are exempt from the Access to Public Administration Files Act.

As the programme budget for the channel is a document subject to section 86(1) of the Radio and Television Broadcasting Act and thus exempt from the Access to Public Administration Files Act, the Ombudsman agreed with DR that the request for access to the overall budget information was to be decided on the basis of the principle of extended openness.

In its decision, DR had attached particular importance to the intention of the provision to protect DR’s independence and its competitive position.

The Ombudsman was of the opinion that the figures were completely overall figures which had only an indirect relation to the channel's programme activities. He added that there must be a limit to how indirect the relation to the specific programme activities can be if the intentions behind section 86(1) are to justify refusal of access according to the principle of extended openness.

However, as section 86(1) is intended to have a fairly wide scope, the Ombudsman was of the opinion that the relationship had to be fairly indirect before it could be established that the limit had been reached.

On that basis, and in the light of the explanation given by DR of its reasons for refusing access according to the principle of extended openness, the Ombudsman did not have sufficient grounds for establishing that the relation of the information to the channel's programme activities was so indirect that the intentions behind section 86(1) could not justify DR's refusal.

2016-43. Own-initiative investigation concerning the regulation on ministerial advice and assistance and the principle of extended openness

For a summary of the case, see under 'E. Ministry of Finance'.

J. MINISTRY OF ENVIRONMENT AND FOOD

The following statement on a case concluded in 2016 has been published:

2016-6. Access to environmental information in internal document

A man complained to the Ombudsman because the Environmental Board of Appeal had denied him access to an internal document. The decision had been made under the provisions of the Environmental Information Act read with the provision on internal documents in section 7 of the 1985 Access to Public Administration Files Act.

The Ombudsman agreed with the Environmental Board of Appeal that the document in question was an internal work document. However, the Ombudsman was of the opinion that because the case involved a decision to which the man was a party, the request for access to the document was to be decided under the provision on internal documents in section 12(1) of the Public Administra-

tion Act, not the provision in section 7 of the 1985 Access to Public Administration Files Act – although the outcome of the case would be unchanged.

In the light of the content of the document, the Ombudsman was inclined to find it difficult to understand that the interests which section 12(1) of the Public Administration Act is intended to protect were so strong in the specific case that they outweighed the interests which would be met if access was granted to the document and that the rules in section 2(3) of the Environmental Information Act on the balancing of interests were therefore to result in access to the document being denied.

If the Environmental Board of Appeal would uphold its assessment in these circumstances, the Board should in the Ombudsman's opinion provide a detailed explanation of why access to the document was to be denied.

Consequently, the Ombudsman recommended that the Board reopen the case in order to reconsider whether there could be a basis for granting access to the document.

The Environmental Board of Appeal subsequently reopened the case and made a decision to give the man access to the document.

K. MINISTRY OF TAXATION

The following statements on cases concluded in 2016 have been published:

2016-3. The power of the National Tax Tribunal to consider complaints/appeals about reminder fees charged by the Customs and Tax Administration in debt collection cases. The concept of 'decision'

A published decision by the National Tax Tribunal prompted the Ombudsman to open a case on his own initiative with the Danish Customs and Tax Administration (SKAT) and the Tribunal to clarify in which situations the Tribunal has the power to consider complaints/appeals about reminder fees charged by SKAT in debt collection cases.

In the Ombudsman's opinion, SKAT's charging of reminder fees when sending out reminders is actual administrative activity, not decisions within the meaning of the Public Administration Act. In reaching this assessment, the Ombudsman

attached importance to factors such as the explanatory notes to the Act on the Collection of Debts to Public Authorities, the size of the fee and the fact that sending out a reminder is part of the usual debt collection process. As the National Tax Tribunal can only consider appeals against decisions made by SKAT, the Ombudsman concluded that the Tribunal cannot consider complaints made directly to the Tribunal about the charging of a reminder fee.

However, in cases where a citizen complains to SKAT about a reminder fee which he or she has been charged, SKAT's reply to the citizen's objection will in the Ombudsman's opinion be a decision within the meaning of the Public Administration Act. Therefore, the National Tax Tribunal has the power to consider complaints (i.e. appeals) about replies from SKAT to objections to reminder fees which have been charged by SKAT in debt collection cases.

2016-42. A decision on access to documents of a case concerning legislation is to be made by the ministry which has the remit for the particular area of legislation

A journalist asked the Danish central bank for access to its correspondence with the Ministry of Taxation and two other ministries about the public assessments of real property carried out by the Danish Customs and Tax Administration (SKAT).

The central bank considered the journalist's request to include some documents on a strategic task force set up by the Ministry of Taxation. Based on information from the Ministry that the documents were also part of the Ministry's case concerning preparations for a new act on public property assessments, the central bank left the decision on access to the documents to the Ministry.

The Ministry of Taxation denied the journalist access to all documents of the case about the strategic task force and to the list of the documents of the case. The grounds given by the Ministry were that under section 20 of the Access to Public Administration Files Act, there is no right of access to cases concerning legislation and that the legal effect of a case being subject to section 20 is that all documents of the case are exempt from access.

The journalist complained to the Ombudsman about both decisions.

The Ombudsman could not criticise that the central bank had left the decision on access to the documents in question to the Ministry. The Ombudsman explained that based on the explanatory notes to section 36(1) of the Access to Public Administration Files Act, the provision is – despite its wording – to be

understood to mean that the power to make decisions on access to documents of cases concerning legislation rests with the ministry which has the remit for the particular area of legislation.

In addition, the Ombudsman found no grounds for criticising that the Ministry of Taxation had considered the whole case about the strategic task force to be part of the Ministry's overall case concerning a new act on public property assessments and on that basis had denied the journalist access to all documents of the case and to the list of documents with reference to section 20 of the Access to Public Administration Files Act. The Ombudsman pointed out, among other things, that the decisive factor in whether section 20 is to be applied is not the case to which a document has been registered but whether the document can actually be considered to be part of a case concerning legislation.

2016-46. Access to correspondence between the Ministry of Taxation and the Legal Adviser to the Danish Government could not be denied under section 27(iv) of the Access to Public Administration Files Act as legal action could not be presumed to be a likely possibility

Media coverage had caused the Ombudsman to ask the Ministry of Taxation and the Danish Customs and Tax Administration (SKAT) for statements on SKAT's general procedures in relation to the question of any changes to the public assessments of other properties in areas in which SKAT's assessment practice had been overturned by an administrative appeals body, and on SKAT's general processing times in such cases. The Ministry of Taxation had asked the Legal Adviser to the Danish Government (Kammeradvokaten) for legal assistance in that connection.

A journalist who had asked the Ministry of Taxation for access to the correspondence etc. which had been exchanged between the Ministry and the Legal Adviser to the Danish Government complained to the Ombudsman because the Ministry had denied him access with reference to section 27(iv) of the Access to Public Administration Files Act.

The Ministry stated to the Ombudsman that its correspondence with the Legal Adviser to the Danish Government consisted in clarification of legal doubts and that it was to be presumed that lawsuits from, for instance, homeowners etc. whose property assessments had not been changed by SKAT or who found that SKAT's case processing time had been too long were a likely possibility in connection with the particular case.

However, the Ombudsman did not consider it a likely possibility that the case to which the legal advice related could result in legal action. He was therefore of the opinion that the Ministry of Taxation could not deny access to the documents under section 27(iv) of the Access to Public Administration Files Act. The Ombudsman recommended that the Ministry reopen the case in order to reconsider whether the journalist was entitled to access to the documents.

The Ministry of Taxation reopened the case and made a decision to grant the journalist full access to the documents.

L. PRIME MINISTER'S OFFICE

No statements on cases concluded in 2016 have been published.

M. MINISTRY OF HEALTH

The following statement on a case concluded in 2016 has been published:

2016-53. Appeal against decision on access to medical records was decided in accordance with legislation no longer in force. Guidance notes on access to health information out of date

The National Agency for Patients' Rights and Complaints (later the Danish Patient Safety Authority) declined to review a decision by the Central Denmark Region that a woman could only be given partial access to her own medical records from 1959 out of consideration for her relatives. The Agency – and later the Patient Safety Authority – found that under the Health Act, patients had no right of access to medical records from before 1 January 1987.

However, the authorities had failed to notice that a transitional provision which restricted the right of access to older patient records had been repealed in 2007. The Ombudsman found it unfortunate that the Patient Safety Authority had considered the woman's appeal in accordance with a provision which was no longer in force.

The Ombudsman also criticised that the Ministry of Health had not updated the guidance notes on access etc. to health information.

Finally, the Ombudsman stated that he did not agree with the Ministry that the Patient Safety Authority did not have the power to consider whether the Region had acted in accordance with the Public Administration Act when processing the woman's requests for access to her medical records.

N. MINISTRY OF TRANSPORT, BUILDING AND HOUSING

The following statements on cases concluded in 2016 have been published:

2016-9. Refusal of access to data on which list of ghettos is based

A man asked for access to the data on which the so-called list of ghettos was based. The Ministry of Immigration, Integration and Housing publishes an updated version of the list on its website once a year.

The Ministry refused the request on the grounds that material procured for the compilation of public statistics is not covered by the right of access, cf. section 27(v) of the Access to Public Administration Files Act. The Ministry gave weight to the facts that it had obtained access to the underlying data via the Research Services of Statistics Denmark and that Statistics Denmark had informed the Ministry in a statement that access to data via the Research Services was provided for the compilation of public statistics.

The Ombudsman took for his basis that the data was to be regarded as received by the Ministry, cf. section 7(1) of the Access to Public Administration Files Act, despite the fact that it had not been filed physically on paper on a case file, or was electronically part of a case file, in the Ministry. In the Ombudsman's opinion the decisive factor was that the data had been made available – on the basis of an order with Statistics Denmark for a set of data defined to serve the specific purpose – exclusively to the Ministry for the compilation of the list of ghettos and was actually used in connection with the Ministry's case concerning the list. As a result, it was relevant to assess whether the data was exempt from access under section 27(v) of the Act.

The Ombudsman was of the opinion that the data had undergone a certain degree of qualified specialist statistical processing in the process which resulted in the generation of the list of ghettos and that the end product – the list itself – was to be classified as public statistics. On that basis, the Ombudsman agreed with the Ministry that the data was exempt from access under section 27(v) of the Act.

In addition, the Ombudsman could not criticise the Ministry's refusal to grant access to the data according to the principle of extended openness. The Ombudsman explained, among other things, that according to the available information, it might be possible to identify individuals in the data and that one of the central intentions behind section 27(v) was precisely to protect information attributable to individuals. Further, it follows from section 10(2) of the Act on Processing of Personal Data that information attributable to individuals which is collected as the basis for statistical or scientific research must not subsequently be processed for other purposes.

2016-13. Unauthorised restrictions on possibility of self-study for driving theory test

A number of specific complaint cases prompted the Ombudsman to open a case with, among others, the Ministry of Transport and Building. The Ombudsman's investigation included a general issue concerning the possibility of self-study of parts of the curriculum for the driving theory test.

The Ministry of Transport and Building found that the applicable law had so far been incorrectly applied. The Ministry informed the Ombudsman, among other things, that the Executive Order on the Curriculum for the Driving Test and the Teacher's Guide would be amended to ensure that there would be no doubt that under the Executive Order on Driving Licences in force, there are no restrictions on the topics (the sections of the curriculum) for the driving theory test of which self-study is permitted.

