



Annual Report

2014





Published by
The Danish Parliamentary Ombudsman
Gammeltorv 22
DK-1457 København K

Printed by
Rosendahls, Copenhagen
E-mail: distribution@rosendahls.dk

Printed in Denmark 2015

Also available in PDF format
on www.ombudsmanden.dk

Graphic design
Conduce

Photographer
Jasper Carlberg

ISSN 1902-0120

CONTENTS

2014 at the Ombudsman institution Jørgen Steen Sørensen, Parliamentary Ombudsman	8
Organisation	20
The regulation on ministerial advice and assistance – one year on Lise Puggaard, Special Legal Advisor, Division 1	40
The Esbjerg Case – severe criticism following a monitoring visit Mette Kildegaard Hansen, Legal Case Officer, Children's Division	48
Invisible help from the Ombudsman Kirsten Talevski, Senior Head of Division, Division 2	56
Tolerated residence status – behind the case Morten Engberg, Senior Head of Department, Monitoring Department	64
Facts and figures about our monitoring activities	70

THE YEAR IN BRIEF

The year in figures	99
Statement of revenue and expenditure – 2014	113
Summaries of selected statements	117
News published in 2014	155



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 2014.

Copenhagen, March 2015

A handwritten signature in blue ink, appearing to read 'J. Steen Sørensen'.

JØRGEN STEEN SØRENSEN

2014 AT THE OMBUDSMAN INSTITUTION



Jørgen Steen Sørensen
Parliamentary Ombudsman

Until now, the Ombudsman's Annual Report has been published at the beginning of October in the year following the report year. This is late.

With effect from the report year of 2014, the process has successfully been moved forward so that the Report will now be published already in April of the following year. We are very pleased with that. Hopefully, it will help make the Annual Report even more topical and relevant.

WHAT HAS CHARACTERISED THE INSTITUTION IN 2014?

Like any other year, 2014 at the Ombudsman institution was characterised by a multiplicity of tasks. The ongoing complaint cases, own-initiative cases, monitoring visits, the children's sector, international cooperation, and optimising the institution's work methods are just some of them.

But when we ourselves look back on 2014, we probably think of two things in particular.

One of them is the new Access to Public Administration Files Act which came into force on 1 January 2014. The Act is a corner stone of an open society, and the Ombudsman is really the last stop on the way as independent safeguard for compliance with the Act. It has therefore been important to us to make a good start, and we made thorough preparations all through the latter part of 2013. Among other things, we established a new concept for the way in which we process the cases.

There has been a long range of new questions to decide on for both the authorities and the Ombudsman. However, the authorities have exerted themselves regarding the correct use of the Act and the fast processing of requests for access to files. The latter is after all a prominent requirement under the new Act, particularly for the sake of the media.

The percentage of criticism in access request cases – meaning the percentage of investigated cases resulting in criticism or recommendation – has been high, namely about 50. In comparison, 2014 showed a percentage of about 30 in general cases involving criticism. First and foremost, this must be seen as an indication that the new Act is difficult and that many problematic issues must find their own level. Contributing to this development will be an important task for the Ombudsman institution over the coming years.

When the Act came into force, we were determined that, in line with the authorities, we will be quick. We set the target that complainants must have a reply within 20 working days after their case is ready for assessment. For complicated cases the target is 40 days. Our average case processing time in 2014 was about 22 days, and we are very happy with that.

The undoubtedly most controversial provision in the new Act is the so-called regulation on ministerial advice and assistance in section 24. In a separate article in this Annual Report, Special Legal Advisor Lise Puggaard describes the principal problems which this regulation has caused so far.

In-house, the second big theme in 2014 was an extensive restructuring of the Ombudsman institution and the introduction of new methods for operational control, etc.

In the 2013 Annual Report, I have described the underlying principles – not least the regard for a fast and efficient processing of the citizens' cases – and we are now well underway with the practical implementation. The only major element of the new management system which we did not achieve in 2014 was the establishment of a concept for management by objectives and results. This will be completed in the course of 2015, taking us far along the road towards the overall modernisation of the Ombudsman institution that we began a couple of years ago.

In addition to this, we have been working on methods that will resolve cases more efficiently and informally than by draining and resource-intensive investigations – for example by passing along clearly well-based complaints to the authorities to see if they will consider the case one more time. In another article

in this Annual Report, Senior Head of Division Kirsten Talevski also describes various ‘smart’ ways of resolving cases.

We also try to be very mindful of when cases can be discussed with the authorities directly responsible – for example the relevant municipality – and when they should be raised to a high level.

In the 2012 Annual Report, for example, we described how the Use of Force Committee under the Ministry of Children, Gender Equality, Integration and Social Affairs was set up because we raised a number of specific questions on the use of force towards children and young people, not with the individual residential institutions, etc. but with the relevant interdisciplinary ministry.

There was a corresponding example in 2014 when we contacted the Ministry of Finance (and the Ministry of Justice) and raised the very significant problem that public IT systems are often not designed to take account of basic administrative law requirements. This not only contravenes the legislation but is also a serious problem in terms of legal protection. The Ministry of Finance took this very seriously, and a number of measures have now been implemented to prevent these problems (Annual Report 2014, Case No. 2014-34).

THREE HIGH-PROFILE CASES

One thing is what we in our institution see as having taken up space in the report year. Another thing is what has drawn particular public attention. One case which received considerable press coverage was the so-called Adam Holm case (Annual Report 2014, Case No. 2014-12). The case concerned *freedom of speech for employees at the Danish Broadcasting Corporation (DR)*.

In his private capacity, a DR TV programme presenter, Adam Holm, wrote a feature article in a daily newspaper, Politiken. In the article, he made very negative comments on religion and religious people with basis in the tragic death of a young acquaintance.

DR got it all wrong from the start in this case. Adam Holm was reprimanded and told at the same time that in future he would need permission from DR if he wanted to express his personal opinions in public. Both reactions were unlawful, and the latter was even in the nature of unconstitutional censorship. We expressed our sharp criticism of DR’s actions, and DR had withdrawn both reactions even before our criticism.

However, we were left with a more fundamental problem. On one hand, DR employees – as do other public employees – have an extensive freedom of speech as long as they use it as private persons. On the other hand, DR is subject to a fundamental legal obligation to be objective and unbiased in its news coverage. Will the public be able to trust DR when, for example, Adam Holm one day as a private person condemns faith and religion in a feature article and the next day in his capacity of programme presenter acts as DR's public face in an objective and unbiased discussion of the same issue?

It is effectively a dilemma. As a matter of fact, DR already has guidelines in place for this issue which aim at achieving a balance between the conflicting interests and which we in this case accepted in principle. If only DR had followed its own guidelines, it would have been unlikely that the case turned out so wrong. But it did.

The outcome of this particular case was that DR withdrew all its management reactions towards Adam Holm, and at the same time DR explained to him – with the future in mind – which specific parts of the feature article that had to be considered problematic for DR's credibility with regard to objective and unbiased news coverage. So the slate was wiped clean, and DR initiated changes in organisation and procedure in order to avoid similar mistakes in the future.

One can hope that the Adam Holm case has helped create more clarity and reflection, but there can hardly be any doubt that we are faced with a considerable problem. Not least in this age of the social media, there is – also for journalists – a very short distance between thought and word, and it is sometimes a difficult line that has to be drawn. DR must be able to safeguard legitimate regards for objectivity and impartiality in its news coverage, even if this entails certain restrictions in the private opinions that a prominent programme presenter may publicise. However, freedom of speech must always be the central element on which such safeguards are based. And safeguarded with a considerably more steady hand than in Adam Holm's case.

On quite another theme, there was the so-called MRSA case (Annual Report 2014, Case No. 2014-8) on whether or not access should be granted to *a list of pig farms infected with penicillin-resistant staphylococci (MRSA)*.

Was it possible to get access to this information based on the Act on Access to Public Administration Files and the specific Environmental Information Act? The journalists who requested access to the information thought that it was important for the public to know where the infected herds are. However, there were opposing interests – for example the concern that the farmers and their

families could be unnecessarily exposed and stigmatised in their local communities.

The Environmental Information Act gives a particularly broad access to public administration files, and though the concern not to expose the farmers and their families to stigmatisation was valid and important, it was not sufficiently proven that this would in actual fact be the result of granting the access. It also played a part in our legal assessment of the case that the mere fact that a herd is infected does not mean that the farmer and the farmer's family are too.

The food safety authorities accepted our statement and decided to give access to the documents. However, at the same time they decided to suspend the actual release of the information. Their grounds were that the Danish Agriculture and Food Council (representing the farming and food industries of Denmark, including businesses, trade and farmers' associations) had brought a legal action against the authorities, claiming that the information should not be released and at the same time applying for a delaying effect pending the proceedings.

This was a quite exceptional situation, and the authorities were, so to speak, being squeezed between the Ombudsman and the courts of law. Can a public authority suspend access to files solely on the grounds that legal action has been taken and delaying effect applied for? And moreover, after the Ombudsman has been involved in the case? But on the other hand, can the authorities ignore legal proceedings and just hand over the documents? The damage will, after all, be irreversible if the courts reach the conclusion that the documents are *not* subject to the right to access after all.

In this particular case, we decided to let the authorities' decision of suspension stand. The reality was that we would be forestalling the decision regarding a delaying effect which the courts were about to make, and this was, in addition, a case involving very complex legal issues and strong interests.

So can public authorities in future just refuse access because somebody succeeds in bringing a legal action before the information has been handed over? No, they cannot. However, I doubt that we will be seeing this problem very often – I do not think that we have ever encountered it before – and if we do, it must be resolved in the light of the specific circumstances. But it does illustrate an unusual aspect of the relationship between the Ombudsman and the courts of law.

A third case which dominated headlines concerned *cost-cutting plans for children placed in care at Guldborgsund Municipality* (Annual Report 2014, Case No. 2014-9).

From an anonymous whistleblower at the municipality we received an internal cost-cutting plan which prepared the ground for marked reductions of municipal costs. The cost savings would be effected, among other things, by taking back 30-40 per cent of the children placed in foster care families. It did not appear from the plan how this was going to be carried out within the framework of the law (the Children's Reform Act, to mention one).

It is perfectly understandable that economically hard-pressed municipalities are searching for ways of cutting costs. But this was a case which had to cause real concern that the price of cutting costs would be a disregard for the basic rights of disadvantaged children. We had to give a serious warning, and the municipality said that the cost-cutting plan had not been and would not be carried out.

The case is clearly an expression of a general problem in the municipalities which find it difficult to match economy and duties together, but this is not a problem which the Ombudsman can solve. As long as the municipalities stay within the law, they are quite free to adjust for example service levels upwards or downwards. But no cost-cutting needs can authorise a breaching of the law – least of all when the conditions of disadvantaged children are at stake. In future, this will be one of our focus areas as well.

Overall, the children's sector is a high priority at the Ombudsman office, also by virtue of our Children's Division. In a separate article in this Report, Legal Case Officer Mette Kildegård Hansen recounts some children's cases from Esbjerg Municipality which drew much public attention.

IMPORTANT CASES WHICH DID NOT DRAW HEADLINES

It can be difficult to foresee which cases will elicit great coverage and which cases do not capture the public's attention. Cases which we feel should attract a wide interest may sometimes disappear quickly from the stage. And vice versa with regard to cases which in our opinion do not contain much in the way of important principles.

I am going to mention a couple of cases in the first category from the reporting year; meaning cases which attracted little attention but which actually touched on important issues.

A sensitive issue within the domain of immigration and refugee policy is how to deal with *foreign national children who want to return to Denmark after having*

been on, for example, re-education stays in their native country. In these cases, the child's residence permit will have expired, but the authorities can grant an exemption or give the child a new residence permit.

On the basis of a Supreme Court judgment from November 2012 and on our own initiative, we raised the question of the authorities' practice in these cases – especially with the aim of ensuring that this practice complies fully with the European Convention on Human Rights. This led to an adjustment of the authorities' practice so that the assessment is now less rigid and relies particularly on a concrete assessment of the extent to which the child has been formed by Danish society already before the re-education period abroad.

These are questions which are important to the life and fate of quite a few children. However, the case did not receive much attention. Maybe it lacked a particular child to be its 'face'. Maybe the case was associated too much with dry, administrative practices and too little with the fate of people. But the fate of people was precisely what it was all about (news item of 1 September 2014).

Another case concerned the conditions for live-born but inevitably dying infants who had been born after an abortion or as extremely early births (Annual Report 2012, Case No. 2012-10). This was a case we raised back in 2011 after press coverage of how these children in some cases were left to die alone in the sluice rooms of the hospital maternity wards.

The case gave rise to a lengthy dialogue between the Ombudsman and the health authorities, and in the autumn of 2013, the result became that all Danish maternity wards now have precise instructions on how to care for the child in the time it is alive. Nothing can change the fact that this is a grievous situation, and it can be unbearable just to contemplate that children die a few hours after they are born. But hardly anyone would dispute that the children shall have all the care, warmth and dignity they can get in their short lives. This has now been ensured, as indicated, following dialogue with the responsible health authorities (news item of 25 February 2014).

This case did not garner much attention in the media either, and one may ask why that is. Was it for example because under the circumstances, the best solution had been found, and it had come about as a result of an exemplary cooperation between the Ombudsman and the authorities? Is the answer quite simply that cases involving conflict and strife provide an easier gateway to the media than cases where difficult issues find good solutions? Or was this also caused by the lack of a specific 'story'?

Obviously, I am not complaining about the lack of attention for some of those ombudsman cases which we really feel deserve the coverage because of the fundamental problems involved, and of course we must always ponder whether our own presentation of the cases has been good enough. But the point is that we, also out of the media headlines, process many cases with wide-ranging perspectives for the individual person.

COOPERATION WITH CHINA

It has for many years been an important part of the Ombudsman institution's work to assist countries around the world when they wish to adopt a form of the ombudsman concept or to work overall with legal rights for their citizens.

In the 2013 Annual Report, we recounted how a new agreement with the Ministry of Foreign Affairs provides us with a better framework for this activity. We also described various current cooperation projects involving, among others, China.

In 2014, we again invested a lot of resources in the cooperation with China on the basis of those memoranda of understanding which we signed in 2013 with two central Chinese ministries (Ministry of Supervision and the State Bureau for Letters and Calls). It is an essential element of the memoranda that the Chinese wish to learn more about the Danish Ombudsman institution and Danish administrative culture.

The cooperation has a high priority with the Chinese authorities, and during a renewed visit to Beijing in June 2014, I had the opportunity to meet, among others, Mr Wang Qishan, a member of the Politbureau's Standing Committee and one of China's top leaders. His particular responsibility is anti-corruption measures and good administrative practice, and he indicated that China has much to learn from Denmark.

And in November, a Chinese delegation headed by Minister Shu Xiaokin visited Denmark and had – in addition to the Ombudsman institution, the Parliamentary Chairman and the Minister of Foreign Affairs – the opportunity to visit both central and local Danish authorities. Among other things, it was thought-provoking to see how impressed a minister in a country with 1.3 billion citizens could be with a citizens' advice centre in the municipality of Elsinore. The Danish public administration has its problems, but seen from an international perspective it is a role model. We should not forget that.

As to what concrete results the cooperation will bring, time will tell. But if the Danish Ombudsman institution is able to play just a small part in supporting a beneficial development in China, then the effort is well-spent.

A COMMENT REGARDING PEOPLE UNDER TOLERATED RESIDENCE STATUS

We dealt with far more in 2014 than space allows me to mention in this article. From conditions in Greenland's police cells to internet pillorying of health care professionals. From the use of force towards children at psychiatric wards to the government's information campaign regarding the Unified Patent Court.

It is always difficult to say what has made the biggest impression in a report year – that would often be like comparing pears and bananas. But very high up on my own list you will find our case on the conditions for persons under tolerated residence status at the asylum centre 'Center Sandholm' (Annual Report 2014, Case No. 2014-42). Senior Head of Department Morten Engberg gives an account of the case in a separate article in this Report.

This is a case about people who have no right to be in this country but who cannot be sent home either. For example because they risk execution or torture. They are unwanted in Denmark, but they are our responsibility. They live at 'Center Sandholm' indefinitely and in conditions which can only be described as very stressful and restrictive for a normal life.

They have to reside at 'Center Sandholm'. They have a duty to report to the police, usually on a daily basis. Their physical living conditions are poor. They are not allowed to work. They have very limited financial means at their disposal. They are to a large extent barred from making their own food and deciding what and when to eat. Their lives are very constricted. And contrary to prison inmates, they do not know when this will end. Or *if* it will end.

There are no easy solutions, and there is undoubtedly a need for various forms of supervision of these people.

But there is reason to take a deep breath and think the system through based on all relevant regards – also those of universally human and humanitarian considerations. We have a deeply rooted principle that society should not give people harsher living conditions than those made necessary by relevant circumstances. The question is whether we can say in good conscience that this is also the case here.



Case No. 14/02772

A woman applied on her father's behalf for personal supplementary allowances for, among other things, organic food, vitamin supplements and warm water swimming, but the municipality rejected the application. When, on the last day of the deadline for complaints, the woman went to the municipality to complain about the rejection, there was a long queue, and a guard told her to deposit her complaint in the municipal letter box. Unfortunately, it turned out that the letter box was not emptied until after the deadline for complaint had expired. This meant that the National Social Appeals Board rejected the complaint.

The woman complained to the Ombudsman who sent the case on to the National Social Appeals Board to find out if the Board could overlook that the complaint deadline had not been observed. The Board decided to consider the complaint after all but was largely in agreement with the municipality that the woman's father could not get the personal allowances. However, the Board did ask the municipality to have another look at the question of warm water swimming.

The Ombudsman cannot consider a complaint until the administrative channels of complaint have been exhausted.

Case No. 13/00228

A woman in a flex job wanted to move to another municipality. She applied well in advance to the new municipality for a flex job there but did not receive any guidance on her rights. She then resigned from her flex job in the old municipality and moved.

The woman got neither a new flex job nor the special unemployment and sickness benefit for people on the flexible job scheme because the new municipality considered her unemployment to be voluntary. The woman complained to the Ombudsman, who asked the Employment Appeals Board to consider whether the woman had received adequate guidance from the municipality. When the Employment Appeals Board was closed down, the case passed to the National Social Appeals Board, which came to the conclusion that the municipality ought to have given the woman better guidance. Consequently, the National Social Appeals Board changed the municipality's decision so that the woman was entitled to the special unemployment and sickness benefit.

45 per cent of the cases which the Ombudsman concluded in 2014 were particularly concerned with the contents of decisions made by public authorities.

Case No. 14/02018

Three unmanned motorway service areas were visited by a monitoring team from the Ombudsman in order to check whether toilets for the disabled and other facilities matched the requirements for accessibility for the disabled.

A report pointed out some problems regarding the accessibility of the toilets for the disabled for, among others, wheelchair users and people with reduced strength in their arms and hands. Another problem was that it was difficult to find on the Road Directorate's homepage a list of service areas with toilets for the disabled.

The Road Directorate, who is responsible for the service areas, took steps to rectify the shortcomings. In addition, the Road Directorate decided to carry out an inspection of all unmanned motorway service areas in order to ensure better accessibility.

The Ombudsman monitors accessibility for the disabled in public places – partly to follow developments in this sector and partly to draw attention to specific faults and shortcomings.

Case No. 13/04337

In 2010, it came to the Ombudsman's attention that the Food and Veterinary Complaints Board of the Ministry of Food, Agriculture and Fisheries was experiencing a sharp increase in the number of complaints about agricultural subsidies, and that the expected case processing time had risen to as much as almost two years. The Ombudsman decided to start an own initiative case on the matter and asked the Ministry's Department to inform him of any measures taken or planned to bring down the case processing time. He also asked the Department to keep him informed of developments.

Subsequently, the Ombudsman received regular updates from the Department on developments in case processing times at the Food and Veterinary Complaints Board. In April 2014, the Department was able to inform the Ombudsman that the average case processing time had dropped from about 12 months to about five months since March 2013. In the light of this development, the Ombudsman closed the case concerning the Food and Veterinary Complaints Board of the Ministry of Food, Agriculture and Fisheries.

The Ombudsman has set specific targets for his own case processing times. One of those targets is that 75 per cent of substantively investigated complaint cases are concluded within six months. This target was met in 80 per cent of these cases in 2014.

Case No. 14/02518

It was not all right to experiment with the approved treatment methods, a disability care worker with a respirator patient learned. First the hospital's respirator centre took away his license to function as a respiratory care assistant and subsequently, he was fired and turned away by the temping agency where he was employed.

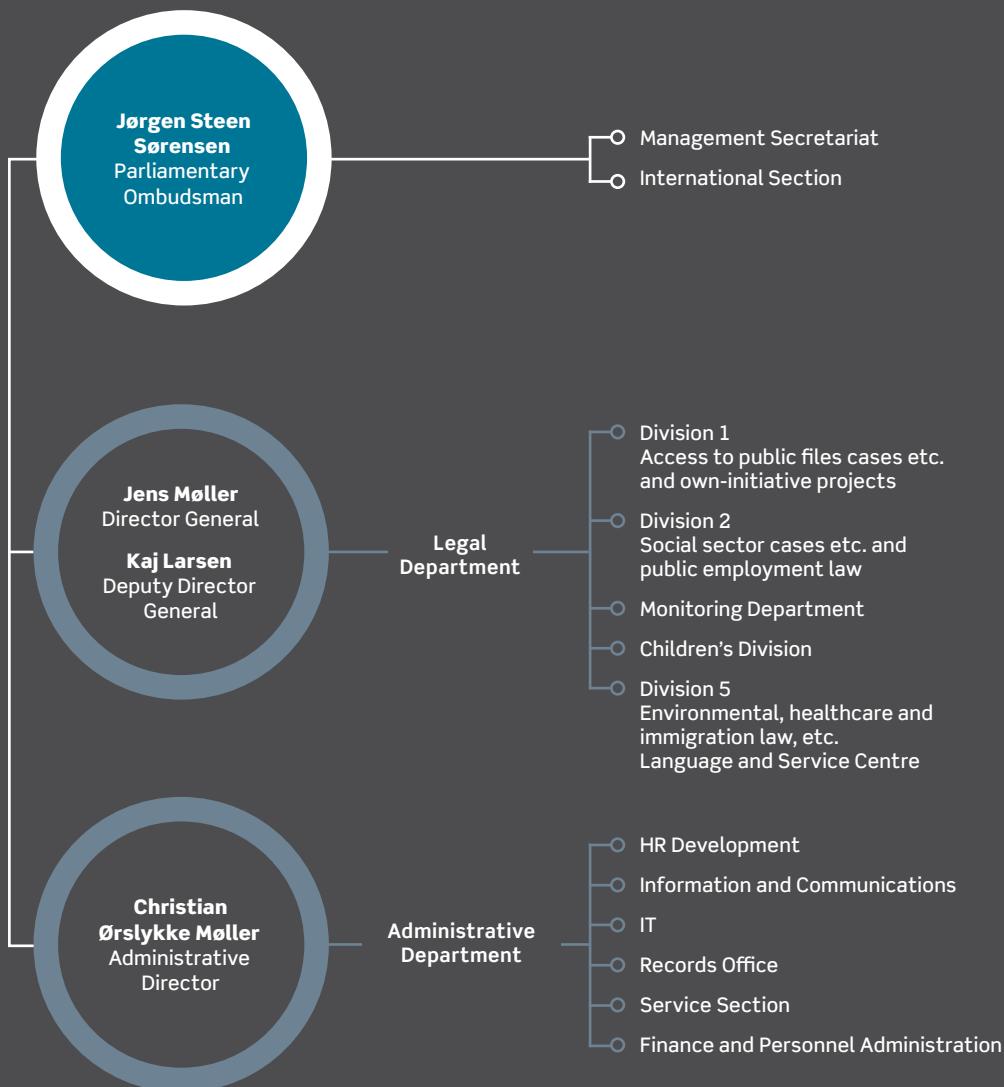
The disability care worker complained to the hospital but the hospital refused to change its point of view. A renewed complaint likewise led nowhere. By the time the disability care worker complained to the Ombudsman, more than a year had passed since the hospital's first reply. Because the hospital in its second reply had only referred to what it had written earlier, the Ombudsman had to reject the complaint as time-barred.

If you wish to complain to the Ombudsman about a decision, you have to do so within 12 months – so stipulates the Ombudsman Act.

