

CITY OF PORTLAND
Office of the Auditor

OFFICE OF THE OMBUDSMAN



Photo: "Portland and Mt. Hood," Wikipedia user Amateria1121

2012 ANNUAL REPORT



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Auditor

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It is an honor for me to introduce the 2012 Annual Report after serving my first year as the Ombudsman for the City of Portland.

My primary focus has been to investigate complaints that either suggest a system-wide problem or that involve an important principle of good government. The sampling of investigations discussed in this report hopefully demonstrates the effectiveness of that approach.

In the year ahead, I will continue to prioritize high-impact investigations and press for administrative and legislative reform based upon the results of those investigations. Other priorities include increasing my role in ensuring awareness of and adherence to the City Code of Ethics and conducting targeted outreach so that the Office of the Ombudsman is accessible to all Portlanders.

I want to express my appreciation to Auditor LaVonne Griffin-Valade for allowing me the privilege of joining her Office's efforts to ensure open and accountable City government. I also want to acknowledge the City employees who have been cooperative and responsive to my Office's inquiries and recommendations.

Finally, I want to thank the 414 members of the public and City employees who took the time and showed the courage to either report concerns directly to my Office or anonymously through the Auditor's Tipline in 2012.

*Margie Sollinger
Ombudsman
City of Portland*



Ombudsman Authority

Complaint Investigations

The Ombudsman’s authority to investigate complaints comes from Title 3 of the Portland City Code (PCC 3.77) and is based on the Model Ombudsman Act developed by the United States Ombudsman Association for public sector ombudsmen. The Code states that the Office of the Ombudsman is

an independent, impartial office, readily available to the public, responsible to the City Auditor, empowered to investigate the administrative acts of City agencies and to recommend appropriate changes toward the goals of safeguarding the rights of persons and of promoting higher standards of competency, efficiency and justice in the provision of City services.

If the Ombudsman accepts a complaint for investigation, the Code provides for broad access to agency records and personnel. Through investigation, the Ombudsman determines whether an administrative act is contrary to law, unfair, or otherwise objectionable.

Anonymous Tipline

The City Auditor created the Tipline in early 2010 after conducting an audit on fraud reporting in the City, which found that the City lacked a centralized place where employees and the public could anonymously report concerns about suspected fraud, waste, and abuse. Initially named the “Fraud Alert Line,” the Auditor changed the name to “OpenCity Tipline” in 2012 to more accurately capture the broad array of issues and concerns that may be reported.



The Auditor, through Administrative Rule ADM-6.02, designated the Ombudsman as the Administrator of the Tipline. Rule ADM-6.02 provides that the Ombudsman will conduct a thorough analysis of each report received and take appropriate action, including routing the report to the appropriate bureau, referring the report to law enforcement, conducting an investigation, or determining no action is required.

Ethics

Human Resources Administrative Rules 11.01 and 11.03 and the Auditor's Code of Ethics pamphlet identify the Ombudsman as a source of ethics information and advice, and as a place for City employees to report suspected ethics violations. Reported ethics violations are handled under the Ombudsman's complaint investigation authority (see page 4).

Ombudsman Code Revisions in 2013

To further safeguard the integrity of the Office and protect the Ombudsman's independence of judgment, the Ombudsman intends to propose revisions to PCC 3.77 that impose pre- and post-employment restrictions for the Ombudsman position. Specifically, the Ombudsman would be restricted from working for any of the agencies the Ombudsman is empowered to investigate for a period of years prior to and after serving as Ombudsman.

In 2012, the Ombudsman received 414 initial contacts. The case summaries that follow are thumbnail descriptions of the kind, source, and variety of complaints the Ombudsman investigated in 2012.

2012 Selected Investigations

Public complaint investigations

In 2012, most complaints came from the public, including individuals and small businesses.

