

**CITY OF PORTLAND**  
**Office of the Auditor**

# OFFICE OF THE OMBUDSMAN



## 2013 ANNUAL REPORT



**LaVonne Griffin-Valade**  
Auditor

**Margie Sollinger**  
Ombudsman





## CITY OF PORTLAND

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Office of City Auditor LaVonne Griffin-Valade

### Office of the Ombudsman

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I am pleased to introduce the *2013 Annual Report* from the City Ombudsman. To be effective, the Ombudsman requires independent authority and objectivity. That is exactly why this program fits naturally within the set of good government functions that are the responsibility of the City Auditor's Office.

The Ombudsman's charge is to safeguard the rights of the public and promote higher standards of competency, efficiency, and justice in how services are carried out. This is accomplished by providing community members and City employees with a neutral place to report concerns about possible problems with service delivery or suspected misconduct by employees.

The Ombudsman investigates a variety of complaints and also often recommends improvements to City managers, offers advice about potential ethical impropriety, and proposes policy changes to City Council. Concerns can be brought directly to the Ombudsman or made through the Auditor's OpenCity Tipline.

The Ombudsman performs a unique and important role within the City on behalf of the independently elected Auditor. The attached report offers Portlanders, City leaders, and employees a snapshot of our oversight and accountability efforts this past year and demonstrates the added value of the City Ombudsman's essential work.



*LaVonne Griffin-Valade*

*City Auditor*

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## INTRODUCTION FROM THE OMBUDSMAN

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Welcome to the Office of the Ombudsman's *2013 Annual Report*, my second as City Ombudsman.

In talking with community members this past year about the Ombudsman's Office, I was sometimes asked how the Ombudsman's role differs from elected officials' constituent services or the City's other complaint handling mechanisms.

My role as Ombudsman is meant to complement – not replace or duplicate – traditional modes of resolving differences between the public and City agencies. Key distinguishing features of the Ombudsman role include:

1. The Ombudsman's Office is independent from the bureaus it investigates, and the Ombudsman is responsible only to the elected City Auditor and the public's interest;
2. The Ombudsman does not represent the complainant or the bureaus; rather, the Ombudsman is a neutral intermediary and advocate for good government;
3. The Ombudsman conducts thorough, apolitical investigations of City bureau administrative acts and recommends appropriate changes;
4. As the central repository for complaints, the Ombudsman is positioned to discern complaint trends, observe any patterns of administrative unfairness, and approach problem-solving from a City-wide perspective.

The option of having a disinterested and independent third party assess complaints is of particular importance in a commission form of government, where legislators also serve as administrative leaders. City Council recognized this in 2001 when it established the Ombudsman's Office in City Code.

Over a decade later, the Office continues to be a testament to the City's openness to scrutiny and its willingness to be held accountable. In 2013, approximately 80% of my Office's recommendations were accepted in full, and the remaining 20% were accepted in part.

## INTRODUCTION FROM THE OMBUDSMAN

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As the *Annual Report* shows, we kept busy this year, receiving 442 new contacts. Of the new contacts, 191 were complaints about City bureaus. The *Report* highlights cases where members of the public raised concerns, not just about City bureaus, but also about private parties doing business with the City.

Employees represented approximately 13% of the complaints about City bureaus. City employees are in the best position to observe early warning signs about possible problems in the way that the City conducts the public's business; as such, the City needs to provide a responsive and safe environment for employees to raise their concerns.

In the year ahead, I will prioritize finalizing a proposal to create a City whistleblower process that ensures prompt and proper responses to whistleblower reports and that protects against unlawful retaliation.

Special and profuse thanks go to Kari Guy, Senior Management Auditor in the Audit Services Division, for serving as Acting Ombudsman during the final months of the year. Along with Gayla Jennings, our Community Outreach and Information Assistant, Kari adeptly handled complaints and provided seamless coverage in my absence.

