

CAYMAN ISLANDS



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**A BILL FOR A LAW TO CONFER UPON THE OMBUDSMAN
RESPONSIBILITIES AND POWERS OF INVESTIGATING AND
RESOLVING COMPLAINTS BY MEMBERS OF THE PUBLIC
AGAINST POLICE OFFICERS; TO AMEND THE POLICE LAW (2014
REVISION) IN ORDER TO DISCONTINUE THE POLICE PUBLIC
COMPLAINTS AUTHORITY; AND TO MAKE PROVISION FOR
INCIDENTAL AND CONNECTED MATTERS**

THE POLICE (COMPLAINTS BY THE PUBLIC) BILL, 2016

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to confer upon the ombudsman responsibilities and powers of investigating and resolving complaints by members of the public against police officers. The Bill would also discontinue the Police Public Complaints Authority.

Clause 1 of the Bill provides for the short title and commencement of the legislation.

Clause 2 defines various terms for the purposes of the legislation (for example, “Commissioner Ranks” and “Ombudsman”).

Clause 3 requires the Ombudsman to undertake investigation and resolution of complaints made by members of the public against police officers and, for that purpose, among other things -

- (a) to receive a complaint made by a member of the public against a police officer, including a complaint alleging that the conduct of a police officer resulted in the death of, or serious injury to, a person;
- (b) to determine by whom the investigation of a complaint shall be undertaken; and
- (c) to redirect or reassign any investigation, if the Ombudsman is of the view that the investigation is not being conducted in a timely or satisfactory manner.

Clause 4 of the Bill sets out the procedure to be followed in order for a member of the public to make a complaint against a police officer. A complaint may be made at a police station or at the Ombudsman’s office.

Clause 5 enables the informal resolution of a complaint. By virtue of the clause, where a member of the public makes a complaint at a police station, a senior officer of at least one rank higher than the rank of the police officer against whom the complaint is made, may attempt to informally resolve the complaint, if he can do so forthwith.

Clause 6 provides that in any case where a complaint cannot be informally resolved, the Commission has the following options -

- (a) request the Commissioner to order the Professional Standards Unit to undertake an investigation into the complaint;
- (b) appoint-

- (i) an investigatory body comprised of one or more individuals (whether resident in or outside the Islands); and
- (ii) task that investigatory body to undertake an investigation into the complaint; or
- (c) undertake an investigation into the complaint.

Clause 7 specifies the persons to whom a final investigation report must be submitted on completion of an investigation.

Clause 8 of the Bill sets out the powers of the Ombudsman, the Professional Standards Unit and an investigatory body for the purpose of investigations related to death or serious harm.

Clause 9 confers on the police a duty to preserve evidence that relates to a complaint.

Clause 10 sets out the procedure for withdrawing and suspending a complaint.

Clause 11 empowers the Commissioner of Police to review a final investigation report and to impose disciplinary measures.

Clause 12 enables Judicial Review of the Ombudsman's determination of a complaint.

Clause 13 of the Bill contains confidentiality provisions.

Clause 14 creates various offences (for example, misleading the Ombudsman).

Clause 15 requires the Ombudsman shall, within three months after the end of each financial year, to submit to the Legislative Assembly a report of the activities during that year and the Ombudsman's recommendations, if any.

Clause 16 of the Bill empowers the Cabinet to make regulations for the administration of the legislation.

Clause 17 repeals Part VII and Schedule 4 of the Police Law (2014 Revision), thereby discontinuing the Police Public Complaints Authority.

THE POLICE (COMPLAINTS BY THE PUBLIC) BILL, 2016

ARRANGEMENT OF CLAUSES

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ENACTED by the Legislature of the Cayman Islands.

1. (1) This Law may be cited as the Police (Complaints by the Public) Law, 2016. Short title and commencement

(2) This Law comes into force immediately after the coming into force of the Ombudsman Law, 2016.

