



OFFICE OF THE DEPUTY GOVERNOR

ADMINISTRATIVE CIRCULAR

TO: Honourable Attorney General
Financial Secretary
All Chief Officers
All Heads of Departments/Sections/Units and all Civil Servants

FROM: The Deputy Governor

DATE: February 21, 2012

SUBJECT: **SIGNING OF PETITIONS**

You should be aware that the Cayman Islands Constitution Order 2009 provides the citizens of the Cayman Islands with various rights, freedoms and responsibilities that are necessary in a democratic society. Two such provisions, which can often cause confusion for those citizens employed by the public service, are:

- Section 11 — Freedom of Expression;
- Section 70 — People-Initiated Referendums.

It should be appreciated that petitions have long been a common form of individual and collective expression of views in relation to matters in the public forum in the Cayman Islands; I believe much more so than in other jurisdictions.

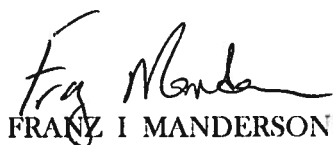
You may recall that back in mid-2011, the Constitutional Commission quite appropriately raised publicly the issue of the lack or the absence of guidance for Civil Servants on the signing of petitions in an *Opinion* issued by the Commission. The *Opinion* also called on my Office to develop appropriate guidance in this regard.

I am therefore pleased to provide the said guidance in the form of a policy document. While I am happy to issue the attached “Policy in respect of the Signing of Petitions by Public Servants” I cannot take credit for the drafting of the Policy and wish to extend my thanks and gratitude to the former Deputy Governor, Mr Donovan Ebanks, for so doing.

I know that Mr Ebanks would like to thank the Cayman Islands Civil Service Association, the Constitutional Commission, the Human Rights Commission, the Honourable Attorney General, the Acting Solicitor General and Sir Jeffrey Jowell for their feedback and assistance with developing the policy.

I expect that shortcomings within the policy will inevitably manifest themselves and for which specific review provisions have been included. Nevertheless, it is imperative that we make a start.

Public servants are therefore invited to familiarise themselves with the policy and to adhere to its provisions. Any questions, comments or concerns should be directed in writing to my Office.


FRANZ I MANDERSON

cc: His Excellency the Governor
Honourable Premier
Honourable Chief Justice
Honourable Speaker, Legislative Assembly
Honourable Ministers of the Cabinet
Honourable Members, Legislative Assembly
Managing Directors, Statutory Authorities
Managing Directors, Government-Owned Companies



DEPUTY GOVERNOR'S OFFICE

POLICY in respect of the SIGNING of PETITIONS by PUBLIC SERVANTS

1. ISSUING AUTHORITY and APPLICATION

This policy is issued by the Deputy Governor as Head of the Civil Service and in accordance with the Public Service Management Law (2011 Revision) and with the approval of His Excellency the Governor. It applies to all public servants.

2. DEFINITIONS

For the purposes of this policy, unless it is otherwise provided or required by the context:

"Agency" means any ministry, portfolio, department, unit or section;

"Appointing Officer" means –

- (a)** in the case of Judges and Magistrates, Official Members, the Auditor General, the Complaints Commissioner, the Information Commissioner, the Commissioner of Police, the Deputy Commissioner of Police, Director of Public Prosecutions, the Cabinet Secretary and the Assistant Commissioner of Police – the Governor;
- (b)** in the case of the chief officers of ministries and portfolios – the Head of the Civil Service;
- (c)** in the case of staff of a civil service entity – the chief officer, or head of the department or other manager in the civil service entity with delegated authority from the chief officer to make personnel decisions;

- (d) in the case of a statutory authority or a government company-the person appointed as chief officer (by whatever name called) by the board of that authority or company;

