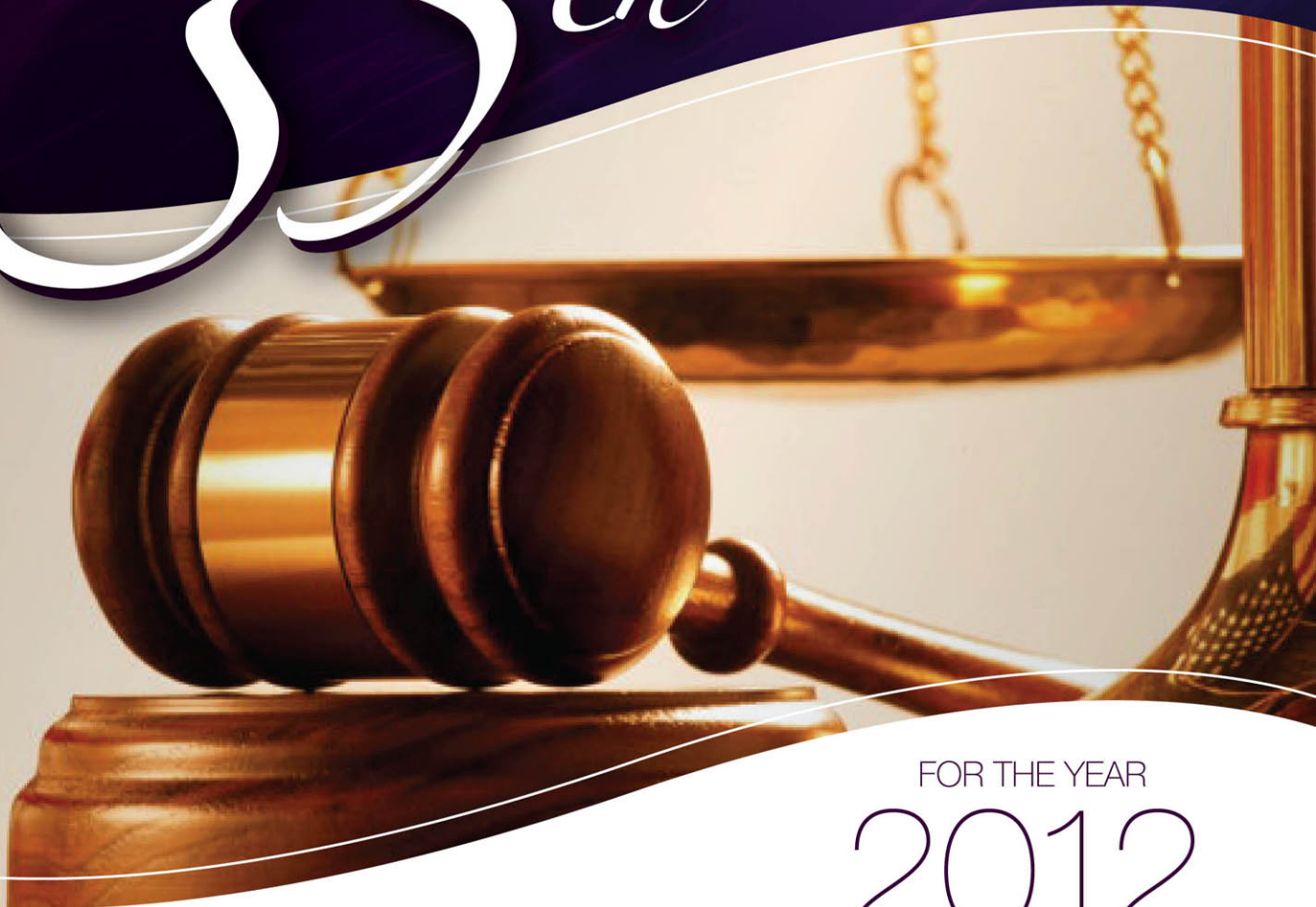




THE OFFICE OF THE OMBUDSMAN OF TRINIDAD & TOBAGO

35th ANNUAL REPORT



FOR THE YEAR
2012

Letter to the Speaker



Honourable Speaker
Office of the Parliament,
Tower D, Levels G-7,
Port-of-Spain International Waterfront Centre,
1A Wrightson Road,
Port of Spain.

Dear Mr. Speaker,

I have the honour to present the *Thirty-Fifth Annual Report* of the Ombudsman for the period *January, 2012 to December, 2012*.

The Report is submitted pursuant to Section 96 (5) of the Constitution of the Republic of Trinidad and Tobago.

Yours faithfully,

Lynette Stephenson, S.C.
OMBUDSMAN
Republic of Trinidad and Tobago





Vision

The Office of the Ombudsman is a strong, respected, independent institution dedicated to arresting bureaucratic injustice and developing an accountable, transparent and participatory public service, for the benefit of all persons in Trinidad and Tobago

Mission

To ensure the protection of all individuals against bureaucratic injustice by efficiently and effectively investigating complaints in an impartial and expeditious manner, educating the public about their rights and responsibilities and advocating for improvement in the quality and standards of public administration in Trinidad and Tobago.

Values

Accessibility
Sensitivity
Professionalism
Integrity
Respect
Equity
Excellence

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Lynette Stephenson, s.c.
Ombudsman of Trinidad and Tobago



"If provided with the proper environment in which to develop, the Ombudsman institution will become a powerful force for good in our society – a mighty bulwark against injustice."

Errington George Green, Jamaica's first Ombudsman 1981.

Ombudsman's Remarks

There is a good reason why the vast majority of nations in the world have chosen to adopt the Ombudsman institution also known as the Parliamentary Commissioner or Public Defender. States overwhelmingly recognise the need for oversight mechanisms, to ensure that powers given to functionaries within their jurisdiction by Constitution or any other law are exercised within the ambit of reasonableness and justice.

In Trinidad and Tobago as in other parts of the world people have had to come to terms with the fact that wherever there is discretion there is room for arbitrariness. Even the most conscientious, hardworking and dependable civil servants are not above mistakes and abuse. Empirically speaking it is not at all uncommon for individuals in their interactions with the State to experience the suffering of undue delay, indifference, negligence, and even oppressive or unlawful behaviour.

This reality is exacerbated now more and more, by both the natural demographic expansion which has swelled the demand for public services and modernization itself, which has augmented the size and complexity of the bureaucracies that address those needs.

If we look carefully at the history of the Office in the Region since Independence, specifically at the level of commitment from Parliamentary institutions the record is less than satisfactory. Guyana for example made history in 1966 becoming the first country in the Region and indeed the Western Hemisphere, to create an office of the Ombudsman. Today in 2012 that office no longer exists. Trinidad and Tobago appointed its first Ombudsman in 1976 today in 2012, thirty six years later, the Office's annual report has only been debated in parliament once and that was in 1989.

I would challenge anyone who would proffer that Regional parliaments deliberately undermine the independence of Ombudsmen or impede the functions of their offices. I would however, have to agree with those who contend that the relationship between parliamentary institutions and the Office has been characterised by a level of indifference. If we understand, that proper support from The Executive Authority is critical for the success of the office and are mindful, that it is often the most vulnerable, in our societies who turn to the Ombudsman, then we must agree that a change is imperative.

Certainly indifference is not the only challenge that the office faces, across the Region. There is still, much to be achieved, if the institution is to emerge as the vigorous defender of justice, equality, good administration and democracy that it should be.

Having held the office now for 7 years I have come to the conclusion cautiously that a number of legislative and structural changes are required to create a more favourable environment for effective performance. In the year 2013 I will be looking more closely at those that have been proposed already along with a number of new and innovative ideas about the institution, with the ultimate goal of developing a reform agenda.

One such new idea comes out of the 21st Meeting of the Organization of American States (OAS) Committee of Experts held in Washington, D.C., USA from March 8th to the 22nd. As a follow-up on the implementation of the Inter-American Convention against Corruption by member states, the Committee was of the view that in addition to the responsibilities already identified, the Ombudsman was empowered under Section 94 of the Constitution to investigate any conditions resulting from, or calculated to facilitate or encourage corruption in the Public Service, even when no specific complaint had been made.

The point is that in the 21st century this office must not simply be a symbolic gesture or show piece for favourable publicity to bolster a country's liberal or progressive image. We have to take up the challenge to make it a truly viable and effective defender of the public good.

On behalf of the members of staff in the office of the Ombudsman and on my own behalf, I wish to thank those public servants who have gone the extra mile in the performance of their duties.

I also say thanks to the many persons who visited the Office in the past year and brought to our attention situations where services needed improvement.



Ms. Lynette Stephenson, S.C.
Ombudsman
Republic of Trinidad and Tobago

Introduction - THE OFFICE OF THE OMBUDSMAN

The Ombudsman's Office of Trinidad and Tobago submits its thirty fifth Annual Report to Parliament on its activities for the year ended December 31, 2012. The report is prepared Pursuant to Section 96 (5) of the Constitution of the Republic of Trinidad and Tobago, Which States:

"The Ombudsman shall make annual reports on the performance of his functions to Parliament which shall include statistics in such form and in such detail as may be prescribed of the complaints received by him and the results of his investigations".

The Office of the Ombudsman

14. The Office of the Ombudsman was established under Section 91 of the Constitution of the Republic of Trinidad and Tobago for the purpose of investigating:

"... any decision or recommendation made, including advice or recommendation made to a Minister or any act done or omitted by any department of government or any other authority ... being action taken in exercise of the administrative functions of that department or authority."

15. The Ombudsman is an Officer of Parliament and does not form part of the machinery of Government. The Office exists as an independent oversight body and, in accordance with the provisions of the Ombudsman Act, performs the dual role of:

- *Providing a fair and impartial investigation service for members of the public who believe that they have been adversely affected by a decision or action of a public sector agency; and*
- *Assisting public sector agencies to improve their decision making and administrative practices and procedures.*

MATTERS NOT SUBJECT TO INVESTIGATION are discussed in Appendix

The Ombudsman and the Freedom of Information Act

The Freedom of Information Act (FOI Act), Chap. 22:02

which came into effect in 2001 provides members of the public with a general right of access to official documents in the possession of public-sector bodies/authorities.

