



OFFICE OF THE  
**OMBUDSMAN**  
TRINIDAD AND TOBAGO



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**44th** ANNUAL REPORT **2021**





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OFFICE OF THE  
**OMBUDSMAN**  
TRINIDAD AND TOBAGO

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## OUR VISION

A Public Administration that is accountable, fair and transparent for the benefit of all in Trinidad and Tobago

## OUR MISSION

The Office of the Ombudsman of the Republic of Trinidad and Tobago in fulfilling its statutory mandate is in the business of investigating and resolving complaints of administrative injustice in an impartial, ethical and expeditious manner; educating the Public on their rights and responsibilities and; advocating improvements in the quality and standards of service delivery in the Public Sector of Trinidad and Tobago.

## OUR VALUES

*ACCESSIBILITY*

*SENSITIVITY*

*PROFESSIONALISM*

*INTEGRITY*

*RESPECT*

*EQUITY*

*EXCELLENCE*



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# 44<sup>th</sup> ANNUAL REPORT 2021

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31<sup>st</sup> January, 2023

**The Honourable Bridgid Annisette-George, MP**

**Speaker of the House**

**Office of the Parliament**

Parliamentary Complex

St. Vincent Street

Port of Spain

Republic of Trinidad and Tobago

Dear Madam Speaker,

I have the honour to present the **Forty-fourth Annual Report** of the Ombudsman for the period **January, 2021 to December, 2021**.

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

Yours faithfully,

A handwritten signature in black ink, which appears to read "Rajmanlal Joseph", is written below the text "Yours faithfully,".

Mr. Justice Rajmanlal Joseph (ret'd)

**OMBUDSMAN**

Republic of Trinidad and Tobago

# OMBUDSMAN'S MESSAGE



It is my distinct privilege to write the foreword of our 44th Annual Report 2021, even though the year had significant challenges as the country was still enmeshed in the throes of the COVID-19 pandemic. Consequently, the restrictive public health measures implemented by the Government caused the public service generally and the Office of the Ombudsman in particular, to function on reduced working hours which invariably impacted on its complaint processing capability.

Notwithstanding the deleterious effects of the pandemic, I was able to rationalize the complaint processes and operationalised the authority of the Ombudsman in the issuing of summons to leaders of public authorities who were reluctant to assist in the resolution of legitimate complaints. Furthermore, the issuance of summons had a positive impact on intractable witnesses, hence the intended consequence of resolving difficult and protracted complaints was achieved in a modest manner.

Moreover, it was my undertaking in 2021 to deal effectively with matters that were "old" and what appeared to be intractable. A good example would be the "CS" case in which a public sector employee was injured on the job and the employer was reluctant to pay appropriate compensation. However, after several attempts over a few years without any progress having been made, the employee complained to the Ombudsman and after several years of sustained efforts by my predecessors which did not bear fruit, I decided shortly after assuming office in early 2021 to use the authority granted by the Constitution in particular section 97 (1) which reads as follows:

*"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."*

To be sure, the issuing and service of the summons on the high level functionary brought about a resolution of the complaint even before the hearing of the summons. It is clearly evident, therefore, that the effective use of this particular provision of our Constitution negates the notion that the Ombudsman is a "toothless bulldog".

Further, at the actual summons hearing many of the public sector leaders who gave evidence in the matters before the Ombudsman on many occasions apologised for the long drawn out delay in responding to our inquiries. This change in attitude and consciousness portends well for the future of the public sector and ought reasonably to improve the relationship between the Office of the Ombudsman and leaders of public authorities as it relates to the complaints resolution process.

It is my fervent desire to build on this nascent relationship with the public sector leadership so that the Office of the Ombudsman may be able to fulfil its constitutional mandate of dealing with complaints by citizens in an effective and efficient manner, along with improving administrative justice.

**Rajmanlal Joseph**

Ombudsman



# INTRODUCTION

## The Office of the Ombudsman

The Office was established under **Section 91 (1) of the Constitution of the Republic of Trinidad and Tobago, Chap. 1:01**. Pursuant to section 93(1) of the Constitution, the Office's main function is "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."

*Matters not subject to investigation are discussed in Appendix I.*

The Ombudsman is an Officer of Parliament but does not form part of the machinery of Government. The Office exists as an independent oversight body, in accordance with the **Constitution of the Republic of Trinidad and Tobago, Chap. 1:01** and the provisions of the **Ombudsman Act Chap. 2:52** and 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.

## The Ombudsman and the Freedom of Information Act (FOIA), Chap. 22:02

**The Freedom of Information Act (FOIA), Chap. 22:02** gives every person the right to obtain access to official documents from public authorities. This is not an absolute right and the FOIA identifies documents a person is not entitled to obtain in accordance with Section 12 of that Act.

**Section 12** of the Act lists these documents to include:

- *Documents with information that is open to public access*
- *A document which is available for purchase by the public*
- *A document that is available for inspection that is in a registry maintained by the Registrar General or other public authority, and*
- *A document which is a duplicate of a document of a public authority*

The FOIA also provides for instances where a public authority can rely on stated exemptions to refuse access to requested documents. Where access is refused, the Ombudsman has the power to review that refusal provided that the applicant makes a complaint, in writing, within twenty-one (21) days of receipt of the notice of refusal.

Documents that may be exempted from disclosure include *inter alia*:

- *Cabinet documents*
- *Law enforcement documents*
- *Documents relating to trade secrets*
- *Documents affecting personal privacy*

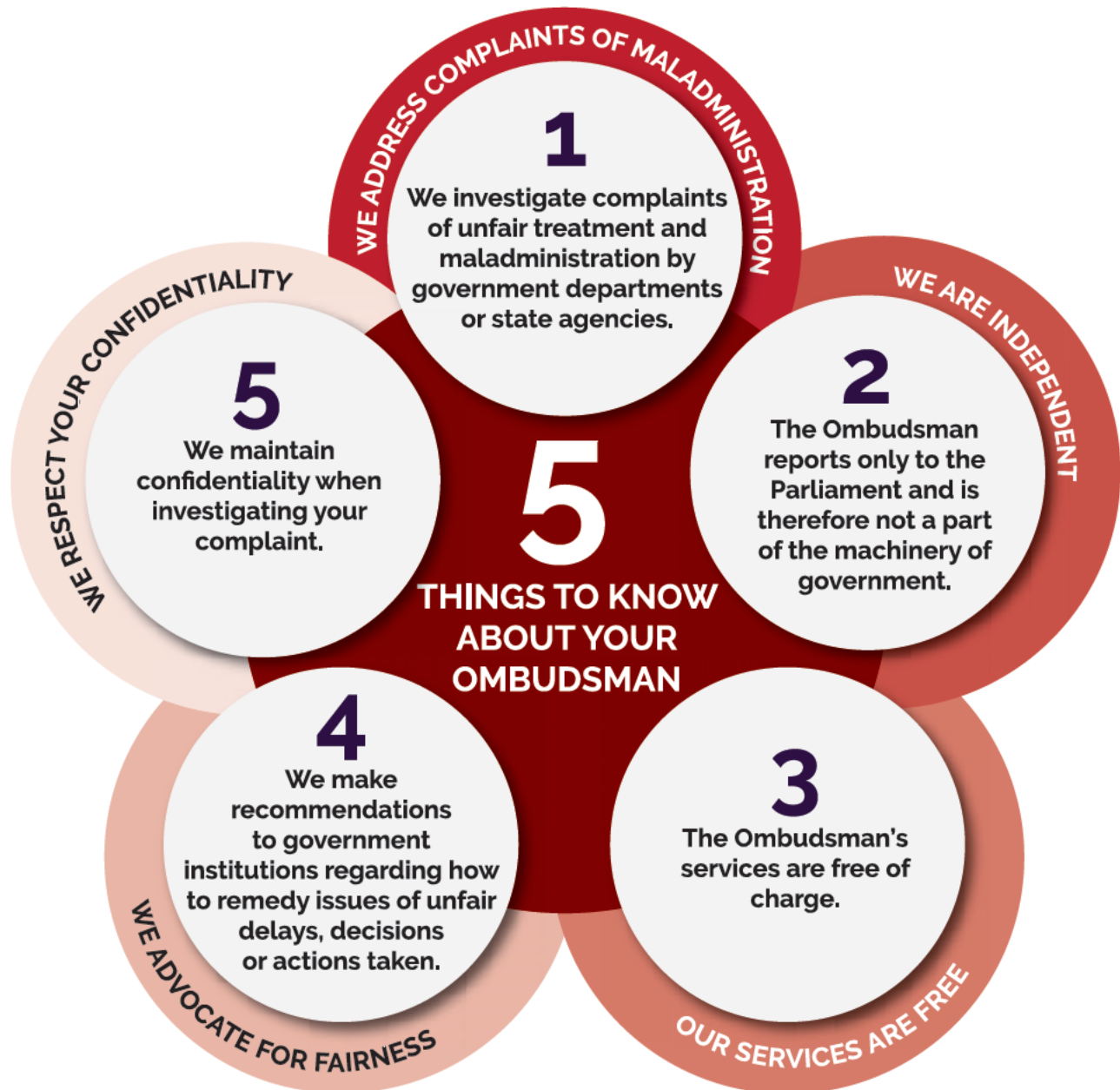
When a request is made pursuant to the FOIA, **Section 15** places a statutory obligation upon public authorities to take all reasonable steps to enable an applicant to be notified of the approval or refusal of his/her request as soon as practicable but in any case not later than thirty (30) days after the day on which the request was duly made.

Further, **Section 38A (1)** states:

*"A person aggrieved by the refusal of a public authority to grant access to an official document, may, within twenty-one 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."*

Pursuant to **Section 23 (1) (e)**, the right to complain to this Office extends to instances where the refusal is based on the non-existence of the requested document and/or the inability of the public authority to locate the requested document despite diligent searches being made.

# FIVE (5) THINGS TO KNOW ABOUT YOUR OMBUDSMAN



# THE COMPLAINTS PROCESS





# REVIEW OF MATTERS UNDER THE FREEDOM OF INFORMATION ACT (FOIA), CHAP 22:02

For the period January to December 2021, the Office of the Ombudsman received a total of forty-nine (49) requests to review decisions made by public authorities under the provisions of the FOIA. Of the forty-nine (49) matters received, forty-six (46) matters or 94% were closed and three (3) matters or 6% remained under investigation as at December 31, 2021. **See Figure I below.**

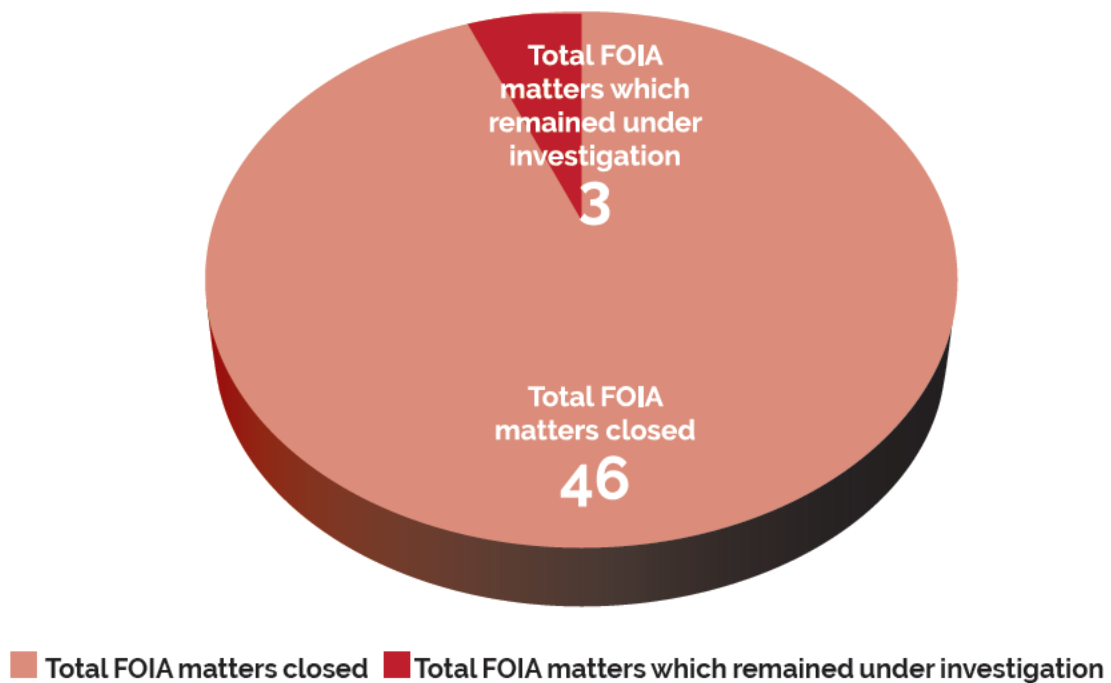
Having examined the complaints and considered the legal framework the following observations are worth noting and in some instances, repeating:

