



FOLKETINGETS  
OMBUDSMAND



The Danish Parliamentary Ombudsman has been elected by Parliament. His task is to help ensure that administrative authorities act in accordance with the law and good administrative practice, thus protecting citizens' rights vis-à-vis the authorities. The Ombudsman investigates complaints, opens cases on his own initiative and carries out monitoring visits.

# Annual Report 2019

**The Danish Parliamentary Ombudsman**

Gammeltorv 22

DK-1457 København K

Phone +45 33 13 25 12

[www.ombudsmanden.dk](http://www.ombudsmanden.dk)

[post@ombudsmanden.dk](mailto:post@ombudsmanden.dk)



# 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 2019.

Copenhagen, March 2020

A handwritten signature in blue ink, appearing to be 'NF', written in a cursive style.

Niels Fenger

**Published by**

The Danish Parliamentary Ombudsman  
Gammeltorv 22  
DK-1457 København K

**Printed by**

Rosendahls a/s, Copenhagen  
E-mail: [distribution@rosendahls.dk](mailto:distribution@rosendahls.dk)

Printed in Denmark 2020  
Also available in PDF format  
on [www.ombudsmanden.dk](http://www.ombudsmanden.dk)

**Graphic design**

Conduce  
Umano (infographics on pages 9, 10, 39, 128 and 129)

**Photographers**

Jasper Carlberg  
Jakob Dall

ISSN 1902-0120

# Contents

## **Preface: Protection of citizens' legal rights**

Niels Fenger, Parliamentary Ombudsman .....	4
---	---

## **Confusion about the roles of public authorities affects citizens**

Marianne Halkjær Ebbesen, Legal Case Officer, and Lisbeth Adserballe, Senior Head of Division .....	8
--	---

## **How do we introduce e-government without harming our legal rights?**

Niels Fenger, Parliamentary Ombudsman .....	16
---	----

## **Is using the term 'environmental information' a magic formula?**

Kirsten Talevski, Senior Head of Division, and Kristine Holst Hedegaard, Deputy Head of Division .....	22
---	----

## **About the cases**

Complaint cases .....	36
Own-initiative investigations .....	40
Summaries of selected statements .....	44
Extracts from news published in 2019 .....	66
Facts and figures about our monitoring activities .....	76

## **Brief overview of the year**

The year in figures .....	114
Statement of revenue and expenditure 2019 .....	132
Organisation .....	136

# Preface

**Protection of citizens'  
legal rights**

I took up the position of Parliamentary Ombudsman on 1 December 2019. Therefore, this Annual Report is my first report in my capacity as Ombudsman. This is also the reason why this Annual Report primarily describes the good work which my predecessor Jørgen Steen Sørensen – and for a brief period also High Court Judge Henrik Bloch Andersen – have accomplished during the preceding year.

During my short time as Ombudsman, my perception has been fully confirmed that I have taken over a well-organised institution with dedicated staff members. The old building at Gammeltorv is teeming with skilled staff members who have chosen to work at the Ombudsman institution because they are idealists who wish to work for the protection of legal rights and to support a good administrative culture within State, Regions and municipalities.

This is also how it should be since it is the Ombudsman's foremost task to protect citizens' legal rights. The institution is named the Parliamentary Ombudsman because the Ombudsman is elected by Parliament and carries out his activities on behalf of Parliament. But actually, the Ombudsman must act as Ombudsman of the people. A person who is independent of the public administration and a person who every-

body – both adults and children, citizens and enterprises – can contact if they feel that they have been treated incorrectly by public authorities.

Just like all other authorities, the Ombudsman institution does not have unlimited resources. It is therefore an important – and difficult – question how we make the most of our limited resources.

The guiding principle must always be that we must concentrate our efforts on matters where we generally prove ourselves most useful in regard to the protection of citizens' legal rights.

As we describe elsewhere in this Annual Report, we know from general experience that we often contribute the most in the so-called own-initiative investigations where we try to uncover general problems for the benefit of many citizens at the same time. I will therefore, in line with my predecessor, constantly be aware whether specific issues could reflect errors that are more recurring in nature.

At the same time, I will – depending on the nature of the individual case – not only establish whether errors have been made in the specific case but also help to impart knowledge to the authorities of what to do better next time, thus

looking forward. Because by helping an authority to avoid future errors, we also ensure that citizens are not subjected to injustice in future cases.

For this reason, I will give high priority to the continued work with the Guide for Authorities (in Danish only) on the Ombudsman's website. The purpose of the Guide is indeed to ensure that authorities receive guidance on how to do the right thing without us entering the fray.

Society is undergoing major changes these years. This also applies in relation to the way public administration works and communicates with citizens. The changes will affect citizens and administrative authorities, and obviously the Ombudsman must keep up.

One of the biggest challenges for the public administration is the implementation of e-government. Today, digitisation of public administration already has immense practical impact. And in the years to come, it will probably change the

public administration more than even the Local Government Reform and the implementation of the Danish Public Administration Act did.

E-government brings significant benefits to citizens as well as the public administration. But it also carries major risks. I will therefore in years to come put a lot of effort into keeping an eye on the implementation of the increasingly important e-government solutions so that e-government is implemented with respect for citizens' legal rights. I am raising this matter in a separate article in this Annual Report where you can also read more about the authorities' various roles and find out whether using the term 'environmental information' is a magic formula when you request access to public records.

Enjoy your read.









**Confusion  
about the  
roles of public  
authorities  
affects citizens**



Marianne Halkjær Ebbesen  
Legal Case Officer



Lisbeth Adserballe  
Senior Head of Division

## **An authority can have many varied tasks and therefore act in various roles. Besides making decisions within the meaning of the law, authorities give guidance, for example, and make private law contracts. It can be difficult to keep the roles separate, and that may affect citizens' legal rights.**

Most people probably consider public authorities as a kind of administrators of the welfare state – they see to it that children are looked after in day-care institutions, that patients receive treatment at hospitals, and that those who cannot fend for themselves get help. But very few, presumably, consider the several and essentially different roles the authorities have in that connection. And sometimes even multiple roles in the very same case.

One role is where authorities make decisions. In these cases, the authority unilaterally decides what is or what is going to be applicable law in the situation. By way of example may be mentioned declaration of planning permissions, allocation of student grants or change of a citizen's tax assessment.

A second role is the more service and operations oriented part of authorities' tasks, for example practical patient treatment, operation of day-care institutions and schooling in primary and lower secondary schools. This is called 'actual

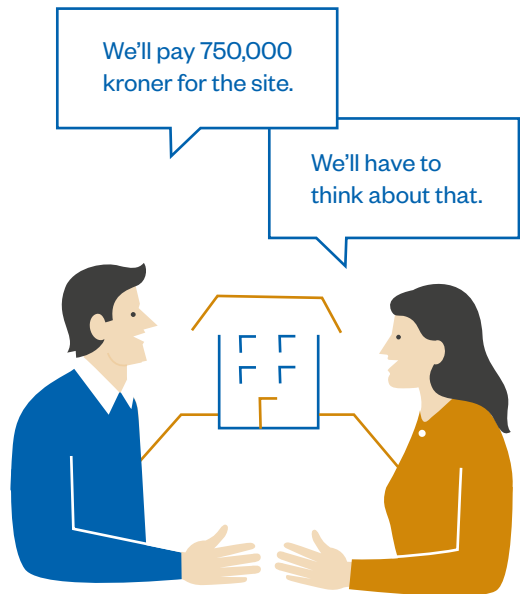
administrative activity'. Guidance of citizens or businesses is yet another example of actual administrative activity.

A third role pertains to entering into agreements. For example, when a municipality is selling a building site or entering into a tenancy agreement. In these situations, the municipality acts as an ordinary contracting party equally with





Actual administrative activity



Entering into agreements

private parties and is (with a few exceptions) not bound by the rules which apply in case processing.

The tasks mentioned and related roles are simplified and not exhaustive. However, the listing illustrates tasks where the Ombudsman especially has seen examples of authorities getting it wrong, causing possible 'confusion about roles'.

### Why is it important to distinguish between the roles?

It is of great importance that the authority is aware of which of the different roles it has in a given situation. For instance, it is important that it knows when it is making an actual decision within the meaning of the law and not just a decision as part of the actual administrative activity, and that it does not get the role as private negotiating party mixed up with the role as the authority making decisions within the meaning of the law.

When an authority assumes the role of an authority making decisions within the meaning of the law – and consequently has to rule unilaterally – the rules of the Danish Public Administration Act apply. These rules give the citizen a number of procedural safeguards and contribute, among other things, to ensure that the citizen is included in the case and is consulted, and that the authority gives grounds for its decision and in that connection informs the citizen of the rules which the decision is based on.

If the authority is not aware of when it makes a decision within the meaning of the law but is maybe just of the opinion that it provides service or guidance, there is a risk that the citizen loses these procedural safeguards.

In addition, the authority can only make a decision if it has the so-called legal authority to do so. In short, there must be rules stipulating that

the authority has the necessary power to make the decision.

Normally, the same requirements for legal power do not apply when the authority acts as private negotiating party. In these situations, the authority can act in more or less the same way as other private parties in the negotiation process and is also not bound by the Public Administration Act's requirements for consultation of parties, reasoned grounds and guidance.

If authorities have difficulties distinguishing between the roles of decision-making authority and negotiating party, it may affect the citizen's legal rights. The Ombudsman has seen several examples of this.

### **An offer or a decision**

The Ombudsman received a complaint from a woman who had applied for a cancellation of her student loan debt (Case No. 2019-16).

According to the rules on cancellation of debts to the public sector, including student loan debts, citizens may have debts to the public sector cancelled – fully or partially – if they prove that they 'are unable to and within the next few years have no prospect of being able to meet their debts'.

SKAT (the Danish Customs and Tax Administration, now the Danish Debt Collection Agency) replied to the woman's application in a letter headed 'Offer of partial cancellation'. The woman was offered a partial cancellation of her student loan debt, after which the balance was to be repaid over a period of five or seven years. However, the partial cancellation was contingent on her accepting the offer within four weeks. If she did not accept the offer within the time limit, her student loan debt would not be cancelled – either fully or partially.

The Ombudsman stated that SKAT had no authority to make its decision on (partial) cancellation conditional on the woman accepting the 'offer' within a specified time limit.

In addition, the Ombudsman stated that it appeared that SKAT was not aware that a decision within the meaning of administrative law was made. He pointed out that SKAT used the term 'offer' and made the legal effect conditional on the woman's acceptance. The procedure could give the woman the impression that it was a negotiation with SKAT acting as a contracting party – and not exercise of public authority which was binding on the citizen.

Further, the Ombudsman pointed out that the woman might get the wrong impression that by accepting the offer she would commit herself to an instalment plan without the possibility of changing it, for instance in case her financial situation changed.

In other words, the Ombudsman stated that SKAT had misunderstood its role as decision-making authority.

### **When the authority negotiates with the citizen**

In another example, an authority also got the roles as decision-making authority and private negotiating party mixed up. The case was part of a larger own-initiative investigation at the Ombudsman institution (Case No. 2018-10).

A man who owned a rental property wanted deduction for a number of maintenance expenses – among other things for upgrading the sewer system. SKAT had accepted deduction for some of the expenses and suggested in a so-called preliminary letter of intent (a kind of consultation of the man as a party to the case) that only a part of the sewer expenses were deducted.

The man protested against SKAT's suggestion, and then the caseworker at SKAT wrote to the man: 'I think I have treated you well by not cutting into the maintenance expenses. We may discuss whether it is a fair part of the sewer expenses I have accepted.' So, it would appear as if the caseworker at SKAT did not make a decision but entered into a negotiation with the citizen where the caseworker would meet the citizen halfway in some areas if he in return yielded in other areas.

The Ombudsman stated that SKAT's e-mail could give the taxpayer a problematic impression of SKAT's processing of the case, thereby damaging the trust in SKAT.

The Ombudsman also stated: 'Tax authorities' task is to administer the legislation which applies to taxation matters. By handling this task, the authorities must maintain citizens' trust that the authorities abide by the legislative framework. This trust is not maintained if the authorities give the taxpayer the impression that a decision regulated by law – for instance a tax assessment – is a matter of negotiation with SKAT.'

In this case, the actual statement is directed at the authorities but the considerations apply in relation to all authorities making decisions within the meaning of the law.

The cases mentioned are examples of what can happen when authorities get their roles as decision-making authority and negotiating party mixed up. The decisions do not appear as clear statements from the authority as to what is applicable law for the individual citizen. On the contrary, there is a risk that the citizen receives a decision with, for example, requirements and conditions which the authority is not allowed at all to stipulate. Therefore, one is easily left with

the impression that the decision is not based on statutory rules and factual assessments but instead is an expression of the individual caseworker's (good)will.

### **'Just' a decision or a decision within the meaning of the law**

Confusion about roles does not only take place between decision-making activities and situations involving negotiations.

When authorities engage in what is called actual administrative activity, they make several decisions every day. But sometimes it can be hard to distinguish between whether a decision is 'just' a decision or a decision within the meaning of the law.

Among other things, this applies to schools, day-care institutions and other places where actual decision-making only rarely takes place.

One example is a case (Case No. 2015-19) where a boy in the 9th grade had grossly harassed a girl in the 8th grade. The boy had also been involved in previous incidents at the school. Therefore, the school decided to transfer the boy to another school.

The school had made a decision within the meaning of the Public Administration Act by unilaterally and finally determining that the boy was to continue his schooling at a different school. But the school itself was not aware that it was making a decision within the meaning of the Act.

That it was a decision within the meaning of the Act meant that the rules of the Public Administration Act applied and that the school ought to have consulted the boy's legal guardian prior to the decision. The school also ought to have given adequate grounds for the decision and

should have referred to the rules of law on which the decision was based. Furthermore, there ought to have been made a written record of the telephone conversation in which the boy's legal guardian was informed of the school transfer. Besides, in the Ombudsman's opinion it would have been most correct to deliver the decision in written form. The Ombudsman criticised the errors which the school had made in the process but not the actual decision to transfer the boy to a different school.

Consequently, in this situation the school not being aware of its role resulted in a number of errors.

### When the guidance becomes a little too concrete

Under the category 'actual administrative activity' falls also guidance of citizens and businesses. In the nature of things, guidance can include practically everything within the authority's area of responsibility. Regarding the municipalities, it may be how to apply for a nursery place, and in regard to the regions how to make use of the free choice of hospitals. Guidance may also be about how certain rules are to be understood.

Especially in the last of these situations, authorities must make sure that it is clear to the citizens that the guidance is guidance only, and that, as a general rule, the guidance is binding on neither citizen nor authority. In other words, an actual decision has not been made.

In a major investigation of the guidance replies (Case No. 2019-25) from the customer centre of the Danish Tax Agency, the Ombudsman found several replies which appeared like actual decisions rather than guidance.

Examples include a citizen who asked if he could deduct expenses of the installation of a charging box for an electric car on his tax return form. The customer centre replied: 'It is not possible to deduct the installation of a charging box for an electric car as this is not included in the home renovation deduction.'

It does not appear from the reply that it is solely a matter of guidance. The reply – which is very concrete – could within reason be perceived as an actual decision about *rejection of deduction*.

The investigation also showed examples of replies which could be perceived as decisions about *entitlement to deduction*. The customer centre replied for instance to a question about the possibility of deduction: 'The expenses you have had in connection with publishing the book can be deducted from the fees you are getting. As a fee recipient you have to deduct the expenses under the heading 29 on the tax return form and section 425 on the preliminary assessment of income.'

You can ask yourself if it is not irrelevant, really, whether the citizen thinks it is a decision.

The answer is no. Because what if the guidance is incorrect? Or if there were details missing in the enquiry which would have led to another reply if the authority had known this information.

There is a risk that a citizen who wrongly perceives the guidance as a decision and acts, or refrains to act, in reliance on the reply, suffers a loss of rights. The citizen may for instance miss out on a deduction or a payment which he or she would have been entitled to otherwise.

It is also important to distinguish between guidance and decisions because decision-making

– contrary to guidance – makes increased demands on the case investigation and the case processing for that matter, for example that the Public Administration Act's rules on parties' legal rights must be observed.

Obviously, this does not mean that authorities ought to stop giving citizens proper and concrete guidance – the authorities just have to remember to let citizens know that it is solely a matter of guidance and therefore not a decision.

### **'Buying elastic by the metre'**

The examples in this article show that it is important that authorities manage their different roles because otherwise it may have consequences for the citizens' legal rights. Ultimately, a citizen can end up suffering an actual loss of rights.

Common to the examples are furthermore that they illustrate that the authorities' confusion about their role may harm citizens' trust in the public authorities.

The man who wanted a deduction for the expenses for upgrading the sewer system had, with good reason, difficulties understanding why he had to negotiate with the authority about his deduction. Among other things, he wrote to SKAT: 'I notice (...) that there is no reference to any sections in acts or guidelines. But that you sit there solely assessing what to accept, it does not seem legally correct, if one of your colleagues assessed the same case, your colleague might have another interpretation and perception and therefore accept things which you won't. It is like buying elastic by the metre.'

*In the article 'When schools have to be legal eagles' from the Ombudsman's Annual Report for 2015, a number of examples are given of schools making decisions without being aware of their role as decision-making authorities.*





**How do we  
introduce  
e-government  
without  
harming our  
legal rights?**



Niels Fenger  
Parliamentary Ombudsman

## **Digitisation of the public administration offers immense potential. But a number of examples also indicate that insufficiently thought-out IT systems can harm citizens' legal rights. The Parliamentary Ombudsman will step up his efforts within this field.**

A woman wanted to help her mother with an application for a technical aid. But the municipality's digital self-service solution only allowed the mother herself to apply. Consequently, it was not possible to submit applications on behalf of others as laid down in the Public Administration Act (Case No. 2019-11).

In another case, the Danish Customs and Tax Administration (SKAT) had put the IT system 'Én Skattekonto' ('One Tax Account') into operation. However, due to a system malfunction SKAT could not charge interest from businesses for more than two years (Case No. 2019-17).

The above cases are only two of many cases about e-government which the Ombudsman investigated in 2019. Both cases indicate that the good intentions behind digital systems can go astray if the systems are not configured correctly. Especially in the case about SKAT, it was most unfortunate that an IT system with such defects was put into operation in the first place.

It can happen to everyone that you forget to take applicable law into account. But if the oversight happens in relation to a digital self-service solution, the individual error multiplies into a cascade of errors. Unlike us human beings, digital solutions do not have bad days with inferior performance. If there is a malfunction in a digital solution, it will be repeated every day of the week and every hour and minute of the day.

Therefore, digitisation of the public sector will become a special focus area for the Ombudsman institution in the years to come.

### **Great potential for the welfare society**

These years, the public administration's case processing is undergoing significant changes due to increased digitisation. Both the public administration's own working methods as well as meetings between citizens and public administration are affected by digital self-service solutions like [www.borger.dk](http://www.borger.dk) and automated

decision-making systems, robot software and other artificial intelligence systems.

Modern technology brings significant benefits to citizens as well as to public administration in many ways. Automated case processing systems where computers entirely or partly make administrative decisions can actually make the case processing cheaper and quicker. Depending on the type of individual case, digitally generated decisions can also be of higher quality and be more predictable.

At the same time, digital self-service solutions can also improve the quality of the public administration's service to citizens in a number of cases. We can benefit from a public administration with night and day opening hours where we can take care of our unsettled matters with public authorities via the internet whenever convenient for us.

Digital solutions can also improve everyday life for citizens at many public institutions such as schools, kindergartens, hospitals and residential care homes. The school teacher can, for example, by means of digital teaching aids target the teaching of the individual pupil to a higher degree. Modern health technology enables patients to self-monitor their disease in their own home.

Good digital solutions can also enhance the efficiency of public administration and thereby release significant resources, including the so-called 'warm hands' and a more citizen-friendly welfare. At the same time, digitisation has frequently proven to be an efficient tool when rethinking processes and working procedures in the public sector.

So, there is no doubt that digitisation of the public sector offers immense potential for our welfare society and thus for all of us. However, the rapid development does not only contain positive gains but also challenges.

### **IT systems with problems from day one**

The Ombudsman's core task is to ensure the individual citizen's legal rights when meeting the public administration. This also applies as far as the new digital reality is concerned.

The general administrative law requirements and principles apply irrespective of manual or digital case processing. It is therefore the individual authority's responsibility when the case processing is digitised fully or partially within a field that new digital solutions meet the requirements so that citizens maintain their legal rights (Case No. 2018-1).

Unfortunately, the Parliamentary Ombudsman has found a number of times within recent years that public digital solutions did not comply with administrative law requirements.

The system defects have been manifold. For instance, there have been problems with incomplete dating of letters, defects in relation to the digital systems' ability to retrieve relevant cases which should, among other things, ensure uniform practice, defects in securing original contents of documents and authenticity (Case No. 2015-22) as well as insufficient record-keeping (Case No. 2018-29).

Just like the case about the woman who wanted to help her mother, it has unfortunately also been found several times that a digital solution did not comply with section 8 of the Public Administra-

tion Act about the right to make use of representatives and be assisted by others (see also Case Nos. 2011 12-1, 2012-5 and 2016-1).

In addition to this, there have also been cases where the chosen technical design of Public Digital Post meant that the authority's identity was not always apparent from the letters which citizens received (Case No. 2015-22). In another case, citizens were not informed about the authority's decisions but had to search the system themselves in order to see whether the authority had made a decision (Case No. 2011 18-1). Finally, there have also been cases where the authorities were not aware that statutory authority is required when requesting citizens to communicate digitally with public authorities (Case No. 2015-36).

A number of the above cases indicate how essential it is for the legal rights of the individual citizen that digital solutions are configured in accordance with statutory law. But the cases also imply another vital lesson: The problems could have been avoided in almost all cases if the authority had included administrative law and design of the digital solution in the planning from the beginning (Case No. 2014-34).

### **System errors come at a high price**

It is a prerequisite for the sound development of public digital solutions that the authorities ensure that they obtain a thorough overview at the outset of the case types and procedures which the new solutions must be able to handle (Case No. 2014-24). It is also necessary to consider which case processing rules in regard to consultation of parties and grounds are applicable in the cases in question.

It is also a prerequisite for fully automated case processing that you are already able at the time of development of the system to foresee the

situations that may occur in actual practice and to design the solution so that the system takes such situations into account. This will typically not be possible in cases where an individual assessment has to be made. Sometimes, a digital solution can be configured in a way so that cases under certain circumstances can be selected for manual case processing. In other instances, a fully automated case processing can only be implemented if the individual assessment is completely taken out of the legislation, and the legislative basis so to speak can be put on a mathematical formula.

Errors can result in disregard of the authority's (the system's) decision, meaning that it is considered invalid. In that case, the authority must process the case again and make a new decision. There may be a basis for compensation if the citizen has suffered a financial loss.

The Ombudsman is concentrating his attention on citizens' legal rights. But it is not only the individual citizen's legal rights and trust in the public administration that are put at risk if a digital solution fails. It is also a waste of resources since it can be expensive as well as technically difficult to change a complicated IT system once it has been implemented. In a case about applicants for the State Educational Grant (SU) not having the possibility to be represented by others, it took more than 18 months to put the system right after the Ombudsman expressed criticism (Case No. 2016-1). In the previous case about the Danish Customs and Tax Administration (SKAT) being unable to charge interest, the system was not able to add interest until two years after it had come into operation.

Sometimes, the expenses of not putting the systems right until afterwards are so heavy that you choose to legitimise the unlawfulness (Case No. 2015-21).

For all these reasons, it is vital that digital solutions are designed from the beginning in such a way that the solutions meet the administrative legal requirements.

### **The Ombudsman's role**

At the Ombudsman institution, we are currently considering how the Ombudsman in the best possible way can contribute to ensure that administrative law and citizens' legal rights are included concurrently with the development of digital solutions.

It is not the ordinary role of the Ombudsman to contribute to the design of the public administration's systems in relation to for example record-keeping and case processing. And, as already mentioned, it is always the responsibility of the authorities themselves that the systems observe the administrative legal requirements. The Ombudsman is usually the last step in the process when it comes to checking whether decisions already reached by the authorities are legitimate and correct. The principle that

the Ombudsman conducts an ex post control and does not take part in the authority's own decision-making process is for good reasons a well-established principle. But precisely as far as development of digital solutions is concerned, we are currently considering how we can contribute in the best possible way within this special field so that the authorities can thoroughly consider the solutions from a legal point of view at an early stage. This is a difficult exercise since the Ombudsman is not (and should not be) a design body but a control body. But this is also an extremely important exercise. Because, if used correctly, digital solutions can contribute to ensuring correct decisions and increase the service provided by the public administration to citizens.

My ambition is that the Ombudsman institution in the best possible way – within the scope of the Ombudsman's authority – supports that society can reap the benefits of this huge potential but only without causing damage to citizens' legal rights during the process.

## Important points

From the Ombudsman's Guide for Authorities (in Danish only) at [www.ombudsmanden.dk](http://www.ombudsmanden.dk), Overview #13 on the general administrative requirements in regard to public IT systems

- Compliance with administrative requirements is essential with regard to citizens' legal rights. It is the individual authority's responsibility to make sure that the authority's IT systems meet these requirements.
- Administrative rules and principles apply irrespective of whether case processing is undertaken manually or digitally.
- Administrative requirements must be considered at an early stage upon development of new IT systems.
- It is important to have an overview of the various types of cases and case procedures which a new IT system must include.
- The authority must clearly define the applicable rules for the processing of cases which the IT system must handle.
- The IT system must be configured in a way that makes it possible to search for relevant cases based on criteria in terms of contents.
- The authority must ensure documentation of all case files – either by a physical copy or by an electronic 'authentic copy'.
- The IT system must support and ensure record-keeping of relevant documents.
- Registrations in the IT system must be clear, sufficient and give a true and fair view.
- It must be possible to see from which authority a letter originates.
- As a general rule, letters in decision cases must either be signed with a personal signature or worked out in a way which ensures both a clear identification of the letter and that the letter is final.
- The IT system must be equipped with secure documentation as to when the authority has sent a letter.
- The system must support compliance with legal rights for citizens laid down in administrative rules and principles.
- Citizens cannot be required to write electronically to the authority or to use a digital self-service solution without statutory authority.
- A citizen who is a party to a case must receive a message directly (for example by e-mail in the digital letter box) when the authority makes a decision.

**Is using the term  
'environmental  
information' a  
magic formula?**





Kirsten Talevski  
Senior Head of Division



Kristine Holst Hedegaard  
Deputy Head of Division

**The general public is given special access to case materials about environmental information, and a number of cases with the Ombudsman indicate a broad perception of the term. But journalists and others should also be aware that using the term ‘environmental information’ does not always result in access to documents.**

A memorandum on the costs of shifting motorists from cars to trains was given a hard time by a technical journalist. He wrote a number of critical articles about the memorandum. He was particularly critical of the Ministry’s calculations. At one point, the Ministry complained to the editor-in-chief about the technical journalist. The outcome was that the journalist asked for access to documents about the complaint.

The question was now which Act the Ministry should base the request for access on.

Broadly speaking, there are two codes of practice regarding access to documents for persons who are not a party to a case. The majority of those who work with access to documents are familiar with the new Access to Public Administration Files Act. The Environmental Information Act is less well-known. But if you seek access to environmental information, the authorities must observe the Environmental Information Act.

Consequently, the Environmental Information Act is of importance to a large part of the public administration. And it can also be of significant importance as to whether journalists and other citizens are granted access or not.

However, it can be difficult to know whether the access is related to environmental information. This was also the case when the journalist asked for access to the Ministry’s documents about the handling of his criticism. Could information about a journalist’s critical writings about a memorandum be considered environmental information at all?

**Environmental information and the Access to Public Administration Files Act**

The Environmental Information Act implements an EU regulation within Danish legislation. Because of the underlying EU legislation the Act can be complicated to use, and you must, among

## Environmental information and rules regarding balancing of assessment rules

Pursuant to the Environmental Information Act, there are two special rules regarding balancing of assessment rules which must be observed when processing a case about access to documents:

- **The general rule on balancing of assessment rules:** The access to *limit* access to documents must be used *restrictively*, taking society's interests in publication of the information into account.
- **The specific balancing of assessment rules:** In each case, the public interests which are protected when *information is made available* must be weighed out against the interests that are protected when *access is denied*.

The balancing of the assessment rules means that the exemptions under the old Access to Public Administration Files Act from 1985 must be interpreted restrictively. And, even if an exemption provision can be used generally to deny access to documents, access can only be denied if the interests protected by the refusal are weightier than the interests protected by making the information available.

other things, include practice laid down by the Court of Justice of the European Union (CJEU) when interpreting the Act.

Basically, the Environmental Information Act gives every person the right to be notified of environmental information. However, there is only one basis in this connection. The limitations (exemptions) stipulated in the old Access to Public Administration Files Act remain applicable when using the Environmental Information Act. In addition to this, things are further complicated by the fact that the old Access to Public Administration Files Act must be interpreted restrictively

in cases regarding environmental information. This is laid down in the so-called balancing of assessment rules of the Environmental Information Act (see factbox).

