

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

**Written Complaint Number CO708-10859 made 28
September 2007, and the Department of Immigration –
Refund Request Processing**

Special Report to the Legislative Assembly

Prepared by the Office of the Complaints Commissioner

Date: 26 November 2008

Published under the Authority of 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.

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Department of Immigration - Refund Request Processing

Failure to Comply with Recommendations within a Reasonable Time

Written complaint number CO708-10859 made 28 September 2007

Prepared by the Office of the Complaints Commissioner

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Foreword

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

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

Under the Immigration Law, an employer must deposit a sum of money with the Immigration Department ("the Department") to cover the possible repatriation of the work permit holder and their dependents. This security deposit, which varies depending on the worker's country of origin, is refundable either once he or she leaves the Cayman Islands. The Department processes the refund request, while the Treasury Department ("Treasury") generates the cheque for the Department to post.

The tardy payment of refunds came to the attention of the Office of the Complaints Commissioner ("OCC") after a company called FFL registered a complaint against the Department on 28 September 2007. By then, FFL had already been waiting more than three months for the refund of a deposit of CI\$2,000. The company came to us after receiving neither the refund nor a response to its request from the Department. After an investigation, the OCC made the following recommendations on 15 November 2007 in a letter to the Department:

1. That the repatriation fee be refunded and delivered to the complainant by 30 November 2007;
2. That the Department's officer responsible for refunds should be instructed to process refunds due within 30 days of properly documented requests for a refund.

FFL eventually received the deposit on 15 November 2007. The OCC found it unacceptable that FFL, which originally requested the refund on 13 June 2007, had been forced to wait more than five months for the payment.

The monitoring of recommendation no. 2 began in December 2007. It was decided that the OCC would grant the Department a six-month period with which to comply with the

recommendation, after which an audit, involving interviews and a review of documents and records, would establish compliance.

The first meeting occurred on 29 May 2008 with the Department's Director of Finance, Ms Christine Mitchell. This meeting was arranged through Chief Immigration Officer Franz Manderson. In a sign of poor communication within the Department that we were to become familiar with over the coming months, no one had told Director Mitchell to expect the meeting.

Our intention had been to see all the refund requests for the month of May 2008 and then return a few months later in order to see how quickly those refund requests had been processed. Director Mitchell admitted that it would be too onerous a task to collate information for the estimated more than 350 refund requests that her section would have received in May. We agreed to select a sample of 37 requests, representing about 10% of the total for the month. When we returned on 13 August 2008, we were able to see that of those 37 requests, only 10 (27%) had been processed within 30 days, while the slowest had taken 72 days.

Since we had been unable to view all the data, Director Mitchell offered to show us information for refunds relating to temporary work permits for the month of June 2008. Even though such refunds were supposedly processed much quicker, thanks to the use of a different system, we still found that only 80 (66.7%) of the 120 such requests were processed within 30 days. The largest timeframe for such cases was 52 days.

We sought to establish why the refunds were taking so long, and drew on evidence from Director Mitchell and Ms Lisa Ritch, Acting Director of the Department's finance section. The reasons given included the existence of a multi-source intake framework; a complex refund process; the use of aged and imperfect software; difficulties interacting with Treasury; the Department's workload volume and working conditions in general; the complexity of the job; a lack of resources; and the lack of clearly stated internal performance targets.

More details about each of those reasons are given in the main body of this report, as are the criticisms of their validity. In essence, the OCC found that it was unacceptable that such a state of affairs had been allowed to exist.

For example, we found that while IRIS was a complex programme, which can be unavailable from time to time and which can crash in the middle of the entry of data for a cheque batch order, such technical problems should not be considered as a major contributory factor to refund delays. Similarly, the process of assessing and approving a refund was in need of redesigning. And the OCC did not accept that the FD was short staffed, but if so, it should take action to fill the post of Accounts Officer.

A draft copy of this report was given to CIO Manderson for his comment, but no response was received.

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 conform to the recommended 30-day timeframe for the issuance of payment for properly documented refund requests.

Report

Introduction

On 28 September 2007, FFL registered a complaint against the Immigration Department ("the Department"). The company alleged it had paid repatriation deposits and work permit fees for its employees in accordance with the Immigration Law. It alleged that deposits were made for two people, MR and MC, and that they were refundable. As the employees were no longer employed by the company, refunds had been requested from the Immigration Department. However, the company had received no response from the Department.

On 3 October 2007, Chief Immigration Officer ("CIO") Mr Franz Manderson was sent a Notice of Investigation by the Office of the Complaints Commissioner ("OCC"). A response letter from the Immigration Department of 15 October 2007 stated that, "A temporary work permit was refused for MR on 5 May 2006 and the work permit fee of CI\$275.00 was refunded by cheque No. 109732 dated 18 May 2006." The refund had been paid to FFL's attorney, who had failed to alert it to this fact.

Yet while the matter of MR had been cleared up, CIO Manderson also confirmed that the deposit of CI\$2,000.00 that had been paid by FFL on behalf of MC was outstanding and would be refunded to FFL on 20 October 2007. The OCC completed its investigation and found the company's complaint to be well founded in part.