2. In this Law - Interpretation

“Commissioner” means the Commissioner of Police appointed under the Police Law (2014 Revision); (2014 Revision)

“Commissioner Ranks” means the Commissioner, the Deputy Commissioner and the Assistant Commissioner;

“complaint” means a signed report of alleged unsatisfactory conduct of a police officer in the performance of the police officer’s duties made under section 4 by a member of the public;

“form” means a standard document for use under this Law published by the Ombudsman;

“functions” includes responsibilities and duties;

“investigatory body” means individuals appointed by the Ombudsman pursuant to section 6(1)(b)(i);

“Ombudsman” means the person appointed by the Governor under section 3 of the Ombudsman Law, 2016;

“police officer” means a member of the Service and includes -

- (a) any recruit constable, probationary constable, auxiliary constable or community support officer;
- (b) any person who has resigned from the Service or who has not been confirmed in appointment in the Service; and
- (b) any public officer assisting the Service in a joint operation during the course of duty;

“senior officer”, when used in relation to a complaint against a police officer, means a police officer senior in rank to the police officer against whom the complaint is made;

“serious harm”, when used in relation to a victim, means harm that has interfered or is likely to interfere with the physical or mental health or comfort of the victim and is more than merely transient or trifling in nature, and “serious harm” includes sexual assault;

(2014 Revision)

“Service” means the Royal Cayman Islands Police Service referred to in section 3 of the Police Law (2014 Revision); and

“Unit” means the unit of the Service known as the Professional Standards Unit or its successor.

Functions of
Ombudsman

3. (1) Subject to this Law, the Ombudsman shall undertake investigation and resolution of complaints made by members of the public against police officers.

(2) Subject to this Law, the Ombudsman shall have the power -

- (a) to receive any complaints made by a member of the public against a police officer, including a complaint alleging that the conduct of a police officer resulted in the death of, or serious harm to, a person;
- (b) to determine by whom the investigation of a complaint shall be undertaken, and give direction;
- (c) to deal with any other matter which, whether or not the subject of a complaint, is in the opinion of the Ombudsman of such a nature that it should be so investigated because of its gravity or its exceptional circumstances or because it is in the public interest;
- (d) to keep under review any investigation undertaken by the Unit, an investigatory body or a person authorized by the Unit or the Ombudsman under this Law;
- (e) to redirect or reassign any investigation at any time, if the Ombudsman is of the view that the investigation is not being conducted in a timely or satisfactory manner;
- (f) to require the production of any record or information, from any person except the Governor, which may be relevant to an investigation in a time period specified by the Ombudsman;
- (g) to refuse to investigate any matter on the ground that it is trivial, that the complaint is frivolous or vexatious or not made in good faith or that the complainant does not have sufficient interest in the matter; and
- (h) to issue guidance notes, procedures and forms as to the processing of complaints.

(3) For the purposes of an investigation, the Ombudsman shall have the same powers as the Grand Court in respect of the attendance and examination of witnesses (including the administration of oaths or affirmations and the examination of witnesses abroad) and in respect of the production of documents.

(4) No person shall be compelled for the purposes of an investigation under this Law to give any evidence or produce any document which the person could not be compelled to give or produce in civil proceedings before the Grand Court.

(5) No information, answer, document or thing shall be withheld from the Ombudsman on the ground that its disclosure would be contrary to the public interest.

(6) The Ombudsman may continue an investigation even if a criminal or civil proceeding may be, or has been commenced related to the matter under investigation.

- Complaints
4. (1) A member of the public may make a complaint against a police officer -
- (a) at any police station; or
 - (b) at the office of the Ombudsman,
- in a form, or in writing providing the information required by the Ombudsman.
- (2) The person who receives a complaint under subsection (1) shall record it and provide to the complainant a copy of the complaint made with an acknowledgement of receipt endorsed on the copy.
- (3) The person recording the complaint shall -
- (a) if it is made at a police station, forward a copy immediately to the Ombudsman; and
 - (b) wherever it is made, if it relates to death or serious harm, forward a copy immediately to the Director of Public Prosecutions.
- (4) A complaint shall be made within six months from the date on which the alleged acts or omissions which form the basis of the complaint took place or failed to take place but, where a complaint is made after that time, the Ombudsman may, in absolute discretion, accept that complaint.
- (5) The procedure to be followed in respect of complaints shall be made available to the public.