If you disregard the special rules that directly follow from the Environmental Information Act, you can generally say that the question about access to environmental information must be processed according to the old Access to Public Administration Files Act. On certain points, the old Access to Public Administration Files Act gives access to more information than the new Access to Public Administration Files Act but in relation to other matters it gives access to the same particulars.

The widely discussed section 24 of the new Access to Public Administration Files Act – the so-called ministerial advice and assistance regulation – does not exist in the old Access to Public Administration Files Act. All things being equal, this means that it is easier to obtain access to documents concerning the political decision-making process when it comes to environmental information.

Other provisions like for example the provision that you can exempt internal documents from the right to access and the provision that you must supply (extract) actual information are more or less the same under the old and the new Access to Public Administration Files Act.

Even if the Environmental Information Act must be used, there is no guarantee that you can get access to the information you require.

### Criticism from the technical journalist

Back to the case (Case No. 2018-2) about the technical journalist who had written critical articles about the Ministry's memorandum on shifting motorists from cars to trains. He wanted

### Section 3 of the Environmental Information Act

**3** Environmental information shall mean any information held by public authorities or for them in written, visual, aural, electronic or any other material form irrespective of when the information was provided on

- (1) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements,
- (2) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (1),

- (3) measures, including administrative measures, such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (1) and (2) as well as measures or activities designed to protect those elements,
- (4) reports on the implementation of environmental legislation,
- (5) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (3), and
- (6) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are affected by the state of the elements of the environment referred to in (1) or, through those elements, by any of the matters referred to in (2) and (3).

to get access to the Ministry's documents regarding the complaint about him.

The Ministry withheld four documents about the Ministry's handling of the criticism. The reason for this was that the Ministry considered the documents to be internal documents. The Ministry referred to a section of the new Access to Public Administration Files Act and did thus not agree that information stated in the four documents was environmental information. The Ombudsman disagreed.

The Ombudsman found that the memorandum, which had been drawn up to form the basis for political discussions, contained environmental information. The journalist's criticism was focused on the professional tenability of the Ministry's memorandum. The journalist's participation in the public debate about the memorandum

was an example of 'effective' participation by the public in environmental decision-making – and that was exactly an intended objective of the rules laid down by the EU legislator.

The Ombudsman recommended that the Ministry reopen the case and make a decision according to the Environmental Information Act. The Ministry did so, but in the specific case this did not mean that the journalist was given access to the information requested. The reason was that pursuant to the Environmental Information Act internal documents could also be exempt from access and the rules regarding balancing of assessment rules did therefore not help the journalist. In this case, using the term 'environmental information' was therefore no magic formula.

## Factors ‘affecting or likely to affect the elements of the environment’

In order to make use of the Environmental Information Act, one must obviously be dealing with environmental information. As such, this sounds simple but sometimes it can – like the case about the technical journalist indicates – be a rather complicated exercise to ascertain what is environmental information within the meaning of the Act.

Environmental information is defined in section 3 of the Environmental Information Act. Environmental information is not only information directly relating to the environment but also information about, for example, the state of the elements of the environment in soil, water or air. It also covers information about for example radiation, noise and discharges affecting or likely to affect the elements of the environment.

More indirect information about the elements of the environment is also included. It follows from the definition of the law that information about measures or activities that affect or are likely to affect the environment is included. This can, for example, be legislation or plans.

In a number of cases regarding access to documents, the Ombudsman has considered how the Environmental Information Act must be used. The most important cases are published on the Ombudsman’s website. Three specific cases are mentioned below:

### Access to MRSA information

For some time, a number of pig farms had been tested to find out whether they were contaminated with the multiresistant *Staphylococcus* bacteria MRSA. Some journalists wanted to know which pig farms had been tested positive. The food safety authorities denied the request,

among other things on the grounds that it would lead to stigmatisation of the pig farm owners and their families. The authorities had processed the case without considering whether it was environmental information.

The Ombudsman found that it was of utmost importance for the assessment of the case whether the information was environmental information. The Ombudsman was of the opinion that if the pig herd was contaminated, the air in the pigsties would contain MRSA bacteria for which reason the Environmental Information Act should be used pursuant to section 3(1) (see factbox).

The Ombudsman also stated that the Environmental Information Act is based on the fundamental view that the public should have a particularly extensive right of access to environmental information. And, in order for access to be denied, it had to be the granting of access itself that would result in stigmatisation. If the problem of stigmatisation would remain irrespective of whether access was granted, the request for access could not be denied. In consequence of this, the Danish Veterinary and Food Administration decided to give access to the information. (Case No. 2014-8).

Consequently, information in regard to which pig herds had been contaminated with MRSA was to be considered environmental information – which in this case made a difference as to whether access could be granted.

On the other hand, two other cases reflect that there are limits to what ‘environmental information’ covers. Even if the practice laid down by the Court of Justice of the European Union (CJEU) indicates that the term is broadly interpreted.

## Limits as to what is considered environmental information

After a pub in Copenhagen had applied for renewal of its alcohol licence, a citizen requested access to a recommendation for the decision to be made by the Licensing Board of the City of Copenhagen and to the decision. The Board denied access with reference to the new Access to Public Administration Files Act.

The Ombudsman now had to decide whether it was a question about environmental information. The renewal of the alcohol licence was potentially of importance to the continuous existence of the pub. Thus, the decision was indirectly of importance to the discharge of noise and tobacco smoke into the surrounding environment.

Even if the recommendation and decision by the Board as such was considered a 'measure' (section 3 paragraph (3) – see factbox), the Ombudsman did not find that the requirement was likely to affect the elements of the environment. An opinion provided by the EU Commission supported the Ombudsman's assessment. Therefore, the case was to be decided pursuant to the new Access to Public Administration Files Act. (Case No. 2018-34).

In another case (Case No. 2020-1) a citizen had connected two field based solar panel plants to the grid via the local energy company and he had received a final settlement invoice for the total price. He wanted to check whether he had been invoiced for the actual costs. Therefore, he asked for access to some underlying supplier invoices for material and the installation worker's hourly fee, among other things.

Now, the question was whether information stated in the supplier invoices was to be considered environmental information. The Ombudsman found that the installation of the solar panels had to be considered a 'measure or an activity' within the meaning of the Environmental Information Act. But the Ombudsman was not of the opinion that the underlying documents were to be considered environmental information, among other things because of the more indirect connection between information and installation of the solar panels. Also in this case, an opinion issued by the EU Commission supported the Ombudsman's assessment.

Thus, the cases about the renewal of alcohol license and the solar panels illustrate that there are limits to what can be regarded as 'environmental information'.

And, as the above cases also illustrate, using the term 'environmental information' is not always the 'magic formula' which means that you will get the information you want. But it can be.

## Increasing importance

When the new Access to Public Administration Files Act entered into force with effect from 1 January 2014, the old Access to Public Administration Files Act was repealed simultaneously. But not entirely. Because, as mentioned above, the repeal did not comprise cases processed under the Environmental Information Act (section 42(4) of the new Access to Public Administration Files Act). And as environmental and climate issues are increasingly on the political agenda, it must be assumed that regulations stipulated in the Environmental Information Act (and thus also the old Access to Public Administration Files Act) will become increasingly important.

### Case No. 19/04405

A mother was very much against her daughter having contact with her father. However, the Agency of Family Law had made the decision that the daughter was to have contact with her father again. The decision could – via the Agency of Family Law – be brought before the Family Court. The mother had already appealed against the decision to the Agency of Family Law but even so she wanted the Ombudsman to look at the case.

The Ombudsman wrote to the mother that the Ombudsman does not consider complaints about decisions by the Agency of Family Law if they can be brought before the Family Court.

**The jurisdiction of the Ombudsman does not extend to the courts of justice – for instance the Family Court. According to practice, nor does the Ombudsman consider cases or matters which are being processed by the courts or which are expected to be brought before the courts, or where the legislation lays down particularly easy access to judicial review.**

### Case No. 19/03436

‘We were walking quietly with our dog on a leash when the cow suddenly took a dislike to the dog and ran after us. It knocked me down and butted me.’ A woman wrote this, among other things, to the Ombudsman after a walk in a municipal forest.

The woman was dissatisfied because she could not get compensation for the expenses she had had in connection with a sick note after the incident. The municipality’s insurance company had informed her that the municipality was not liable to pay damages, among other things because the cows were not owned by the municipality but by a farmer.

The Ombudsman decided not to initiate an investigation since it was a civil law issue whether the municipality was liable to pay damages to the woman and since the Ombudsman first and foremost deals with public law issues. In his opinion, the case had to be decided by the courts if occasion should arise.

**The Ombudsman very rarely investigates complaints about refusals of compensation.**

### Case No. 18/01700

A local newspaper wrote that a woman had been refused an electric scooter which she found she needed after surgery. The grounds for the municipality’s refusal were that politically it had not yet been decided if temporary technical aids were to be a part of the municipality’s service level.

The Ombudsman asked for the municipality’s statement in the case. He pointed out that the municipality according to the Social Services Act is required to make decisions about temporary technical aids based on a specific individual assessment.

The municipality then informed the Ombudsman that the woman’s case had been reopened because it was an error that the municipality had not made a specific individual assessment. The municipality was also going to change its practice and in future consider applications for temporary technical aids specifically and individually.

**The Ombudsman may decide to open own-initiative investigations. Among other things, this may occur based on media coverage.**

## Case No. 19/01698

An inmate in a state prison had written to a company and applied for a job after his release. The company addressed the prison and asked not to be contacted by the inmate after which the prison ordered the inmate not to contact potential employers.

After this, the inmate complained to the Ombudsman that the prison did not reply to his complaint about the order. The Ombudsman wrote this to the prison and asked for a copy of the prison's reply to the inmate.

The case was considered by the regional office of the Prison and Probation Service which the prison fell under. The regional office did not find that the prison could lay down rules on whether the inmate was allowed to contact the company or other potential employers. Therefore, the regional office expressed its regret at the prison's order.

**There are a number of cases about state and local prisons at the Ombudsman institution. In 2019, the Ombudsman concluded approximately 360 cases pertaining to inmates' conditions in state and local prisons. In addition, the Ombudsman's visiting teams visited 18 institutions under the Prison and Probation Service.**

## Case No. 17/02913

A man had had to pay legal fees in a court case in which he had filed a lawsuit in France against his former employer. The man found he was entitled to a full tax deduction for the fees. However, the Danish Tax Agency and a tax and assessment appeals board decided that he was eligible only to a proportionate deduction. The tax authorities based their decision on the ruling and the man's own information about the court case.

The man complained to the Ombudsman who asked the tax authorities some questions about the deduction and about the ruling. In its reply, the appeals board stated that it was now prepared to reopen the man's case. After this, the Ombudsman closed the case.

**The Ombudsman usually closes his investigation when the authorities reopen the case.**

## Case No. 19/04649

'How in the world can this be in the child's best interest?' A citizen asked the Ombudsman this question after the municipality had decided that a boy, whom the citizen had known for many years, no longer was to stay with his foster family. Instead, the boy was to live with his biological mother. The citizen strongly disagreed with the municipality's decision and was deeply concerned about the boy's future well-being.

The Ombudsman wrote to the citizen that he was sending the citizen's letter of concern about the boy on to the National Social Appeals Board, which monitors the children's sector and considers appeals concerning children. Meanwhile, the Ombudsman could not inform the citizen further about the case even though the citizen knew the boy well. This was due to the fact that the citizen did not have parental responsibility for the child.

**Each year, the Ombudsman is contacted by citizens who are concerned about children's well-being – for instance former foster parents. If a citizen who contacts the Ombudsman does not have parental responsibility for the child in question, he or she is not legally a party to the child's case and is therefore not entitled to receive information about further steps in the case.**

### Case Nos. 18/02679 and 19/01918

A citizen requested access to minutes of a meeting drawn up by the Danish Financial Supervisory Authority. However, the Financial Supervisory Authority informed the Ombudsman that no minutes existed. Therefore, the Ombudsman turned down a further investigation of the citizen's complaint.

Later on, the Financial Supervisory Authority wrote to the Ombudsman that it had found some handwritten notes from the meeting in a physical archive and had given the notes to the citizen and had regretted the mistake. This made the Ombudsman ask the Financial Supervisory Authority to account for why the physical archive had not been searched previously and how it was to be assured that a similar situation could not arise again. After having received the Financial Supervisory Authority's report, the Ombudsman replied that the process had not been satisfactory.

**The Ombudsman investigates complaints based on the written material of a case, hence depending on the information he receives from the authorities being correct and sufficient. The authorities are therefore required to provide the information and documents which the Ombudsman requests.**

### Case No. 18/05566

A mother complained about her son being expelled from his school course at a vocational educational centre. The mother wrote to the Ombudsman that her son had been sent a withdrawal form without notice and subsequently been turned down when he showed up at the centre. The mother also wrote that the centre did not return telephone calls and did not take them seriously.

The Ombudsman could not help with the complaint about the vocational educational centre. This was because the centre was not a public authority, nor one of the private institutions which are within the Ombudsman's jurisdiction.

**The Ombudsman can only consider complaints about public administrative authorities and certain private institutions. Sometimes, a closer investigation is needed in order to determine if an institution is within the Ombudsman's jurisdiction.**

### Case No. 19/00029

A dentist had had the 'right to independent self-employment' revoked so that he was only allowed to work under supervision of another dentist. The decision was effective for two years, and after that the dentist could be independently self-employed again unless the Danish Patient Safety Authority had decided to file a lawsuit before then.

Two and a half years later, the decision still showed on the authorisation register even though the lawsuit filed by the Patient Safety Authority had been dropped. The dentist complained to the Ombudsman, who asked the Patient Safety Authority to explain to the dentist why the decision had not been removed from the register. The Patient Safety Authority then removed the decision and regretted that this had not happened when the lawsuit had been dropped.

**Sometimes an enquiry from the Ombudsman to the authority can solve the citizen's problem.**



### Case No. 19/00717

'Nobody can keep up with the bus schedule anymore unless they check up on it every time on the app on DOT's website. And a lot of people do not do that.'

This is what a senior citizen wrote to the Ombudsman. She was not happy because a public transport operator had permanently removed the printed bus schedules and lists at the bus stops. The public transport operator pointed to the fact that the information was available digitally on mobile phones.

The woman wrote to the Ombudsman that she had already complained to the Danish Transport, Construction and Housing Authority, two municipalities in the Copenhagen area and DOT (Your Public Transport) of which the public transport operator was part.

After receiving the complaint, the Ombudsman found that the public transport operator's board had decided to reinstate the schedules at all the 14,500 bus stops because many citizens were having a difficult time getting information about the buses' schedules etc.

On that background, the Ombudsman did not proceed with the case.

**When the Ombudsman receives a complaint, he decides if he is going to investigate the case further. If it turns out that in the meantime the citizen's problem has been solved, he often closes the case without further investigation.**

### Case No. 19/00801

A journalist wrote to the Ombudsman that her case of request for access to information dragged out at the Danish Business Authority. The journalist asked if she could complain to the Ombudsman or if she had to go to another authority first. One of the Ombudsman's employees replied to the complaint by telephoning the journalist and giving her information on the rules of the Danish Access to Public Administration Files Act about processing times in a case of request for access to information. The journalist would then send a complaint to the Danish Business Authority and await a reply before complaining to the Ombudsman, if necessary. In agreement with the journalist, the Ombudsman did not submit a written reply to her enquiry.

**It happens on a regular basis that a written enquiry to the Ombudsman gets a response by telephone.**

### Case No. 19/00893

A man had been refused home detention with electronic monitoring because he had failed to show up for urine testing at a previous occasion. Therefore, the Prison and Probation Service assessed that the man was going to have problems respecting the condition of not using euphorants.

The man's sister wrote to the Ombudsman that her brother had not turned up for the check due to health issues. The Ombudsman pointed to the fact that the Prison and Probation Service had assessed whether her brother was likely to respect the conditions for home detention with electronic monitoring. The Ombudsman did not find that he was able to assess the matter better than the Prison and Probation Service. He therefore wrote to the sister that he did not proceed with the case.

**Usually, the Ombudsman is not able to fully examine the assessment made by the authorities unless special circumstances exist.**



# About the cases

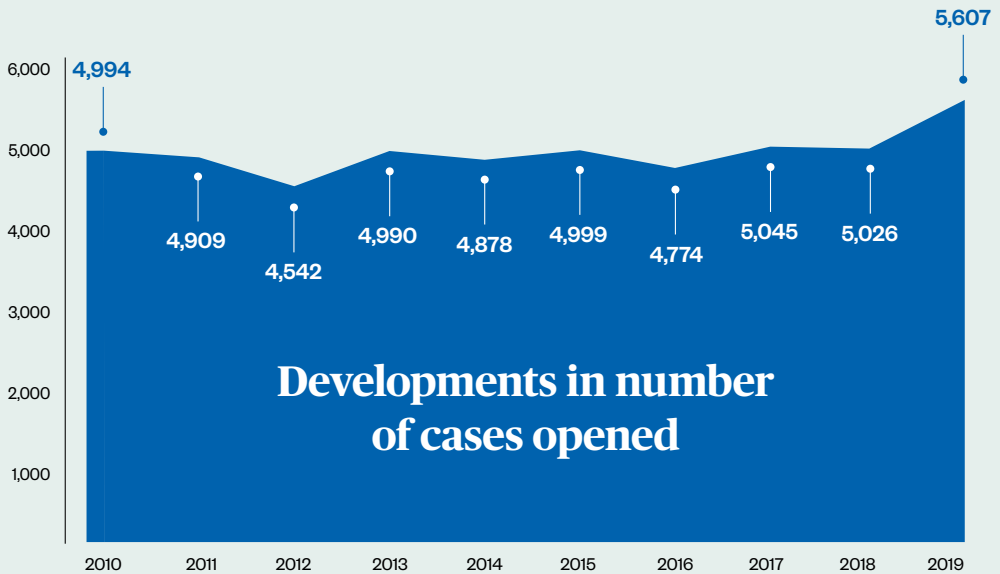
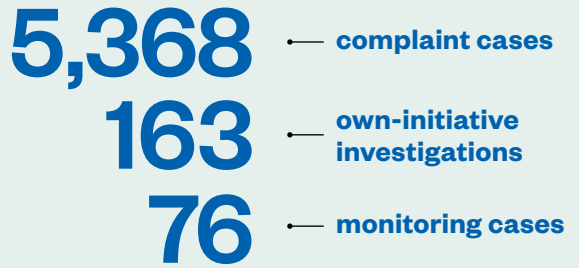




## Cases opened in 2019<sup>1</sup>

# 5,607

1) Administrative cases are not included. In addition, cases selected for collective review in connection with general own-initiative investigations are not normally included.





# Complaint cases

**Who:** In general, anybody can complain to the Ombudsman, also if they are not a party to a case. A complaint cannot be anonymous.

**What:** The Ombudsman considers complaints about all parts of the public administration and in a limited number of situations also about private institutions, an example being complaints about conditions for children in private institutions.

The Ombudsman does not consider complaints about courts or about tribunals which make decisions in disputes between private parties.

**When:** The Ombudsman's task is to ensure that the authorities have observed the applicable rules. For this reason, the Ombudsman cannot consider cases at first instance; he can consider a complaint only if the case has been considered by the relevant authority – and by any appeals bodies.

There is a deadline of one year for complaints to the Ombudsman.

**How:** When the Ombudsman receives a complaint, he first determines whether it offers sufficient cause for investigation: in some cases the Ombudsman will be *unable* to consider a complaint, whereas in other cases he will choose not to open an investigation, for instance because he would not be able to help the complainant achieve a better outcome.

In a large proportion of complaint cases, the Ombudsman helps the citizen by providing guidance or by forwarding the complaint to an authority, for instance in order that the authority will be able to consider the complaint or give the citizen more details of the grounds for a decision which it has made in the case.

In a number of cases, the Ombudsman discontinues his investigation because the authority chooses to reopen the case, for instance after being asked for a statement on the matter by the Ombudsman.

In some complaint cases, the Ombudsman carries out a full investigation, which, among other things, involves obtaining statements from the authority and the complainant. The investigation may result in the Ombudsman choosing to criticise the authority and, for instance, recommend that it make a new decision on the matter.

## What were the complaints about?

### Access to public records under the Access to Public Administration Files Act etc.

The complaints under this heading are primarily about refusals by authorities to give access to information or documents. A large proportion of the complaints are against the central government. Approximately half of the complaints received by the Ombudsman in 2019 about access to public records were from journalists.

### Children

The Ombudsman's Children's Division receives complaints from children and young people, but the complaints lodged with the Ombudsman in relation to children are especially from parents or from other relatives or caregivers. Many complaints are about support measures for children and young people. The Ombudsman also receives a number of complaints relating to schools. For instance, a mother complained because her son had been refused access to his municipal primary and lower secondary school for a week.

### Institutions for adults

The institutions which these complaints concern include prisons, psychiatric wards and institutions for adults with disabilities. As residents and inmates typically spend 24 hours a day in the institution, the complaints cover all aspects of life. Examples are contact with relatives and friends, the food available in the institution, dissatisfaction with a mattress or feelings of unsafety because of other residents or inmates. In addition, a small number of residents and inmates complain about staff speaking to them in a rude manner.

### Environment and building

Many complaints under this heading are made by dissatisfied neighbours. Complaints may be about, for instance, loss of privacy due to overlooking from a building, smells from a pig farm or noise from a school. The Ombudsman also receives a number of complaints about wind turbines and

telephone masts. The complaints typically concern issues relating to compliance with rules on environmental protection and building legislation. In 2019, there were a large number of complaints about long processing times of authorities which consider appeals against municipal decisions on environmental and building matters.

### Personnel matters (including freedom of expression)

The majority of complaints about personnel matters are from public employees who are dissatisfied with a negative reaction from their employer, such as dismissal, a warning or a reprimand. For instance, a schoolteacher complained because he was relocated to another school from one day to the next. A small proportion of complaints relate to the freedom of expression of public employees. These complaints are made mainly by affected employees or their union.

### Taxation

Complaints relating to taxation are handled by the Ombudsman's Taxation Division. They are received from citizens and businesses, including professional representatives of complainants, such as practising lawyers specialised in tax law and accountants. Examples of the subject matter of complaints include property assessments, tax assessments based on estimates and long processing times. For instance, a man complained to the Ombudsman because after five years he still had not received a reply to a complaint to the Tax Appeals Agency.

### Social benefits and services

Complaints concerning social benefits and services account for a large proportion of the complaints received by the Ombudsman. The majority of these complaints involve municipalities, Udbetaling Danmark (an authority responsible for a number of public benefits) or the National Social Appeals Board and are about, for instance, pensions, home help, cash benefit, accompaniment or technical



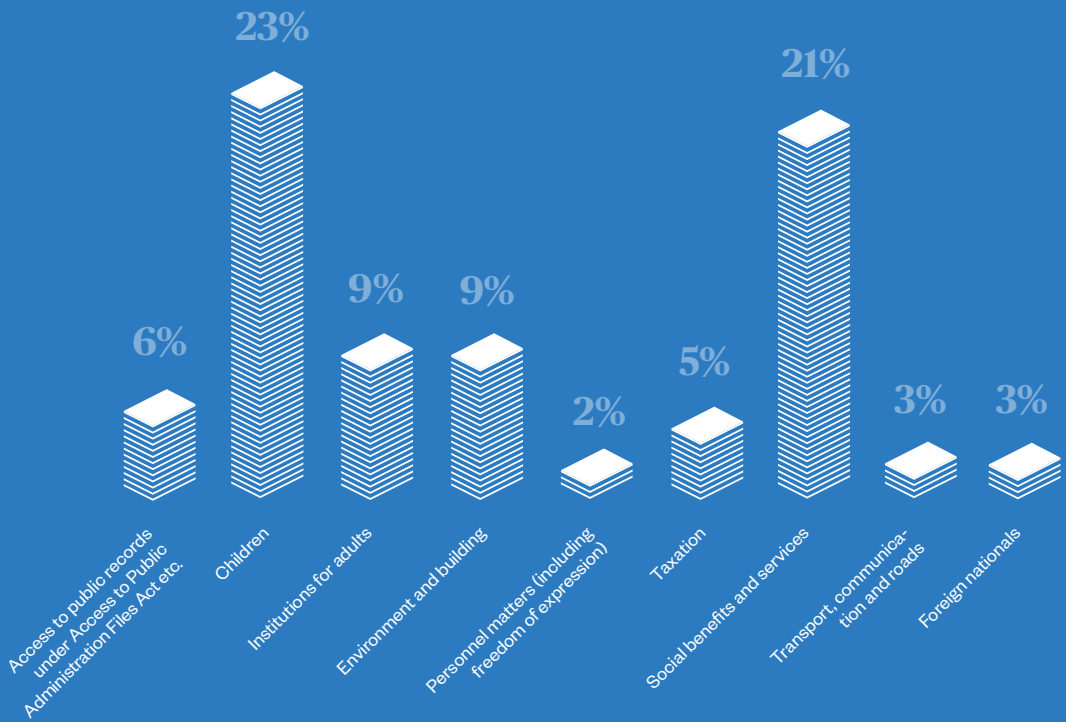
aids. By way of example, a woman with partial paralysis complained to the Ombudsman because her application for financial support for a disability car had been refused.

### Transport, communication and roads

A substantial proportion of complaints under this heading are about public roads or private communal roads. Examples of situations which give rise to complaints to the Ombudsman are neighbour disputes or dissatisfaction with an order by a municipality to maintain or provide access to a private communal road. Other complaints concern, for instance, public digital self-service solutions, media licence fees or the Radio and Television Board – which became the subject of a great many complaints when it decided to grant a broadcasting licence to another channel instead of Radio-24syv in 2019.

### Foreign nationals

Although these cases generate much media coverage, they account for only a relatively small proportion of the complaints received by the Ombudsman. A number of complaints under this heading are about long processing times. In addition, the Ombudsman receives complaints from foreign nationals who are required to reside at a departure centre and complaints about, among other things, refusals of applications for humanitarian residence permits, family reunification and visas. For instance, a Danish man complained to the Ombudsman because his spouse's niece had been refused a visa on the grounds that she was from a country whose citizens presented 'a high risk of illegal immigration'.



Selected subject areas of complaints as percentages of all complaints received by the Ombudsman in 2019



# **Own- initiative investiga- tions**

**What:** The core function of an ombudsman is to investigate complaints from citizens. However, opening investigations on his own initiative is also a high priority for the Ombudsman.

**Why:** The objective of also giving high priority to own-initiative investigations is to identify recurring errors made by authorities and in this way be able to help a large number of citizens at the same time. Investigations of this type can thus have a great impact on the case processing by authorities.

In addition, priority is not only given to investigating cases where errors have been made – but also to preventing errors being made in the first place.

**From where:** Specific complaint cases or monitoring visits may give rise to suspicion of recurring errors and be the launch pad for an own-initiative investigation. When the Ombudsman is investigating a specific case, his focus is therefore, among other things, on problems which characterise not only that particular case.

Sometimes the Ombudsman will open an investigation on his own initiative after following a case in the media. The Ombudsman monitors both local and national media.

External parties – such as professional committees for practising lawyers or accountants – can also be a useful source of knowledge about recurring errors made by authorities.

**How:** In general own-initiative investigations, the focus is expanded beyond specific to more general problems, for instance by the Ombudsman asking the authority to provide details of its practice in a specific type of cases. Similarly, in investigations based on a review of a number of specific cases, it is not the individual case – but the general issue investigated – which is of central interest.

Own-initiative investigations typically have a forward-looking focus in that solutions are pointed out and the authority given guidance on how matters may be rectified.

## Selected own-initiative investigations

### The freedom of expression of employees of Aabenraa Municipality

In the autumn of 2017, the Ombudsman came across several instances of media coverage of employees of Aabenraa Municipality having been summoned to talks with their managements. The employees had in various contexts expressed critical views about the municipality in public.

For instance, a health visitor had written a letter to the editor of an online newspaper about health-care cuts:

‘Dear Politician

How do you think I can continue to make an important difference as a health visitor to families with young children if we are not given resources to match our current situation; (...)’

The Ombudsman pooled the five cases in question into one own-initiative investigation to be able to identify any recurring errors. He concluded the case by criticising Aabenraa Municipality, stating, among other things, as follows:

‘Managements of public authorities are permitted to respond when an employee has expressed critical views in public. However, this must be done for a legitimate purpose and in a legitimate manner. The talks in this case were not conducted in a manner which respected the employees’ freedom of expression.’

(Case No. 2019-2)

### The digital self-service solution of Haderslev Municipality

A woman in the town of Haderslev had tried in vain to apply for orthopaedic shoes for her mother via the municipality’s digital self-service solution. However, because of the way in which the self-service solution had been designed, it was not possible for the woman to submit an application on behalf of her mother. There was no information about how citizens wishing to submit applications on behalf of others could do so without using the digital self-service solution.