The Ministry also informed the Ombudsman that it had asked the Transport and Construction Agency to establish, to the extent possible, how many decisions the National Police and the Agency had made in contravention of section 41(3) and (4) of the Executive Order on Driving Licences on the possibility of self-study of parts of the curriculum for the driving theory test.

On that basis, the Ombudsman took no further action in the case.

2016-34. Messages in case concerning statutory vehicle inspection, including fines, sent via Public Digital Post. Good administrative practice

The Ombudsman received a complaint about the Transport and Construction Agency, which in a case concerning statutory vehicle inspection had sent a

90-year-old man a notification that his vehicle was due for inspection, a reminder and two fines via Public Digital Post and had subsequently refused to cancel the fines.

The 90-year-old man was not exempt from communication via Public Digital Post when the Transport and Construction Agency sent him the messages. However, his representative argued, among other things, that in accordance with good administrative practice, the Agency should have sent one or more letters to the man by physical post before fining him. The man's representative was also of the opinion that the Agency should have checked whether the man had opened his e-Boks (digital mailbox) – and thus if he was aware that the letters had been sent to him.

In the Ombudsman's opinion the Transport and Construction Agency was entitled to send the messages to the man's e-Boks via Public Digital Post. The Ombudsman referred to the facts that the legal effects of sending messages via Public Digital Post are stated directly in the Public Digital Post Act and that the explanatory notes to the Act expressly state that recipients of messages sent via Public Digital Post bear the responsibility for not acquainting themselves with the contents of mail in their digital mailbox. As a result, the Ombudsman could not criticise the Agency's refusal to cancel the fines.

The Ombudsman did not agree that in accordance with good administrative practice, the Agency should have sent the man one or more letters by physical post instead of (or at the same time as) using Public Digital Post. In addition, the Ombudsman did not find that authorities were required to check why a citizen had not responded to a message sent via Public Digital Post before sending the citizen a reminder (or another message) via this channel.

2016-38. Access to information in documents concerning new police college/training centre in western Denmark

A journalist complained to the Ombudsman because he had received a refusal, with reference to section 33(iii) and (v) of the Access to Public Administration Files Act, from the Building and Property Agency and the Ministry of Transport and Building of access to various information in documents which had been exchanged between the Agency and the National Police concerning a new police college/training centre in western Denmark.

The grounds given by the Agency and the Ministry for denying the journalist access to the information in question included that if the information became

publicly available, this could weaken the Agency's hand in negotiations with municipal and private parties and that publication of the information would or could preclude the Agency from acting as an equal participant in negotiations. In addition, the authorities argued that publication would compromise the decision process regarding the establishment of a new police college.

Finally, as far as a few items of information were concerned, the authorities found that they could compromise the security in relation to the buildings if published.

The Ombudsman stated, among other things, that the process was at a preliminary stage and that no concrete negotiations in any form had been initiated. He stated that it appeared to be a prerequisite for applying the provision in section 33(iii) of the Access to Public Administration Files Act that, at least as a general rule, a concrete negotiation situation had been initiated or would with some degree of certainty be initiated.

With regard to the information whose publication in the authorities' opinion could compromise the security in relation to, for instance, the buildings, the Ombudsman was of the opinion that it was rather in the nature of information about general office design.

The Ombudsman concluded that on the available basis, the Agency and the Ministry could not deny access to all the information in question with reference to section 33(iii) and (v) of the Access to Public Administration Files Act.

The Ombudsman recommended that the Ministry reopen the case and reconsider the journalist's request for access.

The Ministry subsequently reopened the case and made a new decision.

2016-40. Accessibility of train stations to persons with disabilities

In a number of replies to Parliament, the then Ministry of Transport had stated that there were 13 long-distance and regional train stations around the country at which the platforms could only be accessed via stairs from a tunnel or a bridge. On that basis, the Parliamentary Ombudsman asked the Ministry whether, and if so how, persons with mobility disabilities could use these stations, whether there were plans for improvements in their accessibility and how users were informed about the means of access.

Based on the Ministry's answers to his questions, the Ombudsman noted that at 12 of the 13 long-distance and regional train stations, there are still considerable obstacles to accessibility for persons with mobility disabilities.

Although installation of lifts or ramps at the 12 train stations cannot be required under legislation, including the relevant EU legislation, the Ombudsman considers it very essential that efforts to improve the accessibility of train stations continue in keeping with the UN Convention on the Rights of Persons with Disabilities and other provisions. However, he acknowledges that this can be costly.

The Ombudsman's recommendations included that the responsible authorities consider providing level-free access to the platforms at those of the stations where there were no current plans of installing lifts.

2016-45. Requests for access to public files must also be processed quickly during holiday periods

A man complained to the Ombudsman because the Ministry of Transport and Building had postponed processing a request from him for access to documents due to summer holidays.

More specifically, the man had asked the Ministry for access to the documents on 5 July 2016, and on 6 July 2016 the Ministry had acknowledged receipt of his request and informed him that it did not expect to be able to reply to his request within one to two working days, nor within seven working days. The grounds given by the Ministry were that it had received the request during the summer holiday period, when several of the employees who had to be present in order for the request to be processed were away on holiday. The Ministry expected to be able to complete processing the request not later than 19 August 2016.

In the Ombudsman's opinion the fact that the relevant case officers were away on holiday did not in itself entitle an authority to postpone the time limits for processing requests for access to public files to conclusion which are set out in section 36(2) of the Access to Public Administration Files Act and the explanatory notes to the provision.

Thus, authorities were not entitled to 'close down' the processing of certain requests for access to public files but had to ensure that appropriate cover was in place for holiday periods in order that requests could generally be processed within the time limits set out in the Act and its explanatory notes.

O. MINISTRY OF HIGHER EDUCATION AND SCIENCE

The following statements on cases concluded in 2016 have been published:

2016-1. Access to representation by others for users of digital self-service systems

Following an Ombudsman investigation in 2012, the Ombudsman stated that because the digital self-service systems 'minSU' (for applications for student grants and loans) and 'ungdomskort.dk' (to apply for a student discount transport card) did not enable students to use their right under section 8 of the Public Administration Act to be represented by others, they must instead be able to choose a non-digital solution to be represented by others. In addition, the Ombudsman stated that the responsible authorities – now the Ministry of Higher Education and Science and the Agency for Higher Education – were required to provide guidance to students on this option. For this reason, the Ombudsman asked the authorities to inform him what guidance students would receive in future.²

Over the following years, the Ombudsman received several updates from the authorities. It turned out that in ungdomskort.dk it was not possible to offer a non-digital solution enabling students to be represented by others and that the non-digital solution in minSU did not conform to section 8 of the Public Administration Act because digital messages for a student could not be redirected to the digital mailbox of the student's representative.

In the spring of 2015, the authorities informed the Ombudsman that a digital solution enabling users to be represented by others had now been implemented in the two self-service systems. In addition, the authorities informed the Ombudsman at a meeting in the autumn of 2015 that a change to be implemented shortly would make it possible to send messages to the digital mailbox of a student's representative. As it was the Ombudsman's understanding that the authorities would give students the option of non-digital representation by others if they wanted a more customised solution than the two varieties available in minSU, the Ombudsman informed the authorities that he would take no further action in the case.

However, the Ombudsman criticised the protracted process and that the authorities appeared to have had major problems finding a justifiable solution for minSU.

2) Case No. 2012-5

He also criticised that it was not until several years after ungdomskort.dk had been implemented that it became possible for applicants for student discount transport cards to be represented by others.

2016-20. Access to documents in case concerning transfer of ownership of university buildings could be refused under provision on ministerial advice and assistance. Not a case involving a specific decision

A request from the University of Copenhagen to the Ministry of Higher Education and Science for transfer of the ownership of the university buildings was declined. A journalist asked for access to the documents on the basis of which the decision was made, but was denied access as the Ministry considered the documents to be subject to the provision on ministerial advice and assistance in section 24(1) of the Access to Public Administration Files Act and thus in principle exempt from access. The journalist claimed that the Ministry's refusal of the University's request for transfer of the ownership of the buildings was a specific decision by an administrative authority and that section 24(1) of the Access to Public Administration Files Act was therefore not applicable, cf. section 24(3)(i) of the Act.

Based on an overall assessment, the Ombudsman found that the Ministry's decision not to transfer the ownership of the buildings to the University could not be considered a specific decision within the meaning of section 24(3)(i) of the Access to Public Administration Files Act read with the explanatory notes to section 2(1) of the Public Administration Act. In this connection, the Ombudsman emphasised that the provisions on transfer of buildings etc. to universities exclusively govern ownership relationships between public authorities, in this case the State and universities.

The Ombudsman had no comments on the Ministry's refusing the journalist's request for access with reference to section 24(1) of the Access to Public Administration Files Act. With respect to a few of the items of information to which the Ministry had refused access, the Ombudsman found that it might be considered if they were subject to extraction under section 28(1), first sentence, of the Act. However, in the Ombudsman's opinion this did not constitute sufficient grounds for recommending that the Ministry reopen the case.

P. MINISTRY OF FOREIGN AFFAIRS

The following statements on cases concluded in 2016 have been published:

2016-10. Access to material for information of Foreign Policy Committee could be denied under section 35 of Access to Public Administration Files Act

A journalist complained because he had received a partial refusal from the Ministry of Foreign Affairs of access to material prepared by the Ministry's Department of International Law on the legal basis for the Iraq war. The Ministry had denied access to a number of documents and certain information on the grounds that the documents and information were internal. Several of the internal documents were also material for the information of Parliament's Foreign Policy Committee. The Ministry was of the opinion that the material was subject to the confidentiality provision in section 4 of the Act on the Foreign Policy Committee – and for this reason, access was also denied under section 35 of the Access to Public Administration Files Act.

The Ombudsman could not criticise that the Ministry of Foreign Affairs had denied access to documents and information under sections 23, 24 and 35 of the Access to Public Administration Files Act. He stated that discussions in the Foreign Policy Committee are subject to confidentiality unless it is expressly agreed what members of the Committee are permitted to say to the public, although according to the wording of the provision in section 4 of the Act on the Foreign Policy Committee, the duty of confidentiality only applies to the extent decided by a minister or the chairman of the Committee.

However, the Ombudsman was of the opinion that some of the documents to which access had been denied contained a few items of information which were subject to extraction in addition to the information which the Ministry had already extracted and released to the journalist.

The Ombudsman agreed with the Ministry of Foreign Affairs that there were also other files that contained information which was subject to extraction but that the information in question was either also included in other documents released to the journalist or could be found in a parliamentary motion which was publicly available on Parliament's website. Thus, the Ombudsman also agreed that this information was not covered by the right of access, cf. section 28(2)(ii) and (iii).

However, the Ombudsman found that the Ministry should have specified where the publicly available information subject to section 28(2)(iii) could be found. Further, the reference should have been so precise that the journalist would have been able to determine which specific information had not been extracted.

2016-14. Ministry of Foreign Affairs declined to disclose name of employee at Danish consulate. Importance of local societal conditions

A citizen complained about the guidance which he had received at a Danish consulate in a foreign country. In this connection, he asked for the name of the locally employed member of staff who had given him guidance. The Ministry declined to inform the man of the name of the employee as it assessed that disclosing the name might result in the employee coming under the spotlight of the authorities of the foreign country, which could have negative implications for the employee and her family. The Ministry gave weight to the events leading up to the man's request, including his conduct, and societal conditions of the country.