- There is a need for training, not only for designated officers but also for employees of public authorities and the public at large. In one instance, an employee of a public authority who was in receipt of a request made pursuant to **Section 11** of the FOIA, failed to transmit the request to the designated officer. That failure resulted in a delay of four months in the applicant receiving a response. Additionally, there have been numerous instances where the public authority fails to inform applicants of their right to apply for judicial review and/or complain to this Office. In one instance, a member complained to the Office outside of the statutory period because she was unaware that she had the right to complain to the Office. **Section 23(1)** imposes a clear obligation on public authorities to inform applicants of their right to apply for judicial review and/or complain to this Office.
- Oftentimes there is a failure to provide reasons for the refusal to disclose requested documents. It is unfortunate that even in instances where the refusal appears to be legitimate, public authorities neglect to include the reason/s for the refusal. Numerous judicial decisions have stressed that merely reciting the sections of the FOIA relied on for the exemption is not sufficient. This contravenes the Act and the facilitative spirit of the Act. Public Authorities should strive to provide reasons for refusal; this would allow applicants to make an informed decision whether or not they wish to challenge the refusal.
- Public authorities often do not indicate whether consideration was given to **Section 35** when refusing a request. The recent case law now establishes that it is generally for the public authority to establish that there was no overriding **Section 35** interest which would allow access to an exempt document.<sup>1</sup> Public authorities have been reminded that the Court may not permit reliance on new public interest considerations that were not communicated to the applicant before an application for judicial review is made. In that regard, public authorities are asked to be mindful of the words of Jamadar JA at paragraph 28 in the case of C.A.CIVP200/2014 **the Minister of Planning and Sustainable**

<sup>1</sup> per Smith JA at paragraph 30 in the case of Ravi Doodnath Jaipaul • The Public Service Commission & Ors Civ App No 162 of 2011 there referring to the cases of The Minister of Planning and Sustainable development • The Joint Consultative Council for the Construction Industry Civ App No P200 of 2014 and Caribbean Information Access Ltd. • The Minister of National Security Civ App No 170 of 2008

**Development v The Joint Consultative Council for the Construction Industry Civ App No P200 of 2014** who stated "even though there is no positive prohibition against the introduction of 'new reasons' to justify denial of information sought, such permissiveness runs contrary to the entire thrust of the legislative scheme and prima facie undermines its objectives and intentions."

**FIGURE 1- Total number of FOIA matters closed and those which remained under investigation for the period January to December 2021**



# AN ANALYSIS OF FOIA MATTERS RECEIVED IN EACH QUARTER FOR THE PERIOD JANUARY TO DECEMBER, 2021.

**Table 1** below illustrates a breakdown and comparative analysis of the total number of FOIA matters received by the Office of the Ombudsman in each of the four (4) quarters for the period January to December, 2021 with those received for the period January to December, 2020.

YEAR	1 <sup>ST</sup> QUARTER	2 <sup>ND</sup> QUARTER	3 <sup>RD</sup> QUARTER	4 <sup>TH</sup> QUARTER	TOTAL
2020	3	1	4	10	18
2021	17	8	14	10	49

**Table 1.** FOIA matters received quarterly in 2020 and 2021

The Office of the Ombudsman received a total of seventeen (17) matters in the 1st quarter of 2021, eight (8) matters in the 2nd quarter, fourteen (14) matters in the 3rd quarter and ten (10) matters in the last quarter.

There was a marked increase of thirty-one (31) FOIA matters or 172% in 2021 in comparison to 2020. The Office accredited this increase to the measures implemented because of COVID-19 restrictions in Trinidad and Tobago during 2020 and continued in 2021. These restrictions saw limits being placed on the number of employees at government offices at any given time. Many public authorities implemented staff rotations and work from home schedules. This ultimately impacted the ability of those organisations to respond to requests within the statutory period. In fifty-nine percent of matters (29 matters) received in 2021, applicants did not receive written response nor a notice of refusal from the relevant public authority.

The Office of the Ombudsman faced challenges during the pandemic which included the time for receipt of paper correspondence/complaints and the investigation of same by the Office. Fortunately, most persons utilised our email services for lodging their complaints. This ultimately allowed us to respond to the increased number of complaints within reasonable timeframes. For that reason, members of the public are encouraged to continue to use electronic methods of filing complaints when engaging the services of the Ombudsman.

In an attempt to address the delay by public authorities in responding to requests, this Office collaborated with the Freedom of Information Unit (FOIU) to ensure the impugned public authorities were aware of their responsibilities under the FOIA. Notably, the Ombudsman is a

remedy available to an applicant under the FOIA provided there is an active refusal by the public authority to satisfy the request for information and notice of that refusal is communicated in accordance with the FOIA. Thus, where there was a delay and the absence of a notice of refusal, the applicants were informed of their right to apply for judicial review and the public authority was notified of the complaint. The decision was made to engage the public authorities in an effort to mitigate the need for judicial intervention. This approach continues to prove useful. The Office thanks the FOI Unit in that regard and looks forward to a continued working relationship with the FOI Unit and all public authorities.

***The following are testimonials from members of the public and public authorities:***

*"I wish to extend thanks to your office for your assistance with my submitted complaints. Subsequent to the intervention of the Office of the Ombudsman, the public agency reviewed and revised its position to withhold the requested documents and ultimately released some of them to me."*

**Member of the public**

*"I would like to take this opportunity to thank you and your staff for the time, effort and expert advice given to me during our short communications. Your efforts were greatly appreciated."*

**Member of the public**

*"Thank you for the provision of information regarding the Freedom of Information Act and we will refer future FOI applicants to your office, when their requests cannot be fulfilled by us due to lack of the requisite documents."*

**Public Authority**

*"As always, it is gratifying that we are able to mitigate these issues without litigation."*

**FOI Unit**

*"Please be informed that...I received access to the information requested through the FOI from the [public authority]. I am aware that reporting the infraction did not fall within the Ombudsman's remit as it wasn't a refusal. However, I chose to highlight the infraction as a form of due diligence. As I do not have finances to obtain an attorney, it would have been a similar delay to seek a judicial review via the Legal Aid Authority. I thank your office for the information and assistance provided thus far."(sic).*

***NB. This testimonial was in response to an FOI application made on 27th October, 2021.***

**Member of the public**



# S U M M O N S

The Office of the Ombudsman is governed by the Constitution of the Republic of Trinidad and Tobago, Chapter 1:01 and the Ombudsman Act, Chap. 2:52.

Section 97 (1) of the Constitution of the Republic of Trinidad and Tobago, Chap. 1:01 states "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."

The issuance of summons is one of the tools used by the Ombudsman as an effective recourse for resolving matters brought against Ministries/Government Departments and State Agencies. The relaxation of stay at home orders in August 2021 allowed for the resumption of summons hearings to be conducted by the Ombudsman.

A total of twelve (12) summonses were issued during the last quarter of 2021 to various Ministries/Government Departments and State Agencies which surpassed what was issued in previous years as can be seen in Table 2. These were issued for matters ranging from the unreasonable delay in receiving payment of salary to invalidity benefits. The issuance and service of these summonses has brought about an increase in the number of matters being resolved.

## Undertaking

At the summons hearing an undertaking is usually given by the representative of the various Ministries/Government Departments and State Agencies to provide feedback within a reasonable time frame which varies from seven (7) days to three (3) months for the resolution of a complaint.

## Summons Protocol

When a summons is issued to the Permanent Secretary of a Ministry or a Head of Department or Agency by the Office of the Ombudsman pursuant to Section 97 (1) of the Constitution of the Republic of Trinidad and Tobago and the named officer is unable to attend, the Office must be notified pursuant to Section 10 of the Ombudsman Act.

A representative of comparable rank can attend in place of the summoned officer and the name and position of that individual must be communicated to the Office of the Ombudsman. Furthermore, it is the responsibility of the organization to implement processes that ensure **ALL** communication from the Office of the Ombudsman (especially summons) receives prompt attention.

**Table 2.** Number of summons issued served over a 5-year period (2016 to 2020)

YEAR	No. OF SUMMONS ISSUED
2016	-
2017	8
2018	9
2019	4
2020	1
Total	22

**Table 2** illustrates the number of summons served over a five (5) year period (2016 to 2020): zero (0) in 2016; eight (8) in 2017; nine (9) in 2018 four (4) in 2019 and one (1) in 2020. A total of 22 summonses were issued.

**Table 3.** Number of Summons served and the Status for the Last Quarter of (2021)

NO.	NATURE OF COMPLAINT	STATUS
01	Request under Freedom of Information Act (FOIA)	Resolved
02	Compensation for injury on the job	Resolved
03	Unreasonable delay in receiving salary	On-going
04	Request for payment of unutilized vacation leave prior to retirement	Resolved
05	Delay by Corporation in addressing access to property	On-going
06	Delay in obtaining payment of gratuity	Resolved
07	Reinstatement of Invalidity Benefit	Resolved
08	Conversion of Invalidity Benefit to Retirement Benefit	Resolved
09	Delay in payment of gratuity	On-going
10	Delay in payment of gratuity	Resolved
11	Compensation for injury on the job	Resolved
12	Delay in payment of increments	Resolved

**Table 3** above illustrates the number of summonses and the status of the complaint for the last quarter of 2021



# AREAS OF CONCERN

The National Insurance Board (NIB)

Ministry of Social Development and Family Services -The Social Welfare Division (SWD)

Ministry of Rural Development and Local Government - Municipal Corporations

# Area of Concern #1

## NATIONAL INSURANCE BOARD (NIB)

The National Insurance Board (NIB) which was established by an Act of Parliament No. 35 of 1971 is responsible for the operation and administration of this country's National Insurance System (NIS), which provides protection to insured persons against the economic and social distress caused by the loss of earnings arising out of work-related injuries and other contingencies.

In other words, this board was set up with the aim of paying benefits to persons who register and pay contributions to the National Insurance System. There are seven (7) categories of benefits offered by the NIB, namely:

- **Sickness**
- **Maternity**
- **Invalidity**
- **Retirement**
- **Funeral Grant**
- **Employment Injury**
- **Survivors'**

The Office of the Ombudsman continues to be troubled by the failure of the NIB to expeditiously address complaints brought against them. Concerned individuals continue to be driven to the various media platforms including social media to publicise issues regarding lengthy delays in accessing services offered by the NIB among other issues. This comes with the hope of receiving some form of redress.

