

MINUTES OF THE House COMMITTEE ON Federal and State Affairs

The meeting was called to order by Rep. Neal D. Whitaker at
Chairperson

1:30 ~~8:30~~ p.m. on February 10, 1983 in room 526-S of the Capitol.

All members were present except:

Committee staff present:

- Russ Mills, Legislative Research
- Mary Torrence, Revisor of Statute's Office
- Nora Crouch, Committee Secretary

Conferees appearing before the committee:

- Bill Anderson, Johnson County Water District #1
- Allen Lloyd, City of Lawrence
- Jim Kaup, Kansas League of Municipalities
- Jim Pritchett, Shawnee, Kansas
- Dennis Swartz, Rural Water District #8, Shawnee County
- Preston Barton, Ombudsman for Corrections
- Chuck Simons, Counsel, Department of Corrections
- T. A. Lockhart, N.A.A.C.P.

Chairman Whitaker called the meeting to order and announced that HB 2138 and HB 2184 were on hearing status.

Bill Anderson, Director of Public Affairs, Water District #1 of Johnson County, appeared in favor of HB 2138 asking for protection of their customer accounts. They do not believe the Open Records law was intended to release the names of customers for solicitation purposes. (See Attachment A)

Allen Lloyd, Management Analyst, City of Lawrence, appeared in favor of HB 2138 asking that the accessibility and availability of customers names and addresses be limited to protect the customer. (See Attachment B)

Jim Kaup, League of Kansas Municipalities, appeared on HB 2138 asking that the bill deal with the general subject of allowing names to be released and that it not just apply to Johnson County and rural water districts. The intent is to prevent the use of public records for private commercial use. (See Attachment C)

Chairman Whitaker asked if the League had any specific recommendations for language in the bill in this vein. Mr. Kaup replied that the League at this time does not have recommendations but would be willing to work with the Committee to come up with suitable language.

Dennis Swartz, Shawnee County Rural Water District #8, appeared in support of HB 2138 stating they serve approximately 1800 private residences. He stated that in one particular instance a commercial firm learned some of the chemistry that the district used in their water and used that data in an incorrect manner to promote the use of their products. The names and addresses of their customers should not be available for commercial use.

Jim Pritchett, Shawnee, Kansas, appeared on HB 2138 stating that he is opposed to excluding potentially important documents of a public agency from open, public view. It is important that public agencies operate in the open. (See Attachment D)

A letter from Fred Harris, Legislative Coordinator, Kansas Press Association, was received and passed out to members. (See Attachment E)

A letter from Louis Stroup, Jr., Executive Director, Kansas Municipal Utilities, Inc. was received and passed out to members. (See Attachment F)

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Federal and State Affairs,
 room 526-S, Statehouse, at 1:30 ~~a.m.~~/p.m. on February 10, 1983

Preston Barton, Ombudsman for Corrections, appeared to explain the provisions of HB 2184. For the benefit of the new members of the Committee he explained his background and the functions of the Ombudsman's office. He further stated that there is a 10 member Board made up of persons from all branches of government that he is responsible to. Since 1979 representatives of the Ombudsman's office have been denied access to the prisons stopped or hindered on 7 different occasions. Mr. Barton detailed the 7 instances to the Committee. Mr. Barton explained that access to the facilities is in the best interests of both the inmates and staff. He also handed out an Information Sheet and a information card prepared for inmate use. (See Attachments G, H, & I)

Chuck Simons, Counsel for Department of Corrections, appeared on HB 2184 stating the Department believes the Ombudsman is a valuable tool in the operation of the Department, however, the Secretary does not feel that the provisions of the proposed bill are appropriate or necessary now. The Committee questioned Mr. Simons on various points. (See Attachment J)

T. A. Lockhart, N.A.A.C.P., appeared in total support of the concept of HB 2184. Mr. Lockhart stated he had worked in prison systems for many years and recognized the concerns that all involved have.

Rep. Brady questioned whether it would be feasible for the Chairman, Vice-Chairman, Ranking Minority Member, DOC, and the Ombudsman to open up lines of communication and see if there is a compromise that everyone can live with. Chairman Whitaker suggested that this might be affected through the work of a subcommittee.

Rep. Vancrum moved, Rep. Barr seconding that the minutes of the February 8, 1983, meeting be approved with the correction of wording "subsections (a), (e) or (n) of" The motion carried.