After receiving a complaint from the woman, the Ombudsman opened a general investigation of the municipality’s digital self-service solution for applications for technical aids, consumer durables and layout and interior design work for persons with functional impairment.

The Ombudsman encountered several errors. He concluded, among other things, that it was unfortunate that it was not expressly stated that it is only compulsory to use the digital self-service solution for applications for technical aids (such as orthopaedic shoes), but not for applications for, for instance, consumer durables or layout or interior design work.

However, the Ombudsman’s investigation of the self-service solution of Haderslev Municipality also revealed some more general problems with the content and coordination of the guidance on [www.borger.dk](http://www.borger.dk), the portal which provides a single point of digital access for citizens to public sector services.

The Ombudsman therefore opened another general investigation, this time with the Agency for Digitisation. The Agency stated that it would improve [www.borger.dk](http://www.borger.dk) in a number of respects.

In addition, the Agency would increase its effort to inform the authorities about their responsibility for specific sites and self-service solutions on [www.borger.dk](http://www.borger.dk).

(Case Nos. 2019-11 and 2019-22)

### Review of 300 answers given by customer centre

Every day, the customer centre of the Danish Tax Agency answers a large number of questions from citizens, by telephone and in writing. For this reason, the customer centre plays a significant role in citizens' confidence in the tax authorities. The Ombudsman asked to see 300 questions from citizens and businesses – and the answers given by the customer centre – in chronological order, starting from a random date, in order to assess the guidance given.

The Ombudsman's conclusion was positive: 'My overall impression from my review of the 300 cases is that the customer centre gives citizens and businesses fast, clear and easy-to-understand answers to their questions. The answers given by the customer centre are generally worded in a friendly, helpful manner', the Ombudsman stated.

However, the Ombudsman pointed out that some answers conveyed the impression that they were decisions despite the fact that they were intended as a guide only. One of the problems in this situation is that the citizen or business cannot necessarily act, or refrain to act, in reliance on the answer. (See article on pages 8-14).

(Case No. 2019-25)

### When Customs and Tax Administration IT system could not add interest

Back in 2013, the IT system 'Én Skattekonto' ('One Tax Account') was put into operation. Businesses which had a negative balance in their account were liable to pay interest, but from the outset, the Danish Customs and Tax Administration (SKAT) was unable to charge businesses interest because of an error in the new IT system. The interest function was not fully functional until after more than two years.

After receiving a complaint from a business in 2017, the Ombudsman started digging into the matter. As own-initiative investigations often have a forward-looking focus, the Ombudsman focused on how SKAT had handled the error and what the authorities could learn from the course of events.

The Ombudsman concluded that SKAT had been much too slow to provide guidance to businesses on the problem. As the Ombudsman put it when his statement on his investigation was published: '(...) the case is also a reminder that if errors of this type do occur, the authorities have a special responsibility to inform affected citizens and businesses about the consequences for them.'

The Ombudsman's investigation revealed that the basis for retrospectively charging the interest which had not been added while the interest function was not working was open to doubt. However, the Ombudsman pointed out that the applicable law on this issue was uncertain, and he therefore found that the question should be resolved by the courts.

(Case No. 2019-17)

# Summaries of selected statements

The Ombudsman regularly publishes statements (in Danish) on selected cases on [www.ombudsmanden.dk](http://www.ombudsmanden.dk) and on [www.retsinformation.dk](http://www.retsinformation.dk), the official legal information system of the Danish state. Summaries are provided below of the statements which have been published on cases concluded in 2019. The summaries have been classified under the ministries etc. which had the remit for the relevant areas at the end of the year.

## Ministry of Employment

The following statement on a case concluded in 2019 has been published:

### **2019-26. Question of access to name of travel agency – decision by Board of Equal Treatment**

The Board of Equal Treatment refused a journalist's request for access to the name of a travel agency which had violated the Act on Ethnic Equal Treatment in connection with selling football trips.

The journalist was denied access to the name with reference to the so-called general provision in section 33 paragraph (5) of the Access to Public Administration Files Act. In its decision, the Board stated, among other things, that disclosure of the name of the travel agency together with information that it had violated the Act on Ethnic Equal Treatment could have far-reaching financial consequences for the agency.

The Ombudsman understood from the Board's decision that the Board assessed that there was such a need to protect business interests which may be grounds for refusal of access to information under section 30 paragraph (2) of the Access to Public Administration Files Act. At the same time, it was the Ombudsman's understanding that the Board assessed that in the specific case, access to the name could not be denied under section 30 paragraph (2) of the Act. The Ombudsman agreed with this assessment.

With regard to the Board's reference to the general provision in section 33 paragraph (5) of the Access to Public Administration Files Act, the Ombudsman pointed out that the general provision is not applicable if the interest which the authority wishes to protect is fully identical to an interest which is protected under

one of the other exemption provisions of the Act but the conditions for applying the exemption provision in question are not met.

Thus, the Ombudsman found that the Board of Equal Treatment could not on the available basis deny access to the name of the travel agency under section 33 paragraph (5) of the Act on the grounds that there was a need to protect the business interests stated, and he recommended that the Board reopen the case.

## Ministry of Children and Education

No statements on cases concluded in 2019 have been published.

## Ministry of Industry, Business and Financial Affairs

No statements on cases concluded in 2019 have been published.

## Ministry of Finance

The following statements on cases concluded in 2019 have been published:

### **2019-8. Partial refusal by Ministry of Finance of access to correspondence about solar cells**

A journalist asked the Ministry of Finance for access to correspondence of the Ministry with the Ministry of Energy, Utilities and Climate about solar cells.

The Ministry of Finance considered the journalist's request under the Environmental Information Act and the 1985 Access to Public Administration Files Act. The Ministry denied access to various information in a number of files with reference to the provision in section 13(1) paragraph (6) of the 1985 Access to Public Administration Files Act, on the grounds, among others,

that the information revealed parts of the content of documents of the case which were exempt from access under the provision in section 10(1) of the 1985 Access to Public Administration Files Act.

In the Ombudsman's opinion access to some of the information concerned could not be denied under the provision in section 13(1) paragraph (6) of the Act on the grounds given by the Ministry.

On that basis, the Ombudsman recommended that the Ministry reopen the case and make a new decision on access.

**2019-20. Ministry of Finance entitled to deny access to environmental information in correspondence about solar cells**

In a decision on a request from a journalist, the Ministry of Finance denied access to various information under the provision in section 13(1) paragraph (6) of the 1985 Access to Public Administration Files Act, cf. the Environmental Information Act. The information concerned correspondence of the Ministry of Finance with other ministries about solar cells.

In connection with a previous investigation (Case No. 2019-8) of a complaint in the same case, the Ombudsman had stated that access to certain information could not be denied under the provision on the grounds given by the Ministry.

In a new decision, the Ministry still denied access to some of this information under the provision in section 13(1) paragraph (6) of the 1985 Access to Public Administration Files Act. The grounds given in this decision were that the information would reveal the content of assessments of a political nature, negotiating mandate, strategies, summaries of political statements, the interpretation of political ties, etc.

On that basis, the Ombudsman had no grounds for criticising the decision of the Ministry of Finance.

**2019-22. Coordination of and responsibility for guidance on digital self-service solutions on [www.borger.dk](http://www.borger.dk)**

On 3 April 2019, the Ombudsman submitted a report on the administration of Haderslev Municipality's digital self-service solution for applications under sections 112, 113 and 116 of the Social Services Act for technical aids, consumer durables and layout and interior design work for persons with permanent functional impairment (Case No. 2019-11). The Ombudsman's report also addressed the situation where persons wished to submit applications on behalf of others.

The case occasioned the Ombudsman to consider some more general aspects in relation to the need for clear information about which authority is responsible for the individual pages on [www.borger.dk](http://www.borger.dk)<sup>1</sup> and the need for overall coordination of information and guidance across the relevant pages on [www.borger.dk](http://www.borger.dk), including guidance on whether it is compulsory or optional to use the individual self-service solution and guidance on how to submit an application on behalf of another person.

The Ombudsman subsequently opened a general investigation with the Agency for Digitisation about the overall coordination of and the responsibility for information and guidance concerning digital self-service solutions on [www.borger.dk](http://www.borger.dk).

The Agency for Digitisation stated to the Ombudsman that it would take measures aimed to improve [www.borger.dk](http://www.borger.dk) so that, among other things, relevant information which citizens need before using a self-service solution was displayed. Examples were information about whether it is compulsory or optional to

1) A common public-sector portal providing a single point of access to the authorities' digital self-service solutions and information about public authorities and services



use the individual self-service solution, information about the options for submitting applications on behalf of others, links to relevant legislation and clearer information about which authority is responsible for the individual page and how the authority may be contacted.

In addition, the Agency informed the Ombudsman that, in this connection, it would also increase its effort to inform the authorities about their responsibility in relation to information and guidance about their digital self-service solutions on [www.borger.dk](http://www.borger.dk).

The Ombudsman noted, among other things, that the Agency for Digitisation has a coordinating responsibility across the [www.borger.dk](http://www.borger.dk) portal. In his opinion the measures about which the Agency had informed him were very relevant. In the light of the statement from the Agency, the Ombudsman took no further action on the matter on the available basis.

### **2019-28. Prospective cost estimates in memorandum on Government's climate and air package exempt from access**

The Ministry of Finance denied a journalist access to a memorandum from the Ministry for the Government's Coordinating Committee on how much it was estimated the costs of the climate and air package would necessitate drawing on the fiscal space. The Ministry decided the case in accordance with the provisions of the Environmental Information Act and the 1985 Access to Public Administration Files Act.

The Ministry did release some of the information in the memorandum in accordance with the provision of the Access to Public Administration Files Act on the requirement to extract and grant access to information about factual circumstances. However, the Ministry declined to release the remaining information on the grounds that the information was specific cost estimates which were only forecasts subject to great uncertainty. The Ministry further stated that the information was the Ministry's own estimates of how

an actual course of events or factual circumstances would change and that the information could not be considered part of the factual basis of the case.

The Ombudsman had no grounds for criticising the Ministry's assessment that those parts of the memorandum that contained the forecasts and cost estimates were not subject to extraction. The Ombudsman essentially found that the memorandum did not contain any information which was to be released in addition to the information to which the journalist had already been granted access.

In this connection, the Ombudsman stated that previous Ombudsman practice regarding extraction expressed in two Ombudsman cases from 2004 and 2005, respectively, could not be fully upheld. In the Ombudsman's opinion the overriding principle must be that an authority's specialist assessments and estimates etc. of the nature concerned regarding future circumstances cannot be considered to be subject to extraction.

### **Ministry of Defence**

No statements on cases concluded in 2019 have been published.

### **Ministry of Justice**

The following statements on cases concluded in 2019 have been published:

#### **2019-3. Significant errors in press handling by Ministry of Justice did not serve to underpin confidence in Prosecution Service**

On 28 June 2018, the Minister of Justice endorsed a recommendation from the Director of Public Prosecutions to bring a case before the courts under section 78 of the Constitution to have a criminal gang dissolved as an association.

The Ministry of Justice gave the news to two selected media as an exclusive, and it was agreed when the news could go public. The two media were sent a

press release and offered interviews with, among others, the Minister of Justice and the Director of Public Prosecutions. It had been planned in advance that the counsel who had been assigned to the gang was to be informed about the Minister's decision later than the two media – more specifically not until five minutes before the news would be made public by the media.

The Ombudsman found that a news exclusive should not have been used in the case. In this connection, the Ombudsman stated that exclusives can be used particularly in cases of a political nature, but that the specific criminal case was not a case of a political nature. The Ombudsman further stated that using an exclusive may leave the impression that the Prosecution Service considers a specific criminal case to be of a political nature – and that extraneous political considerations may therefore have played a part in the case.

In addition, the Ombudsman found that informing the two media about the Minister's decision before the counsel was informed – and the procedure which was planned by the Ministry in this regard – was clearly contrary to good administrative practice. Further, the Ministry's failure to respond to two other media which inquired about the case was contrary to the administrative law principles of equality and legitimacy.

Overall, the Ombudsman found that the Ministry of Justice had committed significant errors in the case and that its course of action did not underpin confidence in the Prosecution Service.

#### **2019-4. Police use of force to reduce screaming and shouting during deportations**

During a forced deportation of a rejected asylum seeker, the deportee offered resistance by, among other things, screaming and shouting on the plane. In order to reduce the shouting, the police officers escorting the deportee restrained him and bent his head towards his chest several times.

The Ombudsman asked detailed questions about the use of this technique. Among other things, he asked the police whether the technique could involve a risk of obstructing the deportee's free breathing.

The police subsequently arranged for the technique to be demonstrated to a doctor. In the doctor's assessment, the technique would not cause airway problems if the person's head was only held briefly in this position and the hold was released when he or she calmed down.

The police also informed the Ombudsman that before the technique is used during a deportation, the escorting police officers are required to try to quieten the deportee down verbally. In addition, the deportee must be informed that the use of force will be discontinued when he or she calms down.

The fact that the police use force in certain situations to reduce screaming and shouting during deportations did not give the Ombudsman cause for comment. In the light of the medical assessment, the technique which had been used by the police also did not give him cause for comment.

However, the Ombudsman recommended the National Police to include directions on how the technique is to be used, and on what conditions, in the internal guidelines of the police on escorted deportations by air.

The use of force during the specific deportation did not give the Ombudsman cause for comment. The police had informed the Ombudsman that the police report on the deportation did not contain adequate documentation of the use of force, and the Ombudsman agreed.

#### **2019-6. Danish police officers did not neglect obligations during deportation**

Two legal case officers from the Ombudsman's office were present at a forced deportation by the police of a number of foreign nationals. On arrival in the country

of destination, two foreign nationals refused to leave the plane, and a local police chief hit the two deportees in the face.

The Danish National Police assessed that under the European Convention on Human Rights, the Danish police officers had the responsibility for protecting the two foreign nationals.

At the same time, however, the National Police assessed that due to, among other things, safety considerations, the Danish police officers – and thus the Danish state – did not neglect their obligations by not intervening towards the local police chief.

The Ombudsman had no grounds for repudiating the assessment of the National Police that the two foreign nationals were under the jurisdiction of the Danish authorities. In addition, he had no grounds for criticising the assessment of the National Police that the police did not neglect their obligations during the deportation.

More specifically, the Ombudsman agreed with the National Police, among other things, that it follows from the practice of the European Court of Human Rights in other areas that the positive obligations of a state must not be interpreted in such a manner as to impose a disproportionate burden on the state and that, further, they must be determined by reference to the situation at the time in question. On that basis, states may be held responsible if, for instance, their authorities have failed to take reasonable measures to protect persons for whom the authorities are responsible.

The assessment of the National Police of the obligation of the police to notify relevant authorities of any observations during an escorted deportation also did not give the Ombudsman cause for comment.

Further, the Ombudsman agreed with the National Police that the documentation regarding prescription

medicine for one of the foreign nationals was inadequate. As a result of the inadequate documentation, the Ombudsman was unable to assess whether it was an error that the foreign national was not offered any prescription medicine during the deportation.

On 6 February 2019, the National Police issued new guidance notes which clarify the obligations of Danish police officers during deportations.

### **2019-19. Obligation to provide guidance in connection with processing of case about access to document**

On 30 May 2018, a journalist asked the Ministry of Justice for access to a report from an interdepartmental working group on a review of provisions on control and inspection visits by authorities to citizens and businesses. The Ministry replied that it understood his e-mail as a request for access to the final report from the working group and informed him that the working group had not yet completed its work, and that therefore the final report was not yet available.

In a complaint to the Ombudsman, the journalist stated that he had obtained a report from the working group through other channels. The report was dated 2 March 2018 and, according to the text on the front cover, was a 'final report'.

In a statement to the Ombudsman, the Ministry explained that the use of the designation 'final report' by the working group was misleading as the report was a draft which was originally to have been discussed at a meeting of the Government's Committee on Economic Affairs on 21 March 2018.

In the Ombudsman's opinion the Ministry of Justice had delimited the journalist's request for access too narrowly as the Ministry was in possession of the report/a draft of the report at the time in question.

The Ombudsman found that it would have been natural and relevant for the Ministry to have guided the

journalist by informing him that it was in possession of the report/a draft of the report from the working group in order to establish whether that was the material to which the journalist wanted access. In this connection, the Ombudsman referred to the obligation under section 7 of the Public Administration Act to provide guidance. He added that according to the White Paper on the Access to Public Administration Files Act, there may be particular reason to provide guidance, especially when requests for access to public records have been made by media.

Overall, the Ombudsman found the Ministry's processing of the journalist's request regrettable.

### **2019-23. Police assessment of need to use force during deportation not documented**

A woman of foreign nationality was to be deported by the police together with several other foreign nationals.

The police assessment prior to the deportation was that both she and the other deportees would seek confrontation during the deportation.

The woman's hands were strapped in a transport belt for three periods during the deportation. The first period was from when she was collected at an immigration detention centre until approximately two hours later, when she had boarded the plane.

The second period was from shortly before a stopover at Rotterdam until shortly after disembarkation at Rotterdam, and the third from shortly before boarding of another plane at Rotterdam until shortly after take-off.

The police described the deportee's conduct during the deportation as 'exemplary'.

The Ombudsman had no grounds for repudiating the assessment of the police of the need for the deportee's hands to be strapped when she was collected at the immigration detention centre and to remain

strapped for the first approximately two hours of the deportation.

However, the Ombudsman found that there was not adequate documentation that the police had made a specific, individual assessment prior to the next two times the deportee's hands were strapped which substantiated that the restraint was necessary and proportionate.

### **2019-30. Access to correspondence of Ministry of Justice with Commission of Inquiry on Customs and Tax Administration concerning establishment of IT infrastructure**

In a decision on a request from a journalist for access to the correspondence of the Ministry of Justice with the Commission of Inquiry on the Customs and Tax Administration about the establishment of IT infrastructure for the Commission, the Ministry stated that the correspondence had been exchanged in connection with the Ministry carrying out secretariat work for the Commission. In the Ministry's opinion, the documents were therefore subject to section 27 paragraph (3) of the Access to Public Administration Files Act and in principle exempt from access.

The Ministry stated that under section 1(5) of the Act on Commissions of Inquiry, the Minister of Justice is to see that commissions of inquiry are provided with the necessary secretariat assistance and other practical assistance.

The Ombudsman found that there was not a sufficient basis for the understanding of section 1(5) of the Act on Commissions of Inquiry on which the Ministry had based its refusal. Further, the Ombudsman found that the assistance provided by the Ministry could not be considered secretariat assistance provided on a non-statutory basis. In the Ombudsman's opinion the Ministry therefore could not refuse the journalist's request for access with reference to section 27 paragraph (3) of the Access to Public Administration Files Act.

The Ombudsman recommended that the Ministry of Justice reopen the case and make a new decision in the light of what he had stated.

### Ministry of Ecclesiastical Affairs

No statements on cases concluded in 2019 have been published.

### Ministry of Climate, Energy and Utilities

No statements on cases concluded in 2019 have been published.

### Ministry of Culture

The following statement on a case concluded in 2019 has been published:

#### **2019-7. Ministry of Culture entitled to deny access to information in relation to communication with Royal House about Crown Prince's participation in IOC**

The Ministry of Culture denied a journalist access to various information in relation to the Ministry's communication with the Danish Royal House about The Crown Prince's participation in a meeting of the International Olympic Committee (the IOC) about Russia's right to participate in the Olympic Games in Rio in 2016.

In connection with a previous investigation (Case No. 2018-13) of a complaint about the same case, the Ombudsman stated that in his opinion access to the documents in question could not be denied under section 23(1) paragraph (1) of the Access to Public Administration Files Act on internal documents as The Crown Prince had been acting in a personal capacity and not 'participating in the governing of the State'. The Ministry and the Royal House were therefore to be regarded as distinct authorities in relation to the Act.

In a new decision, the Ministry referred to section 32(1) of the Access to Public Administration Files Act on the realm's foreign policy interests etc. In addition, the Ministry referred to section 33 paragraph (5) of

the Act, under which access to information may be denied if non-disclosure is required because of the special nature of the matter.

On investigating the journalist's complaint about the Ministry's new decision, the Ombudsman stated that he had no grounds for criticising that the Ministry had denied access to certain information with reference to section 32(1) of the Access to Public Administration Files Act. In addition, he stated that, in essence, he could not criticise the Ministry's decision that, based on a specific assessment, access to certain information could be denied under section 33 paragraph (5) of the Act. The Ombudsman therefore took no further action in the specific case.

At the same time, however, the Ombudsman commented in more general terms that in his opinion section 33 paragraph (5) of the Access to Public Administration Files Act does not authorise withholding information in order to protect the Royal House against, for instance, public debate about whether members of the Royal House have acted within the limits to their freedom to act as private individuals ('in a personal capacity').

### Ministry of Environment and Food

No statements on cases concluded in 2019 have been published.

### Ministry of Taxation

The following statements on cases concluded in 2019 have been published:

#### **2019-1. No authority for advance tax ruling**

A housing cooperative paid out DKK 360,000 to its members and subsequently requested an advance ruling from the Danish Customs and Tax Administration (SKAT) on the tax implications for its members. SKAT made an advance ruling that the members would be taxed on the amount paid out to them, and the ruling was subsequently upheld by the National Tax Tribunal.

The housing cooperative complained about the decision of the National Tax Tribunal to the Ombudsman, who in this connection considered whether there was authority under the Tax Administration Act to make an advance ruling in the case.

The transaction which the request for an advance tax ruling concerned was the decision of the housing cooperative to pay out DKK 360,000 to its members.

Section 21(2) of the Tax Administration Act and the explanatory notes to the Act state that an advance ruling on the tax implications of a transaction for persons other than the person requesting the ruling can be made only if the latter has not yet carried out the transaction but is only considering doing so.

As the transaction had already been carried out when the housing cooperative requested an advance ruling on the tax implications for its members, the Ombudsman agreed with the National Tax Tribunal that there was no authority to make an advance ruling. SKAT should therefore have declined the request for an advance ruling.

The Ombudsman also agreed with the National Tax Tribunal that it was regrettable that the Tribunal had not checked whether SKAT had authority to make the advance ruling.

The Ombudsman pointed out that, as a general rule, a decision made without the necessary authority is invalid, and he recommended that the Tribunal consider the consequence of there being no authority for the decisions made in the case.

**2019-16. Legal effect of decision on partial cancellation of debt could not be made conditional on party's acceptance of the decision**

A woman applied for cancellation of her student loan debt. The Danish Customs and Tax Administration, SKAT, (now the Danish Debt Collection Agency)

replied in a letter headed 'Offer of partial cancellation' that it could offer her a partial cancellation of her student loan debt, after which the balance was to be repaid over a period of five or seven years. However, the partial cancellation was contingent on her accepting the offer within four weeks. If she did not accept the offer within the time limit, her student loan debt would be neither fully nor partially cancelled.

The woman appealed the decision to the Tax Appeals Agency, writing, among other things, that she had declined the offer of a partial cancellation. The Agency upheld SKAT's refusal of full cancellation but did not consider the question of partial cancellation.

The Ombudsman stated that he had no grounds for repudiating the result of the decision of the Tax Appeals Agency that the woman could not have her student loan debt cancelled in full. However, in the Ombudsman's opinion SKAT had no authority to make the legal effect of its decision on a partial cancellation of the woman's debt conditional on her accepting the 'offer' within a specified time limit. The Ombudsman therefore found it regrettable that SKAT had used this procedure.

In addition, the Ombudsman stated that the Tax Appeals Agency should have considered SKAT's decision in its entirety, i.e. both the implied refusal of full cancellation of the woman's student loan debt and the decision on partial cancellation of her debt, as the Agency could not assume from the circumstances of the case – including the woman's appeal – that the woman was appealing only against the decision on refusal of full cancellation. If the Agency was in doubt whether she was appealing against both aspects of the decision, it should in the Ombudsman's opinion have contacted her in order to clarify what she was appealing against.

**2019-17. IT error meant Customs and Tax Administration was unable to charge interest for more than two years**

In 2013, the IT system 'Én Skattekonto' ('One Tax Account') was put into operation. Businesses which had a negative balance in their account were liable to pay interest, which would be calculated on a daily basis and added on a monthly basis.

Shortly after the IT system had come into operation, it turned out that the interest function of the system was not working. As a result, interest was not added and businesses were not charged interest during the first six months, and this was still the case for many businesses during the following 18 months. The interest function was not fully functional until more than two years after the system had come into operation.

The Danish Customs and Tax Administration (SKAT) provided information about the problem on its website and in a newsletter to the professional association of auditors just under six months after the system had come into operation. Only when the error had been resolved did SKAT write directly to the businesses, informing them about the problem. However, some businesses had previously received a letter – in which the problem was not mentioned directly.

SKAT subsequently charged businesses interest if they owed tax at the time when the system became fully functional. Businesses which did not owe tax at that time were not charged interest even if they had previously had a negative balance in their account.

After being contacted by a business about the matter, the Ombudsman decided to investigate a number of issues in relation to the IT system and the way in which SKAT had handled the problem with the interest function.

The Ombudsman stated that it was extraordinarily unfortunate that an IT system with such defects was put into operation at all, but that he had no basis for

assuming that SKAT had been aware of the problem before the system was put into operation.

The Ombudsman found that SKAT's guidance was not adequate and not suited to guide businesses correctly about the problem.

In the Ombudsman's opinion the basis for charging interest retrospectively was open to doubt. However, as he was of the opinion that applicable law gave no clear-cut answers, the Ombudsman overall did not have sufficient grounds for repudiating the tax authorities' assessment of the question of retrospective charging of interest but found that the question should be resolved by the courts.

**2019-25. General own-initiative investigation of 300 cases from customer centre of Danish Tax Agency**

In a general investigation opened on the Ombudsman's own initiative, the Ombudsman reviewed 300 cases from the customer centre of the Danish Tax Agency. The investigation was carried out under section 17(2) of the Ombudsman Act, which authorises general investigations by the Ombudsman of an authority's processing of cases.

The cases consisted of written guidance given by the customer centre to citizens and businesses that had contacted the centre with questions on matters within the remit of the Danish Tax Administration.

The Ombudsman's overall impression from his review of the 300 cases was that the customer centre had given the citizens and businesses fast, clear and easy-to-understand answers to their questions.

In addition, the answers given by the customer centre were generally worded in a friendly, helpful manner.

In some cases, however, the Ombudsman found that the recipient of the reply might have been in doubt whether it was intended as a guide only or was to be

regarded as a decision. The Ombudsman therefore stated that it was important that the customer centre was more mindful in future of ensuring that it was conveyed clearly that the centre's replies are intended as a guide only.

Further, the Ombudsman was of the opinion that in a few cases the customer centre had not answered the questions adequately or provided sufficient guidance on what the next step was. In addition, the Ombudsman found some examples of answers which were unclear or misleading because they did not contain sufficient background information or references to where further information on the applicable law could be found.

Finally, the Ombudsman found examples of answers which were not clear and easy to understand, typically because specialist terms or jargon had been used without being explained.

**2019-33. Non-compliance by Danish Customs and Tax Administration with Act on Due Process in Connection with the Public Administration's Use of Compulsory Intervention and Duties of Disclosure in connection with requests for information and assessment of suspicion in linked specific cases (Panama Papers)**

In 2018, the Parliamentary Ombudsman concluded a general investigation of whether the Danish Customs and Tax Administration (SKAT) had complied with the rules in section 10 of the Act on Due Process in Connection with the Public Administration's Use of Compulsory Intervention and Duties of Disclosure on the privilege against self-incrimination in connection with 176 requests for material which information from the so-called Panama Papers had caused SKAT to send to citizens. In these requests, SKAT ordered the citizens to send in information so that it could be established whether they owed tax to Denmark.

Following this general investigation, the Ombudsman carried out an investigation of SKAT's requests for

information and its assessment of suspicion in a number of linked specific cases about which he had received information from a practising lawyer. The lawyer represented a citizen who had received one of the 176 requests for material sent by SKAT. It was the lawyer's understanding that SKAT had had a specific suspicion at an early stage of its processing of the linked cases that his client had committed a criminal offence, and he added that his client should therefore have been informed about his rights under section 10 of the Act on Due Process in Connection with the Public Administration's Use of Compulsory Intervention and Duties of Disclosure at an earlier date than he was.

The citizen had received several requests for material and reminders from SKAT – at first on the basis of information received by SKAT by virtue of a directive on taxation of savings income in the form of interest payments and later also on the basis of information from the Panama Papers.

Based on an overall assessment of the information in the linked cases, the Ombudsman concluded that SKAT had had grounds at an earlier point than considered by the tax authorities for a specific suspicion that the citizen had committed a criminal offence. The Ombudsman therefore found it regrettable that SKAT had not complied with the rules in section 10 of the Act on Due Process in Connection with the Public Administration's Use of Compulsory Intervention and Duties of Disclosure when requesting information from the citizen.