ORGANISATION

MANAGEMENT

DEPARTMENTS





Jens Møller
Director General

Kaj Larsen
Deputy Director General

Jørgen Steen Sørensen
Parliamentary Ombudsman

Christian Ørslykke Møller
Administrative Director

As at 31 December 2014



MANAGEMENT SECRETARIAT AND INTERNATIONAL SECTION



Jens Olsen, Director of International Relations
Christian Ougaard, Special Legal Advisor
Jannie Svendsen, Executive Secretary
Jon Andersen, Chief Legal Advisor
Jacob Berner Moe, Special Communications Advisor
Axel Crüger, Student Assistant

As at 31 December 2014



DIVISION 1
- ACCESS TO PUBLIC FILES CASES ETC.
AND OWN-INITIATIVE PROJECTS





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
Janne Lundin Vadmand, Legal Case Officer
Karina Sanderhoff, Legal Case Officer
Kirsten Broundal, Legal Case Officer
Martin Reinseth, Legal Case Officer
Pi Lundbøl Stick, Legal Case Officer
Christian Nikolaj Søberg, Legal Student Assistant
Mikkel Lindberg Laursen, 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

As at 31 December 2014

DIVISION 2 – SOCIAL SECTOR CASES ETC. AND PUBLIC EMPLOYMENT LAW



Kirsten Talevski, Senior Head of Division
Susanne Veiga, Head of Division
Marjanne Kalsbeek, Deputy Head of Division
Elizabeth Bøggild Nielsen, Special Legal Advisor
Ann Thagård Gregersen, Legal Case Officer
Camilla Bang, Legal Case Officer
Linette Granau Winther, Legal Case Officer
Nina Melgaard Ringsted, Legal Case Officer
Pernille Helsted, Legal Case Officer
Peter Kersting, Legal Case Officer
Nina Mojaza, Legal Student Assistant
Trine Louise Mågård Hansen, Legal Student Assistant

Core responsibilities

- Social security and labour market law
- Public employment law

As at 31 December 2014



MONITORING DEPARTMENT



Morten Engberg, Senior Head of Department
Erik Dorph Sørensen, Deputy Head of Department
Stine Marum, Deputy Head of Department
Rikke Ilona Ipsen, Special Legal Advisor
Camilla Schroll, Legal Case Officer
Klavs Kinnerup Hede, Legal Case Officer
Marta Warburg, Legal Case Officer
Mette Vestentoft, Legal Case Officer
Sofie Hedegaard Larsen, Legal Case Officer
Ulrik í Hjöllum, Legal Case Officer
Anders J. Andersen, Disability Consultant, MA (Laws)
Jeanette Hansen, Senior Administrative Assistant
Adam Fussing Clausen, Legal Student Assistant
Rune Werner Christensen, 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

As at 31 December 2014

CHILDREN'S DIVISION



Bente Mundt, Head of Division
Mette Ravn Jacobsen, Deputy Head of Division
Irene Rønn Lind, Special Advisor on Children's Issues
Hanne Nørgård, Legal Case Officer
Mai Vestergaard, Legal Case Officer
Mette Kildegaard Hansen, Legal Case Officer
Morten Bech Lorentzen, Legal Case Officer
Christopher Gjerding, 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
- Day-care 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

As at 31 December 2014



DIVISION 5

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





Johannes Martin Fenger, Head of Division
Jørgen Hejstvig-Larsen, Deputy Head of Division
Vibeke Lundmark, Deputy Head of Division
Cecilie Boel Winther, Legal Case Officer
Christoffer Bruus, Legal Case Officer
Kresten Gaub, Legal Case Officer
Kristine Holst Hedegaard, Legal Case Officer
Lykke Leth Nielsen, Legal Case Officer
Tina Andersen, Legal Case Officer
Christian Degnbøel Østergaard, 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 Assistant
Marianne Anora Kramath Jensen, Senior Language Assistant

Core responsibilities

- Translation (English and German)
- Proofreading
- Contact to interpreters
- Production data
- Acknowledgement of complaints
- Coordination of visitors and meetings

As at 31 December 2014

**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

Information and Communications

Karen Nedergaard, Head of Information and Communications
Eva Jørgensen, Senior Communications Officer
Julie Gjerrild Jensen, Senior Communications Officer
Birgit Kehlet-Hansen, Senior Library Assistant

IT

Seyit Ahmet Özkan, IT Administrator
Uffe Larsen, IT Officer
Sonny Manjit Singh, IT Student Assistant

**Records Office**

Carina Haar Hillbrandt, Head of Records
Lisbet Pedersen, Senior Records Officer
Denise Schärfe, Senior Records Assistant
Harriet Lindegaard Hansen, Senior Records Assistant
Olga Bardenshtein, Senior Records Assistant

Service Section

Jeanette Schultz, Head of Service
Flemming Wind Lystrup, Service Assistant
Niels Clemmensen, Service Assistant
Annitta Lundahl, Housekeeper
Charlotte Jørgensen, Housekeeper
Kirsten Morell, Housekeeper
Suphaporn Nielsen, Housekeeper
Susanne Pedersen, 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

As at 31 December 2014

Case No. 14/02416

A father was of the opinion that there was no objectivity in a notification from a municipal family counsellor who had described him as controlling, manipulative and aggressive. The family counsellor was worried that the two small children in the family would experience problems due to their parents' tumultuous relationship.

The Ombudsman wrote to the father that he was unable to do anything about the family counsellor's notification concerning the children: A public employee is obliged to react if he or she assesses that a child needs help. The Ombudsman also wrote to the father that he could lodge a complaint with the mayor regarding the notification's content and form.

Complaints concerning children and young people are usually processed at the Ombudsman's Children's Division. In 2014, the Children's Division opened 765 complaint cases. 37 cases were opened following complaints from children and young people under 18.

Case No. 14/00217

A father contacted the Employees' Guarantee Fund (Lønmodtagernes Garantifond, LG) for guidance on how his daughter could get the wages her former employer owed her. As the father understood it, the reply was that his daughter should have the employer declared bankrupt first. However, it later turned out that the daughter could not get her money from the Fund because she had not made the claim in due time.

The Ombudsman sent the case on to the Customer Ambassador of ATP, the Labour Market Supplement Fund Scheme, as a complaint about the guidance the father had received. The Customer Ambassador made the Fund have another look at the case – and as there was some doubt as to the exact nature of the guidance given by the Fund in the case, the daughter received the wages owed to her.

The authorities' case processing and case processing time was the main subject of approximately one third of the complaint cases concluded by the Ombudsman in 2014.

Case No. 14/03532

A 13-year-old boy complained to the Ombudsman because his parents were invading his privacy by coming into his room without knocking, even though he had asked them not to.

The Ombudsman cannot consider complaints from children about their parents. A case officer from the Ombudsman's Children's Division called the boy on the boy's mobile phone and told him that the Child Helpline at the humanitarian organisation Children's Welfare would be able to advise him on this particular problem.

By far the majority of the Ombudsman's case processing is in writing but complaints from, among others, children and young people may sometimes be resolved over the telephone.

Case No. 14/04034

According to himself, a man had sent 439 e-mails to various employees and politicians at the municipality – many of them identical. The man was dissatisfied with the decisions taken by the municipality in regard to his daughter who was placed in care.

The municipality spent a lot of time answering the man's e-mails and, in consequence hereof, the municipality wrote to him that in the course of the next six months he could only communicate with a specific employee at the municipal administration whereupon the employee would go through his e-mails once a month and answer them, if there were any new issues in the matter.

The Ombudsman could not criticise that the municipality had chosen to set priorities for its resources this way. He referred to a case from the Ombudsman's Annual Report for 2010 with a similar decision.

Each year the Ombudsman selects a number of cases of essential and general public importance as part of his Annual Report to Parliament regarding his activities. In 2014, 43 cases were selected. Summaries of the cases can be found on pages 117-152.



Case No. 14/00029

A debt collection prompted a car owner to lodge a complaint: He had booked a car valuation on the internet, but had regretted and cancelled within two weeks which he considered his right. However, the company that sold the car valuation maintained that he should pay and wrote to him that they considered taking legal action.

The media had mentioned the Danish Consumer Ombudsman in connection with internet-based car valuation companies. The car owner was not aware that there are two ombudsmen, and consequently the Parliamentary Ombudsman received his complaint about the car valuation by mistake.

The Danish Parliamentary Ombudsman could not process the complaint, and he passed it on to the Danish Consumer Ombudsman.

The Ombudsman cannot investigate complaints against private enterprises and private citizens.

THE REGULATION ON MINISTERIAL ADVICE AND ASSISTANCE - ONE YEAR ON



Lise Puggaard
Special Legal Advisor, Division 1

The new Access to Public Administration Files Act was passed after intense debate both in and out of the Parliamentary Chamber. Discussions became really heated whenever the subject was the provisions which especially journalists feared would lead to considerable restrictions in the access to information. The most controversial provision was, and probably continues to be, the so-called regulation on ministerial advice and assistance.

Experience with the new Act is fairly limited. Therefore, no firm conclusions can be drawn on the basis of the relatively few cases regarding section 24 of the Act which the Ombudsman has processed. However, the first year with the new Act indicates that the provision leads to genuine restrictions in the access to information. Still, the preliminary experience also shows that the provision is *not* the trump card which always clears the table.

In order to get a better overview of the central administration's use of the provision, the Ombudsman initiated an investigation in October 2014 of the ministries' use of the controversial regulation on ministerial advice and assistance.

WIDENING OF THE CLOSED DOMAIN

In short, the purpose of the regulation on ministerial advice and assistance is to secure confidentiality in regard to the political decision-making process. Pursuant to the former Access to Public Administration Files Act, documents which were exchanged within the same authority, for instance within a department, could be exempted from access on the grounds that they were internal. This was out of regard for the internal political decision-making process. Such documents are still exempted from access pursuant to the new Access to Public Administration Files Act.

But the regulation on ministerial advice and assistance goes further than that. It widens the domain for the protection of the political decision-making process by stipulating that the right to access also does not include documents and information exchanged between a ministry's department and its subordinate authorities or between ministries when there is actual reason to believe that a minister has or is going to have a need for advice and support from the Civil Service.

There are exceptions, but the regulation basically protects the ministries' political activities.

The legislative history cites as examples situations where government officials give the minister advice on potential political problems in a case, draw up bills and replies to parliamentary questions or help a minister prepare and implement political initiatives.

THE REGULATION ON MINISTERIAL ADVICE AND ASSISTANCE LEADS TO RESTRICTIONS

So the question is, what has actually happened after the Act took effect on 1 January 2014. Were the critics right that the regulation on ministerial advice and assistance was going to be a massive infringement of transparency, or were the supporters right that the regulation did not lead to the collapse which was feared by many, but instead to reasonable and relatively limited restrictions?

In 2014, the Ombudsman institution closed 14 cases with an issue pertaining to section 24. Some were turned down, for instance because an administrative channel of complaint had not been exhausted, or because the authority reopened the case after the Ombudsman's hearing. In six cases, the Ombudsman made a formal investigation and gave a statement. Common to the six cases is that we were not really in any doubt as to whether section 24 was applicable to the exempted documents and information.

The Prime Minister's Department, for example, refused access to memos on ministers' use of the social media (Case No. 14/03694). The Ombudsman agreed that the memos *clearly* appeared as written and exchanged in regard to ministerial advice and assistance. The memos were exchanged between ministries and, besides, written a couple of years before the new Access to Public Administration Files Act. Therefore, the case also shows that even if a document was written before the new Access to Public Administration Files Act

came into force, it can still be caught by the regulation on ministerial advice and assistance and declared exempt from access pursuant to this provision.

In another case (Case No. 14/03537), the Danish Defence Intelligence Service had written a summary of Norwegian and Swedish law prior to the first reading of a bill on the Danish Defence Intelligence Service. The summary was made on request from the Ministry of Defence which expected requests for information about conditions in other countries during the reading of the bill. The Ombudsman could not criticise the Ministry's perception that there was an actual reason to assume that the Minister of Defence needed or was going to need advice and support from the Civil Service. So this document also came within the Act's definition of the regulation on ministerial advice and assistance.

In the case regarding the Danish Customs and Tax Administration (SKAT) (Annual Report 2014, Case No. 2014-14) which is described in more detail below, the Ombudsman had no doubts either that this was also a matter of a ministerial advice and assistance document.

It may be that (some of) the documents in question similarly could have been exempted pursuant to the former Access to Public Administration Files Act. For instance, if it could be determined that the document was written for the purpose of a ministerial meeting (section 10(i) of the previous Act) or if the conditions for using the Act's so-called 'catch-all' provision (section 13(1)(vi)) were fulfilled.

Nevertheless, there is no doubt that the conditions which, pursuant to the previous Act, had to be fulfilled in order to exempt the documents and information which are now covered by section 24 were more narrow, and the assessment pursuant to the 'catch-all' provision very much based on an estimate. According to section 24 of the new Act, the authorities do not have to make this assessment.

Based on this, the cases mentioned exemplify that the regulation on ministerial advice and assistance can lead to actual restrictions on the access to information.

THE REGULATION ON MINISTERIAL ADVICE AND ASSISTANCE DOES NOT ALWAYS CLEAR THE TABLE

But there are also limits to the 'effectiveness' of the provision. Thus, several examples show that other regulations can 'trump' the regulation on ministerial

advice and assistance. For instance, the regulation cannot be used in cases about access to environmental information, as these cases must be decided pursuant to the Environmental Information Act, meaning that it is the *previous* Access to Public Administration Files Act which applies.

This was put to the test in a case (Annual Report 2014, Case No. 2014-27) where a journalist had complained to the Ombudsman because the Ministry of Transport had denied access to documents about the transfer of the Danish Coastal Authority from the Ministry of Transport to the Ministry of the Environment. The request for access was denied with reference to precisely the regulation on ministerial advice and assistance.

According to the Ombudsman, a great deal spoke in favour of the information on the Danish Coastal Authority's transfer of responsibility falling under the very wide concept of 'environmental information'. This meant that the regulation on ministerial advice and assistance was not applicable. The Ombudsman recommended that the Ministry of Transport reopen the case and make a new decision pursuant to the Environmental Information Act. Subsequently, the Ministry made a new decision and gave the journalist full access to the desired information.

In this case, section 24 was not applicable at all.

Another case (Annual Report 2014, Case No. 2014-14) illustrates that even in matters of ministerial advice and assistance, there can still be a right to (partial) access. The duty to provide information about a case's factual basis, etc. – the so-called extraction duty – also applies to ministerial advice and assistance documents.

The Danish Customs and Tax Administration (SKAT) had denied a journalist access to a memo which the Administration had sent to the Ministry of Taxation for the Minister's information. The Tax Appeals Agency agreed that access should be denied. Although as a starting point the memo could be exempted from access according to the regulation on ministerial advice and assistance, the Ombudsman found that a considerable part of the memo contained information about the factual grounds of the case. Therefore, this information should have been given to the journalist. The Ombudsman recommended that a new decision be made. In a new decision, the Tax Appeals Board gave the journalist access to the whole memo apart from a single paragraph.

DO THE MINISTRIES GIVE INCREASED ACCESS TO FILES?

For obvious reasons, the complaints which have been presented to the Ombudsman institution only give a limited picture of how the central administration has used the controversial regulation on ministerial advice and assistance in the regulation's first year of life.

In order to get a better overview, the Ombudsman decided in October 2014 to obtain information from all ministries about the number of decisions in which the departments had used the regulation. The information was to cover all of 2014, and the Ombudsman asked that he get the information no later than 1 February 2015.

The ministries were also asked to state how many times the departments had decided to give access after all in accordance with the principle of increased access.

And the question of increased access is exactly what is important in this connection.

The regulation on ministerial advice and assistance has been introduced in order to protect the regard for the internal and political decision-making process. However, the regulation protects 'ministerial advice and assistance documents' no matter what other information may be included in the documents and thereby no matter whether there is an actual need for confidentiality in the individual case. Therefore, one could argue that it is the principle of increased access – which section 14 of the new Access to Public Administration Files Act emphasises – that is going to ensure a reasonable result.

If there are no weighty regards for the internal political decision-making process, it is therefore obvious to say that the document/information should be provided as part of the increased access principle. Or in other words: The regulation on ministerial advice and assistance is only to be used when it is necessary.

To begin with, the numbers from the ministries are obtained in order to assess whether there is an issue to address. It is expected that the overall results of the Ombudsman's deliberations will be published during 2015.

Case No. 13/02940

When a woman closed down her business, the municipality demanded that almost 30,000 DKK in early retirement pension be repaid. The woman complained to the Ombudsman about the demand.

There are two conditions which must be fulfilled before a public authority can make a demand for repayment of retirement benefits: Firstly, the benefits must have been received wrongfully. Secondly, the recipient must be in bad faith. The Ombudsman sent the complaint on to the National Social Appeals Board so that the woman could get a more specific explanation as to why the municipality believed that she had received the money wrongly and in bad faith.

In the opinion of the National Social Appeals Board, the basis for the repayment demand was not entirely clear, and the Board therefore asked for a renewed assessment from Udbetaling Danmark which is the authority responsible for collection, disbursement and control of a number of public benefits. Udbetaling Danmark did not think that the woman had acted in bad faith and, consequently, the outcome of the case was that the woman did not have to repay the pension after all.

The Ombudsman will often be able to get a case back on track simply by sending it on to the relevant public authority.

Case No. 14/03799 and 14/03800

During a monitoring visit to a state prison, the Ombudsman's monitoring team praised the state prison's own manual on assessment of the danger of suicide and prevention of suicidal behaviour.

When visiting a nearby local prison the next day, the monitoring team suggested that the local prison staff find inspiration in the state prison's suicide screening manual, as the local prison did not have any written guidelines on the subject.

During his monitoring visits, the Ombudsman will gather information on 'best practices' and share it with the relevant authorities, institutions and users. Knowledge sharing can take place in both informal contacts and more formally in case reports and annual reports.

Case No. 14/01037

When a mother received the birth certificate of her new born child, she was surprised to see that she herself was listed without her middle name. It turned out that she was registered like this in the church civil register.

The woman had taken her husband's last name but – or so she thought – she had kept her maiden name as a middle name. Her children had been given both names and the intention was that she and the children would have the same names. She asked the National Social Appeals Board for advice on how to register her middle name. The Board replied that according to the new Names Act the woman could apply to have her former maiden name changed to a proper middle name for a fee.

The woman complained to the Ombudsman that she had to apply to have the middle name which she had always believed she had. But the Ombudsman had previously investigated a similar case and found that the Board's interpretation of the Names Act was correct. Consequently, the reply in this case had to be the same, and the Ombudsman therefore did not investigate the complaint further.

The National Social Appeals Board is one of the public authorities which the Ombudsman contacts most frequently. In 2014, the Ombudsman sent close on 900 letters to the Board.

Case No. 14/01288

A citizen asked the Ombudsman about public authorities' obligation to answer questions from the citizens in general.

The Ombudsman replied that he does not issue general statements on legal matters unless such statements are placed in context with a specific complaint. He added that the citizen was, of course, welcome to write again should he wish to lodge a complaint in a specific matter.

The framework of the Ombudsman's work is stipulated in the Ombudsman Act. The Ombudsman's core competence is to process specific complaints.



Case No. 14/01211

A self-employed taxicab driver was of the opinion that a local taxi board had not provided sufficient grounds for its decision. He had complained about, among other things, an increase in rental fee to the dispatch office with which he was associated. He was dissatisfied with the dispatch office's explanation of a great increase in extra expenses and wanted to inspect the bookkeeping behind the accounts but the dispatch office refused to give him access.

The Ombudsman sent the taxicab driver's complaint on to the taxi board. In a reply setting out detailed grounds for its decision, the taxi board wrote among other things to the taxicab driver that an audit was a serious matter which required a strong suspicion that something unlawful had taken place. And the board did not think that this was the case here.

In 2014, the Ombudsman sent 1,154 complaints on to a public authority, for instance so that the authority could expound on its decision.

THE ESBJERG CASE – SEVERE CRITICISM FOLLOWING A MONITORING VISIT



Mette Kildegaard Hansen
Legal Case Officer, Children's
Division

One day in April 2013, a group of people from the Ombudsman's Children's Division drove towards Esbjerg for a monitoring visit at 'Børnecenter Døgn' which, among other things, is a 24-hour residential care facility for children and young people placed in care. As it happened, the trip to Esbjerg was going to be the first step in the Children's Division's most extensive group action up till now. In two case reports containing criticism, serious problems with the treatment of vulnerable children were uncovered – both before and after the placement of the children outside the home. The visit also caused the Ombudsman to put forward some views on how long children under emergency placement are to wait for a decision on their future.

The visiting team consisted of the head of the Children's Division, the Division's child psychologist and a legal case officer. 'Børnecenter Døgn' was a random choice. We had planned a monitoring visit to a foster family in Tønder, and we wished to make another visit within a reasonable distance.

Therefore, the choice of an institution in Esbjerg was not connected to the National Social Appeals Board's criticism of the case processing in the children's sector at Esbjerg Municipality.

THOROUGH PREPARATIONS

'Børnecenter Døgn' manages Esbjerg Municipality's services and facilities for vulnerable children and their families. The children's centre consists of both a day unit and a 24-hour unit and is situated on various addresses in Esbjerg Municipality. Our visit included a home environment – meaning a separate unit in a detached house where children are typically placed with the intent that they stay there throughout their childhood. In addition, the visit included 'Nord-

stjernen' which is Esbjerg's crisis centre and observation facility. At the time of the visit, 'Nordstjernen' had a capacity rating of eight children.

Prior to our visit, we had given 'Børnecenter Døgn' and Esbjerg Municipality notice of our visit in writing. At the same time, we asked for a number of documents and information about the facility in general and about the children living at the facility. Among other things, we asked for information on the specific resident composition (gender, age, ethnicity), the legal grounds for the placements, action plans and development plans for the children, recent municipal inspection reports, guidelines for and statistics on coercion, violence and threats, the staff's educational background and seniority and also the facility's use of temporary staff.

It is standard procedure for us to ask for such extensive information material. We do so because we believe it is important to show up well-prepared in order to gain the most from the visit itself. Therefore, we knew a bit about the children we might meet. We had also prepared the subjects that we found important to discuss with the management and the staff. Besides, the overall information material provided us with some knowledge concerning the municipality's case processing in cases involving children.

LET DOWN BY PARENTS AND THE SYSTEM

The visit made a huge impression on the entire group. We knew from the information material that several of the children had a tumultuous background. This was also confirmed when we met the children and the staff at the facility. The children were placed outside the home as a consequence of parental substance abuse, mental health issues, etc.

Unfortunately, it turned out that some of the children had been let down by the municipality as well. The information material which we had received prior to the visit showed us that the municipal case processing had been neglectful in several areas.

Some of the children had been let down by the municipality *prior* to their placement, as the municipality had not intervened despite receiving serious notifications about the children's conditions at home.

Some of the children had been let down by the municipality *after* their placement. As a result, these children had been living at the crisis centre for 1-2½

years without any clarification as to where they were going to live in the future, go to school and so on. Furthermore, the facility had been overcrowded constantly for a prolonged period of time.

PREVENTION WAS THE OBJECTIVE

Based on the observations we made before and during the monitoring visit, we decided to initiate a more extensive investigation. Firstly, we asked Esbjerg Municipality to explain why some of the children were under emergency placement, and we asked the municipality to account for the cases, from the municipality's reception of the first notification to the placement of the children at the facility. Secondly, we asked the municipality to explain why a number of children had been living at 'Nordstjernen' for a very long time. In regard to this, we asked the municipality to inform us of the maximum time a child should be kept at a crisis centre.

In addition, we asked Esbjerg Municipality to comment on the information that for years, 'Nordstjernen' had been overcrowded, and also to account for any initiatives the municipality had taken to avoid future overcrowding of the facility.

Obviously, we began our investigation out of consideration for the individual children. Our findings can help assure the children that what they have been through is not acceptable. However, the reality is that those of the children's problems which were mentioned in the Ombudsman's investigation were either solved or on their way to being solved when we opened the cases. Thus, in the cases where the municipality had taken a long time and had been given numerous notifications before initiating placements, the children had finally been placed in care. Also, at the time of the monitoring visit, the children who had been living at the crisis centre for a long time had been promised a permanent placement within the foreseeable future.

Therefore, the most substantial reason for initiating an extensive own-initiative investigation was to avoid similar mistakes in the future. In Esbjerg Municipality as well as in other municipalities. We are talking about errors that have serious consequences for the individual children and which may also occur in other municipalities. By opening the cases, we wished to emphasise how important it is that both Esbjerg Municipality and other municipalities react quickly and correctly when they get notifications and also that the municipalities act swiftly when children are waiting for clarification at a facility.

In August 2013, we received Esbjerg Municipality's response to our questions and approximately 5,000 pages pertaining to the cases in question. Consequently, we could begin our work of going through the files and the legislation and finally complete two major reports from the Children's Division.

THE NEGLECTED BROTHER AND SISTER

On 8 July 2014, the first case report was made public. Serious criticism was expressed in the report because two socially very vulnerable children received help much too late. In the report, the Ombudsman called the municipality's neglect 'completely irresponsible'.

Despite receiving 11 serious notifications from, among others, police, school and private citizens within a year, Esbjerg Municipality took no actual initiatives to help the brother and sister. At the time of the first notification, the children were six and eight years old. The case report shows that the municipality, among other things, failed to carry out a child's protection examination and to work out an action plan. The municipality also failed to initiate voluntary support measures or to place the children in care, as it was supposed to do. It was not until one of the children, who in the meantime had turned nine, was brought into hospital with an alcohol level of 2.57 that an emergency placement at 'Nordstjernen' was arranged for the children.

The Ombudsman determined that the municipality had disregarded the rules that are supposed to protect children and young people from neglect. Among other things, the Ombudsman emphasised that Esbjerg Municipality ought to have been much more insistent in regard to contacting the children's mother who had parental custody at the time.

The full case report was sent to Esbjerg Municipality's mayor. The Ombudsman also informed the municipal council, Parliament's Legal Affairs Committee, Parliament's Social Affairs Committee, and the Ministry of Children, Gender Equality, Integration and Social Affairs about the case.

A month after the case report was made public, the Ombudsman received a report from Esbjerg Municipality. The municipality accounted for the measures it had implemented with help from the Task Force of the National Social Appeals Board in order to ensure that rules and guidelines in the children's sector are observed in future. Hereafter, the Ombudsman decided to close the case.

LONG STAYS AT CRISIS CENTRE

On 2 February 2015, the other case report following the monitoring visit in Esbjerg was made public. As well as in the first case report, the Ombudsman expressed serious criticism of Esbjerg Municipality's case processing.

The Ombudsman stressed the importance of emergency placements being as brief as possible even though the legislation does not stipulate an upper limit. The Ombudsman stated that because of its temporary nature, among other things, a crisis centre cannot be considered as the placement facility best suited to fulfil a child's needs in the long run. Therefore, in consideration of the child's best interest, a municipality has to make a decision about a possible continued placement as soon as possible.

At the same time, serious criticism was expressed because six children had been living at 'Nordstjernen', thereby awaiting a clarification of their future, for 1-2½ years. Furthermore, the Ombudsman found that it would have been advisable if Esbjerg Municipality had opened more crisis centres at an earlier stage, since 'Nordstjernen' had been overcrowded for at least 18 months.

As more than 18 months had passed since the monitoring visit in April 2013 at Esbjerg Municipality, the municipality was asked to provide information on how long the children presently living at 'Nordstjernen' had been there. The municipality was also asked if the crisis centre had been overcrowded within the last 12 months.

Because of the seriousness of the case, the municipal council, Parliament's Legal Affairs Committee, Parliament's Social Affairs Committee, and the Ministry of Children, Gender Equality, Integration and Social Affairs were also informed about this case.



Case No. 14/04861

A legal case officer at the Ombudsman's office observed a forced deportation of an Afghan family from Denmark. The family had been refused residence permit and was told to leave the country. Now, the father, mother and a teenage son were waiting at a Danish asylum centre.