Chairman Whitaker reminded the Committee of the two bills on hearing status for Monday, February 14th and asked that the Committee be on time to the hearing.

The meeting adjourned.

GUEST LIST

FEDERAL & STATE AFFAIRS COMMITTEE

DATE Feb 10, 1983

(PLEASE PRINT)

NAME	ADDRESS	WHO YOU REPRESENT
Jim Kay	Topeka	League of Ks Munic.
Allen Kay	Lawrence	City of Lawrence
Dennis F. Schwartz	Topeka	Kansas Rural Water Assn
Brester Barton	Topeka	ambassador
Charles E. Simmons	Topeka	Department of Corrections
JOHN SHACKLEFORD	KC	Dun & Bradstreet
Kenton Weltmer	Smith Center.	
John W. Sullivan	Overland Park	Water District #1 of Jo. Co.
Bill Anderson	Mission	Water Dist #1 of Jo Co

Statement of

WATER DISTRICT NO. 1 OF JOHNSON COUNTY
ON HOUSE BILL 2138

HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE
February 10, 1983

MEMBERS OF THE COMMITTEE:

We ask for favorable consideration of House Bill 2138 to protect the privacy of our customers. We believe an Attorney General's Opinion of February 26, 1981, invites an invasion of that privacy and the confidentiality of customer accounts.

In response to a request from Hill City, Kansas, the Attorney General's Opinion held that "information concerning individual monthly billings are 'official public records' which shall be open for personal inspection by any citizen at all times."

Since the ruling, we have been forced to supply the names and addresses of new customers to at least three private business companies which admittedly use the customer lists to solicit new business and could employ telephone solicitation for sales. We anticipate more such requests in the future.

We do not believe such use of the state Open Records law was the intent of the Legislature. We believe such use invades the privacy and violates the confidentiality of records of citizens.

You'll note that HB 2138 does not mandate the closing of any records but only allows a governing board to use its discretion and adopt regulations to restrict the use of names for the purposes we complain of.

It may be pertinent to observe that private or investor-owned utilities are not required to reveal this information since they are not government agencies which fall under the provisions of the Open Records law.

We believe most municipal utilities already try to discourage the use of customer records for private financial gain but this legislation would enable them to legally prevent such use for a purpose which we believe the Legislature never intended.

Bill Anderson
Director of Public Affairs

BA:sw



City of Lawrence KANSAS

BUFORD M. WATSON, JR., CITY MANAGER

CITY OFFICES 6 EAST 6th
BOX 708 66044 913-841-7722

CITY COMMISSION

MAYOR

MARCI FRANCISCO

COMMISSIONERS

DONALD BINNS

BARKLEY CLARK

TOM GLEASON

NANCY SHONTZ

February 10, 1983

Chairman Neal D. Whitaker
House Federal and State Affairs Committee
Kansas State Capitol
Topeka, Kansas

RE: Support of House Bill 2138 If Expanded

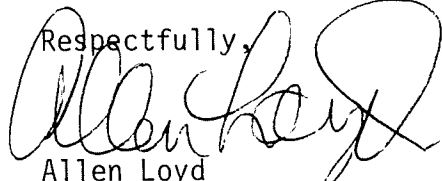
Mr. Chairman:

I am Allen Loyd, Management Analyst, speaking on behalf of the City of Lawrence, Kansas. I appreciate the opportunity to speak to this committee in support of House Bill 2138.

The City of Lawrence supports expanding the provisions of HB2138 to allow cities to adopt procedures to limit the accessibility and availability of names and addresses and credit or usage information of individual utility accounts to protect the privacy of customers. This type of protection already exists for customers of private utilities which are not allowed to give out customer information with the customer's consent.

We do not believe a customer of a public utility has any less need for such protection than a customer of a private utility.

I appreciate the opportunity of speaking to your committee on behalf of the City of Lawrence.

Respectfully,

Allen Loyd
Management Analyst

AL/ed

Attach 2

Statement on HB 2138--Municipal Utility Records
To House Committee on Federal and State Affairs
By E.A. Mosher, Executive Director, League of Kansas Municipalities
February 10, 1983

The League will not have an official position on HB 2138 until a meeting of one of our committees scheduled tomorrow. However, we are aware of the problem the bill addresses, and wish to express our general support.

As written, the bill does not affect access to the names, addresses, billing and collection records of city utility and other service charge records. This includes municipal water systems, gas systems, electric systems, sewerage systems and refuse systems operating on a service charge basis. We would suggest that the bill deal with the general subject, rather than limit its application to the Johnson County water district and rural water districts.