In the Ombudsman's opinion the Ministry of Foreign Affairs had not established that it was to be presumed that the man intended to use knowledge of the name of the employee for an unlawful purpose, including that disclosing the name could result in harassment of the employee, cf. section 9(2)(ii) of the Access to Public Administration Files Act.

The Ombudsman stated that it could not be excluded in advance as a matter of principle that there might be such exceptional conditions in a country that there could generally be grounds for an authority to decline to give access to names of, for instance, locally employed staff members to persons who have a critical attitude to the authority and might contact the authorities of the country.

In the specific case, however, the Ombudsman did not find that what the Ministry of Foreign Affairs had stated about exceptional societal conditions could warrant denying access to the name of the employee under section 9(2)(ii) or section 33(v) of the Access to Public Administration Files Act. As a result, the Ombudsman recommended that the Ministry reopen the case and reconsider whether the man could be granted access to the name of the employee.

The Ministry of Foreign Affairs subsequently informed the Ombudsman that the name of the employee had now been disclosed to the man.

2016-28. Ministry of Foreign Affairs entitled to refuse access to assessments

The Ministry of Foreign Affairs denied a journalist access to 14 assessments prepared by the Center for Terror Analysis (CTA) of the threat of terrorism and a list of documents containing the titles of the individual assessments. The Ministry referred to section 31 of the Access to Public Administration Files Act, under which the right of access may be restricted if this is of significant importance to the security of the State or the defence of the realm. The journalist complained to the Ombudsman.

The Ministry gave weight to a statement from the Danish Security and Intelligence Service (PET) – of which the CTA is part. In the statement, it was explained, among other things, that the disclosure of information which PET had obtained from an informant might endanger the safety of the informant and adversely affect the future activities of PET. The Ministry also referred to the fact that under section 14(1) of the PET Act, PET's activities are exempt from the Access to Public Administration Files Act.

At the same time, the journalist was granted access to parts of an assessment of 16 February 2015 by the CTA of the threat of terrorism following the shootings in Copenhagen on 14 and 15 February 2015 – material to which he had previously been granted access by the Ministry of Justice.

The grounds given by the Ministry of Foreign Affairs for its refusal appeared very general, and the Ministry had not addressed the possible significance of the fact that some of the information was publicly available. Further, the distinction between the information which was released to the journalist and the information which was not did not give the impression of being strictly logical or cogent. In spite of the above, however, the Ombudsman did not find sufficient grounds for criticising the Ministry's refusal of access to the 14 assessments by the CTA and the list of documents.

The Ombudsman attached particular importance to the intentions behind the PET Act which require information about PET's activities generally to be treated as confidential, and to the fact that these intentions would in effect not be safeguarded if it were possible to get access to assessments by the CTA from other authorities.

However, the Ombudsman recommended that the Ministry of Foreign Affairs go through the assessment of 16 February 2015 by the CTA again in order to

consider whether there was a basis for the journalist to be granted further access to information. The reason for the Ombudsman's recommendation was that he found that it was not evident that all the information to which the Ministry had refused access was subject to section 31 – considering, among other things, which information the Ministry did release to the journalist.

The Ministry of Foreign Affairs reopened the case, and after renewed consultation of PET, the Ministry granted the journalist access to further information in the assessment of 16 February 2015 by the CTA.

Q. MINISTRY OF IMMIGRATION AND INTEGRATION

The following statements on cases concluded in 2016 have been published:

2016-12. No sufficiently clear legislative basis for immigration authorities' tightening of practice for granting suspensive effect

The Immigration Service had refused a woman's application for family reunification with her spouse. The woman was from a country outside Europe and had a Danish spouse who lived in Denmark. They had a child of a little under a year who had been born in Denmark. The couple appealed the refusal to the Immigration Appeals Board and requested suspensive effect of the appeal in order to enable the woman to stay in Denmark while the Board processed the case.

The Board considered the request for suspensive effect under a provision in the Aliens Act inserted by an amendment in 2010 and refused the couple's request.

The couple complained to the Ombudsman. In a statement to the Ombudsman, the Immigration Appeals Board explained that its refusal to grant suspensive effect was in compliance with the tighter practice introduced by the Ministry of Integration following the amendment to the Aliens Act in 2010. The Board, which took over the remit for appeals from the Ministry in 2013, had continued the practice.

The Ombudsman was of the opinion that there was no sufficiently clear legislative basis for the tighter practice introduced by the authorities. He gave weight to, among things, the facts that the explanatory notes to the 2010 amendment contained a description of a more lenient existing practice and that the notes stated that the provision was to be administered in accordance with what had been the practice so far.

The description in the explanatory notes of the more lenient existing practice was accompanied by a reference to a memorandum from 2004 in which the practice was described. Following the 2010 amendment, the Ministry had informed Parliament's Committee on Immigration and Integration Policy that the memorandum from 2004 no longer applied. In the Ombudsman's opinion the Ministry's notification did not constitute grounds for disregarding what was stated in the explanatory notes about the continued existence of the practice.

The Ombudsman asked the Immigration Appeals Board to inform him how the Board intended to organise its practice on granting suspensive effect in future.

2016-27. Requirement for foreign national with tolerated residence status to reside at asylum centre

A practising lawyer complained to the Ombudsman because one of his clients, a foreign national who had had tolerated residence status in Denmark since 2007, was still required to reside at the Sandholm asylum centre.

The Ombudsman investigated the matter and concluded that it was to be regarded as doubtful whether it was still proportional to require the man to reside at the asylum centre.

However, the Ombudsman was of the opinion that it would be most appropriate to leave the final assessment of the matter to the courts, and following a recommendation from the Ombudsman, the Department of Civil Affairs granted the man free legal aid to have the Immigration Service's decision that he was required to reside at the asylum centre considered in court.

R. MINISTRY OF EDUCATION

No statements on cases concluded in 2016 have been published.

S. MINISTRY FOR ECONOMIC AFFAIRS AND THE INTERIOR

The following statements on cases concluded in 2016 have been published:

2016-4. Municipality entitled to refuse access to mayor's telephone bill

In 2014 two journalists were denied access to a mayor's telephone bill for the autumn of 2011 – an itemised bill of 54 pages with information about both private and official telephone calls (the last two digits of the numbers being hidden by the telephone company), text messages and data usage.

The grounds given by the municipality for its refusal were that the information about the mayor's private use of the telephone was subject to section 33(i) of the Access to Public Administration Files Act on the right to privacy. As neither the municipality nor the mayor was able to separate the information about the mayor's private use of the telephone from the information about his official use of the telephone, the municipality denied the journalists access to the telephone bill altogether with reference to the general provision in section 33(v) of the Act.

The unit of the State Administration which supervises municipalities' observance of the legislation applying specifically to public authorities agreed with the municipality's refusal, and the two journalists subsequently complained to the Ombudsman.

The Ombudsman agreed that the information about the mayor's private use of the telephone was subject to section 33(i) of the Access to Public Administration Files Act and was therefore not to be released to the journalists. However, the information about the mayor's official use of the telephone was in principle to be released.

The Ombudsman stated that it is an authority's responsibility to investigate a case about access to public files in a manner to make it possible to separate information which is not to be released from information to be released. However, the Ombudsman found no grounds for repudiating the municipality's assessment that neither the municipality nor the mayor was able to separate the information. In this connection, the Ombudsman attached importance to, among other things, the time which had elapsed (more than four years) since the telephone conversations etc.

While the Ombudsman was investigating the case, the question was raised whether section 13 of the Act on Processing of Personal Data had relevance to the issue of access to the telephone bills of public employees etc. who use a telephone which is paid for by their employer. Owing to the specific circumstances of the case, however, the Ombudsman found no cause to investigate the question.

2016-5. A municipality's payroll system is a database subject to section 11 of the Access to Public Administration Files Act on the right to extracts of data

A journalist complained to the Ombudsman because the unit of the State Administration which supervises municipalities' observance of the legislation applying specifically to public authorities had stated that the Cities of Aarhus and Copenhagen were not required to extract data from their payroll systems on the pay of their employees, among other information.

The State Administration was of the opinion that an authority's payroll system was not a database within the meaning of section 11 of the Access to Public Administration Files Act. In this connection, the State Administration gave weight to the explanatory notes and practice, according to which, in the State Administration's opinion, the provision does not encompass databases which are kept essentially for internal, administrative purposes.

The Ombudsman found that in accordance with the general rule of section 11 that the right to extracts of data in principle covers all types of databases, the payroll systems of the Cities of Aarhus and Copenhagen were to be regarded as databases within the meaning of the provision.

The Ombudsman attached importance to the facts that the payroll systems met the technical criteria for being databases and that the information in the systems was used in connection with administrative case processing, such as the setting and payment of wages and salaries. The explanatory notes to section 11 of the Access to Public Administration Files Act state that the provision does not grant a right to extracts of data from an authority's records system. However, the Ombudsman was of the opinion that this was not to be understood as meaning that databases which are primarily (essentially) kept for internal, administrative purposes are generally not subject to section 11 of the Act.

The Ombudsman recommended that the State Administration reopen the cases in order to reconsider the question of a right to extracts of data from the payroll systems of the two municipalities.

2016-11. National Social Appeals Board did not have a basis for concluding that municipality had fulfilled its obligation to provide adequate guidance to woman who withdrew application for disability pension

A mother complained on behalf of her adult daughter, who had a mental disability, because the National Social Appeals Board had regarded an application from her for disability pension on the basis of the available documentation as withdrawn. As a result, the daughter could not have her case considered under the old disability pension rules, which would have been more favourable to her. The mother and the daughter stated that the application had not been withdrawn and that the municipality had not guided the daughter properly.

The Ombudsman could not criticise that the National Social Appeals Board had taken for its basis that the daughter had withdrawn her application – as that was stated in the municipality’s case records, in notes on a meeting with the daughter. Only in connection with the Ombudsman’s investigation of the case did the National Social Appeals Board comment on the requirements on the content of the municipality’s guidance, and the Board assessed that the municipality had fulfilled its obligation to provide adequate guidance.

In his statement, the Ombudsman mentioned several requirements which the municipality’s guidance had to meet. He found that the National Social Appeals Board could not conclude on the basis of the written material available in the case that the municipality had fulfilled its obligation to provide adequate guidance. For this reason, he recommended that the Board consider what consequences, if any, his comments on guidance were to have.

The Ombudsman agreed with the National Social Appeals Board that it should have asked the municipality to provide information about its guidance. He also agreed with the municipality that it should have been stated in the notes in the case records that guidance had been given. In addition, the National Social Appeals Board should have criticised the municipality’s failure to include notes on its guidance in the case records.

Finally, the Ombudsman agreed with the authorities that it would have been desirable and in compliance with good administrative practice if the municipality had confirmed in writing to the daughter that her application had been withdrawn.

2016-15. No right of access to e-mails in mailbox to which State Administration had no direct access in spite of knowing password

The former chairman of a regional council had given the unit of the State Administration which supervises regions' and municipalities' observance of the legislation applying specifically to public authorities the password for the mailbox which he had used in connection with his campaign for the 2015 General Election. He had given the State Administration his password on his own initiative for use in its investigation of a case concerning his use of the assistance of an employee of the region in connection with his election campaign while he was chairman of the regional council. However, the State Administration did not require access to the mailbox to investigate the case.

