

TITLE 2. ADMINISTRATION

CHAPTER 16. OFFICE OF THE OMBUDSMAN
CITIZENS' AIDE

(Authority: A.R.S. § 41-1376 et seq.)

*Editor's Note: The Office of the Secretary of State publishes all Code Chapters on white paper (Supp. 02-1).**Editor's Note: This Chapter contains rules which were adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1995, Ch. 281, Section 5. Exemption from A.R.S. Title 41, Chapter 6 means that the Office of the Ombudsman did not submit these rules to the Governor's Regulatory Review Council for review; the Office did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; and the Office was not required to hold public hearings on these rules. According to Laws 1995, Ch. 281, Section 5, the Office of Ombudsman-Citizens' Aide is exempt from the requirements of A.R.S. Title 41, Chapter 6 until July 1, 1997. Because this Chapter contains rules which are exempt from the regular rulemaking process, the Chapter is being printed on blue paper.*

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*Article 3, consisting of Sections R2-16-301 through R2-16-306, amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).**Article 3, consisting of Sections R2-16-301 through R2-16-306, adopted effective October 30, 1996 (Supp. 96-4).*Section
R2-16-301. Exhausting Reasonable Alternatives within the Agency
R2-16-302. Inmate Complaints
R2-16-303. Resolution without Investigation
R2-16-304. Anonymous Complaints
R2-16-305. Filing Complaints
R2-16-306. Complaints Alleging Employee Misconduct

ARTICLE 4. CONDUCTING INVESTIGATIONS

*Article 4, consisting of Sections R2-16-401 through R2-16-405, adopted effective October 30, 1996 (Supp. 96-4).*Section
R2-16-401. Notice
R2-16-402. Expired
R2-16-403. Closing Cases
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ARTICLE 5. INCORPORATING AGENCY RESPONSES INTO REPORTS AND RECOMMENDATIONS

*Article 5, consisting of Sections R2-16-501 through R2-16-503, amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).**Article 5, consisting of Sections R2-16-501 through R2-16-503, adopted effective October 30, 1996 (Supp. 96-4).*Section
R2-16-501. Preliminary Report
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R2-16-503. Advising the Complainant

ARTICLE 1. GENERAL PROVISIONS

R2-16-101. Definitions

In addition to the definitions provided in A.R.S. § 41-1371, the following apply in this Chapter:

1. "Complainant" means a person who files a complaint with the Office.
2. "Confidential information" means oral or written information, including a record, for which restricted access is required by federal or Arizona law. Confidential information also includes identifying personal information a complainant or witness requests not be disclosed.
3. "Document" means a paper or electronic: record, memorandum, form, book, letter, file, drawing, map, or plat.
4. "Misconduct" means any act or omission by an employee that constitutes a material or substantial breach of the employee's duties or obligations or that adversely affects a material or substantial interest of the employer.
5. "Office" means the Office of the Ombudsman-Citizens' Aide.
6. "Ombudsman-citizens' aide" means the person appointed to the position of ombudsman-citizens' aide under the provisions of A.R.S. § 41-1373.
7. "Photograph" means a paper or electronic photographic representation, photographic file, motion picture, video tape, microfilm, or microphotograph.

Historical Note

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

ARTICLE 2. HANDLING CONFIDENTIAL MATERIAL

R2-16-201. Protecting the Identity of a Complainant or Witness

The Office shall not release to an agency, the public, or anyone else, information that reveals the identity of a complainant or witness without permission from the complainant or witness.

Historical Note

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

R2-16-202. Expired**Historical Note**

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 1834, effective February 28, 2002 (Supp. 02-1).

R2-16-203. Requirement to Close Case before Violating Confidentiality

The Office shall stop an investigation and close a case if it cannot proceed further without releasing identifying information about a complainant who requested confidentiality. Before stopping the investigation and closing the case for this reason, the Office shall ask the complainant for permission to release identifying information.

Historical Note

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

R2-16-204. Expired**Historical Note**

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 1834, effective February 28, 2002 (Supp. 02-1).

R2-16-205. Protecting Confidential Agency Information

The Office shall give confidential information received from an agency the same degree of protection as provided by the agency. The Office shall not release confidential agency information to the complainant, or any other person, without the agency's prior authorization, unless ordered by a court or other lawful authority.

Historical Note

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

R2-16-206. Expired**Historical Note**

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 1834, effective February 28, 2002 (Supp. 02-1).

R2-16-207. Expired**Historical Note**

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 1834, effective February 28, 2002 (Supp. 02-1).

R2-16-208. Returning a Confidential Document to a Complainant

When requested, the Office shall return a confidential document received from a complainant to the complainant. The Office shall not release a confidential document to anyone other than the complainant unless the complainant provides written authorization for release of the document to a third party or the Office determines that the document was not lawfully in the possession of the complainant.