We have not heard of serious complaints from local officials as to the accessibility of such records to the general public or the news media. The concern, instead, is their use for private, commercial purposes. If you were attempting to develop a mailing list of some of the best customers in a city, to sell a variety of products and services, probably the best place to get the information is at city hall. While we do not think the laws require a city clerk to provide written copies or photocopies of municipal utility and service records, we do think they are now obligated to make the information available since they are public records. Thus, city officials can become unwilling partners to purely private and commercial ventures, including the provisions of mailing lists soliciting subscriptions to Hustler magazine.

Legal or not, it is rumored that some cities have adopted policies prohibiting municipal employees from providing such information when the known use is for commercial purposes. The intent is to prevent the use of public records for private purposes and to avoid possible harassment of residents of the city who happen to be a utility or service customer. We suspect a city is subject to mandamus to make such customer information available under existing laws.

Finally, we would note that attempts to amend existing statutes to authorize a local governing body to establish conditions for the availability and use of utility and service charge records would be difficult. While there are a number of state laws relating to public water, electric, gas, refuse and sewerage systems, some of these services and fee charges have been established under the constitutional home rule powers of cities. We would therefore suggest the amendment apply to the customer records of all public agencies.

Attach. c

Attach D

STATEMENT TO FEDERAL AND STATE AFFAIRS COMMITTEE, KANSAS HOUSE OF REPRESENTATIVES

(2/10/83)

My name is Jim Pritchett. I am a resident of Shawnee, Kansas, and am employed as a producer of public affairs programs for KCPT, Channel 19, in Kansas City, Missouri, a public television station.

I am not appearing, however, as a representative of Channel 19. I have been asked to appear as president of the Kansas City Broadcast News Alliance, an organization of radio and television journalists in the Kansas City metropolitan area, and as a member of Sigma Delta Chi/Society of Professional Journalists, Kansas City Chapter, and the Press Club.

Members of those organizations, professional journalists, want to make their feelings known to this committee, and to the legislature, regarding the provisions of HB 2138.

I want to emphasize that members of these two organizations I represent are not so concerned with the specific details of the incidents which caused the legislature to consider this piece of legislation, as they are concerned with the principal of excluding potentially important documents of a public agency from open, public scrutiny.

I am a consumer who feels beseiged with advertising mail, and ^(advertising) telephone calls, which in some ways violate my privacy. But I would suggest that the very essence of an open, democratic society is far more important than some relatively minor inconvenience I may experience. I would further suggest that the nature of law is perhaps an invasion of privacy. Government tells me I must drive no faster than 55 miles per hour on state highways, even if I am a safe driver who does not cause an accident. Law invades my life at every turn, yet that invasion of my privacy, my ability to make contrary personal decisions, is accepted as important to society.

Just as important to society is that public agencies operate in openness. Total openness. Would you consider it important, as a voter, to know that a candidate for a public utility was about to have his water cut off, for failure to pay his bills? That specific issue was raised by a local publication in this state because billing information was a matter of open record. As a voter, would you consider it important that one consumer, one business, was being charged differently than others, or was being treated differently in payment of past due accounts?

I agree that it is unfortunate commercial businesses want to exploit these public records for purposes beyond those that make it necessary for them to be open. But the freedom of information issue is of greater importance, my journalism colleagues and I agree, than the inconvenience created. It is not a compromise worth accepting.

Perhaps it would be far more realistic to attempt to educate the public, by informing them every time a commercial interest tries to exploit these kinds of records. I think the general public resents this practice, and finds it extremely distasteful. The negative reaction could perhaps do far more to discourage the commercial enterprises than a law which holds the potential of greater disservice to society. Thank you.

Attach D

Attach E

Kansas Press association / service, inc.

p.o. box 1773 • 701 jackson street • topeka, kansas 66601 • 913/233-7421

February 10, 1983

TO: Members of the House Federal and State Affairs Committee

RE: House Bill 2138

Mr. Chairman and Members of the Committee:

In making this presentation to you, I feel somewhat like the little Dutch boy with his finger in the dike. With the Kansas Open Records law, it seems no one has enough fingers to plug the holes people would like to punch in it.

Some have some merit individually. Others do not. I will not attempt to differentiate in the matter of HB 2138.