On an early morning, six police officers showed up at the asylum centre to take the family to an institution for detained asylum seekers. A couple of police officers went in to pick up the family. The father and the son accepted without any protest and started packing, but the mother refused and even when the police officers tried to calm her down, she became increasingly upset. The outcome of it was that she had to be carried down to the waiting police car where a female police officer tried to calm her down. The police officer had to restrain her several times to prevent her from knocking her head against the seats and the car window.

Approximately two weeks later the family was deported to Afghanistan, again observed by a legal officer from the Ombudsman's office. The Ombudsman had no remarks in regard to how the deportation was handled by the police.

The Ombudsman monitors the forced deportations of foreigners carried out by the Danish police. One of the objectives is to observe that the police do not use more forcible measures than necessary.

Case No. 14/01605

The school library had sent many reminders that a boy in the second form should return some books he had borrowed. Now the municipality was involved, demanding compensation for the books, but the boy's father did not think that he should be held responsible for the books his son borrowed at the school.

The father asked the Ombudsman to consider the question of liability for compensation in the case. However, the Ombudsman does not normally consider compensation issues, and he also rejected this case. The reason is that the Ombudsman cannot question witnesses, and it would therefore be difficult for him to come to a decision as to any liability for compensation.

The Ombudsman's case processing is usually based on written material from citizens and authorities.

Case No. 14/01717

A citizen was dissatisfied because the municipality had given its consent to the discharge of surface water from a rainwater basin into a stream close by his home. He complained to the Environmental Board of Appeal about the decision and that he had not been consulted as a party to the case. The complainant paid a complaint fee of DKK 500 which would be refunded if his complaint proved to be justified.

The Board decided that the citizen's complaint was not justified, but that it was correct that he should have been consulted as a party to the case. The citizen now lodged a complaint with the Ombudsman and questioned the complaint fee too: 'Since the decision was partly in favour of my complaint that I should have been consulted as party to the case, I feel that I should receive a refund of my 500 DKK', he wrote.

The Ombudsman was unable to assist the citizen with the complaint regarding the decision as such, but he asked the Board to clarify the question about the complaint fee to the citizen. The Board replied that there had been a mistake and that the money would be refunded.

It is free of charge to lodge a complaint with the Ombudsman, and everybody can complain. In 2014, the Ombudsman opened 4,675 cases based on received complaints.

Case No. 14/01839

A father was angry because his ex-wife had taken their children out of their private independent school and now wished to enrol them in a local municipal school. He said so when the local municipal school sent him a consultation note on the change of school. For the sake of the children, the headmaster suggested that the children continued to attend the private independent school, but the mother rejected the suggestion. The solution to the matter was that the children were enrolled in the local municipal school.

The father pointed out that parents must agree on essential decisions in regard to their children when they have joint custody. However, the authorities informed him that since the children were entitled to schooling under the authority of the Folkeskole Act (the municipal school Act), it was in accordance with the law to enrol them in the local municipal school in the school district where they lived if the parents could not agree on a different solution.

It was the Ombudsman's opinion that he could not criticise the authorities' decision, and he therefore closed the case.

If the Ombudsman does not think there is a prospect that a complaint will give occasion for criticism or recommendation, he may close the case without asking the authorities for a statement.

Case No. 14/00564

The Complaints Board for Veterinary Services covered up the veterinarian's mistakes, a dog owner wrote to the Ombudsman when his complaint to the Board that his dog had not received the right treatment was not upheld. This meant that the dog owner could not get compensation.

The dog had sustained corrosive burns in its oesophagus after an operation where it had vomited during the anaesthetic. In the dog owner's opinion, the veterinarian surgeon should have cleaned the dog's throat during the operation, but the Complaints Board did not agree that the damage was due to a procedural error by the veterinarian surgeon.

As the Complaints Board for Veterinary Services is a private board and not part of the public administration, the Ombudsman was unable to consider the complaint.

Normally, the Ombudsman only investigates complaints about the public administration.

INVISIBLE HELP FROM THE OMBUDSMAN



Kirsten Talevski
Senior Head of Division, Division 2

Since 1955, the Danish Parliamentary Ombudsman has kept a relatively sharp distinction between on the one hand substantively investigated cases and on the other hand rejected cases.

Consequently, it appears from this Annual Report that the Ombudsman rejected more than 85 per cent of the cases in 2014. However, part of this picture is that the Ombudsman's staff actually often help the citizens also in these cases, for example by passing the complaint on to the relevant appeals body or by returning the complaint to the concerned authority so that the complainant may get a detailed reason for the decision. We may also help the complainant by asking the authority to consider waiving a complaint deadline which has not been observed. Or we can help the complainant to highlight his or her most important arguments so that the authority will get a more clear understanding of the complaint.

Therefore, many complainants whose cases are listed statistically as rejected do receive assistance from the Ombudsman in various ways. To designate all these complaint cases as 'rejected cases' can therefore give a skewed reflection of the reality. We have consequently decided to change this somewhat simplistic division between 'substantively investigated' and 'rejected' cases, starting with the 2015 Annual Report.

EFFECTIVELY SINGLE UNDER THE SAME ROOF

One example of a case where we helped but which figures under 'rejected cases' concerns an elderly married couple who had been separated for more than 20 years, as the husband had moved to Germany in 1989 and had there ended up living with and being cared for by the couple's daughter. Both husband and wife received a single person's pension and therefore a higher pension than they would have received as cohabitants.

The wife continued to live in Denmark until she was diagnosed with dementia at a very old age. At that point, her children decided that she too should move to Germany to be cared for by the daughter. Consequently, in March of 2010, the wife moved into the same house where her husband was living. Both husband and wife required a very high level of care and had their own rooms at the daughter's house.

When the Danish authorities discovered that the couple was living under the same roof, the pensions were reduced and the authorities made a demand for repayment of a total of more than DKK 165,000. In the authorities' opinion, the couple was now no longer single within the meaning of the Social Pensions Act, seeing as they were now living together again and had the advantages which married and cohabiting couples normally have.

By the time the case reached the Ombudsman, the situation had reached deadlock for the family, as none of the cases had been considered by the appeals body (the National Social Appeals Board). For various reasons, the couple's children had complained too late about the decision regarding their father's pension, and with regard to their mother's case, the municipality would not accept that the children could complain on her behalf.

For formal reasons, the Ombudsman could not at that point consider the decisions, but we saw to it that the cases got back on track. The National Social Appeals Board was given the opportunity to see if the Board would be willing to overlook that the complaint had been submitted too late with regard to the husband's case. The wife's case was sent on to Udbetaling Danmark (the body responsible for, among other things, disbursement of pensions and other benefits) as a complaint, and later that case also ended up before the Board.

In the autumn of 2014, the National Social Appeals Board decided that the couple was still single within the meaning of the Social Pensions Act, also after the wife had moved to Germany. The care-requiring couple did not, even after the wife's move, enjoy the benefits which married and cohabiting persons normally do, and the demand for repayment was dropped.

THE MUNICIPALITY HAD TO MAKE A DECISION

In another case, a man with a background in banking had not been a member of the work force since 2007. In 2011, the man was refused early retirement pension, and a couple of years later the municipality carried out a renewed

assessment of whether there were grounds for opening a case regarding a resource focused process, flexible job or early retirement pension.

The municipality brought the case to its interdisciplinary rehabilitation team, and the team concluded that it was not currently possible to point to any job functions which the man was able to do but that his return to the work force at some point in the future could not be ruled out. However, this prospect depended on the man not drinking and on his compliance with an addiction treatment course. The case was then passed on to the municipality job centre where the man was to appear. Upon enquiry he was told that there was merely a *recommendation* from the municipal rehabilitation team and that the municipality had not made a *decision* in the case which could be appealed. The man wanted a decision from the municipality (a refusal) so that he could appeal. But that was not an easy thing to get.

The man complained to the Ombudsman who first referred him to the municipality's mayor. The reply from the municipality was that the man could not appeal against the rehabilitation team's recommendation and that he would not receive any detailed written communication in that respect.

The man complained again to the Ombudsman who considered whether the municipality's course of action should be put on the same footing as a formal refusal for a resource focused process, flexible job or early retirement pension. The Ombudsman then sent the case on to the National Social Appeals Board which subsequently made a substantive decision in a similar case. It is now laid down in the Board's decision in principle No. 26-14 that the municipalities shall make a decision on the basis of the rehabilitation team's recommendation – regardless of whether the recommendation is positive or negative in relation to the individual in question.

Subsequently, the National Social Appeals Board ensured that the municipality made a decision in the man's case.

WAS THERE A CHANNEL OF COMPLAINT OR NOT?

In a third example of a 'rejected case', a woman received compensation benefits when her municipality could not find her a job for seniors. At some point, the municipality stopped the woman's compensation benefit because she was not available to the job market and was not able to work full hours for health reasons. The municipality wrote to the woman that the decision could not be appealed to the National Social Appeals Board.

Here at the Ombudsman office, we were not sure that the municipality was right in its decision. But for formal reasons we could not investigate this question because we were not sure either whether it was true that the municipality's decision could not be appealed. We therefore sent on the woman's complaint to the municipality for reassessment of the decision. If the municipality maintained its decision, the municipality was to send the complaint on to the National Social Appeals Board.

The municipality maintained that the woman could not get the compensation benefit and that there was no right of appeal but, as the Ombudsman had asked, the municipality did send the case on to the National Social Appeals Board. The Board determined that an appeal could be lodged against the decision and even made it clear that the woman could continue to receive the compensation benefit even though she could no longer work a normal number of hours for health reasons.

Possibilities of helping in 'rejected cases'	
Each year, the Ombudsman opens around 5,000 cases. Even though many cases are categorised in the statistics as rejected cases, the Ombudsman often helps the complainants in these cases as well. The assistance can be given in many different ways.	
The assistance may consist of:	
- Sending the complaint on to the right authority	- Accentuating the most important arguments in the complaints in connection with sending the complaint on to the relevant authority
- Helping the citizen get more detailed grounds for a decision	- Contacting the authority to ascertain where the complainant's case is in the 'system', what the case is waiting for, or when the authority expects to make a decision in the case
- Getting the authority to consider whether a deadline can be waived	- Guiding the citizen on any other available assistance in the case
	- Giving the citizen the opportunity to discuss the case on the telephone with one of the Ombudsman's legal staff.

NEW STATISTICS IN 2015

In the Ombudsman's statistics system all three cases were categorised as rejected cases. This is because the Ombudsman could not for formal reasons at that time consider the key decisions in the cases: whether the elderly couple should receive a reduced pension and repay a large amount of money, whether the municipality should give the former bank employee a decision which gave access to

appeal, and whether the woman could (continue to) receive her compensation benefits. Before the Ombudsman can consider such questions, it is necessary that the relevant highest administrative authority, in this instance the National Social Appeals Board, has made a decision. This follows from section 14 of the Ombudsman Act.

However, when the complaints landed on the Ombudsman's desk, they caused us to wonder, and we could, after all, help the complainants bring the juridical problems into the light and get the cases to the right place. Here, the problems in all three cases were solved to the benefit of the complainants.

As these examples show, the sharp distinction between substantively investigated cases and rejected cases is not always in keeping with reality, partly because the Ombudsman also intervenes in so-called rejected cases.

We have therefore decided to change the statistics system, starting with the 2015 Annual Report, and to divide the cases into three main groups instead of the familiar two groups.

Subsequently, the new statistics system will have the following main groups:

- Investigations
- Other forms of processing and assistance to citizens
- Rejection for formal reasons

Cases such as the three mentioned above where the Ombudsman intervenes will in future be listed statistically in the main group of 'Other forms of processing and assistance to citizens'.

The main group 'Investigations' will consist of cases where the Ombudsman has carried out various investigations and assessments and will include those cases where the Ombudsman has carried out an in-depth investigation with a preceding hearing of the authorities involved.

Hopefully, these new categories will provide a more adequate and modern reflection of the Ombudsman's processing of the around 5,000 annual cases.



Case No. 14/00559

A woman was, in her own words, desperate when a public authority had still not replied to her complaint after more than 18 months.

In July 2012 the woman had complained to the Danish Agency for Higher Education and Educational Support concerning a demand for repayment of student grants, and the Agency had maintained the demand. The woman then asked that the Board of Appeal for the State Education Grants and Loan Scheme consider the complaint. In November 2013, she sent a reminder to the Agency and asked for a reply. In December she complained to the Ministry of Science, Innovation and Higher Education which sent the complaint on to the Agency.

In February 2014, the woman complained to the Ombudsman who was told in March by the Agency that the case was still pending. The Ombudsman asked the Ministry to look into the case. The Ministry discovered that the woman's complaint from July 2012 had not been sent to the Board of Appeal until March 2014. The Ministry wrote to the woman that there had been a clear processing error and that the processing of her case had not been consistent with good administrative practice.

The principles of good administrative practice are among other things a result of the Ombudsman's statements. Good administrative practice may for example be that the authorities reply to the citizens within a reasonable period of time, that their affairs are in order, and that they treat the citizens correctly and courteously.

Case No. 14/02038

The media were buzzing with rumours that the Prime Minister was among the candidates for one of the most senior posts in the EU, but when a journalist requested access to any files in the Prime Minister's Office on the subject, the ministry would not disclose whether such documents existed.

The Ombudsman refused to investigate the journalist's complaint about the decision: The Prime Minister's Office was entitled to keep information secret in order to protect Denmark's interests relating to foreign politics. Besides, it was also okay to keep it a secret whether documents relating to a certain topic exist: In this case, a confirmation of the existence of the documents could be perceived as an actual confirmation that the Prime Minister was a candidate for the job, whereas a denial would imply that if the ministry in later cases did *not* deny – but instead by way of example declined to confirm or deny – the existence of such documents, this would be perceived as an actual confirmation.

In 2014, the Ministry of Justice launched the website www.offentlighedsportalen.dk – a web-based portal which, among other things, gives access to some of the Ombudsman's statements on the Danish Access to Public Administration Files Act in anonymous form, including the statement in this case.

Case No. 14/02544

When a group of commissioners of the Zimbabwean UN Commission on Human Rights paid a visit to the Danish Institute of Human Rights, the Commission had just received the authority to act as the ombudsman of the country. Consequently, the institute suggested a visit to the Danish Ombudsman.

The 10 commissioners were received by one of the Ombudsman's legal case officers. The legal case officer gave an introduction to the Danish Ombudsman's work and then invited the guests to come forward with questions and topics for discussion. The guests wished, among other things, to discuss how an ombudsman keeps his independence and avoids being political. They also asked, quizzically, why a female ombudsman had not been appointed in Denmark yet.

Every year, the Parliamentary Ombudsman office opens its doors to many visitors from both Denmark and abroad.

Case No. 14/02557

When staff members from the Ombudsman's Monitoring Department were being showed around in a closed psychiatric unit, a patient handed them a letter and asked the Ombudsman to treat it as a complaint. In the letter the patient complained, among other things, that she had been admitted against her will.

After the monitoring visit, the Ombudsman wrote to the patient that she should lodge a complaint with the Psychiatric Patients' Complaints Board first. She could, if needed, bring the Complaints Board's decision on compulsory admission before the courts.

The Ombudsman also wrote to her that in accordance with standard practice the Ombudsman does not process complaints where, as in this case, there is easy access to bring the case before the courts.

Before the Ombudsman's monitoring staff visit an institution, the users at the institution are offered a scheduled talk with the Ombudsman's staff during the visit. However, there is also often time for a spontaneous talk with users, for instance when the monitoring staff are being showed around.

Case No. 14/02937

A local grassroots organisation was dissatisfied with the plans for the siting of a new motorway. The Minister for Transport had agreed with some of the members of Parliament's Transport Committee that the motorway was to be constructed south of a village, and not north. According to the grassroots organisation, it was recommended not only by the local citizens, but also by the Road Directorate, that the motorway should be constructed north of the village. The grassroots organisation wrote to the Ombudsman and asked whether politicians were 'entitled to make such a foolish decision'.

The Ombudsman answered that the geographical location of a motorway is determined by law. Since the Ombudsman cannot process legislative matters, he had to reject the case.

The Ombudsman cannot investigate complaints against Parliament, including complaints about individual members of Parliament, parliamentary committees and acts passed by Parliament.

TOLERATED RESIDENCE STATUS - BEHIND THE CASE



Morten Engberg
Senior Head of Department,
Monitoring Department

The Ombudsman carries out regular monitoring visits to institutions for detainees in order to ensure that they live under humane and dignified conditions. The target group includes, among others, prison inmates, patients at secure psychiatric wards and children placed in care.

Many monitoring visits are not carried out solely by the Ombudsman and his staff. The Ombudsman has a close cooperation with DIGNITY – Danish Institute Against Torture and the Danish Institute for Human Rights. Consequently, the two organisations often participate in monitoring visits.

Therefore, there was nothing unusual about the Ombudsman and representatives from the two organisations visiting the asylum centre ‘Center Sandholm’ in 2014 in order to look into conditions for persons under tolerated residence status. But the case touched on very sensitive and much discussed questions which would influence the Ombudsman’s report.

Persons under tolerated residence status at ‘Center Sandholm’ are subject to a number of special restrictions. They are obligated to live at the centre (some of them in rooms together with one or two other people), they have a duty to report to the police (typically every day), they are not allowed to take on paid work, they receive a limited cash allowance (a maximum of DKK 31 a day), and in reality it is not possible for them to cook their own food; instead they get meal coupons for the centre’s cafeteria.

There is no limitation to the duration of tolerated residence, and basically the tolerated residence may last indefinitely. Contrary to, for instance, the majority of prison inmates, it is thus not possible for persons under tolerated residence status to adjust to a situation which they know will last for a fixed period of time, and therefore they cannot look forward to a normalisation of their lives.

Statistics also confirm that tolerated residence can last for a very long time. In 2014, for instance, three persons living at 'Center Sandholm' had spent more than 10 years under tolerated residence status, and 12 persons had been under tolerated residence status for five to 10 years. Previously, only a few people were living under tolerated residence status in Denmark, but the number has increased in recent years. In 2002, 17 persons were living under tolerated residence status, whereas 67 persons were living under tolerated residence status in 2014.

The object of the monitoring visit was to get an impression of the conditions for persons under tolerated residence status and to assess whether these conditions are in conflict with, for instance, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment or the European Convention on Human Rights. The purpose was also to assess whether the conditions are in conflict with the terms of the Ombudsman Act called 'universal human and humanitarian considerations'.

Who is living under tolerated residence status?

Persons under tolerated residence status live in Denmark even though they do not have the right to stay here. There are various reasons why they are not allowed to stay in Denmark: Some are excluded from obtaining asylum in Denmark because they have been deported and have been barred from entering the country due to crime committed in Denmark. There is also a group of people barred from obtaining asylum, for instance if there are serious reasons to believe that they have committed a grave, non-political crime abroad. Furthermore, there are a few people who live under tolerated residence status because they are considered a risk to state security.

The reason why these people live in Denmark is that it would be unlawful to deport them. They are covered by a provision in the Aliens Act according to which it is prohibited to deport people to another country where they risk the death penalty or risk being subjected to torture or inhuman or degrading treatment or punishment. According to this provision, it is also prohibited to deport people to a country where they are not protected against deportation to another country in which they may be exposed to such risks.

A LEGAL CHALLENGE

The investigation of the issue raised a number of legal issues. Firstly, we had to assess whether the conditions for persons under tolerated residence status at 'Center Sandholm' are in conflict with the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the

European Convention on Human Rights. The aforesaid conventions stipulate that no individual must be subjected to torture nor to inhuman or degrading treatment or punishment.

However, after having compared the general conditions at ‘Center Sandholm’ to the conventions we reached the conclusion that no conventions had been breached.

But, as mentioned before, our task was also to assess the conditions on the grounds of ‘universal human and humanitarian considerations’ pursuant to the Ombudsman Act. Naturally, this assessment has a wider scope than when the Ombudsman on a daily basis assesses for instance whether a ministry has given access to documents in accordance with the regulations.

The Ombudsman has assessed many previous cases on the basis of ‘universal human and humanitarian considerations’, but the conditions for persons under tolerated residence status at ‘Center Sandholm’ differ in several important aspects from our previous observations.

Therefore, we examined all the individual elements of the measure. We assessed how the measure affects persons under tolerated residence status in general. We also assessed the importance of the fact that the measure is of indefinite duration. In this connection, we noted that the Danish Red Cross, which is in charge of ‘Center Sandholm’, described common traits for persons under tolerated residence status in the form of, for instance, declining resources, abuse and isolation. And DIGNITY – Danish Institute Against Torture spoke of ‘clear signs of severe mental stress’ based on a medical assessment.

POLITICAL QUESTIONS

Another important consideration was that the conditions for persons under tolerated residence status are partly laid down in the Aliens Act. It is not the Ombudsman’s task to take a position on, for instance, the reasonableness of legislation passed by Parliament, and we did not take a position in this case either. But on the other hand, we could not, as is our task pursuant to the Ombudsman Act, assess the conditions for persons under tolerated residence status without including the purpose of the legislation for this target group.

In his report, the Ombudsman pointed out that the group of persons under tolerated residence status is very complex. Therefore, the considerations behind the legislation take effect to a varying degree. One of the purposes of tolerated

residence is that it should be possible to find a person quickly if the person is to be deported. But if there is no prospect that the person can be deported from Denmark, this consideration must be of less importance than if a person comes from a country where there is a prospect of deportation. As another example, the Ombudsman pointed out that considerations in regard to national security and public order seem to be of varying importance, depending on whether the person in question is considered a risk to state security or has 'only' committed ordinary crime.

What did the Ombudsman say?

It was the Ombudsman's opinion that the overall conditions for people under tolerated residence status at 'Center Sandholm', compared to the indefinite duration aspect, were very stressful and restrictive for a normal life. However, the general conditions are not in conflict with the prohibition on, for instance, degrading treatment pursuant to the UN Convention against Torture and article 3 of the European Convention on Human Rights. Still, the Ombudsman could not rule out that the overall impact of the restrictions which people under tolerated residence status at 'Center Sandholm' face, might over time in specific cases result in what must be considered a violation of the conventions.

It was, however, also the Ombudsman's opinion that there is reason for the authorities to consider in more general terms to which extent, based on the regards behind the relevant legislation, it is necessary in all respects to maintain such overall stressful and restrictive living conditions as is currently the case. The Ombudsman's opinion was based on 'universal human and humanitarian considerations' which he must observe according to the Ombudsman Act.

(Annual Report 2014, Case No. 2014-42)

PARTNERS WITH DIFFERENT MANDATES

After the monitoring visit to 'Center Sandholm', we worked really hard to make the necessary assessments, but just as much to communicate the conclusions as precisely as possible to prevent misunderstandings.

During this process, it was an advantage for us that we could work together with DIGNITY – Danish Institute Against Torture and the Danish Institute for Human Rights. DIGNITY has a comprehensive medical knowledge and a detailed knowledge of the fight against torture, etc. while the Danish Institute for Human Rights has great expert knowledge within human rights legislation.

Denmark has acceded to the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

which stipulates that each country must appoint a supervisory body in order to monitor that the convention against torture is not violated. In Denmark, this task is carried out by the Parliamentary Ombudsman in close cooperation with the Danish Institute for Human Rights and DIGNITY – Danish Institute Against Torture.

DIGNITY is a private non-governmental organisation with the aim of fighting torture, and the Danish Institute for Human Rights is a public organisation with the aim of promoting human rights. In our opinion, the cooperation has strengthened the Ombudsman's monitoring work because it has provided an opportunity to draw on expert knowledge in the two organisations.

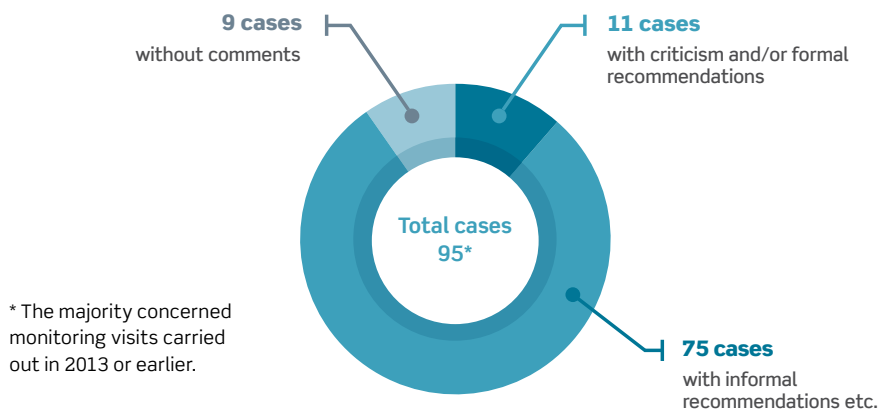
THE OMBUDSMAN'S TASK

In his report, the Ombudsman wrote that 'there are grounds for a more general discussion of the extent to which – based on the regards behind the legislation, among other things – it is in all respects necessary to maintain such an overall stressful and restrictive way of life as is currently the case'.

It rarely happens that the Ombudsman in this way calls for a reconsideration of a measure that is partly stipulated by law. In addition to this, the case involves an issue which is much debated politically. But fundamentally, the Ombudsman only carried out the task as directed by the Ombudsman Act: to monitor the conditions of persons deprived of their liberty and to state his opinion on the matter.

MONITORING ACTIVITIES IN FIGURES

MONITORING CASES CONCLUDED IN 2014



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

21 cases, taken up by the Ombudsman on his own initiative, related to monitoring activities. All cases were concluded without criticism.

48 cases about suicide attempts, deaths, etc. at Danish Prison Service institutions. Criticism was expressed in 1 case.

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

10 cases, taken up by the Ombudsman on his own initiative, related to monitoring activities. Criticism was expressed in 5 cases.

NEW MONITORING VISITS IN 2014

Adults

The Ombudsman carried out monitoring visits to 22 different institutions. During some of these visits, the Ombudsman visited a number of independent sections within the same institution.

1 visit was unannounced ('Lavendelvej' at Viborg).

DIGNITY – Danish Institute Against Torture participated in 14 monitoring visits.

The Danish Institute for Human Rights participated in 4 monitoring visits.

The Ombudsman's monitoring staff had 129 talks with users (prison inmates, patients, residents, etc.).

5 meetings were held with foreign ombudsmen, involving dialogue and exchange of experience regarding the OPCAT work.

Children

The Ombudsman carried out monitoring visits to 11 different institutions. During some of these visits, the Ombudsman visited a number of independent sections within the same institution.