The Ombudsman stated that it could not be inferred from his conclusions in relation to the linked cases that errors had also been committed in the other cases which had been opened on the basis of information from the Panama Papers. However, he added that he assumed that – in the light of what he had stated – the Danish Tax Agency (formerly SKAT) would consider whether there were grounds for a detailed review of one or more of the other cases which had been



opened on the basis of information from the Panama Papers.

**2019-34. The role of the carrier in connection with online shopping from non-EU countries. Guidance on appeal in decisions of the Danish Customs Agency on customs duty etc.**

Information on the website of the Danish Tax Administration caused the Ombudsman to open a general investigation of the role of the carrier when citizens buy products online from non-EU countries, including a question about delegation of decision-making powers. On the website it was stated, among other things, that when a citizen buys a product online from a non-EU country, it is the carrier that will calculate the customs duty etc. payable on the product and that the citizen will pay the customs duty etc. to the carrier.

The Ombudsman noted that the carrier's task of declaring customs, receiving the decision of the Danish Customs Agency on customs duty etc. and paying customs duty etc. to the Agency is based on a private law agreement between the citizen and the carrier. The agreement has the effect that the carrier will act as the citizen's representative in relation to customs.

On that basis, the Ombudsman found that there is no delegation of decision-making powers to the carrier.

The Ombudsman also considered whether decisions of the Danish Customs Agency on customs duty etc. must be accompanied by guidance on appeal. The Ombudsman noted, among other things, that customs duty etc. is calculated automatically in the Agency's electronic import system, that calculations of customs duty etc. are based exclusively on the information about product code, value and country of origin entered by the carrier and that this information can yield only one result.

Under these conditions and in the light of the special procedure laid down in relation to customs, the Ombudsman agreed with the Danish Customs Agency that a decision on customs duty etc. can be regarded

as being wholly in favour of the carrier and that therefore the decision is not required to be accompanied by guidance on appeal.

**Ministry of Social Affairs and the Interior**

The following statements on cases concluded in 2019 have been published:

**2019-9. Documents about financial equalisation between municipalities were part of case concerning legislation and therefore exempt from access**

A journalist asked the then Ministry for Economic Affairs and the Interior and the Finance Committee (a committee of civil servants under the Ministry) for access to information about the educational qualifications of immigrants.

The request was connected with a letter sent by a municipality to the Ministry in October 2014 in which the municipality had pointed out that the data underlying the criteria on which the system for financial equalisation between municipalities was based lacked information about the educational qualifications of immigrants. As a result, some municipalities had been allocated too low and others too high financial resources.

The Finance Committee considered all its documents on the matter to be part of a case concerning legislation and therefore to be exempt from access, and the Ministry denied the journalist access to a number of documents on the grounds that they were part of the same case concerning legislation.

The Ombudsman agreed with the authorities that there was a case concerning legislation within the meaning of section 20 of the Access to Public Administration Files Act. The case concerned work on adjusting the system for financial equalisation between municipalities which was prepared in the Finance Committee, and the issue of information about the educational qualifications of immigrants was part of the basis for the work.

In addition, the Ombudsman agreed that all the documents of the Finance Committee could be considered to be part of the case concerning legislation, and in the Ombudsman's opinion this was also true of the documents of the Ministry for Economic Affairs and the Interior. In reaching this conclusion, the Ombudsman gave weight to, among other things, the documents having a direct and close connection, including in terms of time, with the work carried out by the Finance Committee.

**2019-29. When children are consulted as parties to a case, it must be done in a manner to enable them to understand what the case concerns**

The National Social Appeals Board received an anonymous notification of concern about the well-being of two children. Because of uncertainty about who the children's mother was, the Board called her employer to confirm her identity.

In connection with its processing of the case, the Board sent the two children consultation letters with documents from the case. The children were 12 and 14 years old, respectively, and the 12-year-old child had a diagnosis of atypical autism.

The Ombudsman found that he could not criticise that, in cases of notifications of concern about children, the National Social Appeals Board as a general rule consults not only the holders of parental responsibility as parties to the case but, in the absence of special circumstances, also children aged 12 or over. The Ombudsman therefore found no grounds for criticising the Board's assessment that the 14-year-old girl could be consulted.

With regard to the 12-year-old boy, the Ombudsman was of the opinion that he did not have sufficient grounds for criticising the Board's assessment that he could be consulted.

However, in the Ombudsman's opinion the way in which the Board had conducted the consultation of

the children had not made it sufficiently clear to them what the case concerned and on which information the Board wanted the children's comments. The Ombudsman added that in his opinion the consultation had been conducted in an undesirable way which was not considerate towards the children.

In addition, the Ombudsman stated that in his opinion he did not have a sufficient basis for criticising that the Board chose to call the employer whose name was stated in the notification in order to confirm the mother's identity. However, the Ombudsman was of the opinion that the Board's notes from the telephone conversation should have stated to whom the Board had spoken and which specific information had been passed on during the conversation.

Further, the Ombudsman found that he could not criticise that the National Social Appeals Board processed the anonymous notification instead of forwarding the case to the municipality, which had not previously received any notifications about the family.

**2019-32. No redress despite inadequate guidance on tax-free bonus by unemployment insurance fund**

A woman applied to her unemployment insurance fund for a tax-free bonus, for which members of an unemployment insurance fund may be eligible if they postpone voluntary early retirement and continue working. The woman had continued working beyond the age at which she became eligible for voluntary early retirement – at first as a part-time wage earner for just over two years and then as an assisting spouse in her husband's firm.

The unemployment insurance fund and the appeals bodies refused the woman's application for a tax-free bonus because she did not meet the requirement on the number of hours worked: she had not worked a sufficient number of hours in her part-time job, and because she was part-time insured against unemployment, the number of hours which she had worked in her husband's firm did not count.

The authorities' conception of the law in this connection did not give the Ombudsman cause for comment.

However, the woman pointed out that she had contacted her unemployment insurance fund for guidance on voluntary early retirement and eligibility for a tax-free bonus when she stopped her part-time job to work solely in her husband's firm, and that the unemployment insurance fund had informed her that her work would count towards her eligibility as long as she continued to pay her membership fee. The woman therefore found that her unemployment insurance fund was responsible for her losing her eligibility for a tax-free bonus.

The National Social Appeals Board criticised the guidance which the unemployment insurance fund had given the woman. However, the Board was of the opinion that it could not order the unemployment insurance fund to redress the adverse effects of its inadequate guidance – in other words place the woman in a position as if she had been given correct guidance by her unemployment fund and had acted accordingly.

The Ombudsman pointed out that the woman's unemployment insurance fund did not – either at the time of its guidance or today – offer the type of unemployment insurance which she would presumably have taken out if she had been given correct guidance. Thus, if the unemployment insurance fund had guided the woman correctly at the time, this would not have resulted in her taking out full-time unemployment insurance with her unemployment insurance fund. On that basis, ordering the unemployment insurance fund to place the woman financially in a position as if she had taken out full-time unemployment insurance at the time of its guidance would be tantamount to ordering it to pay damages to the woman for the loss she might have suffered as a result of the guidance which she had been given. As such an order was not a response which was available to the National Social Appeals Board within the field of unemployment insur-

ance, the Ombudsman had no grounds for repudiating the Board's assessment of the question of redress of the adverse effects of the guidance given by the unemployment insurance fund.

### Prime Minister's Office

The following statement on a case concluded in 2019 has been published:

#### **2019-12. Material about construction of new district in Copenhagen exempt from access**

A journalist asked the Prime Minister's Office for access to material about the project to construct an artificial island, Lynetteholmen, off the coast of Copenhagen.

The Prime Minister's Office considered some of the documents to which the journalist had requested access to be part of a case concerning legislation and therefore exempt from access.

The reason why the Prime Minister's Office found that there was a case concerning legislation within the meaning of the Access to Public Administration Files Act was that in order that the construction project could be carried out, it was a prerequisite that a number of bills be introduced.

The Ombudsman agreed with the Prime Minister's Office that the case was to be decided under the Environmental Information Act and the 1985 Access to Public Administration Files Act.

In the Ombudsman's opinion there was a case concerning legislation within the meaning of the Access to Public Administration Files Act at the time when the documents to which the journalist had been denied access were produced.

In this connection, the Ombudsman gave particular weight to the fact that the project had a specific, delimited content as the overall objective of the project was to construct a new district in Copenhagen, and to

the fact that in order for the project to be carried out, it was a prerequisite that a number of bills for construction acts and for an act on the establishment of the firm of Lynetteholmen I/S be introduced (and passed).

In addition, the Ombudsman agreed with the Prime Minister's Office that the documents to which the journalist had been denied access could be considered to be part of the case concerning legislation. In reaching this conclusion, the Ombudsman gave weight to the fact that the documents concerned the Government's internal decision processes just prior to the decision to initiate the construction project. The documents thus had a direct and close connection with the legislative-political decision process, including in terms of time.

On that basis, the Ombudsman could not criticise the decision of the Prime Minister's Office.

### Ministry of Health

No statements on cases concluded in 2019 have been published.

### Ministry of Transport and Housing

The following statement on a case concluded in 2019 has been published:

#### **2019-21. Ministry entitled to deny access to environmental information in memorandum on strategy**

A journalist complained to the Ombudsman because the Ministry of Transport, Building and Housing had denied him access under the provision in section 13(1) paragraph (6) of the 1985 Access to Public Administration Files Act, cf. the Environmental Information Act, to various information in a memorandum on the strategy for handling Togfonden 2017<sup>2</sup>.

The Ministry was of the opinion that disclosure of the information would adversely affect the political negotiations on Togfonden.

The Ministry informed the Ombudsman that the information to which the journalist had been denied access concerned the Government's strategy for the political negotiations with the signatory parties to Togfonden DK in relation to the prioritisation of a number of projects. The Ministry also informed the Ombudsman that the signatory parties did not include the government parties and that the Government did not support the signatory parties.

According to the Ministry, political negotiations were still pending in relation to the vast majority of the projects despite the fact that the memorandum concerned the handling of Togfonden 2017, and the prioritisation of the projects was of central importance in the political discussions. In the Ministry's opinion, non-disclosure of the information was therefore clearly required in order to protect the political decision process in relation to a number of infrastructure projects.

On that basis, the Ombudsman had no grounds for criticising the Ministry's decision.

### Ministry of Higher Education and Science

No statements on cases concluded in 2019 have been published.

### Ministry of Foreign Affairs

No statements on cases concluded in 2019 have been published.

2) Togfonden DK ('The Train Fund') is a political settlement on major investments in the Danish rail network.

## Ministry of Immigration and Integration

The following statements on cases concluded in 2019 have been published:

### **2019-5. Internal e-mail at Immigration Service comprised by Ombudsman's request for files of case**

In 2017, the Ombudsman concluded an investigation involving the Ministry of Immigration and Integration concerning an instruction which the Minister had issued in 2016 to the Danish Immigration Service about the accommodation of married or cohabiting underage asylum seekers. The Minister's written instruction was supplemented by verbal instructions to the Immigration Service.

On investigating the matter, the Ombudsman concluded, among other things, that the written instruction was illegal by virtue of its content and involved a considerable risk of incorrect decisions being made in the specific cases, and that the Ministry's course of action was a matter for extreme criticism.

In connection with his investigation, the Ombudsman had asked for those of the files of the Ministry and the Immigration Service which 'illustrate the authorities' legal deliberations in relation to the instruction', including, for instance, e-mails, 'belly bands', text messages, handwritten notes, etc.

Less than three months after the Ombudsman had concluded his investigation, an employee of the Immigration Service by chance found an internal e-mail from the director of the Immigration Service about the view expressed verbally by the Minister in relation to the accommodation of married or cohabiting underage asylum seekers at a meeting with the Immigration Service.

The Ombudsman had not received a copy of the e-mail in connection with his investigation. The Immigration Service and the Ministry subsequently stated to the Ombudsman that the e-mail did not illustrate legal deliberations in relation to the instruction, and

that this was the reason why it was not sent to the Ombudsman later.

The Ombudsman found it a cause for concern that the Immigration Service had not found the e-mail earlier, and in his opinion it was a clear error of judgement that the e-mail was not considered to be subject to the requirement to surrender documents to the Ombudsman. In addition, the Ombudsman stated that the course of events must give the Immigration Service and the Ministry of Immigration and Integration cause for consideration with a view to avoiding similar situations and errors in future.

Overall, the e-mail did not give the Ombudsman cause to take further action in relation to what he had stated in his report from 2017.

### **2019-10. Length of processing time in case about humanitarian residence permit a matter for criticism. Unfortunate that question of deliberate protraction could arise**

A practising lawyer complained to the Ombudsman about the processing time of the Ministry of Immigration and Integration in a case about an application for a humanitarian residence permit on health grounds. The lawyer claimed that the Ministry had deliberately protracted the case.

The Ombudsman found it a matter for criticism that the Ministry took more than 26 months to decide the case and that the case was at a standstill at the Ministry for three periods totalling almost 16 months.

The Ombudsman found no basis for establishing that the Ministry had in fact protracted the case deliberately. However – in the light of the circumstances in the specific case, including the fact that medical information which had been submitted had become obsolete due to the inadequate progress of the case at the Ministry – he understood why the lawyer claimed that the Ministry had done so. The Ombudsman stated that he found it very unfortunate that the

Ministry had put itself in a situation where the question of deliberate protraction could arise at all.

The Ombudsman had no grounds for criticising the practice of the Ministry of Immigration and Integration whereby medical details of the applicant, including information about whether the applicant's disease currently requires treatment, should be as recent as possible and as a general rule not older than six months in order that a humanitarian residence permit may be granted on the basis of the medical details.

However, the Ombudsman was of the opinion that such a practice places a responsibility on the Ministry to ensure that the processing of this type of case does not drag on.

**2019-14. Freedom of choice of procedure for extracting and granting access to information is not sufficient grounds for delay in processing of request for access**

An internal e-mail at the Ministry of Immigration and Integration contained information about the factual basis of a case which was subject to the right of access under section 28(1) of the Access to Public Administration Files Act on the requirement to extract and grant access to certain information. In its original decision, the Ministry chose, with reference to section 28(2) paragraph (3) of the Act, to provide references to various locations on the Internet where the Ministry considered the information to be publicly available instead of giving the journalist requesting access direct access to the information.

While the Ombudsman was investigating a complaint from the journalist, the Ministry made a decision to give the journalist access to the information in the form of a document listing the information which had been extracted. The Ombudsman subsequently stated that the journalist had now been granted access to the information to which he was entitled under the Access to Public Administration Files Act.

At the same time, the Ministry expressed its regret that some of the references it provided in its original decision were not fully adequate. The Ombudsman concurred with this.

The Ombudsman further stated that he found the Ministry's total processing time of more than eight months prior to its original decision very regrettable. More specifically, the Ministry had not carried out any actual processing in relation to the e-mail for a period of about seven months, after which it took the Ministry about five weeks to process the case to conclusion.

There was a delay of some weeks during the final processing of the case due to the fact that the Ministry had chosen a time-consuming procedure for extracting and granting access to the information. In the Ombudsman's opinion the fact that section 28 of the Access to Public Administration Files Act gives authorities a certain freedom of choice of procedure for extracting and granting access to information did not constitute sufficient grounds for the delay.

**2019-15. Efforts of Ministry of Immigration and Integration to rectify errors following judgement by European Court of Human Rights**

In December 2016, the European Court of Human Rights made a judgement (in the case of Paposhvili v Belgium) which had implications for Danish practice in cases about humanitarian residence permits. However, the Ministry of Immigration and Integration did not change its practice until early 2018. A consequence of this was that specific cases were not processed correctly and that people were deported or otherwise left the country without their cases having been processed correctly in the light of the judgement.

The Ombudsman carried out an investigation on his own initiative of the Ministry's efforts to rectify the errors which were the result of the Ministry changing its practice too late.

The Ombudsman had no grounds for repudiating the Ministry's view that it was not required to reopen cases about humanitarian residence permits in which the decision had been made *and* the applicant deported prior to the judgement by the European Court of Human Rights. In the Ombudsman's opinion the assessment of this issue should be left to the courts, and in future, when considering specific complaints, he would be aware of the possibility of recommending that the complainant be granted free legal aid to have the issue considered by the courts.

The Ombudsman had no comments on the criteria according to which the Ministry had determined which overall categories of cases to review in order to rectify any errors made. In addition, he had no comments on the criteria or methods which had been used to identify the individual cases which were reviewed.

Further, the Ombudsman stated that in his opinion the Ministry had made sufficient and relevant efforts to contact persons who had been deported or had otherwise left the country.

The Ombudsman criticised that the Ministry adjusted the guidance on [www.nyidanmark.dk](http://www.nyidanmark.dk) on the conditions for obtaining a humanitarian residence permit too late.

The Ministry explained to the Ombudsman how it would ensure that a similar situation did not occur again, among other things via a reorganisation of its procedures with a view to closer monitoring of international judgements.

**2019-24. Refusal by board of access to procedural documents to be used by Ministry of Justice in case with international complaints body**

The Immigration Appeals Board had refused a request from a practising lawyer for access to correspondence which included draft procedural documents to be used by the Ministry of Justice in connection with a complaint case with the UN Human Rights Committee against the Danish state. The authorities stated that granting the lawyer access to the correspondence would dam-

age their interests in relation to the case with the Committee.

The Ombudsman concurred with the Ministry's view that cases with the Committee fell outside the scope of section 27 paragraph (4) of the Access to Public Administration Files Act on litigation.

However, the Ombudsman did not on the available basis concur with the view of the authorities that the Board could refuse access to the correspondence under section 32(2) of the Access to Public Administration Files Act on foreign policy interests. In the Ombudsman's opinion the provision was not applicable to interests in judicial proceedings, and this was also true of interests in proceedings with an international complaints body.

With regard to the Board's reference to section 33 paragraph (5) of the Act, the Ombudsman stated that it could well be argued that the interests which section 27 paragraph (4) is intended to protect could be of some significance in the assessment whether access could be denied under section 33 paragraph (5). However, the right of access may only be restricted under that provision if a specific assessment shows that non-disclosure of information is clearly required.

The Board (or the Ministry of Justice) did not appear to have made such an assessment.

On that basis, the Ombudsman recommended that the Board reopen the case.

The Ombudsman further called the Board's attention to, among others, the provision in section 30 paragraph (1) of the Act as a substantial amount of information about the private circumstances of individuals was contained in the documents which had been withheld. The Ombudsman pointed out in this connection that the lawyer's request for access had been made on behalf of persons who were not involved in the specific complaint case with the Committee.

## Municipal and regional authorities etc.

The following statements on cases concluded in 2019 have been published:

### **2019-2. Talks with employees of municipality not conducted in a manner respecting their freedom of expression**

A number of employees of a municipality were summoned to talks with their managements because they had publicly expressed their views about the municipality's decision to move a special school or about healthcare cuts.

The Ombudsman noted that four employees had been summoned to talks despite the fact that their statements were within the limits to the freedom of expression of public employees.

According to the municipality, the talks were not disciplinary hearings. However, in the Ombudsman's opinion the employees could justifiably have got the impression that they were negative reactions to their statements. Thus, it was stated or implied during the talks that the employees had acted in contravention of, among other things, the municipality's communication policy, and several of the employees apologised for and expressed their regret about their statements during the talks.

On that basis, the Ombudsman was of the opinion that the talks were not conducted in a manner which respected – and recognised – the employees' freedom of expression.

A fifth employee was given a written warning following a disciplinary hearing. However, the Ombudsman concluded that the grounds given by the municipality were not sufficient for issuing a written warning. He did not examine whether the municipality could have taken disciplinary measures against the employee on different grounds.

All five cases thus illustrate problems of which authorities must be aware when considering responding towards employees who have expressed their views in public.

In the Ombudsman's opinion the course of events – including the number of employees who were summoned to talks – was also liable to cause more general uncertainty among employees of the municipality about their right to express their views in public.

In conclusion, the Ombudsman found that the way in which the municipality had handled the five cases was overall a matter for severe criticism.

The Ombudsman noted information from the municipality that there was agreement in the municipality's general consultation committee to intensify the municipality's information efforts as regards its communication policy and that guidance notes were being prepared.

### **2019-11. Municipality's digital self-service solution did not comply with certain requirements of administrative law**

A complaint from a citizen caused the Ombudsman to open a general investigation of a municipality's digital self-service solution for applications for technical aids, consumer durables and layout and interior design work for persons with permanent functional impairment.

In the Ombudsman's opinion it was unfortunate that it was not expressly stated on the municipality's website and on [www.borger.dk](http://www.borger.dk)<sup>3</sup> that it is only compulsory to use the digital self-service solution for applications for technical aids (such as arm or leg prostheses or orthopaedic shoes). The Ombudsman stated that it is important that authorities are aware, for instance when publishing information for citizens on their websites, whether

3) A common public-sector portal providing a single point of access to the authorities' digital self-service solutions and information about public authorities and services



it is compulsory or optional to use a digital self-service solution.

Further, the municipality's digital self-service solution was not designed to make it possible to submit applications on behalf of others, and the Ombudsman stated that the municipality had not ensured that express guidance was provided on its website on the option of exemption from using the compulsory digital self-service solution for applications for technical aids and on how to apply for exemption. It should also be ensured that guidance on this was provided on [www.borger.dk](http://www.borger.dk). Finally, guidance should be given that persons applying for consumer durables or layout or interior design work on behalf of others may do so without using the municipality's digital self-service solution.

The municipality and the then Ministry for Children and Social Affairs both replied to the Ombudsman that they would take initiatives to ensure clearer guidance about the digital self-service solution.

The Ministry further informed the Ombudsman that it would initiate a dialogue among the relevant authorities in order to ensure coherent, user-friendly guidance across the relevant pages on [www.borger.dk](http://www.borger.dk) where different authorities are responsible for the content. The Ombudsman recommended to the Ministry that, in that connection, clarity be ensured in the respects mentioned in his report.

### **2019-13. Municipality's observance of rules on disqualification in case about mayor's relations with privately owned enterprise**

The Ombudsman opened an investigation on his own initiative with a municipality about its observance of the rules on disqualification. The Ombudsman made the decision to open the investigation following media reports that the then Mayor for Employment and Integration had been allowed by a privately owned enterprise – with which the Employment and Integration

Administration collaborated on, among other things, apprenticeships for socially vulnerable young people – to use a room at the company's premises free of charge for a birthday party.

Based on an overall assessment, the Ombudsman agreed with the municipality that there was not a friendship between the Mayor and the manager of the company of a nature resulting in disqualification under section 3(1) paragraph (5) of the Public Administration Act.

However, in the Ombudsman's opinion the loan of the room for the Mayor's birthday party was to be regarded as a gift, which the Mayor should not have accepted. The question whether the Mayor's acceptance of this gift resulted in disqualification was open to some doubt, but overall the Ombudsman was of the opinion that the Mayor was disqualified under section 3(1) paragraph (5) of the Public Administration Act in relation to any case concerning the company and its manager.

The Ombudsman stated that, based on the available information, the Mayor had not in any way participated in the processing by the Employment and Integration Administration of any specific cases about placement of unemployed people in apprenticeships with the company. Even for that reason alone, he found that the processing by the Employment and Integration Administration of the cases was not flawed as a result of the Mayor being disqualified. In addition, the Ombudsman found that the Mayor's interest was not of such a nature that it might result in the employees of the Employment and Integration Administration also being disqualified.

However, as a result of her being disqualified, the Mayor should not have taken part in the decision to award the company a business prize – but the Ombudsman found no basis for recommending that the case be reopened.

**2019-18. Criticism on Facebook of speech made by director of social and employment services was within the limits to municipal employee's freedom of expression**

In a post on Facebook, a municipal trainee criticised a speech made earlier that day by the municipality's director of social and employment services during a staff day. The post included a statement in quotation marks which could give the impression of being taken from the director's speech.

Shortly afterwards, the trainee was summoned to a disciplinary hearing on the grounds that her post was disloyal. The municipality found that the quotation marks gave the impression that the statement was a direct quotation from the speech – but that the statement did not represent the content of what the director of social and employment services had said. The municipality therefore gave the trainee a written reprimand.

The Ombudsman stated that, based on the available information, the statement in the post was not a verbatim quotation of what the director of social and employment services had said in his speech. More specifically, the post left the impression that the director had drawn a more express parallel between the problems of high unemployment in the municipality area and child mortality in Africa in his speech than he appeared to actually have done. For this reason, the Ombudsman was understanding of the municipality's wanting to refute the post.

However, the municipality did not have grounds for giving the trainee a written reprimand for her post, which in the Ombudsman's opinion was within the limits to public employees' freedom of expression. The Ombudsman stated that public employees have a certain right to express their views in harsh and polemic terms when participating in the public debate about their workplace, and that there is room for using exaggerated expressions to a certain degree as long as this does not result in statements that are manifestly untrue or unreasonably offensive.

**2019-27. Teacher's comment on Facebook not unreasonably offensive**

In a comment on Facebook, a teacher at a municipal primary and lower secondary school wrote – via his own profile – among other things that the school management 'monitor and victimise people'.

After a disciplinary hearing had been held and the teacher consulted as a party to the case, the municipality gave the teacher a written warning for his comment on the grounds that it overstepped the limits to the freedom of expression of public employees.

The Ombudsman took for his basis that the teacher's comment reflected specific managerial actions carried out in relation to him, as he had – rightly or wrongly – perceived these actions.

The Ombudsman stated that public employees are entitled to express their views in, for instance, harsh or polemic terms as long as this does not result in statements that are manifestly untrue or unreasonably offensive, and that there is room for using exaggerated expressions to a certain degree. The Ombudsman further stated that a management must to a large extent tolerate public expression of differences between the management's and employees' perceptions of managerial actions.

Based on an overall assessment, the Ombudsman found that there were not sufficient grounds for considering the teacher's comment to be unreasonably offensive.

In addition, the Ombudsman found that the comment could not – within the meaning of the applicable rules – be regarded as manifestly untrue.

The Ombudsman therefore found that the comment was within the limits to the freedom of expression of public employees and that there was thus no basis for giving the teacher a disciplinary warning.

However, as the teacher's comment on Facebook was highly critical of the school management and general in form, the Ombudsman was understanding of the fact that the municipality had found that it could not fail to act on the comment. The Ombudsman emphasised that the municipality would have been entitled to refute the comment in a different way as long as it did not criticise the fact that the teacher had used his freedom of expression.

### **2019-31. Municipality had no basis for cancelling employment agreement**

A municipality appointed a student of social education as a paid trainee for a period of six months. Until further notice, her place of employment was to be a school, and she was later moved to a residential facility. The trainee only partly completed her traineeship – among other reasons because of sickness absence – and her place of study therefore did not consider her to have fulfilled her training requirement. The municipality subsequently appointed the woman in a new six-month traineeship. Until further notice, her place of employment was to be one of the municipality's other residential facilities.

However, before the woman started her new traineeship, the municipality decided to cancel the employment agreement. The municipality was of the opinion that she had accepted not to go through with the traineeship.

Based on the available information, the Ombudsman was of the opinion that the woman had not accepted the cancellation of the agreement. The municipality's cancellation was thus to be regarded as unilateral.

On that basis, the Ombudsman stated that the cancellation could not be presumed to be in accordance with the views on false pretences taken in case law and Ombudsman practice. In particular, he referred to the fact that when the municipality appointed the woman, it had been aware of the relevant information about, among other things, her sickness absence during her then traineeship. He added that the woman did not appear to have failed to disclose essential information to the municipality in connection with her appointment.

The municipality had so far had no cause to consider whether it could have terminated the woman's employment with notice instead of cancelling the employment agreement, and the Ombudsman therefore had no basis for commenting on this question.

The Ombudsman recommended that the municipality reopen the case and in this connection consider the consequences of the fact that the municipality had no basis for cancelling the employment agreement.

### **Other authorities etc. within the Ombudsman's jurisdiction**

No statements on cases concluded in 2019 have been published.

# Extracts from news published on the Ombudsman's website in 2019

The number of subscribers to the Ombudsman's e-mail service, where an e-mail is sent out each time a news story is published (in Danish) on the Ombudsman's website, was 4,106 as at 31 December 2019. To subscribe to the service, go to [www.ombudsmanden.dk/nyhedsbrev/](http://www.ombudsmanden.dk/nyhedsbrev/).

The Twitter account [@ombudsmanden\\_](https://twitter.com/ombudsmanden) had 1,854 followers.

The following pages contain extracts from news stories published by the Ombudsman in 2019 and an extract from one press release. Press releases are more factual and are typically about processes in major cases. Press releases are published on the Ombudsman's website and distributed via Twitter but, unlike news stories, they are not sent to subscribers to the Ombudsman's e-mail service. In 2019 the Ombudsman published four press releases.

3 January

### **Targeted effort has reduced worrying processing times of Ministry of Immigration and Integration in a short time**

The Ombudsman recently expressed 'serious concern' about the processing times of the Ministry of Immigration and Integration in cases about access to documents or information. The Ministry has subsequently informed the Ombudsman that it has made a targeted effort to reduce its processing times in these cases.