Tables 4 and 5 illustrate a statistical analysis prepared by this Office over a five (5) year period (2017-2021), with respect to complaints received against the NIB and the complaints still under investigation at year's end.



# STATISTICAL ANALYSIS OF NIB COMPLAINTS RECEIVED BY THE OFFICE OF THE OMBUDSMAN

COMPLAINTS RECEIVED AGAINST NIB BY CATERGORIES FOR THE PERIOD 2017-2021 (PORT OF SPAIN/SAN FERNANDO/TOBAGO)						
CATEGORY	2017	2018	2019	2020	2021	TOTAL (complaints received per category)
Retirement Benefits	33	41	74	36	58	242
Sickness Benefit	2	3	13	5	8	31
Disablement/ Disability Grant	5	2	10	6	4	27
Invalidity Benefit	12	6	22	7	7	54
Injury Benefit	3	3	2	3	0	11
Survivors' Benefit	4	1	6	2	2	15
Maternity Benefit	0	2	4	7	2	15
National Insurance (NI) Contributions Query	5	10	4	5	5	29
Re-marriage Grant	0	0	0	0	1	1
Refund / rebate of NIS-pay- ment	2	5	4	4	2	17
Re-issuing of Cheques	0	3	3	2	0	8
Verification of Indebtedness	0	0	1	0	0	1
Re-Assigning Retirement Pension to Overseas Financial Institution	0	0	1	0	0	1
Payment of Arrears	0	0	0	0	0	0
Sickness and Maternity Benefit	0	1	0	0	0	1
TOTAL (complaints per year)	66	77	144	77	89	453

**Table 4.** Complaints Received Against the NIB (2017-2021)

For the period 2017 to 2021, the Office of the Ombudsman received a total of four hundred and fifty-three (**453**) complaints against the National Insurance Board (NIB) within various categories. Of that total, two hundred and forty-two (**242**) complaints or **53.4%** were received in relation to *retirement benefits*, the highest number recorded in comparison to the other categories. See **Table 4** above.

**NO. OF COMPLAINTS RECEIVED AGAINST NIB STILL UNDER INVESTIGATION AS AT DECEMBER, 31ST OF EACH YEAR (2017-2021) (PORT OF SPAIN/SAN FERNANDO/TOBAGO)**

CATEGORIES	No of Complaints under investigation as at December 31st, 2017	No of Complaints under investigation as at December 31st, 2018	No of Complaints under investigation as at December 31st, 2019	No of Complaints under investigation as at December 31st, 2020	No of Complaints under investigation as at December 31st, 2021
Retirement Benefits	19	19	27	19	47
Sickness Benefit	1	2	6	2	4
Disablement/ Disability Grant	2	1	8	3	4
Invalidity Benefit	5	1	8	4	6
Injury Benefit	2	1	1	0	0
Survivors' Benefit	2	0	5	2	2
Maternity Benefit	0	1	2	4	2
National Insurance (NI) Contributions Query	3	3	2	2	4
Re-marriage Grant	0	0	0	0	1
Refund/rebate of NIS-payment	1	3	3	3	2
Re-issuing of Cheques	0	0	1	1	0
Verification of Indebtedness	0	0	0	0	0
Re-Assigning Retirement Pension to Overseas Financial Institution	0	0	0	0	0
Payment of Arrears	0	0	0	0	0
Sickness and Maternity Benefit	0	0	0	0	0
<b>TOTAL</b>	<b>35</b>	<b>31</b>	<b>63</b>	<b>40</b>	<b>72</b>

**Table 5.** NIB Complaints still under investigation (2017-2021)

At the end of each year for the period 2017 to 2021, the highest number of complaints which remained under investigation was in relation to retirement benefits. This means that more than 40% of the total NIB complaints lodged each year were still under investigation at the end of the period. **See Table 5** above.

## Overall Analysis:

Given statistical data and in comparison to the other categories outlined in **Tables 4** and **5** above, complaints related to retirement benefits remain the highest. *"The National Insurance Retirement Benefit is designed to supplement the income of individuals after retirement. Every employee who has paid National Insurance contributions is entitled to a Retirement Benefit. Citizens qualify for the Retirement Benefit at any time between the ages of 60 and 65 if you are retired or at age 65 whether you retire or not."*<sup>2</sup>

An article published in the Trinidad and Tobago Guardian entitled, ***NIBTT responds to complaints of lengthy delays***, highlighted the concerns of one distressed retiree who states that *"For the past six months, I've been coming here, every time you come here they telling you it processing it's processing that is it. You retire now you can't get your government benefits, you can't get your NIS benefits"*<sup>3</sup>

The length of time taken to process certain benefits such as retirement benefits is of grave concern for the Ombudsman. NIB must be cognizant that not all persons who are eligible and have applied for their retirement benefits have financial arrangements in place to sustain them beyond the ninety (90) day period indicated by the NIB for processing these applications.

Notwithstanding, after decades of diligently making NI contributions with the hope of establishing financial security for their later years, contributors are still subject to undue distress and delays in receiving the retirement benefits to which they are rightfully entitled. This issue is compounded by the fact that most persons who belong to this age group are no longer able to return to work and receive a monthly income to meet their basic needs including any possible health concerns.

There is an inherent need for the NIB to address the following issues noted by the Office of the Ombudsman. These include:

- **Lack of proper and timely communication-** The lack of proper and timely dissemination of information to members of the public accessing the services of the NIB needs to be addressed.
  - One such observation made by this Office is that persons applying to the NIB are unclear of the documents required to have their claim(s) processed. This therefore creates unnecessary delays on the part of the NIB which eventually has to be addressed by the Office of the Ombudsman when persons lodge their complaint. Further, persons who apply for benefits and have submitted all the required documents are still subjected to lengthy delays in receiving a response to their application(s).

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2 The National Insurance Board (NIB). [https://www.nibtt.net/benefits\\_09/ben\\_retirement\\_1.html](https://www.nibtt.net/benefits_09/ben_retirement_1.html). Web.

3 Trinidad and Tobago Guardian. *"NIBTT responds to complaints of lengthy delays."* Thursday 16, September, 2021. <https://www.guardian.co.tt/news/nibtt-responds-to-complaints-of-lengthy-delays6.2.1386383.435fo08660>. Web.

- A second observation made is that persons who are aggrieved or dissatisfied with any decision made by the NIB regarding their claim(s) are often not informed of their right to appeal the said decision to the National Insurance Appeals Tribunal (NIAT). Persons are therefore unaware that a maximum time limit of six (6) months to one (1) year from the date of the Board's decision is allowed within which an appeal must be lodged. It is important to note that NIAT, which was established under Sections 60, 61 and 62 of the National Insurance Act Chap. 32:01 ('NI Act'), operates as an independent body and is not under the control of the NIB.
- **Non-payment of Employees' NI Contributions by Employers-** Sections 29 and 30 of the NI Act imposes an obligation on an employer to ensure that his employees and unpaid apprentices are registered with the NIB and to submit statements of contributions due and paid for all employed persons. Non-payment of employees' NI contributions by employers is a recurring issue and this Office has received several complaints regarding this issue.

An enquiry by the Joint Select Committee (JSC) on Finance and Legal Affairs into certain aspects of the National Insurance System of Trinidad and Tobago) discussed key points which were highlighted in the 41st Annual Report of the Ombudsman (2018). These points included the following:

- "The need for NIBTT to improve its oversight of the collection of contributions from employers.
- The need for greater efficiency in the administration of the NIS compliance.
- The complaints from persons experiencing issues in receiving benefit claims from the NIS
- The need for registration of all employers who are not currently registered or paying the NIS contribution."<sup>4</sup>

### **Recommendations:**

In moving forward, the Office of the Ombudsman would like to commend the NIB for its creditable contribution and marked improvement in addressing complaints in the latter part of the reporting period of 2021; however, this Office will continue to hold the NIB to account for their dispassionate behaviour in dealing with applications for benefits made by members of the public (the clients of the NIB).

The NIB needs to review its current system for ensuring employers' registration and compliance in effecting payment of employees' NI Contributions. It is therefore quite clear that the NIB's Compliance Department which is tasked to handle delinquent employers is not effective.

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4 *Office of the Ombudsman. 41st Annual Report (2018). p. 12. June 7, 2019. [www.ombudsman.gov.tt](http://www.ombudsman.gov.tt). Web.*

The NIB should take into consideration **Section 40** of the NI Act which states that *“An employer who fails or neglects to pay or effect payment of contribution in respect of any person in his employment who is required to be insured under this Act, is liable on summary conviction to a fine of four thousand dollars and six months imprisonment and in the case of a continuing offence shall be liable in respect of each person for whom he neglected or failed to pay or effect payment of contribution, a further fine of one hundred dollars a day for each day that the offence continues after conviction.”*

Additionally, there can be a public education programme focusing on key facts such as the list of documents required when making applications to the NIB. This may be helpful in bridging the communication gap between members of the public which should in turn lead to a reduction in delays as the many questions and concerns persons may have would be clarified.

## Area of Concern #2

# MINISTRY OF SOCIAL DEVELOPMENT AND FAMILY SERVICES-THE SOCIAL WELFARE DIVISION

The Social Welfare Division (SWD) falls under the ambit of the Ministry of Social Development and Family Services and functions to assist in empowering the vulnerable in society to enjoy a better quality of life by providing financial and social assistance in accordance with existing laws, regulations and policies. This division offers a range of social assistance grants.

### Statistical Analysis of SWD Complaints received by the Office of the Ombudsman

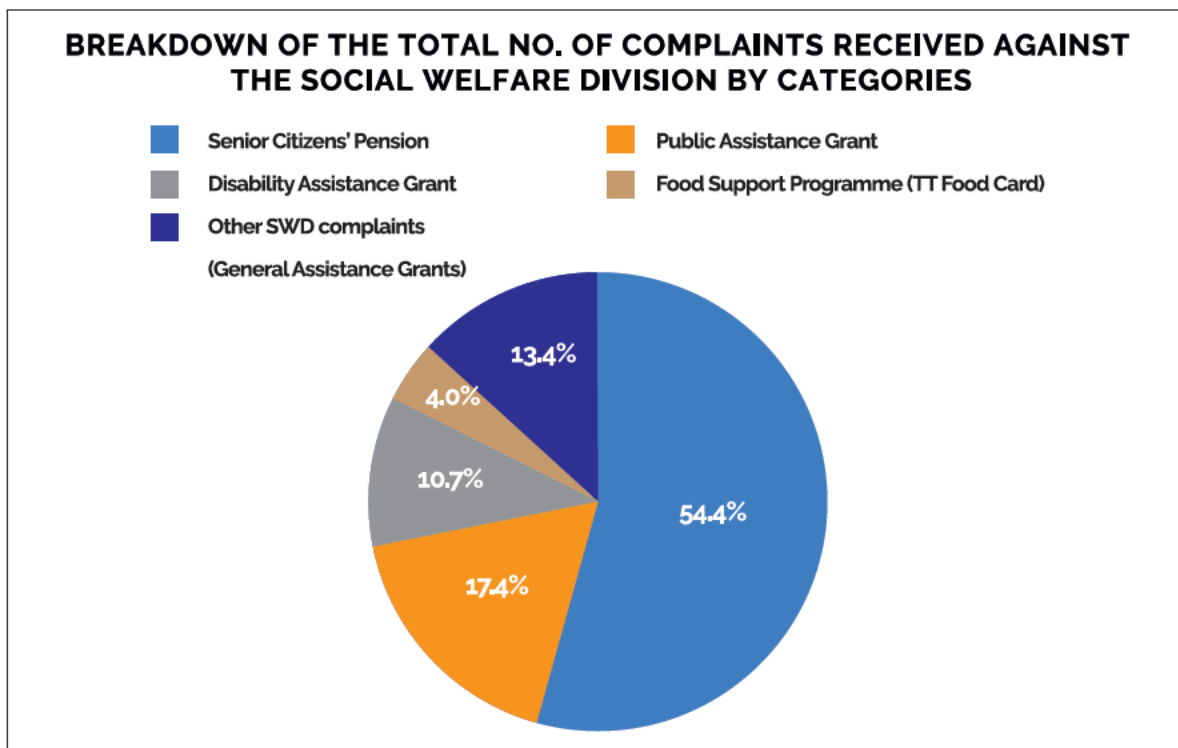
#### *Breakdown of Social Welfare Division (SWD) complaints received for the 5 year period (2017 to 2021).*