1 visit was unannounced ('Kanonen' at Hinnerup).

DIGNITY – Danish Institute Against Torture participated in 1 visit.

The Ombudsman's monitoring staff had 46 talks with children/young people.

The Ombudsman held meetings with representatives from the UN Subcommittee on Prevention of Torture and the European Committee for the Prevention on Torture, etc. about the OPCAT work within the children's sector as well as the adult sector.

MONITORING ACTIVITIES ADULTS

MONITORING VISITS IN 2014

Date	Institution	Type and target group
17 February	'Børsholt' at Sindal	Social-psychiatric accommodation facility for adults with psychiatric disorders
18 February	'Vendelbo' at Vrå	Accommodation facility for adults with mental disorders
20 February	'Ebberød' at Birkerød	Accommodation facility for older adults with learning disabilities and an individual project involving socio-educational treatment
26 February	'Kongelunden' at Dragør	Special centre for asylum seekers with special needs and a unit for women with or without children
5 March	'Pensionen Avedøre', Kastanienborg unit, at Hvidovre	Prison and Probation Service Institution for, among others, inmates in a social re-entry phase or inmates serving alternatively
10 March	Psychiatric ward at Randers	Two bed units for mentally ill patients and patients with disorders relating to forensic psychiatry
11 March	'Lavendelvej' at Viborg	Accommodation facility for adults with a severe mental disorder
27 March	Prison at Copenhagen Police Headquarters	Special prison unit for, among others, negatively strong inmates
9 April	Aalborg University Hospital – psychiatric ward	Two psychiatric units for, among others, patients in need of emergency treatment and patients with disorders relating to forensic psychiatry
10 April	Aalborg University Hospital – psychiatric ward	Two psychiatric bed units relating to forensic psychiatry, especially for patients who have been sentenced to placement or treatment at an institution
8 May	'Psykiatrisk Center Frederiksberg' at Frederiksberg, Copenhagen	Two bed units for adults with a psychiatric disorder and patients with a disorder relating to forensic psychiatry

Date	Institution	Type and target group
7-9 May	'Psykiatrien i Region Syddanmark' at Middelfart and Odense	Five bed units for patients with a disorder relating to forensic psychiatry who have been sentenced to placement or treatment
21 May	'Solvang' at Kirke Hyllinge	Social-psychiatric accommodation facility for adults with, for instance, a psychiatric disorder
26-27 May	Mental Health Centre Sct. Hans at Roskilde	Forensic psychiatric bed unit for patients where the mental disorder and the legal measures are complex and require a special expert knowledge
11 June	'Psykiatrisk Center Hvidovre' at Brøndby	Two bed units for mentally ill patients and patients with a disorder relating to forensic psychiatry
17 June	'Psykiatrisk Center Bornholm' at Rønne	Two bed units for mentally ill patients and patients with a disorder relating to forensic psychiatry
18 June	The detention facility at Rønne	Especially for persons who are unable to care for themselves due to intoxication and have been encountered by the police in a dangerous situation
26 June	'Johannes Hages Hus' at Nivå	Social-psychiatric accommodation facility for adults with a psychiatric disorder
30 September	Asylum centre 'Center Sandholm' at Birkerød	Persons who have been living under tolerated residence status at 'Center Sandholm' for a long time
4 November	The state prison 'Statsfængslet i Nyborg'	Three units at a closed prison, including a special prison unit for, among others, negatively strong inmates
5 November	The local prison at Svendborg	Local prison unit, especially for remand prisoners during investigation of their case
26-27 November	'Psykiatrien Region Sjælland' at Nykøbing Sj.	Secure unit for, among others, mentally ill patients sentenced to placement or with an order for compulsory admission to mental hospital, and two forensic psychiatric bed units

EXAMPLES OF IMPORTANT STEPS TAKEN BY THE OMBUDSMAN IN 2014

Verbal recommendations made to institution managements

Prevention of suicide: A number of institutions have been recommended to draw up guidelines on how to prevent suicides and suicide attempts.

Violence and threats: Recommendation has been made on how to implement a more methodical follow-up on the development in the number of cases involving violence and threats of violence.

Work and leisure time activities: Recommendations have been made to ensure that users are offered at least the same time for outdoor activities as laid down in the European prison rules.

Mechanical restraint of long duration: An institution has been recommended to give more priority to future statistics on forced immobilisation lasting for more than 48 hours.

Statistics: The institution has been recommended to continuously prepare and make active use of statistics on the use of force at unit level. The purpose of doing so is to provide the institution management with information about patterns and reasons for forcible measures undertaken in order to make it possible to reduce the use of force at the institution.

Guidance: A number of institutions have been recommended to intensify focus on providing users with a guide on how to complain and to provide written guidelines. The reason for doing so is to provide the users with proper guidance.

Rights: Recommendation has been made to be more aware of the possibility of providing staff with instructions by using check lists. By doing so, the institution ensures that user rights are observed.

Documentation: Some institutions have been recommended to intensify focus on completion of detention reports and protocols on the use of coercive measures.

>>

Follow-up visits

Measures against inmates: After a monitoring visit to the Prison Headquarters of the Police, the Ombudsman asked if there was a need to formalise decisions on increased security levels for certain inmates – decisions which, according to information given, lead to immediate consequences for the inmates' possibility of activities and/or social contact. These inmates are now considered barred from joint activities. The Ombudsman followed up on this during a new monitoring visit.

Persons under tolerated residence status: The Ombudsman needed a follow-up on the asylum centre 'Center Sandholm', specifically in regard to persons under tolerated residence status, through a new visit to 'Center Sandholm'. The target group of the follow-up visit included persons who have been living at 'Center Sandholm' under tolerated residence status for a long time. (Annual Report 2014, Case No. 2014-42)

Discussions with key authorities

Unintended events: During the annual meeting with the Ministry of Health, the Ombudsman asked why there is no obligation for health staff working within, for instance, the Prison Service and at asylum centres to report unintended events, unlike staff working within other parts of the health sector. An unintended event could, for instance, include errors in connection with medication. The Ministry will examine the issue.

Standard house rules: When carrying out monitoring visits to psychiatric wards, the Ombudsman noticed a significant difference in the content between the house rules of individual wards. The authority for some of the rules may be uncertain. During the annual meeting, the Ombudsman asked the Ministry of Health whether it would be advisable to lay down guidelines for a recommended standard house rule. The Ministry will consider the issue.

Feedback on protocols on the use of coercive measures: The use of coercive measures at psychiatric wards must be registered in the ward's protocol on the use of coercive measures, and the information registered in the protocol on the use of coercive measures must be reported to the Danish Health and Medicines Authority. During monitoring visits, the Ombudsman was informed that the wards did not receive any feedback from the Danish Health and Medicines Authority on the reports. Therefore, the Ombudsman took up the issue with the Ministry of Health. The Ministry will discuss the issue with the Danish Health and Medicines Authority.

Own-initiative cases and requests for statements

Rights of dementia sufferers: The Ombudsman took up a case on the use of special door openers following a visit to an accommodation facility for, among others, persons suffering from dementia. The accommodation facility had been using the special door openers for a while without permission from the municipality. When the municipality approved the use of the door openers later on, the municipality did not inform anyone about the decision. The case was concluded with criticism. (Annual Report 2014, Case No. 2014-2)

Inmates with psychiatric disorders: After two monitoring visits to the hospital wing of the state prison 'Vestre Fængsel', the authorities have now decided to implement various initiatives in order to improve the conditions for inmates with psychiatric disorders – for instance by employing a sector leader who must ensure that the inmates are activated, that a room for multiple activities is established and possibly a room for therapy, together with supplementary education of the staff. The Ombudsman asked to be kept informed in order to follow the process.

Transfer to psychiatric ward: The Ombudsman has taken up a case with the Danish Prison and Probation Service, the Capital Region of Denmark and the prosecution service about an inmate with a severe mental disorder who had to wait a long time before being transferred to a psychiatric ward. The case is pending.

Minors and women: Monitoring visits to four institutions for convicted persons in Greenland led to the Ombudsman asking the Danish Prison and Probation Service and the Prison Service in Greenland how the staff deal with minors and women at the institutions. The case is pending.

Rights of persons placed in detention facilities: After a monitoring visit to a detention without constant police surveillance, the Ombudsman asked the Ministry of Justice, the Danish National Police and the chief police constable in Greenland whether the conditions complied with the rules laid down in the European Convention on Human Rights. The case is pending.

MONITORING ACTIVITIES CHILDREN

MONITORING VISITS IN 2014

Date	Institution	Type and target group
30 January	'Den socialpædagogiske døgninstitution Sønderbro' at Copenhagen	Secure residential institution with in-house school for children and young people, typically aged 15-17 years, who, for instance, serve a surrogate prison sentence or have been placed at the institution as part of a youth sanction
11 March	Family institution 'Skovvænge' at Rønnede	Day care and 24-hour residential care facility for socially vulnerable and dysfunctional families
27 March	'Den sikrede døgninstitution Koglen' at Stakroge	Secure residential institution with in-house school for children and young people, typically aged 15-17 years, who, for instance, serve a surrogate prison sentence or have been placed at the institution as part of a youth sanction
29 April	'Fonden Ulvskov' at Odder	Accommodation facility for young people aged 12-18 years with emotional and social problems, who, for instance, have been exposed to child neglect or have a psychiatric diagnosis.
30 April	'Fonden Bryggergården' at Samsø	Socio-educational accommodation facility with in-house school for young people aged 12-18 years with mental and social problems
27 May	'Fonden Kanonen' at Hinnerup	Socio-educational accommodation facility with in-house school for young people aged 12-23 years with emotional and social difficulties and a psychiatric diagnosis
2 September	Foster family, Regional Municipality of Bornholm	Foster family
3 September	Foster family, Regional Municipality of Bornholm	Foster family
24 September	Residential centre 'Clemens' at Vordingborg and 'Clemens Gaarden' at Lundby	Socio-educational treatment centre for children aged 6-17 years with emotional, behavioral and social problems
28 October	'Himmelbjerggården' at Ry	Treatment facility with in-house school for children needing long-term treatment
29 October	'Småskolen Christianshede' at Bording	Socio-educational accommodation facility with in-house school for children with social problems and adjustment difficulties

EXAMPLES OF IMPORTANT STEPS TAKEN BY THE OMBUDSMAN IN 2014

Verbal recommendations made to institution managements

Forcible measures: A number of institutions have been recommended to ensure that their staff receive a copy of the executive order on the use of force and that children and young people in care and their custodial parents are informed about the regulations of the executive order on the use of force, including the regulations about possible channels of complaint. Registration and reporting to the municipality of residence and the social supervision authorities if an institution decides to search the rooms of the children/young people were also recommended. Furthermore, recommendations to prepare a list of items confiscated from children/young people and to give a copy of the list to the children/young people were also made.

Follow-up visit

After a visit to the accommodation facility 'Fonden Kanonen', the Ombudsman commented in October 2013 on the accommodation facility's use of the so-called time-out. A follow-up visit concentrated on whether the accommodation facility was still making use of time-out in relation to young people. The case is pending.

Own-initiative cases and requests for statements

Forcible measures etc.: After a visit to the secure institution 'Koglen', the Ombudsman took up a case on his own initiative about some of the measures taken by 'Koglen' to prevent smuggling of euphorants into the institution – for instance by washing the young people's clothes and confiscating their jackets and shoes. In addition to this, the Ombudsman asked the authorities to explain their authority to lock the young people up in their rooms. The case is pending.

>>

Action plans: After two visits to foster families, the Ombudsman took up three cases on his own initiative about missing or insufficient action plans. The cases were concluded with criticism of the municipality.

Violence within foster family: After a monitoring visit to a foster family, the Ombudsman informed the social supervision authorities that one of the foster children had told him that she had been subjected to violence in her previous foster family.

In-house schools: After a monitoring visit to a private accommodation facility with an in-house school, the Ombudsman initiated an investigation of whether the in-house school complied with the rules on minimum size (number of pupils), whether the pupils received the lessons they were entitled to receive, and whether the municipality carried out sufficient supervision of the school. The case is pending.

After a visit to another private accommodation facility, the Ombudsman took up a case on his own initiative about the municipality's supervision of the facility's in-house school. The case was concluded with criticism of the municipality in regard to form and content of the supervision.

Emergency placement: After a monitoring visit to a residential institution, the Ombudsman initiated an investigation of why some of the children had been subject to emergency placement. One of the cases was concluded with criticism. (Annual Report 2014, Case No. 2014-19)

MONITORING ACTIVITIES THE DISABILITY FIELD

At the request of Parliament, the Ombudsman monitors developments regarding equal treatment of persons with disabilities and in this connection carries out, among other things, monitoring visits regarding physical accessibility for persons with disabilities.

During these monitoring visits, the Ombudsman's monitoring staff check the observance of the rules intended to ensure that public buildings are accessible to all. The Ombudsman's monitoring staff bring along measuring equipment to check, for instance, whether ramps for wheelchair users have a degree of inclination which is in accordance with building regulations. An Ombudsman employee who is a wheelchair user participates in the monitoring visits.

Furthermore, the Ombudsman cooperates 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 for Persons with Disabilities.

ACCESSIBILITY INSPECTIONS IN 2014

Date	Location inspected	Type of location
12 June	Motorway picnic area 'Antvorskov Nord'	Unstaffed motorway picnic area – disability facilities
12 June	Motorway picnic area 'Rønninge Nord'	Unstaffed motorway picnic area – disability facilities
12 June	Motorway picnic area 'Nørremark'	Unstaffed motorway picnic area – disability facilities
13 June	'Rosborg Gymnasium & HF'	Upper secondary school

OUTCOMES OF ACCESSIBILITY INSPECTIONS

The accessibility inspections of the motorway picnic areas 'Antvorskov Nord', 'Rønninge Nord' and 'Nørremark' resulted in a number of recommendations to the Danish Road Directorate on, among other things, signposting, parking and eating spaces and lavatory facilities at the three picnic areas. The Danish Road Directorate informed the Ombudsman subsequently that the Directorate would inspect the other motorway picnic areas on its own initiative based on the Ombudsman's recommendations.

The accessibility inspection of the upper secondary school 'Rosborg Gymnasium & HF' resulted in a number of recommendations on accessibility and parking facilities, among other things, together with recommendations on marking of doors and other glass fronts, access to the school's yard and stage, the design of the school's lecture room and signposting with information about the tele-loop system.

In 2013, the Ombudsman carried out accessibility inspections of four polling stations in two municipalities in connection with the municipal election. The Ombudsman's final reports, which were completed in 2014, contained recommendations on signposting, parking facilities, accessibility and lavatory facilities, among other things. The inspections also resulted in recommendations on the design of the polling stations and the voting booths and on the facilities for election officials.

In addition, the Ombudsman's visits caused one of the municipalities involved to carry out a general inspection of all polling stations in the municipality based on the Ombudsman's recommendations.

In 2013, the Ombudsman also carried out an accessibility inspection of the Copenhagen University Hospital, 'Rigshospitalet'. The Ombudsman's final report, which was completed in 2014, contained recommendations in regard to accessibility, signposting and lavatory facilities, among other things.

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

MONITORING ACTIVITIES FORCED DEPORTATIONS

The Ombudsman monitors forced deportations carried out by the Danish National Police of foreign citizens without legal residence in Denmark.

The Ombudsman must especially ensure that the deportations 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 applicable law, including EU law and international human rights conventions, together with good administrative practice.

The Ombudsman's monitoring is particularly focused on forcible measures, unity of the family, vulnerable groups, prior contact and information, the security assessment, aborted deportations and the deportation report.

As can be seen from the table on the following pages, the Ombudsman did not express criticism of the work of the police in 2014. The deportations were carried out with respect for the individual and without unnecessary use of force.

In 2014, we also reviewed 1,074 deportation cases from 2013 for the purpose of, among other things, identification of all cases involving forcible measures. We selected 49 cases out of the 1,074 cases for a closer assessment, including 30 cases from which it appeared that forcible measures had been taken. We found that in a small number of cases, the documentation did not comply with the recommendations of the international and national guidelines on forced deportations. Moreover, in certain respects the police had not complied with the non-statutory principle on the obligation to take notes. Though this was also concluded upon review of the cases from 2011 and 2012, the documentation by the Danish National Police had improved in 2013 in regard to most of the focus areas. Unlike in 2011 and 2012, a majority of cases from 2013 complied with the documentation standards. Thus, only a small number of cases did not contain sufficient documentation in relation to several focus areas.

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

FORCED DEPORTATIONS MONITORED IN 2014

Date	Destination	Number of persons	Forcible measures taken?	Deportation completed?
28 January	Nigeria (escorted) ¹	1	No	Yes
20 February	Tunisia (escorted)	1	No	Yes
13 March	Serbia (escorted)	1	Yes	Yes
17 March	Afghanistan (escorted)	20	Yes	Partly
14 April	Tunisia (escorted)	1	No	Yes
5 May	Afghanistan (escorted)	1	No	Yes
10 May	Kosovo (escorted)	6	Yes	Yes
29 September	Egypt (escorted)	1	No	Yes

1) The deportation of foreign nationals who do not depart voluntarily can either be carried out through a *monitored departure*, where the departure is monitored by the police, for instance when the foreign national boards a plane or a ship, or through an *escorted departure*, where the police escort the foreign national out of the country to his or her home country or a third country where the foreign national is entitled to take up residence.

Comments

The forced deportation was part of a so-called FRONTEX deportation from Madrid to Lagos. The United Kingdom was in charge of the FRONTEX deportation, assisted by Spanish authorities. The flight from Denmark to Madrid was organised in cooperation with Swedish police, who chartered a plane for the occasion. British healthcare staff were present during the flight to Lagos for the sake of the foreign nationals' health and safety. The healthcare staff's assistance was not required during the flight.

The forced deportation was only partly monitored by an Ombudsman employee, namely from the time when the police picked up the foreign national until boarding at the airport.

The police took forcible measures in the form of immobilisation and use of plastic strips, a restraint belt and a soft helmet. The use of force was necessary due to the foreign national's aggressive and self-destructive behaviour. The forcible measures were proportional to the situation and only lasted as long as necessary.

The forced deportation was a so-called chartered flight, where the police had chartered a plane for the occasion. In addition to an interpreter, a medical doctor was present for the sake of the foreign nationals' health and safety. In connection with the deportation, the medical doctor checked on two of the foreign nationals. The police took forcible measures towards six foreign nationals, in the form of immobilisation and use of restraint belts. In one case, the police also used plastic strips and a soft helmet. The forcible measures were necessary due to the foreign nationals' behaviour. One of the deportations was aborted upon arrival at Kabul because the Afghan authorities refused one of the foreign nationals entry into Afghanistan.

The forced deportation was only partly monitored by an Ombudsman employee, namely from the time when the police picked up the foreign national until boarding at the airport.

The forced deportation was only partly monitored by an Ombudsman employee, namely from the time when the police picked up the foreign national until boarding at the airport.

The forced deportees were a family consisting of a woman and a man and their four underage children. In addition to an interpreter, a medical doctor and a nurse were present for the sake of the foreign nationals' health and safety. The medical doctor checked on the man in connection with the deportation. The police took forcible measures towards the woman, the man and their 13-year-old son in the form of immobilisation. The forcible measures were necessary due to the foreign nationals' behaviour.

The forced deportee was an adult man. Upon presentation of the deportee's documents, the Egyptian authorities granted him entry into Egypt.

Date	Destination	Number of persons	Forcible measures taken?	Deportation completed?
9 November	Afghanistan (escorted)	3	Yes	Yes
24 November	Afghanistan (escorted)	1	Yes	No
7 December	Afghanistan (escorted)	7	No	Yes

Comments

The forced deportees were a family consisting of a woman and a man and their 15-year-old son. The police took forcible measures in the form of immobilisation and use of plastic strips and restraint belts. The use of force was necessary due to the foreign nationals' aggressive and self-destructive behaviour. The forcible measures were proportional to the situation and only lasted as long as necessary.

The police took forcible measures in the form of immobilisation and use of plastic strips. The use of force was necessary due to the foreign national's aggressive and self-destructive behaviour. The forcible measures were proportional to the situation and only lasted as long as necessary. The deportation was aborted by the pilot due to the foreign national's aggressive and self-destructive behaviour.

The forced deportees were a family consisting of a woman and a man and their five underage children. The forced deportation was only partly monitored by an Ombudsman employee, namely from the time when the police picked up the foreign nationals until boarding at the airport.

Case No. 14/03892

A journalist complained to the Ombudsman about a partial refusal to access from the Fund for Better Working Environment and Labour Retention. The Fund refused access to some e-mails because they were part of the ministerial advice and assistance between the department and the subordinate authority (the Fund) and therefore could be exempted in accordance with the so-called regulation on ministerial advice and assistance in the Public Administration Files Act. When the journalist asked for complaint guidelines, the Fund at first wrote to him that he could complain to the Ministry of Employment but retracted that later on the grounds that the Fund was an independent body.

In a hearing, the Ombudsman asked why the Fund had refused access to information pursuant to the regulation on ministerial advice and assistance about correspondence with a subordinate authority when the Fund at the same time claimed to be an independent body. By telephone, the Fund replied that they had decided to reopen the case. The result of the case was that the journalist was given full access to information.

When the Ombudsman wishes to investigate a complaint further, he sends a hearing to the authority in question – typically including specific questions. In some cases, the Ombudsman's questions make the authority reprocess the case. This happened 30 times in 2014.

Case No. 14/02536

The risk of serious plane crashes due to collisions with barnacle geese and other large birds prompted a concerned citizen to complain to the Ombudsman. In the citizen's opinion, the reaction of the authorities to the problem was irresponsible and their assessment of the risk was totally wrong.

The citizen had previously been in contact with several authorities, among others the Danish Transport Authority. The Ombudsman thought that the Danish Transport Authority was better equipped to consider the issue of air travel safety and consequently decided that he would not investigate the case.

The Ombudsman himself decides whether a complaint offers sufficient grounds for investigation.

Case No. 14/03648

A citizen could not obtain his blue National Health Service medical card because he refused to set up NemId (the single login for public websites and services). In the municipality's assessment, he was able to use the digital self-service solution and therefore was also obligated to do so. It was not a reason for exemption that the citizen on grounds of principle did not wish to use NemId.

The Ombudsman could not criticise the municipality's demand that the citizen apply digitally. The demand is warranted in the Danish Health Act: Only citizens whom the municipality assesses to be unable to use the digital self-service solution can be exempted from using it.

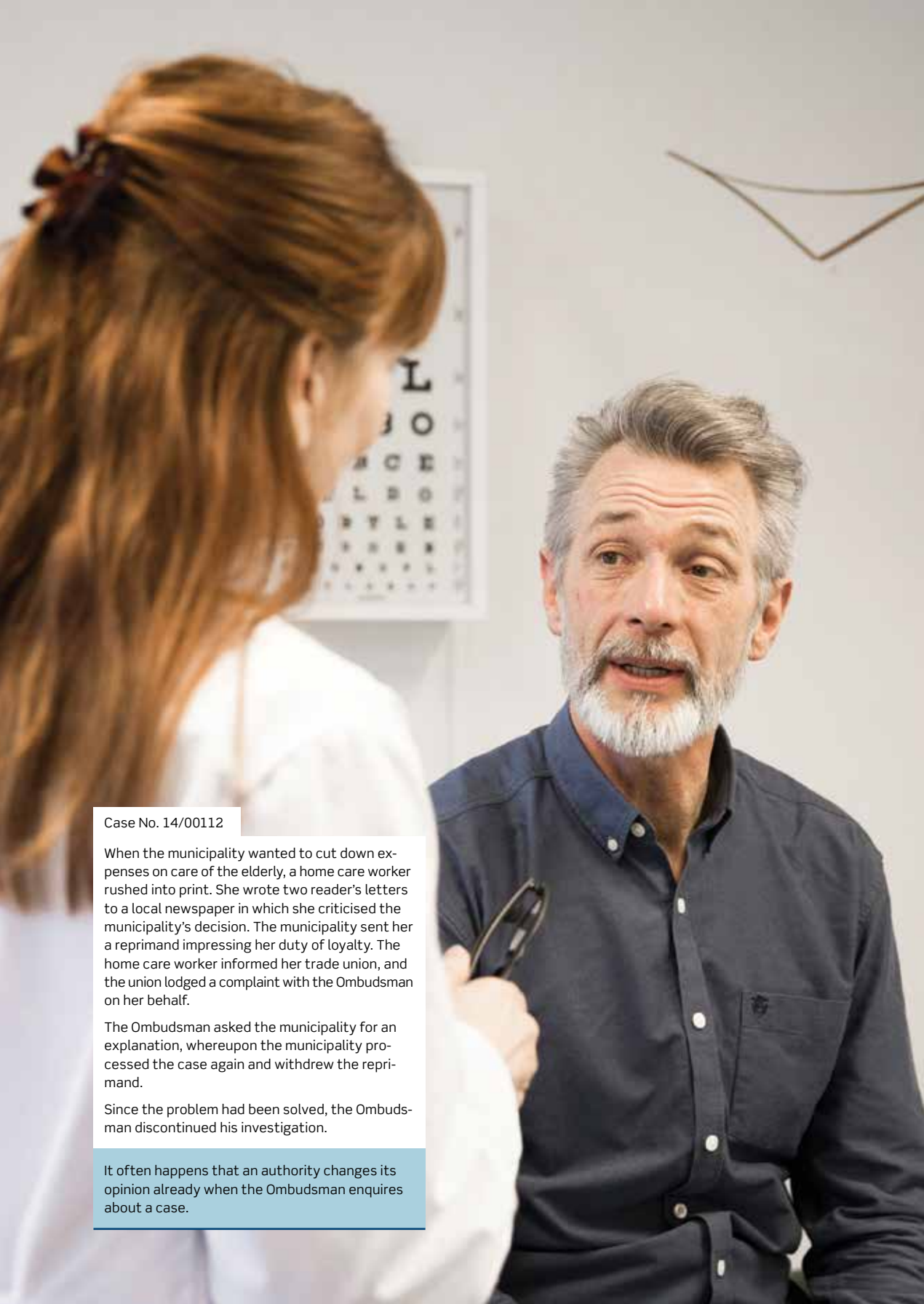
The Ombudsman often processes cases involving administrative law requirements to IT solutions in the public sector. The experience in this field is summed up in a memo on www.ombudsmanden.dk and updated regularly.