Fresh figures from the Ministry show that in recent months a special task force has significantly reduced the number of pending cases about access to documents or information.

4 January

### **Ombudsman recommends Department of Prisons and Probation to increase its awareness in relation to use of pepper spray**

In 2017 pepper spray was used on inmates in Danish state and local prisons on 125 occasions – almost twice as frequently as the year before. The Ombudsman now recommends that the Department of Prisons and Probation consider whether further initiatives are needed to ensure that pepper spray is used in accordance with the rules.

8 January

### **Departure Centre Sjølsmark: New information about how long children had been staying at Centre does not change Ombudsman's assessment**

On 20 December 2018 the Ombudsman submitted a report on the conditions for children housed at Departure Centre Sjølsmark.

Although it has now emerged that some children had been staying longer at the Centre than stated his

report, the Ombudsman has informed the authorities that the information which has now become available does not change his assessment of the overall conditions for children housed at the Centre.

In his report of 20 December 2018 the Ombudsman concluded that children at Departure Centre Sjølsmark were – generally speaking – to be regarded as living under difficult conditions.

9 January

### **Conference: Whistle-blowing and the right of public employees to whistle-blow – the law, the current situation and the dilemmas**

What is understood by whistle-blowing and the right of public employees to whistle-blow? What are the rules? Are whistle-blowers adequately protected? What are the dilemmas?

These are some of the central questions which will be addressed at a conference hosted jointly by the Parliamentary Ombudsman and Parliament's Legal Affairs Committee. The questions will be explored from legal, sociological and legal-political perspectives.

16 January

### **Homeless man got his cash benefit back after a period on integration benefit**

In order for a person to be eligible for cash benefit, he or she must be able to document having lived in Denmark for at least seven out of the last eight years. According to the authorities a homeless man was unable to document this. His cash benefit was therefore discontinued and he was instead put on integration benefit, which meant that he was paid less than before.

Following the Ombudsman's investigation of the matter, the homeless man got his cash benefit back.

22 January

### **Talks with employees of Aabenraa Municipality not conducted in a manner respecting their freedom of expression**

A number of employees of Aabenraa Municipality were summoned to talks with their managements because they had expressed their views in public. On investigating the matter, the Ombudsman concludes that the talks were not conducted in a manner which respected – and recognised – the employees’ freedom of expression.

23 January

### **Greater clarity in relation to immobilisations with restraint belts of children and young people in inpatient psychiatric care**

Children and young people in inpatient psychiatric care may be immobilised with restraint belts. When that happens, it is important that clear rules apply and that the immobilisations are documented correctly. For this reason the Ombudsman is pleased with new initiatives aimed at providing greater clarity in relation to immobilisations with restraint belts.

24 January

### **Employees were entitled to pass internal document about mayor’s wedding reception on to press**

The City of Copenhagen has stated to the Parliamentary Ombudsman that if it was an employee of the City who passed on an internal work document to the press about the wedding reception of the then Mayor for Employment and Integration, which was held at the Copenhagen City Hall in August 2017, this was neither illegal nor unacceptable.

On the basis of statements from the City of Copenhagen, the Ombudsman has decided not to take any further action on the matter, which has increased the City’s focus on the right of its employees to whistle-blow.

29 January

### **Course of action when news of case against criminal gang was made public a matter for severe criticism**

In June 2018 the Ministry of Justice announced a decision to bring a case before the courts under section 78 of the Constitution to have a criminal gang dissolved. On investigating the course of events, the Ombudsman describes the Ministry’s course of action as a matter for severe criticism. He concludes, among other things, that the Ministry disregarded general principles of equality and legitimacy – and failed to treat the counsel for the gang correctly – in favour of attention in the media.

7 February

### **Separate accommodation of married or cohabiting underage asylum seekers – questions about new information**

In March 2017 the Parliamentary Ombudsman submitted his final report on the case of separate accommodation of married or cohabiting underage asylum seekers. The Ombudsman found that the instruction issued by the Minister for Immigration, Integration and Housing on 10 February 2016 to the Danish Immigration Service was illegal by virtue of its content and that the Ministry’s course of action in the case was a matter for extreme criticism.

The national daily newspaper Information today mentions an internal exchange of e-mails at the Immigration Service which took place on the day the instruction was issued.

In this connection the Ombudsman can inform that the newspaper sent the information in question to the Ombudsman’s office on 30 January 2019.

This caused the Ombudsman to contact the Ministry of Immigration and Integration on 1 February 2019.

**4 March**

### **Criticism of long processing time in case about humanitarian residence permit**

A seriously ill man from Sierra Leone had to wait 26 months for a decision whether he would get a humanitarian residence permit. The length of time was a matter for criticism, the Ombudsman states after looking into the matter. Among other things, he criticises that the case was at a standstill at the Ministry of Immigration and Integration for three periods totalling almost 16 months.

**7 March**

### **Much-debated e-mail does not alter Ombudsman's previous conclusion in case about separate accommodation of married or cohabiting underage asylum seekers**

An e-mail of 10 February 2016 from the then director of the Danish Immigration Service to other employees of the Immigration Service has been the subject of public debate over the last few weeks.

The Parliamentary Ombudsman has today informed the Ministry of Immigration and Integration that, based on an overall assessment, the e-mail does not give him cause to take further action on the matter, and that therefore what he stated in his report of 23 March 2017 still stands.

**18 March**

### **Ombudsman to investigate use of disciplinary cells in state and local prisons**

In 2019 the Ombudsman's Monitoring Department will have special focus on the form of solitary confinement which is called placement in disciplinary cells.

Placements in disciplinary cells are increasingly used against inmates who violate rules in state and local

prisons. In 2018 unconditional placements in disciplinary cells were used on 4,752 occasions as against 2,579 occasions in 2015.

Denmark has been criticised several times by the UN and the Council of Europe for protracted placements in disciplinary cells.

**19 March**

### **Ministry of Culture entitled to withhold information about Crown Prince and IOC**

A journalist asked for access to letters exchanged between the Ministry of Culture and the Danish Royal House about The Crown Prince's participation in a meeting of the International Olympic Committee (the IOC) about Russia's right to take part in the Olympic Games in Rio in 2016. The IOC is a private organisation, and The Crown Prince participated in a personal capacity.

The Ombudsman concludes that the Ministry of Culture was entitled to deny the journalist access – based on a specific assessment – to the major part of the correspondence.

**20 March**

### **New practice for calculation of compensation for loss of earnings for self-employed people**

A professional composer and producer who had to look after his seriously ill baby daughter at home received DKK 83 per day in 2013 by way of compensation for loss of earnings.

After the Ombudsman opened an investigation of the matter, asking the National Social Appeals Board to answer a number of questions, the Board changed its decision and the composer now has prospects of being paid much higher amounts for 2013 and subsequent years.

**21 March**

### **Department of Prisons and Probation to stress that rules on use of pepper spray must be observed**

In the light of a specific case the Ombudsman recently recommended the Department of Prisons and Probation to consider whether further initiatives were needed to ensure that the rules were observed when pepper spray was used on inmates in Danish state and local prisons. In this connection the Ombudsman pointed out that the use of pepper spray had almost doubled over the past few years.

The Department of Prisons and Probation has now replied that it will be stressed that the rules on use of pepper spray – including in regard to when pepper spray may be used and what documentation is required – must be observed.

**25 March**

### **Ombudsman to focus on younger children in care outside their home in 2019**

In 2019 staff of the Ombudsman's Children's Division are going to visit a number of residential institutions and accommodation facilities for children in care where some or all residents are aged six to 12 years – as the theme for this year's monitoring visits by the Children's Division is younger children placed in social care outside their home.

**26 March**

### **Minor inmates' rights strengthened**

The rights of the small number of 15- to 17-year-olds who are placed in state or local prisons have been strengthened in several respects. This has happened after, among other things, monitoring visits by the Ombudsman, in which connection the Ombudsman raised a number of questions with the authorities.

**27 March**

### **Ombudsman setting up new division dedicated to cases about access to public records**

As a result of an increasing number of complaints in cases about access to public records, the Parliamentary Ombudsman is now setting up a division dedicated to processing these cases. The new division will be operational from 1 May.

**28 March**

### **Obligations of Danish police officers during deportations clarified**

During a forced deportation of foreign nationals to Afghanistan, several Danish police officers saw an Afghan police chief hit two of the Afghan deportees in the face with the flat of his hand on the plane at the airport in Kabul. Afterwards, the Danish National Police assessed that the Danish police officers had the responsibility for protecting the Afghan nationals, but that due to, among other things, safety considerations, they did the right thing by not intervening.

On investigating the matter, the Ombudsman concludes that he has no grounds for repudiating the assessment of the National Police.

**3 April**

### **Digital self-service solution of Haderslev Municipality did not comply with certain requirements of administrative law**

Citizens of Haderslev Municipality with functional impairment who want to apply for technical aids, consumer durables or layout or interior design work under the Social Services Act will get the impression that it is compulsory to use the Municipality's digital self-service solution. But that is not always the case, the Ombudsman emphasises in a recent report.



The case has occasioned the Ombudsman to emphasise – in line with previous statements in other cases – that if digital self-service solutions have not been designed to enable applications on behalf of others, it must be possible to submit such applications without using the digital self-service solution. The Ombudsman also stresses that the responsible authorities must provide guidance on this option.

**9 April**

### **Dry rules provide quality in public administration**

Rules on the duty to take notes and keep records and on other forms of documentation easily conjure up images of useless bureaucracy. However, in an article in his Annual Report for 2018, which has just been published, the Ombudsman defends these dry and at times much-maligned rules.

**10 April**

### **Mayor's acceptance of offer of loan of room resulted in disqualification**

When the then Mayor for Employment and Integration of the City of Copenhagen accepted an offer from a privately owned enterprise of a loan of a room for a party, this was contrary to the rules on acceptance of gifts by public employees and disqualified her in relation to the company. For this reason she should not have taken part in the decision to award the company a business prize.

This is the conclusion of a statement from the Parliamentary Ombudsman.

**11 April**

### **Ombudsman offers legal updates on a quarterly basis**

If you want to keep updated on legal news from the Ombudsman, you can now get an overview in your inbox once a quarter.

**8 May**

### **Conclusion of investigation of specific aspects in relation to initiatives following Paposhvili case: Ministry of Immigration and Integration has done enough to rectify errors**

The Minister for Immigration and Integration has previously expressed her regret about the Ministry not having processed a number of cases about humanitarian residence permits correctly following the judgement by the European Court of Human Rights on 13 December 2016 in the case of Paposhvili v Belgium.

The Ombudsman has today submitted his report on the case. He has found no grounds for taking further action and states, among other things, that the Ministry of Immigration and Integration 'has made relevant and sufficient efforts to contact those who were deported or otherwise left the country whose cases had not or might not have been processed correctly'.

**16 May**

### **IT error meant Customs and Tax Administration was unable to charge interest for more than two years**

As part of modernisation efforts of the Danish Customs and Tax Administration (SKAT), all businesses got a digital tax account – 'Én Skattekonto' ('One Tax Account') – in 2013. However, a system error meant that for up to 26 months SKAT did not charge businesses interest – as it was required by law to do. This may have resulted in, among other things, errors in the annual accounts of businesses.

This is the conclusion of a statement from the Parliamentary Ombudsman which has been published today. The Ombudsman's investigation focused, among other things, on SKAT providing inadequate guidance to businesses.

7 June

## **Ombudsman notifies Parliament of increasing problems with collection of child support payments**

The extent to which single parents have to wait for child support payments due to them continues to increase. Those affected are parents who are not entitled to advance child support payments from the state but have to wait until the payments due to them have been collected from the other parent.

After investigating and following the matter over a period of time, the Ombudsman has now closed his investigation and instead notified Parliament of the problem.

7 June

## **New Deputy Director General of Ombudsman institution**

Lennart Lindblom will be the new Deputy Director General of the Ombudsman institution from 1 August 2019, thereby joining the top management team of the institution, which has a total staff of approximately 115.

11 June

## **The People's Political Festival: Doesn't the public administration listen to Parliament's watchdogs?**

Parliament has appointed independent watchdogs with the task of ensuring that the public administration complies with rules and regulations – and does so in an efficient manner. But why did the public administration fail to heed warnings from the Auditor General's Office and the Public Accounts Committee about the Danish Customs and Tax Administration (SKAT) and the National Board of Social Services? Did the authorities abide by the Ombudsman's criticism in the case about separation of young asylum-seeking couples? And is the system less responsive today than previously to criticism from the watchdogs?

These are some of the questions which moderator Hans Engell will ask Parliament's watchdogs at this year's People's Political Festival.

20 June

## **Critical post on Facebook was within limits to municipal employee's freedom of expression**

A critical post on Facebook by an employee of Odense Municipality about a speech held by an executive during a staff day was within the limits to public employees' freedom of expression. So says the Ombudsman in a statement to Odense Municipality – while at the same time expressing understanding that the Municipality wanted to refute the post.

21 June

## **Ombudsman recommended for appointment as new Supreme Court justice**

The Judicial Appointments Council has today announced that it recommends that Parliamentary Ombudsman Jørgen Steen Sørensen be appointed as Supreme Court justice.

1 July

## **Emphasis is placed on best interests of children with asylum background**

Many unaccompanied underage foreign nationals have major problems. However, the children's asylum centres and private accommodation facilities for, among others, children and young people with an asylum background visited by Ombudsman staff place emphasis on ensuring that the best interests of the children and young people come first. This is a central conclusion of the investigation which the Parliamentary Ombudsman has just completed of conditions for children and young people with an asylum background. The investigation focused particularly on use of physical force and the practices of asylum centres and accommodation facilities in relation to notifying the municipality of concerns about the well-being of a child.

20 August

### **Ombudsman: Decision by public authority cannot be called an 'offer'**

When the tax authorities decide that a citizen can have a debt to a public authority cancelled, this is a decision – not an offer – the Ombudsman has established on investigating a specific case about a woman receiving an 'offer' from the Danish Customs and Tax Administration, SKAT.

26 August

### **Ombudsman: Inmates and remand prisoners excluded from association should be better protected from adverse psychological effects**

In several respects more can be done to protect inmates and remand prisoners from adverse psychological effects when they are excluded from association with other inmates or remand prisoners. This is the message from the Parliamentary Ombudsman following visits to eight state prisons and nine local prisons.

4 September

### **Faster replies to applications for retention of Danish citizenship**

Young Danish expatriates wait a considerably shorter time today for a reply to applications for retention of Danish citizenship. The processing time decreased appreciably in 2018 compared to previous years – the average now being approximately eight months – and the number of pending cases has been reduced significantly.

The Ombudsman took up the case back in 2014 after being contacted by an association for Danish expatriates. The investigation carried out by the Ombudsman at that time showed that young Danish expatriates had to wait an average of 15.5 months for a decision on whether they could retain their Danish citizenship, and that many had to wait more than two years.

9 September

### **Ombudsman appointed new Supreme Court justice**

The Supreme Court has today announced that the Parliamentary Ombudsman, Jørgen Steen Sørensen, has passed the test required to become a Supreme Court justice by satisfactorily rendering his opinion in four Supreme Court cases.

This means that the Ombudsman will take up office as a Supreme Court justice on 1 November 2019.

10 September

### **Police must on an ongoing basis reconsider need to use force during deportations**

During a police deportation of a foreign national, it may be necessary to use force, for instance in the form of plastic strips around the deportee's wrists. However, the Ombudsman stresses on the basis of two specific deportations that when force is used during a deportation, the police should consider on an ongoing basis whether it is still necessary to use force. The reason is that any use of force must be necessary and proportionate for its entire duration, which follows from the rules of law applicable to police deportations.

16 September

### **Update on case about separation of young asylum seeking couples**

The Parliamentary Ombudsman does not at this point in time expect to receive any more material from the Ministry of Immigration and Integration in the case about separation of young asylum seeking couples. The Ombudsman has today written this to the Ministry after it has been decided to set up a commission of inquiry into the matter.

'The main task of the Ombudsman institution in this matter has been to ensure that the rights of the affected couples under Danish law and international conventions are respected. I consider this task ac-

completed. Now that it has been decided to set up a commission of inquiry, the clear presumption must be that further investigation of the matter will take place in the commission of inquiry', says the Parliamentary Ombudsman, Jørgen Steen Sørensen.

**18 September**

### **Citizens get fast and clear answers from customer centre of Danish Tax Agency**

The customer centre of the Danish Tax Agency generally gives fast and clear answers. This is the conclusion of a review of 300 cases from the customer centre which the Ombudsman has just completed.

**26 September**

### **Foreign nationals have not had decisions on requirement to reside at departure centre and report to police reassessed**

Foreign nationals with tolerated residence status have not had the decisions that they are required to reside at a departure centre and report to the police at specified intervals reassessed for a long period of time. The Ombudsman therefore now criticises the Immigration Service and the National Police.

**9 October**

### **When children are consulted as parties to a case, it must be done in a way so they can understand what the case is about**

When children are consulted as parties to a case, it must be done in a way so they can understand what the case is about and in a way which is considerate towards them. This is a central message in a specific case which the Ombudsman has just concluded about a notification of concern about the well-being of two children.

**23 October**

### **School management must tolerate critical Facebook comment**

'The management monitor and victimise people', a schoolteacher wrote, among other things, on Facebook about the management of the municipal primary and lower secondary school where he worked.

The Ombudsman now concludes that the teacher's comment was within the limits to the freedom of expression of public employees. For this reason it was unjustified for the municipality to give the teacher a disciplinary warning.

**24 October**

### **Press release: Parliament elects interim Ombudsman**

Parliament has today elected Henrik Bloch Andersen, High Court Judge, interim Ombudsman from 1 November 2019 until a newly elected Ombudsman is able to take up office. Henrik Bloch Andersen is a judge at the High Court of Eastern Denmark and has until now acted as a so-called 'ad hoc ombudsman' in cases where the Ombudsman has been disqualified.

**25 October**

### **Possibility of legislating to secure private school pupils' right to be heard now to be discussed**

Despite comprehensive information campaigns, the views of children in private schools are in many cases not included, as stipulated by the UN Convention on the Rights of the Child, before they are removed or expelled from a school.

For this reason the Ministry of Children and Education has informed the Ombudsman that steps will now be taken to discuss with the parties in Parliament the possibility of legislating to secure this right.

**31 October**

## **Interview with Ombudsman on DR2 Deadline**

The Parliamentary Ombudsman, Jørgen Steen Sørensen, today resigns as Ombudsman to take up office as a Supreme Court Justice.

In this connection the Ombudsman has been interviewed on DR2 Deadline. Among other topics, he spoke about the current situation of the Ombudsman institution, about significant cases and topics of cases during his time as Ombudsman and about the future of the institution.

**11 November**

## **Journalist granted access to name of travel agency which had violated Act on Ethnic Equal Treatment**

Following a statement from the Ombudsman, a journalist has been granted access to the name of a travel agency which had violated the Act on Ethnic Equal Treatment.

**26 November**

## **Niels Fenger elected new Ombudsman**

Parliament has today elected Niels Fenger new Ombudsman. He is replacing Jørgen Steen Sørensen, who has taken up office as a Supreme Court justice.

**20 December**

## **Non-compliance with rules on privilege against self-incrimination in specific case involving information from Panama Papers**

A man was ordered to send information to the Danish Customs and Tax Administration (SKAT) – without being informed that he was under suspicion of committing a criminal offence and thus not required to contribute to the investigation of the case. In his statement on an investigation which he has just completed, the Ombudsman therefore concludes that SKAT did not observe the rules on the so-called privilege against self-incrimination.

All news stories can be read in full  
(in Danish) at [www.ombudsmanden.dk](http://www.ombudsmanden.dk).



# Monitoring activities

## Monitoring activities – adults and children

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

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

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

The Ombudsman has a special responsibility to protect the rights of children under the UN Convention on the Rights of the Child etc.

**How:** During monitoring visits, the Ombudsman often gives recommendations to the institutions. Recommendations are typically aimed at improving conditions for users of the institutions and in this connection also at bringing conditions into line with the rules. Recommendations may also be aimed at preventing, for instance, degrading treatment.

Monitoring visits may also cause the Ombudsman to open investigations of general problems.

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

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

## Monitoring activities – adults

### Theme for 2019

#### Disciplinary cells

The form of solitary confinement called placement in disciplinary cells ('strafcelle') may be used as a disciplinary sanction when an inmate breaks the rules of the Prison and Probation Service. Inmates placed in a disciplinary cell may be in solitary confinement for up to 23 hours a day. The inmate is entitled to one hour a day outside in the prison exercise yard and to work in his or her cell.

The Ombudsman chose as the theme for 2019 to investigate the use of disciplinary cells. The reasons for the choice of theme were that solitary confinement may have adverse psychological effects and that the use of disciplinary cells in state and local prisons has risen sharply over recent years.

The Prison and Probation Service has laid down guidelines for how the most common transgressions are normally to be sanctioned. For instance, an inmate is normally sanctioned with 15 days in a disciplinary cell the first time the inmate is caught with a mobile phone in a closed prison.

Before the sanction of placement in a disciplinary cell is imposed on an inmate, statements must be taken and the statements must be put on record. The upper limit for placing an inmate in a disciplinary cell is four weeks at a time. However, the inmate can be placed in a disciplinary cell – or be excluded from association with others – for a longer period.

As part of the theme for 2019, the Ombudsman's visiting teams visited three closed prisons, two open prisons, 11 local prisons and the Prison and Probation Service immigration detention centre. The visiting teams focused especially on

- whether the Prison and Probation Service observes the rights of the inmates when questioning them
- whether the documentation in records lives up to the rules
- whether the Prison and Probation Service takes preventive measures against adverse psychological effects on inmates placed in disciplinary cells
- whether the healthcare staff are informed of and attend to inmates who are placed in disciplinary cells

#### The Ombudsman's overall assessment

- The guidelines of the Prison and Probation Service should in certain areas be changed with a view to ensuring the legal rights of the inmates when it is decided to place them in a disciplinary cell and in order to take preventive measures against adverse psychological effects as a result of placement in a disciplinary cell.

#### Examples of the Ombudsman's general recommendations

- that the institutions under the Prison and Probation Service ensure that the inmate understands what is said during a disciplinary hearing, and increase the use of interpreters

Reports on the themes for our monitoring visits can be found at [www.ombudsmanden.dk](http://www.ombudsmanden.dk) by clicking next to the small globe icon at the top of the site, selecting 'English' and clicking 'Read more' under the heading 'About the Ombudsman and complaints' and then 'Publications'.



- that the institutions under the Prison and Probation Service ensure precise and adequate documentation in the records and ensure continuous quality control
- that the Department of Prisons and Probation considers drawing up guidelines on the prevention of adverse psychological effects as a consequence of placement in a disciplinary cell
- that healthcare staff are informed of inmates placed in disciplinary cells

See the Ombudsman's specific recommendations (extracts) in the tables on pages 80-89.

### Cases concluded in 2019 in relation to monitoring activities

**12** own-initiative cases were concluded in 2019. Eight of these cases were opened in direct continuation of monitoring visits. *Two of the cases resulted in criticism and informal recommendations, respectively.*

In addition, **21** cases on suicide attempts, deaths etc. in institutions under the Prison and Probation Service or in police custody were concluded in 2019. *Three of the cases resulted in criticism.*

### Selected investigations

**The correct doctor's certificate must be completed before placement in detention cell:** A man died while placed in a detention cell for intoxicated persons. In the police car on the way to the detention cell, he was briefly examined by a doctor but no doctor's certificate was completed. The Ombudsman looked into what requirements apply to a medical examination and the use of a doctor's certificate before persons are placed in a detention cell for intoxicated persons. The Danish National Police stated, among other things, that steps would be taken to ensure that all police districts use the Danish Medical Association's doctor's certificate form, which sets out the medical examinations which the doctor must perform. The Ombudsman then concluded his investigation.

### Authority to use body scanners to be provided:

During a monitoring visit to the Maximum Security Department of Slagelse Psychiatric Hospital ('Sikringsafdelingen') the visiting team were informed that visitors had to go through a body scanner. The Ombudsman raised the question of the authority to use body scanners with the Ministry of Health. The Ministry informed the Ombudsman that authority to use body scanners would be provided under the Mental Health Act.

### The Prison and Probation Service looks into the procedure for inmates' correspondence with the Department:

A complaint made the Ombudsman aware that the Department of Prisons and Probation had sent a letter to an inmate via the prison. The prison staff printed out the e-mail with the letter and put the letter in an envelope for the inmate. The Ombudsman started an investigation of this practice. The Department would look into the procedure for correspondence with inmates and ensure that inmates can correspond unmonitored with the Department regarding, for instance, complaints about the staff's behaviour towards the inmates. The Ombudsman then concluded his investigation.

### Gang members must be heard before transfer:

33 inmates complained about having been transferred to another prison section because they had biker or other gang affiliations. The Ombudsman opened a general case on the processing of such cases. The Ombudsman found it regrettable that the inmates had not been heard in all instances and that the rules on, among other things, the duty to take notes had not been observed in all instances. The basis for the Department's identification of inmates as gang-affiliated did not otherwise give the Ombudsman cause for comment.

## Where did we go in 2019?

When	Where	What	With whom did we speak?		Who also participated? <sup>1</sup>	
			Users <sup>2</sup>	Relatives etc. <sup>3</sup>	DIGNITY	IMR
	<b>30 visits in total</b>		<b>309 talks</b>	<b>43 talks</b>	<b>30 visits</b>	<b>17 visits</b>
10 Jan.	'Holbæk Arrest'	Local prison particularly for persons remanded in custody during investigation of their case	8	0	✓	
22 Jan.	'Psykiatrisk Center Sct. Hans', Roskilde	Three bed units for forensic psychiatric patients	11	6	✓	✓
30 Jan.	'Slagelse Arrest'	Local prison particularly for persons remanded in custody during investigation of their case	7	0	✓	
4 Feb.	'Ringsted Arrest'	Local prison particularly for persons remanded in custody during investigation of their case	10	0	✓	
7 Feb.	'Udlændingecenter Ellebæk', Birkerød	Immigration detention centre under the Prison and Probation Service, for foreign nationals held under aliens legislation	11	0	✓	✓
20 Feb.	'Søbæk Have 18 B', Jyderup	Municipal social residential facility for mentally deficient adults with great behavioural challenges and sentenced to placement in an institution	3	2	✓	✓

- 1) The Ombudsman collaborates with DIGNITY – Danish Institute Against Torture and the Danish Institute for Human Rights (IMR) on monitoring activities. Among other things, they participate in a number of monitoring visits.
- 2) Number of inmates, residents and patients etc. with whom the visiting teams had talks.
- 3) Number of relatives, guardians (including social security guardians), patient advisors etc. with whom the visiting teams had talks.

	<b>Selected recommendations etc.<sup>4</sup></b>
	<b>Visits concluded with recommendations: 24</b> <b>Visits concluded without recommendations: 2</b> <b>Not concluded at the time of going to press: 4</b>
	<ul style="list-style-type: none"> <li>• Ensure that guidance on the possibility of complaint is only given when there is access to complain</li> <li>• Ensure precise and adequate documentation in records, and continuous quality control</li> <li>• Ensure that medicines are handled in accordance with applicable rules</li> <li>• Increase focus on whether the doctor should be called in as a result of information given by the inmate during placement interview</li> </ul>
	<i>Still pending at the time of going to press.</i>
	<ul style="list-style-type: none"> <li>• Increase focus on the inmate understanding what is said during interrogation etc., and increase use of interpreter</li> <li>• Follow and analyse development in number of decisions and days in disciplinary cell</li> <li>• Offer inmates a medical examination during placement interview</li> <li>• Ensure that medicines are handled in accordance with applicable rules</li> </ul>
	<ul style="list-style-type: none"> <li>• Ensure clear guidance on each of the inmate's individual rights</li> <li>• Ensure precise and adequate documentation in records, and continuous quality control</li> <li>• Inform the doctor of the expected duration of the disciplinary cell placement</li> <li>• Ensure that medicines are handled in accordance with applicable rules</li> </ul>
	<ul style="list-style-type: none"> <li>• Increase focus on the detainee understanding what is said during interrogation, and increase use of interpreter</li> <li>• Ensure prevention of adverse psychological effects from placement in disciplinary cell and inform doctor or healthcare staff of placements in disciplinary cell and the expected duration</li> <li>• Improve the general maintenance standard in the men's accommodation quarters, particularly in the solitary confinement section</li> <li>• Draw up instructions for handling of medicines and for treatment of abstinence, and train staff in the instructions</li> </ul>
	<i>Own-initiative case opened about introduction of screening for torture and risk of suicide in the centre.</i>
	<ul style="list-style-type: none"> <li>• Increase focus on a precise and adequate description in reports of the grounds for use of force</li> <li>• Increase focus on handling of medicines</li> </ul>

4) The table contains selected, abbreviated recommendations. The full recommendations can be found (in Danish only) at [www.ombudsmanden.dk](http://www.ombudsmanden.dk), where concluding letters on monitoring visits are published on an ongoing basis. The table also contains information on cases opened on the Ombudsman's own initiative following monitoring visits.