COMPLAINTS RECEIVED AGAINST SOCIAL WELFARE DIVISION BY CATERGORIES FOR THE PERIOD 2017-2021 (PORT OF SPAIN/SAN FERNANDO/TOBAGO)						
CATEGORY	2017	2018	2019	2020	2021	TOTAL
Senior Citizens' Pension	19	14	26	11	11	81
Public Assistance Grant	3	5	11	2	5	26
Disability Assistance Grant	2	4	5	3	2	16
Food Support Programme (TT Food Card)	1	0	1	2	2	6
Other Social Welfare Division Complaints (General Assistance Grants)	4	8	3	3	2	20
TOTAL SOCIAL WELFARE DIVISION COMPLAINTS	29	31	46	21	22	149

**Table 6.** Social Welfare Division complaints received (2017- 2021)

**Table 6** above shows that for the 5-year period from 2017 to 2021, the Office of the Ombudsman received a total of one hundred and forty-nine (149) complaints against the Social Welfare Division. Of that total, 54.4% or eighty-one (81) of the complaints were regarding Senior Citizens' Pension; twenty-six (26) or 17.4% related to Public Assistance Grants and sixteen (16) or 10.7% were regarding Disability Assistance Grants. Six (6) or 4.0% of complaints were regarding the Food Support Programme and twenty (20) or 13.4% were in relation to other Social Welfare Division services (General Assistance Grants)- for example, Special Child Grant, Education Grant, Housing Grant among others. See **Figure 2** for further illustration.





**Figure 2.** Social Welfare Division Complaints by category

#### Overall Analysis:

In a brief published by the International Labour Organisation (ILO) Trinidad and Tobago: Universal pensions and elderly care stated that *"The old-age pension system in Trinidad and Tobago consists of contributory and non-contributory schemes that provide income security for elderly people."*<sup>5</sup> Apart from the Retirement Benefit, a contributory pension scheme provided by the National Insurance Board (NIB), the Senior Citizens' Pension, a non-contributory pension scheme provided by the SWD, also forms a major part of the pension system in Trinidad and Tobago. The latter is a grant aimed at providing financial assistance to eligible older persons in Trinidad and Tobago in accordance with the Senior Citizens' Pension Act, Chap. 32:02 ('the Act').

Statistical data illustrated in **Table 4 and Figure 2** above clearly shows that more than 50% of the complaints received were in relation to Senior Citizens' Pension. Further, there is a striking similarity in the prevalence of complaints regarding both the NIB's Retirement Benefit and SWD's Senior Citizens' Pension. Both services are accessed by senior citizens which is a significant segment of the vulnerable population within our society. Consequently, the inordinate delay in processing these applications, even in comparison to other applications, is a troubling indictment on the efficacy of the nation's social protection machinery.

The SWD, like the NIB, must consider that most persons who belong to this age group are no longer able to return to work in order to earn a monthly income to support their basic needs or to

<sup>5</sup> ILO Social Protection Department. *"Trinidad and Tobago: Universal pensions and elderly care."* 2018. <https://socialprotection.org/discover/publications/trinidad-and-tobago-universal-pensions-and-elderly-care>. Web.

address any health concerns which may arise. The delays in processing senior citizens' pensions or benefits should not therefore be seen as simply mere bureaucratic inefficiencies but, rather, subjecting a vulnerable segment of society to unnecessary socioeconomic hardship, anxiety and frustration in what ought to otherwise be their 'golden years'.

Additionally, the following recurring issues have been observed by the Office of the Ombudsman over the years. These issues require attention by the SWD and by extension, its line Ministry. These include:

- **Extensive delays in processing Social Assistance applications**

Similar to several other Ministries/Government Departments/State Agencies, the issue of extensive delays in processing social assistance applications exists at the SWD. The Office of the Ombudsman has noted from complaints received that numerous persons expressed plights of having to wait 'more than a year' to receive some form of feedback on their applications including receiving home visits from the Social Welfare Officers. Like the NIB, persons also complained that this process was too long and arduous and the list of documents required to complete the said process was unclear.

Additionally, in order to apply for a social assistance grant, an application form must be completed at the Local Board Office of the respective district. Applicants may also be required to attend an age assessment meeting with the Local Public Assistance Board at which the Board decides on all applications.

- **Rejected applicants have the right to appeal the Board's decision.**

**Section 18** of the Act states that *"a person whose claim has been rejected by a Local Board, may within thirty (30) days of the receipt by him of the notification of the grounds upon which his claim is rejected, request the Local Board in writing to submit his claim for the final decision of the Board."*

This Office has observed that often members of the public accessing the services of the SWD are unaware of the details involved in the appeals process including the timeframe stipulated in accordance with Section 18 of the abovementioned Act.

- **Lengthy delays in reissuing cheques which were misplaced, damaged, stolen and encashed or requiring correction:**

The Trinidad Express Newspaper published an article in (2021) entitled, **Pension fraud against the elderly** which highlighted that *"the Ministry continues to receive numerous complaints from clients, particularly senior citizen pensioners, of lost, stolen and damaged cheques"*<sup>6</sup> Moreover, it must be stated that cheques which are stolen are often encashed thus depriving

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<sup>6</sup> Trinidad Express Newspaper. "Pension fraud against the elderly." Friday 11, June, 2021.

[https://trinidadexpress.com/news/local/cox-pension-fraud-against-the-elderly/article\\_5090dcbc-cb13-11eb-a3d7-ob436bb7daea.html](https://trinidadexpress.com/news/local/cox-pension-fraud-against-the-elderly/article_5090dcbc-cb13-11eb-a3d7-ob436bb7daea.html). Web.

persons of their due benefits. These pensioners are then required to wait for an investigation process to be conducted in order for cheques to be reissued. In spite of the fact that the SWD cannot be held solely accountable for the delay in the reissuing of cheques, it must accept some responsibility for any unjustifiable setbacks which may occur within the Division in doing same.

- **Inefficient record keeping:**

One of the recurrent issues noted by the Office of the Ombudsman based on complaints lodged against the SWD is the misplacement of an applicant's documents submitted for processing. It should be emphasized that this issue exists not only within the SWD but also in several other Ministries/Government Departments/State Agencies. The prevalence of a problem, however, does not justify its permanence and the Division should therefore make meaningful steps towards remedying this procedural issue. The misplacement of documents or files would contribute to the delay in processing any application.

### **Recommendations:**

Notwithstanding the issues discussed above, the Office of the Ombudsman would like to applaud the SWD for its creditable effort and marked improvement in addressing complaints in the latter part of the reporting period of 2021. Given the implementation of restrictions intended to curb the spread of COVID-19, the SWD and by extension, the Ministry of Social Development and Family Services made a remarkable effort to safeguard the financial well-being of persons during that challenging period. The SWD should, however, continue to make a more determined effort to 'stop dragging its feet' in processing social assistance applications submitted to it.

Additionally, public education campaigns should be consistently undertaken to ensure that persons are fully sensitized about the various grants offered by the SWD and the list of documents required to make applications for those grants. The SWD also needs to make mention of its procedures with respect to dealing with applications made by persons to access social assistance grants as well as the details involved in its appeals process. This in itself would reduce the many delays applicants encounter.

The Ministry of Social Development and Family Services should continue to place greater emphasis on the implementation of the Direct Deposit Initiative allowing for cheques to be sent directly to recipients' personal bank accounts. The need for this initiative was also amplified during the COVID-19 pandemic when the movement of persons was restricted to mitigate the spread of the virus. Further, the use of this initiative would avoid cheques being misplaced, damaged or stolen and fraudulently encashed, thereby reducing the need for cheques to be reissued.

It must be stated that even though this initiative may be met with resistance by some persons, the SWD should make a concerted effort to continue sensitizing and encouraging persons, particularly the elderly, regarding the benefits to be derived from adopting this method.

Additionally, it is crucial that the maintenance of proper recordkeeping be viewed as a mandatory obligation by the SWD. Employees who are charged with the function of receiving and processing applications from members of the public should be held accountable if any documents are misplaced.

It is the fervent hope of this Office that even greater strides can be made by the SWD in reinforcing the social protection floor for the vulnerable groups throughout Trinidad and Tobago which fall within its ambit.

# Area of Concern #3

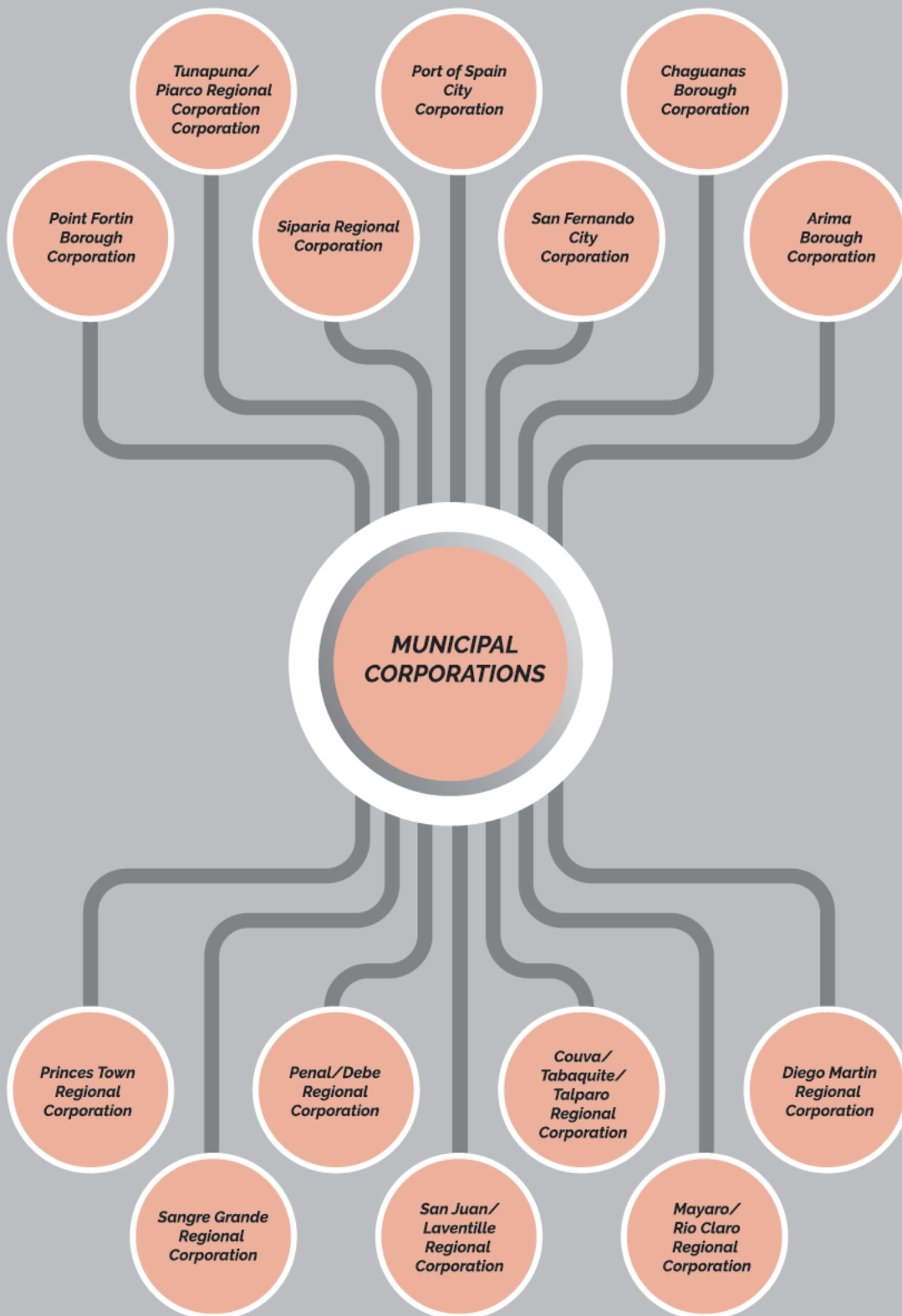
## MINISTRY OF RURAL DEVELOPMENT AND LOCAL GOVERNMENT- MUNICIPAL CORPORATIONS

Trinidad and Tobago is a unitary republic with two levels of Government: Central and Local. Local government history dates back to the 1700s when the Royal Cabildo was established in St. Joseph during the Spanish rule of Trinidad. It continued under the British with the establishment of municipalities in 1853 and city councils in 1945.