Case No. 14/00521

The owner of two small dogs got angry when a dog trainer's big Rottweiler savaged her dogs. The police did not help the matter when they decided that the Rottweiler did not have to be put down. She complained to the National Police but her complaint was turned down because she was not a party to the case. The dog owner did not understand this and she then complained to the Ombudsman, who asked the National Police to take a position on the complaint.

The National Police answered the dog owner that even though she was obviously interested in what happened to the Rottweiler, she was not a party to the case in a legal sense. That would require her having a significant and individual interest in the result of the case. The National Police did not believe this to be the case: Whatever happened to the Rottweiler had no greater impact on her situation than on any other citizen's situation.

Even if the Ombudsman does not investigate a case further as such, he may still be able to help the citizen get a more specific explanation of the authorities' decisions.



Case No. 14/00112

When the municipality wanted to cut down expenses on care of the elderly, a home care worker rushed into print. She wrote two reader's letters to a local newspaper in which she criticised the municipality's decision. The municipality sent her a reprimand impressing her duty of loyalty. The home care worker informed her trade union, and the union lodged a complaint with the Ombudsman on her behalf.

The Ombudsman asked the municipality for an explanation, whereupon the municipality processed the case again and withdrew the reprimand.

Since the problem had been solved, the Ombudsman discontinued his investigation.

It often happens that an authority changes its opinion already when the Ombudsman enquires about a case.

THE YEAR IN

B R I E F

2014



THE YEAR IN FIGURES

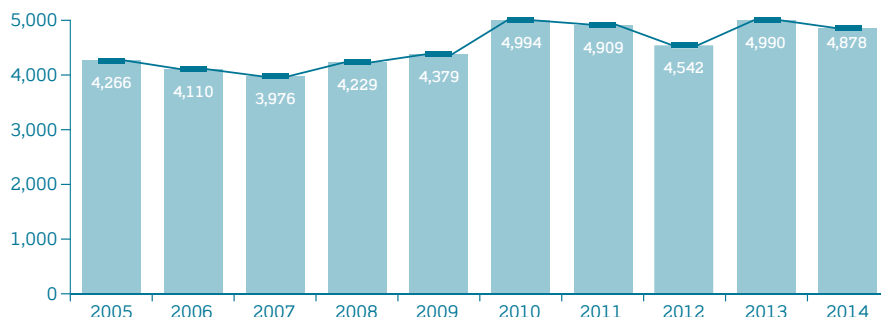
The following pages present some key figures related to the cases processed by the Ombudsman in 2014. More information about the Ombudsman's work and the rules governing the Ombudsman's activities can be found on www.ombudsmanden.dk.

NEW CASES

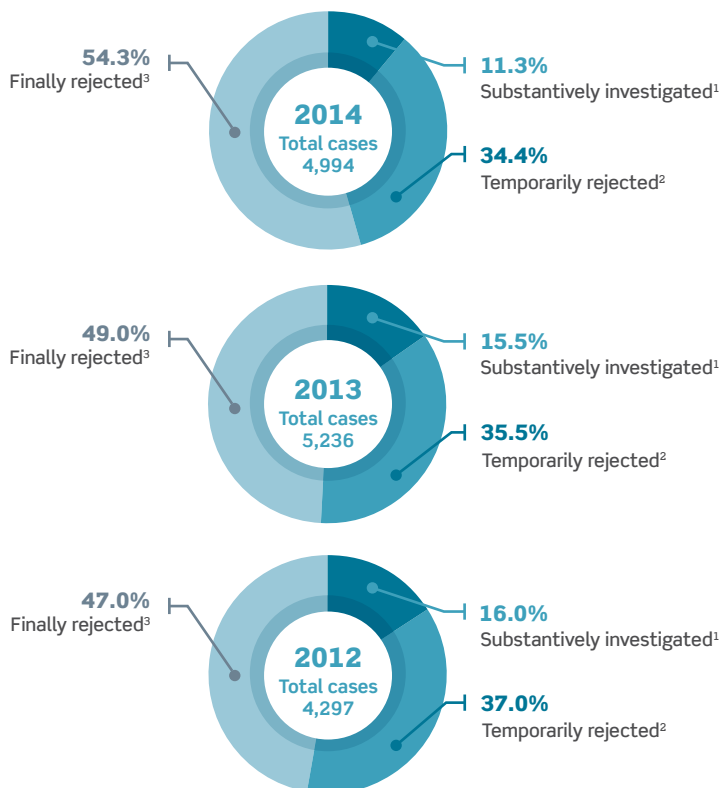
Cases opened in 2014 ¹	
Complaint cases	4,675
Cases opened by the Ombudsman on his own initiative	121
Monitoring cases opened in pursuance of section 18 of the Ombudsman Act	9
OPCAT monitoring cases ²	8
Combined OPCAT and section 18 monitoring cases	51
Deportation cases ³	14
Total	4,878

- 1) The table does not include administrative cases, for instance cases concerning requests for access to documents of Ombudsman cases, cases connected with international collaboration, general cases concerning the Ombudsman's work and own-initiative projects. An own-initiative project concerning the ministries' use of the provision in section 24 of the Access to Public Administration Files Act on ministerial advice and assistance was opened in 2014.
- 2) Monitoring visits according to UN rules (the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)).
- 3) Cases opened in relation to the Ombudsman's monitoring of forced deportations of foreign nationals. See www.ombudsmanden.dk/udsendelser for further information (in Danish). In addition, the Ombudsman reviewed 1,074 specific deportation cases pursuant to section 30 a(3) of the Aliens Act in 2014. These cases are not included in the table. See also pages 88-93.

Developments in the number of cases opened



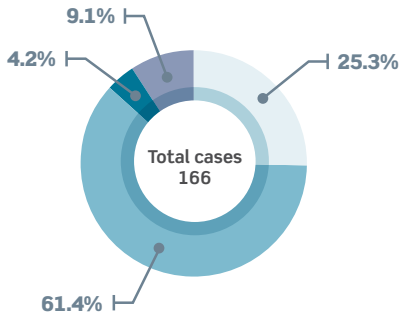
CASES CONCLUDED



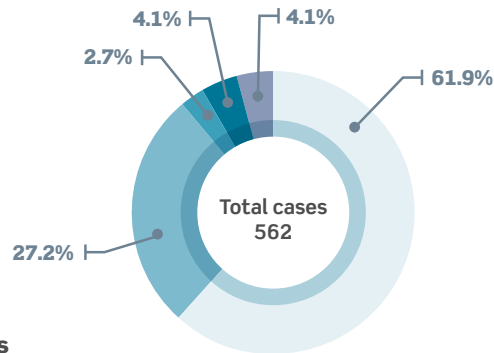
- 1) In general, a substantive investigation is carried out on the basis of a consultation, where the authorities are given the opportunity to make a statement to the Ombudsman about the case. Cases opened by the Ombudsman on his own initiative, monitoring cases, etc. are also classified as substantively investigated cases, as are cases reopened by the authorities following a request from the Ombudsman for a statement (30 cases in 2014). If it is unlikely that a complaint will result in criticism or recommendations, the Ombudsman may subject it to what is referred to as a shortened substantive investigation, where he does not obtain statements from the authorities. The category of cases subjected to a shortened substantive investigation includes cases opened by the Ombudsman on his own initiative which he closes without making an actual statement, for instance on the basis of the replies which he receives from the authorities. Cases subjected to a shortened substantive investigation (totalling 208 in 2014) are governed by section 16(2) and section 17(1) of the Ombudsman Act.
- 2) The Ombudsman is not permitted to enter a case until all administrative complaint/appeal options have been exhausted (section 14 of the Ombudsman Act). In cases where there are still complaint/appeal options available in the administrative system, the Ombudsman will either forward the case to the relevant authority or authorities or ask the complainant to use his or her complaint/appeal options in the administrative system. The Ombudsman also forwards cases to authorities for other reasons. 61 per cent of cases which were rejected temporarily in 2014 were forwarded (for various reasons) to the relevant authorities by the Ombudsman.
- 3) The table on page 109 contains details of the grounds on which cases were rejected in 2014.

What did our cases concern in 2014?

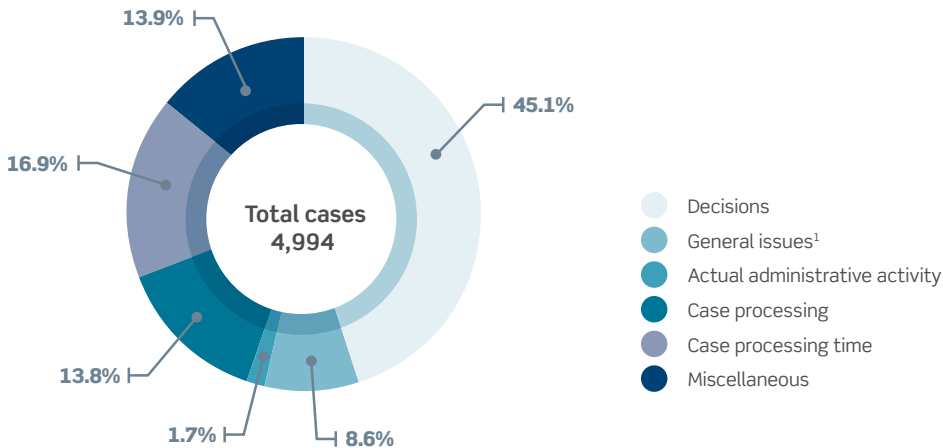
Cases with criticism, formal or informal recommendations, etc.



Substantively investigated cases



All concluded cases



- Decisions
- General issues¹
- Actual administrative activity
- Case processing
- Case processing time
- Miscellaneous

1) In monitoring cases, the main topic is normally 'General issues'.

Outcome of cases in 2014 by authorities etc.

Authority etc. with prime responsibility ¹	Substantively investigated cases ²		Rejected cases	Total cases
	With criticism, formal or informal recommendations, etc.	Without criticism, formal or informal recommendations, etc.		

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

a. Ministry of Employment

Department of Employment	2	1	16	19
ATP Appeals Board	0	5	5	10
ATP (Danish Labour Market Supplementary Pension Scheme)	0	0	6	6
National Board of Industrial Injuries	0	0	53	53
Danish Working Environment Authority	0	0	2	2
Unemployment Insurance Complaints Centre	0	1	1	2
Fund for Better Working Environment and Labour Retention	0	1	0	1
Employees' Guarantee Fund	0	0	1	1
Danish Agency for Labour Market and Recruitment	0	1	12	13
Total	2	9	96	107

b. Ministry of Business and Growth

Department of Business and Growth	3	2	7	12
Danish Business Authority	0	0	5	5
Danish Financial Supervisory Authority	0	0	6	6
Danish Consumer Ombudsman	0	1	7	8
Danish Patent and Trademark Office	0	0	1	1
Danish Safety Technology Authority	0	0	1	1
Danish Storm Council	0	0	1	1
Danish Maritime Authority	0	0	10	10
Total	3	3	38	44

- 1) The cases in Section A of the table have been classified under the ministries existing at the end of the year. Cases relating to authorities which have been closed down or reorganised have as far as possible been classified under the ministerial areas where the cases would have belonged at the end of the year.
- 2) See note 1 to the chart on page 100.

Outcome of cases in 2014 by authorities etc.

Authority etc. with prime responsibility ¹	Substantively investigated cases ²		Rejected cases	Total cases
	With criticism, formal or informal recommendations, etc.	Without criticism, formal or informal recommendations, etc.		
c. Ministry of Finance				
Department of Finance	2	4	9	15
Agency for Digitisation	0	1	18	19
Agency for the Modernisation of Public Administration	0	2	10	12
Total	2	7	37	46
d. Ministry of Defence				
Department of Defence	1	0	5	6
Emergency Management Agency	0	0	1	1
Danish Defence Personnel Organisation	0	1	2	3
Total	1	1	8	10
e. Ministry of Justice				
Department of Justice	7	20	106	133
Local prisons	5	4	44	53
Civil Affairs Agency	0	1	19	20
Data Protection Agency	0	1	10	11
Independent Police Complaints Authority	0	1	5	6
Greenland Criminal Injuries Compensation Board	0	0	1	1
Department of Prisons and Probation	1	63	80	144
Criminal Injuries Compensation Board	0	1	3	4
Prison and Probation Service in Greenland, institutions for convicted persons	7	0	0	7
Regional offices of the Prison and Probation Service	4	0	0	4
Prison and Probation Service institutions	0	0	2	2
Halfway houses under the Prison and Probation Service	3	0	0	3
The police	7	1	86	94
Danish Security and Intelligence Service (PET)	0	1	4	5
Chief Constable of Greenland	0	0	2	2
Danish Medico-Legal Council	1	0	3	4
Director of Public Prosecutions	0	2	19	21
National Police	1	22	37	60
Prosecution Service	2	18	36	56
State prisons	12	3	36	51
Immigration Appeals Board	0	11	16	27
Immigration Service	0	1	48	49
Total	50	150	557	757

Outcome of cases in 2014 by authorities etc.

Authority etc. with prime responsibility ¹	Substantively investigated cases ²		Rejected cases	Total cases
	With criticism, formal or informal recommendations, etc.	Without criticism, formal or informal recommendations, etc.		

f. Ministry of Ecclesiastical Affairs

Department of Ecclesiastical Affairs	1	1	12	14
Parochial church councils	0	0	3	3
Dioceses	0	0	13	13
Total	1	1	28	30

g. Ministry of Climate, Energy and Building

Department of Climate, Energy and Building	2	0	2	4
Energinet.dk	0	0	5	5
Danish Energy Agency	0	0	5	5
Danish Energy Regulatory Authority	1	0	3	4
Total	3	0	15	18

h. Ministry of Culture

Department of Culture	1	3	9	13
DR (Danish Broadcasting Corporation)	1	1	23	25
Danish Agency of Culture	0	0	1	1
Media Board	0	1	0	1
Reimbursement Committee	0	1	2	3
Total	2	6	35	43

i. Ministry of the Environment

Department of the Environment	0	2	5	7
Danish Coastal Authority	0	0	1	1
Environmental Protection Agency	0	0	4	4
Environmental Board of Appeal	0	1	40	41
Nature Agency	0	0	22	22
Total	0	3	72	75

j. Ministry of Housing, Urban and Rural Affairs

Department of Housing, Urban and Rural Affairs	0	0	3	3
Total	0	0	3	3

Outcome of cases in 2014 by authorities etc.

Authority etc. with prime responsibility ¹	Substantively investigated cases ²		Rejected cases	Total cases
	With criticism, formal or informal recommendations, etc.	Without criticism, formal or informal recommendations, etc.		

k. Ministry of Children, Gender Equality, Integration and Social Affairs

Department of Children, Gender Equality, Integration and Social Affairs	2	3	14	19
Danish National Board of Adoption	0	0	1	1
National Social Appeals Board	1	90	625	716
National Board of Social Services	0	0	2	2
The State Administration ³	0	0	33	33
Udbetaling Danmark (institution responsible for benefit payments)	0	1	96	97
Total	3	94	771	868

l. Ministry of Food, Agriculture and Fisheries

Department of Food, Agriculture and Fisheries	0	1	7	8
Food and Veterinary Complaints Board	3	3	28	34
Danish Veterinary and Food Administration	0	0	8	8
Danish AgriFish Agency	0	0	11	11
Total	3	4	54	61

m. Ministry of Health

Department of Health	2	1	28	31
Psychiatric Appeals Board	0	0	1	1
Danish Mental Health Patients' Complaints Board	0	0	5	5
National Agency for Patients' Rights and Complaints	2	5	45	52
National Institute of Radiation Protection	0	0	2	2
SSI (Statens Serum Institut)	0	0	1	1
Danish Health and Medicines Authority	0	0	25	25
Disciplinary Board of the Danish Health Care System	4	2	32	38
Total	8	8	139	155

- 3) The figures comprise cases in which the State Administration was the authority with prime responsibility and which have been classified under the Ministry of Children, Gender Equality, Integration and Social Affairs based on their substantive content.

Outcome of cases in 2014 by authorities etc.

Authority etc. with prime responsibility ¹	Substantively investigated cases ²		Rejected cases	Total cases
	With criticism, formal or informal recommendations, etc.	Without criticism, formal or informal recommendations, etc.		
n. Ministry of Taxation				
Department of Taxation	4	4	22	30
Danish Registry of Motor Vehicles	0	0	3	3
National Tax Tribunal	1	4	18	23
Danish Customs and Tax Administration (SKAT)	0	2	103	105
Tax Appeals Agency	1	2	11	14
Tax centres	0	0	4	4
Regional assessment appeals boards	0	1	1	2
Total	6	13	162	181
o. Prime Minister's Office				
Department of the Prime Minister's Office	2	5	5	12
Total	2	5	5	12
p. Ministry of Transport				
Department of Transport	3	2	19	24
Danish State Railways	0	0	7	7
Danish Transport Authority	0	1	11	12
Road Directorate	3	0	16	19
Total	6	3	53	62
q. Ministry of Higher Education and Science				
Department of Higher Education and Science	0	4	5	9
State Education Grant and Loan Scheme Board of Appeal	0	7	8	15
Danish Agency for Science, Technology and Innovation	0	0	1	1
Danish Agency for Higher Education	0	6	17	23
Educational establishments	0	2	31	33
Danish Committees on Scientific Dishonesty (DCSD)	0	1	3	4
Total	0	20	65	85
r. Ministry of Foreign Affairs				
Department of Foreign Affairs	4	2	13	19
Danish embassies, consulate generals, etc. in foreign countries	0	0	1	1
Total	4	2	14	20

Outcome of cases in 2014 by authorities etc.

Authority etc. with prime responsibility ¹	Substantively investigated cases ²		Rejected cases	Total cases
	With criticism, formal or informal recommendations, etc.	Without criticism, formal or informal recommendations, etc.		

s. Ministry of Education

Department of Education	0	2	5	7
Appeals Board for Special Needs Education	0	1	1	2
National Agency for Education and Quality	0	3	2	5
Total	0	6	8	14

t. Ministry of Economic Affairs and the Interior

Department of Economic Affairs and the Interior	1	2	11	14
The State Administration ⁴	2	6	126	134
Total	3	8	137	148

Central authorities, total

99

343

2,297

2,739

B. Municipal and regional authorities (within the Ombudsman's jurisdiction)

Municipalities	30	42	1,378	1,450
Regions	21	6	97	124
Joint municipal or regional enterprises	0	0	3	3
Total	51	48	1,478	1,577

C. Other authorities etc. within the Ombudsman's jurisdiction⁵

Other authorities etc. within the Ombudsman's jurisdiction	16	5	47	68
Total	16	5	47	68

- 4) The figures comprise cases in which the State Administration was the authority with prime responsibility and which have been classified under the Ministry of Economic Affairs and the Interior based on their substantive content. The figures include cases relating to the State Administration in its capacity of supervisory authority.
- 5) The figures comprise private institutions which fall within the Ombudsman's jurisdiction in connection with OPCAT (the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) or in the children's field and other institutions etc. which have been included under the Ombudsman's jurisdiction. In 2014, the Ombudsman decided in pursuance of section 7(4) of the Ombudsman Act that his jurisdiction was to extend to Local Government Denmark and Danish Regions to the extent to which they are covered by the provisions of the Public Administration Act.

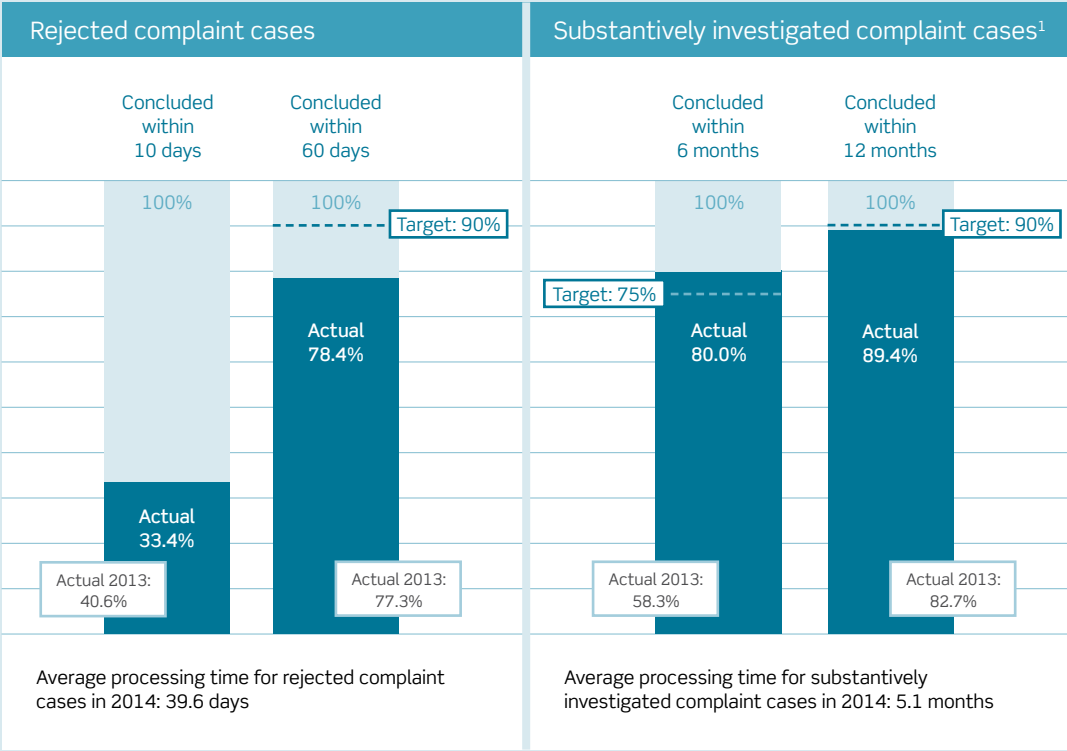
Outcome of cases in 2014 by authorities etc.				
Authority etc. with prime responsibility ¹	Substantively investigated cases ²		Rejected cases	Total cases
	With criticism, formal or informal recommendations, etc.	Without criticism, formal or informal recommendations, etc.		
D. Authorities etc. within the Ombudsman's jurisdiction, total				
Central authorities, total (A)	99	343	2,297	2,739
Municipal and regional authorities, total (B)	51	48	1,478	1,577
Other authorities etc. within the Ombudsman's jurisdiction, total (C)	16	5	47	68
Total	166	396	3,822	4,384
E. Institutions etc. outside the Ombudsman's jurisdiction				
1. Courts etc., cf. section 7(2) of the Ombudsman Act	0	0	81	81
2. Dispute tribunals, cf. section 7(3) of the Ombudsman Act	0	0	23	23
3. Other institutions, companies, businesses and persons outside the Ombudsman's jurisdiction	0	0	266	266
Total	0	0	370	370
F. Cases not relating to specific institutions etc.				
	0	0	240	240
Grand total (A-F total)	166	396	4,432	4,994

Grounds for rejection – 2014

	Rejected cases, total	Of which municipal and regional cases
1. Final rejections		
1. Complaints which were submitted too late (Section 13(3) of the Ombudsman Act provides for a limitation period of one year)	94	32
2. The administrative case processing options had not been exhausted and were no longer available (section 14 of the Ombudsman Act)	56	28
3. Complaints 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 (section 7(2) of the Ombudsman Act)	129	19
4. Complaints about matters which related to Parliament, including legislative issues, and which were thus outside the Ombudsman's jurisdiction (cf., a contrario, especially section 7(1) of the Ombudsman Act)	38	1
5. Complaints which related to other matters outside the Ombudsman's jurisdiction, including private legal matters (cf., a contrario, especially section 7(1) of the Ombudsman Act)	236	3
6. Complaints which were not clarified sufficiently to enable investigation and complaints which were withdrawn	242	81
7. Enquiries etc. without actual complaints	443	123
8. Anonymous approaches (section 13(2) of the Ombudsman Act)	22	2
9. Complaints which the Ombudsman decided not to investigate (especially section 16(1) of the Ombudsman Act)	1,455	440
Final rejections, total	2,715	729
2. Temporary rejections		
The administrative case processing options had not been exhausted (section 14 of the Ombudsman Act) ¹	1,717	749
Temporary rejections, total	1,717	749
Total (1+2)	4,432	1,478

1) See note 2 to the chart on page 100.

PROCESSING TIMES



1) See page 100, note 1, for an explanation of the term ‘substantively investigated case’.

OTHER FACTS

The Ombudsman declared himself **disqualified** in one complaint case in 2014. Parliament's Legal Affairs Committee assigned this case to Henrik Bloch Andersen, High Court Judge. The Ombudsman's office provided secretariat assistance in connection with the processing of the case.

The Inatsisartut (the Parliament of Greenland) asked the Ombudsman to act as **ad hoc ombudsman** for the Ombudsman for Inatsisartut in one case in 2014. The Faroese Lagting (the Parliament) did not ask the Ombudsman to act as ad hoc ombudsman for the Faroese Parliamentary Ombudsman in any cases in 2014.

STATEMENT OF REVENUE AND EXPENDITURE – 2014

The Ombudsman's ordinary activities

DKK

Revenue

Subsidy from Ministry of Foreign Affairs	808,000
Other revenue	0
Total revenue	808,000

Expenditure

Wages and salaries, pension costs	51,017,000
Rent	3,958,000
Staff and organisation, including staff welfare	463,000
Continuing training/education	434,000
Books and library	163,000
Specialist databases	902,000
Newspapers and journals	244,000
Communication	448,000
Computer systems – operations and development	2,181,000
Computer hardware	395,000
Telephony and broadband	576,000
Premises – repairs and maintenance	398,000
Furniture, fixtures and fittings	340,000
Cleaning, laundry and refuse collection	212,000
Heating and electricity	514,000
Premises – other expenditure	230,000
Travel	484,000
Entertainment and meals	148,000
Contribution to financial support scheme for trainees	281,000
Stationery and office supplies	160,000
Postage	123,000
Other goods and services	475,000
Total expenditure	64,146,000
Total expenditure (net)	63,338,000
Government appropriation	65,100,000
Result for the year	1,762,000

Public service pension payments

	DKK
Pension payments for former public servants	1,315,000
Public service pension contributions	-1,658,000
Public service pension payments, total	-343,000

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 area) of the statements which have been published on cases concluded in 2014.