*Margie Sollinger*  
*Ombudsman*



## 2013 NOTABLE ISSUES

### MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (“M/WBE”) FRAUD

M/WBE fraud undermines the City’s efforts to reverse historic discrimination and support social equity in contracting opportunities. In 2013, the Ombudsman’s Office received a complaint that questioned whether certain firms performing subcontracts on City projects were bona fide M/WBEs:

COMPLAINT	RESOLUTION
<p>A business owner referred by a commissioner’s office contacted the Ombudsman alleging that a State-certified M/WBE was acting as a front or pass-through for a non-certified firm on a Portland Housing Bureau (PHB) funded project.</p>	<p>The Ombudsman investigated and found sufficient corroboration of the allegation to warrant submission of a third-party complaint to the State certification office. The Ombudsman’s complaint questioned whether the firm was eligible for certification and whether it performed a commercially useful function on the PHB project.</p> <p>Although the State dismissed the Ombudsman’s complaint, media coverage of the issue prompted additional complaints alleging M/WBE fraud. The Ombudsman is currently pursuing administrative, legislative, and legal remedies at the local, State, and Federal levels.</p>

#### “RED FLAG” INDICATIONS OF POTENTIAL M/WBE FRAUD:

- ⌚ M/WBE owner lacks background, expertise, or equipment to perform work
- ⌚ M/WBE owner never present at job site
- ⌚ Employees shuttle back and forth between M/WBE and non-M/WBE (e.g. prime contractor) payrolls
- ⌚ Prime contractor always uses the same M/WBE
- ⌚ Business names on equipment and vehicles do not match M/WBE or are covered with paint or magnetic signs
- ⌚ Non-M/WBE facilitated purchase of M/WBE
- ⌚ Financial agreements between M/WBE and non-M/WBE
- ⌚ Absence of written contracts
- ⌚ Orders or payments for necessary supplies made by individuals not employed by M/WBE
- ⌚ Joint bank accounts between M/WBE and non-M/WBE

**WHISTLEBLOWER PROTECTIONS**

Oregon’s Whistleblower Protection Law extends to the City of Portland and is meant to protect public employees and government contractors who expose government wrongdoing from retaliation.

The Better Government Association ranks the strength of Oregon’s law as 24th out of 50, noting the law falls short of best practices in several areas, including the lack of a requirement that public employers notify employees of their whistleblowing rights and the absence of explicit penalties for employees who retaliate against whistleblowers.

Although State law allows the City to adopt additional rules, including rules that aid in the implementation of the State law, the City currently lacks a clear and consistent protocol for handling whistleblower reports outside the context of workplace harassment and discrimination.

COMPLAINT	RESOLUTION
<p>In 2013, several City employees contacted the Ombudsman and the Auditor to discuss their concerns about the City’s handling of whistleblower reports, the perceived repercussions against whistleblowers, and the decreasing workplace morale as a result.</p>	<p>To address the systemic concerns, the Ombudsman conducted best practices research and examined how other jurisdictions handle whistleblower reports.</p> <p>In 2014, the Ombudsman expects to propose measures that more effectively implement State Whistleblower Law, create a protocol for meeting the City’s obligation to protect whistleblowers from retaliation, and ensure that the City is following best practices for whistleblower protection.</p>

Any actual or perceived failure to protect whistleblowers deters people from reporting allegations of wrongdoing. The importance of whistleblowing should be conveyed to City employees through policy, training, and good leadership that promotes a positive ethics culture and that recognizes the value of reporting wrongdoing.

*The selected case summaries that follow are thumbnail descriptions of the type, source, and variety of complaints the Ombudsman investigated.*

