

VIRGIN ISLANDS
COMPLAINTS COMMISSIONER ACT, 2003
ARRANGEMENT OF SECTIONS

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I Assent

M. Elton Georges, OBE
Acting Governor
12th May, 2003

VIRGIN ISLANDS

No. 6 of 2003

An Act to provide for the functions and jurisdiction of the Complaints Commissioner and matters connected therewith.

[Gazetted 13th May, 2003]

ENACTED by the Legislature of the Virgin Islands as follows:

PART I
PRELIMINARY

1. This Act may be cited as the Complaints Commissioner Act, 2003 and shall come into force on such date as the Governor may, by Proclamation published in the *Gazette*, appoint. Short title and commencement.

2. (1) In this Act, unless the context otherwise requires, Interpretation.

“action” includes omission, recommendation, advice or decision and a reference in this Act to action taken by a department of Government or a public authority includes a reference to any omission made, recommendation or advice given or decision taken, by that department or authority;

“Commissioner” means the Complaints Commissioner appointed under section 66A of the Virgin Islands (Constitution) Order, 1976; U.K.S.I. 1976
No. 2145

“complainant” means

- (a) a person who makes a complaint referred to in section 4(2)(a); or
- (b) a person or body of persons referred to in section 4(2)(b) or (c);

“complaint” means

- (a) a complaint referred to in section 4(2)(a); or
- (b) a request referred to in section 4(2)(b);

“department of Government” means a department or agency of the Government;

No. 5 of 2001

“document” includes an electronic record under the Electronic Transactions Act, 2001;

“investigation” means an investigation by the Commissioner under this Act;

“maladministration” means inefficient, bad or improper administration and, without prejudice to the generality of the foregoing, includes

- (a) unreasonable conduct, including delay, discourtesy and lack of consideration for a person affected by any action;
- (b) abuse of any power (including any discretionary power) or authority including any action which
 - (i) is unreasonable, unjust, oppressive or improperly discriminatory or which is in accordance with a practice which is or may be unreasonable, unjust, oppressive or improperly discriminatory; or
 - (ii) was based wholly or partly on a mistake of law or fact;
- (c) unreasonable, unjust, oppressive or improperly discriminatory procedures;

“Minister of Finance” means the Minister to whom responsibility for finance is assigned;

“officer” includes employee;

“public authority” means an authority or body

- (a) the majority of whose members are appointed by the Governor, the Governor in Council, the Executive Council or a Minister;
- (b) whose funds consist wholly or mainly of monies provided out of public funds;
- (c) established to recommend or determine the persons with whom any contract shall be entered into by or on behalf of the Government; or
- (d) that is declared by the Executive Council, by Order, to be a public authority for the purposes of this Act.

(2) A reference in this Act to a department of Government or a public authority includes a reference to the officers of that department or authority.

3. This Act does not apply to

Application.

- (a) judges, magistrates or the functions of any court;
- (b) deliberations and proceedings of the Executive Council, Legislative Council or any committee thereof;
- (c) the Attorney General in the exercise of any power conferred upon him by section 24, 49(2) or 50 of the Virgin Islands (Constitution) Order, 1976; or
- (d) the Chief Auditor in the exercise of any power conferred upon him by section 66 of the Virgin Islands (Constitution) Order, 1976.

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PART II PRINCIPAL FUNCTION AND JURISDICTION OF THE COMMISSIONER

4. (1) Subject to subsection (2) and sections 5 and 6, the principal function of the Commissioner shall be to investigate any action taken by a department of Government or a public authority in the exercise of its administrative functions.

Principal
function of the
Commissioner.

(2) The Commissioner may investigate a matter referred to in subsection (1) in the following circumstances:

- (a) where a complaint is made, in writing, to the Commissioner by a person alleging that he has sustained an injustice as a result of maladministration;
- (b) where a member of the Legislative Council requests, in writing, the Commissioner to investigate the matter on the ground that a person or body of persons specified in the request has or may have sustained an injustice as a result of maladministration;
- (c) in any other circumstances in which the Commissioner considers that he ought to investigate the matter on the ground that some person or body of persons has or may have sustained an injustice as a result of maladministration.