A. MINISTRY OF EMPLOYMENT

No statements on cases concluded in 2014 have been published.

B. MINISTRY OF BUSINESS AND GROWTH

The following statements on cases concluded in 2014 have been published:

2014-13. USE OF THE CIVIL SERVICE FOR AN INFORMATION CAMPAIGN ON A REFERENDUM REGARDING THE UNIFIED PATENT COURT

The Ombudsman received a complaint from a Member of the European Parliament on behalf of the organisations PROSA, NOAH and the People's Movement against the EU regarding the information campaign by the Ministry of Business and Growth leading up to the referendum on 25 May 2014 on the EU Unified Patent Court.

The organisations did not consider the contents of the information campaign to be neutral and were of the opinion that the Government had misused the Civil Service to campaign for the Government's own stance regarding the referendum.

The Ombudsman did not find cause for opening an ombudsman investigation. In the Ombudsman's opinion, there was no prospect that by opening an ombudsman investigation he would be able to determine whether the Ministry had disregarded the rules regulating information campaigns and the use of the Civil Service in that context.

2014-32. DATA EXTRACTION. SPECIAL CONFIDENTIALITY PROVISION. FEW AND SIMPLE COMMANDS

A journalist asked the Danish Business Authority for information from the Central Business Register (CBR) about the number of employees in specific companies. The information was publicly available via extraction from the CBR but only in larger unit groups. The journalist wanted either to be informed of the exact number of employees or to receive the information in smaller unit groups.

The Danish Business Authority refused the request with, i.a., reference to the provision in section 18(7) of the Act on the Central Business Register which says that information about the number of employees shall only be passed on in the form of size groups. It was the Danish Business Authority's assessment that the provision had the character of a specific confidentiality provision which prevented the information being given out in smaller unit groups than those already determined. The Ministry of Business and Growth confirmed the decision.

The journalist then complained to the Ombudsman who stated that he agreed with the Danish Business Authority and the Ministry that the provision in the Act had to be considered a specific confidentiality provision, at least with regard to the passing on of information about the current, precise number of employees in CBR-registered companies. Thus, though a grouping of information about the exact number of employees could be produced via few and simple commands, the Ombudsman could not criticise that the authorities had not carried out a data extraction of this nature pursuant to section 11 of the Access to Public Administration Files Act.

In addition, the Ombudsman agreed with the authorities that a grouping of information on the number of employees in smaller unit groups than those already determined in the CBR could not be carried out via few and simple commands. Therefore, the Ombudsman could not criticise that the authorities had not carried out a data extraction of this nature pursuant to section 11 of the Access to Public Administration Files Act. On this basis, the Ombudsman did not find grounds for considering whether the provision in the CBR Act prevented information about the number of employees being given out in smaller unit groups.

C. MINISTRY OF FINANCE

The following statements on cases concluded in 2014 have been published:

2014-17. REFUSAL TO GIVE ACCESS TO INFORMATION ABOUT CONTRACTUAL PARTNER'S FISCAL POSITION ON RECEIVING PROFIT

A journalist complained to the Ombudsman that the Ministry of Finance had excluded information in a document concerning the sale by the Danish State of shares in the publicly owned energy company DONG Energy A/S to the U.S. company Goldman Sachs with reference to, among other things, section 30(ii) of the Access to Public Administration Files Act. The document contained information regarding the possible fiscal position of Goldman Sachs regarding profits received from DONG Energy A/S. In the Ministry's judgment, this was information pertaining to the operating and business procedures of DONG Energy A/S, particularly the company's thoughts regarding a negotiating partner's position and possible deliberations.

In the Ombudsman's opinion, it was on the existing basis not indisputable that an assessment from DONG Energy A/S regarding the likely fiscal position of Goldman Sachs with regard to payment of profits from DONG Energy A/S after the conclusion of the contract was information pertaining to the operating and business procedures or the like of DONG Energy A/S.

In addition, the Ministry of Finance had not specifically stated the nature of the alleged financial loss for DONG Energy A/S. Furthermore, the Ministry had not considered what it entailed that when the access request was made, the contract with Goldman Sachs had been approved by Parliament's Financial Committee. Nor had the Ministry considered the journalist's argument that the question of the payment record by Goldman Sachs regarding taxation of profits had been very much debated in the press.

It was the Ombudsman's overall opinion that the conditions for exempting the information from access according to the provision in section 30(ii) of the Access to Public Administration Files Act were not fulfilled on the present basis.

2014-34. COMPLIANCE WITH ADMINISTRATIVE LAW UPON INTRODUCTION OF NEW PUBLIC IT SYSTEMS

The Ombudsman opened an own initiative case involving the Ministry of Finance about securing that new public IT systems comply with the demands of administrative law to the processing of cases. The reason was that there had been a number of cases about problems that arise when public authorities introduce new IT systems which inadequately support the applicable legislation.

It appeared from a statement which the Ombudsman received from the Agency for Digitisation – and in which the Ministry of Finance concurred – that the Agency for Digitisation and the Ministry of Justice agreed on the need for comprehensive guidance of the authorities to secure that new public IT systems comply with the demands of administrative law. The Agency for Digitisation also explained specifically how the Agency and the Ministry would complete the comprehensive guidance.

On the basis of the available information, the Ombudsman decided to take no further action in the case, but he asked the Ministry of Finance to keep him informed about further developments in the case and also requested a copy of the material prepared as part of the comprehensive guidance.

D. MINISTRY OF DEFENCE

No statements on cases concluded in 2014 have been published.

E. MINISTRY OF JUSTICE

The following statements on cases concluded in 2014 have been published:

2014-20. NON-DISCLOSURE OF LAWYERS' IDENTITY

A journalist complained to the Ombudsman about the Ministry of Justice having denied access to the names of five lawyers who had recently been – but no longer were – employed according to section 784(2) of the Administration of Justice Act. The lawyers had previously belonged to the special group of lawyers who are appointed in those cases that involve infringement of secrecy of communications when the Danish Security and Intelligence Service (PET) investigates crime against state security, terrorism, and so on.

The Ministry of Justice had in particular pointed to considerations of state security because of the risk of undue influence on the lawyers in question to possibly obtain access to classified information.

After having asked further questions about the reason for the denied access, the Ombudsman recommended that the Ministry reopen the case and make a new decision. Thus, the Ombudsman found that there was too much doubt about the Ministry's real reason for the denied access for the Ombudsman to be able to recognize the decision on the present basis.

In the new decision, the Ministry once again denied giving access to the names. And again, the journalist complained to the Ombudsman.

The Ombudsman found that with the explanations he had now received from the Ministry of Justice, there were overall not sufficient grounds for criticising the Ministry's new decision.

However, the explanations which the Ministry of Justice had given during the collective case proceedings gave the Ombudsman cause for comment. In the Ombudsman's opinion, the case illustrated how important it is that the authorities, also in cases pertaining to PET, remain critical – and self-critical – as to whether there really are considerations which justify denied access to information. According to the Ombudsman, the case could leave the impression that this had not fully happened.

2014-23. EXTRACTION OF INFORMATION IN AN INTERNAL DOCUMENT

A journalist complained to the Ombudsman because the Ministry of Justice had given him a partial refusal of access to a document on the grounds that it was an internal document. The document contained information which the Ministry had made a note of in connection with a telephone call from a party secretary regarding the interpretation of the subsidy concept in the Political Parties Accounts Act. The Ministry had extracted two paragraphs from the documents and granted the journalist access to them.

The Ombudsman agreed with the Ministry of Justice that the document was an internal document which is generally exempt from access.

However, the Ombudsman found that more information in the document had to be considered subject to extraction than the two paragraphs to which the Ministry of Justice had given access. The information concerned a paragraph in which the party secretary made a number of statements. The Ombudsman emphasised that the information had to be considered information about the 'factual basis' of the case and that the information was 'relevant to the case'. The Ombudsman referred to the fact that the information was part of the grounds on which the Ministry had assessed the case and that it was relevant to the case as it appeared that the Ministry had commented on the statements and to a certain extent also given its advice on that basis.

The Ombudsman therefore asked the Ministry of Justice to resume the case and make a new decision with regard to this additional information.

The Ministry of Justice subsequently resumed the case and gave access to the paragraph in question.

2014-36. REFUSED INCREASED ACCESS TO FILES BASED ON AUTHORITY'S RESOURCE USE. ANONYMISATION

A journalist complained to the Ombudsman because the Immigration Service and the Ministry of Justice had given a (partial) refusal to his request for access to at least 600 cases in which asylum seekers had been refused healthcare treatment.

The documents included in the request for access contained, among other things, information on the healthcare details of the individual asylum seekers, and the documents consequently contained information which was exempt from access pursuant to section 30(i) of the Access to Public Administration Files Act.

In their decisions, the authorities had taken into account that the Immigration Service would have to use at least 15 minutes per case – meaning at least 150 hours or 20 full working days – in order to comply with the request for access.

On this basis, the Ombudsman did not have grounds for criticising the Immigration Service's opinion that anonymisation of the relevant information could not take place without considerable use of the Service's resources and that a refusal to the request had consequently been given pursuant to section 30(i) of the

Access to Public Administration Files Act and to a principle of increased access to files corresponding to section 14 of the Act. At the same time, the Ombudsman noted that, prior to the refusal, the Immigration Service had asked the journalist to delimit or clarify his request for access, but that he did not wish to do so.

The journalist also complained about the extent of anonymisation in 32 cases to which he got partial access. The Ombudsman did not find any grounds for criticising the extent of the anonymisation either.

2014-42. MONITORING VISIT TO THE ASYLUM CENTRE ‘CENTER SANDHOLM’ – PERSONS UNDER TOLERATED RESIDENCE STATUS

In 2012 and 2014, the Ombudsman carried out monitoring visits to the asylum centre ‘Center Sandholm’. The visits were carried out together with the Institute for Human Rights and DIGNITY – Danish Institute Against Torture.

The purpose of the monitoring visits was to assess the general conditions for persons under tolerated residence status who live at ‘Center Sandholm’. The monitoring visit in 2014 included a group of 25 individuals who had been under tolerated residence status and had had a duty to reside at ‘Center Sandholm’ since 2012 or earlier.

Persons under tolerated residence status at ‘Center Sandholm’ are subject to a number of restrictions. Among other things, they have to live at the centre (often in rooms with one or two other people), they have a duty to report regularly to the police (typically every day), they cannot take on paid work, and they receive a limited cash allowance (a maximum of 31 DKK a day). They get meal coupons for the centre’s cafeteria. They can in principle cook their own food, but the reality is that this is very difficult for them because of the limited financial resources available to them. There is no limit to the duration of tolerated residence.

Together with the indeterminate duration, the Ombudsman considered the overall conditions for persons under tolerated residence status at ‘Center Sandholm’ to have a very stressful and restrictive impact on a basic way of living. The general conditions were not, however, contrary to the ban on ‘degrading treatment’ in the UN Convention against Torture and in the European Convention on Human Rights.

In the Ombudsman's opinion, though, there was reason for the responsible authorities to consider in more general terms to which extent it was necessary in all respects to maintain such overall stressful and restrictive living conditions.

F. MINISTRY OF ECCLESIASTICAL AFFAIRS

The following statement on a case concluded in 2014 has been published:

2014-33. BISHOP AND DIOCESAN AUTHORITIES EMPLOYEES DISQUALIFIED IN A COMPLAINT CASE REGARDING THE RURAL DEAN'S VICARAGE INSPECTION WITH PARTICIPATION OF THE BISHOP IN HIS CAPACITY AS RURAL DEAN

A former vicar complained to the Ombudsman about a decision taken by the diocese and the Ministry of Ecclesiastical Affairs in regard to the vicar's complaint about some of the Rural Dean Inspections of the official residence attached to the vicar's position as vicar.

The Ombudsman's examination of the case concentrated on whether the bishop – who had been a rural dean in the past and had participated in the Rural Dean Inspections of the vicar's official residence in this capacity – as well as employees at the diocesan authorities were disqualified when they processed a complaint from the vicar concerning the reply from the Deanery Committee on the Rural Dean Inspections of vicarages.

In the opinion of the diocese and the Ministry of Ecclesiastical Affairs, there was no disqualification involved.

The Ombudsman found that the Ministry of Ecclesiastical Affairs should have established disqualification. Therefore, he asked the Ministry to reopen the processing of the case.

G. MINISTRY OF CLIMATE, ENERGY AND BUILDING

The following statement on a case concluded in 2014 has been published:

2014-41. CASE PROCESSING TIME OF APPROXIMATELY 5.5 YEARS IN CASE REGARDING PRICE CONTROL OF DISTRICT HEATING WAS UNACCEPTABLY LONG

A lawyer complained to the Ombudsman about the case processing time by the Energy Regulatory Authority in a case regarding price control of district heating. The Authority expressed its regrets, and the Ombudsman agreed that the case processing time had been far too long. In the Ombudsman's opinion, a case processing time of 5.5 years was unacceptable, and he recommended that the Authority conclude the case as a matter of priority.

Furthermore, the Ombudsman agreed with the Authority in its expression of regret that the Authority had not done more to inform the parties of the reasons why the case processing dragged on and that the Authority had not reacted to the lawyer's inquiries to a greater extent.

The Ombudsman also agreed with the Authority's expression of regret that the Authority did not inform the parties that it was not possible for the Authority to send them a case processing timetable within a framework which the Authority had itself issued.

In addition, the Ombudsman found it very regrettable that in the autumn of 2013 – after a case processing time of 5.5 years – the Authority did not have a sufficient overview of the case to be able to give an expected timetable for the continued case processing.

H. MINISTRY OF CULTURE

The following statements on cases concluded in 2014 have been published:

2014-12. FREEDOM OF SPEECH FOR THE DANISH BROADCASTING CORPORATION (DR) EMPLOYEES

In May 2013, a programme presenter at the Danish Broadcasting Corporation (DR) wrote a feature article in a daily newspaper in which he expressed his personal and strong dislike of religion.

At the end of May 2013, the programme presenter was summoned to a disciplinary interview with his immediate superior. At the meeting he was given a disciplinary reprimand and also told to get permission from his immediate superior if he in future wanted to express his personal opinions in the public domain.

DR's reaction to the programme presenter's article was covered by the press in October 2013, and the Ombudsman decided to take up the case on his own initiative. In November 2013 DR withdrew the imposed and unconstitutional censorship. Instead, DR composed a new management response to the programme presenter which said that he had to expect that it might be necessary to reallocate him if he made any similar expressions in future.

In his case report, the Ombudsman approved DR's guidelines for the private statements of employees.

At the same time, the Ombudsman found that DR's handling of the actual case was clearly outside those guidelines and that it was cause for severe criticism that DR had, among other things, applied a censorship measure in breach of section 77 of the Danish Constitutional Act.

The Ombudsman also stated that it was difficult to understand that DR's administrative procedures had made such mistakes possible.

As the new management response from November 2013 did not contain any specific explanation as to why the feature article was incompatible with the function as programme presenter, the Ombudsman recommended that DR reconsider the new management response.

2014-25. REFUSED ACCESS TO DISCREPANCY REPORT FOR A FEATURE FILM'S PAYROLL AND PRODUCTION ACCOUNTS

A journalist had asked The Danish Film Institute for access to the discrepancy report regarding the production accounts for a feature film. The discrepancy report appeared in an e-mail correspondence between the Institute and the film company which had produced the feature film.

The Danish Film Institute gave the journalist the discrepancy report but – as did the Ministry of Culture subsequently – with reference to section 30(i) and (ii) of the Access to Public Administration Files Act, the Institute exempted from access information on salaries to the film production's employees, the amount of the co-producers' funding of the film, sales revenues and the distribution of the film's development costs. In the opinion of the authorities, this was information partly on the private, including financial, circumstances of individuals (section 30(i) of the Act) and partly on business matters the disclosure of which would result in a risk of financial damage for particularly the film company (section 30(ii) of the Act).

The journalist then complained to the Ombudsman who did not find any grounds for criticising that the authorities had exempted the information from access. The Ombudsman emphasised that, according to available information, the authorities had made a concrete assessment of the nature of the information, and for the information exempted pursuant to section 30(ii) the authorities had likewise made a concrete assessment of whether or not public access to that information would result in a risk of financial damage. In addition, in light of the circumstances of the case, the Ombudsman could not criticise that the Danish Film Institute had not obtained a statement from the film company before making the decision.

However, the Ombudsman did find it relevant to make some general comments on the practice of The Danish Film Institute, including the meaning of the rule of presumption mentioned in the explanatory notes for section 30(ii) of the Access to Public Administration Files Act.

I. MINISTRY OF THE ENVIRONMENT

No statements on cases concluded in 2014 have been published.

J. MINISTRY OF HOUSING, URBAN AND RURAL AFFAIRS

No statements on cases concluded in 2014 have been published.

K. MINISTRY OF CHILDREN, GENDER EQUALITY, INTEGRATION AND SOCIAL AFFAIRS

The following statement on a case concluded in 2014 has been published:

2014-18. NO GROUNDS FOR EXEMPTING INFORMATION ABOUT NAMES AND INITIALS OF EMPLOYEES FROM ACCESS

A journalist complained to the Ombudsman because the Ministry of Children, Gender Equality, Integration and Social Affairs had exempted information about names and initials of Ministry employees from access.

The Ombudsman said that the journalist's reason for wanting access – which was to investigate possible conflict of interest issues in connection with the Ministry's allocation of subsidies – could be seen as the core of the Access to Public Administration Files Act's basic intent, namely to permit 'the public's control of the public administration'. The Ombudsman stated that it is the Access to Public Administration Files Act's clear and fundamental basis that there is access to names of employees in the public administration, and that exemption from this can only take place under special circumstances and according to a specific assessment.

As far as the Ombudsman was concerned, the Ministry's assessment of the case was without a safe basis in the Access to Public Administration Files Act, and it was more suited to appear as an expression of personnel policy considerations in the light of a single case than as a factually correct administration of the Act.

The Ombudsman recommended that the Ministry reopen the case and make a new decision about access to the information in question.

The Ministry reopened the case processing and gave access to the requested information.

L. MINISTRY OF FOOD, AGRICULTURE AND FISHERIES

The following statements on cases concluded in 2014 have been published:

2014-4. DENIED ACCESS TO INFORMATION ABOUT ORIGIN AND PRELIMINARY TEST RESULTS OF GM MAIZE

A company had filed an application with the Danish AgriFish Agency for variety testing of seven GM maize types for registration on the Danish National List of Plant Varieties and had asked for confidentiality in that context. After having received the information that the varieties could not be expected to obtain registration on the list, the company withdrew its application. A journalist complained to the Ombudsman that the Danish AgriFish Agency as well as the Ministry of Food's Complaints Center had denied him access to information about the origin and preliminary test results of the maize varieties.

The Ombudsman agreed with the authorities that the question of access had to be decided in compliance with the rules of the Environmental Information Act which is based on, i.a., an EU Directive. The company's request for confidentiality was submitted pursuant to a provision in the Consolidate Act on Plant Variety Protection, also based on an EU Directive.

The Ombudsman agreed with the authorities that the confidentiality regulation in the Consolidate Act on Plant Variety Protection was defined in order to protect plant breeding companies' trade secrets and that this precautionary measure was also safeguarded in the EU Directive on environmental information. Since the Ombudsman found no grounds for disregarding the authorities' deliberations in the case, including the consideration to protect the companies' trade secrets compared to the public's interest in disclosure of the information, the Ombudsman could not criticise the authorities' decisions.

2014-8. INFORMATION IDENTIFYING WHICH PIG FARMS WERE CONTAMINATED WITH A MULTIRESTANT BACTERIA COULD NOT BE EXEMPTED FROM ACCESS

In the time period 2008-2011, the Danish Veterinary and Food Administration tested a number of pig farms to find out if they were contaminated with the multiresistant *Staphylococcus* bacteria MRSA. Three journalists asked the

Administration for access to information about which of the tested pig farms were contaminated. The Administration denied the request, specifically on the grounds that granting access would increase the risk of stigmatisation of the pig farm owners and their families. The journalists complained to the Ombudsman.

The Ombudsman said that the information about which pig farms were contaminated was environmental information and that the access request had to be processed according to the Environmental Information Act. It was the Ombudsman's opinion that it could not be ruled out that the population's reaction to disease in animals which people are in contact with and can get contaminated by might reach a level where the purpose to avoid stigmatisation of the people involved can be served by the provisions in section 13(1)(vi) of the Access to Public Administration Files Act, cf. the Environmental Information Act regulations. However, the Ombudsman did find that the authorities had not provided a sufficient basis to exempt the information from access according to the regulations. In that context, the Ombudsman pointed out that the provisions in section 13(1)(vi) of the Access to Public Administration Files Act have a limited scope of application, that there is especially extensive access according to the regulations of the Environmental Information Act, and that, according to the regulations, it has to be precisely the granting of access to the information that entails or supports stigmatisation. Therefore, there are substantial requirements for documentation of the need to avoid stigmatisation, etc. if such needs are to provide grounds for denying access.

M. MINISTRY OF HEALTH

The following statements on cases concluded in 2014 have been published:

2014-1. DECISIONS CRITICISING HEALTH CARE PROFESSIONALS WERE MADE PUBLIC UP TO 1.5 YEARS LATER. THE STATUTORY 2-YEAR-PERIOD OF PUBLICATION COULD NOT BE REDUCED

The Disciplinary Board of the National Health Service (the Board) had in a number of cases made decisions where the Board criticised health care professionals for serious or repeated negligence, etc. The National Agency for Patients' Rights and Complaints (the Agency) which is secretariat for the Board had by mistake not published the decisions immediately after they were made. Instead, they were published up to 1.5 years later. In connection with the delayed publishing, the Agency informed the health care professionals in question that the decisions henceforth would remain public on the relevant websites for 2 years after the time of publishing.

The Danish Medical Association complained to the Ombudsman on, i.a., the grounds that the decisions had been made public in conflict with the basic assumptions of the Act on Appeals and Compensation in Health Care. The Medical Association wanted the decisions removed from the websites.

The Ombudsman said that it was most regrettable that the Board did not publish the decisions immediately after they were made and that, according to information received, up to 1.5 years went by before the decisions were published in at least some of the cases. The Ombudsman asked the Ministry of Health for a statement on whether the Ministry – for the sake of clarifying the state of law for citizens and law-applying authorities – would be prepared to change the regulations on publishing decisions, etc. in complaint and monitoring cases in the health care sector so that it is more explicitly stated that decisions must be published immediately after they are made.

On the other hand, the Ombudsman could not criticise the authorities' opinion that the regulations' requirement for a statutory publication period of 2 years could not specifically be derogated from by the Board. Likewise, the Ombudsman had no grounds for assuming that in the situation at hand the Minister might be obligated to grant an exemption from this claim in the regulations.

2014-7. PASSING ON ELECTRONIC MEDICINE INFORMATION

The Ombudsman received a complaint about the processing of a case by the former National Agency for Patients' Complaints. One of the issues of the complaint was that in the complainant's opinion the National Agency for Patients' Complaints should have collected some electronic medicine information from the so-called Medicine Profile to be used in the processing of the case.

During the Ombudsman's examination of the case it was disclosed that the former National Agency for Patients' Complaints, now the Disciplinary Board of the National Health Service and the National Agency for Patients' Rights and Complaints, believed that there was no statutory basis for collecting the electronic medical information for use in a patient complaint case. The Agency argued that the Danish Health Act contained an exhaustive regulation of any kind of passing on of electronic medicine information, and the National Agency for Patients' Complaints was not mentioned in this connection.

The Ombudsman investigated this question.

The Ombudsman found that the Danish Health Act had neither previously nor at the time of the Ombudsman's statement in the case contained an exhaustive regulation of any kind of passing on of electronic medicine information. Consequently, it is possible for the Disciplinary Board of the National Health Service and the National Agency for Patients' Rights and Complaints to request that the data controller forward electronic medicine information.

The Ombudsman also found that the question of passing on electronic medicine information for use in the processing of a patient's complaint must be assessed in accordance with the general rules pursuant to section 7 of the Act on Processing of Personal Data regarding i.a. the passing on of health status data.

2014-40. REFUSED REQUEST FOR ACCESS TO INTERNAL DOCUMENT. NOTIFICATION OF FACTUAL INFORMATION AND NOTIFICATION OF INTERNAL EXPERT ASSESSMENTS. COMMUNICATION BETWEEN AUTHORITY AND CITIZEN

A woman complained to the Ombudsman because the Ministry of Health had refused her request for access to a particular document. The document was a so-called cover to the minister for a hearing regarding three drafts for ministerial orders.

The Ombudsman could not criticise that the Ministry had refused the request for access.

However, the Ministry's use of section 28 of the Access to Public Administration Files Act on notification of factual information and section 29 on notification of internal technical assessments gave the Ombudsman cause for comment.

The case also raised the question of communication, as it appeared from the woman's applications to the Ministry that she was solely interested in some specific details and that this was the reason why she asked for access to the document. However, the document did not contain any of the desired information at all. In the Ombudsman's opinion, it would have been expedient and in accordance with good administrative behaviour if the Ministry had clearly informed the woman of this. The Ombudsman considered it probable that on that basis, the woman would have informed the Ministry that she was not interested in access to the document and that the Ministry would consequently not have had to use resources on processing the request for access.

In addition, the Ombudsman understood the woman's request to mean that no matter whether there were in actual fact documents referring to a question she had asked the Ministry she wanted the Ministry to reply to the question. The Ombudsman therefore asked the Ministry to respond to the woman's question.

N. MINISTRY OF TAXATION

The following statements on cases concluded in 2014 have been published:

2014-3. NO ACCESS TO DOCUMENTS BY SPECIAL ADVISER AS PART OF MINISTER'S PARTY POLITICAL WORK

Independently of each other, two journalists complained to the Ombudsman about the Ministry of Taxation having denied them access to documents written and sent to one or more media houses by the Ministry's special adviser. The documents dealt with earmarked paternity leave. The Ministry had denied access to the requests on the grounds that the assignment in question was not connected to the Minister's capacity as minister but to his duty as party politician, and therefore the documents were not encompassed by the rules of the Access to Public Administration Files Act.