Complaint	Resolution
Two neighborhood association members submitted separate complaints about the Office of Neighborhood Involvement's (ONI) handling of grievance-appeals.	The Ombudsman investigated both complaints and identified several concerns with the grievance and appeal process as written and implemented. Some recommendations have already been implemented, while others will be taken up by a committee charged with reviewing ONI's grievance process.
A resident and a condominium association separately contacted the Ombudsman seeking to challenge Portland Water Bureau (PWB) enforcement actions.	The Ombudsman investigated and found that City Code provides the right to challenge PWB enforcement actions by direct appeal to the Hearings Office. However, the Ombudsman discovered that PWB employees were unaware of the Code provision and that PWB does not regularly notify customers of the appeal right. After the Ombudsman communicated concerns, PWB stipulated that the two complainants would be given the opportunity to appeal any enforcement action. In 2013, the Ombudsman intends to follow up with PWB to press for the adoption of a notice requirement.

(Public complaint investigations, continued)

Complaint	Resolution
<p>After Procurement Services denied his bid protest, a small business owner filed a complaint. The business owner's protest had raised concerns about the City's evaluation of vendors' proposals and specifically questioned a Portland Bureau of Transportation (PBOT) employee's scoring of the proposals.</p>	<p>The Ombudsman conducted an investigation and found the PBOT employee's scoring of the proposals to be unsupportable. After several communications, Procurement opted to re-do the evaluation of the proposals with a different evaluation committee. In 2013, the Ombudsman will continue to press for more thorough records of decision making, which, in turn, provide the basis for meaningful review in response to bid protests.</p>

<p>A resident contacted the Ombudsman after not being permitted to file a complaint with the Revenue Bureau's Towing and Private Property Impound Program. The Bureau said the resident lacked the requisite legal standing to file a complaint. The resident had wanted to raise concerns about the conduct of a private towing company and the City's policy on towing a vehicle with an animal inside.</p>	<p>The Ombudsman determined that City Code did not require legal standing in order for a person to file a towing complaint. After extended discussion, the Revenue Bureau agreed with the Ombudsman's assessment and the Bureau subsequently conducted an investigation into the resident's complaint. The Bureau also proposed changes to the Towing Code clarifying the rights of vehicle owners' with respect to animals in towed vehicles.</p>
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Employee complaint investigations

In 2012, City employees were an important source of reporting (about 15% of complaints).

Complaint	Resolution
<p>A City employee complained about a Portland Water Bureau (PWB) facility having designated smoking areas within fifty feet of the building structure. The employee initially approached bureau management to address the problem but was unsuccessful in getting a timely response.</p>	<p>The Ombudsman looked into the complaint and determined that the PWB’s designated smoking areas and absence of posted notices were in violation of City Code, Human Resources Administrative Rules, and State Law. Upon receiving the Ombudsman’s assessment, PWB acted promptly to bring the facility into compliance.</p>
<p>A City employee questioned whether the City’s hosting of Red Cross blood donation drives violates the City’s non-discrimination policies because of the Red Cross policy prohibiting sexually active gay and bisexual men from donating blood (the “MSM Policy”).</p>	<p>The Ombudsman conducted extensive research and determined that the Red Cross blood donation eligibility criteria at issue is actually federal Food and Drug Administration (FDA) policy. Since 2006, the Red Cross has publicly supported changing the MSM Policy, calling the current policy scientifically and medically unwarranted. In 2010, an FDA subcommittee acknowledged that the MSM Policy is “suboptimal,” and efforts are underway to develop an alternative policy. In the meantime, several major cities have passed resolutions calling upon the FDA to revise the MSM Policy. The Ombudsman supports the City passing a similar resolution.</p>

(Employee complaint investigations, continued)

Complaint	Resolution
Several City employees sought ethical guidance regarding unsolicited gifts.	In conjunction with the City Attorney's Office, the Ombudsman provided information about the requirements of City and State Ethics Law and advised the City employees about any relevant acceptance restrictions and disclosure obligations.