Section 15 of the said Act places a statutory obligation upon public authorities to take all reasonable steps to inform an applicant of its decision not later than thirty (30) days after the request for access to official documents was duly made.

Section 38 A (1) states - "A person aggrieved by the refusal of a public authority to grant access to an official document, may within twenty-one (21) days of receiving notice of the refusal under **Section 23(1)**, complain in writing to the Ombudsman and the Ombudsman shall after examining the document if it exists, make such recommendations with respect to the granting of access to the document as he thinks fit within thirty days or as soon as practicable thereof."

In the event that a public authority does not respond in writing within a thirty day period, the Ombudsman does have the authority to enquire as to the reasons for this delay.

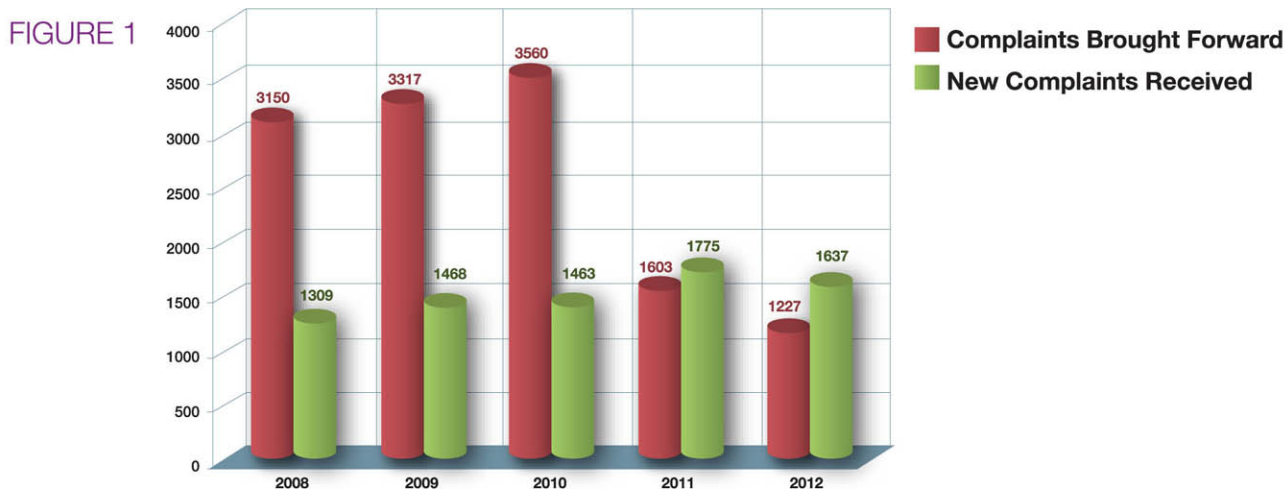
Public officers must recognise and appreciate the importance of the right given to citizens to seek access to information under the FOI Act. They have an obligation to comply with the provisions of this Act.

Report on the Years Activities

OVERVIEW OF INVESTIGATIONS CONDUCTED IN 2012

During the year 2012 I oversaw a caseload of two thousand, eight hundred and sixty-four (2,864) complaints. This figure was comprised of one thousand, six hundred and thirty-seven (1,637) new complaints and one thousand, two hundred and twenty-seven (1,227) unresolved matters brought forward from previous years. The one thousand, six hundred and thirty-seven (1,637) new complaints represents a decrease of one hundred and thirty-eight (138) from the previous year. Though this is important to note, I don't believe that this signals a departure from the overall upward trend of complaints that I have received over the last 5 years: **see Fig 1.**

Figure 1 below is illustrative of the total number of new complaints received and brought forward over a five year period (2008-2012) by the Office of the Ombudsman. There is a noticeable reduction in cases brought forward after 2010 and this has to do with a special audit that was conducted during that year which determined that a significant quantity of the cases being brought forward could be closed.



In 2012 investigations were initiated on nine hundred and forty three (943) new complaints if you include the twenty-one (21) which fell under the Freedom of Information Act (FOIA). By the end of the year two hundred and fifty (250) of these cases had been resolved, including all of the 21 FOI cases. This still leaves the majority of new cases a total of six hundred and ninety-three (693) unresolved. **See Table I**

TABLE 1

	NUMBER	PERCENTAGES %
Total number of complaints received in 2012	1637	100
Less total number of complaints without jurisdiction (Private)	(262)	16
Less referrals	(432)	26.4
Less total Freedom of Information Act	(21)	1.3
Total number of complaints pursued	922	56.3
Total number of complaints concluded	229	24.8
*Complaints sustained	60	6.5
*Complaints not sustained	23	2.5
*Complaints withdrawn/discontinued	30	3.2
*Complaints advised	116	12.6
TOTAL NUMBER OF COMPLAINTS UNDER INVESTIGATION AS AT DECEMBER 31, 2012	693	75.2

If we include cases brought forward from previous years a total of eight hundred and thirteen (813) investigations were resolved (this includes the 21 FOI cases). This means that a total of one thousand, three hundred and fifty-seven (1,357) complaints remained unresolved.

See Table II

TABLE II

	NUMBER	PERCENTAGES %
Total number of complaints brought forward from previous years	1227	
Total number of complaints received in 2012	1637	
TOTAL	2864	100
Less number of complaints without jurisdiction (Private)	(262)	9.1
Less referrals	(432)	15.1
Less total Freedom of Information Act	(21)	0.7
Total number of complaints pursued	2149	75
Total number of complaints concluded	792	36.9
*Complaints sustained	279	13
*Complaints not sustained	77	3.6
*Complaints withdrawn/discontinued	210	9.8
*Complaints advised	226	10.5
TOTAL NUMBER OF COMPLAINTS UNDER INVESTIGATION AS AT DECEMBER, 2012	1357	63.1

The following **table (III)** gives a breakdown of new complaints received against Government departments/Agencies/Ministries. It also sheds light on their current status.

The following key words (specialised jargon) are used in the table

- **Advised** - Office looked at the complaints and it is not a matter to investigate.
- **Not sustained** - Following investigations the complaint is found to be without merit
- **Sustained** - Investigations demonstrate that the complaint has merit
- **Withdrawn** - the complainant is no longer interested in pursuing the matter
- **Discontinued** - The office takes the decision to cease pursuit of the matter for any number of reasons.

TABLE III

MINISTRY/DEPARTMENT/AGENCY	Total No. of Complaints	Advised	Not Sustained	Sustained/Rectified	Under Investigation	Withdrawn/Discontinued
ART AND MULTICULTURALISM	1	1	0	0	0	0
THE ATTORNEY GENERAL	5	2	0	1	2	0
AIRPORT AUTHORITY	1	0	0	0	1	0
COMMUNITY DEVELOPMENT	5	2	1	0	2	0
EDUCATION	34	6	0	6	20	2
ELECTIONS AND BOUNDARIES COMMISSION	4	0	0	0	4	0
ENERGY AND ENERGY AFFAIRS	4	2	0	0	2	0
ENVIRONMENTAL MANAGEMENT AUTHORITY	6	1	0	0	5	0
FINANCE AND THE ECONOMY	71	10	1	4	55	1
FOOD PRODUCTION	25	2	0	1	21	1
FOREIGN AFFAIRS	4	2	0	0	2	0
GENDER, YOUTH AFFAIRS AND CHILD DEVELOPMENT	2	1	0	0	1	0
HEALTH	46	2	1	1	40	2
HOUSING	16	1	0	0	14	1
• Housing Development Corporation (HDC)	39	5	1	4	29	0
JUDICIARY	14	9	1	0	3	1
JUSTICE	8	3	0	0	3	2
LABOUR, SMALL AND MICRO ENTERPRISE DEVELOPMENT	10	1	1	2	6	0
LEGAL AFFAIRS	9	3	2	1	3	0
LEGAL AID AND ADVISORY AUTHORITY	7	3	0	0	4	0
LOCAL GOVERNMENT	3	1	0	0	2	0
• URP	5	0	0	0	5	0
• Borough Corporation	7	0	0	0	7	0
• City Corporation	11	2	0	0	9	0
• Regional Corporation	72	6	3	2	59	2
MAGISTRACY	7	1	0	0	6	0
NATIONAL INSURANCE BOARD	154	2	0	22	126	4
NATIONAL DIVERSITY & SOCIAL INTEGRATION	1	0	0	0	1	0
NATIONAL SECURITY	10	3	0	1	6	0
• Coast Guard	1	0	0	0	1	0
• Defence Force	2	1	0	0	1	0
• Forensic Science Centre	1	0	0	0	1	0

TABLE III - Continued

MINISTRY/DEPARTMENT/AGENCY	Total No. of Complaints	Advised	Not Sustained	Sustained/ Rectified	Under Investigation	Withdrawn/ Discontinued
• Fire Services	6	1	0	0	5	0
• Immigration	7	1	0	1	5	0
• Police Service	15	8	0	0	7	0
• Prisons Service	13	0	2	2	8	1
OFFICE OF THE PRIME MINISTER	2	0	0	0	2	0
THE PEOPLE AND SOCIAL DEVELOPMENT	66	11	4	5	43	3
PERSONNEL DEPARTMENT	2	0	0	0	1	1
PLANNING AND SUSTAINABLE DEVELOPMENT	15	0	0	0	13	2
PUBLIC ADMINISTRATION	6	0	1	0	5	0
PUBLIC UTILITIES	4	0	1	0	2	1
• METEOROLOGICAL SERVICES	1	0	0	0	1	0
• T & TEC	6	2	0	1	3	0
• W. A. S. A	7	4	0	0	3	0
• TTPOST	2	0	1	0	1	0
SCIENCE & TECHNOLOGY	8	3	0	0	5	0
SERVICE COMMISSIONS DEPARTMENT	10	7	0	0	2	1
SPORT	3	0	0	0	2	1
STATE ENTERPRISES						
• PETROTRIN	1	0	0	0	1	0
STATUTORY AUTHORITY	1	0	0	0	0	1
TOBAGO HOUSE OF ASSEMBLY						
Divisions:						
• Agriculture, Marine Affairs, Marketing & the Environment	4			1	3	
• Community Development & Culture	1				1	
• Health & Social Services	30	1	0	0	29	0
• Office of the Chief Secretary-Chief Administrator	1				1	
• Office of the Chief Secretary-Public Administration	2				2	
• Infrastructure & Public Utilities	40		1	1	38	
• Tourism & Transportation	4				4	
• Education, Youth Affairs & Sport	25				25	
• Finance & Enterprise Development	1				1	
• Finance & Enterprise Development – Inland Revenue	1			1		
• Settlements & Labour	1				1	
TOBAGO DEVELOPMENT	2			1	1	
• CAST	1				1	
TRADE, INDUSTRY AND INVESTMENT	1	1	0	0	0	0
TRANSPORT	5	1	0	0	3	1
• PTSC	1				1	
TOURISM	2	2	0	0	0	0
WORKS AND INFRASTRUCTURE	39	2	2	2	31	2
• MTS	1				1	
TOTAL	922	116	23	60	693	30
Freedom of Information Act, Chap. 22:02	21					
Referrals	432					
Private	262				4	
GRAND TOTAL	1637	116	23	60	697	30

COMMUNITY OUTREACH

The Office of the Ombudsman engages in outreach activities in communities across the country to ensure that members of the public everywhere have access to its services. These outreach activities are conducted once a month in the areas of Point Fortin; Rio Claro; Chaguanas; Sangre Grande; Siparia and Couva. A Roxborough Tobago outreach is conducted quarterly.