- Informal resolution or referral of complaints
5. (1) If a member of the public makes a complaint (other than one that alleges death or serious harm) at a police station, a senior officer of at least one rank higher than the rank of the police officer against whom the complaint is made, may attempt to informally resolve the complaint.
- (2) A complaint may be informally resolved pursuant to subsection (1) -
- (a) at the time when the complaint is made; or
 - (b) at any time during the course of, or after, an investigation has commenced,
- and in accordance with such procedures as may be published by the Ombudsman.
- (3) A statement made or answer given during an attempt at informal resolution of a complaint under this section is not admissible in any criminal or civil proceedings or, where an informal resolution process is terminated, any proceedings in relation to the complaint, except with the consent of the person who made the statement.

(4) Where a complaint is resolved informally, a record shall be made in a form, of the nature of the complaint and the manner in which the complaint was resolved; and the person making the complaint and the police officer concerned shall each signify in writing agreement to the resolution.

(5) A copy of a record made under subsection (4) shall be forwarded to the Ombudsman, the person making the complaint and the police officer concerned within two working days of the resolution of the complaint.

(6) A reference shall not be made in the personal record of a police officer to a complaint resolved under this section, unless so agreed by the complainant and the police officer concerned.

(7) Notwithstanding subsections (1) to (6), where the Ombudsman is of the opinion that the informal resolution was obtained as a result of any misunderstanding, threat or other improper pressure, the Ombudsman may order that the investigation of the complaint shall continue and give reasons for that in writing to the police officer concerned and the complainant; and in that event, the complaint shall continue and be treated as a complaint to be formally resolved.

6. (1) The Ombudsman may -

Formal resolution of
complaints

- (a) subject to subsection (2), request the Commissioner to order the Unit to undertake an investigation into the complaint;
- (b) appoint-
 - (i) an investigatory body comprised of one or more individuals (whether resident in or outside the Islands); and
 - (ii) task that investigatory body to undertake an investigation into the complaint; or
- (c) undertake an investigation into the complaint.

(2) A complaint regarding a member of the Commissioner Ranks shall be investigated by the Ombudsman or an investigatory body and not by the Unit.

(3) Where the Ombudsman undertakes an investigation, the Ombudsman shall give notice of the investigation to the Commissioner but where the investigation is in relation to a member of the Commissioner Ranks, the notice shall be given to the Governor.

(4) Where a complaint relates to death or serious harm or is a complaint which may be the subject of criminal proceedings, the Ombudsman shall give notice of an investigation into the complaint, to the Governor and the Director of Public Prosecutions.

(5) The Unit or an investigatory body shall adopt such procedure for dealing with a complaint as may be specified by the Ombudsman.

(6) Subject to subsection (7), the Ombudsman, the Unit or an investigatory body, as the case may be, shall, not later than sixty days after receipt of the complaint furnish, to the complainant and the police officer concerned, an interim report in a form, providing a summary of the investigation to date and shall furnish further interim reports as appropriate.

(7) The Ombudsman, the Unit or an investigatory body may decide not to make a report pursuant to subsection (6) where the Ombudsman, Unit or investigatory body is of the opinion that to do so might adversely affect the investigation of the complaint, or where there are no new matters to report.

(8) In the exercise of undertaking and carrying out an investigation, the Ombudsman may give directions as to particular investigations and it shall be the duty of the Unit or investigatory body to comply with the directions and, on completion of the investigation, to submit a final investigation report to the Ombudsman.

(9) Nothing in this section shall be construed as requiring the Ombudsman, the Unit or an investigatory body to follow any particular procedure or hold any hearing.

(10) The Ombudsman may determine whether any person may be represented, by an attorney-at-law or otherwise, in the investigation and, if so, to what extent.

Final investigation
report

7. (1) Subject to subsection (2), on completion of an investigation under this Law, the Ombudsman shall submit a final investigation report to -

- (a) the complainant;
- (b) the police officer against whom the complaint was made;
- (c) the Commissioner; and
- (d) where there are reasonable grounds to believe that a criminal offence may have been committed by a police officer, the Director of Public Prosecutions.

(2) Where an investigation under this Law was in relation to a member of the Commissioner Ranks, the Ombudsman shall on completion of the investigation, submit a final investigation report to -

- (a) the complainant;
- (b) the member of the Commissioner Ranks against whom the complaint was made;

- (c) the Governor; and
- (d) where there are reasonable grounds to believe that a criminal offence may have been committed by a police officer, the Director of Public Prosecutions.