The Ministry of Rural Development and Local Government oversees fourteen (14) municipal corporations which exist in Trinidad (**See Figure 3**) whilst the Tobago House of Assembly (THA) oversees its divisions in Tobago.

Many of the services and facilities across communities are provided by these corporations in accordance to the Municipal Corporations Act, Chap. 25:04. Their responsibilities include:

- ***Secondary Roads, Drains and Municipal Infrastructure;***
- ***Public Health and Sanitation Services;***
- ***Municipal Building and Development Control;***
- ***Community Services and Facilities;***
- ***Daily Paid Employment;***
- ***Tendering for Municipal Projects.***



**Figure 3.** Local Government Municipal Corporations



**COMPLAINTS RECEIVED AGAINST THE MUNICIPAL CORPORATIONS  
FOR THE PERIOD 2017-2021 AND THE NUMBER STILL UNDER INVESTIGATION  
AT THE END OF EACH YEAR**

<b>CATEGORY (Corporations)</b>	<b>2017</b>		<b>2018</b>		<b>2019</b>		<b>2020</b>		<b>2021</b>		<b>TOTAL (complaints received per corporation)</b>
	No. received	No. still under investigation at year end	No. received	No. still under investigation at year end	No. received	No. still under investigation at year end	No. received	No. still under investigation at year end	No. received	No. still under investigation at year end	
<i>Arima Borough Corporation</i>	<b>2</b>	<b>1</b>	<b>2</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>4</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>8</b>
<i>Chaguanas Borough Corporation</i>	<b>3</b>	<b>1</b>	<b>3</b>	<b>2</b>	<b>5</b>	<b>4</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>12</b>
<i>Couva/ Tabaquite/ Talparo Regional Corporation</i>	<b>8</b>	<b>7</b>	<b>4</b>	<b>4</b>	<b>4</b>	<b>4</b>	<b>6</b>	<b>6</b>	<b>3</b>	<b>3</b>	<b>25</b>
<i>Diego Martin Regional Corporation</i>	<b>2</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>3</b>
<i>Mayaro/ Rio Claro Regional Corporation</i>	<b>3</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>1</b>	<b>2</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>7</b>
<i>Penal/Debe Regional Corporation</i>	<b>5</b>	<b>5</b>	<b>4</b>	<b>3</b>	<b>4</b>	<b>1</b>	<b>2</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>16</b>
<i>Point Fortin Borough Corporation</i>	<b>1</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>4</b>	<b>3</b>	<b>2</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>7</b>
<i>Port-of- Spain City Corporation</i>	<b>6</b>	<b>5</b>	<b>4</b>	<b>2</b>	<b>3</b>	<b>3</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>1</b>	<b>14</b>
<i>Princes Town Regional Corporation</i>	<b>3</b>	<b>1</b>	<b>4</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>2</b>	<b>2</b>	<b>1</b>	<b>1</b>	<b>13</b>
<i>San Fernando City Corporation</i>	<b>4</b>	<b>3</b>	<b>4</b>	<b>2</b>	<b>5</b>	<b>5</b>	<b>6</b>	<b>6</b>	<b>1</b>	<b>1</b>	<b>20</b>
<i>Sangre Grande Regional Corporation</i>	<b>4</b>	<b>4</b>	<b>8</b>	<b>8</b>	<b>2</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>2</b>	<b>1</b>	<b>17</b>
<i>San Juan/ Laventille Regional Corporation</i>	<b>1</b>	<b>1</b>	<b>4</b>	<b>4</b>	<b>5</b>	<b>3</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>12</b>
<i>Siparia Regional Corporation</i>	<b>5</b>	<b>5</b>	<b>7</b>	<b>7</b>	<b>6</b>	<b>4</b>	<b>6</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>24</b>
<i>Tunapuna/ Piarco Regional Corporation</i>	<b>1</b>	<b>1</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>4</b>	<b>2</b>	<b>4</b>	<b>4</b>	<b>13</b>
<b>TOTAL (complaints per year)</b>	<b>48</b>	<b>37</b>	<b>47</b>	<b>40</b>	<b>45</b>	<b>34</b>	<b>37</b>	<b>31</b>	<b>14</b>	<b>12</b>	<b>191</b>

**Table 7.** Corporation Complaints Under Investigation as at December 31, 2021

## Statistical Analysis of Municipal Corporations data for the 5-year period (2017-2021):

**Table 7** above illustrates that for the 5-year period (2017-2021), the Office of the Ombudsman received a total of one hundred and ninety-one (191) complaints against the various Municipal Corporations. In 2017, a total of forty-eight (48) complaints were received, forty-seven (47) were received in 2018, forty-five (45) were received in 2019, thirty-seven (37) were received in 2020 and fourteen (14) were received in 2021. From observations made over this 5-year period, it is clear that there has been a moderately declining trend in the number of complaints received each year against the various Corporations with the exception of 2021, which reflected a sharp decline. This decline may have been as a result of the implementation of government restrictions such as stay-at-home orders and the closure of non-essential organizations which included the Office of the Ombudsman. These restrictions may have contributed to the decline in the number of complaints received, not only pertaining to Municipal Corporations but also to all other complaints received by the Office even though the use of other methods such as email and drop-box was encouraged.

Furthermore, at the end of 2017, thirty-seven (37) of the total complaints received in that year remained under investigation, forty (40) complaints remained under investigation at the end of 2018, thirty-four (34) complaints remained under investigation at the end of 2019, thirty-one (31) complaints remained under investigation at the end of 2020 and at the end of 2021, twelve (12) complaints remained under investigation. It can therefore be stated that there has also been a moderate decline in the number of complaints which remained under investigation at the end of each year with the exception of 2018. **See Figure 4** below.



**FIGURE 4.** *Complaints Received and Still Under Investigation at year's end (2017-2021)*

## **Statistical Analysis of data for each Municipal Corporation for the 5-year period (2017-2021):**

From the data set presented in Table 7 above, it is also clear that over the 5-year period (2017-2021), the highest number of complaints were received against the Couva/Tabaquite/Talparo Regional Corporation with twenty-five (25) complaints followed by the Siparia Regional Corporation with twenty-four (24) complaints and the San Fernando City Corporation with twenty (20) complaints. The lowest number of complaints was received against the Diego Martin Regional Corporation with a mere three (3) complaints.

It is crucial to note that the number of complaints highlighted against the various Corporations should not be taken as the sole indicator of any Corporations' performance over another as the main objective is resolution of complaints. Therefore, while one corporation may reflect a higher number of complaints lodged against them they may have an equally higher level of resolution and Co-operation with the Office of the Ombudsman as opposed to another Corporation with fewer number of complaints.

### **Overall Analysis**

A review of the complaints regarding Corporations that have been brought to the Ombudsman over the past five years revealed that infrastructural issues, public health concerns and hazards are recurrent sources of complaints. Some examples of the types of issues within these areas that become the subject of complaints against Corporations on a consistent basis include:

- **improper drainage that leads to flooding or the erosion of residents' property**
- **failure to prohibit the construction of illegal or encroaching structures**
- **preventable landslips caused by inadequate infrastructure**
- **delays in repairing damages to property caused by the Corporation's construction projects; and**
- **overhanging trees, overgrown vacant lots and haphazard dump sites**

It has been noted by the Office of the Ombudsman that one of the factors impacting the investigation of complaints against Corporations is the denial of jurisdiction by some Corporations on nefarious grounds. This practice has the potential to delay the investigative process of this Office where further action must then be taken to impress upon the offending Corporation the certainty of their responsibility in addressing the claims of the complainant.

Additionally, it has been found that some Corporations give the undertaking that they would resolve complaints through the approval of the appropriate remedial works. However, subsequent to continued delays, the reason for inaction proffered is financial constraints due to

the unavailability of requisite funding. For instance, this Office has taken note of the fact that projects- including remedial works- are approved by the Engineering, Technical and/or other relevant departments of the Corporation but are constrained by the availability of funding for the completion of the said project.

Finally, complaints submitted to this Office often highlight a lack of responsiveness by Corporations when a resident has complained to the Corporation about an issue. Furthermore, Corporations have demonstrated similar lapses in responsiveness when there are requests for information during the course of investigations being conducted by the Ombudsman.

## **Recommendations**

It is crucial to note that while a larger number of complaints is received against some Corporations in comparison to others, this figure in itself should not be used as the sole indicator in determining that those Corporations are the only ones not collaborating with the Office of the Ombudsman in the investigation and resolution of matters.

With respect to jurisdictional matters, Corporations must give careful attention to both confirming and sensitizing their staff on their geographic boundary lines. Where this is not done, residents are subjected to a cycle of being referred from one neighbouring Corporation to the other with an ultimate result of frustration and an issue that remains unresolved. Moreover, when complaints are submitted to the Ombudsman, Corporations that are proficient in their geographic boundaries can circumnavigate providing uninformed denials of responsibility when approached by this Office.

Apart from the above, Corporations ought to promptly acknowledge complaints when they are approached by residents who report their claim of an administrative delay or injustice on the part of the Corporation. Upon confirmation of the Corporation's liability, financial priorities should be managed in a manner that ensures constituents are not further aggrieved by unreasonable delays in corrective measures being taken to alleviate their plight.

Furthermore, all complaints brought to the attention of a Corporation by the Office of the Ombudsman should be promptly acknowledged and addressed. Through the Corporations' responsiveness and prompt action when residents contact them about a problem, it can be expected that there would be a decline in the number of persons feeling compelled to escalate their matter by complaining to the Ombudsman.

# THE OMBUDSMAN'S CASEBOOK



## CASE 1: 14 YEARS TOO LATE

Ms. C's complaint stemmed from injuries sustained on October 24, 2007, when she allegedly slipped and fell on the job injuring her back, left foot and head. This occurred while employed as a Temporary Registration Clerk I at the Elections and Boundaries Commission's (EBC) Registration Office for Arima/Piarco.

Five (5) days after the incident, Ms. C reported her matter to the then Acting Chief Election Officer (CEO) enquiring "as to how it will be treated considering that it occurred on the job."

Having her hopes for a response prove futile, she sought the assistance of the Office of the Ombudsman on November 28, 2007 regarding the failure on the part of the EBC to address her claim of having been injured on the job.