“Chief Officer” means –

- (a) in the case of a ministry-the Permanent Secretary of that ministry;
- (b) (i) in the case of the Portfolio of Internal and External Affairs-such public officer in the Portfolio as may be designated by the Governor;
- (ii) in the case of the Portfolio of Legal Affairs-such public officer in the Portfolio as may be designated by the Governor;
- (iii) in the case of the Portfolio of Finance and Economics-such public officer as may be designated by the Governor; and
- (iv) in the case of the Portfolio of the Civil Service-such public officer in the Portfolio as may be designated by the Governor;
- (c) in the case of a statutory authority or a government company-the person appointed as chief officer (by whatever name called) by the board of that authority or company;
- (d) in the case of the Audit Office-the Auditor-General; and
- (e) in the case of the judicial administration-the court administrator or such other suitable person as may be designated by the Chief Justice; and
- (f) in the case of the Office of the Complaints Commissioner-the Complaints Commissioner;
- (g) in the case of the Information Commissioner’s Office - the Information Commissioner;
- (h) in the case of the Cabinet Office - the Cabinet Secretary; and
- (i) in the case of the Office of Public Prosecution - the Director of Public Prosecutions.

“Civil Servant” means a person employed by the government, but does not include a Member of the Legislative Assembly other than an Official Member, and is a public officer for the purposes of the Constitution;

“Civil Service” means the group comprising all civil servants;

“Direct Responsibility” means being responsible for advising on, delivery of or regulation of the function which is the subject matter of the petition;

“Key Position” means the position of Chief Officer, Deputy Chief Officer, Policy Advisor, Head of Agency, Deputy Head of Agency, the Clerk of Cabinet and the Clerk of the Legislative Assembly;

“Sensitive Position” means a position held by an officer employed in an agency which provides direct support to Ministries and Portfolios in the areas of legal advice, fiscal advice, public communication and physical development and who is responsible for providing these services on behalf of his agency or is eligible to be called upon to provide them;

“Public Office” means, subject to subsection 124.(2) of The Cayman Islands Constitution Order 2009, an office of emolument in the public service;

“Public Officer” means the holder of any public office, and includes a person appointed to act in any public office;

“Public Official” includes any Minister, Official Member, or person in a Key Position to whom a petition is addressed;

“Public Servant” means a person employed by a civil service entity or an employee of a statutory authority or government company.

3. LEGISLATIVE CONTEXT

The C.I. Constitution Order 2009 (the Constitution) provides the basic rights and the broad principles of governance and conduct that apply to all individuals in the Cayman Islands; the Public Service Management Law (2011 Revision) specifically provides for the engagement and conduct of the persons essential for proper public administration. Sections of these two instruments relevant to this subject are shown below:

The Cayman Islands Constitution Order 2009

Expression

11.—(1) No person shall be hindered by government in the enjoyment of his or her freedom of expression, which includes freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his or her correspondence or other means of communication.

(2) Nothing in any law or done under its authority **shall be held to contravene this section to the extent that it is reasonably justifiable in a democratic society—**

(a) in the interests of defence, public safety, public order, public morality or public health;

(b) for the purpose of protecting the rights, reputations and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating telecommunications, posts, broadcasting or other means of communication, or public shows or entertainments; or

(c) **for the imposition of restrictions on public officers in the interests of the proper performance of their functions.**

Overriding duty of public officers

108. Subject to this Constitution, all public officers must—

(a) act in accordance with the best interests of the Cayman Islands and not in their own private interests; and

(b) implement Government policy to the best of their ability and in accordance with the directions given to them by the Cabinet or other responsible person or authority.

Public Service Management Law (2011 Revision)

Section 4. Public Service Values

The values which govern the management and operation of the public service, in particular, the public service values prescribed in subsections 4.(a) and (b) of the law, namely:

4.(a) to serve diligently the government of the day, the Legislative Assembly and the public in an apolitical, impartial and courteous manner and to deliver high quality policy advice and services; and

- 4.(b) to uphold the proper administration of justice and the principles of natural justice, and to support public participation in the democratic process.