## Where did we go in 2019?

When	Where	What	With whom did we speak?		Who also participated? <sup>1</sup>	
			Users <sup>2</sup>	Relatives etc. <sup>3</sup>	DIGNITY	IMR
25 Feb.	'Frederikssund Arrest'	Local prison particularly for persons remanded in custody during investigation of their case	9	0	✓	
7 Mar.	'Center Avnstrup', Hvalsø	Deportation centre for rejected asylum seekers who cooperate with own return to home country	4	0	✓	✓
13-14 Mar.	'Storstrøm Fængsel', Nørre Alslev	Closed prison with specially secure unit, particularly for persons serving a sentence	65	0	✓	
1 Apr.	'Københavns Fængsler', 'Vestre Fængsel'	Four prison sections, particularly for persons remanded in custody during investigation of their case (two communal units for men and two communal units for women)	9	0	✓	✓
4 Apr.	'Nykøbing Fængsel', Nykøbing Sjælland	Closed prison, particularly for persons serving a sentence	5	0	✓	
24 Apr.	'Psykiatrisk Afdeling Aabenraa'	Two integrated 24-hour units for general and forensic psychiatric patients	4	3	✓	
25 Apr.	'Haderslev Arrest'	Local prison particularly for persons remanded in custody during investigation of their case	4	0	✓	

**Selected recommendations etc.<sup>4</sup>**

- Ensure precise and adequate documentation in records, and continuous quality control
  - Ensure correct verbal guidance on possibility of bringing the Department's decisions on disciplinary cell placement before the courts
  - Follow and analyse development in number of decisions and disciplinary cell days
  - Ensure that medicines are handled in accordance with applicable rules
- Ensure precise and adequate documentation in reports on the use of force
  - Clearly communicate zero tolerance towards violence and threats and extend guidelines on prevention and handling of violence and threats so that they include violence and threats among residents
  - Add information in the house rules on residents' possibilities of complaining about conditions at the centre
  - Increase focus on well-being and safety for children and young people staying at the centre – and, among other things, consider establishing a family section
- Ensure precise and adequate documentation in records, and continuous quality control
  - Handle requests from inmates as quickly as possible and continuously assess whether there are requests that need to be prioritised
  - Ensure that medicine storage follows applicable legislation and that handling of medicines follows the institution's procedures
  - Draw up instructions for abstinence treatment and train staff in the contents of the instructions
- Ensure precise and adequate documentation in records, and continuous quality control
  - Ensure that the inmate has understood the guidance on his or her rights during interrogation and on the possibility of complaint
- Ensure that the inmate is not placed in a disciplinary cell longer than necessary, that the inmate is kept active and has sufficient liquids so that thrombosis is prevented, and that the inmate has access to food, drink and visits to the toilet
  - Ensure that staff know how adverse psychological effects of placement in disciplinary cell are prevented
  - Inform healthcare staff of inmates in solitary confinement
  - Ensure that medicines are handled in accordance with applicable rules
- Increase focus on correct reporting of the use of force
  - Establish appropriate quality control of reports on the use of force
  - Carry out and document debriefings with patients when the forcible measures have ended
- Ensure precise and adequate documentation in records, and continuous quality control
  - Update and supplement house rules with a more detailed description of why, how and when urine sampling and searches are done, and access to complaint in that connection
  - Store medicines according to applicable legislation



## Where did we go in 2019?

When	Where	What	With whom did we speak?		Who also participated? <sup>1</sup>	
			Users <sup>2</sup>	Relatives etc. <sup>3</sup>	DIGNITY	IMR
30 Apr.	'Næstved Arrest'	Local prison particularly for persons remanded in custody during investigation of their case	4	0	✓	✓
7 May	'Chiligruppen, Lystrup'	Private social residential facility for adults with problematic behaviour or sentenced to placement in an institution	4	3	✓	✓
8 May	'Aarhus Arrest'	Local prison particularly for persons remanded in custody during investigation of their case	8	0	✓	✓
22 May	'Fonden Landlyst', Hadsund	Private social residential facility for mentally deficient adults with mental disorders	3	3	✓	✓
23 May	'Regionspsykiatrien Randers'	An intensive and emergency bed unit for general and forensic psychiatric patients and a bed unit for general psychiatric patients	7	4	✓	✓
3 June	'Pension Brøndbyhus', Brøndby Strand	Halfway house under the Prison and Probation Service, particularly for persons who are serving the last part of their sentence or who are under supervision	3	0	✓	✓
6 June	'Horserød Fængsel'	Open prison with closed section, particularly for persons serving a sentence	17	0	✓	

**Selected recommendations etc.<sup>4</sup>**

- Ensure precise and adequate documentation in records, and continuous quality control
- Store medicines according to applicable legislation
- Update instructions on handover of medicines so that they are in accordance with the requirements of applicable legislation
- Not to use rooms of under eight square metres for double occupancy

- Draw up instructions for the use of force and discuss them regularly with staff

- Ensure correct verbal guidance on possibility of bringing the Department's decisions on disciplinary cell placement before the courts
- Follow and analyse development in number of decisions and days in disciplinary cell
- Mark poured out medicine according to the rules and handle excess medicine in accordance with the rules
- Draw up instructions for observation of inmates in abstinence treatment

*The monitoring visit did not give rise to recommendations.*

- Maintain protocols on the use of force in accordance with applicable regulations
- Document that debriefings have been carried out

*The monitoring visit did not give rise to recommendations.*

- Ensure precise and adequate documentation in records, and continuous quality control
- Inform doctor or healthcare staff of inmates placed in disciplinary cell and the expected duration of the placement
- Refer inmates to doctor or dentist without undue delay
- Draw up instructions for the nurses' duties when a doctor is not present, and for treatment of abstinence



## Where did we go in 2019?

When	Where	What	With whom did we speak?		Who also participated? <sup>1</sup>	
			Users <sup>2</sup>	Relatives etc. <sup>3</sup>	DIGNITY	IMR
12-13 June	'Psykiatrisk Afdeling Middelfart'	Six 24-hour units for forensic psychiatric patients	13	0	✓	
20 Aug.	'Rønbæk Fængsel', Skærbæk	Open prison with closed section, particularly for persons serving a sentence	14	0	✓	
29-30 Aug.	'Psykiatrien Øst, Roskilde'	Three integrated bed units and a psychiatric emergency unit for general and forensic psychiatric patients	18	5	✓	✓
3-4 Sep.	'Ringe Fængsel'	Closed prison for persons who are serving a sentence and who are sentenced to be deported	22	0	✓	✓
24 Sep.	'Retspsykiatrisk Afdeling, Skejby'	Two bed units for forensic psychiatric patients	8	13	✓	✓
25 Sep.	'Vejle Arrest'	Local prison particularly for persons remanded in custody during investigation of their case	12	0	✓	
1 Oct.	'Køge Arrest'	Local prison particularly for persons remanded in custody during investigation of their case	11	0	✓	✓
9 Oct.	'Roskilde Arrest'	Local prison particularly for persons remanded in custody during investigation of their case	7	0	✓	✓



**Selected recommendations etc.<sup>4</sup>**

*Still pending at the time of going to press.*

- Ensure precise and adequate documentation in records, and continuous quality control
- Inform doctor or healthcare staff of inmates placed in disciplinary cell and the expected duration of the placement

- Ensure that management continuously receive and actively use statistics regarding the duration of forcible measures
- Maintain use of force protocols in accordance with the regulations
- Systematically carry out and document debriefings in accordance with regulations
- Draw up guidelines on prevention and follow-up of violence and threats between patients

- Ensure that interpreters are used to the necessary extent
- Ensure that staff consider using a handcuff transport belt in cases involving transport of inmates over longer distances
- Ensure that the rules are observed when inmates are locked up in their own cells

*Two own-initiative cases opened about the use of cell No. 709 and payment for hospital treatment of foreign nationals sentenced to deportation.*

*Still pending at the time of going to press.*

- Ensure that prison officers who have written a report on a disciplinary matter or have been involved in the matter do not attend the interrogation
- Inform healthcare staff of inmates placed in disciplinary cell and the expected duration of the placement
- Ensure precise and adequate documentation in records, and continuous quality control
- Update instructions for handing out medicines and draw up instructions for treatment of abstinence

- Ensure that during disciplinary hearings no weight is attached to the inmate's negative attitude as evidence that the inmate has committed a disciplinary violation
- Deduct the time an inmate has been temporarily excluded from association from a subsequent placement in disciplinary cell
- Ensure that healthcare staff are aware of the special circumstances applicable to healthcare service of persons deprived of liberty, and ensure the quickest possible response to cell calls so the waiting time is 20 minutes at most

- Increase focus on the inmate understanding what is said during interrogation, and increase use of interpreter
- Inform doctor of inmates placed in disciplinary cell and the expected duration of the placement
- Not to use rooms of under eight square metres for double occupancy
- Ensure that inmates can call a prison officer in order to go to the toilet during evening or night hours



## Where did we go in 2019?

When	Where	What	With whom did we speak?		Who also participated? <sup>1</sup>	
			Users <sup>2</sup>	Relatives etc. <sup>3</sup>	DIGNITY	IMR
22 Oct.	'Særforanstaltningen Grevenlund', Odense	Municipal social residential facility for adults with a mental disorder, pervasive behavioural disorders, disruptive behaviour and sentenced to placement in an institution	2	2	✓	
24 Oct.	'Lunden', Brøndby	Regional social psychiatric residential facility for adults with psycho-social difficulties, misuse of intoxicants, disruptive behaviour and sentenced to be placed in an institution	6	2	✓	✓

**Selected recommendations etc.<sup>4</sup>**

*Still pending at the time of going to press.*

- Ensure that the board with risk assessment of the residents is placed so that it is not accessible or visible to others than staff
- Keep statistics on the incidence of violence and threats among residents, and continuously analyse the statistics to find causes and patterns
- Maintain focus on work environment problems continuing not to have a spill-over effect on residents' conditions
- Solve problems in relation to handling of medicines and ensure correct recording of administration of medicines, and that unintended incidents are not under-reported

## Monitoring activities – children

### Theme for 2019

#### Younger children placed in social care

The target group for monitoring visits in 2019 was children between 6 and 12 years who were placed outside their home in an accommodation facility or a residential institution.

The institutions visited by the Ombudsman's monitoring teams as part of the theme typically also held children and young people placed in care who were outside the target group in terms of age. The year's monitoring visits encompassed – regardless of the target group – all children and young people at the accommodation facilities and residential institutions visited.

As part of the theme, the Ombudsman's monitoring teams visited three municipal residential institutions and five private accommodation facilities and focused particularly on

- use of physical force
- education
- contact with relatives

#### Examples of important conclusions

- Several institutions and facilities lack adequate knowledge of legislation on the use of force.
- Several in-house schools experience challenges with regard to observing the rules on exemption from school subjects.
- Generally, the institutions are good at supporting the children and young people's contact with their relatives.

#### The Ombudsman generally recommends

- that accommodation facilities and residential institutions ensure
  - that staff are familiar with the legislation on the use of force
  - that the deadlines for recording and reporting use of force are observed
  - that children, young people and parents are informed on arrival of their rights in relation to, among other things, the use of force
- that accommodation facilities and residential institutions with in-house schools ensure that the rules on exemption from lessons in school subjects are observed
- that accommodation facilities and residential institutions ensure that their medicines instructions observe applicable rules and that the medicines in the facilities and institutions are handled correctly.

See the Ombudsman's specific recommendations (extracts) in the tables on pages 92-95.

#### Cases concluded in 2019 in relation to monitoring activities

12 cases opened on the Ombudsman's own initiative were concluded in 2019. **Eight** of these cases were opened in direct continuation of monitoring visits. *Three of the cases resulted in criticism or informal recommendations.*

Reports on the themes for our monitoring visits can be found at [www.ombudsmanden.dk](http://www.ombudsmanden.dk) by clicking next to the small globe icon at the top of the site, selecting 'English' and clicking 'Read more' under the heading 'About the Ombudsman and complaints' and then 'Publications'.

### **Selected investigations**

#### **Secure residential institutions rejected young asylum seekers without age determination:**

During a monitoring visit to a local prison, the monitoring team encountered an underage asylum seeker who was remanded in custody. The court had decided that the inmate was to stay there until a place became available in a secure residential institution. However, two secure residential institutions had refused to accept the young person because his age was in doubt and an examination to determine his age had not yet been carried out. The Ombudsman raised the question with the region whether secure residential institutions were entitled to refuse a young asylum seeker if his or her age was in doubt. The region agreed with the Ombudsman that it is the courts and certain administrative authorities which have the power to make decisions on the placement of children and young people in secure residential institutions. The two secure residential institutions' practice of refusing young people without age determination would therefore be changed.

**The Ombudsman criticised a municipality's supervision of teaching in a secure residential institution's in-house school:** In continuation of a monitoring visit to a secure residential institution, the Ombudsman received a monitoring report on the teaching in the institution's in-house school. The Ombudsman criticised the municipality's supervision of the teaching as it was not possible to assess on the basis of the report whether the pupils of the in-house school received schooling which measured up to what is ordinarily required in ordinary primary and lower secondary schools. The municipality accounted for the measures which it had since implemented in order to improve its supervision of the in-house schools in the municipality, and the Ombudsman therefore took no further steps in the matter.

#### **The Ombudsman opened a case concerning the duty of children's asylum centres to notify the municipality when unaccompanied minors disappeared or stayed away:**

During a monitoring visit to a children's asylum centre, the Ombudsman's monitoring team was informed that the Centre did not notify the municipality if a minor about whom the Centre found it had a duty to notify the municipality disappeared or stayed away. In those cases, the notification form was indeed completed but it was only sent to the municipality if the minor returned. In that connection, the Ombudsman opened a case with the Danish Immigration Service. From replies in the case, the Ombudsman noted that any notifications under the Act on Social Services which were in progress would in future always be sent to the municipality, whether or not the minor stayed away while the case was being processed. Furthermore, a notification would always be sent if a child or young person disappeared. On that basis, the Ombudsman took no further steps in the matter.

**The Ombudsman criticised that a minor was placed in a prison in which minors were not permitted to serve a sentence:** When visiting a closed prison in which minors were not permitted to serve a sentence, the monitoring team encountered a 17-year-old boy. The Ombudsman criticised that the 17-year-old had been placed in a prison in which according to the rules minors could not serve a sentence. In addition, the Ombudsman noted the initiatives which were subsequently taken to ensure that staff were familiar with the rules on 15-17-year-olds – including the rules specifying the closed institutions in which minors can be placed. (News stories published on 31 May 2018 and 26 March 2019).

## Where did we go in 2019?

When	Where	What	With whom did we speak?		Who also participated?¹	
			Users²	Relatives etc.³	DIGNITY	IMR
	<b>11 visits in total</b>		<b>93 talks</b>	<b>51 talks</b>	<b>9 visits</b>	<b>4 visits</b>
28-29 Jan.	'Villa Kokkedal', Hørsholm	Open residential institution for children and young people	7	7		
4-5 Feb.	'Specialinstitutionen Skodsborg'	Residential institution with one open and two partly closed units for young people between 12 and 17 years	3	2	✓	✓
27 Mar.	'Grenen-Dalstrup', Grenå (unannounced follow-up visit)	Solitary confinement rooms in two secure units and in one specially secure unit for children and young people	0	0		
27-28 Mar.	'Mini-institutionerne Solbrinken, Toften og Sølyst', Aarhus	Open residential institution for children and young people	17	3	✓	
1-2 May	'Hostruphøj S/I', Hobro	Socio-educational accommodation facility for children and young people In-house school	10	2	✓	
2-3 May	'Altiden Solskovgaard ApS', Brovst	Socio-educational accommodation facility for children and young people In-house school	8	4	✓	

- 1) The Ombudsman collaborates with DIGNITY – Danish Institute Against Torture and the Danish Institute for Human Rights (IMR) on monitoring activities. Among other things, they participate in a number of monitoring visits.
- 2) Number of children and young people with whom the visiting teams had talks.
- 3) Number of relatives and guardians, if any, with whom the visiting teams had talks.

	<b>Selected recommendations etc.<sup>4</sup></b>
	<b>Visits concluded with recommendations: 9</b> <b>Visits concluded without recommendations: 1</b> <b>Not concluded at the time of going to press: 1</b>
	<ul style="list-style-type: none"> <li>• Ensure that the report forms on the use of force are completed correctly</li> <li>• Consider drawing up in-house guidelines on the use of force which explain in an easy-to-understand way what staff can and cannot do</li> <li>• Strive to keep deadlines for recording and reporting use of force</li> </ul>
	<ul style="list-style-type: none"> <li>• Bring house rules and information material on stays in partly closed unit in line with the applicable rules on access of young people to communal areas</li> <li>• Record violence and threats among young people</li> <li>• Continue efforts to ensure the safety of the young people in the institution, including follow-up on specific incidents</li> <li>• Consider drawing up a policy on prevention of violence and threats among the young people</li> </ul> <p><i>Case opened on the Ombudsman's own initiative about the legal basis for the institution's practice of locking windows and balcony doors of the young people's rooms at night when they are staying in the open part of the institution. The case was still pending at the time of going to press.</i></p>
	<i>The monitoring visit did not give rise to recommendations.</i>
	<ul style="list-style-type: none"> <li>• Ensure that children, young people and holders of parental responsibility are informed on arrival about their rights in relation to use of force</li> <li>• Adjust guidance on use of force to state that children and young people over the age of 12 can complain to the municipal council about use of physical force</li> </ul>
	<ul style="list-style-type: none"> <li>• Ensure that staff, including in-house school staff, are familiar with the scope of the Act on Adult Responsibility for Children and Young Persons in Placement Facilities</li> <li>• Ensure that incidents involving use of force in in-house school are reported to the municipality in which the institution is located</li> <li>• Ensure that the rules on exemption from classes in individual school subjects are observed</li> </ul>
	<ul style="list-style-type: none"> <li>• Ensure documentation of pedagogical-psychological assessment when pupils are exempted from classes in one or more school subjects</li> <li>• Draw up local instructions on handling of medicines which can be used in day-to-day work, cf. the applicable guidance on drawing up instructions</li> </ul>

4) The table contains selected, abbreviated recommendations. The full recommendations can be found (in Danish only) at [www.ombudsmanden.dk](http://www.ombudsmanden.dk), where concluding letters on monitoring visits are published on an ongoing basis. The table also contains information on cases opened on the Ombudsman's own initiative following monitoring visits.



## Where did we go in 2019?

When	Where	What	With whom did we speak?		Who also participated? <sup>1</sup>	
			Users <sup>2</sup>	Relatives etc. <sup>3</sup>	DIGNITY	IMR
14-15 May	'Det Socialpædagogiske opholdssted Munkegården', Avernakø	Socio-educational accommodation facility for children and young people In-house school	12 <sup>5</sup>	5	✓	✓
15-16 May	'Fonden Asgaard-Sødinge', Ringe	Socio-educational accommodation facility for children and young people In-house school	7	3	✓	✓
10-11 Sep.	'Magnoliegården', Hårlev	Open residential institution for children and young people In-house school	6	7	✓	
17-18 Sep.	'Skole- og behandlingshjemmet Orøstrand'	Socio-educational accommodation facility for children and young people In-house school	13	9	✓	✓
12-13 Nov.	'Marjatta Skolehjem', Tappernøje	Open residential institution for children and young people with mental disabilities	10 <sup>6</sup>	9	✓	

5) Including one resident over the age of 18.

6) Including nine residents over the age of 18.



**Selected recommendations etc.<sup>4</sup>**

- Consider a staff training course on careful grips in connection with use of force
  - Ensure observance of rules on full school curriculum
  - In cooperation with the municipality of location to update the agreement on education so that it is in accordance with applicable rules
- Ensure awareness that it is only pedagogical staff etc. who can use force according to the Act on Adult Responsibility for Children and Young Persons in Placement Facilities
  - Ensure that the children and young people are informed that use of force is put on record and that they are given the opportunity to give their own version of the incident and to document that it has happened
  - Review and assess the reported incidents involving use of force together with staff in order to learn from the incidents and prevent use of force
- Ensure that staff are sufficiently familiar with the conditions for using force under the Act on Adult Responsibility for Children and Young Persons in Placement Facilities
  - Continue endeavours to ensure that the rules on teaching the full school curriculum and number of teaching hours are observed
  - Consider drawing up written guidelines on prevention of violence and sexual abuse and on a procedure for handling suspected abuse
- Continue endeavours to prevent and bring down the number of incidents involving use of force
  - Ensure that poured-out medicine is marked with name of drug and date of pouring it out in accordance with the guidance on prescription and handling of medicines

*Still pending at the time of going to press.*

## Discussions, other activities etc. in relation to both children and adults

### Discussions with key authorities

Dialogue with the relevant authorities – both at the local level in connection with monitoring visits and at central level – plays an important part in the Om-

budsman's monitoring activities. The Ombudsman has meetings with key authorities on a regular basis together with the Danish Institute for Human Rights and DIGNITY – Danish Institute Against Torture.

When	Who	Subjects (extracts)
21 May	Department of Prisons and Probation	Overcrowding and understaffing in institutions under the Prison and Probation Service Written information for 15-17-year-olds on their rights and duties Result of internal review of placements in security cells Addiction treatment of remand prisoners Healthcare provision in Prison and Probation Service institutions
27 May	Ministry of Health	Non-statutory authority for interventions and house rules in the psychiatric sector So-called satellite pharmacies of the Prison and Probation Service Reduction in the use of force in the psychiatric sector Shielding in wards Capacity issue concerning the Maximum Security Department of Slagelse Psychiatric Hospital ('Sikringsafdelingen') Handling of medicines in private accommodation facilities Addiction treatment of children and young people in accommodation facilities
27 Aug.	Ministry for Children and Social Affairs	Knowledge of the legislation on the use of force Observance of deadlines for reporting incidents involving the use of force in secure residential institutions Young people' access to a toilet during solitary confinement and summoning of psychiatrist or emergency doctor for young people with mental disorders in solitary confinement Information for children, young people and their parents or guardians in connection with moving into accommodation facilities about their rights in relation to the use of force Addiction treatment of children and young people in accommodation facilities Feedback on reports of the use of force and guidance on complaints Security for residents in (social psychiatric) residential facilities and sector transfers
26 Sep.	Local Government Denmark	Briefing on the issues which the Ombudsman took up at a meeting with the Ministry of Social Affairs and the Interior in continuation of the thematic report for 2017 about young people in secure residential institutions, local prisons and state prisons Briefing on the most important conclusions in the thematic report for 2018
3 Oct.	Danish Immigration Service	Knowledge of the legislation on the use of force Information for children, young people and personal representatives in connection with moving into children's asylum centres on their rights in relation to the use of force Addiction treatment for children and young people in children's asylum centres
24 Oct.	Ministry of Social Affairs and the Interior together with Danish Regions	Non-statutory authority for interventions and house rules in the psychiatric sector
25 Oct.	Department of Prisons and Probation	Inadequate documentation in cases regarding exclusion from association Maintaining exclusion from association due to a lack of space in other places Guidance on forced and voluntary exclusion from association Overview of the total amount of time in which an inmate has been in solitary confinement

### Other activities

- Meetings with foreign (including Nordic) ombudsmen or 'national preventive mechanisms' etc., with discussion and exchange of experience
- Meeting with the UN Subcommittee on Prevention of Torture, etc. (SPT)
- Meeting with delegation from the European Council's Committee for the Prevention of Torture (CPT)
- Meetings with national monitoring authorities with discussion and exchange of experience

### Other results

- The Department of Prisons and Probation has emphasised the documentation requirements in cases involving the use of pepper spray. This has been done on the basis of a statement from the Ombudsman. (News story published on 21 March 2019).
- In meetings in 2017 and 2018 the Ombudsman discussed a number of issues with the Ministry of Health as a follow-up on the thematic report from 2016 on children and young people in the psychiatric sector. The Ministry then took the following initiatives:
  - Information material was prepared for children and young people and their relatives on the use of force and their rights in the psychiatric sector, in collaboration with the National Council for Children and the Danish Mental Health Fund.
  - Guidance on the use of force etc. was clarified and spelled out in greater detail, among other things in relation to recording use of belt restraints during stomach tube feeding and in relation to medical assessment of children and young people who fall asleep while immobilised with belt restraints. (News story published on 23 January 2019).
- The Ombudsman opened a case about the Central Denmark Region's practice of making voluntary agreements with children and young people in secure residential institutions that they would hand over their clothes for washing on arrival at the institution with a view to, among other things, degrading or destroying any illegal drugs hidden in the clothes. Over the course of the case, the Region decided to stop this practice with reference to the Ombudsman's enquiry and a monitoring report from the local social supervisory authority according to whose assessment the Region did not have statutory authority for its practice. On that basis, and because the Act on Adult Responsibility for Children and Young Persons in Placement Facilities had been changed in the meantime, the Ombudsman decided to close the case.
- On 1 February 2019 new rules on education provision for inmates of compulsory school age came into force. According to the rules, inmates (remand prisoners and inmates serving a sentence) of compulsory school age are entitled to schooling which measures up to what is ordinarily required in primary and lower secondary schools. The rules were introduced in continuation of a case regarding conditions for 15-17-year old inmates in Prison and Probation Service institutions which the Ombudsman had opened on his own initiative. (News stories published on 5 September 2017, 4 July 2018 and 26 March 2019).

**Monitoring activities**

# **Accessibility for persons with disabilities**

## Monitoring visits to investigate accessibility for persons with disabilities

**Where:** The Ombudsman carries out monitoring visits to investigate the accessibility of public buildings, such as primary and lower secondary schools, other educational establishments, town halls, libraries, hospitals and polling stations.

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

**How:** During monitoring visits, the Ombudsman's monitoring teams are shown around the buildings. The Ombudsman's monitoring teams bring along measuring equipment to check whether, for instance, the dimensions of toilet facilities for persons with disabilities and of lifts are in accordance with building regulations.

**Who:** The Monitoring Department carries out the monitoring visits regarding accessibility. A wheelchair user from the Danish Association of the Physically Disabled and a consultant from the Danish Association of the Blind participate in these monitoring visits as consultants. In addition, the Ombudsman's special advisor on children's issues has participated in monitoring visits to primary and lower secondary schools.

## Monitoring visits in 2019 to investigate accessibility for persons with disabilities

When	Where	What
1 October	'Lillevang Skole, Afd. Skovvang', Allerød	Primary and lower secondary school with integrated special needs classes for pupils with mobility disabilities and often accompanying specific learning difficulties
11 December	'Sundhedscenter Odsherred', Nykøbing Sj.	Healthcare centre with municipal and regional healthcare facilities

*The case regarding 'Sundhedscenter Odsherred' was still pending at the time of going to press.*

### Conclusion of the theme on accessibility in the teaching and education sector

In the period 2014-2019, the Ombudsman had 'Teaching and education' as a general theme for the monitoring visits to investigate accessibility for persons with disabilities. The aim of the Ombudsman's focus on this theme was to highlight the importance of persons with disabilities being able to attend classes and to get an education on an equal footing with other persons.

In connection with the theme, members of the Ombudsman's staff carried out monitoring visits to three primary and lower secondary schools with specialised units for pupils with disabilities, an upper secondary school, a technical school, a teacher training college and a university.

In all these schools and other educational institutions, the monitoring teams detected conditions which could and should be improved. The Ombudsman thus gave recommendations on, for instance, one-level accessibility, signposting, layout of disabled toilets, disability parking and accessibility to outdoor areas, such as playgrounds.

In general, the Ombudsman has experienced responsiveness from managements of the schools

and other educational establishments. It is also the Ombudsman's view that the monitoring visits have generally given managements a better understanding of the challenges which pupils and students with disabilities face.

### New theme

For some time to come, the Ombudsman will carry out monitoring visits to investigate accessibility in healthcare centres. During these monitoring visits, focus will be on the communal areas of the healthcare centres and on the parts of the healthcare centres which are used by public authorities.

In that connection, members of the Ombudsman's staff carried out a monitoring visit in December 2019 to the healthcare centre in Odsherred ('Sundhedscenter Odsherred').

### Other activities

The Ombudsman collaborates with the Danish Institute for Human Rights and the Danish Disability Council to facilitate, protect and monitor the implementation of the UN Convention on the Rights of Persons with Disabilities. As part of this collaboration, the Ombudsman held two meetings with these collaborative parties in 2019.

More information about the Ombudsman's activities in relation to equal treatment of persons with disabilities and the Ombudsman's reports on monitoring visits to investigate accessibility for persons with disabilities can be found at [www.ombudsmanden.dk/handicap/](http://www.ombudsmanden.dk/handicap/) (in Danish only).

**Monitoring activities**

# **Forced deportations**



## Monitoring of forced deportations

**What:** The Ombudsman monitors forced deportations by the Danish police of foreign nationals without legal residence in Denmark. In addition, the Ombudsman monitors forced deportations arranged by other EU member states at the request of the European Border and Coast Guard Agency, Frontex.