## 2013 SELECTED INVESTIGATIONS

COMPLAINT		RESOLUTION
<b>BOEC</b>	<p>After exhausting other avenues, a resident contacted the Ombudsman alleging that a Bureau of Emergency Communication's 9-1-1 call-taker refused to send police to her aid and gave advice that, if followed, may have further endangered her welfare.</p>	<p>The Ombudsman investigated and determined that the call-taker misapplied BOEC's Standard Operating Procedures (SOP) and otherwise exhibited questionable judgment in handling the call. In response to the Ombudsman's recommendations, BOEC provided supervisory training to the employee and incorporated new SOP language for handling vehicular menacing calls.</p>
<b>City Attorney's Office</b>	<p>A resident contacted the Ombudsman alleging that an expert consultant hired by the City Attorney's Office was significantly overbilling the City.</p>	<p>The Ombudsman investigated and was able to partially substantiate the allegations, finding clear instances of overbilling. In response to the Ombudsman's recommendations, the City Attorney's Office challenged certain billing items and recovered thousands of dollars that the City had overpaid to the consultant. The City Attorney's Office also accepted the Ombudsman's recommendation to add standard provisions to its expert consultant contracts that required itemized billing and created a mechanism for addressing disputed billed amounts.</p>
<b>BPS</b>	<p>The Ombudsman followed up on media-reported concerns about a page on the Bureau of Planning and Sustainability's website that purportedly endorsed certain commercial entities.</p>	<p>The Ombudsman investigated and determined that BPS's website conveyed the appearance of endorsing commercial entities in violation of Human Resources Administrative Rule 4.08. Exceptions to the Rule may be granted by the elected official in charge if such endorsement is central to the bureau's mission. The Mayor subsequently granted BPS an exception.</p>



## 2013 SELECTED INVESTIGATIONS

COMPLAINT		RESOLUTION
<b>BDS</b>	<p>A homeowner contacted the Ombudsman about mounting liens against her home because of a peeling-paint violation issued by the Bureau of Development Services. The homeowner stated she was experiencing severe economic and personal hardship and was unable to afford or otherwise address the peeling paint in a timely manner, thus incurring revolving liens and increasing penalties.</p>	<p>The Ombudsman directed the homeowner to the BDS lien reduction review process and separately advocated that the lien amount be reduced due to mitigating hardship circumstances. BDS granted a partial reduction, which satisfied the homeowner.</p> <p>The Ombudsman has and will continue to raise concerns with BDS management and the Commissioner-in-charge about the revolving lien system, including (1) the potentially disparate impact on low-income households and (2) the potentially unfair nature of a revolving lien system that does not distinguish between minor and significant violations.</p>
<b>Appeal Fees</b>	<p>In the course of investigating a different issue, the Ombudsman became concerned about City bureaus charging the public prohibitively high administrative appeal fees. This issue was also raised in litigation against the City; however, the case settled on separate grounds.</p>	<p>The Ombudsman surveyed bureau practices and found that some bureaus do not charge anything for an appeal, while others seek full cost-recovery, topping out at nearly \$1,300.00. In 2014, the Ombudsman expects to make recommendations to City Council regarding the setting of an equitable administrative appeal fee.</p> <p>In the interim and in response to the Ombudsman’s concerns, the Portland Water Bureau and the Bureau of Environmental Services agreed to charge only \$50.00 for all appeals to the Hearings Office.</p>

## 2013 SELECTED INVESTIGATIONS

COMPLAINT		RESOLUTION
<b>PWB</b>	<p>Several neighboring property owners contacted the Ombudsman seeking to void the Portland Water Bureau’s sale agreement for disposal of surplus green space property. The neighbors alleged lack of public process in both deeming the property as surplus and in deciding to sell it to a developer. The neighbors also disputed whether the City got a fair price for the land.</p>	<p>The Ombudsman investigated and agreed that PWB’s surplus disposal process did not conform to best practices; however, the Ombudsman did not substantiate the neighbors’ claim that there were legal grounds for voiding the sale agreement. Going forward, the Commissioner-in-charge developed a pilot process for disposing of surplus property, which the Ombudsman supports in concept.</p> <p>Noting the lack of and/or inadequacy of bureau surplus disposal and sale processes across the City, the Ombudsman referred the issue to the City Auditor, who is now conducting a City-wide audit.</p>
<b>OMF</b>	<p>A City employee submitted an anonymous OpenCity Tipline report raising allegations of document falsification and conflicts of interest in the process of determining whether Office of Management and Finance IT projects should be subject to Technology Oversight Committee review.</p>	<p>The Ombudsman’s investigation did not substantiate the allegations of document falsification; however, the Ombudsman concluded that OMF IT projects could benefit from more independent oversight under Bureau of Technology Services Administrative Rule 1.07. The Ombudsman intends to raise these and other OMF structural oversight concerns in 2014.</p>