A citizen subsequently asked for access to the contents of the e-mails stored in the mailbox. The State Administration declined his request because it had not opened the mailbox.

In connection with the Ombudsman's investigation of the case, the State Administration informed the Ombudsman that it had not received a link or an e-mail address for which the password could be used. The Ombudsman found that in these circumstances, the contents of the mailbox had not been 'received or created by' the State Administration, cf. section 7(1) of the Access to Public Administration Files Act. In the Ombudsman's opinion the situation was comparable to that of an authority having access to documents via an external database only.

On that basis, the Ombudsman did not have grounds for criticising the State Administration's refusal of the request for access.

2016-24. A Danish citizen residing abroad should have been informed about the possibility of applying for old-age pension

A Danish citizen who left Denmark and took up residence in another EU country shortly before he reached state pension age was not informed by the Danish authorities about the possibility of applying for state pension. When leaving Denmark, the man had informed the population registry of his new address abroad.

Under section 13 of the Social Pensions Act, notification of entitlement to state pension must be sent 'in reasonable time prior to the date on which such person

attains state pensionable age'. Section 2 of the Executive Order on Social Pensions, on the other hand, states that 'notification of entitlement to state pension shall not be sent to persons with permanent residence abroad' – whereas according to the guidance notes on state pension issued by the ministry, the National Social Security Agency (now Udbetaling Danmark, an authority responsible for a number of public benefits) must inform persons with permanent residence outside Denmark about the possibility of applying for state pension 'in so far as the addresses of such persons are known to the National Social Security Agency'.

The Ombudsman found that the requirement under section 13 of the Act to inform persons with permanent residence abroad could not be validly restricted by inserting a provision in section 2 of the Executive Order on Social Pensions which generally excluded the requirement for the authorities to inform this category of persons about the possibility of applying for state pension.

On the basis of the authorities' statements on the case, the Ombudsman's understanding was that sending notification of entitlement to state pension to persons with permanent residence abroad could not be considered an impossible or disproportionately difficult task for the authorities if the persons' former municipalities of residence had passed on their addresses to the National Social Security Agency (now Udbetaling Danmark).

Based on the available information, the Ombudsman took for his basis that the man's address abroad was known to his former municipality of residence and that the municipality should therefore have passed his address on to the National Social Security Agency, which should subsequently have sent him notification in accordance with section 13 of the Social Pensions Act.

Under section 33(1) of the Act, state pension can only be granted as from the 1st of the month following application. However, as the man should in the Ombudsman's opinion have received guidance on the possibility of being granted state pension, and as the Ombudsman considered it likely that the man would in that case have submitted his application for state pension in time, he recommended that the National Social Appeals Board reopen the case and consider whether the man could be granted state pension retroactively – by virtue of the general legal doctrine that a person who has been given erroneous guidance by the authorities is to a certain extent entitled to be put in a position as if the error had not been made.

2016-43. Own-initiative investigation concerning the regulation on ministerial advice and assistance and the principle of extended openness

For a summary of the case, see under ‘E. Ministry of Finance’.

2016-47. Extracts of data from municipalities’ payroll systems

A journalist had asked two municipalities for extracts from their payroll systems of information about name, job title, department worked in, working hours and pay for a number of employees for the years 2010 to 2013.

In the Ombudsman’s opinion it was most likely that the provision in section 11(1) of the Access to Public Administration Files Act on extracts of data was to be interpreted as meaning that when an authority calculates the amount of resources it expects to require in order to extract (and if necessary anonymise etc.) requested data, the authority may include the time it will need for the processing steps necessary to establish whether the data extract contains information which is subject to sections 19-35 of the Act. Thus, anybody requesting an extract of data will only be entitled to the extract if all the processing steps necessary to ensure that the provisions on exemptions in sections 19-35 are complied with – and the actual extraction of data – can be carried out by ‘few and simple commands’.

The Ombudsman therefore found no cause for criticising that the State Administration had taken for its basis that when the municipalities calculated the amount of resources which they expected to require in order to extract (and if necessary anonymise etc.) the data requested by the journalist, they were entitled under section 11(1) of the Access to Public Administration Files Act to include the time they would need for the processing steps necessary to establish whether the data extracts contained information which was subject to sections 19-35 of the Act.

The Ombudsman saw no cause for criticism of the State Administration’s view that in order for the two municipalities to be able to ensure that they would make correct decisions under section 11 of the Access to Public Administration Files Act, it would be necessary for them to consult the employees involved before making their decisions. The Ombudsman also could not criticise the State Administration’s assessment that the resources which would be required for consulting the employees involved would be of such a scale that they would in themselves exceed the resources which an authority is required to use under section 11(1) of the Act.

On that basis, the Ombudsman found no cause for criticising that the State Administration did not consider the two municipalities to be required under section 11(1) of the Act to extract the requested data from their payroll systems because it could not be done by few and simple commands.

2016-55. Decision not to consider appeal due to uncertainty regarding the power to consider it. The ex officio investigation principle and the obligation to forward written communications to the correct authority

The National Social Appeals Board declined to consider an appeal due to uncertainty whether it was the correct appeals body. The appeal had been submitted by a trade union on behalf of a mother and a father who wished to appeal a decision to take their disabled son off an overnight support scheme. The municipality had informed them that the boy would be taken off the scheme because the Region of Southern Denmark assessed that he no longer needed the scheme.

The National Social Appeals Board contacted the municipality to establish under which provision the support had been granted, but the municipality was unable to provide the information. The Board then made a decision to decline to consider the appeal on the grounds of uncertainty whether it had the power to consider it.

The Ombudsman was of the opinion that the Board, in deciding to decline to consider the appeal, had failed to observe the ex officio investigation principle and the obligation under the Public Administration Act to forward written communications to the correct authority. The Board should have investigated the matter further before making the decision to reject the case. Had the Board investigated the matter adequately, it would have become aware, among other things, that the regional council had the remit for the support, and the Board could have contacted the Region of Southern Denmark.

The way in which the National Social Appeals Board had handled the case had been a major factor in the case becoming very protracted.

The Ombudsman concluded that the Board's decision and its failure to investigate the case adequately prior to its decision were matters for criticism.

2016-57. Access to extract of data from register of declarations of support

A journalist asked the Ministry of Social Affairs and the Interior (now the Ministry for Economic Affairs and the Interior) to inform him how many declarations of support three political parties had obtained from electors at the time of his request [and thus, by implication, how many they still needed in order to be entitled to run for Parliament].

The Ministry of Social Affairs and the Interior denied the journalist access in the form of an extract of data under section 11 of the Access to Public Administration Files Act from the register of declarations of support, referring to section 33(v) of the Act. The grounds given by the Ministry for its refusal included that it should not be possible for the information concerned to enter into the prime minister's choice of an election date. In addition, the Ministry stated that if political parties were to have information made available to the public on an ongoing basis about how their collection of declarations of support was progressing, the individual party would in effect be deprived of the freedom to decide when to register as entitled to run for Parliament. The Ministry also stated that public access to the information concerned would be an unintended consequence of the digitisation of the procedure in relation to declarations of support.

Overall, the Ombudsman was of the opinion that on the available basis, the Ministry of Social Affairs and the Interior could not with reference to section 33(v) of the Access to Public Administration Files Act deny the journalist access in the form of an extract of the information concerned under section 11 of the Act.

Consequently, the Ombudsman recommended that the Ministry for Economic Affairs and the Interior reopen the case and – in the light of what he had stated – make a new decision on extraction of the information concerned.

At the same time, the Ombudsman pointed out to the Ministry for Economic Affairs and the Interior that if the Ministry was of the opinion that a right of access to the information concerned was undesirable, it could seek legislative clarification on the issue, for instance in the legislation on elections.

The Ministry for Economic Affairs and the Interior subsequently made a new decision on access in the form of an extract of data.

T. MUNICIPAL AND REGIONAL AUTHORITIES ETC.

The following statements on cases concluded in 2016 have been published:

2016-2. E-mail from municipality about employees' duty of loyalty was an illegitimate restriction on their freedom of expression

A parent set up a public Facebook group in which matters of current interest in the children and young people's sector in the municipality were discussed.

The municipality learnt that a number of managers and employees of institutions for children and young people intended to join the group. This caused the municipality to send an e-mail to the managers of the municipality's institutions for children and young people, asking them to be very aware of the need to ensure that their employees were familiar with the municipality's rules of good conduct, including their duty of loyalty, before discussing matters in their field of work in the public debate.

The municipality made it clear that the employment law consequences of violations of the employees' duty of loyalty could be serious.

The Ombudsman stated that under the rules on freedom of expression for public employees, employees have a relatively wide scope for expressing critical views in a private capacity on matters in their field of work – particularly resource issues – in the public debate.

In the Ombudsman's opinion the e-mail to the institution managers gave the impression that the municipality did not want its employees to express critical views on matters in their field of work in the public debate even if they did so in a private capacity. Further, the e-mail gave a misleading impression that employees expressing such views ran a considerable risk of being deemed to be in breach of their duty of loyalty. The e-mail was therefore an illegitimate restriction on the employees' freedom of expression.

2016-16. Monitoring visit to investigate physical accessibility of primary and lower secondary school to persons with disabilities

The Parliamentary Ombudsman made a monitoring visit to a primary and lower secondary school to investigate its accessibility to persons with disabilities.

During his monitoring visit and in his preliminary report, the Ombudsman recommended a number of initiatives to improve the school's accessibility to persons with disabilities. The school and the municipality subsequently stated in a reply to the Ombudsman which measures would be taken on that basis.

The Ombudsman's recommendations related to aspects such as the school's play facilities for children with mobility disabilities, the accessibility of its special subject rooms to these pupils and the school's practice with regard to exempting pupils from certain subjects on account of their disabilities.

In his final report to the school and the municipality, the Ombudsman reiterated several recommendations and asked to be notified of the further process in relation to a few of his recommendations. The Ombudsman referred to provisions in the UN Convention on the Rights of Persons with Disabilities and the UN Convention on the Rights of the Child as his basis for several recommendations.

2016-22. Inadequate case investigation in case concerning construction of slurry tank without rural zone permit

A municipality had granted a farm owner a permit for the construction of a slurry tank for which he had not obtained a rural zone permit. In order for structures – including slurry tanks – to be lawfully constructed in a rural zone without a rural zone permit, the structures must be commercially necessary for the agricultural operations of the farms in question.

A neighbour complained to the Ombudsman. The municipality did not have details of the livestock, plant production and slurry consumption of the farm and had not taken notes on how it had assessed at the time of the farm owner's application that the slurry tank was commercially necessary for the operations of the farm. In addition, the municipality had not subsequently explained how it was able to assess on the basis of the information available in the case that the slurry tank was commercially necessary.

On that basis, the Ombudsman found that the municipality had not made a sufficiently specific assessment of whether the slurry tank was commercially necessary for the operations of the farm. Thus, the municipality had not fulfilled its obligation under the building regulations and the provisions on rural zones to investigate whether a rural zone permit was a prerequisite for granting the farm owner a construction permit.

The Ombudsman therefore recommended that the municipality reopen the case in order to make a specific assessment of whether the slurry tank was commercially necessary.

In addition, the Ombudsman criticised the municipality's general practice of considering slurry tanks to be commercially necessary if the slurry was used as fertiliser on the land of the farm in question, and he recommended that the municipality change its practice.