Table IV, shows that a total of three hundred and thirty-eight (338) persons visited the various Regional Offices to participate in the Outreach Programme during 2012.



TABLE IV

MONTHS	POINT FORTIN	RIO CLARO	CHAGUANAS	SANGRE GRANDE	SIPARIA	COUVA	ROXBOROUGH	TOTAL
JANUARY	5	7	2	8	6	8	-	36
FEBRUARY	NO VISIT	2	5	8	0	4	-	19
MARCH	2	1	1	4	8	9	-	25
APRIL	3	5	6	10	3	4	0	31
MAY	9	5	4	11	7	8	-	44
JUNE	3	6	6	10	3	2	-	30
JULY	4	8	4	7	5	1	0	29
AUGUST	1	5	0	10	1	4	-	21
SEPTEMBER	3	4	5	9	9	9	-	39
OCTOBER	1	10	9	10	3	4	0	37
NOVEMBER	3	6	5	6	4	3	-	27
DECEMBER	NO VISIT	NO VISIT	0	0	NO VISIT	NO VISIT	-	
TOTAL	34	59	47	93	49	56	0	338



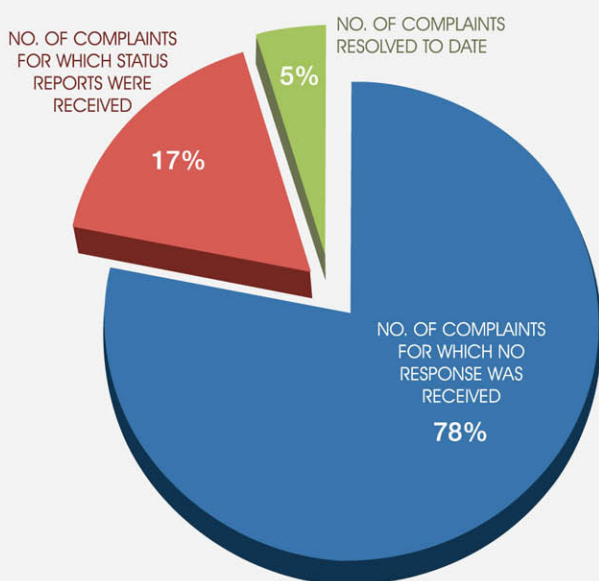
Areas of Concern

NATIONAL INSURANCE APPEALS TRIBUNAL

It should be noted that since 2010, this Office has received almost one hundred (100) complaints regarding delays in obtaining hearings for Appeals filed at the National Insurance Appeals Tribunal (NIAT). In many cases, these complaints are filed by the most vulnerable in society such as the elderly and the disabled.

Despite repeated reminders, telephone calls and official visits by the Ombudsman, this Office is only able to give status reports on twenty-two (22) of those complaints and only six (6) complaints have been resolved thus far.

COMPLAINTS RECEIVED AGAINST THE NATIONAL INSURANCE APPEALS TRIBUNAL (NIAT) SINCE 2010



This Office has identified a number of specific problems which need to be addressed by NIAT. These include:

- i. Administrative deficiencies including a the lack of co-ordination between, the National Insurance Board (NIB) and NIAT;
- ii. Timelines as specified in the National Insurance Act Chap. 32:01 that guide the operation of NIAT are not met. For example;

- (a) The National Insurance Act states that upon receipt of Appeals NIAT should submit a request to the NIB for the Benefits Unit file which must be made available to the Tribunal within three (3) weeks. This timeline is rarely met by NIB.
- (b) Section 62 of the said Act provides that appeals from decisions of the Board shall lie to the Appeals Tribunal on questions of fact only and to the High Court on questions of law or partly of law and partly of fact and from the High Court to the Court of Appeal.
- iii. Inadequate staffing and office facilities at NIAT (there is only one NIAT office to serve the country);
- iv. The requirement that makes it imperative for meetings to be scheduled according to the availability of the Chief Medical Officer (CMO) since he/she must be a member of the Tribunal where an appeal involves medical issues.

RECOMMENDATIONS

It is important for the Tribunal to ensure that in its thrust to move forward and to improve its services to the public, greater attention is paid to the implementation of adequate measures to resolve the above highlighted deficiencies.

There must be greater communication and co-ordination between NIB and NIAT with respect to their roles and functions.

There should be strict adherence to the timelines outlined under the Act. If the NIB finds it difficult to comply, steps should be taken to amend the Act to allow for more realistic timelines to deal with the situations presented.

Public education programmes should be introduced to sensitize citizens as to the roles and functions of NIAT which would include for example, the procedures to be followed when filing an appeal at the Tribunal.

There could also be a need to increase the number of meetings held by the Tribunal in order to reduce the present backlog of cases.

HOUSING DEVELOPMENT CORPORATION

The Housing Development Corporation (HDC) deserves its notoriety under areas of concern. It generates a considerable number of serious complaints each year and is generally tardy in addressing them whether or not this Office becomes involved.

This could lead one to assume that there is a level of insensitivity operating with HDC officials, particularly when one considers those Complainants whose matters deserve immediate attention. It also demonstrates a lack of will to co-operate with the Office of the Ombudsman. The result is a great deal of frustration not only with the HDC but also with the Office. At present, there are one hundred and one (101) outstanding complaints against the HDC with at least one going all the way back to 1998.

Complaints received by this Office against the HDC include:-

- Delay to repair units;
- Housing accommodation still unavailable years after receipt of down payments
- Persons invited to attend a “Presentation of Keys” ceremony where there is no provision for them to get accommodation;
- Inability to access information regarding the status of housing applications;
- Inaccurate calculations of mortgage balances by the HDC;
- Inability to obtain deeds for properties upon completion of mortgage payments;
- Requests for emergency housing not addressed expeditiously;
- Requests for re-location for cogent reasons not promptly addressed.

In one specific matter a Complainant had been assigned a house which was re-assigned to another person without her knowledge. To date, although the Complainant still has not received the keys to that house, she receives utility bills from it. In another, a Complainant completed the mortgage payments on his HDC property in 2003. To date, he has not been able to receive his lease.

RECOMMENDATIONS

The facts would suggest that the authorities need to look closely at the functioning of this body as a matter of urgency.



COMMISSIONER OF STATE LANDS (Land Management Division)

Since its inception in 1976, the Office of the Ombudsman has been bombarded with complaints regarding land use. There is an inordinate delay on the part of the Commissioner of State Lands (COSL) not only to pay compensation to land owners for land compulsorily acquired by the State but also to grant leases for State Lands to applicants. Additionally, the issues of encroachment by squatters on State Lands which have been allocated to persons who have not yet received formal leases are not resolved promptly. These areas have been and continue to be, of grave concern.

In previous annual reports, my predecessors have highlighted land matters as an area of concern.

In the Second Annual Report, the Honourable Mr. Justice Evan Rees, the first Ombudsman reported that his investigation into the issue of land acquisition revealed that the machinery was inefficient and unjust with respect to the fact that the claimants, whose lands were acquired, were deprived of their property without the expeditious payment of compensation.

In the Fourteenth Annual Report, the Honourable Mr. Justice George A. Edoe, the second Ombudsman emphasized that, ***“the payment of compensation should be concurrent with acquisition”. His investigations “confirmed that in nearly every case, claimants experienced extreme hardship and inordinate delays in obtaining compensation for land compulsorily acquired.”***

In the Twentieth Annual Report, the Honourable Mr. Justice George A. Edoe was of the view that the problems which existed were ***“as a result of the involvement of a number of agencies in which... there has been little effective coordination: the Land and Surveys Department, the Ministry of Planning and Development, the Chief State Solicitor and the Valuations Division of the Ministry of Finance.”***

He also advised on ***“other factors,”*** that he thought, ***“contributed to the delay and the constant injustice suffered by complainants: a shortage of trained and experienced staff, particularly land surveyors; inability of complainants to produce evidence of title and the burden being placed upon the Chief State Solicitor in this regard; unavailability of proper records; a lack of sensitivity on the part of the officers involved in the acquisition process.”***

The situation today has not changed. **This Office continues to receive many complaints regarding long delays in receiving compensation for land acquired by the State for public purposes.**

The following cases are instructive:

1. A Complainant's land at Warner Village had been compulsorily acquired by the State for the construction of the Uriah Butler Highway. In 2002, he was advised by authorities that the issue of compensation had been forwarded to the Commissioner of Valuations for negotiation and settlement.

With the matter unresolved one year later, the Complainant approached the Office for assistance. Eventually, in March 2004 he was paid compensation for the acquisition of 370.6m² of land but Cabinet approval had to be sought for an additional 24.4m² which would have to be acquired by Private Treaty. In October 2004, the Commissioner of Valuations indicated that he was awaiting instructions from the Director of Surveys to negotiate and settle the matter in relation to the additional 24.4m².