The fact remains that water districts in Kansas are publicly-owned bodies. As such, the public has the right to know about their operations and have access to their records. To make an exception for them would only weaken an already not-too-strong structure and provide a precedent for a multitude of other public units at all levels to attempt to close their records through legislation of this sort in the future.

The Kansas Press Association respectfully goes on record as opposing HB 2138. Thank you for your consideration.

Very truly yours,

KANSAS PRESS ASSOCIATION



Fred Harris
Legislative Coordinator

FH/c

Donald M. Fitzgerald, Executive Director; Dorothy Taylor, Administrative Asst.; Bill Meyer, Marion County Record, President; Mike Harris, Chanute Tribune, Vice President; W. W. Morford, Sharon Springs Western Times, Treasurer; Ned Valentine, Clay Center Dispatch, Northeast District Director; Bill Baker, Linn County News (Pleasanton), East Central District Director; Gordon Nordquist, Parsons Sun, Southeast District Director; Carter Zerbe, Augusta Daily Gazette, Central District Director; Don Haxton, Kiowa County Signal (Greensburg), Southwest District Director; Jim Logback, Hill City Times, Northwest District Director; Murrel Bland, Wyandotte West (Kansas City), Legislative Chairman; John Stauffer, Topeka Capital-Journal, Daily Membership Chairman; Rick Grabill, Osborne County Farmer, Weekly Membership Chairman; Paul Jones, Lyons Daily News, Immediate Past President.

Attach E

Attach F

KMU

Kansas Municipal Utilities, Inc.
P. O. Box 1225
McPherson, Kansas 67460
316-241-1423

February 5, 1983

Representative Neal D. Whitaker
Chairman
House Federal and State Affairs Committee
State Capitol
Topeka, Kansas 66612

Re: HB 2138

Dear Chairman Whitaker:

I would like to provide you and your committee with some comments on House Bill 2138, An Act concerning the disclosure of official public records. It is my understanding that you've slated hearings on the measure for 1:30 p.m. Thursday, February 10.

I'm taking the liberty of submitting my comments to you in writing ahead of time because there is a good possibility that I'll have jury service next week or that additional weather may make it impossible for me to get to Topeka. I would request that you hand out my comments to the committee during hearings on the measure February 10.

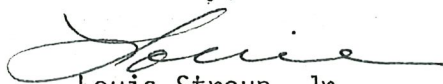
There appears to be some abuse for commercial purposes of lists of municipal water customers served by the Johnson County Water District No. 1 which is a member of KMU, a state-wide association of municipal water, gas and electric systems.

KMU is supportive of what the District is trying to accomplish, but would like to see an amendment that would apply to all municipal utility customers, not just those served by the District. HB 2138 would solve the District's problems, but not those faced by municipal electric, gas, water and sewer customers. A narrow amendment to the Public Records Act could accomplish the goal of protecting municipal customers' privacy. We would not want any broad amendment that might damage other sections of the Act; but rather just language that would provide that the names and addresses of municipal customers may be protected.

I might point out that municipal customers are the only ones subject to the Public Records Act and that the very protection we are requesting is available to customers of the private utilities (both gas and electric) as well as those served by the rural electric cooperatives of this state.

I hope you and your committee will take a serious look at this problem and provide a measure that will protect the customers of all utilities in the manner requested. Thank you for your consideration of our views.

Cordially,



Louis Stroup, Jr.
Executive Director

Attch. F

OFFICE OF THE OMBUDSMAN FOR CORRECTIONS
 503 Kansas, Suite 539
 (913) 296-5295 KANS-A-N 561-5295
 Preston N. Barton, Ombudsman

SUMMARY OF TESTIMONY ON HB 2184
Access to Prisons for the Ombudsman

Purpose of Bill

1. The Ombudsman would be guaranteed access to adult correctional facilities. He would be able to delegate this authority to the Ombudsman Associates.
2. While on the premises of correctional facilities, ombudsman staff would not have documents relating to their official function read or confiscated by correctional staff.
3. Correspondence between inmates and the Ombudsman could not be opened or delayed.
4. The Ombudsman would have the authority to administer oaths and take testimony. This authority could be delegated to the Ombudsman Associates.

Discussion

Justice must not only be done, but must be perceived as being done. If the Ombudsman is kept out of an institution, it raises the specter of suspicion even if there is no basis for suspicion.

While the authority provided in this bill would not make an Ombudsman inquiry immune to subterfuge, it would clearly communicate legislative intent and, thus, minimize interference in an Ombudsman inquiry. It would help the Ombudsman Office do a more credible and accurate job - and would present the appearance of doing a more credible job.