Ombudsman-initiated investigations

The Ombudsman has the authority to self-initiate an investigation.

Complaint	Resolution
In response to a campaign advertisement during the 2012 primary season, the Ombudsman initiated an investigation into whether certain Fire & Rescue Bureau employees violated any restrictions pertaining to public employee political activity. Two residents reported similar concerns to the Auditor's Office during the general election season.	<p>In the course of conducting the investigation, the Ombudsman observed a lack of clarity and consistency among the various political activity restrictions that may apply to City employees. In 2013, the Ombudsman will propose amending Human Resources Administrative Rule 4.06 to track the more stringent Federal Hatch Act political activity restrictions. Corresponding changes to the Fire & Rescue Bureau's internal rules are expected to follow.</p> <p>The Ombudsman also worked with the Auditor's Elections Officer to distribute a City-wide memorandum in advance of the 2012 general election, which reminded employees of political activity restrictions and reporting obligations for suspected violations.</p>

OpenCity Tipline report investigations

In 2012, the Auditor’s OpenCity Tipline received 27 reports. Members of the public submitted 66.7% of the reports, with the remainder coming from City employees. Reports were submitted both through the call center and over the internet, at 55.6% and 44.4% respectively. Individuals submitting reports to the Tipline preferred to remain anonymous more than 80% of the time.

Complaint	Resolution
<p>A resident made an anonymous report alleging that the Procurement Services’ Sheltered Market Program paid a former City contractor thousands of dollars for consulting services it never rendered.</p>	<p>The Ombudsman investigated. Finding support for the allegations, the Ombudsman referred the matter to law enforcement for possible prosecution. The former City contractor later settled with the City, agreeing to return approximately \$17,000 and to never again seek to contract with or work for the City. In 2013, the Ombudsman expects to make recommendations about establishing internal controls that will prevent and detect similar incidents.</p>
<p>A City employee anonymously reported concerns that a no-bid contract with a former City employee was the result of a quid pro quo arrangement with a current Office of Management and Finance (OMF) administrator.</p>	<p>The Ombudsman conducted an investigation. Although the Ombudsman did not find evidence of a quid pro quo arrangement, the investigation raised several general concerns, including the prudence of sole-sourcing to former City employees, the adequacy of the dollar threshold for public notice and opportunity for protest, and the sufficiency of the public contracting oversight structure. The Ombudsman will be following-up on these concerns with OMF in 2013.</p>

(OpenCity Tipline report investigations, continued)

Complaint	Resolution
<p>A City employee anonymously reported concerns about a Portland Water Bureau (PWB) employee's outside business subcontracting with the City on a PWB project.</p>	<p>The Ombudsman initiated an investigation; however the employee under investigation resigned before the investigation was completed. Going forward, the Ombudsman will work with Procurement Services and the City Attorney's Office to amend City Code 5.33.070 to expressly prohibit the City from subcontracting with a City employee, or any business with which a City employee is associated.</p>

2012 Overview

The Ombudsman received complaints in 2012 regarding nearly every City bureau and office. Bureaus that have a large number of transactions with members of the public or whose transactions affect members of the public deeply and materially are expected to generate a larger number of complaints. In 2012, the bureaus receiving complaints in the double-digits were, in descending order:

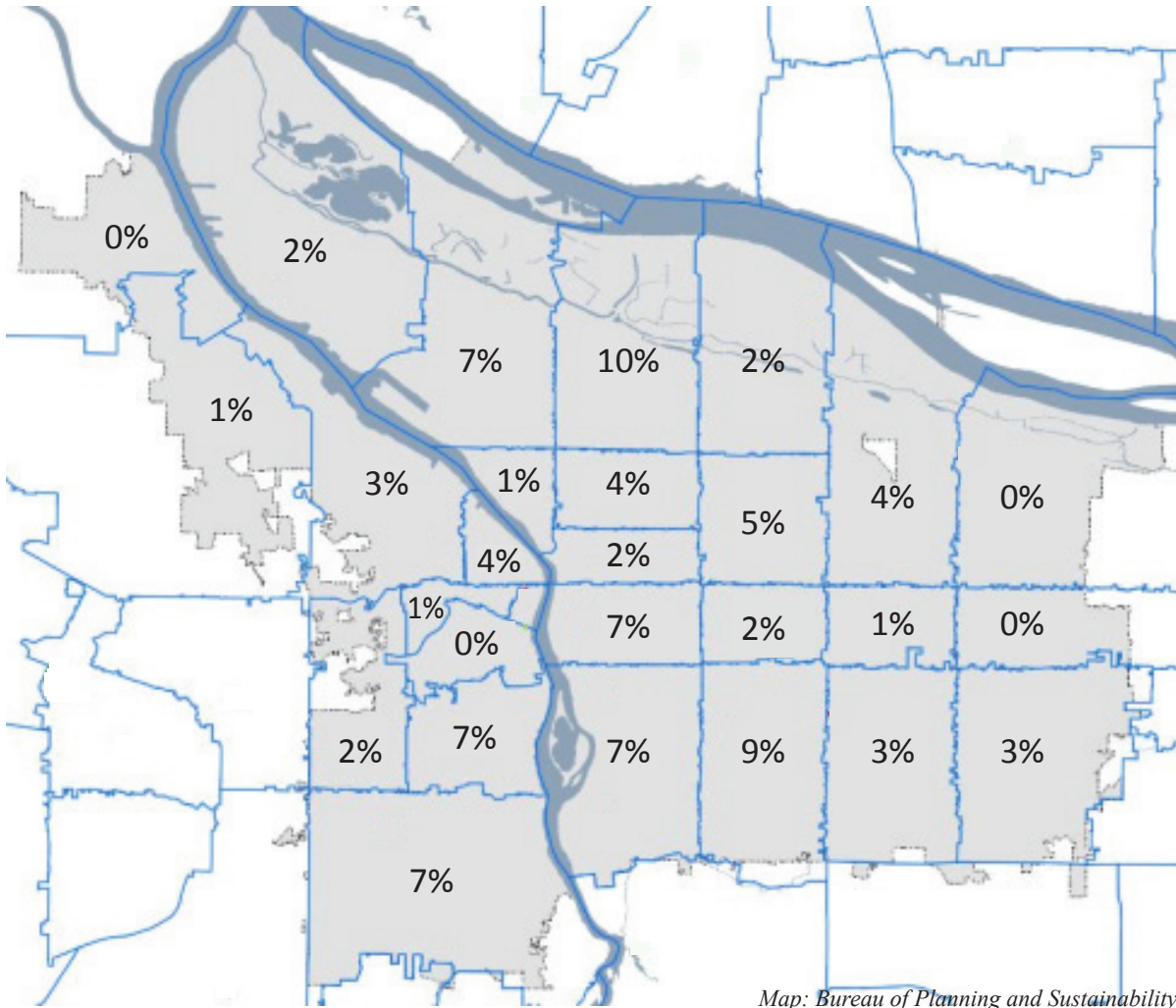
1. Portland Bureau of Transportation
2. Portland Water Bureau
3. Office of Management and Finance (including all divisions)
4. Bureau of Development Services
5. Portland Parks & Recreation

The Ombudsman received complaints in 2012 from nearly every Portland zip code and a number of complaints from outside the City limits (mainly from small companies doing business with the City).

Tracking complaints by geographical location is one method used to target future outreach efforts (see zip code boundary map on following page). For example, based on rough correlations, the zip codes where complaints were less than the population size might otherwise predict tended to be in the easternmost and northernmost areas of Portland.