Restrictions on matters for investigation.

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

(2) The Commissioner may investigate a matter notwithstanding that such matter raises questions as to the integrity or corruption of the public service or of any department of Government or public authority, and may investigate any conditions resulting from, or calculated to facilitate or encourage corruption in the public service or any such department or authority, 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 Commissioner that there is evidence of any corrupt act by any individual, he shall report the matter to the Governor with his recommendations as to any further investigation he may consider proper.

(4) The Commissioner shall not investigate

- (a) any matter in respect of which the complainant has or had
 - (i) a remedy by way of proceedings in a court, other than by way of judicial review; or
 - (ii) a right of appeal, objection, reference or review to or before any person, tribunal, board or other authority appointed or constituted by or under an enactment;
- (b) any such action, or action taken with respect to any matter, as is described in the Schedule.

Schedule

(5) Notwithstanding subsection (4), the Commissioner 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 the complainant to take or to have taken such proceedings.

6. (1) In determining whether to initiate, continue or discontinue an investigation, the Commissioner shall, subject to sections 4 and 5, act in his discretion and, in particular and without prejudice to the generality of this discretion, the Commissioner may refuse to initiate or may discontinue an investigation where it appears to him that

Discretion of
Commissioner.

- (a) a complaint relates to action of which the complainant has had knowledge for more than twelve months before the complaint was received by the Commissioner, unless the Commissioner is satisfied that in the particular circumstances it is proper to conduct an investigation into a complaint not made within that period;
- (b) the complaint is made anonymously or the complainant cannot be identified or traced;
- (c) the complaint is not made by
 - (i) the individual aggrieved himself;
 - (ii) his personal representative or by a member of his family or other individual suitable to represent him, where the individual by whom the complaint might have been made has died or is for any reason unable to act for himself; or
 - (iii) a member of the Legislative Council pursuant to section 4(2)(b);
- (d) where the complaint is made on behalf of a body corporate, the body corporate has not authorised the making of the complaint;
- (e) the complainant does not have a sufficient interest in the subject matter of the complaint;
- (f) the subject matter of the complaint is trivial;
- (g) the complaint is frivolous or vexatious or is not made in good faith;

- (h) the complaint, or a complaint of a substantially similar nature, has previously been the subject of an investigation as a result of which the Commissioner was of the opinion that there had been no maladministration; or
- (i) any investigation or further investigation is for any other reason unnecessary.

(2) Where the Commissioner decides not to undertake or continue an investigation into a complaint, he shall inform the complainant, in writing, of his decision and of his reasons.

Power to investigate in the public interest.

7. Where the Commissioner is of the opinion that it is in the public interest to do so, he may undertake or continue an investigation into a complaint notwithstanding that the complainant has withdrawn the complaint and, in any such case, the provisions of this Act shall apply to the complaint and the complainant as if the complaint had not been withdrawn.

Preliminary inquiries.

8. For the purposes of determining whether to undertake an investigation, the Commissioner may conduct such preliminary inquiries as he considers appropriate.

Dealing with complaints by mediation.

9. (1) The Commissioner may decide to deal with a complaint by mediation under this section if he is of the opinion, having regard to all the circumstances of the case, that the subject matter of the complaint involves no, or only minor, maladministration.

(2) The Commissioner shall appoint in accordance with section 21, such person as he thinks fit to be a mediator in any mediation.

(3) The Commissioner shall not participate in any mediation.

(4) Participation in the mediation by the complainant and the relevant department of Government or public authority is voluntary, and any party may withdraw at any time.

(5) The mediator may terminate the mediation at any time.