## 2013 SELECTED INVESTIGATIONS

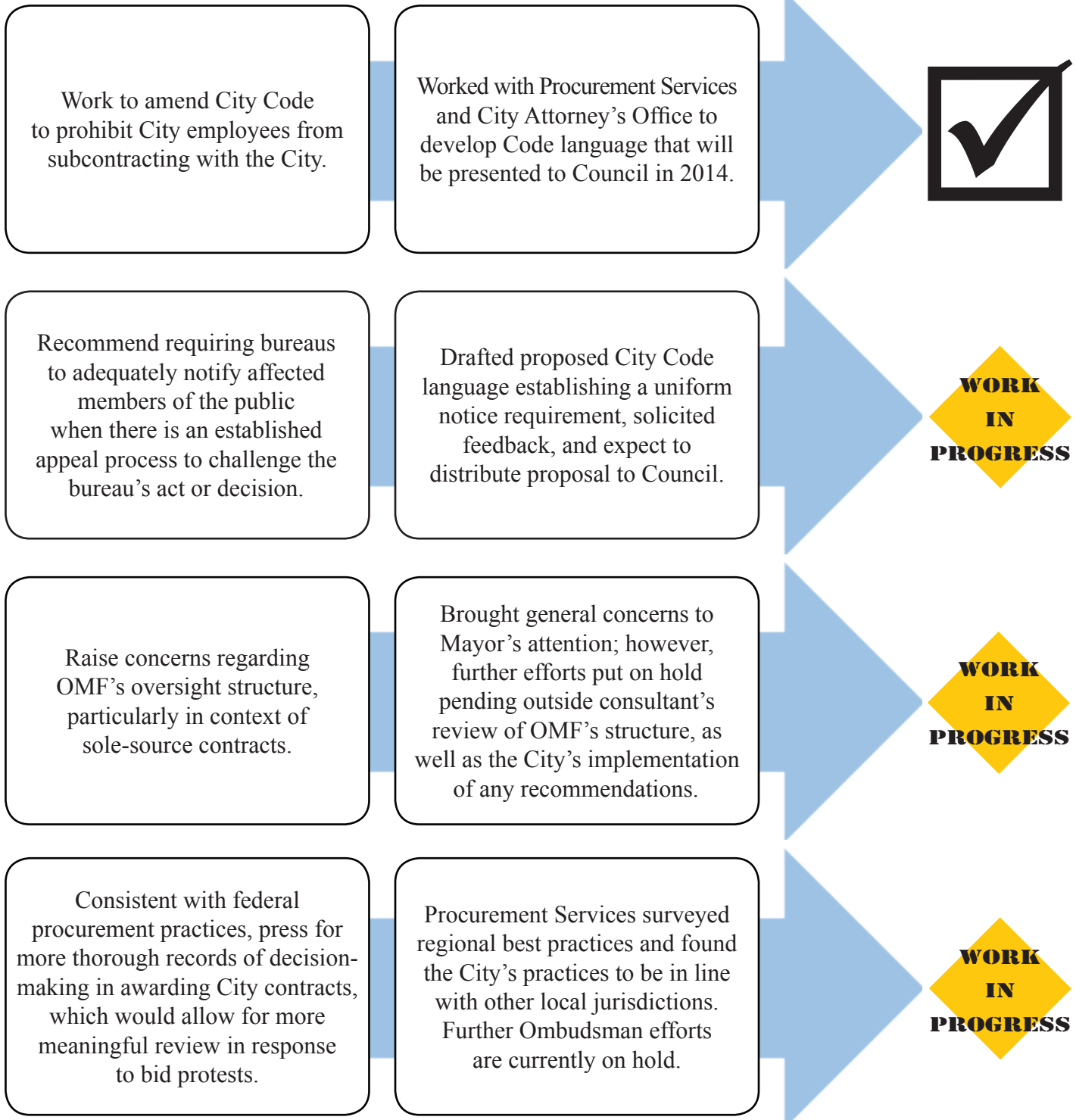
COMPLAINT		RESOLUTION
<b>PBOT</b>	<p>A complainant who is homeless contacted the Ombudsman contending that a Portland Bureau of Transportation’s no camping notice addressing the removal of personal property was inadequate and contained conflicting information.</p>	<p>The Ombudsman agreed with the complainant’s contentions and raised concerns with PBOT and the City Attorney’s Office. PBOT explained that this particular notice was posted by the Multnomah County Sheriff’s Office without PBOT’s authorization and was actually an outdated draft version of the notice. PBOT followed up with the Sheriff’s Office and clarified that it is not to post any campsites on PBOT’s behalf.</p> <p>PBOT’s final version of the notice had corrected most of the deficiencies; however, the Ombudsman remained concerned that the notice’s 1,500 feet clean-up radius was too large and ran afoul of applicable laws. On the Ombudsman’s recommendation, PBOT reduced the clean-up radius to 200 feet.</p>