Section 5. The Public Service Code of Conduct

The Code of Conduct with which public servants must comply and that failure to do so in a significant way shall be grounds for discipline or dismissal, in particular, the components prescribed in subsections 5.(2)(c) and (d) of the law, namely:

5.(2)(c) a public servant **must be politically neutral in his work and serve the government of the day in a way that ensures that he maintains the confidence of the government**, while also ensuring that he is able to establish the same professional and impartial relationship with future governments;

5.(2)(d) a public servant, as a member of the public, **has the right to be politically informed**¹ but must ensure that his participation in political matters or public debate or discussions, does not conflict with his obligation as a public servant to be politically neutral;

4. GENERAL CONTEXT

This policy should be read in the context of the following:

- Public servants are directly or indirectly servants of the Government and owe a duty of loyal service to the Government as their employer.
- Primary attributes of public servants include those of integrity, impartiality, objectivity and neutrality which ensure that the public service will be trusted by successive governments. The public service serves every government with the same passion. It does not take sides in the partisan debate between parties.

¹ For example, attend public meetings and ask questions which are seen as seeking information.

- Public servants are to keep separate their public positions and their political affiliations, if any. Public servants would not be able to fulfil their duties if their own political views were expressed in a fashion that caused politicians and the public to doubt their functional impartiality. Confidence in the public service would be diminished.
- Public servants do not generally express publicly their personal views on government policies or administration where such public criticism is likely to impact on their ability to perform effectively the duties of a public servant or on the public perception of that ability.

5. CLASSES OF PETITIONS

While it is not possible to predict what form every petition will take and to whom it will be addressed, it is essential to prescribe key features of petitions which will allow their distinction and provide the basis of authorizations under this policy. Accordingly, petitions shall be classified in one of two classes, namely:

5.1. Class 1 Petition: Petition Addressed to a Public Official

This category includes any petition addressed to a Public Official seeking attention to a matter related to the Ministry or Portfolio or Agency for which he or she is constitutionally responsible, whether for a minor matter or a matter that could be defined as a matter of national importance, and includes:

- 5.1.1. Seeking to amend or cease a current action, to amend or prevent a proposed action or seeking to initiate a new action on the part of the ministry, portfolio, or agency; or
- 5.1.2. Seeking to amend or cease a current action or to amend or prevent a proposed action on the part of a private individual or entity being an action which the ministry, portfolio, or agency is empowered to regulate.

5.2. Class 2 Petition: Petition Addressed to the Cabinet Seeking to Trigger a People-Initiated Referendum

This category relates to a petition addressed to the Cabinet, prepared pursuant to section 70 of the Constitution, on a matter or matters of national importance, intending to trigger a people-initiated referendum, requiring the specified threshold of twenty-five per cent (25%) of registered voters to sign for presentation to Cabinet.

5.3. Other Petitions Addressed to the Cabinet

A petition addressed to the Cabinet, other than a petition as provided for under para. 5.2. above, shall be treated as a Class 1 petition to the Public Official with constitutional responsibility for the matter to which the petition relates.

5.4. Petitions Addressed to the Governor

• A petition addressed to the Governor shall be treated as:

5.4.1. a Class 1 petition if it relates to a matter for which a Public Official has constitutional responsibility; and

5.4.2. a Class 2 petition if it relates to a matter for which the Governor has constitutional responsibility.

5.5. Petitions Related to Other Social, Civic Community and Professional Matters

This policy only applies to petitions which are addressed to the Governor, the Cabinet or a Public Official.

6. SIGNING OF PETITIONS

6.1. In accordance with the provisions of section 11.(1) of the Constitution, the preferred policy would be that public servants should enjoy the same freedom of expression, including the freedom to sign petitions, as persons outside of the public service. However, the roles of some public

servants are so intrinsically linked to the responsibilities and actions of some Public Officials that it is impractical to allow those public servants to be seen publicly to be of a conflicting view to that of the respective Public Official.

6.2. In the interest of proper and effective performance of their functions, it is necessary that some restrictions are applied to these public servants as envisaged by section 11.(2)(c), and in the furtherance of the provisions of section 108, of the Constitution. This consideration is reflected in the policies in paragraphs 6.3. - 6.5. below.