(6) Where an attempt to deal with a complaint by mediation under this section is unsuccessful,

- (a) the complaint is to be treated as if the mediation had not taken place; and

- (b) the mediator is excluded from participating as an investigating officer in any subsequent investigation of the complaint.

(7) Anything said or admitted during the mediation and any document prepared for the purposes of such mediation shall not be admissible in evidence

- (a) in any subsequent investigation of the complaint concerned unless the person who said or admitted the thing, or to whom the document relates, consents to its admission;
- (b) against any person in any court or at any inquiry or in any other proceedings,

and no evidence in respect of the mediation may be given against any person.

(8) Nothing in this section prevents a complaint from being dealt with otherwise than in accordance with this section.

10. (1) Before investigating any action, the Commissioner shall, subject to subsection (2), inform the head of the relevant department of Government or public authority of his intention to conduct an investigation and may seek his comments.

Proceedings of
Commissioner.

(2) Subsection (1) shall not apply where the Commissioner is of the opinion that compliance is inappropriate in the particular circumstances of the case and, instead of complying with that subsection, informs the Governor of his intention to conduct an investigation.

(3) Subject to the provisions of this Act and any rules made under section 30, the Commissioner may

- (a) obtain any information, document or thing from such persons, and make such inquiries, as he thinks fit; and
- (b) regulate his procedure in such manner as he thinks fit.

(4) Every investigation shall be conducted in private and, subject to subsection (6), legal practitioners shall not have any right of audience before the Commissioner, but may appear before him if he thinks fit.

(5) It shall not be necessary for the Commissioner to hold any hearing, and, subject to subsection (6), no person shall be entitled to be heard by the Commissioner.

(6) If at any time during the course of an investigation it appears to the Commissioner that there may be sufficient grounds for him to make a report or recommendation that may criticise or adversely affect an officer, department of Government, public authority or person, he shall give the officer, the head of the department or authority or the person an opportunity to be heard, either personally or by his legal practitioner.

Power to obtain evidence.

11. (1) Subject to subsections (2) and (3), the Commissioner 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 they would have in civil proceedings in the High Court.

(2) The Commissioner shall not have power to summon the Governor or a Minister to appear before him or compel the Governor or a Minister to answer any questions relating to any matter under investigation by the Commissioner, but the Commissioner

(a) may, in his discretion, consult the Governor or a Minister on the matter; and

(b) shall, on the request of the Governor or a Minister, consult the Governor or the Minister on the matter.

(3) The Commissioner shall not have power to summon any witness to produce any Executive Council papers.

(4) The Commissioner shall have power to enter and inspect the premises of any department of Government or public authority, to call for, examine, make copies of and, where necessary, retain any document kept on such premises and there carry out any investigation in pursuance of his functions.

Report on investigation.

12. (1) Upon the completion of an investigation, the Commissioner shall provide the relevant department of Government or public authority with a report containing his findings of fact, his opinion and the reasons for his opinion.

(2) Where the Commissioner is of the opinion that any person has sustained an injustice as a result of maladministration, he shall include in his report such recommendations as he thinks fit and a request that the relevant department of Government or public authority notify him, within a specified time, of the steps, if any, that it proposes to take to give effect to his recommendations.

(3) The Commissioner may in his report, or at any later stage if he thinks fit, specify the time within which an injustice should be remedied.

(4) The Commissioner shall send a copy of his report to the Governor and each member of the Executive Council.

13. Where an investigation is undertaken as a result of a complaint, the Commissioner shall inform the complainant, and in the case of a complaint under section 4(2)(b) the relevant member of the Legislative Council, of the result of the investigation and may make such comments on the matter as he thinks fit.

Complainant to be informed of result of investigation.

14. (1) If, within a reasonable time after the Commissioner issues his report or the time specified under section 12(3), no action is taken which seems to the Commissioner to be adequate and appropriate, the Commissioner, after considering the comments, if any, made by or on behalf of the relevant department or authority, shall lay a special report on the matter before the Legislative Council.