This Office was advised by the COSL in September 2011 (seven years later) that the matter had been forwarded to the Commissioner of Valuations to engage in negotiations with the Complainant. No further response has yet been received.

2. Another Complainant informed the Ombudsman about the delay by the COSL to pay compensation to him and his family for land used on Store Bay Local Road, Crown Point, Tobago. The land had been acquired by the State in 1994. He submitted a complaint to this Office in 2010, yet two years later this matter has not been resolved.

The following cases are relevant to the issue of delay in the issuance of leases which is also a serious problem:

1. A Complainant approached this Office in 2002 after she was told to re-apply for a lease for agricultural land after her original application could not be located in the El Reposo section of the relevant Ministry. In 1993, the Complainant's father had requested the Director of Surveys to have his land in El Reposo transferred to her. All the relevant documents were submitted, but when she checked on the status of her application in 2003 she was told that her file could not be found.

Though Cabinet approved the Lease in 2004, In 2009, she was asked to submit several documents to facilitate the transfer. This case remains unresolved in 2012.

2. A Complainant who had been living on a parcel of land since 1958 applied for the said parcel in 1982 and to date there has been no response to her application.
3. In May 2006, a Complainant applied for a residential lease for a parcel of land which she and her family have been living on, at Monroe Land Settlement, Cunupia for over 45 years. In 2012, the matter still had not been resolved.
4. In 2007, a Complainant approached the Office for assistance in obtaining his lease at Long Circular Road Belle Vue, St James. In 2009, this Office was told that the Division would initiate the process of preparing it. In 2010, the COSL advised that he was awaiting Survey Plans to advance the process of the matter. In April 2011, investigations revealed that the Director of Surveys had approved the Survey Plans. This Office was informed verbally in September 2011 that the matter would be referred to Cabinet. To date, no further information has been received from the COSL.
5. A Complainant had in his possession a letter dated September 11, 2008 advising him that the State had agreed to grant him a Standard Agricultural Lease for 30 years. Although, he had submitted his acceptance of the offer in 2008, to date, he has no lease.
6. In 2011, three brothers complained that in 1989 they had applied to the Lands and Surveys Division to obtain the land which they had been occupying since 1984. In 2003, the land was surveyed, but it should be noted that in 2012 they have neither been given any information on the status of their application nor have they received a lease.

RECOMMENDATIONS

It is imperative that the human resource and structural framework of the agencies concerned are strengthened. Such land matters can take a serious toll on the well-being of individuals as well as families.

Delay - Issues of Encroachment

1. A Complainant advised that since 1986 he had been approaching the COSL about a person's encroachment on his property. He came to this Office in 2009. However, to date, there has been no response from the COSL to our enquiries regarding this matter.

2. A Complainant applied for a parcel of land at Teak Lane, Valencia in 2004. In 2007, he was advised by the then Director of Surveys that the Division was awaiting the approval from the Chief State Solicitor (CSS). Upon checking with the CSS, he was further informed that the document had been sent to the Lands and Surveys Division since 2006. The document was then faxed again by an official from the CSS to the Lands and Surveys Division in the Complainant's presence. When he returned to the Division to enquire into the status of his Application, he was told that they were still awaiting CSS approval. In 2008 this Office was told that the application was being processed. In 2010, the status had not changed it was still, "being processed". The Office later learned that a person had encroached on the land and so the Division was currently taking the necessary steps to remove the offender from the said land and as a result of this development, the Lease could not be prepared in the Applicant's favour, "until all encumbrances on the subject parcel had been rectified". To date, there has been no further response from COSL.
3. Similarly, a Complainant approached this office in 2011 for assistance to get the COSL to address the issue of encroachment on a property which had been leased to his mother. To date, there has been no response from the COSL despite numerous enquiries from this office.

And this is really just a small sample as the Ombudsman is in receipt of numerous complaints from persons regarding the inability by the COSL to take appropriate action to address the issue of encroachment by others on their properties.

It has been noted that in an effort to address the problems affecting land use in Trinidad and Tobago, the Government divided the Land and Surveys Department into two Divisions namely the Surveys and Mapping Division and the Land Management Division which has responsibility for granting agricultural and residential leases. Although the separation of responsibilities was envisaged to reduce the time frame in which leases would be prepared, this has not been the case.

RECOMMENDATION

Due to the fact that this is an issue which causes great suffering to many a Complainant I feel that the onus is upon all in authority to take a very serious approach to this matter. There needs to be further analysis and improvement of this system.

This should include but not be confined to:

- (a) Public Awareness programme - posters and brochures setting out the steps for processing a lease;
- (b) Adequate staff who are trained to deal with applications;
- (c) A cadre of Inspectors of State Lands and other field officers who can respond quickly to requests for information.

Special Cross Section of Cases for 2012

The following is a cross section of some of the cases that consumed the attention of the office in 2012. Many of the complaints are much older, they were chosen to represent a broad cross section of the work of the Ombudsman.

Case 1 - MINISTRY OF WORKS AND TRANSPORT THE MISFORTUNE OF THE OVERPAID OFFICER

In 2000, a Complainant, a Motor Vehicle Officer I with the Ministry of Works and Transport (the Ministry) was informed that he had been overpaid in the amount \$24,238.43. He approached the Office in 2003 for assistance in getting this written off.

The Ombudsman convened several meetings with relevant officials in an attempt to address the complaint and arrive at a solution. In October 2007, the Ombudsman recommended that the overpayment be written off since investigations revealed that the error was on the part of the Ministry and that it would now be exceedingly onerous and manifestly unjust to call upon the Complainant to reimburse the State for monies to which he believed he was entitled.

In July 2009, the Ministry agreed to pursue the Ombudsman's recommendation and thereafter approached the Comptroller of Accounts with respect to the write off in accordance with Finance Circular No. 2 dated March 2004, which gave the Treasury the authority to deal with overpayments not exceeding twenty-five thousand (\$25,000) in this manner.

In April 2010, the Comptroller of Accounts requested that the Ministry submit the required documents relating to the overpayment.

In November 2012, the Comptroller of Accounts informed this Office that it had made the necessary arrangements with the Pensions Management Branch. In December 2012, the Complainant informed the Office that the overpayment had been written off and that he had collected his cheque.

RECOMMENDATION

While the amount of the overpayment is inconsequential to the State, it represents a significant amount to a great deal of public officers who need the money upon retirement. A seemingly straightforward matter such as this ought not to have taken nine (9) years to conclude and certainly five (5) years should not have elapsed after a recommendation was made by this Office.

It is recommended that there should be better co-ordination between Ministries to ensure that matters such as this are dealt with more expeditiously in the future.



Case 2 - NORTH WEST REGIONAL HEALTH AUTHORITY

WARD 33 MYSTERY AT THE PORT OF SPAIN GENERAL HOSPITAL

In September 2009, a Complainant sought the assistance of the Ombudsman to obtain a Medical Report from the Port of Spain General Hospital which she had paid for in May 2008.

The Office pursued this matter with the Chief Executive Officer (CEO), North West Regional Health Authority (NWRHA). The complainant received a Report in June 2010, but found that it contained inaccurate information concerning the dates she was admitted and discharged from the hospital, she then returned to the Ombudsman.

In a subsequent enquiry the Medical Director informed the Ombudsman that there was no record on file of the Complainant's stay on Ward 33 in 2007.

On September 27, 2011, keen to remedy this unsatisfactory outcome, this Office served a notice on the Hospital Administrator under Section 97 (2) of the Constitution to enter and inspect the premises.

The medical file was inspected by an Investigator from this Office who observed that there were no files on surgical procedures or treatments that the complainant had allegedly undergone except for a report by the Specialist Medical Officer in charge of Ward 33 which indicated that the Complainant had in-fact been admitted to the Ward in September 2007.

This information was enough to corroborate the statements made by the Complainant and demonstrate that the problem was really one of record keeping at the Hospital.

Following this revelation and despite the continuous intervention of this Office, no action was taken by the hospital authorities to furnish the Complainant with an accurate medical report. The Ombudsman was compelled to write the Permanent Secretary in the Ministry of Health before this Office was informed that the matter was being considered by the CEO, NWRHA.

Subsequently, the Officers from the Hospital's Quality Control Department contacted the Ombudsman

explaining that the doctors who had originally treated the Complainant had returned to India and that it was not appropriate to get another doctor to sign a medical report on behalf of the Complainant. Nevertheless in March 2012, in the absence of medical notes an amended Medical Report was issued to the Complainant.

RECOMMENDATION:

We must insist that proper mechanisms be put in place at all health institutions to ensure accurate record keeping



Case 3 - MINISTRY OF HEALTH

UNFULFILLED PROMISES HAUNT EX-CHACACHACARE PATIENTS

In a decision recorded as **Minute No. 760** dated March 31, 1977, Cabinet agreed that the Leprosarium at Chacachacare be closed and the existing patient population resettled in a number of specific communities throughout Trinidad and Tobago. Cabinet also agreed that the patients would be provided with on-going medical attention, housing, financial assistance and other amenities and services necessary to the maintenance of their health and welfare.

In 2001, several of the patients approached the Ombudsman requesting assistance in getting the Government to fulfill its promises with respect to various issues: acquisition of leases/deeds for agricultural and residential lands assigned, provision of water and electricity services on those lands, and payment of resettlement allowances and superannuation benefits. My predecessor had stated in 1999, in the 24th Annual Report that, fifty-one (51) of the surviving patients had visited his office to complain about the very same issues.

To date, the issue of deeds to ex-Chacachacare patients who are still living in the National Housing Authority (now called Housing Development Corporation (HDC) apartments/houses has not been resolved.

The Legal Office of the HDC, has said that since the Complainants' names were not on their system, and since they were not paying mortgages, the NHA could not issue deeds to those persons. Their position, based on the information available to them is that National Housing Authority (NHA) accommodation was given to the Ministry of Health for the purpose of providing the ex-Chacachacare patients with accommodation. As such, the responsibility for dealing with the issue falls on that Ministry.