(3) The final investigation report of the Ombudsman shall contain -

- (a) a summary of the complaint and a description of the alleged misconduct by the police officer;
- (b) a summary of the investigation and of the information obtained from the complainant, the police officer concerned and the witnesses, if any;
- (c) a description and analysis of any physical evidence obtained;
- (d) the procedural or legal decisions made;
- (e) the findings of fact;
- (f) the recommendations made, if any; and
- (g) the determination of the complaint.

(4) The findings of fact in the final investigation report are binding on the complainant and the police officer against whom the complaint was made, in any related administrative or civil proceedings, including police disciplinary matters.

(5) When a final investigative report is to be or has been referred to the Director of Public Prosecutions, such action shall be noted in the report.

(6) Where the investigation was in relation to the Deputy Commissioner of Police or Assistant Commissioner of Police, the Ombudsman shall on completion of the final investigation report under this section, also submit the report to the Commissioner.

(7) On making a report to the Director of Public Prosecutions, the Ombudsman shall furnish the Director of Public Prosecutions with -

- (a) copies of all statements collected in relation to the complaint;
- (b) all exhibits so collected; and
- (c) such other information as the Director of Public Prosecutions may require the Ombudsman to furnish.

(8) Nothing in this section shall prohibit the Ombudsman from referring a complaint to the Commissioner to be resolved under section 5.

8. For the purpose of complaints and investigations related to death or serious harm, the Ombudsman, the Unit and an investigatory body shall, in exercise of their functions and powers under this Law, have the like powers, authorities, protections and privileges as are given under the Police Law (2014 Revision) to a police officer of the rank of Chief Inspector.

Powers

(2014 Revision)

Duty of police officer to preserve evidence

9. (1) Subject to any directions by the Commissioner or the Ombudsman, a police officer in charge of a police station shall promptly take any steps which appear to the police officer to be necessary for the purpose of obtaining or preserving such evidence as relates to a complaint.

(2) A police officer who becomes aware of an incident resulting in death or serious harm to a person who is not a police officer, shall immediately report the incident to the police officer's station commander.

Withdrawal and suspension of complaints

10. (1) A complainant may by notice in writing withdraw the complaint at any time, and the notice shall state the grounds on which the withdrawal is made.

(2) Where the Ombudsman, the Unit or an investigatory body has already begun an investigation of a complaint, the Ombudsman, may -

- (a) if it is satisfied with the grounds on which the complaint is withdrawn, suspend or terminate the investigation of the complaint; or
- (b) if it considers it appropriate to so do, proceed with the investigation.

(3) Where the Ombudsman accepts the withdrawal of a complaint and terminates the investigation, the Ombudsman, shall immediately notify the complainant and the police officer concerned.

(4) Where the Ombudsman does not accept the withdrawal of a complaint, the Ombudsman shall state the reasons on which the investigation is proceeding.

Powers and duties of Ombudsman in relation to final investigation report

11. (1) The Commissioner shall review a final investigation report made pursuant to section 7 and may proceed immediately to take disciplinary action.

(2) Where a member of the Commissioner Ranks is the subject of the final investigation report, the powers of the Commissioner pursuant to this section shall be exercised by the Governor.

Appeal process

12. (1) In the case of a final investigation report, the complainant or the police officer concerned may seek leave of the Grand Court for judicial review of the Ombudsman's determination within twenty-eight days, and the time shall begin to run at the dispatch of the final investigation report to a delivery agent who is directed to deliver it to the complainant and the police officer concerned.

(2) A copy of the document seeking leave of the Grand Court mentioned in subsection (1), and subsequent proceedings, shall be served on the offices of the Ombudsman and the Commissioner.

(3) The judicial review shall be limited to jurisdiction, findings of fact and the decision as to whether the complaint was well founded but shall not include recommendations made.

(4) In the event that the application for judicial review is not pursued in a timely manner, the Ombudsman shall have standing to seek an order of the Grand Court to have the process terminated and the order shall end the right to seek judicial review and be deemed to confirm the final investigation report.

13. (1) Except in the case of proceedings for an offence pursuant to section 14(c), proceedings shall not lie against the Ombudsman, the Unit, an investigatory body or any person concerned with the administration of this Law for anything done, reported or said in performance of the functions under this Law.