On January 24, 2008, this Office wrote to the CEO, outlining Ms. C's complaint and requesting a response. Although numerous correspondence passed between both offices over the years, there was still no resolution of this matter. It was not until 2014 that this Office learnt that the matter was referred by the EBC to the Solicitor General for determination. The Solicitor General performs a critical role in the administration of justice by tendering legal advice in civil and public law matters to Government Ministries and Departments or entities.

This referral was made in accordance with **Item 6, of the Personnels' Department Guidelines for the Administration of Devolved Functions-Injury Benefits** which states: - "In order to determine Government's liability, if any, the matter should be referred to the Solicitor General for determination."

Emphasis should be placed on the fact that the Office of the Ombudsman made several attempts from 2014, including writing directly to the Solicitor General for information on the issue of liability and compensation regarding Ms C's matter. These attempts were unsuccessful as the Solicitor General failed to respond to any of the queries made by this Office.

By September 2021, having found the delay into this long outstanding matter along with other matters to be "unconscionable", the current Ombudsman took the decision to summon the Solicitor General to appear before him on October 6, 2021, to give evidence concerning this complaint, however, the summons hearing was no longer required after this Office was informed that the Solicitor General provided the EBC with the requested legal advice on October 4, 2021, two (2) days shy of the said summons hearing.

The Office of the Ombudsman was informed that a recommendation was made by the Solicitor General for **"the grant of an ex-gratia payment, in the sum of Forty Thousand Dollars (\$40,000.00)."** to Ms. C to which the EBC agreed to fulfil.



Unfortunately, this Office learnt of Ms. C's passing on June 23rd, 2021. It was agreed, however, that payment would still be made to her estate subject to the approval of Cabinet.

**Note: It is a disheartening fact that Ms. C's plight fell on deaf ears which resulted in a resolution coming fourteen (14) years too late. Situations such as these may cause one to wonder why members of the public must continue to bear the full brunt of unconscionable delays on the part of government departments. This Office continues to see worrying administrative injustices faced by the average person while the offending parties go about 'business as usual' with impunity.**

## CASE 2: YOU CAN SAFELY SAY THIS IS NOT A HEALTHY POSITION FOR MR. S

In September 2014, Mr. S sought the assistance of the Ombudsman regarding the delay in obtaining his arrears of salary and outstanding contract gratuity from the then Division of Community Development and Culture (now Division of Community Development, Youth Development and Sport), Tobago House of Assembly (THA).

Mr. S had been employed, on contract, from April 03, 2006 to January 01, 2014 as a Health and Safety Officer with the Division. He indicated that in 2009, the Executive Council of the THA had approved the change of his job title to that of Safety and Health Officer I along with an approved increase in salary.

Circular Memorandum No. 14 A of 2008 spoke to an increase in salaries effective from January 01, 2007. Mr. S stated, however, that his salary was never adjusted to the correct point. Thus, he was owed arrears of salary for the period 2007 to 2011.

Further, he claimed that he was owed gratuity for the contract periods:

- **April 04, 2011 to December 31, 2011 and**
- **January 03, 2012 to January 02, 2014**

Mr. S expressed that his efforts to obtain the outstanding remuneration from the Division proved futile, therefore leading him to the Office of the Ombudsman for assistance.

On September 30, 2014, this Office wrote to the Administrator of the Division followed by a reminder on February 26, 2015 requesting a report regarding the aforementioned claims made by Mr. S.

On April 27, 2015, the Division advised this Office of the following:

*"(i) Mr. S did not qualify for gratuity for the contracted period of April 01, 2011 to December 31, 2011. This period is less than twelve (12) months and (sic) according to Section VII, paragraph 2 of the Guidelines for Contract Employment which states, "Provision is not made in contracts of less than 12 months duration for payments of a gratuity.*

*(ii) He is to be paid an arrears of salary for the period November 01, 2011 to December 31, 2011 of forty-four hundred and seventy-four dollars (\$4474). This is based on the Chief Administrator's Circular dated January 13, 2012 re: Executive Minute No. 1007 dated November 17, 2011.*

*(iii) Officer was granted twenty (20) days in excess of his vacation leave eligibility, which will be recovered from his gratuity for the period January 03, 2012 to January 02, 2014."*

The Division gave an estimated timeframe of May 29, 2015 to effect payment to Mr. S but this deadline was never met.

Upon receipt of this information, the Office of the Ombudsman in pursuing its investigations discovered the following which would shed new light on Mr. S's matter:

- (i). With respect to Mr. S being deemed 'not qualified' to receive gratuity for the contracted period of April 01, 2011 to December 31, 2011 by the Division, it was determined that he was indeed qualified for this payment. Based on Minute 76 of Mr. S's file dated March 23, 2012, there was an Executive Council Minute No. 224 of March 07, 2012 where an agreement for the payment of a prorated gratuity was given. Further, Minute 92 on Mr. S's file spoke to the preparation of such payment.
- (ii). Additionally, legal advice was sought on a similar matter received by the Office of the Ombudsman and as such, that advice was applied to Mr. S's matter. This advice was as follows:
- **"that the employer is under a duty to comply with the terms as agreed between both parties and that the terms of the relevant contract will override the policy decision spelt out in Circular Memorandum dated January 18th, 2013;**
  - **That it was incumbent on the employer to amend the Schedule to reflect the change as to the payment of gratuity when a contract is less than a year, as provided for in the Circular Memorandum and this was not done; and**
  - **The employer is bound by the terms as set out in clause 11 of the Schedule which formed part of the main contract."**

On August 11, 2016, this Office was informed that Mr. S received his contract gratuity payment for the period January 03, 2012 to January 02, 2014 and the overpayment of the twenty (20) days taken in excess of his vacation leave eligibility was recovered by the Division.

On November 27, 2019, a thorough perusal of Mr. S's file by the Investigating Officer of the Office of the Ombudsman and the Human Resource Officer I of the Division revealed that an administrative error with respect to his vacation leave was made by the Division. As such, the Division would now have to reimburse this overpayment of twenty (20) days to Mr. S which has not been paid to date.

From this thorough perusal, additional anomalies were brought the attention of the Administrator of the Division:

- **The issue of arrears where Mr. S's salary was never adjusted to the correct salary point for the period January 01, 2007 to 2011. As a result of such, one can concur that Mr. S was not paid the correct salary from the start of his employment. This therefore would not only affect Mr. S's arrears of salary but also contract gratuity, that was paid and still owing.**

The issue of Mr. S's leave eligibility in accordance with the Guidelines for Contract Employment item I (1) (C) which states "*persons with more than six consecutive years of employment, on contract... with effect from the seventh year, five additional working days in each category.*" The Division would therefore have to pay Mr. S for ten (10) additional days' vacation leave.

**General Note:**

The Ombudsman is deeply concerned about the lack of responses to queries made and the failure of some Divisions of the THA to address complaints in a timely manner. There are complaints which span periods of more than ten (10) years which have not been addressed to date. Divisions inadvertently neglect to provide the necessary information that would help determine the legitimacy of complaints and bring closure to such. There have been instances where Divisions have responded expeditiously, but these are the exception rather than the standard.

**Recommendations:**

There is an inherent need for collaboration between Administrators and the Office of the Ombudsman to facilitate timely resolution of complaints. Further, Administrators must ensure compliance with policies and work processes that reflect the vision, values and culture of their Divisions and seek the interest of their clientele. This is an important step in cohesion and it would be a significant contributor to resolving issues in an effective, efficient and timely manner.

## CASE 3: FOLLOW-UP: 'CRIBLOCK' WALL REMOVAL MET WITH GRIDLOCK

The Ombudsman's 43rd Annual Report (2020) highlighted the case of Ms. T's crib wall removal by the Housing Development Corporation (HDC). The Office of the Ombudsman made a commitment to follow up on this matter to confirm the removal of this wall.

### **The following is a recap of Ms. T's case:**

In May 2005, Ms. T received the keys to a housing unit from the Housing Development Corporation (HDC). One year later, she observed that a crib wall on her property was not holding the land together and she expressed her concern, in writing to the Managing Director, HDC regarding the threat to the structural integrity of her home. A response to this however was not received.

In July 2010, Ms. T observed contractors in the area removing crib walls from properties on another street in close proximity to where she resides. She approached the Project Manager, HDC with respect to her concerns and was told that all crib walls in the area would be removed. The crib wall on her property however was not in fact removed.

Ms. T indicated that in March 2011 she again wrote to the Managing Director, HDC, in an attempt to highlight her concerns and provided photographs of the damage being done to the structure of her home. In September 2012, two (2) officers from the HDC visited her property and took photographs. Despite this, no further action was taken by the HDC.

In November 2012, Ms. T sought the assistance of the Ombudsman to have the crib wall on her property removed by the Housing Development Corporation (HDC). In that same month, the Ombudsman approached both the Managing Director and the Project Manager, HDC seeking feedback on Ms. T's matter. After several reminders were sent to the HDC from January 2013 to April 2013, the HDC by letter dated April 19, 2013 stated the following:

***"The Corporation is aware that the Complainant made averments that a crib wall constructed by itself and in close proximity to her housing property...is threatening the structural integrity to same. In response to these allegations, kindly note that the duly authorized officials of the Corporation have thoroughly engaged in investigating said claim.***

***Resulting from these investigations, the Corporation wishes to advise that such "Crib-Lock" type of retaining wall does not display any indications of structural failure, vertical or lateral movement, deformation or rotation, subsidence or heave or any other probable indication of distress occurring on Complainant's property relative to the presence of this wall.***

***In light of such findings, the Corporation therefore categorically refutes any and all claim, causes, or allegations that it has engaged in activities which have led to the structural damage of the Complainant's property..."***

In August 2013, upon receipt of the HDC's response, the Office of the Ombudsman engaged the services of an independent engineering company with the aim of obtaining a technical report and further advice on this matter. A site visit was conducted on Ms. T's property on September 5, 2013 and on September 20, 2013, a report of this company's findings was received by this Office.

***A synopsis of this company's findings is as follows:***

- 1) A properly constructed 'Cribblock' retaining wall is suitable to be used on this site.***
- 2) The fill material used within the cribs of the 'Cribblock' retaining wall does not meet the specifications recommended...***
- 3) Significant erosion of the fill material has already occurred and this has caused some precast concrete sections of the wall to shift and it has weakened the retaining wall."***

In November of that same year, a copy of this report was sent to both the Minister of Housing and Urban Development and the Managing Director of the HDC.

In March 2014, the Office of the Ombudsman was informed that Ms. T's matter was receiving the attention of the HDC and a response would be provided. Subsequent requests were made by the HDC for additional copies of the report.

Two (2) months later in May 2014, this Office requested that steps be taken by the HDC to review Ms. T's matter based on the findings of the independent technical report and that a report from them be submitted to this Office no later than June 2014. No response was received in relation to this Office's requests.

After numerous requests were made to the HDC over a five (5) year period to have this matter addressed, Ms. T informed this Office of the following on November 25, 2019:

***"I made arrangements for Mr. D (HDC's representative) to access the property to view the deteriorated crib wall. On Friday 22 November, 2019, Mr. D and I spoke via telephone while he was on site and he verbally indicated that the crib wall will be removed within approximately two months' time (January 2020) because of the relevant paper work which has to be done. I was informed that Mr. D took measurements to remove the crib wall and he said that a solid wall will replace the crib wall along the side of the property..."***



In January 2020, this Office was informed that there was in fact a new HDC Board of Directors resulting in the entire process with respect to the removal of Ms. T's crib wall being initiated once again. In December of that same year, Ms. T notified this Office that the HDC made arrangements for the crib wall to be removed in January 2021.

In March 2021, Ms. T informed this Office that crib wall was removed and replaced by a solid concrete wall. See photos below.