Officials from the Ministry of Health maintain that this was a matter to be dealt with by the NHA. Both institutions thus continue to deny responsibility.

Cabinet Minute No. 4837 dated November 16,

1979 specifically provides for Standard Agricultural Leases at a rental of \$6.00 per acre per annum, identifying twelve (12) people by name. These twelve are the only people to receive leases despite the fact that **Cabinet Minute 1370 dated May 6, 1982** was very specific in terms of the transfer of state lands at Morvant to the Ministry of Health and Environment for the accommodation of the others. It states that the Board of the National Housing Authority had agreed to the release of parcels of land (7969 square feet at Cicada Street, 6754 square feet at Jacobin Street) and that the Ministry of Health had accepted the offer for the use of the patients.

Although this matter has been brought to the attention of three former Ministers of Health and the present incumbent, ex-patients are going to their graves without a resolution in sight.

RECOMMENDATION

I have sought to draw attention to this problem in this Annual Report because the issue has persisted over too many years to the extent that some Complainants have passed on and others have little energy left to continue the struggle to acquire what is in fact their just due.



Case 4 - REGISTRAR GENERAL

COMMON SENSE SUFFERS CASUALTY IN BIRTH CERTIFICATE BATTLE WITH GRANDMA

INTRODUCTION

In 2006, a Complainant approached the Registrar General's Department to obtain a Computer Generated Birth Certificate so that she could receive medication. On receipt of the document, she discovered that her date of birth was recorded as October 17, 1919 instead of September 17, 1919. She brought this discrepancy to the attention of the Registrar General but was told that she had to accept October 17, 1919 as her correct birth date.

DETAILS

The complainant sought the assistance of the Ombudsman to have this issue addressed hoping to find a resolution that would have her Birth Certificate amended to correspond with the other official documents that she had used all her life:

- Trinidad and Tobago Birth Certificate dated December 13, 1966;
- United States of America Passport No: 159242102 dated October 13, 1998

In 2007, the matter was referred to the Registrar General's Department with the recommendation that it take the necessary steps to amend the Complainant's records. Two years later in 2009, the Department agreed to issue to the Complainant a letter which would enable her to conduct official business since records to clarify the matter could not be located.

Five letters were sent between the period March 2010 and December 2011 requesting an update on the matter in which the Deputy Registrar General was questioned about the discrepancy in the two dates.

In response the Office was advised that:

1. The process of birth certificate preparation was not as thorough and rigorous in 1919 as it is now;
2. The records were recopies, so there was no entry prior to 1966. Both the Original (which the informant and the Registrar signed) and the Volume (a transcription of the original without the signatures), were recopies;
3. There was no indication of the dates when the recopying took place as records were recopied

when the original documents were worn and torn.

The Registrar General further stated that he would write the Complainant indicating that the date of her birth on her computer generated certificate would remain October 17, 1919.

RECOMMENDATION:

This case illustrates the tunnel vision that operates with some senior officials. It is the view of this Office that if the Registrar General is unable to disprove the Complainant's information with documentary evidence then in this case in particular, the documents submitted by the Complainant ought to have been accepted.



Case 5 - COMMISSIONER OF STATE LANDS

THE CASE OF THE NEIGHBOUR'S NOXIOUS FUMES

INTRODUCTION

A complaint came to this Office in 2010 desirous of taking action against a neighbour whose wife was accused of operating a hairdressing salon in her home in a residential neighbourhood. It was alleged that both the fumes and noise from the operations of the salon were affecting the Complainant's wife.

In February 2012, the complainant returned stating that an Advisory Notice had been served on his neighbours in June 2011 requesting that they rectify certain breaches in accordance with the covenants of their lease within 30 days and that thereafter; expected action had not been taken by the Commissioner of State Lands (COSL).

DETAILS

It was noted that officials from the Diego Martin Regional Corporation who had visited the site in 2008 had stated that any problem of fumes should have been abated by the vertical vent that had been installed 3.5 ft. above the roof. They noted that there were no odours emanating from the usage of chemicals. In addition, chemicals were stored safely on shelves and the area was adequately ventilated.

A site visit conducted by the Environmental Management Authority (EMA) also in 2008 found no established hairdressing salon on the property and no trace of odours from chemicals. It was stated in the report that there were, proper measures to mitigate the effects of fumes and even further that there was no observable equipment, machinery or chemicals, to indicate that commercial activity was indeed taking place.

In October 2010, the Environmental Health Division, Ministry of Health made a site visit. Their investigation found that there was a hairdressing operation but that the chemicals used were ammonia free and that there were no noxious fumes.

In December 2011, the Housing Development Corporation (HDC) advised that although a warning had been issued to the alleged offenders, subsequent

investigations revealed, that the claims submitted by the Complainants were unjustified.

In light of the above, the Ombudsman wrote the Complainants in January 2011 and advised them that it had been determined that the respective Agencies had indeed discharged their statutory functions without fault and that the file was closed.

Subsequently, the Complainants visited the COSL this time requesting action for purported breaches of certain clauses in their neighbours' lease. They then in 2012, approached this Office with regard to the delay by the COSL in dealing with their complaint.

A report from the COSL in mid-2012 supported the reports submitted previously by the other State Agencies. It stated that there was no evidence to support an established hairdressing business and that the neighbours had taken sufficient measures to alleviate any inconvenience caused by a non-commercial clothes dryer by adding a short extension to direct the air from the dryer to the ground.

The Complainants were advised of the contents of the report submitted by the COSL and were informed once again that there was no fault in administration on the part of the relevant State Agencies.



Case 6 - OFFICE OF THE PRIME MINISTER ANOTHER P&L QUANDRY FOR RETIREE

INTRODUCTION

A Complainant sought the assistance of the Ombudsman in 2011 with regard to the delay on the part of the Office of the Prime Minister in forwarding her amended Pension and Leave Records (P&L) to the Comptroller of Accounts, so that she could receive her revised retirement benefits.

DETAILS

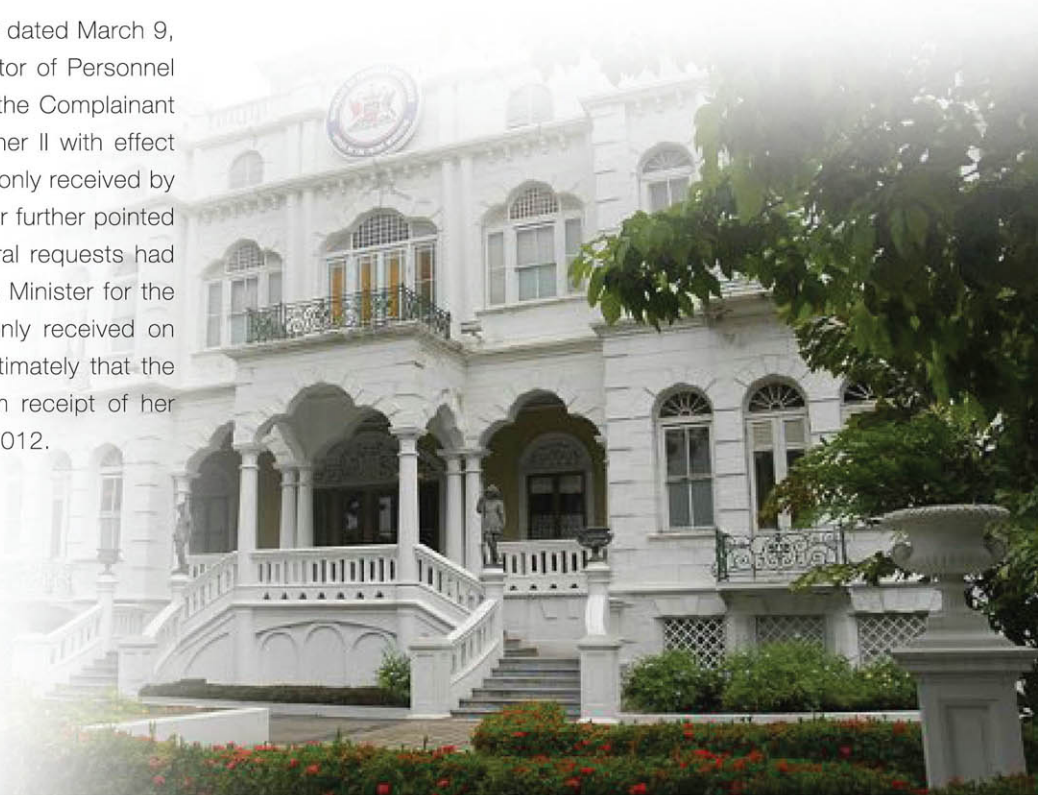
What happened was that the Division to which she was originally attached had been moved from the Office of the Prime Minister to the Ministry of Public Administration and this meant that her matter had to be referred to the Permanent Secretary of that Ministry and this caused significant delay.

By letter dated February 9, 2012, this Office was advised by the Ministry of Public Administration that the amended P&L records had been forwarded to the Comptroller of Accounts to facilitate the processing of the Complainant's additional retirement benefits.

The Comptroller of Accounts, by letter dated March 9, 2012 advised that although the Director of Personnel Administration had informed him that the Complainant had been promoted Clerk Stenographer II with effect from October 8, 1998, that letter was only received by them on October 5, 2005. The Officer further pointed out that since December 2005, several requests had been made to the Office of the Prime Minister for the amended P&L records which were only received on November 23 in 2011. This meant ultimately that the complainant was only able to confirm receipt of her revised retirement benefits in August 2012.

RECOMMENDATION:

Too often I am in receipt of complaints from retired Public Officers who are unable to get their benefits within a reasonable timeframe because, upon retirement it is discovered that their Pension and Leave Records are in a state of disarray. It is imperative that Ministries take decisive action to curb the frequency of this occurrence which is often compounded by the realignment of Departments.