In upholding the statutory authority of an ombudsman office, a court opinion stated in part:

... (the Ombudsman) can bring the lamp of scrutiny to otherwise dark places, even over the resistance of those who would draw the blinds. If his scrutiny and observations are well founded, corrective measures can be taken in due democratic process; if not no harm can be done in looking at that which is good.

Purpose of the Office of the Ombudsman for Corrections

The objectives of the Office of the Ombudsman for Corrections are to:

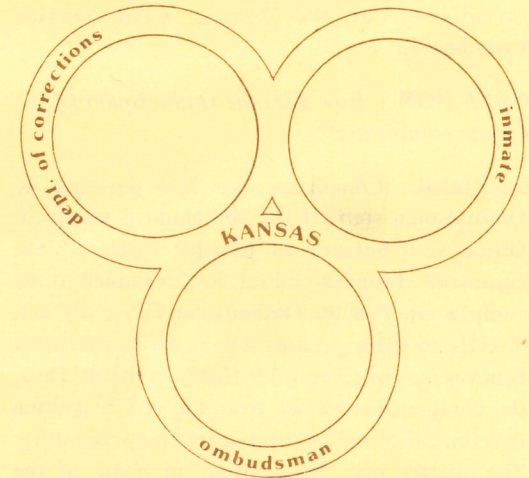
- 1) dispense with unfounded staff and inmate complaints.
- 2) substantiate valid staff and inmate complaints.
- 3) improve administrative procedures.

In accomplishing these objectives, the Ombudsman Office assists the executive and legislative branches of government in monitoring the form and substance of administration within the Kansas Department of Corrections. Additionally, these objectives demonstrate to correctional employees and inmates the state's commitment to be responsive to individual concerns, while at the same time provide programs to meet the needs of large numbers of persons. In this way, the Ombudsman Office works to reduce litigation and violence within Kansas prisons.

INFORMATION SHEET

Attach #

STATE OF KANSAS
CORRECTIONS OMBUDSMAN OFFICE



January 1983

503 Kansas Ave., Suite 539
Topeka, Kansas 66603
(913) 296-5295
KANS-A-N 561 5295

Att. 6 H

1. QUESTION: *Does the Ombudsman Office encourage inmates to bring lawsuits?*

ANSWER: The Ombudsman staff attempts to slow down the tendency to take all matters to court. One of the objectives of the Office is to effect administrative remedies for problems to avoid lengthy and costly litigation. This is done in such a way as to resolve an issue early at the lowest possible administrative level.

2. QUESTION: *Does the Ombudsman Office handle only inmate complaints?*

ANSWER: In addition to inmate complaints, the Ombudsman Office also handles complaints from correctional staff members--with the exception of those complaints which are within the jurisdiction of the Kansas Civil Service Commission.

3. QUESTION: *How does the Ombudsman Office handle complaints?*

ANSWER: Complaints are first screened by Ombudsman staff. If the complaint is accepted, Office staff pursues all possible facets of the complaint. From the outset, it is explained to the complainant that the Ombudsman Office will talk directly to those persons whom the complainant believes may be responsible for the problem. Thus, the complainant knows, from the very beginning that the Office will be checking out his or her story. The matter may be resolved in favor of the complainant, in favor of the other party, or very likely through a creative compromise of the versions of both parties.

4. QUESTION: *Does the Corrections Ombudsman Office always recommend in favor of the inmate?*

ANSWER: The Corrections Ombudsman works for and represents the State of Kansas. Indeed, the Ombudsman Office handles complaints from both staff and inmates. The Ombudsman does not represent inmates as does an attorney.

5. QUESTION: *Does the Ombudsman Office create discontent by sympathizing with inmates?*

ANSWER: The Ombudsman Office does not operate on the basis of trying to secure preferential treatment for some or all complainants. If an alleged discrepancy in administrative procedure is presented to the Ombudsman Office and is subsequently verified, then the Office will work toward rectifying the error. The Ombudsman Office staff has a strong commitment to the orderly and safe functioning of the penal institutions in the State of Kansas and works in a deliberate fashion to achieve this goal.

6. QUESTION: *How does the Ombudsman Office address a series of related problems?*

ANSWER: Many complaints are individualistic in nature and reflect isolated occurrences. However, when a series of complaints points to broader issues, the Ombudsman Office then pursues the matter through an indepth study. Based on study findings, recommendations are then made for administrative and legislative changes to correct the problem.