***MS. T'S CRIB WALL TO BE REMOVED (BEFORE)***



***REMOVAL OF CRIB WALL (AFTER)***



***SOLID CONCRETE WALL ERECTED (AFTER)***



# ISSUES COMMONLY FACED BY THE OMBUDSMAN

*The following are issues encountered by the Ombudsman in the investigation of complaints.*

## INSTITUTIONAL UNRESPONSIVENESS

- Unreasonably long delays in responding to letters, calls and emails
- Correspondence from the Office ignored by institutions
- Inability to reach the public officers instrumental to the investigation of a complaint

## POOR COMMUNICATION

- Decisions made by institutions unexplained or unclearly articulated
- Information provided is inaccurate or lacks substance
- Persons not informed of their right to access the relevant appeals processes where applicable

## UNFAIR POLICIES AND PROCEDURES

- Policies result in unfair outcomes for complainants
- Unfair treatment of complainants by institutions
- Over-enforcement or misapplication of policies

## UNREASONABLE DELAYS

- Unreasonable delays in handling complaints
- Unreasonable delays in processing appeals



# THE STORY IN NUMBERS

# STATISTICAL REPORT

## Summary:

- OVERVIEW OF INVESTIGATIONS FOR 2021
- FIVE (5) YEAR TREND OF NEW COMPLAINTS RECEIVED AND COMPLAINTS BROUGHT FORWARD FROM PREVIOUS YEARS
- TOTAL NUMBER OF CASES BROUGHT FORWARD TO 2021 AND NEW COMPLAINTS RECEIVED IN THE SAME YEAR
- TOTAL NUMBER OF NEW COMPLAINTS RECEIVED FOR THE PERIOD 2021
- DISTRIBUTION OF COMPLAINTS FOR THE PERIOD JANUARY TO DECEMBER 2021

### *An explanation of the jargon used throughout this section:*

**SUSTAINED/RESOLVED** - Investigations demonstrate that the complaint has merit

**NOT SUSTAINED** - Following investigations, the complaint was found to be without merit

**WITHDRAWN/DISCONTINUED** - The Office took the decision to cease pursuit of the matter for a number of reasons

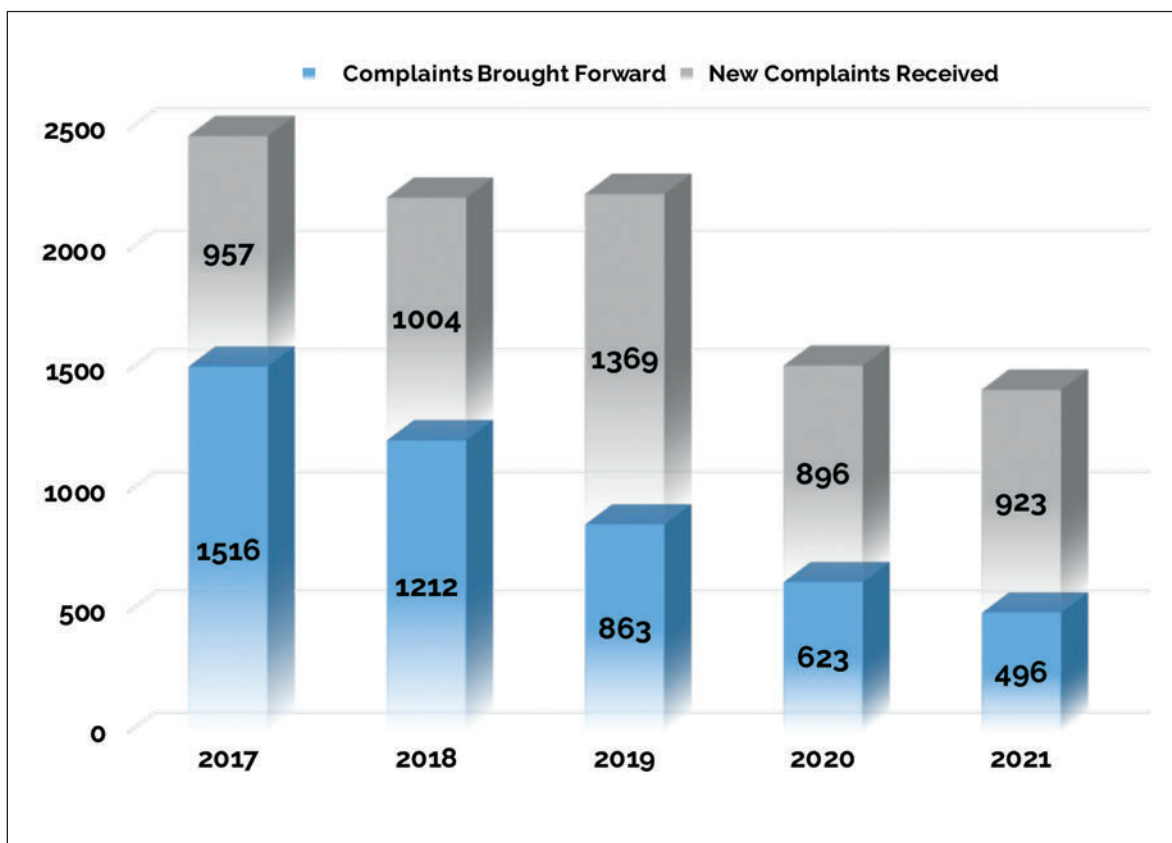
**NO JURISDICTION/ADVISED** - The Office reviewed the complaint and it was not a matter to investigate

**UNDER INVESTIGATION** - Matters are still ongoing

## OVERVIEW OF INVESTIGATIONS FOR 2021

For the period under review, the Office of the Ombudsman managed a caseload of one thousand, four hundred and nineteen (1,419) complaints, a decrease by one hundred (100) complaints in comparison to the last reporting period. This figure comprised nine hundred and twenty-three (923) new complaints received in 2021 and four hundred and ninety-six (496) complaints brought forward from previous years. In comparison to 2020, the number of new complaints received by the Office increased by twenty-seven (27) or 3.0% and the number of brought forward complaints decreased by one hundred and twenty-seven (127) or 20.4%. See **Figure 5**.

**FIGURE 5.** FIVE (5) YEAR TREND OF NEW COMPLAINTS RECEIVED AND COMPLAINTS BROUGHT FORWARD FROM PREVIOUS YEARS (2017-2021)



**Figure 5** above demonstrates the total number of new complaints received and brought forward from previous years over a five (5) year period (2017-2021) by the Office of the Ombudsman. From observations made over this period, it can be concluded that there has been a steady decline in the number of complaints brought forward annually. As it relates to the resolution of complaints, it should be noted that the issuance of summons was utilised in resolving protracted matters. For the year 2021, twelve (12) such hearings were conducted.



**Table 8** below illustrates the total number of cases brought forward to 2021 and new complaints received in the same year. A total of four hundred and fifty-three (453) cases or 55.2% were under investigation as at December 31, 2021.

	NUMBER	PERCENTAGE (%)
Total number of complaints brought forward from previous years	496	
Total number of complaints received in 2021	923	
TOTAL	1,419	100
Less total number of Private matters	(82)	5.8
Less Enquiries/Referrals	(467)	32.9
Less total Freedom of Information Act (FOIA), Chap. 22:02 matters	(49)	3.5
Total number of complaints pursued	821	57.9
Total number of complaints concluded	(368)	44.8
*Complaints sustained/resolved	218	26.6
*Complaints not sustained	7	0.9
*Complaints with no jurisdiction/advised	30	3.7
*Complaints withdrawn/discontinued	113	13.8
<b>TOTAL NUMBER OF COMPLAINTS UNDER INVESTIGATION AS AT DECEMBER 31, 2021</b>	<b>453</b>	<b>55.2</b>

**Table 8.** *New and Brought Forward Cases Under Investigation as at December 31, 2021*

**Table 9** shows that for the period, January to December 2021, investigations were pursued on three hundred and twenty-five (325) new complaints. At the end of the reporting period, a total of seventy-one (71) of these cases or 21.8% had been concluded and a total of two hundred and fifty-four (254) cases or 78.2% remained under investigation.

	NUMBER	PERCENTAGE (%)
Total number of complaints received in 2021	923	100
Less total number of Private matters	(82)	8.9
Less Enquiries/Referrals	(467)	50.6
Less total Freedom of Information Act (FOIA), Chap. 22:02 matters	(49)	5.3
Total number of complaints pursued	325	35.2
Total number of complaints concluded	(71)	21.8
*Complaints sustained/resolved	45	13.8
*Complaints not sustained	3	0.9
*Complaints with no jurisdiction/advised	9	2.8
*Complaints withdrawn/discontinued	14	4.3
<b>TOTAL NUMBER OF COMPLAINTS UNDER INVESTIGATION AS AT DECEMBER 31, 2021</b>	<b>254</b>	<b>78.2</b>

**Table 9.** *New Cases Concluded and Still Under Investigation for the period January to December 2021*



## DISTRIBUTION OF COMPLAINTS FOR THE PERIOD JANUARY TO DECEMBER, 2021

The table below illustrates the distribution of complaints received against Ministries/Government Departments/Agencies for the reporting period and their current status at the end of this period. It also highlights the total number of Freedom of Information (FOIA), Chap. 22:02 matters, Enquiries/Referrals and Private matters for the same period.

**Table 10.** *Distribution of Complaints for The Period January to December, 2021*

MINISTRIES/ GOVERNMENT DEPARTMENTS/ AGENCIES	SUSTAINED/ RESOLVED	NOT SUSTAINED	WITHDRAWN/ DISCONTINUED	NO JURISDICTION/ ADVISED	UNDER INVESTIGATION	GRAND TOTAL
<b>AGRICULTURE, LAND AND FISHERIES</b>						<b>15</b>
<i>General</i>	3	0	1	0	8	12
<i>Commissioner of State Lands</i>	0	0	2	0	1	3
<b>OFFICE OF THE ATTORNEY GENERAL AND MINISTRY OF LEGAL AFFAIRS</b>						<b>6</b>
<i>General</i>	3	0	0	0	2	5
<i>Legal Aid And Advisory Authority</i>	0	0	0	0	1	1
<b>EDUCATION</b>						<b>27</b>
<i>General</i>	1	0	0	1	25	27
<b>ENERGY AND ENERGY INDUSTRIES</b>						<b>2</b>
<i>General</i>	0	0	0	1	0	1
<i>Petrotrin</i>	0	0	0	0	1	1
<b>ENVIRONMENTAL MANAGEMENT AUTHORITY</b>	0	0	0	0	3	<b>3</b>
<b>ENVIRONMENTAL COMMISSION</b>	1	0	0	0	0	<b>1</b>
<b>EQUAL OPPORTUNITY COMMISSION</b>	0	0	0	1	0	<b>1</b>
<b>FINANCE</b>						<b>17</b>
<i>General</i>	0	0	1	0	2	3
<i>Comptroller of Accounts</i>	2	0	0	0	3	5
<i>Customs and Excise Division</i>	0	0	0	0	1	1
<i>Inland Revenue Division</i>	1	1	0	0	5	7