*Last year's Annual Report identified a number of ongoing projects stemming from individual investigations. Below are progress updates.*

## 2012 FOLLOW-THROUGH

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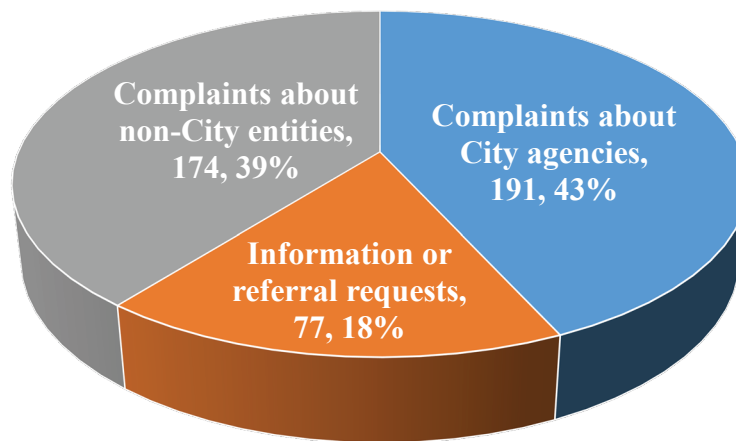


## 2013 OVERVIEW

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The Ombudsman’s Office received 442 new contacts in 2013. Of the new contacts, 191 were complaints about City bureaus. In cases where the Ombudsman made recommendations, bureaus accepted the recommendations in full 80% of the time and in part the remaining 20% of the time.

### Types of contacts received in 2013



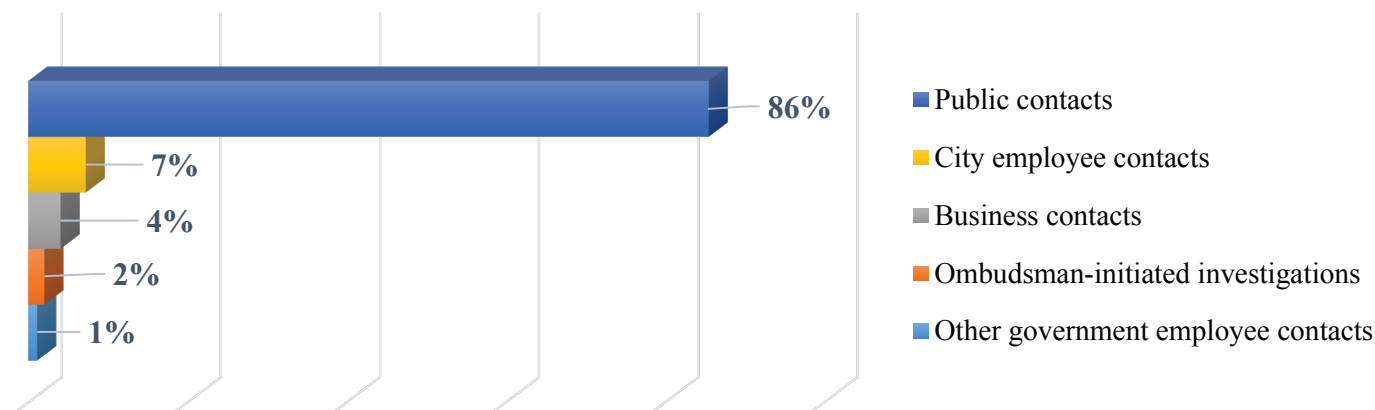
In addition to complaints about City agencies, the Office responded to information or referral requests and complaints about entities outside of the Ombudsman’s authority to investigate.