Finally, the Ombudsman stated that in its decision following its investigation of the matter, the unit of the State Administration which supervises municipalities' observance of the legislation applying specifically to public authorities should have reprimanded the municipality for its inadequate case investigation.

2016-25. Dismissal of employee on the grounds of future lack of cooperation. Representation by another person

A municipality summoned a social and health care assistant to a disciplinary hearing to agree the terms of her exit. The situation was occasioned by an e-mail which the woman had sent to her union – with a copy to the chief executive officer of the municipality. At the hearing, the woman was informed that the municipality would recommend that she be dismissed on the grounds that it assessed that the future cooperation with her would not function. The woman was represented by her husband in the case.

In connection with the Ombudsman's investigation of the case, the municipality gave new information about the purpose of the disciplinary hearing and the reason for the municipality's dismissal of the woman.

The Ombudsman stated that in his investigation of the case, he had taken the municipality's subsequent information for his basis – subject to doubt – because the municipality was required under the Ombudsman Act to provide truthful information to the Ombudsman.

The Ombudsman further stated that in his opinion it was somewhat doubtful if it was necessary to summon the woman to a disciplinary hearing. In any case, the Ombudsman regarded it as a matter for extreme criticism that the woman had not been informed of the actual purpose of the hearing. In the Ombudsman's opinion this had contributed to unnecessarily creating or escalating a level of conflict in the case. In addition, the Ombudsman found that the con-

tent of the letter in which the municipality had consulted the woman as a party to the case was a matter for extreme criticism.

The Ombudsman was of the opinion that overall there were no grounds for dismissing the woman due to present lack of cooperation or a considerable risk of future lack of cooperation. In addition, the Ombudsman pointed out that if an authority finds that a person acting as the representative of a party to a case is harming the party's interests, the authority cannot summarily let it affect the case adversely.

The Ombudsman recommended that the municipality reopen the case.

2016-32. Forensic psychiatric ward had no authority to forbid patients to buy unhealthy food

Following press coverage of patients in a special forensic psychiatric ward (Sikringsafdelingen) being restricted in their choice of food, sweets and soft drinks, the Ombudsman raised the case with the Region Zealand.

The forensic psychiatric ward explained that certain types of medicine carry an increased risk of obesity, and that in order to prevent the adverse health effects of obesity, the ward tried to get patients to adopt a healthier lifestyle. Where it was not possible to get patients to do so voluntarily, the ward had restricted their possibilities of buying unhealthy foods such as sweets, pizza and burgers.

The Ombudsman was understanding of the ward's efforts to help those patients who could not be motivated to change their behaviour. At the same time, however, he stated that restrictions on patients' right of self-determination require legal authority. As there was no legal authority for this particular restriction on the right of self-determination, the ward was not entitled to impose restrictions on the individual patients' right to buy unhealthy food. The Ministry of Health agreed with the Ombudsman's assessment.

As these patients' health situation was to some degree a consequence of the treatment which they were (forcibly) receiving, and as there were medical grounds for intervening in relation to their health situation, the Ombudsman assumed that the authorities would consider whether the forensic psychiatric ward had the necessary possibilities for helping these patients in a reasonable and safe manner.

2016-33. Municipality required to reopen large number of cases on its own initiative. Failure to notify parties of decisions. Invalid decisions

In just over a hundred cases on the mutual obligation of support which cohabiting couples one (or both) of whom received cash benefit had at the time, a municipality had failed to notify both partners of its decision, notifying only the benefit recipient. When the municipality became aware of its error, it notified both persons in the cases but did not change the dates on which the decisions took effect. In the municipality's opinion, it was not to repay the citizens the amounts which it had deducted from their benefit. The municipality explained that the citizens had received 'the correct amounts of benefit'.

The Ombudsman assessed on the basis of a few specific decisions by the National Social Appeals Board that the municipality could not remedy its error of not notifying both partners by subsequently notifying them or by making a new decision in relation to both partners with retroactive effect.

On that basis, the Ombudsman was of the opinion that the municipality was required, at the time when it ought to have been evident to the municipality, based on specific decisions by the National Social Appeals Board, that it could not remedy its error as described above, to reverse all its original decisions and repay the citizens the amounts which it had deducted from their benefit. The Ombudsman criticised that the municipality had not done so.

In the Ombudsman's opinion the municipality was therefore required to reopen the cases once again on its own initiative (where the municipality had not done so already), reverse its decisions and repay the citizens the amounts which it had deducted from their cash or education benefit and, where relevant, to pay them their benefit without these deductions until a decision was made in relation to both persons/their cohabitee.

On that basis, the Ombudsman recommended that the municipality reopen the cases once again on its own initiative and make the payments in question.

2016-41. No authority to move a child from one placement facility to another by means of physical force

A municipality made a decision to move an 11-year-old girl from her foster family to another placement facility. The girl did not wish to move and put up

physical resistance when municipal staff arrived to execute the decision, and the municipality therefore felt it necessary to use physical force when executing the decision.

In a statement on the case, the Ombudsman described the rules on when authorities are entitled to use physical force. The Ombudsman was of the opinion that the municipality's use of physical force when executing the decision to move the girl to another placement facility was not authorised. In this connection, the Ombudsman stated that the use of physical force is so intrusive that it requires express statutory authority.

The Ombudsman found the municipality's use of physical force when executing the decision a matter for severe criticism.

When he concluded the specific case, the Ombudsman took up a case on his own initiative with the Ministry of Social Affairs and the Interior with a view to the Ministry considering whether to take steps to seek to provide statutory authority for the use of physical force to execute decisions on a change of placement facility – also in cases where a child is staying with a person other than one who has parental authority.

In the light of the intrusive nature of the decision for the 11-year-old girl, the Ombudsman stated that it would have been most appropriate and most compliant with good administrative practice if the decision to change the placement facility had been communicated in writing – or if the decision had at least been confirmed in writing, with a statement of the grounds for the decision, very soon after it had been made.

2016-44. Failure of municipality to provide placement facility with copies of relevant parts of action plan for child

If an action plan for a child or a young person involves his or her being placed in a facility of one of the types listed in section 66 of the Social Services Act, the facility must be provided with copies of relevant parts of his or her action plan. This is provided by the Act's section 140(7), which came into force on 1 January 2014.

During a monitoring visit to a therapeutic residential facility for children with special needs, the Ombudsman's visiting team were informed that the facility had not received copies of parts of the action plan for one of the children in the facility from her municipality.

The girl had moved into the facility before the provision on municipalities' obligation to provide placement facilities with copies of relevant parts of action plans came into force.

The Ombudsman stated that there was no specific basis for construing the provision on the obligation restrictively as not applying to children and young people who had already been placed in a facility. In addition, the Ombudsman was of the opinion that the purpose of the provision indicated that it also applied to children and young people placed in facilities before 1 January 2014.

On that basis, the Ombudsman was of the opinion that the girl's municipality should have provided the facility in which the girl had been placed with copies of relevant parts of her action plan after section 140(7) of the Social Services Act came into force on 1 January 2014.

2016-49. Business Development Centre Northern Denmark is subject to the Ombudsman's jurisdiction and to the Access to Public Administration Files Act and the Public Administration Act

The Ombudsman received a complaint that the foundation Business Development Centre Northern Denmark (Væksthus Nordjylland) had incorrect information on its website. In that connection, the Ombudsman considered whether the institution was subject to his jurisdiction.

The Ombudsman was of the opinion that the foundation was to be regarded as part of the public administration, cf. section 7(1) of the Ombudsman Act. In addition, he stated that the foundation was subject to section 3(1)(ii) of the Access to Public Administration Files Act. This means that the foundation is also subject to section 1(2)(ii) of the Public Administration Act.

In his assessment, the Ombudsman took for his basis that the foundation had been established under private law and was therefore not subject to section 3(1)(i) of the Access to Public Administration Files Act. When assessing whether the foundation was instead to be regarded as subject to section 3(1)(ii) of the Act, the Ombudsman attached importance to the facts that the foundation had been set up by public authorities and that its activities were governed by the Act on Industrial Promotion and by agreements between Local Government Denmark and the Danish Business Authority and between Local Government Denmark and Denmark's central government. In addition, the Ombudsman took into account that the activities of the foundation were predominantly financed with public funds. Further, the Ombudsman was of the opinion that

it was evident that the foundation was engaged in public sector activities on an extensive scale.

Finally, the Ombudsman stated that the foundation was to be regarded as subject to both intensive public regulation and intensive public supervision by virtue of the provisions of the foundation's articles of association on the composition of its board of trustees and the appointment of a director, the provisions of the articles on financial supervision by the Auditor General and the Danish Business Authority and the legislative provisions on supervision by the Ministry of Business and Growth and the Danish Business Authority.

2016-50. Recommendation for National Board of Social Services to consider training of staff of social care accommodation facilities in use of force

The Ombudsman's investigation of a specific case in which a young man in a social care accommodation facility died in connection with force being used on him occasioned the Ombudsman to raise the question whether authorities which operate social care institutions are required to ensure that general guidelines on the use of force are drawn up to the extent relevant.

The case also caused the Ombudsman to raise the question whether the authorities in question are required to ensure that social care institution staff receive adequate training in the use of force.

The Ombudsman asked the National Board of Social Services to consider the two questions.

2016-58. Distinction between preventive measures and special measures relating to children and young people (sections 11 and 52 of Social Services Act)

After receiving two anonymous letters about the situation in a municipality's children and families department, the Ombudsman opened a case with the municipality. The anonymous letters firstly concerned the duration of the municipality's preventive measures relating to children, young people and families under section 11(3) of the Social Services Act. The letters stated that in a large number of difficult cases, the municipality's three advisory teams had been using preventive measures 'for months and years' without initiating child protection examinations and preparing action plans. Secondly, it was stated that

the processing times of the municipality's examination team were very long for child protection examinations under section 50 of the Social Services Act.

In his statement on the case, the Ombudsman explained section 11(3) of the Social Services Act on preventive measures and section 52 on special measures: section 11 is a provision on actual preventive measures and is aimed at children and young people with delimited problems, whereas section 52 is aimed at children and young people with problems of such a complex nature that a child protection examination is needed in order to determine their need for special measures.

Based on information received from the municipality, the Ombudsman criticised that the municipality had used preventive measures under section 11(3) of the Social Services Act in a number of cases where it should have made a decision to implement provisional support under section 52(2), cf. subsection (3), of the Act. However, because of information which he had received from the municipality about organisational changes, the Ombudsman took no further action in relation to the duration of the preventive measures.

The Ombudsman further stated that in his opinion it was a matter for severe criticism that during some periods in the years 2013 to 2015, the processing times for child protection examinations had exceeded the time limit of four months specified by the Social Services Act in more than half of all cases. The Ombudsman asked the municipality for further information about its processing times for child protection examinations in 2016.

U. OTHER AUTHORITIES ETC. WITHIN THE OMBUDSMAN'S JURISDICTION

The following statement on a case concluded in 2016 has been published:

2016-37. Upper secondary school teacher could not be dismissed for sending e-mail criticising his school to members of Parliament's Finance Committee

An upper secondary school teacher sent an e-mail to members of Parliament's Finance Committee in which he criticised the financial moves of the management of his school in connection with a planned building project. Among other things, he called the school a 'sinking ship'. The teacher sent the e-mail the day before the Finance Committee was to approve extraordinary funding for the building project.