The journalists questioned whether the assignment was linked to the Minister's duty as minister or as party politician and also questioned the boundaries of a special adviser's lawful work duties as an employee on the Ministry's payroll.

The Ombudsman did not find grounds for criticising the Ministry of Taxation's decisions.

Therefore, the Ombudsman agreed with the Ministry that according to the listed circumstances, the assignment was not linked to the Minister's function as minister in relation to the Access to Public Administration Files Act but to his function as party politician, and therefore there was no access pursuant to the Access to Public Administration Files Act. In addition to that, since special advisers supposedly may advise and aid within wide limits in regard to the Minister's party duties, the Ombudsman found no reason to criticise the Ministry's perception of the assignment as being lawful for the special adviser.

2014-6. THE NATIONAL TAX TRIBUNAL COULD NOT OMIT CONSIDERING WHETHER THE DEADLINES FOR CHANGING A TAX ASSESSMENT HAD BEEN OBSERVED

A woman complained to the Ombudsman that the National Tax Tribunal had changed a tax assessment to her disadvantage. In its decision, the National Tax Tribunal had not taken a position on whether the rules on deadlines for changing a tax assessment had been observed because the woman's representative had waived the claim that the deadlines had not been observed. Whether or not there was a duty to observe the deadlines was of central importance to the question of changing the tax assessment in the case.

The Ombudsman stated that it follows from the legality principle that, as a general rule, the activities of the public administrative authorities shall be based on the legislation, meaning for instance that a decision by an administrative authority must, basically, be in accordance with the law. The Ombudsman also stated that it is the responsibility of the individual administrative authority to procure the necessary information on the cases in question or at least to cause private individuals, including particularly the parties to the case, to contribute to the elucidation of the case (the inquisitorial principle). In addition, the Ombudsman stated that the starting point in principle when an appeals body is to make a decision regarding a complaint is that the appeals body must make the substantively correct decision in the case. This means that the appeals body is subject to the legality principle and the inquisitorial principle.

On this basis, and since the National Tax Tribunal is part of the public administration, the Ombudsman found that the Tribunal could not omit considering whether the rules on deadlines for changing a tax assessment (to the disadvantage of the taxpayer) had been observed, even though the taxpayer's representative had waived the claim that the deadlines had not been observed.

The Ombudsman therefore recommended to the National Tax Tribunal that the processing of the case be resumed.

2014-10. OBTAINING INFORMATION ACCORDING TO SECTION 8D OF THE TAX CONTROL ACT AND DAY FINES PURSUANT TO SECTION 9 OF THE ACT

The National Tax Tribunal had refused to process a complaint from a man who had left Denmark. The complaint was about the Danish Customs and Tax Administration's request pursuant to section 8D(1) of the Tax Control Act to

the complainant's Danish bank to send print-outs from the complainant's account and information on the persons who had authorised access to the account. The National Tax Tribunal had pointed out that the Danish Customs and Tax Administration's request for access to account statements and information had to be regarded as a procedural decision pertaining to the available case information and not a decision within the meaning of administrative law.

The National Tax Tribunal had later upheld the Danish Customs and Tax Administration's decision made pursuant to section 9 of the Tax Control Act whereupon the bank's chairman of the board was instructed to pay day fines if the bank did not comply with the Danish Customs and Tax Administration's request for access to the desired information.

The man's lawyer complained to the Ombudsman about the National Tax Tribunal's decisions. Having gone through the complaint with the submitted documents, the Ombudsman informed the lawyer that he had decided not to investigate the cases in relation to the National Tax Tribunal further, on the grounds that he did not have any prospect of being able to criticise the Tax Tribunal's rulings.

Firstly, the Ombudsman agreed that the Danish Customs and Tax Administration's request pursuant to section 8D on release of account statements was not a decision within the meaning of administrative law.

Secondly, the Ombudsman agreed that the provision in section 9 of the Act of Legal Protection on the Administration's Use of Coercive Measures and Duty of Disclosure does not apply in cases like this which deal with the release of information.

Thirdly, there was no prospect of the Ombudsman being able to criticise the National Tax Tribunal's opinion that section 10 of the Act on Coercive Measures did not prevent the Danish Customs and Tax Administration requesting information from the bank. And fourthly as well, in the Ombudsman's opinion there was legal authority to use section 8D of the Tax Control Act and subsequently section 9 in relation to the tax payer's Danish bank.

2014-14. MAJOR PARTS OF DOCUMENT GIVING MINISTERIAL ADVICE AND ASSISTANCE WERE SUBJECT TO ACCESS TO INFORMATION

A journalist complained to the Ombudsman that first the Customs and Tax Administration, and then the Tax Appeals Agency had denied him access to a

memo which the Customs and Tax Administration had sent to the Ministry of Taxation's department for the Minister's information. Among other things, the memo described the Customs and Tax Administration's practice in regard to the preliminary fixing of value added tax, etc. in cases where reports to the Administration have not been given in time. To the journalist, the taxing authorities had referred to the memo as exempt from access pursuant to section 24(1) (i) of the Access to Public Administration Files Act, on documents prepared for the purpose of ministerial service.

The Ombudsman agreed that the memo was exempt from access pursuant to the regulations about ministerial service. However, the Ombudsman was of the opinion that a highly significant part of the memo held information about the actual grounds of the case and that this information should have been given to the journalist by virtue of section 28(1) of the Access to Public Administration Files Act on extraction.

The Ombudsman recommended that the Tax Appeals Agency make a new decision in relation to the question of extraction as far as the relevant information in the memo was concerned. Hereafter, the Tax Appeals Agency decided to give the journalist access to the entire memo apart from one paragraph.

2014-22. REFUSAL TO PROCESS REQUEST FOR ACCESS TO FILES ON THE GROUNDS OF DISPROPORTIONATE USE OF RESOURCES. DIALOGUE

A man asked the Ministry of Taxation for access to the Ministry's files in connection with a report from the National Audit Office on merging of the tax administration. The Ministry of Taxation refused to process the request for access with reference to the disproportionate use of resources this would entail, cf. section 9(2)(i) of the Access to Public Administration Files Act. Before refusing the request, the Ministry had in vain asked the man to specify his request for access.

The Ombudsman could not criticise the Ministry's refusal to process the request.

However, the Ombudsman did find that the Ministry should have explained to the man why he was asked to specify his request for access and that the consequence of a lack of specification could be that the Ministry would refuse to process the request out of regard for the Ministry's resources.

The Ombudsman was also of the opinion that the Ministry of Taxation should have considered as part of the dialogue with the man whether a previously compiled files list or parts of such a list could have been given to the man.

2014-24. COMPLIANCE WITH ADMINISTRATIVE LAW REQUIREMENTS IN CONNECTION WITH THE DEVELOPMENT OF A NEW IT SYSTEM FOR THE CUSTOMS AND TAX ADMINISTRATION

When in 2005 the Ombudsman learned from the introduction of a bill that the tax administration's debt collection was to be concentrated in a central recovery body and that a new, central IT system (EFI) was to be created, he asked the Ministry of Taxation to state how the Ministry intended to ensure that the scheduled new IT system would be set up to comply with the requirements in administrative law. Not until nine years later – and after the new IT system had been put into partial operation – did the Ombudsman receive a description of how the administrative law requirements would be observed in the IT system.

The Ombudsman considered it unsatisfactory that an adequate description of the way in which administrative law requirements would be observed in the new system was not provided until after the system had been put partly into operation.

In addition, the Ombudsman considered it to be very regrettable that the Ministry of Taxation had to report that no continuous documentation, etc. of the system's ability to comply with administrative law requirements seemed to have been made during the development of the system.

The Ombudsman made a number of general comments on the prerequisites for a secure planning of the work involved in developing new IT systems for the public sector. He stated that a final assessment of whether or not the EFI system adequately supported a compliance with administrative law requirements would have to be made in connection with the processing of actual cases.

2014-37. THE PROCESSING OF A REQUEST FOR ACCESS TO CORRESPONDENCE REGARDING LEGAL OPINION SHOULD REFLECT THAT THE LEGAL OPINION HAD BEEN MADE PUBLIC

A journalist complained to the Ombudsman that the Ministry of Taxation had given him a partial refusal to his request for access to documents exchanged

between the Legal Adviser to the Danish Government, the Central Tax and Customs Administration (SKAT) and the Ministry of Taxation concerning a legal opinion which the Ministry had asked the Legal Adviser to prepare. The Legal Adviser's investigation was implemented on the basis of the criticism by the National Auditor and the Public Accounts Committee regarding the real property tax assessment. The investigation was intended to uncover whether the practice of the Central Tax and Customs Administration had been within the framework of the law. It appeared that the legal opinion itself and a list of those documents which the authorities had made available to the Legal Adviser had already been made public on the Ministry's website.

The Ombudsman agreed with the Ministry of Taxation that the correspondence with the Legal Adviser took place in a context which implied that a court case was a likely possibility and that section 27(iv) of the Access to Public Administration Files Act – on correspondence with experts for use in court cases or when considering if legal proceeding should be filed – therefore as a general rule should be applied to the exempted documents.

However, it was the Ombudsman's opinion that the Ministry of Taxation should have considered that the legal opinion itself and the list of associated documents had been made public on the Ministry's website whereby the confidentiality consideration – at least with regard to these documents – had to be seen as having been abandoned. He therefore recommended that the Ministry reopen the case and go through the exempted documents with a view to considering anew whether they could be exempt from access.

On the other hand, the Ombudsman could not criticise that the Ministry of Taxation had exempted a few details from access regarding the resumption of specific real property tax assessment cases in some reports from the Ministry's Internal Auditing with reference to the specific confidentiality provision in Section 17(1) of the Tax Administration Act.

O. PRIME MINISTER'S OFFICE

The following statement on a case concluded in 2014 has been published:

2014-28. ACCESS TO PERSONNEL CASE INFORMATION IN NON-PERSONNEL CASE. INCREASED ACCESS TO FILES

A journalist complained to the Ombudsman because the Prime Minister's Office had, with reference to section 33(v) of the Access to Public Administration Files Act, refused to give access to information which was part of a non-personnel case at the Ministry. The information also figured in two personnel cases with the Agency for Modernisation. The Prime Minister's Office referred to the fact that the information in question concerned personnel cases outside the Prime Minister's Office and to the regards underlying section 2(2) of the Access to Public Administration Files Act on the exemption of personnel cases from access to files.

Based on the Act's explanatory notes, the Ombudsman found that in cases like this there was generally a fairly broad-ranging authority to exempt such information pursuant to section 33(v) of the Act. At the same time, the Ombudsman maintained that also in cases such as this the use of this provision required a concrete assessment.

As the decision and the statement to the Ombudsman by the Prime Minister's Office did not leave the impression that a concrete assessment had actually been made, the Ombudsman could not on the present basis accept the use by the Prime Minister's Office of the provision. The Ombudsman therefore asked the Prime Minister's Office to reopen the case and make a new decision.

The journalist also complained because the Prime Minister's Office had delimited the case so that it only concerned a request for access to those documents, etc. which were specifically mentioned in the request.

The Ombudsman could not criticise that the Prime Minister's Office had delimited the case. But as the journalist had specifically asked for documents up to the time of the decision, it was, however, the Ombudsman's opinion that the Prime Minister's Office should have considered whether, based on the principle of increased access to files, full or partial access could be given to those documents which had been received by or created by the Prime Minister's Office in the period of time between the request and the decision. At any rate, the Prime

Minister's Office should have informed the journalist about the reason why the Office had not searched in documents right up till the time the decision was made.

P. MINISTRY OF TRANSPORT

The following statements on cases concluded in 2014 have been published:

2014-21. DENIED ACCESS TO INFORMATION ABOUT WORKPLACE EVALUATIONS. INTERNAL DOCUMENTS. EXTRACTION DUTY

A journalist asked the Ministry of Transport for access to information about the Ministry's two most recent workplace evaluations. The Ministry denied the request on the grounds that these were internal documents. In addition to that, the Ministry did not think that the workplace evaluations contained information that was subject to extraction.

The Ombudsman could not criticise that the Ministry of Transport had regarded the workplace evaluations as internal work documents that could be exempted from access. In that context, the Ombudsman emphasised, among other things, that a possible handing over of the documents to a third party had taken place for legal reasons. However, the Ombudsman found that the workplace evaluations contained lots of information encompassed by the extraction duty. On this basis, the Ombudsman recommended that the Ministry reopen the case and make a new decision in this matter.

2014-27. INFORMATION ON RESTRUCTURING OF THE DANISH COASTAL AUTHORITY WAS ENVIRONMENTAL INFORMATION

A journalist complained to the Ombudsman because the Ministry of Transport had refused his request for access to documents regarding the transfer of the Danish Coastal Authority from the Ministry of Transport to the Ministry of the Environment with reference to the so-called ministerial advice and assistance rule.

The Ombudsman stated that it was of decisive importance to the assessment of the case whether the information on the transfer of the Danish Coastal Authority was environmental in character, because if so, the case would have

to be processed on the basis of the Environmental Information Act. The rule on ministerial advice and assistance, which the new Access to Public Administration Files Act had introduced, would consequently not be applicable as the Environmental Information Act referred to the old Access to Public Administration Files Act.

In the Ombudsman's opinion, this question gave rise to some doubt, but he arrived at the conclusion that most of the information in the case pointed towards considering the information on the restructuring of the Danish Coastal Authority to be environmental information. Among other things, the Ombudsman emphasised that according to the Environmental Information Act, the fact that the measure 'may' affect environmental elements is sufficient to consider information regarding an administrative measure to be environmental information. In addition, the Ombudsman found it to be important that according to the practice of the European Court of Justice the concept of 'environmental information' had to be interpreted very broadly and that in actuality, the transfer of an authority to a new ministerial field of responsibility often had an effect on the Authority's tasks, for example due to a change in priorities and political focus.

On this basis, the Ombudsman recommended that the Ministry of Transport reopen the case and make a new decision pursuant to the Environmental Information Act.

The Ministry then reopened the case and complied fully with the journalist's request for access.

2014-29. EXTRACTION OF INFORMATION IN INTERNAL DOCUMENTS. INCREASED ACCESS TO FILES

A journalist complained to the Ombudsman that the Ministry of Transport had rejected access to two documents (two presentation pages to the Transport Minister).

The Ombudsman agreed with the Ministry of Transport that the extracted documents were internal documents and therefore in principle not subject to public access. However, in the opinion of the Ombudsman two lines in one of the documents were in principle subject to extraction duty. But since the information appeared from other documents given to the journalist in connection with the request for access to the documents, the Ombudsman could not criticise the Ministry's refusal to give the journalist access.

The Ombudsman found it difficult to understand that the Ministry of Transport had not found grounds for granting the journalist access to the two exempted documents pursuant to the principle of increased access to files. The Ombudsman pointed out that the provisions laid down in sections 23 and 24 of the Access to Public Administration Files Act were aimed at protecting the authorities' internal and political decision-making process. The Ombudsman understood the need for confidentiality in relation to, among other things, the ministerial services provided by the civil service – which was foreseen in the provisions. The consequence would be that the scope of the principle of increased access to public records was rather limited in this field, depending on the circumstances – especially in cases of current interest. It should, however, be maintained that the principle of increased access to public records also applies to documents regarding advisory services to ministers provided by the civil service. In cases where no – as stated in the legislative history – 'actual and objective' need for exempting information from public access exists it should therefore be considered an option to grant public access to the files pursuant to the principle of increased access to public records.

The Ombudsman found that if the Ministry of Transport maintained its assessment, the Ministry ought to give a real and specific explanation. Therefore, he asked the Ministry to reopen the case in order to consider once again whether there might be grounds for granting increased access to the two documents.

The Ministry of Transport subsequently reopened the case and gave access to the two documents.

2014-31. SUPERVISORY VISIT TO MONITOR ACCESSIBILITY FOR THE DISABLED AT THREE PICNIC AREAS

On 12 June 2014, the Ombudsman carried out monitoring visits in regard to accessibility at the motorway picnic areas 'Antvorskov Nord', 'Rønninge Nord' and 'Nørremark'. During the visits, the Ombudsman's monitoring staff brought forward a number of recommendations to the Danish Road Directorate which subsequently informed the Ombudsman about the implementation of initiatives based hereupon. The Ombudsman's recommendations concerned signposting, parking and eating spaces as well as lavatory facilities at the three picnic areas in question.

Q. MINISTRY OF HIGHER EDUCATION AND SCIENCE

No statements on cases concluded in 2014 have been published.

R. MINISTRY OF FOREIGN AFFAIRS

No statements on cases concluded in 2014 have been published.

S. MINISTRY OF EDUCATION

No statements on cases concluded in 2014 have been published.

T. MINISTRY OF ECONOMIC AFFAIRS AND THE INTERIOR

The following statements on cases concluded in 2014 have been published:

2014-15. MUNICIPALITY COULD NOT EXEMPT INFORMATION ABOUT THE AMOUNT OF A LEASE PAYMENT AND THE CALCULATION OF IT FROM THE RIGHT OF ACCESS TO PUBLIC FILES

A journalist complained to the Ombudsman that the Municipality of Nordfyn pursuant to section 33(iii) of the Access to Public Administration Files Act had rejected access to the information in a lease agreement that concerned the amount of the lease rent and the calculation of it, and that the State Administration's supervisory department had not considered this to be in conflict with the Access to Public Administration Files Act.

The municipality had emphasized its ability to achieve the highest possible market price for the leased property at future tenders. The municipality assessed that there was a risk that competitors' specific knowledge of the amount of the lease rent would result in fixation of offered prices corresponding to the level of the agreement contracted, meaning that the municipality would face the risk of not receiving an offer at a higher price even if the market could bear it. The State Administration assessed that it could not be ruled out that access to the

information in question would weaken the municipality's negotiating position in connection with subsequent entering of contracts concerning the leased property. Thus, the rejection of access to the files could ensure the municipality's position as contractual party.

The Ombudsman stated that the information was about a contract already entered and that the use of section 33(iii) of the Access to Public Administration Files Act had to be based on more than the mere general risk that no market quotations would be received at (possible) future tenders.

It did not appear from the information available in the case that the assessments by the municipality and the State Administration were based on other information than a general risk. Consequently, the Ombudsman did not consider the State Administration's assessment to be adequately reasoned. Therefore, the Ombudsman did not find that the municipality could exempt the information from the right of access to public files pursuant to section 33(iii) of the Access to Public Administration Files Act.

As a consequence hereof, the Ombudsman asked the State Administration to resume the processing of the case.

The case was subsequently resumed, and the journalist gained access to the information in question.

2014-16. NOT ENTITLED TO DATA EXTRACTION FROM SECURITY LOG OF THE CENTRAL NATIONAL REGISTER (CPR)

A man complained to the Ombudsman because the Ministry of Economic Affairs and the Interior had refused him access to the security log of the central national register (CPR) regarding inquiries about him in the CPR system.

The Ministry had refused the man's request for access on the grounds that though section 11 of the Access to Public Administration Files Act says that anyone can demand that an administrative authority carries out and hands over a compilation of existing information in the Authority's database (so-called data extraction), the section does not entitle a person to be given an extraction from the CPR's security log.

The Ombudsman had no grounds for criticising the Ministry's decision. Based on the provision's explanatory notes, the Ombudsman emphasised among other things – as did the Ministry – that the right to data extraction is not intended for registrations which are primarily done to serve internal administrative purposes. The security log, which was solely intended to fulfil the statutory demand for logging of all personal data use, had in the Ombudsman's opinion to be considered a system facility derived from the actual processing of information in the CPR system. Consequently, the Ombudsman agreed with the Ministry that the provision did not provide a right to extraction from the CPR's security log.

On this basis, the Ombudsman took no further action in the matter.

2014-26. ASSOCIATION WAS WITHIN THE SCOPE OF THE ACCESS TO PUBLIC ADMINISTRATION FILES ACT

A journalist complained to the Ombudsman because an association had refused a request for access to files. The grounds given for the refusal were that the association was created on a private law basis and therefore not subject to the Access to Public Administration Files Act. The association was created by a number of municipalities and other public authorities and was intended to provide IT solutions for the authorities.

The Ombudsman stated that in his opinion, the association was not part of the public administration and consequently not within the scope of sections 2 or 3 of the Access to Public Administration Files Act. On the other hand, the Ombudsman was of the opinion that the association was subject to section 4 of the Act according to which the Act applies to all activities carried out by companies if more than 75 per cent of the ownership is in the hands of Danish public authorities. The Ombudsman referred to the explanatory notes for section 4 of the Act which say that, i.e., companies included in the Act on Certain Commercial Undertakings are subject to section 4 of the Access to Public Administration Files Act. The Ombudsman said that in his opinion, the association was subject to the Act on Certain Commercial Undertakings.

U. MUNICIPAL AND REGIONAL AUTHORITIES

2014-2. THE USE OF SPECIAL EXIT DOOR OPENERS AT RESIDENTIAL FACILITY FOR PEOPLE WITH DEMENTIA

In continuation of a monitoring visit at a residential facility for, among others, people with dementia, the Ombudsman opened a case about the use of special door openers. The residential facility had started using special door openers in relation to a female resident in order to prevent her from leaving the facility, thereby exposing herself or others to danger.

The Ombudsman could not criticise the assessment that there was a need for special door openers for the woman's protection. However, he thought it a matter for severe criticism that the door openers were in use for a period of time in which no decision had been made about this in relation to the woman. Furthermore, the Ombudsman criticised that nobody had been informed of the decision. In his opinion, the woman's spouse ought to have been informed of the decision. The Ombudsman also said that the facility as well as the municipality ought to have observed the rules on, i.a., registration and reporting of and follow-up on the use of force which the door opener practice constituted.

The Ombudsman decided to inform the local social supervisory authority about the case.

2014-5. NO GROUNDS FOR DENYING CITIZEN ACCESS TO MUNICIPAL OFFICES

In August 2010, a municipality decided that a citizen was not allowed to show up in person at the municipal offices. The reason for this was an incident where the citizen had behaved in a threatening manner towards the municipality staff. He had also committed vandalism by kicking a book case. In March 2012, he contacted the municipality again, and the municipality extended the ban against the man showing up in person to six months. The municipality found that he violated the ban by showing up yet again in September 2012. Therefore, the municipality banned him again from showing up in person. As grounds for the ban, the municipality subsequently also referred to staff safety.

The Ombudsman agreed that the citizen had violated the ban of March 2012 by showing up in person at the municipality in September 2012, but the Ombudsman did not think that this alone could justify a new ban. The Ombudsman was of the opinion that there was no case information which indicated that the citizen had behaved in a threatening manner or otherwise inappropriately in his contact with the municipality since the first episode in 2010. Hence, the Ombudsman did not find that the municipality had sufficient grounds for preventing the citizen from showing up in person at the municipal offices. The Ombudsman was of the opinion that the municipality should have made the decision that the ban of March 2012 was no longer valid and that the citizen was allowed to show up in person at the municipal offices as every other citizen.

However, the Ombudsman did not find grounds for recommending that the municipality reprocess the case, since the municipality had informed him that the ban against the man showing up in person had by then expired.

2014-9. MUNICIPAL COST-CUTTING PLAN FOR CARE PLACEMENT GAVE THE OMBUDSMAN REASON FOR GRAVE CONCERN ABOUT THE MOST VULNERABLE CHILDREN'S LEGAL RIGHTS

In November 2013, the Ombudsman received anonymous information regarding planned cost-cutting for care placements in Guldborgsund Municipality. It appeared from the information that the municipality's case workers were asked to go through all their placement cases and divide them into three categories – A, B and C. Afterwards, the case workers were to contact the facilities where the children were placed in order to effect a cost reduction of 10-15 per cent of the existing price. In case they failed to do so, the child was to be brought back to the municipality or a cheaper facility had to be found for the child. The objective of this process was to bring back the children or to shorten the placement by 30 per cent for the children in category A (children whose needs necessitated special, qualified action at a placement facility or 24-hour care facility) and also to take back 30-40 per cent of the placed children in category C (children placed in foster families). In addition to that, the municipality wanted to introduce a so-called minimum intervention principle when working with the placements.

The anonymous information caused the Ombudsman to start a case in relation to Guldborgsund Municipality.

In a case report, the Ombudsman went through the major legal principles applicable to the placement of children outside the home as well as the authority in the Social Services Act to bring back children in care to the municipality or to place them at another facility. The Ombudsman expressed his concern about the fact that the information he had received did not contain a description of the legal framework for the municipality's process. Also, the Ombudsman did not think that the municipality's so-called minimum intervention principle was consistent with the state of law suggested by the Social Services Act.

All in all, the case gave the Ombudsman reason for grave concern that the legal position of the most vulnerable children was being put at risk, and the Ombudsman asked Guldborgsund Municipality to reconsider the procedure as well as the principles for the seven step process which constituted the basis of the municipality's planned cost-cutting for care placements. The Ombudsman asked to be informed of the municipality's intended actions. The Ombudsman informed the National Social Appeals Board, the Ministry of Children, Gender Equality, Integration and Social Affairs, Parliament's Social Affairs Committee and Parliament's Legal Affairs Committee of the case.

2014-11. CONFLICT OF INTEREST AND ADDITIONAL OCCUPATION IN CONNECTION WITH MUNICIPALITY'S PLACEMENT OF A MOTHER AND CHILD IN A FOSTER FAMILY WHERE THE FOSTER FATHER WAS ALSO HEAD OF THE MUNICIPALITY'S FAMILY HOUSE AND THE MUNICIPALITY'S FAMILY CARE CONSULTANTS

The Ombudsman opened an own initiative case in relation to a municipality because it came to the Ombudsman's attention that the municipality had decided to place a mother and her child in a foster family where the foster father also held a municipal management position. The foster father worked for the municipality as head of the municipality's Family House (family resource centre) and the municipality's family care consultants.

Based on information received from the municipality, the Ombudsman found that the foster father had not been part of the case processing which led to the mother and child being placed in his and his wife's care. Neither were there grounds for presuming that there was a conflict of interests in regard to the persons making the decision to place the mother and child in the foster family.

Next, the Ombudsman considered whether the foster father – in the time period where the mother and child were placed with him and his wife – was disqualified due to his usual municipal position. The Ombudsman did not think this was the case. Also, the Ombudsman did not find grounds for presuming that the additional occupation as foster father was incompatible with the execution of the man's main position, including the respect and trust necessary for the position.