One of the Ombudsman’s goals from 2012 was to decrease reliance on the Office for information or referral requests, freeing up resources to devote toward high-impact complaint investigations and systemic reform. In 2013, the Office saw a significant decrease in requests for information or referrals, going from 131 in 2012 to 77 in 2013.

Unfortunately, the Office also received a noticeable increase in complaints about non-City entities, going from 121 in 2012 to 174 in 2013. A significant portion continue to be complaints about Multnomah County, which does not have a County-wide Ombudsman. However, the County recently formed an Ombudsman’s Office for the Department of Community Services (DCS), which may reduce the number of County-related complaints going forward.

**Multnomah County  
DCS Ombudsman**  
  
**(503) 988-5050 ext. 26741**  
**[dcs.ombudsman@multco.us](mailto:dcs.ombudsman@multco.us)**

As the below graphic shows, individual members of the public were the source of nearly 86% of contacts to the Ombudsman in 2013. Private businesses added an additional 4%, with the remaining 10% split between City employees, other government employees, and Ombudsman-initiated investigations.



The Ombudsman received complaints in 2013 about every City agency, except for the Portland Development Commission, the City Budget Office, the Office of Equity and Human Rights, and the Office of Government Relations.

Higher numbers of complaints are expected for bureaus performing regulatory and enforcement functions, but high numbers of repeat complaints can also be an indication of problem areas. The Ombudsman has begun keeping records of complaints by bureau and in future years will be able to use the data to discern patterns and identify areas for reform.

In the meantime, in 2013, bureaus receiving complaints in the double-digits and comprising nearly 90% of complaints were, in descending order:

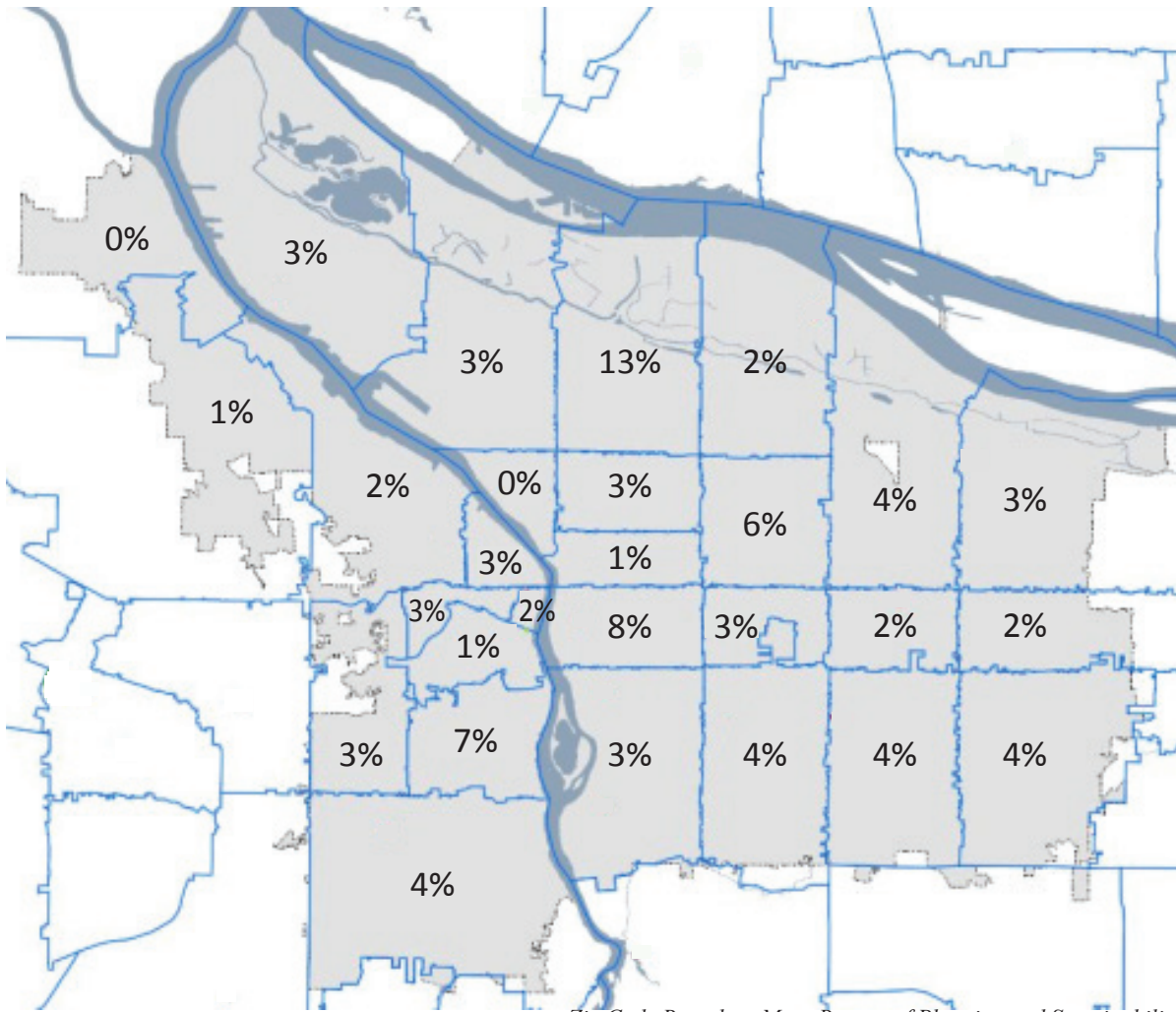
1. Portland Bureau of Transportation
2. Office of Management and Finance (including all divisions)
3. Bureau of Development Services
4. Portland Water Bureau
5. Portland Parks & Recreation
6. Bureau of Environmental Services

Compared to 2012, all of the bureaus listed above are repeat bureaus, with the exception of the Bureau of Environmental Services. The Office of Management and Finance was the subject of most of the City employee complaints to the Ombudsman's Office in 2013.

## 2013 OVERVIEW

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The Ombudsman received complaints in 2013 from nearly every geographical area of Portland. The map below shows the approximate percentage of public complaints by zip code.



Zip Code Boundary Map: Bureau of Planning and Sustainability

The Ombudsman increased efforts to inform residents in the outermost areas of Portland about the Office's services. The Office provided outreach materials to various social service and referral organizations and gave presentations to neighborhood coalitions and Multnomah County branch librarians.



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## 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.

### 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.

## APPENDIX

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### **Anonymous Tipline**

The Auditor’s OpenCity Tipline is a centralized place where employees and the public can anonymously report concerns about suspected fraud, waste, abuse, and other misconduct within City government.

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.