The school dismissed the teacher for ‘consciously disloyal conduct’, stating that the timing of his criticism – the day before the decision on extraordinary funding – was to be deemed an attempt to inflict damage on the school.

The dismissal was covered by the media, and the school management, among other things, sent an information letter to the staff. In the letter, the management expressed the view that if teachers publicly disagreed with the school’s financial moves, this could be in breach of their duty of loyalty.

In the Ombudsman’s opinion the dismissal was a violation of the rules on freedom of expression for public employees. He stated that in his assessment the right of public employees to take part in the public debate on matters relating to their workplace also means that they are entitled – on equal terms with other citizens – to express their views in, for instance, harsh or polemic terms as long as their statements are not manifestly untrue or unreasonably offensive. The Ombudsman recommended that the school reopen the case.

In addition, the Ombudsman was of the opinion that the information letter sent by the school management to the employees did not give a true picture of their right to express their views – also critical views – on matters relating to the school, including any disagreements with the management over its financial moves.

The Ombudsman regarded the school’s violations of the rules on freedom of expression for public employees in connection with the dismissal and its information letter as matters for extreme criticism.

In view of the nature of the errors and dereliction committed by the school, the Ombudsman informed Parliament’s Legal Affairs Committee, Parliament’s Finance Committee and the Minister for Children, Education and Gender Equality about the case.

The school subsequently reopened the dismissal case, which resulted in the teacher being reinstated and receiving compensation.



NEWS PUBLISHED ON THE OMBUDSMAN'S WEBSITE IN 2016

All news can be read in full (in Danish only) on www.ombudsmanden.dk.

14 January

Children placed in care outside their home entitled to lessons in all primary and lower secondary school subjects

Children and young people who are placed in care outside their home and are taught in an in-house school of a residential facility or an institution have the same right to education as pupils in ordinary primary and lower secondary schools. However, following monitoring visits to placement facilities for children and young people in care, the Ombudsman became aware that several in-house schools did not provide sufficient education. In one school, pupils only had lessons in the core subjects of Danish, mathematics and English.

21 January

E-mail to municipal employees had the appearance of an illegal attempt at muzzling

Public employees have extensive freedom to criticise matters in their workplaces. However, an e-mail from Gribskov Municipality to all managers of the municipality's institutions for children and young people gave the opposite impression, the Parliamentary Ombudsman concludes in a recent statement.

22 January

Self-service systems precluded students from being represented by others

When digital self-service systems replace manual case processing, the authorities must ensure that the systems comply with the requirements of administrative law. This means, among other things, that the systems must be designed to allow users to be represented by others – if necessary by means of a paper-based solution.

For several years, students applying for student grants or loans or for a discount transport card have not had this option. It is only now that a solution is on the cards.

4 February

Staff of Ombudsman's Children's Division visit 15-year-old girl held in solitary confinement

Staff of the Ombudsman's Children's Division have, together with representatives of the Institute for Human Rights and DIGNITY – Danish Institute Against Torture, visited a 15-year-old girl who has been in solitary confinement since 14 January 2016. It is extremely rare for minors to be held in solitary confinement.

5 February

Odense Municipality entitled not to disclose Mayor's telephone bill

The Ombudsman agrees that Odense Municipality is not required to disclose the Mayor's telephone bill for the autumn of 2011. The reason is that it is assessed not to be possible to separate the information about the Mayor's private telephone calls from the information about his official calls.

8 February

Ombudsman's Children's Division to focus on children and young people in psychiatric wards

In 2016, staff of the Ombudsman's Children's Division are going to visit a large proportion of children and young people in psychiatric wards as the theme for this year's monitoring visits by the Children's Division is residential psychiatric wards. One of the central issues is the use of forced immobilisation on children and young people.

15 March

Ombudsman seriously concerned about foreign nationals detained at Institution of Vridsløselille

Following an unannounced monitoring visit to the Institution of Vridsløselille on 29 February 2016, the Ombudsman is seriously concerned about the conditions for detained foreign nationals.

16 March

Debate letter: Getting the most Ombudsman for the money

'Just as a doctor will not operate a patient until he has assessed whether surgery will ultimately be of any benefit to the patient, we do not initiate comprehensive investigations until we have assessed whether we can actually make a difference.'

These are the words of Ombudsman Jørgen Steen Sørensen in a letter published by the national daily newspaper Politiken about the Ombudsman institution's more stringent prioritisation. (...)

17 March

Expat Danes must be informed about entitlement to state pension

A Danish citizen residing in the United Kingdom failed to apply for state pension until after reaching pension age as – unlike Danish citizens living in Denmark – he was not informed by the authorities about his entitlement to pension. That was an error, the Parliamentary Ombudsman concludes in a recent statement. He has recommended that the National Social Appeals Board reopen the case and consider whether the man should be granted four years' pension retroactively because of the error.

18 March

Political discussions concerning Access to Public Administration Files Act cause Ombudsman to put general investigation on hold – processing of complaint cases to continue unchanged

The Ombudsman will put on hold a general investigation of ministries' use of the principle of extended openness in cases concerning requests for access to documents exchanged in connection with ministerial advice and assistance. This has been decided in order not to risk 'short-circuiting' the current political discussions about the content and timing of an evaluation of the new Access to Public Administration Files Act.

21 March

Vulnerable citizens must be given particularly thorough guidance

An authority must tailor its guidance to the individual citizen and his or her needs. Especially in communication with vulnerable citizens who may have difficulty fully grasping their situation, it is important, for instance, that the authorities thoroughly explain the possible consequences of specific moves on the part of the citizen. So says the Ombudsman in a statement on a recent case in which a woman aged about 30 with mental disorders withdrew her application for disability pension.

29 March

Police will improve documentation in connection with deportations

The National Police is now going to develop a form to be completed by police in order to ensure that all relevant processing steps in cases of forced deportations of foreign nationals are documented sufficiently. The form will be a supplement to the deportation reports which are prepared by the police today.

This initiative is being introduced after the Parliamentary Ombudsman has on several occasions pointed out insufficient documentation in relation to deportations.

5 April

Primary and lower secondary schools forget pupils' rights in serious cases

The behaviour of a primary or lower secondary school pupil may be so gross that he or she may, for instance, be excluded temporarily from school, or it may be decided that the pupil is to be taught on a one-on-one basis. However, when a school resorts to such serious measures, the pupil has a number of rights – but schools often seem to forget that. For this reason, the Ombudsman recently approached the Ministry for Children, Education and Gender Equality to find a solution to the problem.

6 April

Ombudsman takes up case about dismissal of upper secondary school teacher

The Parliamentary Ombudsman has today asked Campus Bornholm to explain the background to its dismissal of an upper secondary school teacher after he had criticised his employer in an e-mail to Parliament's Finance Committee.

8 April

Primary and lower secondary schools must ensure children with disabilities equal access to play and education

According to the UN Convention on the Rights of Persons with Disabilities, children in Danish primary and lower secondary schools who have mobility disabilities must have equal access with non-disabled children to participation in education, play and leisure activities. Therefore, it is important that this is promoted and encouraged by the physical facilities of schools. This is the conclusion following a monitoring visit by an Ombudsman team to investigate the physical accessibility of a school in Allerød Municipality to persons with disabilities.

21 April

No grounds for criticism of guidance received by unaccompanied refugee children

In November 2015, the Ombudsman opened a case with the immigration authorities as a result of public claims that unaccompanied refugee children with so-called 'temporary protection status' received insufficient guidance about their possibilities of getting their parents to Denmark.

The authorities have subsequently adjusted their guidance. On that basis, the Ombudsman is now satisfied with the total guidance received by unaccompanied refugee children with temporary protection status.

25 April

Major differences in utilisation of communication aids for children and young people with considerable disabilities

During the past year, the Ombudsman's Children's Division has made monitoring visits to a number of institutions for children and young people with considerable disabilities and almost no language. The overall conclusion is positive, but the Ombudsman points out, among other things, that there are major differences in how good the institutions are at utilising the technological aids that exist in their communication with the children and young people.

26 April

National Social Appeals Board not required to search for incorrectly decided sickness benefit cases

The National Social Appeals Board cannot be required to manually go through a total of about 5,000 sickness benefit cases per year for an unknown number of years to locate an unknown number of cases with errors. This is the conclusion of a recent Ombudsman statement. The National Social Appeals Board is therefore entitled not to search of its own accord for sickness benefit cases in which errors have been made. Instead, the Board has published information widely, on its website and through other channels, in order that affected citizens may contact the Board or their municipality on their own initiative to have their cases reopened.

27 April

Ombudsman announces new visit to Institution of Vridsløselille

Following information from the Prison and Probation Service that improvements in conditions for the foreign nationals who are detained at the Institution of Vridsløselille are in the pipeline, the Ombudsman has now announced a new monitoring visit to the Institution on 22 June 2016.

12 May

Ombudsman raises questions about separation of couples seeking asylum

Following a change of practice in February, 15- to 17-year-old married or cohabiting asylum seekers are not to be placed in the same asylum centre as their partner. This is the clear principle irrespective of their partner's age and regardless of whether the couple have children. After considering a complaint from a Syrian couple, the Ombudsman has asked the Ministry of Immigration, Integration and Housing for a number of details of the new practice.

13 May

Prisons should tighten up on their use of security cells

In several cases, the Ombudsman has suspected illegitimate use of security cells and forced immobilisation when visiting state and local prisons and reviewing reports on placements in security cells. For this reason, the Ombudsman has now recommended that the Prison and Probation Service tighten up in a number of respects.

16 May

Feature article: How do we safeguard public employees' freedom of expression?

In a feature article published today in the national daily newspaper Jyllands-Posten, the Parliamentary Ombudsman describes infringements of public employees' freedom of expression as 'an unsolved problem'. He urges the Government to take the problem seriously in a future information campaign (...).

17 May

Institutions may be precluded from helping vulnerable citizens

The behaviour of some citizens who suffer from mental illness or have mental disabilities causes such problems that they cannot be dealt with in ordinary accommodation facilities for people with mental illness or disabilities. For this reason, they live in special accommodation facilities referred to as 'individual support programmes' with staff around the clock.

Following monitoring visits in 2015 to 14 institutions with a total of 79 individual support programmes, the Parliamentary Ombudsman concludes that conditions are generally good. However, in a number of serious situations, staff are unable to help the residents because they are not permitted to use coercion. (...)

18 May

Ministry of Justice promises faster replies to requests for access to files

More than one in every five of those who have asked the Ministry of Justice for access to files had to wait for more than 40 working days for a reply. The Ministry acknowledges that this is much too long and has informed the Parliamentary Ombudsman, who opened a general case about the problem in January, that it is now taking steps to reduce its processing times.

19 May

Legal for Danish Broadcasting Corporation to pay journalists' fines and legal costs

It is legal for the Danish Broadcasting Corporation (DR) to follow a practice of normally paying employees' fines, compensation costs and legal costs resulting from offences committed in the course of their journalistic work. This is the conclusion of a recent statement from the Parliamentary Ombudsman.

26 May

Police promise tighter procedures in detention facilities for intoxicated persons

Two unannounced visits by the Ombudsman will now lead to improved procedures in Copenhagen detention facilities for intoxicated persons.

27 May

Citizens wait too long for compensation for loss of earning capacity

The average processing time for certain industrial injury cases is 26 to 28 months. That is too long in the Parliamentary Ombudsman's opinion.