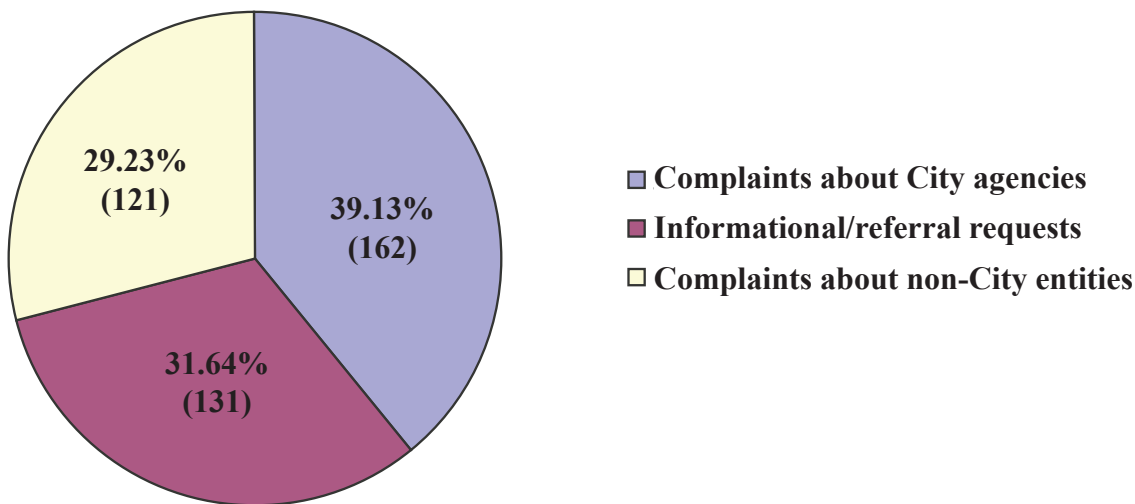
As the Ombudsman gathers more data, geographical location may also be used to take a closer look at the nature of complaints within zip codes that are seeing a particularly high number of complaints relative to their populations. Similarly, to help focus internal outreach the Ombudsman will analyze, by bureau, the number and nature of employee complaints.

Portland Zip Code Boundary Map



*Showing approximate percentages of public complaints by zip code
(excludes employee complaints and public complaints from outside of Portland)*

In addition to complaints about City agencies, the Office of the Ombudsman responded to informational/referral requests and complaints about entities outside of the Ombudsman’s authority to investigate. The total number of initial contacts for 2012 was 414, which is consistent with prior years.