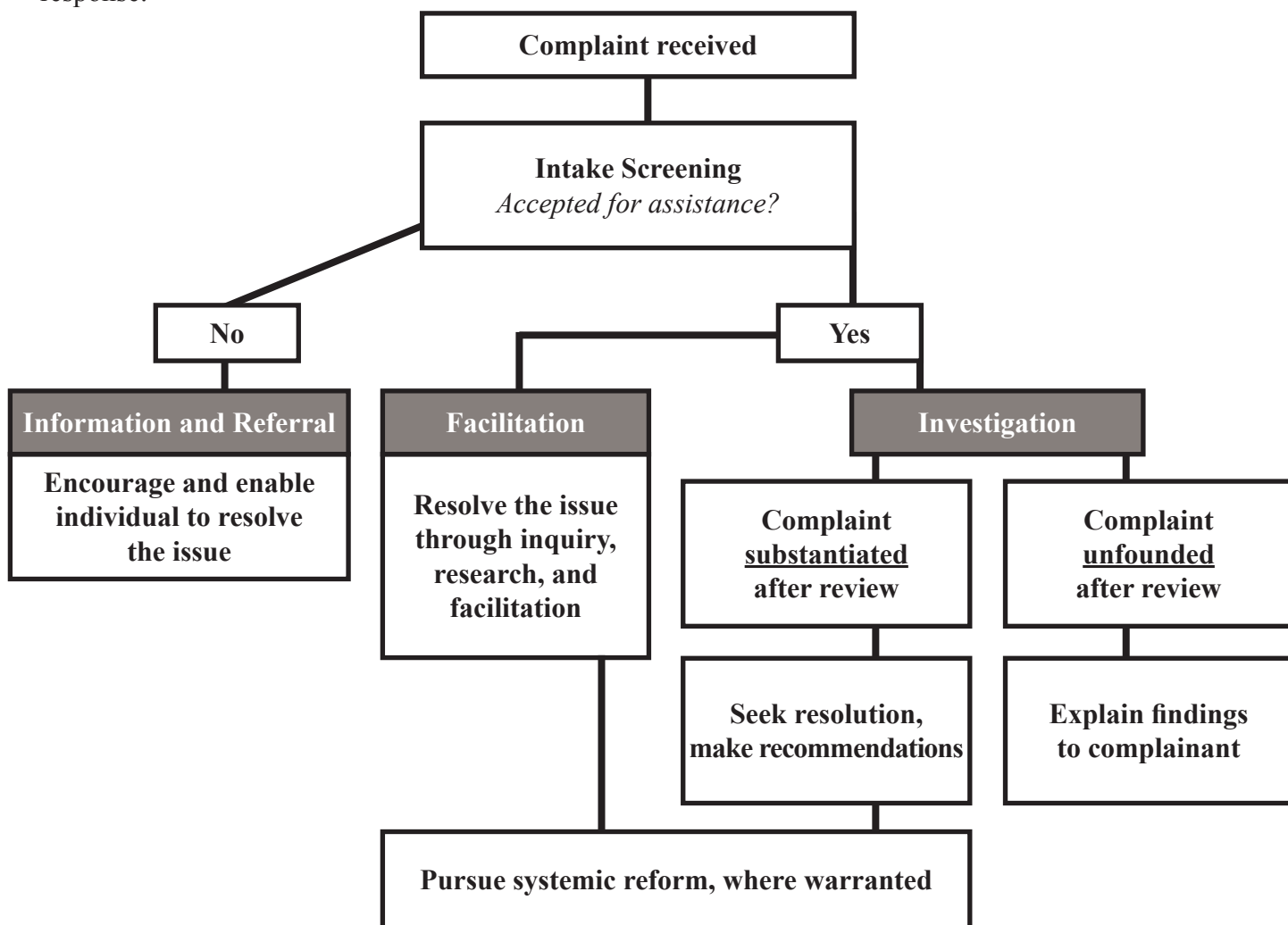
### **Political Activity**

At the end of 2013, and in response to the Ombudsman’s recommendation, the Bureau of Human Resources revised its Administrative Rule 4.06, which governs City employee political activity. The revised Rule prohibits non-elected City employees from using their “official authority or influence while participating in any political activity” and incorporates the Federal political activity law. The Rule also requires employees to report suspected law or rule violations to an appropriate authority, including the Ombudsman’s Office or the Auditor’s OpenCity Tipline.

**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

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**Staff:** Margie Sollinger, Ombudsman  
Gayla Jennings, Community Outreach and Information Assistant

**Telephone:** (503) 823-0144

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**OpenCity Tipline**  
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