31 May

Old-age pensioner not to repay just over DKK 100,000

A woman believed in good faith that she was entitled to state pension at the rate for a single person. For this reason, the National Social Appeals Board has decided that the woman is not to repay just over DKK 100,000.

This is the outcome of the Ombudsman forwarding a complaint from the woman to the National Social Appeals Board. (...)

1 June

Ministry of Justice entitled to decline to process request from journalist for resource reasons

The Ministry of Justice was entitled to decline to process a request from a journalist for access to documents because it would take the Ministry more than 60 hours to process the request. So says the Parliamentary Ombudsman in a recent statement. This is the first case in which the Ombudsman has considered the application of the so-called resource provision of the Access to Public Administration Files Act to a request from a mass medium.

2 June

Specific case about tolerated residence status should be considered in court

The Ombudsman has recommended that a foreign national is granted free legal aid to bring a case against the Immigration Service.

The man has since September 2008 been required to reside at the Sandholm asylum centre after serving a prison sentence. He was also sentenced to deportation from Denmark but cannot be deported as his life would be endangered in his home country. For this reason, he has 'tolerated residence status' in Denmark.

7 June

Pile of older patient complaints growing

The number of patient complaint cases older than 18 months increased by approximately 40 per cent from 461 at the end of 2014 to 651 at the end of 2015. On the other hand, there are now fewer of the very old cases, i.e. cases older than 36 months. This is noted by the Ministry of Health in a statement to the Ombudsman.

22 June

Municipalities may place children of asylum seekers etc. in care against parents' or guardians' wishes

Who is to help a child of asylum seekers or foreign nationals without legal residence in Denmark who is, for instance, neglected by his or her parents? Is it the municipality, which has specialist knowledge of children, or is it the immigration authorities, under which matters relating to asylum seekers and foreign nationals without legal residence in Denmark normally belong? This question has given rise to confusion for a lengthy period of time.

The Ombudsman has carried out an investigation of the question (...).

28 June

Chief of Defence causing uncertainty about employees' freedom of expression is a matter for severe criticism

Employees of the Armed Forces have the same freedom of expression as other public employees. For that reason, it was a matter for severe criticism that the Chief of Defence told employees during a presentation at Airbase Karup that they could expect to be dismissed for 'downright disloyal' remarks which they might make about the Armed Forces on social media. So says the Parliamentary Ombudsman in a statement today to the Ministry of Defence.

29 June

Danish Broadcasting Corporation entitled to withhold budget information for radio channel

A decision by the Danish Broadcasting Corporation (DR) to refuse a journalist's request for access to some overall budget information for the radio channel P1 was in accordance with the law. This is the conclusion of a recent statement from the Ombudsman.

30 June

Ministry still too slow to process appeals about reporting duty

For several years, appeals about reporting duty for foreign nationals with 'tolerated residence status' have taken too long to process. In the autumn of 2014, the responsible ministry informed the Ombudsman that extra focus would be put on these cases so that appeals could be decided within three months.

This has not happened. (...) The Ombudsman describes this as regrettable.

4 July

Ombudsman resumes general investigation concerning use of principle of extended openness in cases about access to ministerial advice and assistance documents

The Ombudsman will now resume his investigation of ministries' use of the principle of extended openness in cases concerning requests for access to documents which have been exchanged in connection with ministerial advice and assistance. The Ombudsman's decision is the result of information which he has received from the Ministry of Justice that the parties behind the Access to Public Administration Files Act have no comments on the Ombudsman resuming his investigation.

4 July

Errors of form mean municipalities have to repay citizens amounts deducted from cash benefit

In 2014, a large number of cash benefit recipients had deductions made from their benefit due to their cohabitee's income. However, some municipalities notified only the cash benefit recipients – and not their cohabitees – of their decisions on the couples' mutual obligation of support. This means that the decisions are invalid and that the municipalities have to reopen the cases.

In two recent cases involving Randers and Brønderslev Municipalities, the Ombudsman stated that municipalities are required to reopen cases, on their own initiative, in which invalid decisions have been made if the municipalities are able to locate the cases and the administrative difficulties will not be too great. (...)

22 August

Failure to check digital mailbox can be expensive

Not checking his e-Boks (digital mailbox) for a protracted period of time may become expensive for a 90-year-old man. The man received a notification that his car was due for statutory vehicle inspection, a reminder and two fines of DKK 2,000 each before he finally took his car for inspection after receiving a physical letter from the Transport and Construction Agency.

...

'I can understand if many people – maybe senior citizens, among others – find it difficult to get used to checking their e-Boks just as they empty their letter box. However, the legislation is clear: citizens bear the responsibility and risk if they do not regularly check their digital mailbox', says Ombudsman Jørgen Steen Sørensen. (...).

22 August

New head of Ombudsman's Children's Division

On 1 October 2016, Susanne Veiga will take over as head of the Ombudsman's Children's Division from Bente Mundt, who has headed the Division since it was established on 1 November 2012 by a decision of Parliament. Bente Mundt will remain with the Ombudsman institution in a position as senior consultant.

31 August

Dismissal of upper secondary school teacher a violation of the rules on freedom of expression for public employees

An upper secondary school teacher was entitled to criticise his employer, Campus Bornholm, in an e-mail to members of Parliament's Finance Committee. For this reason, the Ombudsman describes Campus Bornholm's subsequent dismissal of the teacher as 'a matter for extreme criticism'.

6 September

Recruitment for new Taxation Division begins

On 1 January 2017, the Ombudsman's Taxation Division will open. The Division is one of several initiatives by Parliament aimed at improving the legal protection of citizens in tax matters. The Ombudsman has just appointed Louise Vadheim Guldborg head of the Division.

20 September

Greatly improved conditions for foreign nationals detained at Vridsløselille

Following the Ombudsman's two monitoring visits and his dialogue with the responsible authorities, the conditions for the foreign nationals who are detained at Vridsløselille have been greatly improved.

21 September

Self-employed man not to repay almost half a million kroner of unemployment benefit

466,090 kroner before tax and interest – that was the amount which a 52-year-old man was ordered to repay in unemployment benefit, received over a period of two years. Following the Ombudsman's intervention, however, the man is not to repay any of the amount.

6 October

Regulation on ministerial advice and assistance has resulted in considerable restrictions on right of access to public files

The introduction of the so-called regulation on ministerial advice and assistance in the Access to Public Administration Files Act has in practice led to considerable restrictions on the right of access to public files. This is the conclusion of a general investigation by the Parliamentary Ombudsman of ministries' use of the regulation on ministerial advice and assistance and the principle of extended openness.

7 October

Municipalities need to be aware of young people's right of appeal

At the beginning of June, a 17-year-old girl contacted the Ombudsman's Children's Division because she wanted to move to a different residential facility. Her municipal caseworker had refused her request – but the municipality had forgotten to mention an important detail: that the girl had a right of appeal.

The case of the 17-year-old girl is the latest of five cases with the Ombudsman's Children's Division which may indicate that some municipalities neglect to inform children and young people over the age of 12 that they have a right of appeal.

14 October

People with disabilities precluded from travelling by train in several places

Under the UN Convention on the Rights of Persons with Disabilities, people with mobility disabilities must have access, on an equal basis with others, to public transportation. However, the Ombudsman notes that this is not always the case today, after receiving answers from the Ministry of Transport and Building to a number of questions about the accessibility of 13 long-distance and regional train stations in Denmark to people with disabilities.

26 October

Authorities' response to European judgement on 26-year rule is of interest to the Ombudsman

The European Court of Human Rights recently established in the so-called Biao Case that the 26-year rule¹ in the Danish Aliens Act constitutes discrimination. (...)

The Government has stated that it intends to propose that Parliament repeal the 26-year rule as a consequence of the judgement. (...)

The Ministry of Immigration, Integration and Housing assesses that even now the immigration authorities must set aside the 26-year rule, also in cases which are decided before a possible legislative change. Those are the cases on which the Ombudsman wants to keep updated.

4 November

Errors of form mean that several municipalities are repaying citizens amounts deducted from cash benefit

Due to basic case processing errors, Brønderslev, Vesthimmerland and Mariagerfjord Municipalities are now repaying a large number of cash benefit recipients amounts which they had deducted from their benefit.

1) A rule according to which, among others, persons who have held Danish citizenship or resided lawfully in Denmark for at least 26 years are exempted from the requirement that in order for family reunion with a spouse to be granted, the aggregate ties of the spouses to Denmark must be stronger than their attachment to any other country.

'This is a frustrating situation for these municipalities, but the errors that have been made are so basic that the only thing to do is to reopen the cases and repay the benefit recipients the money', says the Parliamentary Ombudsman, Jørgen Steen Sørensen.

Earlier this year, the Ombudsman investigated a case which resulted in Randers Municipality having to repay cash benefit recipients amounts which it had deducted from their benefit. In addition, he recently recommended that Aabenraa Municipality reopen a substantial number of cases.

9 November

Hearing about Parliamentary Ombudsman to focus on topics of current interest

On Wednesday 23 November 2016 at 10 a.m. to 12 noon, Parliament's Legal Affairs Committee will hold its annual hearing about the work of the Parliamentary Ombudsman. The hearing will be held at Christiansborg Palace and may be attended by members of the public. It can also be viewed live on Parliament's TV channel.

15 November

Ombudsman to strengthen activities in area of taxation

When the Ombudsman's Taxation Division opens on 1 January 2017, the Ombudsman institution's capacity in the area of taxation will be 'greatly strengthened', the Parliamentary Ombudsman, Jørgen Steen Sørensen, writes in a feature article published today in the online newspaper Altinget.dk. Among other things, the Ombudsman describes particulars of how the opening of the Taxation Division will strengthen the institution's monitoring of the tax authorities. He also announces an opening seminar to be held already on 13 January 2017. (...)

15 November

A child cannot be moved from one placement facility to another by means of physical force

A child can only be moved from one placement facility to another if he or she agrees to be moved, as under the applicable rules, a municipality is not entitled to use physical force in such a situation. This is the Ombudsman's conclusion after investigating a specific case.

16 November

Ombudsman recommends that authorities consider training of staff of social care accommodation facilities in use of force

In a social care accommodation facility in eastern Jutland, a young man died last year after being restrained by three staff members. None of the staff of the facility had received any actual training in the use of force.

The Ombudsman's investigation of the case shows, among other things, that there are no rules on training in the use of force in social care institutions.

17 November

Ombudsman's Children's Division to visit centre for unaccompanied underage asylum seekers

At the end of the month, a team from the Ombudsman's Children's Division is due to make the institution's first monitoring visit to a centre for unaccompanied asylum seekers under 18 years.

The visit to the centre – Børnecenter Hundstrup on the island of Funen – will take place in the wake of several cases concerning children in asylum centres which have been covered by the media. However, the visit has no direct connection to these cases, Susanne Veiga, head of the Ombudsman's Children's Division, explains.

21 November

Requests for access to public files must also be processed quickly during holiday periods

Journalists and others are entitled to have requests for access to public files processed quickly – also during holiday periods. This means that authorities cannot ‘close down’ the processing of requests for access to public files in, for instance, July but must ensure that appropriate cover is in place for them to be able to reply to requests within the time limits set out in the Access to Public Administration Files Act.

This is the conclusion of a recent statement from the Parliamentary Ombudsman.