7. QUESTION: *What is the role of the staff members of the Ombudsman Office when they are on the premises of an institution?*

ANSWER: While on the premises of an institution, Ombudsman staff members act as third-party, impartial observers of events. This is particularly important during times of crisis. In this way the state is assured of having an independent, first-hand source of information regarding such events, in addition to sources within the administration, line staff and inmates of a facility. The Ombudsman and his staff do not have authority either to issue directives or to rescind them.

8. QUESTION: *Is the Ombudsman Office a penal reform group?*

ANSWER: The Corrections Ombudsman Office is not a reform program. It reviews actions of Department of Corrections' staff members within the context of the Department's own rules, regulations, policies and generally accepted practices, as well as state law. The Office does not impose a standard of its own creation upon the corrections system.

9. QUESTION: *Do the Ombudsman and his staff work for the Kansas Department of Corrections?*

ANSWER: The Ombudsman Office is statutorily established state agency, separate from the Kansas Department of Corrections. It provides the Department of Corrections with an external, third-party complaint resolution mechanism. The Ombudsman is appointed by and accountable to the Corrections Ombudsman Board. This ten-member board is composed of two appointees each selected by the Governor, the Attorney General, the Chief Justice of the Supreme Court, the President of the Senate and the Speaker of the House. Board members are appointed for four year terms.

10. QUESTION: *What is the role of the Corrections Ombudsman Board?*

ANSWER: Since Corrections Ombudsman Board members are appointed by the executive, legislative and judicial branches of the Kansas State government, the Board is able to provide the Ombudsman Office with a necessary degree of independence. This independence assures the Office's ability to be fair and impartial. As the policy-making body for the Office, the Board formulates the budget, the program design and priorities, and oversees its implementation. The composition and activities of the Board assures the Ombudsman Office's independence and neutrality--which are the very essence of the ombudsman concept.

11. QUESTION: *What is the relationship of the Office of the Ombudsman for Corrections to the Legislative branch of government?*

ANSWER: The Ombudsman Office is by statute a part of the executive branch of government. However, the Ombudsman Office does work very closely with legislators in assisting them in resolving constituent complaints. The Office also provides extensive assistance to the Joint Legislative Committee on Special Claims Against the State by investigating and making recommendations regarding claims submitted by inmates and staff members.

Attack of

HOUSE BILL NO. 2184

Secretary Barbara supports the concept of a Corrections Ombudsman, views the role of the Ombudsman has being a valuable tool and resource in the operations of the Department of Corrections and its institutions, and anticipates a cooperative and productive working relationship with the Ombudsman.

However, with respect to H.B. 2184, the Secretary does not feel that the provisions of the bill are appropriate or necessary at this time.

Specifically, the Secretary does not feel there should be a statutory grant of access to the Ombudsman to institutions at any time and under any circumstances. It is the Secretary's position that during emergency situations and incidents that the security concerns of the institution should override the Ombudsman's right of access to an institution. The Secretary believes that in such situations the decision on whether to grant access should be made by those responsible for the security, orderly operation and safety of those in an institution and not by the Ombudsman or his staff. The present grant of access to the Ombudsman is provided by statute as being at reasonable times subject to limitations necessary for the orderly operation of the institution.

Attch. J

The Secretary believes that such access is sufficient and reasonable to enable the Ombudsman to perform his duties with appropriate concern for the security and orderly operation of an institution.

Section 2(a) and (b) are both statements of existing department policy regarding the Ombudsman. The department has never taken the position that any documents in the possession of the Ombudsman should be read or confiscated.

With respect to paragraph (b), the department has two regulations concerning mail to and from the Ombudsman. Such mail is designated as official mail. Official mail may be opened only if it has been shown to be abused in the past or if probable cause exists to believe a crime has been committed. A second regulation provides that an inmate may send a sealed letter to the Ombudsman.

The Secretary believes these provisions provide sufficient protection for the Ombudsman's mail and that while he does not oppose the language of paragraph (b), he believes it to be unnecessary.

The Secretary believes Section 3 of the bill which provides authority for the Ombudsman to take testimony under oath is a broad grant of authority which is unnecessary. As written, the bill places no limits on this authority or when it could be used. The Secretary believes the Ombudsman may now request that testimony be under oath through a sworn affidavit but that compelled sworn testimony is not necessary or appropriate to the Ombudsman's functions.