6.3. A public servant, other than those holding positions set out in paragraph 6.4., is permitted to sign a Class 1 Petition, subject to the requirements for notification set out in paragraph 7, and continued adherence to Civil Service Values and Code of Conduct.

6.4. A public servant who holds:

- a Key Position with direct responsibility; or
- a Sensitive Position providing services;

to the Public Official to whom a Class 1 petition is directed is not permitted to sign the Petition.

6.5. A public servant is permitted to sign a Class 2 Petition, subject to the requirements for notification set out in paragraph 7, and continued adherence to Civil Service Values and Code of Conduct.

6.6. Notwithstanding the permissions conveyed by paras. 6.3. and 6.5. above, a public servant who is authorised to sign a petition has a responsibility, in making his decision as to whether to do so or not, to give consideration to whether he feels that signing the petition in question would likely impact his ability to discharge his normal duties, giving consideration to factors such as:

- Is he closely engaged in supporting the policy of the Public Official to whom the petition is addressed by either providing advice or giving effect to implementation directives; or
- Is he required to speak for the government or for any entity reporting directly to the Public Official to whom the petition is addressed; or
- Does he have significant direct dealings with the public and does he make, or appear to make, decisions directly affecting the persons with whom he has contact, and would they likely become aware of his decision to sign the petition in question?

7. NOTIFICATION

7.1. Maintaining confidence and trust is fundamental to any personal or professional relationship and no less so to that between a public servant and a Public Official. Proper communication of information that a public servant is privy to, and a Public Official is inherently interested in, is a key component of the *modus operandi* that must be followed for confidence and trust to be preserved. This is particularly relevant to information that the public servant is privy to before anyone else and therefore best placed to communicate. The decision to sign a petition is seen as such information.

7.2. It follows, therefore, that in the interest of preserving confidence and trust between public servants and Public Officials, it is deemed appropriate to affix certain communication requirements to permissions granted to certain categories of public servants in respect of the signing of petitions.

7.3. The appropriate channel of communication for a public servant to a Public Official is through their Appointing Officer and their Chief Officer under whose authority the public servant is appointed.

- 7.4. Relevant to the signing of a Class 1 Petition, any public servant who holds a Key Position but does not have direct responsibility for the subject matter of the petition must, at least forty-eight (48) hours prior to doing so, inform the Public Official whom his or her position supports, through his Chief Officer, of his intention to sign a Class 1 Petition.
- 7.5. Relevant to the signing of a Class 2 Petition, any public servant who holds a Key Position must, at least forty-eight (48) hours prior to doing so, inform the Public Official whom his or her position supports, through his Chief Officer, of his or her intention to sign a Class 2 Petition.
- 7.6. Written notifications shall be disposed of within thirty-six (36) months of receipt or within six (6) months of receipt of the petition, whichever is earlier.

8. SANCTIONS:

- 8.1. The signing of a petition by a public servant who is not authorised to do so will render the public servant liable to disciplinary action.
- 8.2. The failure by a public servant to provide notification to a Public Official of his or her intention to sign a petition will render the public servant liable to disciplinary action.
- 8.3. An Appointing Officer shall not take any action towards a public servant who signs a petition in accordance with the provisions of this policy merely as a result of the public servant having done so.
- 8.4. A public servant who feels that he has been subjected to action which he has reason to believe was occasioned by his having legitimately signed a petition in accordance with this policy shall bring the matter to the immediate attention of the Deputy Governor.

8.5. Any action taken by an Appointing Officer against a public servant who legitimately signed a petition in accordance with this policy will render the Appointing Officer liable to disciplinary action unless he is able to provide a justifiable basis for the action taken.

9. PROMULGATION

9.1. This policy shall be incorporated into all Work Place Rules and Staff Handbooks and made available to all staff.

10. FUTURE REVISIONS

10.1. This policy may be revised as deemed necessary. A review of the policy will be conducted after it has been in place for one year and any revisions emanating from this review shall be implemented prior to the policy having been in place for two years. Reviews thereafter shall be conducted at such times as the Deputy Governor may decide.

DE/fm
REF: DE/PCS/1 & IN/HDG/4
February 21, 2012