**Why:** The monitoring of forced deportations carried out by the Danish police is especially aimed at ensuring that the police carry out the forced deportations 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 – and good administrative practice.

The same applies in the case of monitoring forced deportations arranged by other EU member states. Here, however, the Ombudsman does not assess whether the deportations are carried out in compliance with good administrative practice.

**How:** Members of the Ombudsman's staff participate in forced deportations. In some deportations the Ombudsman only monitors the period from the foreign citizen is collected and until the plane is boarded.

The Ombudsman's monitoring activity is particularly focused on use of force, separation of families, vulnerable groups (such as persons with health problems), prior contact and information, the safety assessment prior to the deportation and aborted deportations. When monitoring forced deportations by the Danish police, the Ombudsman also focuses on the police's deportation report.

In addition to participating in specific deportations, the Ombudsman reviews about 50 concluded deportation cases every year.

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

## Forced deportations monitored in 2019<sup>1</sup>

When	Number of persons comprised by the deportation	Use of force during deportation?	Deportation completed?	
<b>10 deportations in total</b>	<b>11 persons</b>	<b>5 deportations</b>	<b>8 completed 2 aborted</b>	
26 March	1	No	Yes	
6 May	2	Yes	Yes	
23 September	1	No	Yes	
8 October	1	No	Yes	
8 October	1	Yes	Yes	
14 October	1	Yes	No	
18 November	1	Yes	Yes	
25 November	1	No	Yes	
3 December	1	Yes	No	
9 December	1	No	Yes	

- 1) In 2019, the destinations of the deportations monitored by the Ombudsman included Iran, Nigeria, Afghanistan and Pakistan.
- 2) At a number of deportations, the Ombudsman monitors the procedure merely from the time when the foreign national is collected by police until boarding.

	Comments
	<p><b>Deportation cases completed without criticism of the police: 8</b>  <b>Deportation cases still pending at the time of going to press: 2</b></p>
	<p>Forced deportation by scheduled flight of a 26-year-old man.</p>
	<p>Forced deportation by scheduled flight of a 45-year-old woman and a 40-year-old man. The forced deportation was only partially monitored by a member of staff from the Ombudsman's office, namely from the time when the police collected the foreign nationals and until they changed flights in Germany to a flight arranged by the EU Border and Coast Guard Agency, Frontex. Force was used in the form of manual restraint on the male foreign national.</p>
	<p>Forced deportation (partially escorted<sup>2</sup>) by scheduled flight of a 33-year-old man.</p>
	<p>Forced deportation (partially escorted<sup>2</sup>) by scheduled flight of a 26-year-old man.</p>
	<p>Forced deportation (partially escorted<sup>2</sup>) by scheduled flight of a 39-year-old man. Force was used in the form of a transport belt with one hand strapped.</p>
	<p>Forced deportation (partially escorted<sup>2</sup>) by scheduled flight of a 44-year-old woman. Force was used in the form of a transport belt with hands strapped and manual restraint.</p>
	<p>Forced deportation by scheduled flight of a 44-year-old woman. Force was used in the form of manual restraint, helmet, adult diaper and transport belt with hands, elbows and ankle strapped.</p> <p><i>Case still pending at the time of going to press.</i></p>
	<p>Forced deportation (partially escorted<sup>2</sup>) by scheduled flight of a 33-year-old woman.</p>
	<p>Forced deportation by scheduled flight of a 49-year-old man. Force was used in the form of a transport belt with hands strapped and manual restraint.</p>
	<p>Forced deportation by scheduled flight of a 32-year-old woman.</p> <p><i>Case still pending at the time of going to press.</i></p>

## Examples of important activities in 2019

### Deportations in which Ombudsman representatives participated

In 2019, legal case officers from the Ombudsman's office were present at 10 forced deportations of foreign nationals. The Ombudsman did not express criticism of the police work in any of the eight deportation cases concluded by the Ombudsman in 2019. The Ombudsman assessed that the deportations were carried out within Danish and international rules, including with respect for the individual and without unnecessary use of force. Further, the Ombudsman had no comments on the documentation in the cases. Two of the deportation cases were still pending at the time of going to press.

### Concluded cases

As stated in the Parliamentary Ombudsman's Annual Report for 2018, the Ombudsman reviewed the case files in that year of 77 deportation cases from 2016 and 2017 which had been concluded by the police. In five of these cases, the Ombudsman's review caused him to raise questions with the National Police. The Ombudsman concluded the five cases in 2019.

Two of the cases concerned inadequate documentation that it was necessary for the police to use force during the deportation. One of these cases has been published (Case No. 2019-23). Two other cases concerned a lack of documentation to show that the foreign nationals were offered to see a doctor after the forced deportation was aborted. The Ombudsman expressed criticism of the police in all four cases. The fifth case concerned whether or not a final decision that the foreign national could be deported had been made before the forced deportation was

initiated. After receiving the National Police's comments on the case, the Ombudsman took no further action.

In addition, in a case concluded in 2019 the Ombudsman found that he did not have grounds for repudiating the assessment by the National Police that – due to, among other things, safety considerations – Danish police officers did not have an obligation to intervene towards a foreign chief of police during a forced deportation of foreign nationals. (Case No. 2019-6).

Finally, in another case concluded in 2019 the Ombudsman found that he could not criticise that the police use force under specific conditions to reduce screaming and shouting during deportations. However, the Ombudsman recommended the National Police to include these conditions in the internal guidelines of the police. (Case No. 2019-4).

### Annual review

In 2019, the Ombudsman reviewed the case files in 52 of the deportation cases from 2018 which had been concluded by the police. The final result of the review was still pending at the time of going to press.

### Discussions

In 2019, the Ombudsman had a dialogue meeting with the National Police, the National Immigration Centre, and North Zealand Police, the North Zealand Immigration Centre, about the Ombudsman's monitoring of forced deportations carried out by the police. In addition, the Ombudsman had a meeting with the Danish Refugee Council.

**International collaboration**

In 2019, a legal case officer from the Ombudsman's office participated in a European conference in Slovakia on monitoring of forced deportations.

**Deportations organised by other EU member states**

A legal case officer from the Ombudsman's office monitored the forced deportation by German police of 18 foreign nationals by chartered plane from Germany to Tunisia in January 2019. Another legal case officer from the Ombudsman's office monitored the forced deportation by French police of 36 foreign nationals by chartered plane from France to Georgia in October 2019. The Ombudsman submitted his report directly to the European Border and Coast Guard Agency, Frontex.

## Case No. 19/02359

'Our child has ended up stuck between his school's recommendation that he repeat his classes one year – which we agree to – and the municipality's assessment that he has no need for that.' This was the essence of a complaint from the parents of a boy who, according to the rules about open enrolment, went to a special needs school in another municipality than the one where the family was living.

The Ombudsman forwarded the complaint to the then Ministry of Education as he found that the Ministry ought to be given the opportunity – on a general level – to consider who should decide if the boy had to repeat his classes one year. The Ministry wrote to the parents how the rules were to be understood in general. The Ministry wrote that it is the head of the school where the child is enrolled who decides the class grading, meaning that it is not the municipality.

The Ministry also wrote that 'question and answer information' would be posted on the Ministry's website in order to provide more transparency about the rules, for the benefit of pupils, parents, schools and municipalities.

**When the Ombudsman considers a complaint from an individual citizen, this may end up making a difference to several citizens in the same situation.**

## Case Nos. 19/01514 and 19/02747

'Can it be right that part of your accrued holiday pay is frozen at the introduction of a new holiday act and not paid out till you drop out of the labour market?' A citizen wanted the Ombudsman's reply to this question.

In his reply, the Ombudsman wrote that he was not able to help. The reason was that the rules on the freezing of accrued holiday pay follow directly from an Act passed by Parliament.

**The Ombudsman assesses if the authorities observe the Acts passed by Parliament. The Ombudsman does not consider whether legislation should be changed.**

## Case No. 19/02087

A woman complained to the Ombudsman that a municipality without prior agreement had cut down trees on her plot of land to gain access to a nearby stream.

It did not appear from the complaint that the woman had made an enquiry to the municipality. Therefore, the Ombudsman asked her to do so first.

**The Ombudsman does not normally consider complaints which the relevant authority has not had an opportunity to consider.**

## Case No. 19/02109

'In my opinion, SKAT (the Danish Customs and Tax Administration) has made case processing errors by not observing the binding ruling when conditions are met', a practising lawyer wrote to the Ombudsman on behalf of his client. The National Tax Tribunal had made a decision that the client was subject to taxation of his wages from an offshore company abroad – but that was inconsistent with the binding ruling by SKAT about the client not being subject to taxation in Denmark of wages earned in another country.

However, the conditions and terms which SKAT's binding ruling was initially based on were no longer valid, so the reply from SKAT was now without significance. Therefore, the Ombudsman could not help the lawyer and the client to obtain a better case result than the one the National Tax Tribunal had arrived at.

**In 2019, the Ombudsman concluded 260 cases about the tax authorities, including nine general own-initiative investigations. A selection of the cases can be found at the Taxation Division's page on [www.ombudsmanden.dk](http://www.ombudsmanden.dk).**

## Case No. 19/02133

The Ombudsman received an e-mail with a list of payments from a telephone company attached. In the subject line of the e-mail, it said 'Complaint 2' but otherwise the e-mail was without content. Besides, the e-mail was sent as an insecure e-mail, meaning without digital signature and encryption.

The Ombudsman was not to know who made the enquiry but he replied to the e-mail anyway. He wrote that an insecure e-mail without name and address is considered an anonymous complaint. And that according to the Ombudsman Act, the Ombudsman cannot consider anonymous complaints.

The Ombudsman also wrote that he could not consider a complaint about the private telephone company for that matter.

**The Ombudsman must know a complainant's identity. He is unable to consider anonymous complaints.**

## Case No. 19/01141

'The planning of the light railway in Aarhus at approximately 4 billion Danish kroner has taken place without incorporating full accessibility for people with disabilities. We find that it is inconsistent with the UN Convention on the Rights of Persons with Disabilities.' This is what members of a municipality's disability council wrote in a complaint to the Ombudsman. They were dissatisfied because some of the older local railway stations, which the new light railway used as stops, were not accessible for wheelchair users. The most glaring example of this was a station with a 20 cm gap between train and platform.

The Ombudsman reviewed the Danish and international legislation in the field. The rules did not give grounds for the requirement that all stops at the former local railways must be fully accessible for people with disabilities from the time the light railway started using them. For that matter, work was in progress on finding solutions which could improve accessibility at the older local railway stations for people with disabilities. Besides, people with disabilities could be transported between stations by the use of radio taxis and demand-responsive transport.

**The Ombudsman considers complaints about public buildings and constructions and monitors whether they comply with the requirements for disability accessibility. The monitoring team is assisted by two consultants with disabilities. From 2019, the Ombudsman focuses on disability accessibility in health centres.**

## Case No. 19/03280

In relation to a complaint case, the Ombudsman found out that a mailbox at the Administration and Services Agency of the Danish Ministry of Taxation could not receive secure mails even though citizens who wanted to complain about other matters than decisions by the tax authorities had to use the mailbox or send their complaints in the post.

After having been made aware of this problem, the Agency wrote to the Ombudsman that it was going to make sure that in future it would be possible to receive secure mails in the mailbox. After this, the Ombudsman closed the case.

**In 2019, the Ombudsman concluded 3,771 cases after having helped citizens further along with their case without initiating an investigation as such – for example by forwarding the case to the relevant authority.**



### Case No. 19/03388

A man was not happy with the quality of his cheese cutter. 'It is simply poor quality', he wrote to the Ombudsman. 'Hoping it will get handled with the manufacturer.'

One of the Ombudsman's employees telephoned the man and explained that it is the Ombudsman's task solely to keep an eye on whether authorities observe applicable laws and rules.

**It is stipulated in the Ombudsman Act that the Ombudsman cannot consider complaints about private parties – for example associations, private individuals and companies.**

### Case Nos. 18/02512 and 18/04747

An interest organisation complained to the Greenland Ombudsman about a refusal of access to public records from the Greenland Ministry of Fisheries, Hunting and Agriculture. The Greenland Ombudsman was unable to consider the case because she was disqualified. The Inatsisartut, the Parliament of Greenland, therefore forwarded the complaint to the Parliamentary Ombudsman, who investigated the case. The Ombudsman concluded that he could not criticise the Ministry's refusal of access to the records.

**The Parliamentary Ombudsman acts as ad hoc ombudsman for the Greenland Ombudsman, the Ombudsman for Inatsisartut. This means that the Parliamentary Ombudsman will consider complaint cases relating to Greenland authorities if the Greenland Ombudsman is disqualified in the cases.**

### Case No. 19/02812

After a break of a few years, a driving instructor wanted to resume the driving instructor business. It required a new driver's license with the approval that he was entitled to teach – but when the driving instructor showed up at the citizen service centre, he was informed that he could not be approved as motor cycle instructor because the police could not find him in the register. Therefore, he had to train as a driving instructor again in order to be entitled to teach driving a motor cycle. The driving instructor complained to the Ombudsman.

The Ombudsman found that the municipality ought to have the opportunity to review the case. Thus, he forwarded the complaint to the municipality. In cooperation with the police, the municipality found the missing registration. Hereafter, the driving instructor was able to have his driver's license renewed with the relevant approvals.

**In 2019, a municipality was the authority with prime responsibility in 1,678 of the cases concluded by the Ombudsman.**



**Brief  
overview  
of the year  
2019**

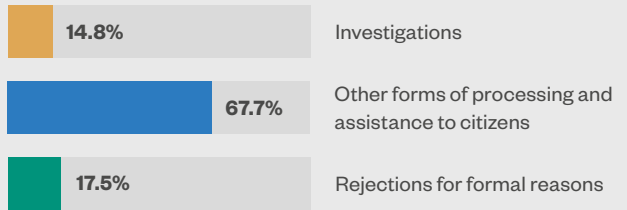


# The year in figures

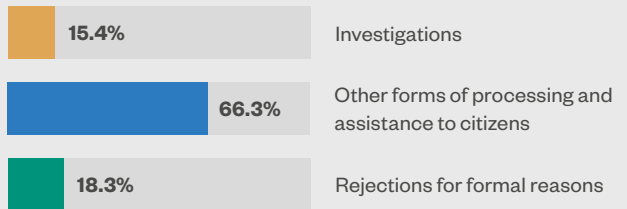
The following pages contain key figures for the cases processed by the Ombudsman in 2019. More information about the Ombudsman's work and the rules governing the Ombudsman's activities can be found on [www.ombudsmanden.dk](http://www.ombudsmanden.dk).

## Concluded cases<sup>1</sup>

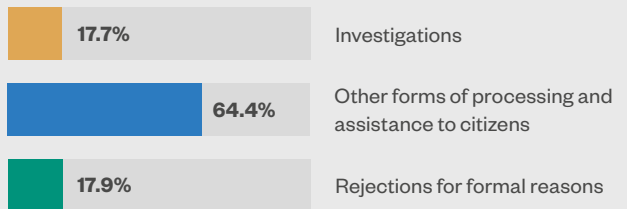
**2019**  
5,574 cases



**2018**  
4,955 cases



**2017**  
5,062 cases



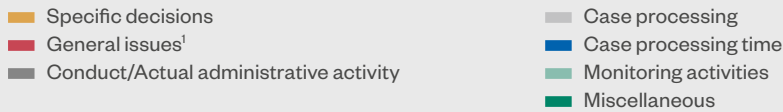
1) Administrative cases are not included. In addition, cases selected for collective review in connection with general own-initiative investigations are not normally included.

## What was the outcome of the cases?

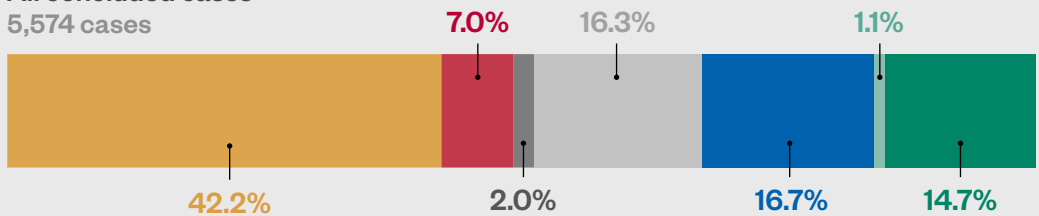
	Concluded cases
<b>1. Investigations</b>	
Full investigations	187
– of which cases with criticism, formal or informal recommendations etc.	105
Shortened investigations <sup>1</sup>	638
<b>Investigations, total</b>	<b>825</b>
<b>2. Other forms of processing and assistance to citizens</b>	
Various forms of intervention in cases where the avenues of processing by authorities had not been exhausted	2,162
– of which cases forwarded to authorities	1,277
The Ombudsman's review of the cases did not result in further investigation	1,177
Answers to enquiries, guidance etc.	432
<b>Other forms of processing and assistance to citizens, total</b>	<b>3,771</b>
<b>3. Rejections for formal reasons</b>	
Complaints which had been submitted too late to the Ombudsman	103
Cases where the complaint/appeal options to authorities had not been used – and could no longer be used	38
Cases which related to courts, judges or matters on which a court had made or could be expected to make a decision – and which were thus outside the Ombudsman's jurisdiction	149
Cases which concerned matters relating to Parliament, including legislative issues, and were thus outside the Ombudsman's jurisdiction	82
Complaints which related to other matters outside the Ombudsman's jurisdiction, including private legal matters	303
Complaints which were not clarified sufficiently to enable investigation and complaints which were withdrawn	267
Cases in which the Ombudsman declared himself disqualified	10
Anonymous approaches	26
<b>Rejections for formal reasons, total</b>	<b>978</b>
<b>Total (1-3)</b>	<b>5,574</b>

1) Shortened investigations comprise primarily cases in which the Ombudsman reviewed a complaint but decided not to obtain statements from the authorities because it was unlikely that a full investigation would result in criticism or recommendations. The category of shortened investigations also includes, among others, cases which were reopened by the authorities after the Ombudsman asked them for a statement (19 cases in 2019).

## What did the cases concern?



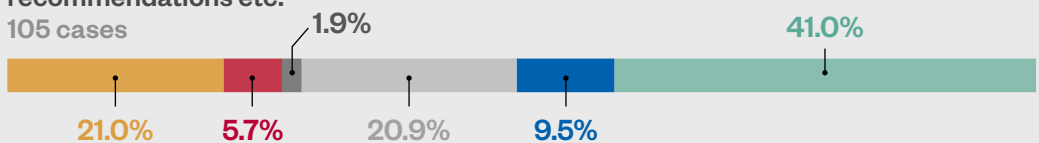
**All concluded cases**  
5,574 cases



**Investigations**  
825 cases



**Cases with criticism, formal or informal recommendations etc.**  
105 cases



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

## Which authorities etc. were involved?

### Cases concluded in 2019 - by authority etc.

Authority etc. with prime responsibility <sup>1</sup>	Investigations		Other forms of processing and assistance to citizens	Rejections for formal reasons	Total cases
	With criticism, formal or informal recommendations etc.	Without criticism, formal or informal recommendations etc.			
<b>A. Central authorities etc. (within the Ombudsman's jurisdiction)</b>					
<b>Ministry of Employment</b>					
The Department	0	2	4	0	6
Appeals Board for ATP etc.	0	0	2	0	2
Labour Market Insurance	1	1	32	4	38
Council of Appeal on Health and Safety at Work	0	3	0	0	3
Danish Working Environment Authority	0	0	1	0	1
ATP	0	0	1	0	1
Unemployment Insurance Complaints Centre	0	0	1	0	1
Board of Equal Treatment	1	6	1	1	9
Employees' Guarantee Fund	0	0	1	0	1
Danish Agency for Labour Market and Recruitment	0	1	10	1	12
<b>Total</b>	<b>2</b>	<b>13</b>	<b>53</b>	<b>6</b>	<b>74</b>
<b>Ministry of Children and Education</b>					
The Department	1	3	9	1	14
Danish Centre for Educational Environment	0	0	1	0	1
Special Education Appeals Board	0	0	2	0	2
National Agency for Education and Quality	0	3	17	2	22
Secondary education and vocational training establishments	0	0	13	0	13
<b>Total</b>	<b>1</b>	<b>6</b>	<b>42</b>	<b>3</b>	<b>52</b>

<sup>1</sup> The cases in Section A of the table have been classified under the ministries existing at the end of the year. Concluded cases relating to authorities which have been moved to another ministry, closed down or reorganised have as a general rule been classified under the ministries/authorities which had the remit for the relevant areas at the end of the year.



## Cases concluded in 2019 - by authority etc.

Authority etc. with prime responsibility <sup>1</sup>	Investigations		Other forms of processing and assistance to citizens	Rejections for formal reasons	Total cases
	With criticism, formal or informal recommendations etc.	Without criticism, formal or informal recommendations etc.			
<b>Ministry of Industry, Business and Financial Affairs</b>					
The Department	1	1	2	0	4
Psychiatric Patients' Board of Complaints	0	0	3	3	6
Energy Board of Appeal	0	3	1	0	4
Company Appeals Board	0	0	1	0	1
Danish Business Authority	0	0	9	3	12
Danish Financial Supervisory Authority	1	0	1	1	3
Danish Consumer Ombudsman	0	0	3	0	3
Danish Competition and Consumer Authority	0	1	1	1	3
Danish Competition Appeals Board	0	1	0	0	1
Danish Environment and Food Board of Appeal	0	9	22	1	32
Danish Appeals Boards Authority	0	2	24	2	28
Danish Town and Country Planning Board of Appeal	0	8	18	2	28
Danish Safety Technology Authority	0	1	1	1	3
Danish Storm Council	0	0	1	0	1
VisitDenmark	0	0	6	0	6
Vækstfonden – The Danish Growth Fund	0	0	1	1	2
<b>Total</b>	<b>2</b>	<b>26</b>	<b>94</b>	<b>15</b>	<b>137</b>
<b>Ministry of Finance</b>					
The Department	1	6	6	0	13
Agency for Digitisation	0	1	0	0	1
Agency for Modernisation	0	1	2	0	3
<b>Total</b>	<b>1</b>	<b>8</b>	<b>8</b>	<b>0</b>	<b>17</b>



## Cases concluded in 2019 – by authority etc.

Authority etc. with prime responsibility <sup>1</sup>	Investigations		Other forms of processing and assistance to citizens	Rejections for formal reasons	Total cases
	With criticism, formal or informal recommendations etc.	Without criticism, formal or informal recommendations etc.			
<b>Ministry of Defence</b>					
The Department	0	3	7	1	11
Defence Command Denmark	0	0	1	0	1
Danish Ministry of Defence Estate Agency	0	0	1	0	1
Danish Ministry of Defence Personnel Agency	0	1	4	0	5
Danish Ministry of Defence Accounting Agency	0	0	1	0	1
<b>Total</b>	<b>0</b>	<b>4</b>	<b>14</b>	<b>1</b>	<b>19</b>
<b>Ministry of Justice</b>					
The Department	3	11	37	4	55
Local prisons	0	1	18	0	19
Department of Civil Affairs	0	4	2	1	7
Danish Data Protection Agency	0	8	18	4	30
Independent Police Complaints Authority	0	1	6	3	10
Department of Prisons and Probation	5	26	52	22	105
Criminal Injuries Compensation Board	0	5	13	1	19
State prisons	3	14	156	13	186
Kriminalforsorgen i Frihed (Prison Service in Freedom)	0	4	6	1	11
Prison and Probation Service in Greenland	0	2	1	1	4
Regional offices of the Prison and Probation Service	14	23	31	5	73
The police	0	9	125	17	151
Danish Security and Intelligence Service (PET)	0	0	1	0	1
Danish Medico-Legal Council	0	0	1	0	1
Director of Public Prosecutions	0	5	14	2	21
Danish National Police	9	13	32	1	55
State prosecutors	0	14	38	6	58
Danish Intelligence Oversight Board	0	0	1	0	1
Immigration detention centres and departure centres	0	0	9	1	10
<b>Total</b>	<b>34</b>	<b>140</b>	<b>561</b>	<b>82</b>	<b>817</b>

## Cases concluded in 2019 - by authority etc.

Authority etc. with prime responsibility <sup>1</sup>	Investigations		Other forms of processing and assistance to citizens	Rejections for formal reasons	Total cases
	With criticism, formal or informal recommendations etc.	Without criticism, formal or informal recommendations etc.			
<b>Ministry of Ecclesiastical Affairs</b>					
The Department	0	1	14	2	17
Parishes	0	0	3	0	3
Dioceses	0	0	6	0	6
<b>Total</b>	<b>0</b>	<b>1</b>	<b>23</b>	<b>2</b>	<b>26</b>
<b>Ministry of Climate, Energy and Utilities</b>					
The Department	0	3	7	1	11
Energinet	0	0	4	0	4
Danish Energy Agency	0	0	2	0	2
Danish Utility Regulator	0	0	1	0	1
Danish Geodata Agency	0	1	0	2	3
Valuation Authority	0	2	0	0	2
<b>Total</b>	<b>0</b>	<b>6</b>	<b>14</b>	<b>3</b>	<b>23</b>
<b>Ministry of Culture</b>					
The Department	0	5	7	0	12
Danish Broadcasting Corporation (DR)	0	2	14	5	21
The Royal Theatre	0	0	1	0	1
Media Council for Children and Young People	0	0	1	0	1
Radio and Television Board	0	0	33	0	33
Danish National Archives	0	0	4	1	5
Agency for Culture and Palaces	0	1	1	3	5
Danish Arts Foundation	0	1	0	0	1
<b>Total</b>	<b>0</b>	<b>9</b>	<b>61</b>	<b>9</b>	<b>79</b>



## Cases concluded in 2019 - by authority etc.

Authority etc. with prime responsibility <sup>1</sup>	Investigations		Other forms of processing and assistance to citizens	Rejections for formal reasons	Total cases
	With criticism, formal or informal recommendations etc.	Without criticism, formal or informal recommendations etc.			
<b>Ministry of Environment and Food</b>					
The Department	0	4	10	2	16
Danish Fisheries Agency	0	0	4	0	4
Danish Veterinary and Food Administration	0	0	3	0	3
Danish Coastal Authority	0	1	7	3	11
Danish Agricultural Agency	0	0	3	0	3
Danish Environmental Protection Agency	0	2	5	1	8
Danish Nature Agency	0	0	8	2	10
<b>Total</b>	<b>0</b>	<b>7</b>	<b>40</b>	<b>8</b>	<b>55</b>
<b>Ministry of Taxation</b>					
The Department	0	7	5	3	15
Administration and Services Agency	0	1	2	0	3
Director of Legal Protection	0	1	3	0	4
Regional joint tax and assessment appeals boards	0	3	1	0	4
Danish Debt Collection Agency	0	5	44	6	55
National Tax Tribunal	3	26	5	1	35
Regional motor vehicles appeals boards	0	1	0	0	1
Danish Motor Vehicle Agency	0	0	16	1	17
Regional tax appeals boards	0	7	4	1	12
Tax Appeals Agency	2	11	18	5	36
Danish Tax Agency	3	7	49	8	67
Danish Gambling Authority	0	0	1	0	1
Danish Customs Agency	0	1	0	0	1
IT and Development Agency	0	0	1	0	1
Regional assessment appeals boards	0	1	1	0	2
Danish Property Assessment Agency	0	2	4	0	6
<b>Total</b>	<b>8</b>	<b>73</b>	<b>154</b>	<b>25</b>	<b>260</b>

## Cases concluded in 2019 - by authority etc.

Authority etc. with prime responsibility <sup>1</sup>	Investigations		Other forms of processing and assistance to citizens	Rejections for formal reasons	Total cases
	With criticism, formal or informal recommendations etc.	Without criticism, formal or informal recommendations etc.			
<b>Ministry of Social Affairs and the Interior</b>					
The Department	1	8	34	2	45
Danish National Board of Adoption	0	0	4	1	5
National Social Appeals Board <sup>2</sup>	8	228	318	56	610
Statistics Denmark	0	0	2	0	2
Agency of Family Law	1	3	75	23	102
Danish Supervisory Board of Psychological Practice	0	5	1	0	6
National Board of Social Services	0	0	1	0	1
<b>Total</b>	<b>10</b>	<b>244</b>	<b>435</b>	<b>82</b>	<b>771</b>
<b>Prime Minister's Office</b>					
The Department	1	1	4	1	7
High Commissioner of the Faroe Islands	0	0	1	0	1
<b>Total</b>	<b>1</b>	<b>1</b>	<b>5</b>	<b>1</b>	<b>8</b>
<b>Ministry of Health</b>					
The Department	0	1	17	2	20
Psychiatric Appeals Board	0	1	1	0	2
Danish Medicines Agency	0	1	0	2	3
Danish Agency for Patient Complaints	0	9	29	5	43
Danish Patient Safety Authority	0	3	26	2	31
National Health Data Agency	0	0	2	1	3
Danish Health Authority	0	0	4	0	4
Disciplinary Board of the Danish Healthcare System	0	7	12	2	21
<b>Total</b>	<b>0</b>	<b>22</b>	<b>91</b>	<b>14</b>	<b>127</b>

2) The figures do not include cases where the authority with prime responsibility was a board to which the National Social Appeals Board provides secretariat assistance.



