

**CALIFORNIA DEPARTMENT OF AGING**  
**Office of the State Long-Term Care Ombudsman**  
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## **PROGRAM MEMO**

**TO:** Long-Term Care Ombudsman  
Program Coordinators, representative  
staff, volunteers and AAA Directors

**EXPIRES:** Until superseded

**NO:** 23-17

**PROGRAMS AFFECTED:** Long-  
Term Care Ombudsman

**DATE ISSUED:** November 9, 2023

**SUPERSEDES:** N/A

**SUBJECT: Guidance for Addressing Legal Matters and Inquiries**

### **Program Memo Summary:**

All legal matters or inquiries received by Ombudsman program representatives and staff should be reported to the California Department of Aging's (CDA) Office of the State Long-Term Care Ombudsman ([stateomb@aging.ca.gov](mailto:stateomb@aging.ca.gov)) within 24 hours of receipt. After reporting, Ombudsman program representatives and staff should await further instruction prior to taking further action.

### **Purpose**

This Guidance discusses how to address any legal matters or inquiries that a local Ombudsman program and/or its representatives may receive. Such matters and inquiries may include subpoenas, California Public Records Act requests, and other legal papers served on the local program. Such documents and inquiries may be served by general members of the public, attorneys, advocacy groups, or the courts. In addition, this Guidance addresses the procedure to report any other legal issues or questions that arise in relation to the Ombudsman programs and representatives/job duties.

### **Non-exhaustive list of documents that fall under legal matters or inquiries:**

**Subpoenas.** A subpoena is an order that usually requires you to either appear at a certain place, date, and time to testify as a witness about a particular case, or to produce documents related to a case or investigation you may have worked on. The subpoena will generally provide the date by which the testimony or document production is required to be released. The subpoena can be served in person or by mail.

**California Public Records Act (CPRA) requests.** Generally, CPRA requests are made

when any member of the public asks for records held by a government agency. The CPRA allows a government agency **10 days** to respond to these requests by stating whether the agency has responsive records. Because of the sensitive nature of some government records, however, not all documents are subject to the CPRA. Determining whether records are responsive or exempt under the CPRA is a legal function and responsibility.

**Court orders.** A court order is an oral or written mandatory instruction given by a judge. An individual who wants Ombudsman records can petition the relevant State Superior Court or federal District Court to get a copy of the records. Records can only be released with receipt and verification of a court order.

**Court or regulatory documents.** Lawsuits and other legal proceedings are often commenced by filing a complaint or similar document. Like a subpoena, a complaint must be properly served on the intended party. Proper service is important because it sets in motion a strict timeline of events on how to respond.

This is a non-exhaustive list of common legal matters or inquiries that you may receive. If you receive any of these, or any other legal documents or inquiries, please contact the Office of the State Long-Term Care Ombudsman within 24 hours of receiving them. OSLTCO's legal team will handle these matters and provide you further instructions as needed.

### **Duties and Obligations of Local Ombudsman Representatives**

#### **A. The local Ombudsman programs and their representatives must inform the Office of the State Long-Term Care Ombudsman whenever served with legal matters or inquiries within 24 hours.**

The Local Long-Term Care Ombudsman programs (LTCOPs) and their representatives are extensions of the Office of the State Long-Term Care Ombudsman (OSLTCO). CDA's Office of Legal Services (OLS) provides legal counsel and advice to the OSLTCO whenever legal issues arise. Since the local programs and representatives report to and are extensions of OSLTCO, they must immediately report to OSLTCO whenever they receive any legal matter or inquiry.

When an LTCOP and/or its representatives receive a document or inquiry of a legal nature, such as subpoenas, PRA requests, and/or court orders, the LTCOP and/or its representatives must inform OSLTCO **within 24 hours** of receiving the document or inquiry. **To contact OSLTCO with legal matters or inquiries, please email [Stateomb@aging.ca.gov](mailto:Stateomb@aging.ca.gov) and Cc: your OSLTCO Program Analyst.** LTCOPs and/or their representatives must not make any contact with outside entities or third parties and must await further instruction from OSLTCO.

OSLTCO will refer these legal matters to OLS, and then OLS will work with the LTCOPs and their representatives to address and resolve these legal issues; when appropriate, OLS will enlist the Office of the Attorney General to provide further support.

**B. Communications between the local Ombudsman representative are protected by the attorney-client privilege, but communications with outside entities or third parties are not protected.**

Attorney-client privilege refers to a legal protection that keeps communications of a legal nature between an attorney and their client private and confidential.

OLS is made up of attorneys that provide legal counsel and advice to the Ombudsman programs at the State and local levels. In this way, the Ombudsman programs and representatives are clients of OLS. When Ombudsman representatives communicate with OLS over Ombudsman-business, these communications become confidential and are protected by the attorney-client privilege. These communications may not be disclosed to any third party, including members of the public, a court, or other attorneys. These communications include referring and discussing any legal papers, such as subpoenas or CPRA requests, or issues and/or questions that arise in relation to the Ombudsman representatives' job duties.<sup>1</sup>

The attorney-client privilege does not protect communications between Ombudsman representatives and outside entities or third parties. Outside entities or third parties can include general members of the public, advocacy groups, or attorneys that serve subpoenas or CPRA requests upon the Ombudsman representatives. Therefore, local Ombudsman staff and representatives must not discuss any legal matters with outside entities or third parties. Furthermore, Ombudsman representatives must not delay in informing OLS of receiving these legal communications or papers from outside entities or third parties. Delay in receiving such important information can cause legal problems for OSLTCO, the local program, and/or the subpoenaed individual.

**C. Ombudsman representatives have a special duty to protect the personal, health, and financial information of residents and complainants.**

In the course of their work, certified local Ombudsman representatives have access to residents' personal, medical, and financial information. Because of this access and the sensitive nature of issues handled by Ombudsman representatives, federal and State laws require the protection from disclosure of complaint information, including the identities of complainants and residents, through specific confidentiality requirements. More regarding the legal obligations of Ombudsman representatives as to these records can be found in **Program Manual Chapter 5: Confidentiality, Consent, and Disclosure**.

Oftentimes, subpoenas or CPRA requests made by general member of the public, advocacy groups, or attorneys ask for protected information and records, which reveal the identities of complainants and residents. Releasing such records without the consent of a resident or without a court order is against the law. Again, it is of absolute importance that Ombudsman representatives do not handle these legal requests on their own and that

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<sup>1</sup> We are aware that some local Ombudsman programs may be county-based and retain their own county counsel. As previously mentioned, communications between clients and their attorneys are protected by the attorney-client privilege. In effect, county-based Ombudsman programs may have two attorneys (one through the county and one through CDA). If you wish to Cc: your county counsel in communications to the State office, you may do so. Such communications will be protected by the common interest doctrine, which is an extension of the attorney-client privilege. Please be aware that OSLTCO and OLS will still be your primary source of communication regarding legal matters and inquiries specifically connected to the Ombudsman program.

they instead refer these legal requests to OSLTCO to avoid any breach of confidentiality.

**Contact information**

When a legal inquiry or matter arises, LTCOPs and/or their representatives must contact the State Ombudsman at [Stateomb@aging.ca.gov](mailto:Stateomb@aging.ca.gov), and Cc: their respective OSLTCO Program Analyst.

A handwritten signature in black ink, appearing to read "Blanca E. Castro". The signature is fluid and cursive, with the first name "Blanca" being the most prominent part.

Blanca E. Castro  
Office of the State Long-Term Care Ombudsman