23 November

Children placed in care outside their home do not always have an action plan

Municipalities are required to prepare action plans for children and young people placed in care outside their home. In addition, municipalities are required to provide the facilities in which the children or young people are placed with copies of relevant parts of their action plans. However, this is not always done, the Ombudsman notes following monitoring visits by the Ombudsman’s Children’s Division to a number of 24-hour residential institutions for children in care.

24 November

Seminar to mark opening of Ombudsman’s Taxation Division

The Ombudsman’s Taxation Division will open on 1 January 2017 following a decision by Parliament.

A seminar to mark the opening of the Taxation Division will be held at Christiansborg Palace with participation of a wide range of interested parties.

28 November

Bids for shares in DONG Energy could be kept confidential

The new Access to Public Administration Files Act has made it more difficult to get access to business information, the Ombudsman notes after investigating a complaint from a journalist in connection with the so-called ‘DONG Energy case’.

19 December

Uncertain whether legal guardian can appeal refusal to use restrictive measures

A man who was the legal guardian of his mentally retarded daughter wanted her to be fitted with a GPS tracker to ensure that she would not disappear from the institution where she lived. The municipality denied the father’s wish, and he was later told by the National Social Appeals Board that he could not appeal the municipality’s decision. (...)

An investigation carried out by the Ombudsman shows that it is uncertain how the rule on appeals is to be interpreted, and for this reason, the Ombudsman has no grounds for criticising the Board’s conception of the law. Instead, he has forwarded the question to the Ministry for Children and Social Affairs and notified Parliament in order that they may consider whether the issue is to be clarified by legislation. (...)

20 December

Everybody as a general rule has a right to see their own medical records

In a statement on a case which he has just concluded, the Ombudsman says that the Health Act entitles anybody to access to their own medical records. As a general rule, this also applies to old information.

The case concerned a partial refusal of a request from a woman for access to her own medical records from 1959.

21 December

Allegations of illegal use of force must be investigated thoroughly

During a monitoring visit by the Ombudsman to a local prison, several inmates told the visiting team, independently of each other, of an incident in which a prison guard had got into a rage and, among other things, pushed an inmate down a corridor. The prison management and the Department of the Prison and Probation Service did not investigate the incident in depth before the video surveillance recordings were deleted.

The Ombudsman emphasises that any genuine suspicion of the use of illegal force in local and state prisons must be taken seriously and investigated.

22 December

Authorities are required to help direct citizens to the correct authority

An authority cannot reject a citizen because it is unclear where responsibility lies for the matter about which the citizen has contacted the authority or because the citizen has contacted the wrong authority.

...

'The public sector is complex, and the authorities must help ensure that citizens get in touch with the correct authority', says the Parliamentary Ombudsman, Jørgen Steen Sørensen. (...)

23 December

Ministry stresses obligation to provide sufficient education to children placed in care outside their home

Children and young people who are placed in care outside their home have the same right to education as children and young people living at home. This has now been stressed to all municipalities of the country.

This is a result of the Ombudsman's Children's Division revealing that several in-house schools of residential facilities and institutions did not provide sufficient education – and contacting the Ministry of Education to ensure the proper functioning of municipalities' supervision of the education provided by in-house schools.

28 December

Legislation should be considered in order to ensure that private school pupils are heard

Despite a major information campaign, there are still many pupils at private schools and continuation schools who are not heard before being expelled or removed. The Ombudsman now recommends that the Ministry of Education consider legislating in this respect.

Chapel at Rigshospitalet (Copenhagen University Hospital): Patients who pass away in a department of the Copenhagen University Hospital located at the hospital's main address are taken to this chapel. In the chapel, relatives can say their goodbyes.



CASE NOS. 15/05653 AND 16/00259

Shortly before a monitoring visit to a prison, one of the inmates complained to the Ombudsman. He was dissatisfied because he and another inmate were placed together in a very small cell. The Ombudsman passed on the complaint to the prison, since the prison needed to consider the complaint first.

During the monitoring visit, the Ombudsman's visiting team asked about the complaint and found that the prison did use cells down to 6.9 sq. m as double cells. The cells only allowed space for a bunk bed, a small table and one single chair. According to the rules, double cells must be at least 8 sq. m.

The visiting team recommended that the prison arrange matters so that such small cells were not used as double cells.

The prison now uses larger cells if it is necessary to place two inmates in the same cell.

Before the Ombudsman's visiting teams go on monitoring visits, the staff prepare thoroughly by going through a great deal of written material from the institution they will be visiting, but also by studying previous cases, any media coverage of the institution etc.

On a morning in April, the Ombudsman received a visit from a delegation from the Kyrgyz Ombudsman's office. The purpose was to give a general presentation of the Danish Ombudsman's work, as his staff do a number of times each year.

The conversation was lively, and it was therefore decided to have another meeting a couple of days later. At that meeting, staff from the Ombudsman's International Division gave more details about the Ombudsman's case procedures and explained about the ongoing process of ensuring a fast and flexible case processing with few bottlenecks. After the visit to Copenhagen, the Kyrgyz Ombudsman has begun a process of improving the efficiency of his internal case procedures.

Every year, the Ombudsman receives a number of visits from abroad. The themes of the visits are often the Ombudsman's work and the processing of appeals and complaints. The content and nature of the individual visits can vary quite a bit.

CASE NO. 16/03113

The Bailiff's Court evicted a man from his rented accommodation. The man was not present during the eviction, and his household effects were left to the landlord who subsequently removed them because the Bailiff had said they were worthless.

The man contacted the Danish Court Administration and demanded compensation for the household effects he had lost. The Danish Court Administration refused the claim for compensation, and the man complained to the Ombudsman about the Danish Court Administration.

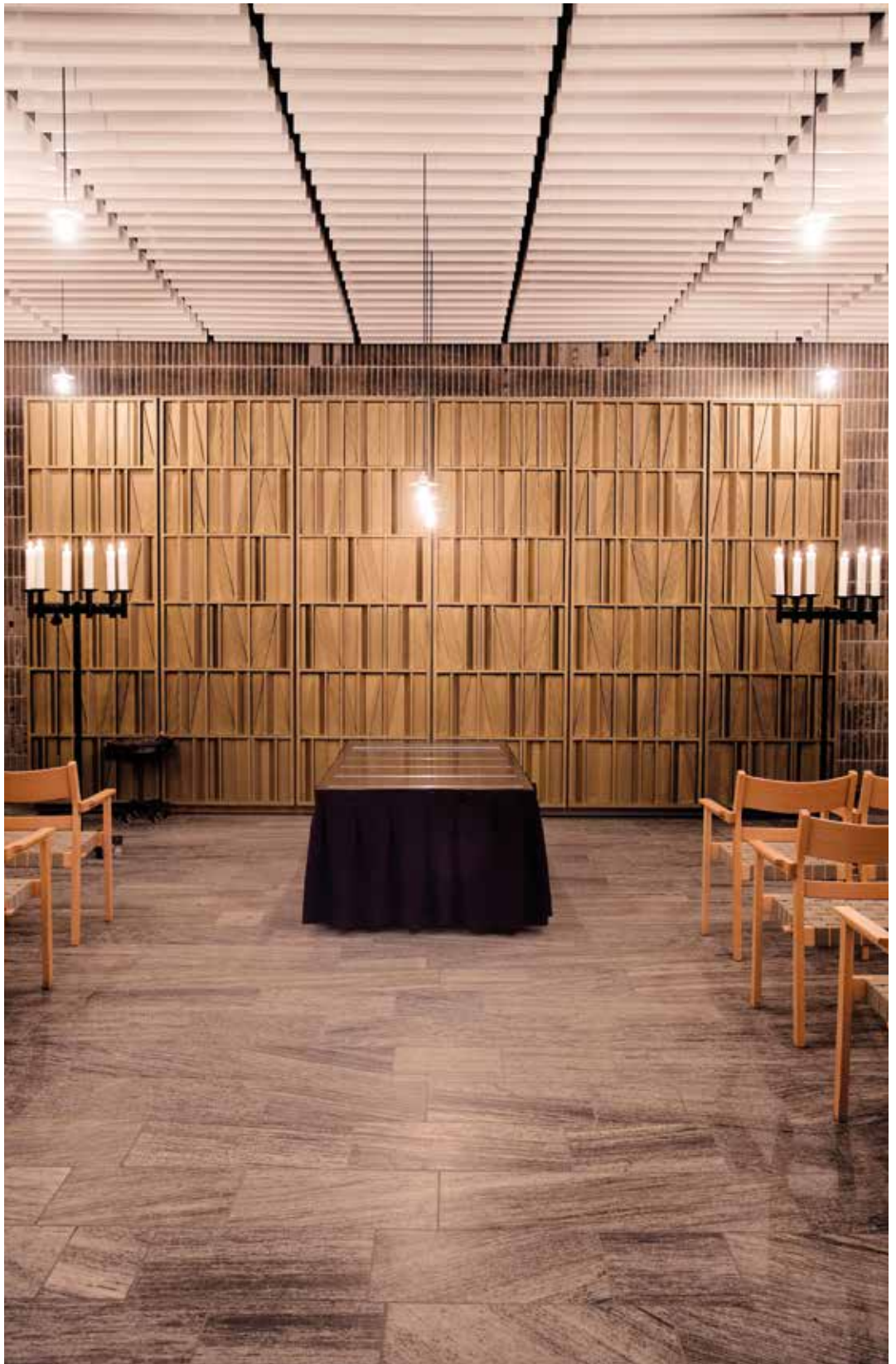
The Ombudsman refused the complaint: The Danish Court Administration was not under his jurisdiction, therefore he could not investigate the complaint

The Ombudsman cannot investigate complaints about sentences, verdicts and the courts of law, including the Bailiff's Court. Likewise, the Ombudsman cannot investigate complaints about the Danish Court Administration.

CASE NO. 16/01462

Only 13 days too late. But the Ombudsman still had to refuse a complaint from a self-employed man who could not get coverage under the Danish rules on social insurance whilst working in another EU country. The Ombudsman had to refuse the complaint because the man had not complained until 12 months and 13 days after he had received the decision from the National Social Appeals Board. Consequently, as more than 12 months had passed since the most recent decision from the authorities, the Ombudsman was barred from investigating the complaint.

The Ombudsman must receive a complaint within 12 months from when the complainant received the authority's decision. The deadline for complaining to the Ombudsman runs from the time of the decision by the highest administrative authority. If the complaint is received later, the Ombudsman cannot investigate it.



The public sector as seen through the lens

'The public sector' is an abstract thing. What does the public sector actually look like? In this Annual Report we have given a photographer a free hand to illustrate the public sector as she sees it. In the years to come, we are going to invite varying photographers to show the public sector as seen through the lens.



Sara Brincher Galbiati. Born in 1981. Trained photo journalist from the Danish School of Media and Journalism. Self-employed photographer. Works for commercial and editorial clients and on her own artistic projects. In July 2016 she published the photo book 'Phenomena' in collaboration with two photographer colleagues.

Sara Brincher Galbiati says: 'This series of pictures shows some of the thousands of temporary residence facilities which are provided by the public sector. Here citizens sleep who are in need of protection, nursing and/or care or who are coercively placed in a locked room to protect other people and property.

They would probably all wish that they had never ended up there, in that situation, in that room. But for society and for the individual citizen it is nice to know that there is a place to go if one should end up in the same situation one day. The pictures show some of the rooms one might end up in through life's journey in Denmark – from birth till death.'