

In the matter of the
Complaints Commissioner Law (2006 Revision)

**Written Complaint Number CO708-11041 made 13
February 2008 against the Immigration Department –
Timeliness of the Internal Complaints Process related to
complaints against the Department**

Special Report to the Legislative Assembly

Prepared by the Office of the Complaints Commissioner

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Aim of the Office: To investigate in a fair and independent manner complaints against government to ascertain whether injustice has been caused by improper, unreasonable, or inadequate government administrative conduct, and to ascertain the inequitable or unreasonable nature or operation of any enactment or rule of law.

TABLE OF CONTENTS

Foreword	04
Executive summary	04
Introduction to report	05
Monitoring timeline	06
Efforts of the Department to comply with recommendation no.1	07
Efforts of the Department to comply with recommendation no.2	07
Conclusion	08

Department of Immigration – Timeliness of the Internal Complaints Process related to complaints against the Department

Failure to Comply with Recommendations within a Reasonable Time

Written complaint number CO708-11041 made 13 February 2008

*Prepared by the Office of the Complaints Commissioner
3 August 2009*

Foreword

In accordance with the powers conferred on the Commissioner under Section 6 of the Complaints Commissioner Law (2006 Revision), this report was completed in part by Analyst Quappé.

His Excellency the Governor was provided with a copy of this report in advance of its presentation to the Legislative Assembly in accordance with Section 18(4) of the Complaints Commissioner Law (2006 Revision).

Executive Summary

The Office of the Complaints Commission (“OCC”) has encouraged all Government Departments to establish their own Internal Complaints Process (“ICP”). When a person decides to file a formal complaint using a government entity’s ICP they should submit the complaint in writing. That government entity should then begin an investigation. The investigation, depending on the seriousness of the complaint, should include collecting documents and obtaining statements from the complainant, government employees and possibly third parties. The information should then be analysed and a decision made to remedy the complaint or not. Some reasons for using an entity’s ICP include: they have the staff with the expertise to resolve the complaint, they have an opportunity to contribute to the workings of the department, but most importantly the complaint is more likely to be dealt with in a timely fashion. As it is the duty of civil servants to serve their stakeholders in a kind, courteous and competent manner, a proper ICP ensures that the government entity will achieve these objectives. Most important however would be to resolve their complaint in a timely fashion.

To leave any type of allegation unaddressed for any length of time is an injustice to both parties as the complainant feels that his/her concerns are not being taken seriously which will affect the Department’s credibility and the employee’s integrity may also be called into question.

The lack of timeliness in investigating these types of complaints internally came to the attention of the OCC after a complainant, hereinafter referred to as “C”, registered a complaint against the Department of Immigration (“the Department”) on 13 February

2008. The allegations were of a very serious nature yet a month had passed from the time of C's complaint to the Department and the complainant had received no response from the Department. After conducting an investigation into this matter, the OCC issued closing letters dated 19 June 2008 to the Department and the complainant.

Based on his findings the Commissioner made two recommendations:

1. That the Immigration Department complete internal investigations arising from complaints made by residents within one month.
2. That the Immigration Department report the findings of the investigation to the complainant within one week.

Monitoring of these two recommendations began on 2 July 2008. When the OCC contacted Deputy Chief Immigration Officer ("DCIO") Nixon she said she could not initially locate the report of the Department's internal investigation. The report (in the form of a one page letter) was dated 28 May 2008 and referred to C's complaint dated 15 January 2008. This was copied to the OCC on 8 July 2008. The four months timeframe for this internal investigation does not comply with our recommendations.

In an effort to monitor the Department's progress in addressing complaints made using their ICP, the OCC tracked the progress made by the Department in similar complaints. However, our monitoring efforts clearly demonstrated continued non-compliance with recommendations made.

Section 18 (3) of the Complaints Commissioner Law (2006 Revision) states that, "[w]here the Commissioner has made a recommendation under subsection (1) and within the time specified or a reasonable time thereafter, he is of the opinion that no adequate action has been taken to remedy the injustice, he shall lay before the Legislative Assembly a special report on the case".

The Commissioner is of the opinion that no adequate action has been taken to comply with the recommended one month timeframe for the completion of internal investigations nor has there been adequate action taken to report the findings of the investigation to the complainant within one week.

Report

Introduction

On 13 February 2008, C registered a complaint with this Office against the Department. The complainant stated that after sending an email to three members of the Department's staff on 8 January 2008, the private details contained in those emails and attachments were communicated to an outside party. The complainant alleged that one of the Department's officers violated the Public Servant's Code of Conduct by revealing this information to a third party. The complainant also stated that they had initially registered a complaint with the Department on 11 January 2008 but to the date of filing this complaint with the OCC they had not received a reply.

The investigation involved some challenges in that witnesses had to be subpoenaed and requests for telephone records were legally challenged. Independent legal counsel supported the Complaints Commissioner's right under the Complaints Commissioner Law (2006 Revision) to request said information. The investigation was concluded on 19 June 2008 when the closing letters were issued to the Department and the complainant. The Commissioner's findings on the evidence were as follows:

1. the allegations are of a very serious nature
2. they must be investigated promptly and the Chief Immigration Officer ("CIO") does have senior experienced investigators he can assign to complete this task
3. they must be investigated thoroughly
4. the CIO must draw conclusion in a reasonable timeframe
5. the result must be reported to the complainant in a reasonable timeframe
6. the CIO failed to complete the investigation report in a reasonable timeframe

"Has there been an injustice to the complainant? Yes. Whether there is a finding of an informational leak from the Department or not, the complainant needs to know the truth to be able to put their mind at ease.