## Cases concluded in 2019 - by authority etc.

Authority etc. with prime responsibility <sup>1</sup>	Investigations		Other forms of processing and assistance to citizens	Rejections for formal reasons	Total cases
	With criticism, formal or informal recommendations etc.	Without criticism, formal or informal recommendations etc.			
<b>Ministry of Transport and Housing</b>					
The Department	2	5	10	2	19
Banedanmark (Rail Net Denmark)	0	0	1	1	2
DSB (Danish State Railways)	0	1	9	2	12
Danish Road Traffic Authority	0	6	18	1	25
Danish Transport, Construction and Housing Authority	0	1	8	1	10
Danish Road Directorate	0	8	3	1	12
<b>Total</b>	<b>2</b>	<b>21</b>	<b>49</b>	<b>8</b>	<b>80</b>
<b>Ministry of Higher Education and Science</b>					
The Department	0	0	7	1	8
State Educational Grant and Loan Scheme Board of Appeal	0	5	2	1	8
Innovation Fund Denmark	0	0	1	0	1
Qualifications Board	0	1	1	0	2
Danish Committee on Research Misconduct	0	0	2	0	2
Danish Agency for Science and Higher Education	0	3	5	1	9
Danish Agency for Institutions and Educational Grants	0	4	10	1	15
Educational establishments	0	1	16	3	20
<b>Total</b>	<b>0</b>	<b>14</b>	<b>44</b>	<b>7</b>	<b>65</b>
<b>Ministry of Foreign Affairs</b>					
The Department	0	7	20	0	27
<b>Total</b>	<b>0</b>	<b>7</b>	<b>20</b>	<b>0</b>	<b>27</b>

## Cases concluded in 2019 - by authority etc.

Authority etc. with prime responsibility <sup>1</sup>	Investigations		Other forms of processing and assistance to citizens	Rejections for formal reasons	Total cases
	With criticism, formal or informal recommendations etc.	Without criticism, formal or informal recommendations etc.			
<b>Ministry of Immigration and Integration</b>					
The Department	4	13	25	22	64
Danish Agency for International Recruitment and Integration	0	0	7	0	7
Immigration Appeals Board	1	5	22	2	30
Danish Immigration Service	1	7	45	11	64
<b>Total</b>	<b>6</b>	<b>25</b>	<b>99</b>	<b>35</b>	<b>165</b>
<b>Central authorities etc., total</b>	<b>67</b>	<b>627</b>	<b>1,807</b>	<b>301</b>	<b>2,802</b>
<b>B. Municipal and regional authorities etc. (within the Ombudsman's jurisdiction)</b>					
Municipalities	16	74	1,406	182	1,678
Regions	6	7	62	14	89
Joint municipal or regional enterprises	0	8	2	0	10
<b>Total</b>	<b>22</b>	<b>89</b>	<b>1,470</b>	<b>196</b>	<b>1,777</b>
<b>C. Other authorities etc. within the Ombudsman's jurisdiction<sup>3</sup></b>					
Other authorities etc. within the Ombudsman's jurisdiction	16	4	108	19	147
<b>Total</b>	<b>16</b>	<b>4</b>	<b>108</b>	<b>19</b>	<b>147</b>
<b>D. Authorities etc. within the Ombudsman's jurisdiction, total</b>					
Central authorities etc., total (A)	67	627	1,807	301	2,802
Municipal and regional authorities etc., total (B)	22	89	1,470	196	1,777
Other authorities etc. within the Ombudsman's jurisdiction, total (C)	16	4	108	19	147
<b>Total</b>	<b>105</b>	<b>720</b>	<b>3,385</b>	<b>516</b>	<b>4,726</b>

3) The figures comprise private institutions which fall within the Ombudsman's jurisdiction in connection with OPCAT or in the children's sector and other institutions etc. which have been included under the Ombudsman's jurisdiction. In 2019, the Ombudsman made no decisions in pursuance of section 7(4) of the Ombudsman Act that his jurisdiction was to extend to a specific company, institution, association etc.



## Cases concluded in 2019 - by authority etc.

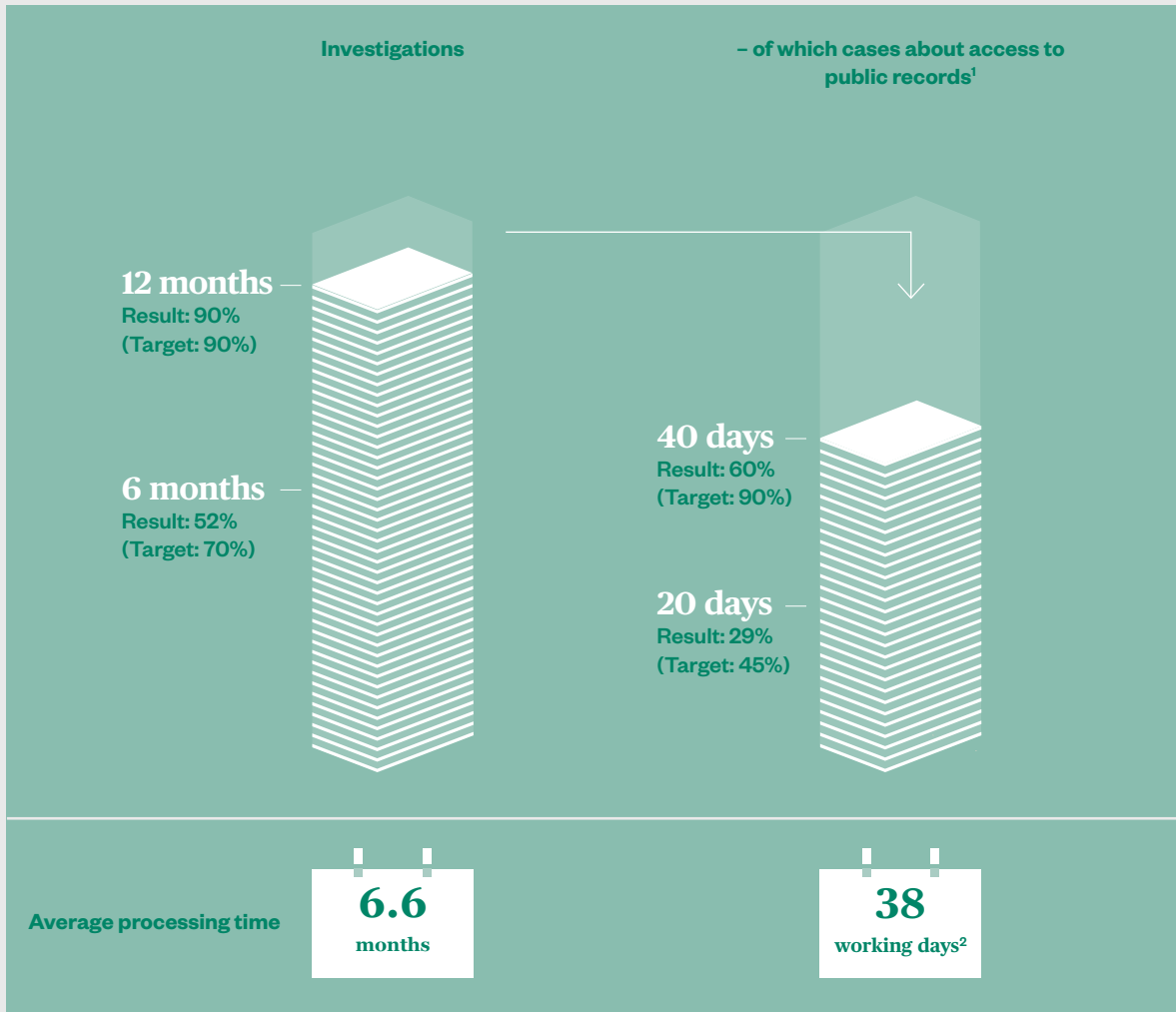
Authority etc. with prime responsibility <sup>1</sup>	Investigations		Other forms of processing and assistance to citizens	Rejections for formal reasons	Total cases
	With criticism, formal or informal recommendations etc.	Without criticism, formal or informal recommendations etc.			
<b>E. Institutions etc. outside the Ombudsman's jurisdiction</b>					
1. Courts etc., cf. section 7(2) of the Ombudsman Act	0	0	0	72	72
2. Dispute tribunals, cf. section 7(3) of the Ombudsman Act	0	0	0	22	22
3. Other institutions, associations, enterprises and persons outside the Ombudsman's jurisdiction	0	0	6	334	340
<b>Total</b>	<b>0</b>	<b>0</b>	<b>6</b>	<b>428</b>	<b>434</b>
<b>F. Cases not relating to specific institutions etc.</b>					
	<b>0</b>	<b>0</b>	<b>380</b>	<b>34</b>	<b>414</b>
<b>Grand total (A-F total)</b>	<b>105</b>	<b>720</b>	<b>3,771</b>	<b>978</b>	<b>5,574</b>



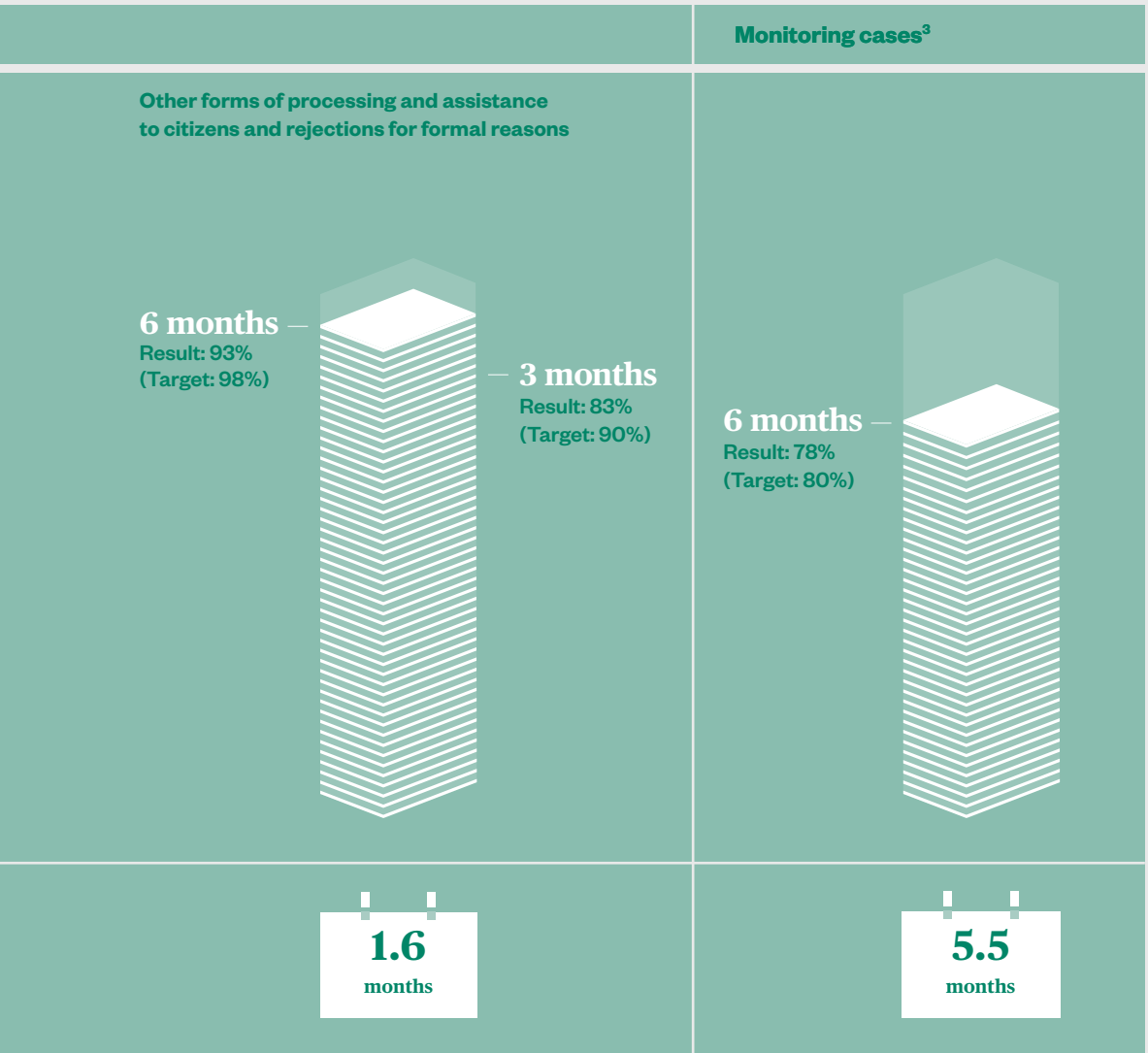


## Processing times

### Complaint cases and own-initiative investigations



- 1) Complaint cases about access to public records under the Access to Public Administration Files Act, the Environmental Information Act, the Administration of Justice Act etc., with the exception of cases about the right of a party to a case to obtain access to documents of the case. On 1 May 2019, a division dedicated to processing cases about access to public records was set up at the Ombudsman's office with a view to, among other things, reducing processing times for these cases.
- 2) Processing times for cases about access to public records are stated in working days – as in the Access to Public Administration Files Act. The number of working days is calculated from the date on which the Ombudsman had received replies from the citizen and the authorities and the case was thus ready for final processing (the 'maturity date').



3) Concluded cases concerning monitoring visits made to institutions for children and for adults, monitoring visits to investigate physical accessibility for persons with disabilities and monitoring of forced deportations of foreign nationals by Danish police. The processing time for a monitoring case is calculated from the date of the monitoring visit or deportation.

## Other facts

The Ombudsman declared himself **disqualified** in 10 cases in 2019. Parliament's Legal Affairs Committee assigned these cases to Henrik Bloch Andersen, High Court Judge. The Ombudsman's office provided secretariat assistance in connection with the processing of the cases.

The Faroese Lagting (the Parliament) did not ask the Ombudsman to act as **ad hoc ombudsman** for the Faroese Parliamentary Ombudsman in any cases in 2019. The Inatsisartut (the Parliament of Greenland) asked the Ombudsman to act as ad hoc ombudsman for the Ombudsman for Inatsisartut in two cases.





# **Statement of revenue and expenditure 2019**

## The Ombudsman's ordinary activities

	DKK
<b>Revenue</b>	
Revenue	61,000
<b>Total revenue</b>	<b>61,000</b>
<b>Expenditure</b>	
Wages and salaries, pension costs	71,625,000
Rent	5,460,000
Staff and organisation, including staff welfare	302,000
Continuing training/education	742,000
Books and library	73,000
Specialist databases	1,369,000
Newspapers and journals	220,000
Communication	846,000
Computer systems – operations and development	2,215,000
Computer hardware	252,000
Telephony and broadband	460,000
Premises – repairs and maintenance	1,236,000
Furniture, fixtures and fittings	631,000
Cleaning, laundry and refuse collection	307,000
Heating and electricity	531,000
Premises – other expenditure	369,000
Travel	231,000
Entertainment and meals	115,000
Contribution to financial support scheme for trainees	385,000
Stationery and office supplies	224,000
Other goods and services	2,675,000
<b>Total expenditure</b>	<b>90,268,000</b>
<b>Total expenditure (net)</b>	<b>90,207,000</b>
Government appropriation	88,100,000
<b>Result for the year</b>	<b>-2,107,000</b>

## Public service pensions

	DKK
Revenue	3,255,000
Expenditure	2,312,000
<b>Result for the year</b>	<b>943,000</b>

## Collaboration agreement with Ministry of Foreign Affairs

	DKK
Revenue	568,000
Expenditure	568,000
<b>Result for the year</b>	<b>0</b>

## Collaboration project with China

	DKK
Revenue	1,174,000
Expenditure	1,174,000
<b>Result for the year</b>	<b>0</b>



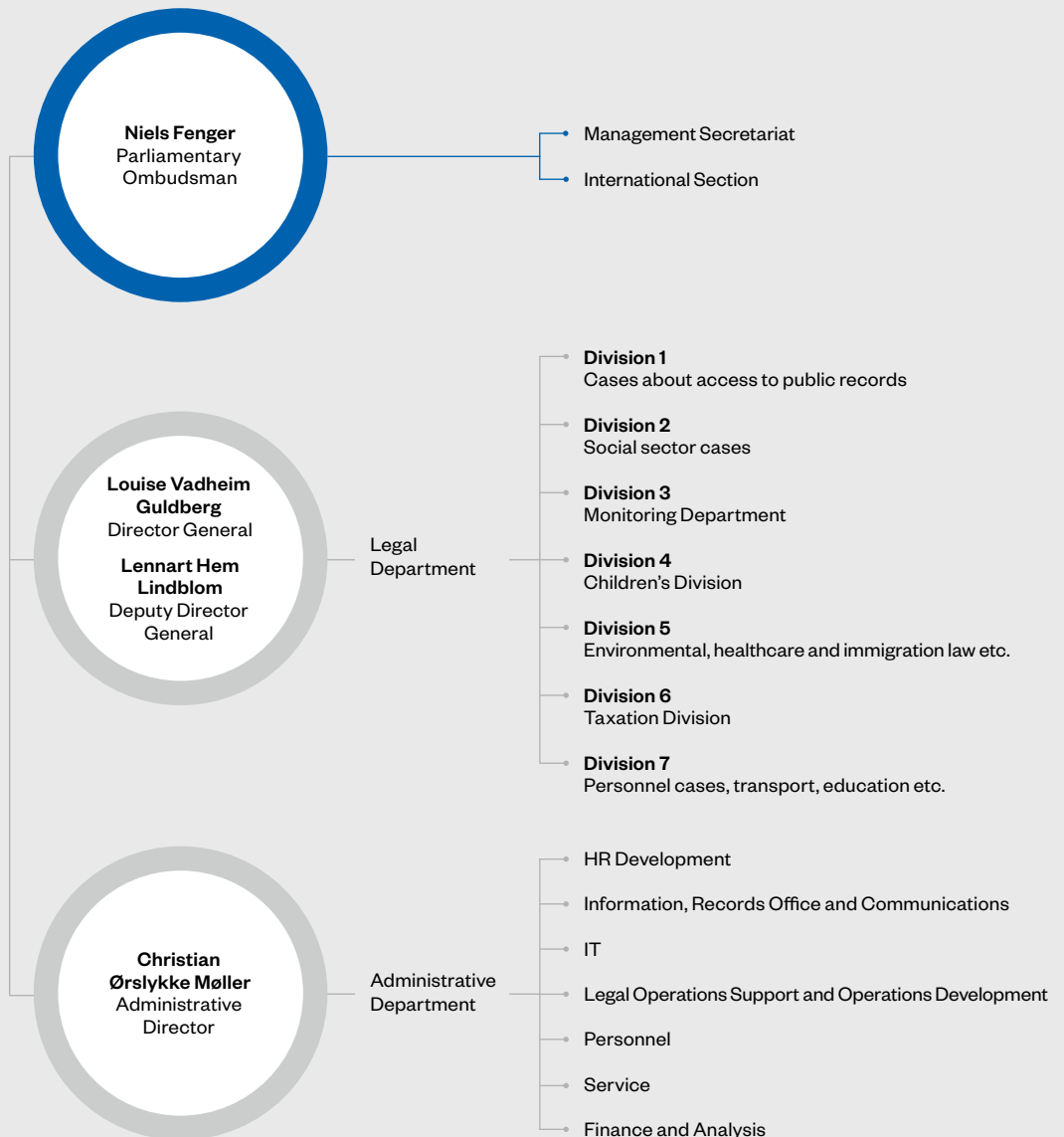


# Organisation

As at 31 December 2019

## Management

## Departments







## Employees and core responsibilities as at 31 December 2019

### Management

Niels Fenger, Parliamentary Ombudsman  
Louise Vadheim Guldberg, Director General  
Lennart Hem Lindblom, Deputy Director General  
Christian Ørslykke Møller, Administrative Director

### Management Secretariat

Jens Møller, Chief Legal Advisor  
Kaj Larsen, Chief Legal Advisor  
Jacob Berner Moe, Special Communications Advisor  
Anne Djurhuus, Management Coordinator  
Jannie Svendsen, Executive Secretary

### International Section

Klavs Kinnerup Hede, Director of International Relations  
Camilla Schroll, Legal Case Officer

### Division 1

#### Cases about access to public records

Kirsten Talevski, Senior Head of Division  
Kristine Holst Hedegaard, Deputy Head of Division  
Stephan Andreas Damgaard, Deputy Head of Division  
Sofie Hedegaard Larsen, Special Legal Advisor  
Dennis Sørensen, Legal Case Officer  
Mai Vestergaard, Legal Case Officer  
Rune Werner Christensen, Legal Case Officer  
Tina Andersen, Legal Case Officer  
Karen Fowler Lund, Legal Student Assistant

#### Key subject areas of cases processed

- Cases about access to public records
  - The Access to Public Administration Files Act
  - The Environmental Information Act
  - The Radio and Television Broadcasting Act
  - Selected cases involving the Administration of Justice Act
  - Selected cases about press handling etc.

### Division 2

#### Social sector cases

Karsten Loiborg, Senior Head of Division  
Linette Granau Winther, Deputy Head of Division  
Stine Marum, Deputy Head of Division  
Bente Mundt, Senior Consultant  
Mette Ravn Jacobsen, Special Legal Advisor

Kirsten Broundal, Legal Case Officer  
Lina Funda Phillips, Legal Case Officer  
Mai Gori, Legal Case Officer  
Rikke Malkov-Hansen, Legal Case Officer  
Björg Boye Gudbrand, Legal Student Assistant  
Jacob Degnbol, Legal Student Assistant

#### Key subject areas of cases processed

- Social security and labour market law

### Division 3

#### Monitoring Department

Morten Engberg, Senior Head of Department  
Erik Dorph Sørensen, Deputy Head of Department  
Louise Marie Jespersen, Deputy Head of Department  
Lise Puggaard, Senior Consultant  
Ulla Birgitte Frederiksen, Special Legal Advisor  
Hanne Nørgård, Legal Case Officer  
Marie Nyborg Kvist, Legal Case Officer  
Morten Bech Lorentzen, Legal Case Officer  
Nina Melgaard Ringsted, Legal Case Officer  
Sabine Heestermans Svendsen, Legal Case Officer  
Jeanette Hansen, Senior Administrative Officer  
Emilie Egevang, Legal Student Assistant  
Oskar Stangegård Christensen, Legal Student Assistant

#### The Monitoring Department is in charge of the Ombudsman's monitoring activities in relation to adults, which involve in particular:

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

#### The Monitoring Department especially processes specific cases involving:

- Sentence enforcement and custody
- Psychiatric healthcare and conditions for psychiatric patients
- Social care institutions

## Division 4

### Children's Division

Susanne Veiga, Senior Head of Division  
 Ann Thagård Gregersen, Deputy Head of Division  
 Christina Ladefoged, Deputy Head of Division  
 Irene Rønn Lind, Special Advisor on Children's Issues  
 Christine Hagelund Petersen, Legal Case Officer  
 Lene Levin Rybtke, Legal Case Officer  
 Marie Helqvist, Legal Case Officer  
 Pernille Helsted, Legal Case Officer  
 Peter Kersting, Legal Case Officer  
 Ida Alberte Chur Rasmussen, Legal Student Assistant  
 Morten Pilgaard Pedersen, Legal Student Assistant

#### **The Children's Division carries out monitoring visits to public and private institutions for children, such as:**

- Social care institutions and private accommodation facilities for children placed in residential care
- Foster families
- Asylum centres
- Hospital wards and psychiatric wards for children

#### **The Children's Division especially processes specific cases involving:**

- Support measures for children and juveniles
- Social services for children
- Family law cases
- Primary and lower secondary schools, continuation schools and private schools
- Institutions for children
- Other cases with a particular bearing on children's rights

## Division 5

### Environmental, healthcare and immigration law etc.

Jacob Christian Gaardhøje, Senior Head of Division  
 Adam Abdel Khalik, Deputy Head of Division  
 Rasmus Krogh Pedersen, Deputy Head of Division  
 Janne Lundin Vadmand, Special Legal Advisor  
 Rikke Ilona Ipsen, Special Legal Advisor  
 Lucienne Josephine Lokjær Bak, Legal Case Officer  
 Marte Volckmar Kaasa, Legal Case Officer  
 Nanna Flindt, Legal Case Officer  
 Sverre Kjeldgaard Johansen, Legal Case Officer  
 Yasaman Mesri, Legal Case Officer  
 Ditte Hector Degner, Legal Student Assistant

#### **Key subject areas of cases processed**

- Environment and planning
- Building and housing
- Energy
- Food and agriculture
- Municipalities and regions etc.
- The non-psychiatric healthcare sector
- Foreign nationals
- The law of capacity, the law of names, foundations, trusts and the law of succession
- The Guide for Authorities on the Ombudsman's website

## Division 6

### Taxation Division

Lisbeth Adserballe, Senior Head of Division  
 Jørgen Hejstvig-Larsen, Deputy Head of Division  
 Pi Lundbøl Stick, Deputy Head of Division  
 Michael Gasbjerg Thuesen, Senior Consultant  
 Elizabeth Bøggild Monrad, Special Legal Advisor  
 Helle Sidenius, Special Legal Advisor  
 Anne Djurhuus, Legal Case Officer  
 Marianne Halkjær Ebbesen, Legal Case Officer  
 Marjanne Kalsbeek, Legal Case Officer  
 Marta Warburg, Legal Case Officer  
 Martin Dyhl-Polk, Legal Case Officer

#### **Key subject areas of cases processed**

- Direct taxes
- Indirect taxes, including value-added tax, etc.
- Levying and collection of taxes
- Cases within certain other fields, including industrial injury cases

## Division 7

### Personnel cases, transport, education etc.

Johannes Martin Fenger, Senior Head of Division  
 Camilla Bang, Deputy Head of Division  
 Kristian Gyde Poulsen, Special Legal Advisor  
 Anna Helene Stamhus Thommesen, Legal Case Officer  
 Mette Kildegaard Hansen, Legal Case Officer  
 Morten Juul Gjermundbo, Legal Case Officer  
 Stine Harkov Hansen, Legal Case Officer  
 Anna Grevelund Kiil, Legal Student Assistant

#### **Key subject areas of cases processed**

- Public employment law
- Transport, communication, roads, traffic etc.

- Education and research
- Prosecution Service and criminal cases etc.
- Passports, weapons etc.
- Elections, registration of individuals etc.
- Ecclesiastical affairs and culture
- Trade and industry etc.

## Administrative Department

### Core responsibilities

- Personnel
- Finance and analysis
- HR development
- Organisational development
- Information and communications
- Proofreading and other linguistic services
- IT
- Service and maintenance
- Records office

Christian Ørslykke Møller, Administrative Director

### HR Development

Lisbeth Kongshaug, Head of HR and Development  
Jannie Svendsen, Senior HR and Development  
Administration Officer

### Information, Records Office and Communications

Karen Nedergaard, Head of Information, Records  
Office and Communications  
Anna Skov Fougat, Librarian  
Julie Gjerrild Jensen, Senior Communications Officer  
Eva Jørgensen, Senior Communications Officer  
Carsten Christiansen, Senior Records Assistant  
Denise Schärfe, Senior Records Assistant  
Harriet Lindegaard Hansen, Senior Records Assistant  
Julie Roland, Senior Records Assistant  
Sajada Perveen Hassan, Senior Records Assistant

### IT

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

### Legal Operations Support and Operations Development

Vibeke Lundmark, Senior Consultant  
Gurli Søndergaard, Senior Language Officer  
Lisbeth Nielsen, Senior Language Officer  
Marianne Anora Kramath Jensen, Senior Language  
Officer

### Personnel

Mette Vestentoft, Special Legal Advisor  
Lone Gundersen, Senior Personnel Officer  
Neel Aggestrup, Senior Personnel Officer  
Stine Holst Gamain-Nørgaard, Senior Personnel  
Assistant

### Service

Jeanette Schultz, Head of Service  
Charlotte Charboe Andersen, Receptionist  
Flemming Wind Lystrup, Service Assistant  
Niels Clemmensen, Service Assistant  
Annitta Lundahl, Housekeeper  
Charlotte Jørgensen, Housekeeper  
David Jensen, Housekeeper  
Katarzyna Sztukowska-Thomsen, Housekeeper  
Kirsten Morell, Housekeeper  
Suphaporn Nielsen, Housekeeper

### Finance and Analysis

Torben Frimer-Larsen, Head of Finance and Analysis  
Jeanette Schultz, Head of Service  
Mathias Brix, Finance and Analysis Student Assistant