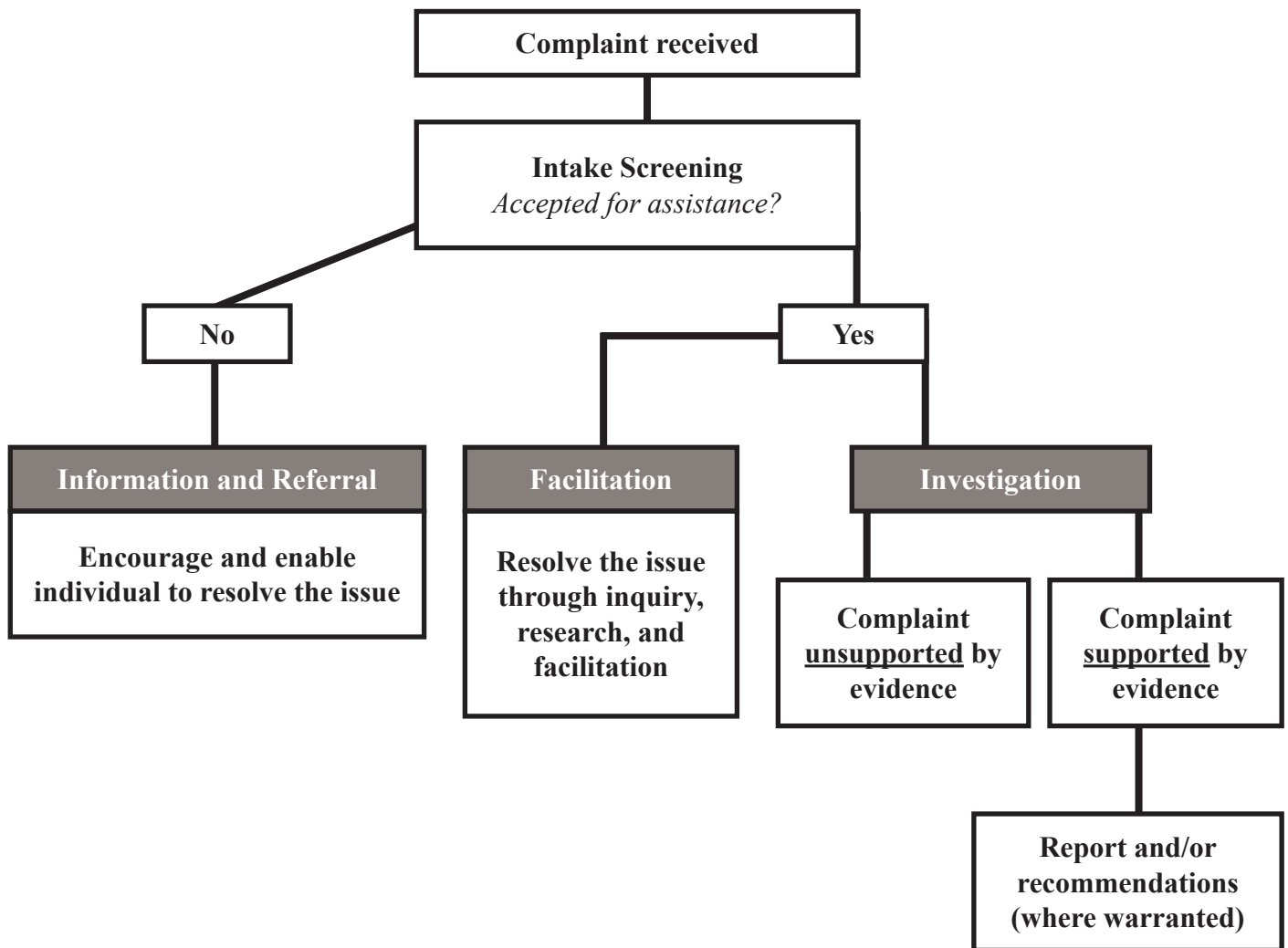
Historically, the Office of the Ombudsman has served as a clearinghouse for informational/referral contacts. However, in order to focus on the core Ombudsman function of investigating complaints and avoid duplicating the work of the City/County Information and Referral Line (503-823-4000), the Ombudsman hopes to reduce the number of informational/referral contacts going forward.

Complaints about non-City entities are sometimes received because a member of the public is trying to reach a different ombudsman office (e.g. the Oregon Longterm Care Ombudsman or the Department of Human Services Ombudsman). Other times, it is because the entity complained about lacks an independent and impartial authority that can investigate individual complaints. For example, there is no ombudsman counterpart available to complainants for Multnomah County, Home Forward, Portland Public Schools, or TriMet.

Ombudsman Process

Intake screening includes an assessment of jurisdiction, workload capacity, available alternate avenues, issue priority and complexity. Most casework is handled informally; however, the Ombudsman may decide to publish investigation reports in some cases involving serious or important issues of broad impact or interest.

The Ombudsman uses the following process to organize complaints and determine the appropriate response:



How to Contact the Office of the Ombudsman

Staff: Margie Sollinger and Gayla Jennings
Telephone: (503) 823-0144
Email: ombudsman@portlandoregon.gov
Fax: (503) 823-4571 (Attn: Ombudsman)
Address: 1221 SW 4th Avenue, Room 320
Portland, OR 97204

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Twitter: @Portland_Ombuds



OpenCity Tipline
1-866-342-4148
or online through the Ombudsman's website