Case 7 - COUNTY MEDICAL OFFICER OF HEALTH

THE CASE OF PIGS, PITBULLS AND POOR DRAINAGE ENDS UP IN COURT

INTRODUCTION

A Complainant sought the assistance of the Ombudsman in August 2010 to facilitate the intervention of the County Medical Officer of Health (CMOH) to abate a nuisance with respect to the rearing of animals on his neighbour's property in a residential area. Although many reports had been submitted to the CMOH since 2004 about this case and several Public Health Inspectors had visited the site, no action was taken against the offender.



that there was still no drainage on the property additionally there was the charge that the neighbor was raising pit bulls on his property.



On a joint site visit with a Public health inspector conducted on March 14, 2012 it was confirmed that there was indeed inadequate drainage for the removal of animal waste.

DETAILS

This Office made a site visit in September 2010 one month after the complaint was lodged and an investigator observed that pigs were in fact being reared on the property in question. The complaint was then formally referred to CMOH St George East for further investigation.

One year later in November 2011, seven years after the complaint was first lodged the CMOH could only advise that her Department was awaiting a response from the Eastern Division of Town and Country Planning in order to determine whether the area was classified as residential or agricultural and that based on the response, the offending party could be served a Notice.

In January 2012, the Complainant protested that the owners of the pig pen were extending their sheds and

In June this office was informed that the CMOH had finally taken the matter to Court and from our point of view this meant that the case was closed.

RECOMMENDATION

The CMOH has to be more efficient and expeditious in the handling of matters such as this.

Case 8 - WATER AND SEWERAGE AUTHORITY

IS WASA AT FAULT? - THE CASE OF THE UNWANTED OUTDOOR POOL

INTRODUCTION

In 2005, the Complainant, a resident of Signal Hill, Tobago, observed a shallow pool of water in front of and under his house. He was of the opinion that the problem was more pronounced on those days when water was supplied by the Water and Sewerage Authority (WASA) and whenever there was prolonged rainfall. As a result, he claimed that the WASA was responsible for the cracks which were developing on the walls of his house which were a clear sign that the foundation of his property was being undermined. The matter was reported to WASA but despite several visits by its officials to his property over the years no conclusive decision was made about what should be done.

DETAILS

This Complainant sought the intervention of the Ombudsman in January 2011. The Office pursued the matter with WASA immediately. In March 2012 at a meeting with the General Manager, Tobago Services, it was revealed that WASA Officials had been to the Complainant's property on several occasions and had conducted excavation work on parts of the roadway in order to determine the source of the leakage. It was disclosed that neither the cause nor the source of the problem had yet been determined definitively. Thereafter it was agreed that a site visit by representatives from the Office of the Ombudsman and WASA officials would be scheduled in order to determine the action required to resolve the matter.

On the visit on 3rd of April 2012 a small pool/puddle of stagnant water was indeed discovered. As had been the case before it could not be immediately confirmed that either this water or the damage to the premises (cracks in walls) were due to a leak in the water main. The water level in the puddle was also found to be too low to facilitate the extraction of samples for testing to verify if it was consistent with that which was provided by WASA for national consumption. The Deputy General Manager promised however that a thorough

investigation would be conducted to determine the source of the leak and a comprehensive report would be forwarded for the attention of the Ombudsman.

By letter dated May 1st, 2012, the Ombudsman was informed that a proper investigation had been conducted and that there was indeed no evidence that the seepage on the complainants premises was due to a leak from a WASA main.

RECOMMENDATION:

This case should have been concluded long before the Ombudsman got involved in 2011. Having said that we must compliment General manager of WASA for adopting an attitude of conciliation and cooperation once this office got involved so as to accelerate the at a resolution which would allow the complainant to take other measures to safeguard their property.



Case 9 - The Division of Agriculture, Marine Resources and the Environment, Tobago House of Assembly

PAIN FOR RETIREE AND FAMILY AS PARANORMAL ACTIVITY AFFLICTS OFFICIAL RECORDS

INTRODUCTION

The Complainant's husband in this case had been employed as a Deckhand/Fisherman with the Division of Agriculture, Marine Resources and the Environment, Tobago House of Assembly (THA) from December 1978 to August 2008. In accordance with his substantive post, he was entitled to receive both a Ration Allowance and Commuted Overtime. These allowances were paid on a timely basis until July 1995 when for reasons unknown the payments ceased. Subsequent attempts to obtain the outstanding monies proved difficult indeed.

DETAILS

A Complainant sought the assistance of the Ombudsman in September 2006 stating that in June of that year her husband had suffered a stroke that rendered him unfit for further employment. She claimed that she had visited the Division of Agriculture, on several occasions on his behalf to make enquiries about outstanding allowances due to him all the while pleading the case that his current state of health had placed major financial constraints on his family.

The Ombudsman immediately took up the case requesting the Division to review its records in order to determine whether the Complainant's husband was in fact eligible for the outstanding allowances for the period starting on August 1, 1995 and ending on June 8, 2006.

In May 2008, two years after the Office made the request, the Division of Agriculture wrote stating that the records which were necessary to establish the validity of the complaint could not be located. Under pressure from this office in January 2009 the division claimed to have found the relevant records which were said to have confirmed the eligibility for the relevant allowances. We were informed that a pay sheet would be prepared and forwarded to the audit department for checking and verification.

Having waited a reasonable amount of time to allow the matter to be resolved and thereafter unable to gather any information regarding its status the Ombudsman was left with no choice but to summon the Administrator and other officials from the Division to a meeting at the Tobago Regional Office on May 13, 2010 in accordance with Section 97 of the Constitution and Section 10 of the Ombudsman Act, Chap 2:52. At that meeting, it was revealed by the Administrator, that the records had not in fact been located as previously stated and that efforts to locate the register were, on-going.

The Ombudsman observed that it had been established that the Complainant's husband had in fact performed the duties of Deckhand/Fisherman and was in fact owed the relevant allowances. She therefore recommended that the Division seek the approval of the Chief Administrator, of the Tobago House of Assembly to pay the monies retroactively in the form of a package based on current operations.

On this basis, on May 4, 2012, the Complainant received that which was due. Unfortunately, by this time her husband had already passed.

RECOMMENDATIONS

Cases such as these in which Individuals who are entitled to benefits, pass away before their matters are resolved are far too common. Since there is, in many of these cases no good reason for such delays one has to conclude that a degree of insensitivity is in operation. I must therefore recommend that we consider a special type of sensitization of public officials to combat these types of attitudes.

Case 10 - MINISTRY OF THE PEOPLE & SOCIAL DEVELOPMENT

APPROVED BUT NO TTCARD

INTRODUCTION

In January 2012, a Complainant approached the Ombudsman for assistance to acquire a Targeted Conditional Cash Transfer Programme (TCCTP) TT Card from the Ministry of the People and Social Development. He had applied for the Card, at the Port of Spain Office between May and June of 2011 and was concerned about the length of time it was taking to receive it, the office took up the case immediately.

DETAILS

In February 2012, the Regional Coordinator, TCCTP informed the Office that the application for the Card had been approved and that it had been sent for processing.

A subsequent inquiry in September revealed that the Complainant's documents had to be sent to the San Juan Office since the Complainant's address fell within that area.

In December 2012, the San Juan Regional Office confirmed that the Complainant's documents had been lodged with them but that the card was still not yet ready.

RECOMMENDATION:

Here is a case where although the application had been approved in February 2012, ten months later, the applicant still had not received his card. Steps should be taken to address this issue at the structural level to ensure that it does not become a common one and the relevant departments should examine their procedures to ensure that applications are dealt with in a more efficient and expeditious manner once they have been approved.





APPENDIX

- Schedule of Community Visits
- Extracts from the Constitution related to the Office and the Ombudsman
- Ombudsman Act, Chap. 2:52
- Third Schedule - Matters not subject to an Investigation
- Map of the Caribbean

APPENDIX 1

SCHEDULE OF COMMUNITY VISITS

ROXBOROUGH (TOBAGO)

Office of the Justice of Peace,
at the Court House facility

Every three months on the second Tuesday of the month

Time: 9:30 a.m. to 12 noon

POINT FORTIN

The Engineering Services Building,
Point Fortin Borough Corporation
Guapo Cap-de-Ville Main Road, Point Fortin

2nd Wednesday each month

Time: 9:30 a.m. to 12 noon

CHAGUANAS

Chaguanas Borough Corporation
Cor. Taitt & Cumberbatch Streets, Chaguanas

2nd Friday each month

Time: 9:30 a.m. to 12 noon

SIPARIA

Siparia Regional Corporation
High Street, Siparia

3rd Monday each month

Time: 9:30 a.m. to 12 noon

SANGRE GRANDE

Sangre Grande Regional Corporation
Technical Section, Railway Road, Sangre Grande

Last Tuesday each month

Time: 9:30 a.m. to 12 noon

MAYARO/RIO CLARO

Mayaro/Rio Claro Regional Corporation
De Verteuil Street, Rio Claro

Last Thursday each month

Time: 9:30 a.m. to 12 noon

COUVA

Couva/Tabaquite/Talparo Regional Corporation (main building)
Railway Road, Couva

3rd Wednesday each month

Time: 9:30 a.m. to 12 noon

APPENDIX 2

EXTRACT FROM THE CONSTITUTION OF TRINIDAD AND TOBAGO
ACT NO. 4 OF 1976

PART II - OMBUDSMAN

Appointment and
conditions of
office.

91. (1) There shall be an Ombudsman for Trinidad and Tobago who shall be an officer of Parliament and who shall not hold any other office of emolument whether in the public service or otherwise nor engage in any occupation for reward other than the duties of his office.

(2) The Ombudsman shall be appointed by the President after consultation with the Prime Minister and the Leader of the Opposition.

(3) The Ombudsman shall hold office for a term not exceeding five years and is eligible for reappointment.

(4) Subject to subsection (3), the Ombudsman shall hold office in accordance with section 136.

First
Schedule.

(5) Before entering upon the duties of his office, the Ombudsman shall take and subscribe the oath of office before the Speaker of the House of Representatives.

Appointment
of staff of
Ombudsman.

92. (1) The Ombudsman shall be provided with a staff adequate for the efficient discharge of his functions.

(2) The staff of the Ombudsman shall be public officers appointed in accordance with section 121(8).

Functions of
Ombudsman.