I find that there has been maladministration and an injustice.

I conclude that internal investigations need to be completed in a timely fashion to stop any potential leak, if one exists and if not, this finding should be communicated to the complainant to give this member of the public confidence in the Immigration Department that confidentiality has been preserved.

Recommendations:

1. that the Immigration Department complete internal investigations arising from complaints made by residents within one month;
2. that the Immigration Department report the findings of the investigation to the complainant within one week."

Monitoring Timeline

The closing letters were sent out by the OCC on 19 June 2008. On 2 July 2008, when contacted by the OCC, Deputy Chief Immigration Officer ("DCIO") Nixon said she could not locate the report of the Department's internal investigation. DCIO Nixon undertook to find out what action had been taken by CIO Manderson and respond to the OCC. The investigation report (in the form of a one page letter) that was provided was dated 28 May 2008 and referred to C's complaint dated 15 January 2008. This was copied to the OCC on 8 July 2008. The four months taken to conduct this internal investigation did not conform to our recommendations.

On 7 October 2008 Analyst Quappé met with DCIO Nixon to review the Department's ICP. Analyst Quappé provided DCIO Nixon with a list of all outstanding referrals the OCC had made to the Department. This list included 14 referrals of which 6 had been submitted within that last month. After reviewing these cases with DCIO Nixon, evidence indicated that only 2 had been resolved

On 7 December 2008 Analyst Quappé requested another meeting to review the update on ICP referrals and DCIO Bruce Smith responded on 9 December 2008 noting that he would consult the files and revert with a date for a meeting. To date, the OCC has not received confirmation for a meeting to review the progress made with the Department's ICP with either DCIO Nixon or DCIO Smith.

Efforts of the Department to comply with recommendation no. 1

As the evidence above demonstrates, the OCC has not seen efforts to date by the Department to comply with the one-month time frame for completing investigations of their internal complaints. The requested meeting to follow-up with DCIO Nixon on the Department's performance with referrals given to them by the OCC on 7 October 2008 did not show evidence of compliance. An attempt by the OCC to schedule another meeting in December 2008 was initially responded to by DCIO Smith but no further contact was made by the Department.

Efforts of the Department to comply with recommendation no. 2

The Department has failed to provide any evidence that it has issued reports on internal investigations to the complainants within one week of the conclusion of its investigations.

Similar cases that demonstrate non-compliance with Recommendations

The OCC has subsequently investigated similar complaints against the Department wherein the recommended timeframes were not complied with.

The first example was case #11277 wherein a party entered the Cayman Islands in January 2008 and in April 2008 they became aware that the entry stamp [required as evidence should they be required to provide it] had not been applied to their passport. The party made the Department aware of the situation through contact with the CIO's Personal Assistant, from 28 April 2008, but up until the time of making their complaint to the OCC they had not received a response from the Department. Only after the party made their complaint to the OCC on 15 June 2008 were they finally provided a response by the Department on 4 August 2008. The timeframe for this response was over 3 months and clearly not in compliance with the recommendations above.

More recently, case # 11355 also demonstrated a timeframe for response that was non-compliant and also showed the Department's failure to conduct a thorough internal investigation. The Department was notified of this complaint on 28 August 2008 and DCIO Nixon issued a letter of her findings to the complainant on 1 October 2008. The

complainant was not satisfied with this letter of response and asked the OCC to investigate.

The Commissioner's findings in this case were as follows:

"The allegation can be summarised as a failure to follow due process by not conducting a thorough and fair investigation into a complaint of professional misconduct. It is my finding that the allegation is well founded as the complaint was not thoroughly and properly investigated and the complainant was not informed of the details of the internal investigation conducted by DCIO Nixon and therefore could not determine whether or not a proper investigation into their complaint had been conducted. These failures amount to maladministration and caused an injustice to the complainant. A failure to conduct appropriate investigations is unfair and bad administration in relation to the accused officer also.

It is recommended that:

1. a proper investigation is carried out on complaints made against Immigration Officers within one month of the receipt of the complaint;
2. the investigator draw conclusion within an additional week; and reasonable details of the investigation and the evidence, and the result be reported in writing to the complainant within the same week as the conclusion is reached."

Case #11355 showed that despite the OCC's recommendations given on 19 June 2008 in case #11041, another serious allegation against the Department in August 2008 was not responded to in accordance with the OCC recommendations.

Conclusion

The Complaints Commissioner Law (2006 revision), section 18(3) states that where the Commissioner has made a recommendation and he is of the opinion that inadequate action has been taken to carry out the recommendation, a special report must be laid before the Legislative Assembly.

In the OCC's closing letter to the Department of Immigration, the Commissioner found maladministration and made recommendations that have, to date, not been complied with.

The monitoring efforts by the OCC regarding these recommendations have been ongoing since the completion of the investigation on 19 June 2008, and to date, these recommendations have not been complied with.