Finally, in the Ombudsman's assessment there were no circumstances likely to raise doubts regarding the man's impartiality which would result in him being disqualified in connection with future servicing of the mother and child by the Family House.

2014-19. MUNICIPALITY'S LACK OF REACTION TO INFORMATION ABOUT TWO SOCIALLY VERY VULNERABLE CHILDREN

In the course of one year, a local authority received 11 serious notifications about two socially very vulnerable children. The first notification was given by the children's former residential municipality which was severely worried about the children's well-being and strongly recommended that the new municipality of residence started measures in regard to the family. The 10 following notifications were given by police, school, and citizens. Both children were acutely brought into a 24-hour residential facility after the oldest child was admitted to hospital with an alcohol level of 2.57.

In a case report, the Ombudsman defined the regulations for municipalities' monitoring obligation and municipalities' obligation on receiving notifications. The Ombudsman was of the opinion that the municipality at the very first notification from the former residential municipality should have focused on the family and initiated an investigation in order to identify the children's situation.

According to the Ombudsman, the municipality failed to a very serious degree to abide by the rules which protect children and young people from neglect.

As a whole, the Ombudsman regarded the municipality's quite insufficient reaction to a long list of notifications of grave concern for the children to be completely irresponsible. The Ombudsman asked the municipality to give an

account of how the municipality will in future make sure to abide by the rules intended to protect children and young people from neglect so that similar cases can be avoided. Pursuant to section 24 of the Ombudsman Act, the Ombudsman informed Parliament's Legal Affairs Committee, Parliament's Social Affairs Committee, the Ministry of Children, Gender Equality, Integration and Social Affairs, and the municipal council about the case.

2014-38. INSPECTION OF ACCESSIBILITY FOR THE DISABLED AT POLLING STATION FOR MUNICIPAL ELECTIONS

In connection with the municipal elections on 19 November 2013, the Ombudsman carried out an accessibility inspection of the Kalbyris School polling station in the Municipality of Næstved.

The Ombudsman made a number of recommendations to the municipality which subsequently gave the Ombudsman an account of the measures it would take to comply with the recommendations. The Ombudsman's recommendations concerned matters of parking, access and lavatory facilities and of the design of the polling station and polling booths.

2014-39. INSPECTION OF ACCESSIBILITY FOR THE DISABLED AT POLLING STATION FOR MUNICIPAL ELECTIONS

In connection with the municipal elections on 19 November 2013, the Ombudsman carried out an accessibility inspection of 'Herlufsholm Hallen' polling station in the Municipality of Næstved.

The Ombudsman made a number of recommendations to the municipality which subsequently gave the Ombudsman an account of the measures it would take to comply with the recommendations. The Ombudsman's recommendations concerned matters of parking, access and lavatory facilities and of the design of the polling station and polling booths.

2014-43. MONITORING VISIT TO CHILDREN'S MENTAL HEALTH CENTRE BISPEBJERG

During a monitoring visit to a children's mental health centre, the Ombudsman's monitoring team noticed two staff members taking hold of a young boy in the institution's courtyard. The staff members dragged the boy inside despite his resistance. Subsequently, the monitoring team was informed that the boy had not wanted to come inside for school lessons and that he had been restrained twice.

The boy was a day patient at the centre, and since the coercion regulations in the Mental Health Act do not apply to day patients, there was no statutory authority to use coercion. In addition, there was no statutory authority regarding reasonable force or necessity.

The Ombudsman considered it to be a matter of severe criticism that force had been used on the boy.

V. OTHER AUTHORITIES ETC. WITHIN THE OMBUDSMAN'S JURISDICTION

2014-30. A COMPLAINT ABOUT THE METRO COMPANY 'METRO-SELSKABET I/S' FELL OUTSIDE THE SCOPE OF THE OMBUDSMAN'S CORE COMPETENCE

On behalf of a client – a subcontractor of the metro building work – a lawyer requested that the Ombudsman initiate an investigation of the decision taken by 'Metroselskabet I/S' to ask the principal contractor to terminate the co-operation with the subcontractor in question. The lawyer claimed in this connection, among other things, that 'Metroselskabet I/S' had not complied with the rules of the Public Administration Act in regard to consultation of the parties involved and giving reasoned statements.

It appears from section 14 of the Metro Companies Act that the Access to Public Administration Files Act, the Public Administration Act and the Ombudsman Act apply to 'Metroselskabet I/S' which is not considered an administrative authority. However, upon a closer examination of the legislative history of the Metro Companies Act, the Ombudsman found that section 14 was aimed at enabling the Ombudsman to process complaints about the specific part of 'Metroselskabet I/S' activities which concerns decisions in opposition to the part of the company which is considered commercial.

In continuation of the above, the Ombudsman found that the decision made by 'Metroselskabet I/S' could not be considered a decision within the meaning of the Public Administration Act, but should be considered a decision reached on the basis of contracts entered between the parties involved, that is to say that this case was considered a dispute according to civil law.

Disputes according to civil law are not within the Ombudsman's field of competence. Consequently, the Ombudsman referred the lawyer to the courts of law for a resolution of the dispute.

W. INSTITUTIONS ETC. OUTSIDE THE OMBUDSMAN'S JURISDICTION

2014-35. FOUNDATION NOT WITHIN THE SCOPE OF THE ACCESS TO PUBLIC ADMINISTRATION FILES ACT

A journalist complained to the Ombudsman because a foundation had refused his request for access to minutes from the foundation's meetings on the grounds that the foundation had been created on a private law basis and was therefore not subject to the Access to Public Administration Files Act.

The Ombudsman stated that in his opinion, the foundation was not subject to section 3(1)(ii) of the Act. Though the Ombudsman found that there could be some doubt regarding the question of whether or not the foundation could be said to carry out public activities of a more comprehensive nature, the Ombudsman did, however, agree with the foundation that it was not in any event subject to intensive public regulation, supervision or control.

Thus, the Access to Public Administration Files Act – including its rules on access to files – did not apply to the activities of the foundation and, likewise, the foundation was not within the Ombudsman's jurisdiction.

NEWS PUBLISHED ON THE OMBUDSMAN'S WEBSITE IN 2014

All news can be read in full (in Danish only) on www.ombudsmanden.dk.

10 January

No criticism of refusal to give residence permit on humanitarian grounds to woman with HIV

The Ombudsman cannot criticise that the Ministry of Justice refused to give a woman with HIV a residence permit on humanitarian grounds without checking whether medical treatment is available to her in her native country. This is the outcome of a case recently concluded by the Ombudsman.

16 January

Efficiency drive at the Ombudsman office

Structure and work processes have been the subject of critical scrutiny at the Ombudsman office. The outcome will be a brand new structure which will come into force on 1 February 2014. The new structure is intended to give the approximately 100 employees a better scope for processing complaints quickly, but also an opportunity for even more focus on and in-depth handling of fundamental or otherwise important cases.

21 January

The Ombudsman: We too must act fast in access request cases

Journalists and other citizens must receive a quick reply from the public authorities when requesting access to files, says the new Access to Public Administration Files Act. And now the Ombudsman announces that he will also step up the pace when processing complaints about the authorities in access request cases.

22 January

Ombudsman satisfied with prospect of faster processing of early retirement cases

As a general rule, citizens in Copenhagen who have applied for early retirement at the end of 2012 may expect a reply before the end of January 2014.

And the majority of new applicants may expect a reply within three months. So says the City of Copenhagen in a statement to the Parliamentary Ombudsman who is satisfied that a solution has been found to the long processing times for early retirement applications.

27 January

The Ombudsman intervenes in case concerning physically restrained inmate

A man who had been declared unfit to serve a prison sentence had for months been waiting at Vestre State Prison for a space at a high security forensic psychiatric ward. His situation has been the subject of several articles in the press. The Ombudsman has just asked the Department of the Prison and Probation Service for a report on the course of events, including how often and for how long the man has been physically restrained.

...

The conditions for psychiatric patients have been chosen as a theme for the Ombudsman's monitoring visits in 2014 with focus on, among other things, the use of force.

30 January

New Head of Intelligence Service to clarify statement about his staff's freedom of speech

The Ombudsman has asked the new Head of the Security and Intelligence Service (PET) to elaborate on statements made during an interview which was published on www.dr.dk/nyheder on 24 January 2014.

In the interview the Head of the Service stated among other things that it is not acceptable for the Service staff to go to the press about matters which should normally be resolved in-house.

3 February

Ombudsman satisfied that the ATP resumes about 100 cases

The Labour Market Supplementary Pension Scheme (ATP) now resumes about 100 cases in which seniors between 60 and 65 years of age have maintained that they have not received the ATP's letters regarding their rate of employment. The Ombudsman consequently discontinues his investigation.

...

The Ombudsman approached the ATP and the Supplementary Pension Scheme Appeals Tribunal, etc. after receiving numerous complaints from people over 60 who told him that they had not received the ATP's letters with calculations of their rate of employment, and therefore had not had the opportunity to make a timely objection. (...)

4 February

Delayed publication of criticism of health care professionals was very regrettable

When a health care professional is criticised by the Disciplinary Board of the National Health Service for serious or repeated negligence, the criticism must be made public on the internet with, among other things, the name of the health care professional. The Ombudsman now criticises that some decisions are not made public until as much as 18 months after the decision has been made.

25 February

New guidelines to ensure fitting care for dying babies following premature birth or abortion

All the country's maternity wards have now been issued with guidelines on how the health care staff shall give care to 'live-born, inevitably dying babies' following extremely premature births or abortions, the Health and Medicines Authority informed the Ombudsman who had raised the issue in the spring of 2011.

11 March

Ombudsman: All rules must be followed when dementia sufferers are kept indoors

When a nursing home resident with dementia no longer understands for instance that she needs to put on shoes and a coat in winter, the nursing home staff must protect her. One of the protective measures may be to put in a special door opener so that the woman cannot go outside. Such measures are an expression of care but it involves at the same time the use of force which requires both staff and municipality to live up to a number of

regulations. That those regulations are not always observed was shown by a case which the Ombudsman raised following a monitoring visit to a nursing home in Esbjerg.

13 March

No access to assistance by special advisers to ministers' party political work

A special adviser is able to assist a minister in party political work, even though the special adviser is paid by the ministry. There is no access to files regarding the special adviser's work in such cases.

This is illustrated by a new statement by the Ombudsman in two cases where journalists were not allowed to see e-mails on earmarked paternity leave sent from the special adviser to the Minister for Taxation.

21 March

Ombudsman: No investigation of the National Agency for Patients' Rights and Complaints

The Ombudsman will not at the present time start a major investigation of the National Agency for Patients' Rights and Complaints. This is the Ombudsman's reply to the Danish Medical Association which has pointed out a number of errors on the part of the Agency and urged the Ombudsman to carry out a general investigation of the Agency's case processing.

28 March

The Ombudsman's international activities in 2013

For the first time, the Parliamentary Ombudsman will publish an overall report on his international activities during the previous year.

7 April

Severe criticism of psychiatry centre for forcing a boy to go to school

A 9-year-old mentally ill boy with autism who was outside in the courtyard of Bispebjerg Mental Health Centre for Child and Adolescent Psychiatry refused to come inside for lessons at the in-house school. Therefore, two of the staff took hold of the boy and pulled him inside while he resisted.

The incident is described in a recently published statement from the Ombudsman who calls it a matter for severe criticism.

11 April

Ombudsman investigates conditions for mentally ill inmates of Vestre State Prison

The Ombudsman has asked the Department of the Prison and Probation Service and Copenhagen Prisons for a detailed account of conditions for mentally ill inmates at Vestre State Prison Hospital.

14 April

Ombudsman seriously concerned about municipal cost cutting plan for children placed in care

Guldborgsund Municipality's internal cost cutting plan for the placement of children in care now prompts the Ombudsman to issue a serious warning about the consequent risk that the rights of the children may not be observed.

22 April

The Ombudsman now investigates complaints about access requests refused by Local Government Denmark and Danish Regions

The Ombudsman has decided to include Local Government Denmark (KL) and the Danish Regions in his activities where the new Access to Public Administration Files Act extends to those two bodies.

24 April

Ombudsman looks at the rights of private school pupils

Do pupils at private schools have a right to be consulted before the school makes the decision to suspend and expel them? The Ombudsman has now asked the Ministry of Education to consider this question.

29 April

Municipalities must have good reasons for banning citizens from turning up in person at the municipality offices

If a municipality wants to ban a citizen from turning up in person at the municipal administration offices, it requires strong reasons for doing so, says the Ombudsman in a statement on a case where a municipality had issued such a ban to a citizen several times with reference to, among other things, the safety of the municipal staff.

2 May

Ombudsman closes case on freedom of speech for the Security and Intelligence Service staff

It was not an attempt to curtail the staff's freedom of speech when the new head of the Security and Intelligence Service (PET) in a TV interview indicated that it was unacceptable if PET employees went to the press and related matters which are normally to be resolved internally in the Service.

6 May

Ombudsman rejects complaint about information campaign for referendum on Unified Patent Court

The Ombudsman has decided not to initiate an investigation of the information campaign organised by the Ministry of Business and Growth leading up to the referendum on the EU Unified Patent Court

on 25 May 2014, including the question about the government's use of the civil service. The decision is stated in a reply which the Ombudsman has sent to the complainant.

8 May

Ombudsman stops investigation of conditions at the Regional Hospital Holstebro

The Parliamentary Ombudsman is satisfied with the information he received from the Central Denmark Region on the conditions of patients with psychiatric disorders at the Regional Hospital Holstebro. Consequently, the Ombudsman does not take further action in the matter.

13 May

Severe criticism of censorship against programme presenter at the Danish Broadcasting Corporation (DR)

In some cases, DR has the right to reallocate for instance programme presenters if they express strong personal opinions in public and, by doing so, harm the impartiality of DR. However, in a case related to programme presenter Adam Holm, DR got it completely wrong. Among other things, DR applied a censorship measure in breach of the Danish Constitutional Act. These are the central key points in a statement from the Ombudsman in the case.

20 May

Large parts of ministerial advice and assistance documents covered by the right to access to public files

The tax authorities went too far when they exempted a note from the Customs and Tax Administration (SKAT) from access to public files pursuant to the ministerial advice and assistance regulation, according to one of the first Ombudsman investigations of the controversial provisions laid down in the new Access to Public Administration Files Act.

2 June

Ombudsman participates in the People Meeting on the island of Bornholm

Ombudsman Jørgen Steen Sørensen will be discussing supervision of the public administration with the National Auditor and members of the parliamentary Public Accounts Committee when former Minister of Justice, now political commentator, Hans Engell grills the public watchdogs.

6 June

The Ombudsman: Not sufficient grounds for keeping MRSA data secret

The authorities did not have sufficient grounds for keeping secret the identity of the pig farms contaminated with penicillin-resistant staphylococcus (MRSA), says the Ombudsman in a new statement.

10 June

The Ombudsman is pleased that a cost-cutting plan for children placed in care was not carried out

Guldborgsund Municipality's extensive cost-cutting plan for children placed in care recently caused the Ombudsman to issue a grave warning against the risk that the rights of the children were not observed.

Guldborgsund Municipality has now informed the Ombudsman that the cost-cutting plan – which had as one of its targets to take back to the municipality 30-40 per cent of the children placed with foster families – will not be carried out.

25 June

Markedly shorter case processing times in farm subsidy cases

The average case processing time with regard to farm subsidy cases at the Complaints Centre of the Ministry of Food, Agriculture and Fisheries has shown a sharp drop over the past year. So says a report which the Ombudsman has received from the Ministry.

...

In the course of 2010, a number of specific cases alerted the Ombudsman to the rapidly rising number of complaints regarding farm subsidy cases received by the Complaints Centre of the Ministry of Food, Agriculture and Fisheries. The many complaints led to an expected case processing time of up to two years. The Ombudsman therefore asked the Ministry for a detailed account of the development in case processing times and of measures to bring down the case processing time.

3 July

Ministry should give access to names of employees

Basically, names of public employees are not confidential. Pursuant to the Access to Public Administration Files Act, this also applies even if the employees are not in a senior position. The provision is also laid down in a new statement in which the Ombudsman has expressed severe criticism against the Ministry of Children, Gender Equality, Integration and Social Affairs.

4 July

Previously covert lawyers can be exempted from access to public files

The identity of the so-called covert lawyers – 'hush-hush lawyers' – can be exempted from access to public files, even if the lawyers do not work in this capacity anymore. This has now been confirmed by the Parliamentary Ombudsman. The covert lawyers are appointed in connection with phone tapings and other measures in relation to information confidentiality in cases where the Danish Security and Intelligence Service (PET) investigates terrorism, among other things.

9 July

Socially vulnerable brother and sister were let down by municipality

The Parliamentary Ombudsman has severely criticised that two socially very vulnerable children received help from their municipality far too late. In his statement the Ombudsman considers the municipality's neglect 'completely irresponsible'.

23 August

Ombudsman: Focus on the classic administrative values

In a feature article in today's issue of the newspaper Berlingske, Ombudsman Jørgen Steen Sørensen comments on the current topic of a 'shift in norms' within the central Civil Service in the wake of a number of problematic individual cases.

1 September

Changed practice for children who wish to return to Denmark

The immigration authorities have adjusted their assessment of whether foreign children should be allowed to return to Denmark, for instance if they have been on a so-called re-education trip to their native country. This happens after the Ombudsman opened a case on his own initiative regarding the authorities' follow-up on a ruling by the Supreme Court of November 2012.

2 September

The Ombudsman intensifies focus on citizens' legal rights in relation to IT systems

How do the authorities ensure that the digital debt collection system EFI is implemented in such a way that the cases are processed in accordance with the rules – for instance the provisions laid down in administrative law on the right to access to files, consultation with the parties involved and explanatory statements? The Ombudsman has followed up on this question since the law on EFI was passed back in 2005.

The Ombudsman has now – after a very long process and after EFI has been put into partial operation – received a description from the Customs and Tax Administration (SKAT) and the Ministry of Taxation which is sufficiently adequate. Simultaneously with the conclusion of the case, the Ombudsman makes a number of critical remarks on the authorities' lack of attention towards the specific problem during the development of the system.

12 September

Prospect of better conditions for mentally ill inmates at Vestre State Prison

Better facilities and better treatment of mentally ill inmates. These are prospects held out by Vestre State Prison after the Ombudsman has visited the prison's hospital section twice and subsequently asked detailed questions about the inmates' conditions.

13 September

New decision in MRSA case

...

The Veterinary and Food Administration has now informed the Ombudsman that a new decision has been reached in the case and that the Administration has decided to grant access to the MRSA information.

...

However, the MRSA information has not been handed over yet because the Danish Agriculture and Food Council, which represents, among others, the farming and food industry, has in the wake of the Ombudsman's statement taken legal action against the Veterinary and Food Administration with the claim that the information cannot be made public.

15 September

The Danish Broadcasting Cooperation (DR) drops management reaction against DR2 presenter

A feature article critical of religion and written by TV presenter Adam Holm from the channel DR2 will have no management consequences for him, says the management of the Danish Broadcasting Cooperation in a letter to the Ombudsman.

16 September

Association set up by municipalities covered by the Access to Public Administration Files Act

The association SBSYS which has been set up by a number of municipalities and other public authorities is covered by the Access to Public Administration Files Act and is consequently subject to the provisions on access to files, the Ombudsman makes clear in a new statement.

17 September

Regulation on ministerial advice and assistance could not be used as grounds for keeping information on the transfer of the Danish Coastal Authority secret

The Ministry of Transport should have used the Environmental Information Act and not the new Access to Public Administration Files Act when processing a journalist's request for access to documents regarding the transfer of the Danish Coastal Authority from the Ministry of Transport to the Ministry of the Environment. Such is the Ombudsman's conclusion in a new statement.

The statement has significant consequences because the conditions for access to files are easier in the Environmental Information Act than in the Access to Public Administration Files Act.

7 October

Ombudsman to take a closer look at the ministries' use of the regulation on ministerial advice and assistance

The Ombudsman has just asked all government ministries to add up all the cases regarding requests for access to files in which the ministries have used the so-called ministerial advice and assistance regulation. The Ombudsman has at the same time asked the ministries to state the number of such cases in which the ministries chose to give access regardless, pursuant to the principle of increased access to public records.

7 October

The Ombudsman now has more areas of responsibility

The Parliamentary Ombudsman's Annual Report for 2013 has just been published and for the first time ever, the Report provides an overall survey of the increasing number of tasks carried out by the Ombudsman.

27 October

The Ombudsman will not investigate decision to suspend access to MRSA information

...

The three journalists subsequently lodged a complaint with the Ombudsman about the decision to suspend access to the MRSA information.

The Ombudsman has decided not to investigate this question.

3 November

The Ombudsman's comments on the Tax Commission's report

With reference to the Tax Commission's report, the Parliamentary Ombudsman Jørgen Steen Sørensen states:

'I note that according to the Tax Commission, the tax authorities have given false information to the previous ombudsman in connection with a case on access to public files. (...)'

9 December

The Ombudsman awaits the Ministry of Justice's investigations in the Eritrea case

The Parliamentary Ombudsman has decided against investigating the so-called Eritrea case for the time being. The reason is that the Ministry of Justice has stated that the ministry has initiated investigations of the case.

10 December

Authorities obtain better legal help for IT systems

Comprehensive measures are to help public authorities act in conformity with the administrative law and other administrative rules when designing IT systems. This is the outcome of a case initiated by the Parliamentary Ombudsman.

16 December

The Ombudsman raises questions about the conditions of people on tolerated residence at Center Sandholm

There is reason to consider thoroughly whether it is necessary to maintain in all aspects the stressful and limiting living conditions for people on tolerated residence at the asylum centre Center Sandholm.

This is stated in a report on tolerated residence by the Parliamentary Ombudsman which has just been published and sent to the immigration authorities, the Danish Red Cross and Parliament. The report is based on the Ombudsman's monitoring visit at Center Sandholm together with the Danish Institute for Human Rights and DIGNITY – Danish Institute Against Torture.

17 December

Status on the Eritrea case

Today, the Ministry of Justice has forwarded the Danish Immigration Service's statement of 16 December 2014 to the Ombudsman. (...)

It appears from the Ministry of Justice's letter to the Ombudsman that the Ministry of Justice 'will not for the time being request further statements as to the course of events from the Danish Immigration Service'. The Minister of Justice has stated simultaneously in a press release that she will now 'await the Ombudsman's considerations'.

...

Today, the Ombudsman has (...) asked the Ministry of Justice to inform him expressly whether the ministry's letter implies that the Ministry of Justice – as supreme authority within the field – does not find any grounds for taking further action in relation to the preparation of the fact finding report on Eritrea by the Danish Immigration Service.

Case No. 14/00677

A 17-year-old Greenlander was accused of having committed a serious crime and was remanded in custody at a Greenlandic institution for convicted adults. Already at the first hearing, the police requested that the accused was placed outside the institution. The social services were asked to take care of that. But the days passed and no new place was found for the young Greenlander. Three weeks after the custodial remand, the young Greenlander committed suicide.

The Ombudsman was informed about the death by the Danish Prison and Probation Service. He was uncertain whether the Greenland social services had done enough to find a suitable facility for the young man. However, the Ombudsman was unable to take up the question since the social services in Greenland fall under the Government of Greenland. Instead, the Ombudsman passed on the case files to the Ombudsman of Greenland who had just brought the conditions of children and young people into focus.

The Ombudsman receives information on all suicides and attempted suicides at the institutions under the Danish Prison and Probation Service. This also applies to the Greenland Prison and Probation Service since it is part of the national community.

Case No. 14/03263

The Ministry of Justice decided that a mentally ill Iranian was to be deported, even though his psychiatrist warned against it. The psychiatrist was worried that the Iranian might not be able to afford medicine and have access to any other necessary treatment in his home country. The Iranian therefore applied for a residence permit on humanitarian grounds.

The Ministry was aware that the health services in Iran did not correspond to those in Denmark but did not think that this provided sufficient grounds for a humanitarian residence permit.

The Ombudsman closed the case as he did not think that he would be able to criticise the Ministry's decision which was based on assessments and a balancing of various factors.

The Ombudsman does not normally involve himself in the authorities' balancing of concerns, except if there are special circumstances – for example if there is information missing in the case or if the authorities have differentiated between citizens without good reason.

Case No. 14/02740

Lack of cooperation with management and colleagues meant that an employee at a directorate was cautioned and later on dismissed. The employee did not think that he had done anything wrong and complained to the Ombudsman about the caution as well as the dismissal.

The Ombudsman could not criticise that the employee had been cautioned. And he would not take a position on the dismissal as such since the employee's trade union could have passed the case on for processing in the labour legislation system.

In practice, the Ombudsman does not process cases which can be determined in the labour legislation system.

Case No. 13/00621

The Ombudsman reacted when a daily newspaper described how patients at a regional forensic psychiatry unit were exposed to violence and humiliation from the employees. The Region responded to the newspaper article immediately by initiating an investigation of the conditions at the unit, and the Ombudsman asked the Region to inform him of the developments in the matter.

The investigation showed that a small group of employees had developed a tough and derogative language as well as an improper attitude towards the patients and that there was a significant difference between the individual units as to how the management reacted to complaints by patients or colleagues regarding the staff's attitude. The regional psychiatry and social services management implemented eight initiatives in order to eliminate the problems and informed the Ombudsman about the progress of the initiatives.

The Ombudsman concluded his investigation when it became clear that the problems at the unit had been addressed.

Media coverage often gives the Ombudsman grounds for opening a case on his own initiative.



Case No. 14/04682

During a monitoring visit to a municipal accommodation facility, case officers from the Ombudsman's Children's Division spoke with the mother of a day pupil at the in-house school. The mother was dissatisfied because her son had not been offered a dyslexia test.

The Ombudsman wrote to the municipality regarding the mother's wish. In the municipality's reply to the mother, a reading expert wrote among other things that in the municipal assessment the boy could not be tested for dyslexia because he had learning difficulties and very poor language skills.

The Ombudsman's Children's Division carries out monitoring visits to both public and private institutions for children.

The Danish Parliamentary Ombudsman

Gammeltorv 22
DK-1457 København K

Phone +45 33 13 25 12
Fax +45 33 13 07 17

www.ombudsmanden.dk
post@ombudsmanden.dk