Historical Note

Adopted effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

R2-16-209. Prohibition against Discussing Open Complaint Investigations

The Office shall not discuss an open complaint investigation with the general public or the media.

Historical Note

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

R2-16-210. Summaries of Closed Cases

The Office shall make available to the public a summary of a closed case if the Office determines that the summary will assist in the management of a state government program, respond to an inquiry about the performance of a state program, or inform the public about the activity and performance of the Office. The Office shall ensure that the summary does not disclose identifying information about a complainant or witness whose identity is protected, confidential investigator notes, or confidential information received from an agency.

Historical Note

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

ARTICLE 3. RECEIVING AND PROCESSING COMPLAINTS**R2-16-301. Exhausting Reasonable Alternatives within the Agency**

- A. The Office shall make inquiry of the complainant and the agency to determine whether a complainant has exhausted all reasonable alternatives to resolve a complaint within an agency before initiating an investigation.
- B. If the complainant has not made a reasonable effort to resolve the complaint within the agency, the Office shall refer the complainant to the appropriate person or office within the agency and provide the complainant information about available steps to resolve the complaint.
- C. The Office shall defer action in a matter that is being litigated in the courts or is the subject of a current formal administrative procedure unless the ombudsman-citizens' aide determines that immediate action is necessary to protect the public health, safety, or welfare.

Historical Note

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by

final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

R2-16-302. Inmate Complaints

In accordance with A.R.S. § 41-1377, the Office shall refuse to investigate a complaint filed by a person in the custody of the Department of Corrections, filed by another person on behalf of an inmate, or concerning a rule or substantive policy statement about inmates.

Historical Note

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

R2-16-303. Resolution without Investigation

If a complaint can be resolved quickly by mutual agreement, the Office shall attempt to resolve the complaint informally, without resorting to an investigation.

Historical Note

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

R2-16-304. Anonymous Complaints

The Office shall not investigate an anonymous complaint. If the Office receives facts from an anonymous source that are compelling and can be reasonably independently verified, the Office may investigate the matter if it is within the scope of A.R.S. § 41-1377.

Historical Note

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

R2-16-305. Filing Complaints

- A. A complaint against an agency shall be filed with the Office in person or by the U.S. Postal Service, telephone, electronic facsimile, or electronic mail.
- B. A complaint that alleges misconduct by a state employee shall be in writing, signed by the complainant, and filed with the Office in person or by the U. S. Postal Service or electronic facsimile.

Historical Note

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

R2-16-306. Complaints Alleging Employee Misconduct

- A. Before investigating an allegation of misconduct by a state employee, the Office shall provide written notice of the pending investigation to the employee and the chief executive officer of the employee's agency.
- B. If an investigation of an allegation of misconduct by a state employee results in a preliminary report that contains an adverse opinion or recommendation, the Office shall consult with the employee about the preliminary report before submitting the preliminary report to the agency and shall include the employee's written response, if any, with the preliminary report that is forwarded to the agency.

1. This consultation with the employee shall be confidential and shall not be publicly disclosed.
2. The employee shall have 15 working days to respond to the preliminary report, unless the ombudsman - citizens' aide believes a 15-day delay will cause significant harm.
3. An employee may request an extension of time in which to respond to the preliminary report for a compelling reason. The Office shall grant the request unless the ombudsman-citizens' aide believes an extension will cause significant harm.

- C. If an investigation of an allegation of misconduct by a state employee results in a final report that contains an adverse opinion or recommendation, the Office shall consult with the employee about the final report before submitting the final report to the agency and shall include the employee's written response, if any, with the final report that is forwarded to the agency.

1. The employee shall have 15 working days to respond to the final report, unless the ombudsman - citizens' aide believes a 15-day delay will cause significant harm.
2. An employee may request an extension of time in which to respond to the final report for a compelling reason. The Office shall grant the request unless the ombudsman-citizens' aide believes an extension will cause significant harm.

Historical Note

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

ARTICLE 4. CONDUCTING INVESTIGATIONS

R2-16-401. Notice

When it will not compromise the effectiveness of an investigation, the Office shall exercise the right of access under A.R.S. § 41-1378 by giving the agency at least 10 days notice before conducting interviews, examining necessary records, or requiring the production of information. An agency may request an extension to this period for a compelling reason. The ombudsman-citizens' aide shall grant a request for extension unless the ombudsman-citizens' aide believes a delay will cause significant harm or damage.

Historical Note

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

R2-16-402. Expired

Historical Note

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 1834, effective February 28, 2002 (Supp. 02-1).