Special report where no appropriate action taken.

(2) The Commissioner shall attach to every special report under subsection (1) a copy of any comments made by or on behalf of the relevant department of Government or public authority.

15. No proceeding of the Commissioner may be held bad for want of form and, except on the ground of lack of jurisdiction, no proceeding or decision of the Commissioner conducted or taken in good faith is liable to be challenged, reviewed, quashed or called in question in any court.

Appeals restricted.

PART III FINANCIAL AND ADMINISTRATIVE PROVISIONS

16. (1) The funds of the Commissioner shall consist of

Funds of the Commissioner.

- (a) such monies that are appropriated to him by the Legislative Council for the purposes of this Act;
- (b) monies received by the Commissioner from agencies, other than the Government, approved by the Minister of Finance for the performance of his functions; and
- (c) donations, endowments and other gifts received by the Commissioner.

(2) The funds of the Commissioner shall be kept in such bank as the Minister of Finance may approve.

(3) The Commissioner shall cause to be prepared proper estimates of receipts and expenditure in respect of the performance of his functions for each financial year and the estimates shall be submitted to the Minister of Finance not later than such date as the Minister of Finance may direct.

Accounts and
audit.

17. (1) The Commissioner shall cause proper accounts of all financial transactions to be kept in such form as the Chief Auditor may direct.

(2) The Commissioner shall, as soon as practicable after the end of the financial year, prepare a statement of his accounts.

(3) The accounts required to be kept under subsection (1) and the statement of accounts required under subsection (2) shall be audited, as soon as practicable and in any case within four months after the end of each financial year, by the Chief Auditor or an auditor appointed for the purpose by the Chief Auditor.

Fees prohibited.

18. No person shall be required to pay any fee in respect of a complaint or for any mediation or investigation under this Act.

Remuneration
of the
Commissioner.

19. The salary, allowances and other benefits payable to the Commissioner shall be determined by the Governor in Council and shall be paid out of the Consolidated Fund.

Appointment of
staff.

20. (1) The Commissioner shall be provided with such staff as the Governor, after consultation with the Commissioner, considers necessary for the efficient administration of this Act.

(2) The Governor may, after consultation with the Commissioner, appoint the staff of the Commissioner either in accordance with the Public Service Commission Regulations, 1969 or on contract.

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(3) The salaries, allowances and other benefits payable to the staff of the Commissioner shall be determined by the Governor and shall be paid out of the Consolidated Fund.

Appointment of
mediators and
advisers.

21. (1) The Commissioner may, from time to time, appoint

- (a) mediators for the purposes of section 9; or
- (b) professional or technical advisers to assist him in the performance of his functions.

(2) Persons appointed under subsection (1) may be paid such remuneration as the Commissioner may approve.

(3) Any remuneration payable pursuant to subsection (2) shall be paid out of the funds of the Commissioner.

22. (1) Where the Commissioner is absent from the Territory or is for any other reason unable to perform the functions of his office, those functions shall, until such time as he resumes the functions of his office or another person is appointed as the Commissioner under section 66A of the Virgin Islands (Constitution) Order, 1976, be assumed and performed by such person as may be appointed in writing by the Governor to act as Commissioner.

Acting
Commissioner.

U.K.S.I. 1976
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(2) Section 66A(3) and (5) of the Virgin Islands (Constitution) Order, 1976 and section 25 shall apply to a person appointed under subsection (1).

23. The Commissioner may lease such premises and acquire such equipment as are necessary for the efficient operation of his office.

Premises and
supplies.

PART IV MISCELLANEOUS

24. (1) The Commissioner shall, within six months after the end of each financial year, furnish

Laying of annual
reports.