MINISTRIES/GOVERNMENT DEPARTMENTS/AGENCIES	SUSTAINED/ RESOLVED	NOT SUSTAINED	WITHDRAWN/ DISCONTINUED	NO JURISDICTION/ ADVISED	UNDER INVESTIGATION	GRAND TOTAL
<i>National Insurance Appeals Tribunal (NIAT)</i>	0	0	0	0	1	1
<b>FOREIGN AND CARICOM AFFAIRS</b>						<b>1</b>
<i>General</i>	0	0	0	0	1	1
<b>HEALTH</b>						<b>25</b>
<i>General</i>	0	0	0	1	4	5
<i>North Central Regional Health Authority</i>	0	0	0	0	1	1
<i>North West Regional Health Authority</i>	1	0	0	0	9	10
<i>Public Health</i>	0	0	0	0	4	4
<i>South West Regional Health Authority</i>	2	0	0	0	3	5
<b>HOUSING AND URBAN DEVELOPMENT</b>						<b>11</b>
<i>General</i>	0	0	0	0	2	2
<i>Housing Development Corporation (HDC)</i>	0	0	0	0	8	8
<i>Land Settlement Agency</i>	0	0	1	0	0	1
<b>JUDICIARY</b>	2	0	0	0	9	<b>11</b>
<b>MAGISTRACY</b>	1	0	0	0	0	<b>1</b>
<b>NATIONAL INSURANCE BOARD (NIB)</b>	19	1	3	1	65	<b>89</b>
<b>NATIONAL SECURITY</b>						<b>44</b>
<i>General</i>	0	0	0	0	4	4
<i>Fire Services</i>	1	0	0	0	0	1
<i>Immigration</i>	1	0	2	0	3	6
<i>Police Service</i>	0	0	1	0	24	25
<i>Prison Service</i>	1	0	0	0	7	8
<b>OFFICE OF THE PRIME MINISTER</b>						<b>4</b>
<i>General</i>	0	0	1	0	3	4

MINISTRIES/GOVERNMENT DEPARTMENTS/AGENCIES	SUSTAINED/RESOLVED	NOT SUSTAINED	WITHDRAWN/DISCONTINUED	NO JURISDICTION/ADVISED	UNDER INVESTIGATION	GRAND TOTAL
<b>PERSONNEL DEPARTMENT (OFFICE OF THE CHIEF PERSONNEL OFFICER)</b>	0	0	0	0	1	<b>1</b>
<b>PLANNING AND DEVELOPMENT</b>						<b>2</b>
<i>Town And Country Planning Division</i>	0	0	0	0	2	2
<b>PUBLIC UTILITIES</b>						<b>4</b>
<i>General</i>	0	0	0	0	2	2
<i>Water and Sewerage Authority (WASA)</i>	0	0	0	0	2	2
<b>RURAL DEVELOPMENT AND LOCAL GOVERNMENT</b>						<b>14</b>
<i>Regional Corporations</i>	0	0	0	2	12	14
<b>SERVICE COMMISSIONS DEPARTMENT</b>	1	0	0	0	2	<b>3</b>
<b>SOCIAL DEVELOPMENT AND FAMILY SERVICES</b>						<b>28</b>
<i>General</i>	0	0	0	0	6	6
<i>Social Welfare Division</i>	4	1	2	2	13	22
<b>SPORT AND COMMUNITY DEVELOPMENT</b>						<b>2</b>
<i>The National Commission for Self Help</i>	0	0	0	0	2	2
<b>TOBAGO HOUSE OF ASSEMBLY</b>						<b>8</b>
<i>Community Development, Enterprise Development and Labour</i>	0	0	0	0	1	1
<i>Education, Innovation and Technology</i>	0	0	0	0	2	2
<i>Health, Wellness and Family Development</i>	0	0	0	0	1	1

MINISTRIES/GOVERNMENT DEPARTMENTS/AGENCIES	SUSTAINED/ RESOLVED	NOT SUSTAINED	WITHDRAWN/ DISCONTINUED	NO JURISDICTION/ ADVISED	UNDER INVESTIGATION	GRAND TOTAL
<i>Infrastructure, Quarries and the Environment</i>	0	0	0	0	4	4
<b>TRADE AND INDUSTRY</b>						<b>2</b>
<i>General</i>	0	0	0	0	2	2
<b>WORKS AND TRANSPORT</b>						<b>3</b>
<i>General</i>	1	0	0	0	2	3
<b>SUB-TOTAL</b>	<b>45</b>	<b>3</b>	<b>14</b>	<b>9</b>	<b>254</b>	<b>325</b>
<b>FREEDOM OF INFORMATION ACT (FOIA), Chap. 22:02 MATTERS</b>						<b>49</b>
<b>ENQUIRIES/REFERRALS</b>						<b>467</b>
<b>PRIVATE MATTERS</b>						<b>82</b>
<b>GRAND TOTAL</b>						<b>923</b>

# FREQUENTLY ASKED QUESTIONS (FAQ'S)

## 1. WHAT MUST BE DONE BEFORE A COMPLAINT IS MADE?

- An official complaint must first be lodged in writing within the government department where the alleged injustice occurred.
- The department should be given a reasonable amount of time to adequately address the matter before it is brought to the attention of the Office of the Ombudsman.

## 2. HOW DO I LODGE A COMPLAINT?

All complaints must be made **IN WRITING** to the Ombudsman. They can be made by:



If you are unsure whether you have a valid complaint, you may contact the Office for further information.

## 3. WHAT INFORMATION SHOULD MY COMPLAINT INCLUDE?

*Your complaint should include:*

- Name
- Telephone contact
- Residential Address and/or Mailing address
- Email Address (optional)
- A summary of:
  - *The facts of the complaint and the current status of the matter*
  - *The Government Department involved*
  - *The date when the complaint was lodged with the Government Department*
  - *The name of person to whom you have reported the matter*
  - *Copies of documents pertinent to your complaint (if available)*

## WHAT TYPE OF COMPLAINTS CAN THE OMBUDSMAN INVESTIGATE?

- Delay by Local Government Corporations in constructing, repairing and maintaining roads and drains.
- Delay by Government Departments in processing and paying pension and severance benefits.
- Delay by the National Insurance Board (NIB) in processing claims for NIS benefits.
- Delays in obtaining birth certificates, passports, medical reports.
- Requests for official documents under the Freedom of Information Act, Chap. 22:02.
- Delay by Government Departments in responding to letters of complaints and requests for assistance.

## ARE THERE AREAS THAT THE OMBUDSMAN CANNOT INVESTIGATE?

*Some of the matters which the Ombudsman cannot investigate include:*

- Civil or criminal proceedings before any Court.
- Contractual or other commercial transactions.
- Personnel matters in relation to service in the public service.
- Terms and conditions of members of the armed forces.
- Policy decisions of Ministers or Government Departments e.g. HDC Housing Allocations, Town and Country etc.



# APPENDICES

## Appendix I

Extract from the Constitution related to the Office of the Ombudsman and Third Schedule to the Constitution (Matters Not Subject to Investigation)

## Appendix II

Ombudsman Act, Chap. 2:52

## Appendix III

Extract from the Freedom of Information Act (FOIA), Chap. 22:02

## Appendix IV

Map of the Caribbean



# APPENDIX I

## EXTRACT FROM THE CONSTITUTION OF TRINIDAD AND TOBAGO

### ACT NO. 4 OF 1976

#### PART II - OMBUDSMAN

- |  |            |   |
|--|------------|---|
| <b>Appointment and conditions of office.</b> | <b>91.</b> | <ul style="list-style-type: none"><li>(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.</li><li>(2) The Ombudsman shall be appointed by the President after consultation with the Prime Minister and the Leader of the Opposition.</li><li>(3) The Ombudsman shall hold Office for a term not exceeding five years and is eligible for re-appointment.</li><li>(4) Subject to subsection (3), the Ombudsman shall hold office in accordance with section 136.</li></ul>  |
| <b>First Schedule.</b>                       |            | <ul style="list-style-type: none"><li>(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.</li></ul>  |
| <b>Appointment of staff of Ombudsman.</b>    | <b>92.</b> | <ul style="list-style-type: none"><li>(1) The Ombudsman shall be provided with a staff adequate for the efficient discharge of his functions</li><li>(2) The staff of the Ombudsman shall be public officers appointed in accordance with section 121(8).</li></ul>   |
| <b>Functions of Ombudsman.</b>               | <b>93.</b> | <ul style="list-style-type: none"><li>(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.</li><li>(2) The Ombudsman may investigate any such matter in any of the following circumstances:<ul style="list-style-type: none"><li>(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;</li><li>(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;</li><li>(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.</li></ul></li></ul> |

- (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;
  - (b) authorities or bodies the majority of whose members are appointed by the President or by a Minister or whose revenue 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  
investigation.**

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

**Third Schedule.**

any such action, or actions 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).

**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, 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 investigation of the matter, he shall inform the person who made the complaint or request of the reasons for his decision.
- (2) Upon 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 sees 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 investigation.

**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 proceedings 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 I cont'd**

## **THIRD SCHEDULE TO THE CONSTITUTION**

### **(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 II

### LAWS OF TRINIDAD AND TOBAGO

#### OMBUDSMAN ACT, CHAPTER 2:52

An Act to make provision for giving effect to Part 2 of Chapter 6 of the Constitution

(Assented to 24th May, 1977)

#### ENACTMENT SHORT TITLE MODE OF COMPLAINT

ENACTED by the Parliament of Trinidad and Tobago as follows:

1. This Act may be cited as the Ombudsman Act.
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 moneys 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)(a) 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.



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 Act.  
  
(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.  
  
(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.  
  
(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.  
  
(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.

**DISCLOSURE OF CERTAIN  
MATTERS NOT TO BE  
REQUIRED**

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 –
- (a) might prejudice the security, defence or international relations of Trinidad and Tobago (including Trinidad and Tobago relations with the Government of any other country or with any international organizations);
- (b) will involve the disclosure of the deliberations of Cabinet; or
- (c) 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.
- (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.

**SECRECY OF INFORMATION**

6. A person who performs the functions appertaining to the office of the Ombudsman or any office or employment there under –
- (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 Act and 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**

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.

<b>DELEGATION OF POWERS</b>	<p><b>8.</b> (1) With the prior approval in each case of the Prime Minister, functions herein before 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>
<b>REPORTS</b>	<p><b>9.</b> (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>
<b>OFFENCES</b>	<p><b>10.</b> 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>
<b>PRESCRIPTION OF AUTHORITIES SUBJECT TO THE OMBUDSMAN'S JURISDICTION</b>	<p><b>11.</b> (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>
<b>REGULATIONS</b>	<p><b>12.</b> 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>

# APPENDIX III

## LAWS OF TRINIDAD AND TOBAGO

### EXTRACT FROM THE FREEDOM OF INFORMATION ACT (FOIA), CHAP. 22:02

#### **Time limit for determining requests.**

**15.** A public authority shall take reasonable steps to enable an applicant to be notified of the approval or refusal of his request as soon as practicable but in any case not later than thirty days after the day on which the request is duly made.

#### **Reasons to be given for deferment or refusal.**

**23.** (1) Where in relation to a request for access to a document of a public authority, a decision is made under this Part that the applicant is not entitled to access to the document in accordance with the request or that provision of access to the

document be deferred or that no such document exists, the public authority shall cause the applicant to be given notice in writing of the decision, and the notice shall—

- (a) state the findings on any material question of fact, referring to the material on which those findings were based, and the reasons for the decision;
- (b) where the decision relates to a public authority, state the name and designation of the person giving the decision;
- (c) where the decision does not relate to a request for access to a document which if it existed, would be an exempt document but access is given to a document in accordance with section 16(2), state that the document is a copy of a document from which exempt information has been deleted;
- (d) inform the applicant of his right to apply to the High Court for judicial review of the decision and the time within which the application for review is required to be made;
- (e) where the decision is to the effect that the document does not exist or cannot, after a thorough and diligent search, be located, inform the applicant of his right to complain to the Ombudsman.

#### **Review by the Ombudsman. [92 of 2000].**

**38A.** (1) A person aggrieved by the refusal of a public authority to grant access to an official document, may, within twenty-one 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.

## APPENDIX IV

### MAP OF THE CARIBBEAN



NOTES



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OFFICE OF THE  
**OMBUDSMAN**  
TRINIDAD AND TOBAGO

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