93. (1) Subject to this section and to sections 94 and 95, the principal function of the Ombudsman shall be to investigate any decision or recommendation made, including any advice given or recommendation made to a Minister, or any act done or omitted by any department of Government or any other authority to which this section applies, or by officers or members of such a department or authority, being action taken in exercise of the administrative functions of that department or authority.

(2) The Ombudsman may investigate any such matter in any of the following circumstances:

(a) where a complaint is duly made to the Ombudsman by any person alleging that the complainant has sustained an injustice as a result of a fault in administration;

(b) where a member of the House of Representatives requests the Ombudsman to investigate the matter on the ground that a person or body of persons specified in the request has or may have sustained such injustice;

(c) in any other circumstances in which the Ombudsman considers that he ought to investigate the matter on the ground that some person or body of persons has or may have sustained such injustice.

(3) The authorities other than departments of Government to which this section applies are—

(a) local authorities or other bodies established for purposes of the public service or of local Government;

APPENDIX 2 - Cont'd

EXTRACT FROM THE CONSTITUTION OF TRINIDAD AND TOBAGO

ACT NO. 4 OF 1976

- (b) authorities or bodies the majority of whose members are appointed by the President or by a Minister or whose revenues consist wholly or mainly of moneys provided out of public funds;
- (c) any authority empowered to determine the person with whom any contract shall be entered into by or on behalf of Government;
- (d) such other authorities as may be prescribed.

Restrictions on matters for investigations.

94. (1) In investigating any matter leading to, resulting from or connected with the decision of a Minister, the Ombudsman shall not inquire into or question the policy of the Minister in accordance with which the decision was made.

(2) The Ombudsman shall have power to investigate complaints of administrative injustice under section 93 notwithstanding that such complaints raise questions as to the integrity or corruption of the public service or any department or office of the public service, and may investigate any conditions resulting from, or calculated to facilitate or encourage corruption in the public service, but he shall not undertake any investigation into specific charges of corruption against individuals.

(3) Where in the course of an investigation it appears to the Ombudsman that there is evidence of any corrupt act by any public officer or by any person in connection with the public service, he shall report the matter to the appropriate authority with his recommendation as to any further investigation he may consider proper.

(4) The Ombudsman shall not investigate—

(a) any action in respect of which the complainant has or had—

(i) a remedy by way of proceedings in a Court; or

(ii) a right of appeal, reference or review to or before an independent and impartial tribunal other than a Court; or

(b) any such action, or action taken with respect to any matter, as is described in the Third Schedule.

(5) Notwithstanding subsection (4) the Ombudsman—

(a) may investigate a matter notwithstanding that the complainant has or had a remedy by way of proceedings in a Court, if satisfied that in the particular circumstances it is not reasonable to expect him to take or to have taken such proceedings;

(b) is not in any case precluded from investigating any matter by reason only that it is open to the complainant to apply to the High Court for redress under section 14 (which relates to redress for contravention of the provisions for the protection of fundamental rights).

Third Schedule.

APPENDIX 2 - Cont'd

EXTRACT FROM THE CONSTITUTION OF TRINIDAD AND TOBAGO ACT NO. 4 OF 1976

Discretion of
Ombudsman.

95. In determining whether to initiate, continue or discontinue an investigation, the Ombudsman shall, subject to sections 93 and 94, act in his discretion and, in particular and without prejudice to the generality of this discretion, the Ombudsman may refuse to initiate or may discontinue an investigation where it appears to him that—

- (a) a complaint relates to action of which the complainant has knowledge for more than twelve months before the complaint was received by the Ombudsman;
- (b) the subject matter of the complaint is trivial;
- (c) the complaint is frivolous or vexatious or is not made in good faith; or
- (d) the complainant has not a sufficient interest in the subject matter of the complaint.

Report on
investigation.

96. (1) Where a complaint or request for an investigation is duly made and the Ombudsman decides not to investigate the matter or where he decides to discontinue an investigation of the matter, he shall inform the person who made the complaint or request of the reasons for his decision.

(2) Upon the completion of an investigation the Ombudsman shall inform the department of government or the authority concerned of the results of the investigation and, if he is of the opinion that any person has sustained an injustice in consequence of a fault in administration, he shall inform the department of government or the authority of the reasons for his opinion and make such recommendations as he thinks fit. The Ombudsman may in his original recommendations, or at any later stage if he thinks fit, specify the time within which the injustice should be remedied.

(3) Where the investigation is undertaken as a result of a complaint or request, the Ombudsman shall inform the person who made the complaint or request of his findings.

(4) Where the matter is in the opinion of the Ombudsman of sufficient public importance or where the Ombudsman has made a recommendation under subsection (2) and within the time specified by him no sufficient action has been taken to remedy the injustice, then, subject to such provision as may be made by Parliament, the Ombudsman shall lay a special report on the case before Parliament.

(5) The Ombudsman shall make annual reports on the performance of his functions to Parliament which shall include statistics in such form and in such detail as may be prescribed of the complaints received by him and the results of his investigations.

APPENDIX 2 - Cont'd

EXTRACT FROM THE CONSTITUTION OF TRINIDAD AND TOBAGO

ACT NO. 4 OF 1976

Power to obtain evidence.

97. (1) The Ombudsman shall have the powers of the High Court to summon witnesses to appear before him and to compel them to give evidence on oath and to produce documents relevant to the proceedings before him and all persons giving evidence at those proceedings shall have the same duties and liabilities and enjoy the same privileges as in the High Court.

(2) The Ombudsman shall have power to enter and inspect the premises of any department of government or any authority to which section 93 applies, to call for, examine and where necessary retain any document kept on such premises and there to carry out any investigation in pursuance of his functions.

Prescribed matters concerning Ombudsman.

98. (1) Subject to subsection (2), Parliament may make provision—

(a) for regulating the procedure for the making of complaints and requests to the Ombudsman and for the exercise of the functions of the Ombudsman;

(b) for conferring such powers on the Ombudsman and imposing such duties on persons concerned as are necessary to facilitate the Ombudsman in the performance of his functions; and

(c) generally for giving effect to the provisions of this Part.

(2) The Ombudsman may not be empowered to summon a Minister or a Parliamentary Secretary to appear before him or to compel a Minister or a Parliamentary Secretary to answer any questions relating to any matter under investigation by the Ombudsman.

(3) The Ombudsman may not be empowered to summon any witness to produce any Cabinet papers or to give any confidential income tax information.

(4) No complainant may be required to pay any fee in respect of his complaint or request or for any investigation to be made by the Ombudsman.

(5) No proceedings, civil or criminal, may lie against the Ombudsman, or against any person holding an office or appointment under him for anything he may do or report or say in the course of the exercise or intended exercise of the functions of the Ombudsman under this Constitution, unless it is shown that he acted in bad faith.

(6) The Ombudsman, and any person holding office or appointment under him may not be called to give evidence in any Court, or in any proceedings of a judicial nature, in respect of anything coming to his knowledge in the exercise of his functions.

(7) Anything said or any information supplied or any document, paper or thing produced by any person in the course of any enquiry by or proceedings before an Ombudsman under this Constitution is privileged in the same manner as if the enquiry or proceedings were proceedings in a Court.

(8) No proceeding of the Ombudsman may be held bad for want of form and, except on the ground of lack of jurisdiction, no proceeding or decision of an Ombudsman is liable to be challenged, reviewed, quashed or called in question in any Court.

APPENDIX 2 - Cont'd

EXTRACT FROM THE CONSTITUTION OF TRINIDAD AND TOBAGO ACT NO. 4 OF 1976

- [Section 94(4)(b)].
1. Action taken in matters certified by the Attorney General to affect relations or dealings between the Government of Trinidad and Tobago and any other Government or any International Organisation.
 2. Action taken in any country or territory outside Trinidad and Tobago by or on behalf of any officer representing or acting under the authority of the Government of Trinidad and Tobago.
 3. Action taken under any law relating to extradition or fugitive offenders.
 4. Action taken for the purposes of investigating crime or of protecting the security of the State.
 5. The commencement or conduct of civil or criminal proceedings before any Court in Trinidad and Tobago or before any international Court or tribunal.
 6. Any exercise of the power of pardon.
 7. Action taken in matters relating to contractual or other commercial transactions, being transactions of a department of government or an authority to which section 93 applies not being transactions for or relating to -
 - (a) the acquisition of land compulsorily or in circumstances in which it could be acquired compulsorily;
 - (b) the disposal as surplus of land acquired compulsorily or in circumstances in which it could be acquired compulsorily.
 8. Action taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters in relation to service in any office or employment in the public service or under any authority as may be prescribed.
 9. Any matter relating to any person who is or was a member of the armed forces of Trinidad and Tobago in so far as the matter relates to -
 - (a) the terms and conditions of service as such member; or
 - (b) any order, command, penalty or punishment given to or affecting him in his capacity as such member.
 10. Any action which by virtue of any provision of this Constitution may not be enquired into by any Court.