- (a) a full report on the performance of his functions during that financial year, which shall include a general survey and statistics in relation to complaints received by him, the results of mediations and investigations conducted under this Act, steps taken to implement his recommendations and such other matters or developments as he thinks fit;
- (b) a copy of the statement of accounts required under section 17(2) and the auditor's report on that statement of accounts,

to the Governor who shall cause them to be laid before the Legislative Council within a period of three months after their receipt.

25. Before commencing the duties of his office, the Commissioner shall take an oath, to be administered by the Governor, that he will faithfully and impartially exercise the functions of his office and that he will not, except in accordance with section 26(3), disclose any information received by him as Commissioner.

Oath of office
and secrecy.

Commissioner
and staff to
maintain secrecy.

26. (1) The Commissioner and every person appointed under section 20, 21 or 22 shall, subject to subsections (2) and (3), maintain secrecy in respect of all matters that

- (a) arise from any investigation or complaint made to the Commissioner; and
- (b) come to their actual knowledge in the exercise of their functions.

(2) Subsection (1) shall not apply so as to prevent the Commissioner or any person appointed under section 20, 21 or 22 from

- (a) disclosing in the course of proceedings for an offence under this Act, any matter relevant to those proceedings;
- (b) reporting evidence of any crime to such authority as he considers appropriate;
- (c) disclosing to a person any matter referred to in subsection (1) which, in the opinion of the Commissioner or the person so appointed
 - (i) may be ground for a complaint by that person; or
 - (ii) is necessary to be disclosed to that person for the purposes of investigating a complaint or deciding whether an investigation should be undertaken, continued or discontinued.

(3) Subject to subsection (4), the Commissioner may disclose in any report made by him under this Act such matters as in his opinion ought to be disclosed in order to establish grounds for his conclusions and recommendations.

(4) The Commissioner shall not disclose in any report made by him under this Act

- (a) the nature or substance of any consultation with the Governor or a Minister pursuant to section 11(2) or whether or not any such consultation was requested or has taken place; or
- (b) any matter in respect of which the Governor certifies that its disclosure might prejudice security, defence or international relations (including relations with an

international organisation) in respect of the Territory or would otherwise be contrary to the public interest.

(5) A person who fails to comply with subsection (1) or (4) commits an offence and is liable, on summary conviction, to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months, or both.

27. Except on the trial of any person in respect of his sworn testimony, no statement made or answer given by that or any other person in the course of an inquiry by or any proceedings before the Commissioner is 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 Commissioner shall be given against any person.

Protection of witnesses.

28. No proceedings shall lie against the Commissioner, or against any person appointed under section 20, 21 or 22, for any act done or omitted to be done in the performance or purported performance of any function, or the exercise or purported exercise of any power, under this Act, unless it is shown that he acted in bad faith.

Immunity.

29. A person who

Offences.

- (a) without lawful excuse, willfully obstructs, hinders or resists the Commissioner or any other person in the performance of his functions under this Act;
- (b) without lawful excuse, refuses or willfully fails to comply with any lawful requirement of the Commissioner or any other person under this Act; or
- (c) willfully makes any false statement to or misleads or attempts to mislead the Commissioner or any other person in the exercise of his functions under this Act,

commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months, or both.

30. The Governor may make rules for the guidance of the Commissioner in the exercise of his functions.

Rules.

SCHEDULE

(Section 5(4)(b))

MATTERS NOT SUBJECT TO INVESTIGATION

1. Action taken under any law relating to extradition or fugitive offenders.
2. Action taken for the purpose of investigating crime or of protecting the security of the Territory.
3. The commencement or conduct of civil or criminal proceedings before any court or before any international court or tribunal.
4. Action taken in respect of appointments or removals, pay, discipline, pension or other personnel matters in relation to service in any office or employment in a department of Government or public authority.

Passed by the Legislative Council this 17th day of April, 2003.

REUBEN VANTERPOOL,
Speaker.

OLEANVINE MAYNARD,
Ag. Clerk of the Legislative Council.