R2-16-403. Closing Cases

The Office may close a case for any of the following reasons:

1. *Discontinued.* The ombudsman-citizens' aide determines that an investigation should be terminated before the investigation is completed because:
 - a. Disclosure of the complainant's identity is necessary to enable full investigation and the complainant refuses to allow the disclosure;

- b. Information or a record is requested from the complainant and the complainant fails to produce the information or record within the time specified by the Office;
 - c. The complainant withdraws the complaint;
 - d. The complaint relates to a matter that has become the subject of an administrative or judicial proceeding;
 - e. The Office forwards the complaint to an appropriate prosecutor because it involves possible criminal activity; or
 - f. The ombudsman-citizens' aide determines there is other good cause not to proceed with an investigation;
2. *Closed - not substantiated.* Following an investigation, the ombudsman-citizens' aide makes a finding that the allegations in the complaint are not substantiated;
 3. *Closed - complaint resolved (before preliminary report).* Following an investigation, the ombudsman-citizens' aide determines that the complaint has merit, either wholly or in part, and, before a preliminary report is issued, the agency agrees to provide a remedy that is acceptable to the agency and the ombudsman-citizens' aide;
 4. *Closed - complaint resolved (after preliminary report).* Following an investigation, the ombudsman - citizens' aide determines that the complaint has merit, either wholly or in part, and, after a preliminary report is issued, the agency agrees to provide a remedy that is acceptable to the ombudsman-citizens' aide;
 5. *Closed - complaint unresolved.* Following an investigation, the ombudsman - citizens' aide determines that the complaint has merit, either wholly or in part, and the agency does not accept the recommendations of the ombudsman - citizens' aide; or
 6. *Other.* Any other reason the Office determines requires that a complaint be closed.

Historical Note

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

R2-16-404. Findings

The Office shall make one of the following findings in an investigative report:

1. *Substantiated.* The investigation establishes that the administrative act did occur and the complainant's criticism of the administrative act is valid.
2. *Partially substantiated.*
 - a. In a complaint having multiple allegations, the investigation establishes that at least one allegation is substantiated and at least one allegation is not substantiated or indeterminate; or
 - b. The investigation establishes there is shared fault between the complainant and agency.
3. *Not substantiated.* The investigation establishes that:
 - a. The administrative act did not occur; or
 - b. The administrative act occurred, but the complainant's criticism of the administrative act is not valid.
4. *Indeterminate.* The investigation does not provide sufficient evidence for the Office to determine conclusively:
 - a. Whether the administrative act occurred; or
 - b. If the administrative act occurred, whether the complainant's criticism of the administrative act is valid.

Historical Note

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

R2-16-405. Recommendations

- A. In accordance with A.R.S. §§ 41-1376 and 41-1379, the Office shall recommend a resolution to a complaint when a completed investigation results in a finding of "substantiated" or "partially substantiated."
- B. The Office shall not recommend that a specific employee disciplinary action be imposed.

Historical Note

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

ARTICLE 5. INCORPORATING AGENCY RESPONSES INTO REPORTS AND RECOMMENDATIONS

R2-16-501. Preliminary Report

- A. Before issuing an opinion or recommendation, the Office shall consult with the agency and send a confidential preliminary report to the agency.
- B. In accordance with A.R.S. § 41-1379, the Office or agency may share a preliminary report with other state officials only if it is necessary to resolve the complaint, but shall not publicly disclose the contents of the preliminary report.
- C. An agency may seek modification of an opinion or recommendation presented in the preliminary report by including a request for modification in a written response submitted within 15 working days of receiving the preliminary report.
- D. An agency may request, for a compelling reason, an extension to the time in which to respond. The Office shall grant an agency's request for extension, unless the ombudsman-citizens' aide believes an extension will cause significant harm or damage.
- E. The Office shall consider an agency's request for modification of an opinion or recommendation before it prepares the final report and shall notify the agency of the acceptance or rejection of the request within 15 working days of receiving the request.
- F. If an agency does not request modification, the preliminary report becomes the final report 15 working days after the agency receives the preliminary report.

Historical Note

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

R2-16-502. Final Report

- A. After the Office receives an agency's response, if any, to a preliminary report and makes accepted modifications to the preliminary report, or if no timely response is filed, the Office shall send the final report to the chief executive officer of the agency.
- B. If the Office requests that an agency respond to a final report, the agency shall respond to the Office, in writing, within 20 working days after receiving the final report. The agency shall include in the response the agency's decision to accept or reject a recommendation. If the agency accepts a recommen-

dition, the agency shall specify a date by which the recommendation will be implemented.

- C. If the ombudsman-citizens' aide determines that an early response to a final report is necessary to protect the public health, safety, or welfare, the Office shall require an agency to respond on a date sooner than 20 working days. Additionally, the ombudsman - citizens' aide may extend a response period for good cause at the request of an agency.

Historical Note

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).

R2-16-503. Advising the Complainant

- A. The Office shall provide a final response to a complainant. If requested by the complainant, the Office shall provide the final response in writing.
- B. Before releasing a final report to any person not authorized to receive confidential information, the Office shall purge the final report of any confidential information.

Historical Note

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Amended by final rulemaking at 12 A.A.R. 1372, effective June 4, 2006 (Supp. 06-2).