APPENDIX 3

LAWS OF TRINIDAD AND TOBAGO CHAPTER 2:52 OMBUDSMAN ACT

*An Act to make provision for giving effect to Part 2 of Chapter 6 of the Constitution
(Assented to 24th May, 1977)*

ENACTMENT ENACTED by the Parliament of Trinidad and Tobago as follows:	
SHORT TITLE	1. This Act may be cited as the Ombudsman Act.
MODE OF COMPLAINT	2. (1) All complaints to the Ombudsman and requests for investigation by him shall be made in writing. (2) Notwithstanding anything provided by or under any enactment, where any letter written by any person detained on a charge or after conviction of any offence is addressed to the Ombudsman, it shall be immediately forwarded, unopened to the Ombudsman by the person or the time being in charge of the place where the writer is detained.
PROCEDURE IN RESPECT OF INVESTIGATION	3. (1) Where the Ombudsman proposes to conduct an investigation under Section 93 (1) of the Constitution he shall afford to the principal officer of the department or authority concerned, an opportunity to make, orally or in writing as the Ombudsman thinks fit, representations which are relevant to the matter in question and the Ombudsman shall not, as a result of such an investigation, make any report or recommendation which may adversely affect any person without his having had an opportunity to make such representations. (2) Every such investigation shall be conducted in private. (3) It shall not be necessary for the Ombudsman to hold any hearing and, subject as hereinbefore provided, no person shall be entitled as of right to be heard by the Ombudsman. The Ombudsman may obtain information from such persons and in such manner, and make such inquiries as he thinks fit. (4) Where, during or after any investigation, the Ombudsman is of the opinion that there is evidence of any breach of duty, misconduct or criminal offence on the part of any officer or employee of any department or authority to which Section 93 of the Constitution applies, the Ombudsman may refer the matter to the Authority competent to take such disciplinary or other proceedings against him as may be appropriate. (5) Subject to this Act, the Ombudsman may regulate his procedure in such manner as he considers appropriate in the circumstances of the case. (6) Where any person is required under this Act by the Ombudsman to attend before him for the purposes of an investigation, the Ombudsman shall cause to be paid to such person out of money provided by Parliament for the purpose, the fees, allowances and expenses, subject to qualifications and exceptions corresponding to those, that are for the time being prescribed for attendance in the High Court, so, however, that the like functions as are so prescribed and assigned to the Registrar of the Supreme Court of Judicature shall, for the purposes of this sub-section, be exercisable by the Ombudsman and he may, if he thinks fit, disallow, in whole or in part, the payment of any amount under this subsection. (7) For the purposes of Section 93 (2) of the Constitution a complaint may be made by a person aggrieved himself or, if he is dead or for any reason unable to act for himself, by any person duly authorized to represent him. (8) Any question whether a complaint or a request for an investigation is duly made under this Act or under Part 2 of Chapter 6 of the Constitution shall be determined by the Ombudsman.
EVIDENCE	4. (1) The power of the Ombudsman under Section 97 of the Constitution to summon witnesses and to compel them to give evidence on oath and to produce documents shall apply whether or not the person is an officer; employee or member of any department or authority and whether or not such documents are in the custody or under the control of any department or authority. (2) The Ombudsman may summon before him and examine on oath: (a) any person who is an officer or employee or member of any department or authority to which Section 93 of the Constitution applies or any authority referred to in the Schedule to this Act and who in the Ombudsman's opinion is able to give any relevant information; (b) any complainant; or (c) any other person who in the Ombudsman's opinion is able to give any relevant information, and for the purpose may administer an oath. Every such examination by the Ombudsman shall be deemed to be a judicial proceeding for the purposes of the Perjury Ordinance.

APPENDIX 3 - Cont'd

LAWS OF TRINIDAD AND TOBAGO CHAPTER 2:52 OMBUDSMAN ACT

ENACTMENT	ENACTED by the Parliament of Trinidad and Tobago as follows:
EVIDENCE (Cont'd)	<p>(3) Subject to subsection (4) no person who is bound by the provisions of any enactment, other than the Official Secrets Act, 1911 to 1939 of the United Kingdom In so far as it forms part of the law of Trinidad and Tobago, to maintain secrecy in relation to, or not to disclose, any Matter shall be required to supply any information to or answer any Questions put by the Ombudsman in relation to that matter, or to produce to the Ombudsman any document or paper or thing relating to it, where compliance with that requirement would be in breach of the obligation of secrecy or non-disclosure.</p> <p>(4) With the previous consent in writing of any complainant, any person to whom subsection (3) applies may be required by the Ombudsman to supply any information or answer any question or produce any document or paper or thing relating only to the complainant, and it shall be the duty of the person to comply with that requirement.</p> <p>(5) Except on the trial of any person for an offence under the Perjury Act in respect of his sworn testimony, or for an offence under Section 10, no statement made or answer given by that or any other person in the course of any inquiry or any proceedings before the Ombudsman under the Constitution or this Act shall be admissible in evidence against any person in any court or at any inquiry or in any other proceedings and no evidence in respect of proceedings before the Ombudsman shall be given against any person.</p> <p>(6) No person shall be liable to prosecution for an offence against the Official Secrets Act, 1911 to 1939 of the United Kingdom, or any written law other than this Act by reason of his compliance with any requirement of the Ombudsman under this section.</p> <p>5. (1) Where the Attorney General certifies that the giving of any information or the answering of any question or the production of any document or paper or thing –</p> <ul style="list-style-type: none"> (a) might prejudice the security, defence or international relations of Trinidad and Tobago (b) including Trinidad and Tobago relations with the Government of any other country or with any international organizations; (c) will involve the disclosure of the deliberations of Cabinet; or (d) will involve the disclosure of proceedings of Cabinet or any Committee of Cabinet, relating to matters of a secret or confidential nature, and could be injurious to the public interest, the Ombudsman shall not require the information or answer to be given or, as the case may be, the document or paper, or thing to be produced. <p>(2) Subject to subsection (1), no rule of law which authorises or requires the withholding of any document or paper, or the refusal to answer any question, on the ground that the disclosure of the document or paper or the answering of the question would be injurious to the public interest shall apply in respect of any investigation by or proceedings before the Ombudsman.</p>
SECRECY OF INFORMATION	<p>6. A person who performs the functions appertaining to the Office of the Ombudsman or any office or employment there under –</p> <ul style="list-style-type: none"> (a) shall regard as secret and confidential all documents, information and things which have been disclosed to any such person in the execution of any provisions of Sections 93 and 96 of the Constitution, so, however, that no disclosure made by any such person in proceedings for an offence under Section 10, or under the Perjury Ordinance by virtue of Section 4(2) or which the Ombudsman considers it requisite to make in the discharge of any of his functions and for the purpose of executing any of the said provisions of Section 3(4) or Section 9, shall be deemed inconsistent with any duty imposed by this paragraph; and (b) shall not be called upon to give evidence in respect of, or produce, any such documents, information or things in any proceedings, other than proceedings mentioned in the exception to paragraph(a)
NOTICE OF ENTRY ON PREMISES	<p>7. Before entering upon any premises pursuant to Section 97(2) of the Constitution the Ombudsman shall notify the principal officer of the department or the authority which the premises are occupied.</p>

APPENDIX 3 - Cont'd

LAWS OF TRINIDAD AND TOBAGO CHAPTER 2:52 OMBUDSMAN ACT

ENACTMENT	ENACTED by the Parliament of Trinidad and Tobago as follows:
DELEGATION OF POWERS	<p>8. (1) With the prior approval in each case of the Prime Minister, functions hereinbefore assigned to the Ombudsman may from time to time, by direction under his hand, be delegated to any person who is appointed to any office or to perform any function referred to in Section 6.</p> <p>(2) No such delegation shall prevent the exercise of any power by the Ombudsman.</p> <p>(3) Any such delegation may be made subject to such restrictions and conditions as the Ombudsman may direct, and may be made either generally or in relation to any particular case or class of cases.</p> <p>(4) Any person purporting to perform any function of the Ombudsman by virtue of a delegation under this section shall, when required to do so, produce evidence of his authority to exercise the power.</p>
REPORTS	<p>9. (1) The Ombudsman may from time to time in the public interest publish reports relating generally to the exercise of his functions or to a particular case or cases investigated by him, whether or not the matters to be dealt with in such reports may have been the subject of a report to Parliament.</p> <p>(2) The form of statistics of complaints received by the Ombudsman and the results of his investigation required by Section 96(5) of the Constitution to be included in the annual report to Parliament by the Ombudsman on the performance of his functions shall be prescribed by regulations made under Section 12.</p> <p>10. A person is liable on summary conviction to a fine of one thousand dollars or to imprisonment for six months who –</p> <p>(a) without lawful justification or excuse, wilfully obstructs, hinders or resists the Ombudsman or any other person in the exercise of his powers under this Act;</p> <p>(b) without lawful justification or excuse refuses or wilfully fails to comply with any lawful requirement of the Ombudsman or any other person under this Act;</p> <p>(c) wilfully makes any false statement to or misleads or attempts to mislead the Ombudsman or any other person in the exercise of his powers under this Act; or</p> <p>(d) in a manner inconsistent with his duty under Section 6 (a), deals with any documents, information or things mentioned in that paragraph.</p>
PRESCRIPTION OF AUTHORITIES SUBJECT TO THE OMBUDSMAN'S JURISDICTION	<p>11. (1) The authorities mentioned in the Schedule are authorities to which Section 93(3) (d) of the Constitution applies.</p> <p>(2) The President may, by Order, amend the Schedule by the addition thereto or deletion therefrom of any authorities or the substitution therein, for any authorities of other authorities.</p>
REGULATIONS	<p>12. The President may make regulations for the proper carrying into effect of this Act, including in particular, for prescribing anything required or authorised to be prescribed.</p>

THIRD SCHEDULE-MATTERS NOT SUBJECT TO INVESTIGATION

1. Action taken in matters certified by the Attorney General to affect relations or dealings between the Government of Trinidad and Tobago and any other Government or any International Organization.
2. Action taken in any country or territory outside Trinidad and Tobago by or on behalf of any officer representing or acting under the authority of the Government of Trinidad and Tobago.
3. Action taken under any law relating to extradition or fugitive offenders.
4. Action taken for the purposes of investigating crime or of protecting the security of the State.
5. The commencement or conduct of civil or criminal proceedings before any Court in Trinidad and Tobago or before any international Court or tribunal.
6. Any exercise of the power of pardon.
7. Action taken in matters relating to contractual or other commercial transactions, being transactions of a department of government or an authority to which section 93 applies not being transactions for or relating to-
 - (a) the acquisition of land compulsorily or in circumstances in which it could be acquired compulsorily;
 - (b) the disposal as surplus of land acquired compulsorily or in circumstances in which it could be acquired compulsorily.
8. Action taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters in relation to service in any office or employment in the public service or under any authority as may be prescribed.
9. Any matter relating to any person who is or was a member of the armed forces of Trinidad and Tobago in so far as the matter relates to-
 - (a) the terms and conditions of service as such member; or
 - (b) any order, command, penalty or punishment given to or affecting him in his capacity as such member.
10. Any action which by virtue of any provision of this Constitution may not be enquired into by any Court.

APPENDIX 5



THE CARIBBEAN

APPENDIX 5 - Cont'd



TRINIDAD & TOBAGO





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