Privilege and secrecy

(2) Information obtained by the Ombudsman, the Unit, an investigatory body or any person concerned with the administration of this Law in the course of or for the purposes of formal investigation shall not be disclosed except -

- (a) for the purposes of the investigation and of any report to be made on the investigation; and
- (b) for the purposes of proceedings (or possible proceedings) under sections 12 and 14;

and they shall not be called upon to give evidence in any proceedings of matters coming to their knowledge in the course of an investigation.

(3) For the purposes of the law of defamation-

- (a) any communication made by or to the Ombudsman, the Unit or an investigatory body for the purposes of a complaint or investigation shall be privileged in the same manner as if it were made in the course of proceedings in the Grand Court;
- (b) any report of the Ombudsman, the Unit or an investigatory body shall be deemed to be authorized to be published by the Legislative Assembly; and
- (c) any communication between the Ombudsman and a member of the Legislative Assembly and the Speaker of the Legislative Assembly for the purposes of the Ombudsman's functions shall be deemed to be a proceeding of the Legislative Assembly.

(4) The Ombudsman, the Unit, an investigatory body and every person concerned with the administration of this Law shall treat as secret and confidential all documents, information and things disclosed to them in the execution of any of the provisions of this Law, except that no disclosure -

- (a) made by the Ombudsman, the Unit, an investigatory body or any person concerned with the administration of this Law in proceedings for an offence under section 14; or
- (b) which the Ombudsman, the Unit or an investigatory body thinks necessary to make in the discharge of its functions,

shall be deemed inconsistent with any duty imposed by this section.

Offences and penalties

14. A person who -

- (a) wilfully makes a false statement to mislead or misleads or attempts to mislead the Ombudsman, the Unit, an investigatory body or any other person in the execution of functions under this Law;
- (b) without lawful justification or excuse -
 - (i) obstructs, hinders or resists the Ombudsman, the Unit, an investigatory body or any other person in the exercise of functions under this Law; or
 - (ii) fails to comply with any lawful requirement of the Ombudsman, the Unit, an investigatory body or any other person under this Law; or
- (c) deals with documents, information or their preservation or administration in a manner inconsistent with that person's duty under this Law,

commits an offence and is liable on summary conviction to a fine of three thousand dollars or to imprisonment for one year, or to both.

Reporting

15. (1) The Ombudsman shall, within three months after the end of each financial year, submit to the Legislative Assembly a report of the activities under this Law during that year and the Ombudsman's recommendations, if any, and the Oversight Committee or the Speaker of the Legislative Assembly shall cause a copy of the report to be laid in the Legislative Assembly.

(2) Where the Ombudsman has made a recommendation and, within the time specified or a reasonable time thereafter, the Ombudsman is of the opinion that no adequate action has been taken to remedy the concern, the Ombudsman may give to the Speaker a special report on the case, and the Speaker shall lay the report before the Legislative Assembly.

(3) The Ombudsman, prior to laying a special report under subsection (2), shall provide the Governor with a copy of the report.

(4) The Ombudsman shall not, in any report under subsection (2), comment adversely on any person unless the Ombudsman has given that person an opportunity to be heard.

(5) Where the Ombudsman makes an investigation on the Ombudsman's own initiative, the Ombudsman shall make a report on it to the Legislative Assembly by giving it to the Speaker, who shall lay it before the Legislative Assembly.

16 (1) The Cabinet may make regulations for the administration of this Law and for prescribing anything required to be prescribed under this Law. Regulations

(2) Regulations made under subsection (1) shall be subject to affirmative resolution.

17. (1) The Police Law (2014 Revision) is amended as follows - Amendment of the
Police Law (2014
Revision) and savings
provisions

(a) in section 2 by deleting the definition of the word "Authority";
and

(b) by repealing Part VII and Schedule 4.

(2) During the period commencing on 22nd November, 2010 and ending on the date of commencement of this Law, a complaint made under section 113 of the former Law shall not be invalid by reason only of a failure to make the complaint within six months from the date on which the alleged acts, the basis of the complaint, were done.

(3) In subsection (2), "former Law" means the Police Law (2014 Revision) in force immediately before the commencement of this Law.

Passed by the Legislative Assembly the _____ day of _____, 2017.

Speaker.

Clerk of the Legislative Assembly.