On 30 October 2007, FFL contacted the OCC and stated that while the company appreciated the response from the Immigration Department, the promised refund had not yet been received.

On 15 November, the Commissioner faxed a closing letter to the Immigration Department that contained the following recommendations:

1. That the repatriation fee be refunded and delivered to the complainant by 30 November 2007;
2. That the Department's officer responsible for refunds should be instructed to process refunds due within 30 days of properly documented requests for a refund.

FFL eventually received the deposit on 15 November 2007.

The OCC found it unacceptable that a small business owner had been forced to wait more than four months for the refund. Furthermore, the OCC regarded the Department's failure to meet a promised payment date as having brought its reputation into disrepute.

The monitoring of the above recommendations began in December 2007.

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 date to conform to the recommended 30-day timeframe for the issuance of payment for properly documented refund requests.

Monitoring Timeline

It was decided that the OCC would grant the Department a six-month period with which to comply with recommendation no. 2, after which the OCC would conduct an audit involving interviews and a review of documents and records to establish compliance.

This process began on 23 May 2008 when the OCC requested a meeting with the Department’s Director of Finance, Ms Christine Mitchell, through CIO Manderson. This meeting, which took place on 29 May 2008, demonstrated that recommendation no. 2 had not been complied with. The reasons given by Ms Mitchell are discussed in the following section.

After the meeting, we asked to see spreadsheets that would demonstrate when a refund had been requested and when it had been issued. The request was limited to the month of May 2008. The Finance Division (“FD”) explained that in May 2008 it processed over 350 requests for refunds and that it would be too onerous to provide the documents and files that supported the master list. As a result, the OCC selected a sample of 37 refund requests, or about 10% of the master list.

The results of the sample were revealed at a meeting on 13 August 2008 with Director Mitchell and Ms Lisa Ritch, Acting Director, of the FD. They produced the paper files and had access to the electronic records of the 37 clients selected from the May master list. These records were reviewed and oral testimony was received. The samples revealed that the timeframe for processing refunds ranged from three days to 72 days. Only 10 refunds – or 27% of the sample – had been made within the all-important 30-day period.

Director Mitchell offered to submit the Accounts Department Organizational Chart and the job descriptions for all the posts listed on this chart to give the OCC a better view of the work load of the FD. She felt that the poor results in May 2008 could be explained in part by unanticipated staff absences.

She also suggested that the FD could submit a spreadsheet recording the statistics from the month of June to show somewhat better timeliness results. She restricted this offered sample to Temporary Work Permit refusals only. This information was received by the OCC on 19 August 2008 along with the job descriptions of positions in the Accounts Department. Time frames for processing the Temporary Work Permit Refunds on this list ranged from two days to 52 days; of 120 occurrences, 80 or 66.7% were under 30 days. The job descriptions are discussed later in this report.

The OCC then reviewed the Service Level Agreement between the Treasury Department (“Treasury”) and the Portfolio of Internal and External Affairs and saw that the number

of estimated cheque runs per month was 20. Treasury also assisted by sending reports utilizing codes received from the Immigration Department to demonstrate account activity for the month of May 2008 as it related to the Immigration Department. The reports from Treasury did not provide additional or new information compared to those already seen on the spreadsheets provided by the Immigration Department.

The Immigration Department made some efforts to respond to the various information requests made during the monitoring of this case. However, detailed information on the timeliness of payments – that is, useable records showing the date of receipt of a request for a refund and the date of the issuance of refund – was not forthcoming. The OCC tried different approaches but only received limited sample data. However, the interaction with the Department provided some information that enabled the OCC to identify issues that, if addressed, would improve the timeliness of refunds.

Efforts of the Department to comply with recommendation no. 2

In this section, we analyse the reasons given by the Department for its failure to comply with the recommendation, and we also suggest a few reasons of our own. These include: the existence of a multi-source intake framework; a complex refund process; the use of aged and imperfect software; difficulties interacting with Treasury; the Department's workload volume and working conditions in general; the complexity of the job, such as keeping up with frequent changes to Immigration Regulations; and the lack of clearly stated internal performance targets. (A draft copy of this report was given to CIO Manderson for his comment, but no response was received.)

Computer data management

The refunds process draws on two separate computer systems: the Immigration Department's in-house computer system, the Immigration Software System (IMSS), and Treasury's system, the Integrated Resources Information System (IRIS).

The evidence gathered in this investigation shows that there is no relevant central database in IMSS for recording or calculating refund payments. IMSS is designed to assist in border control issues such as processing visas and work permit management. It is not designed as an accounting management software program. Various features have been added in what are described by Director Mitchell as a "patchwork" manner, but it still does not capture all types of refund requests.

To make matters worse, IMSS does not interact with IRIS. For example, data from IMSS cannot be exported electronically to an IRIS payment order a cheque batch. If a refund order is completed, IMSS automatically closes the record and thus renders tracing of refund requests more difficult. When Director Mitchell produced the May 2008 master list, she stated that the IMSS system did not include numerous other refunds processed from cancellations of work permits, work permit refusals and overpayments.

Also, IMSS does not notify the FD when a refund is due. Once the application is granted and paid for, it closes out that entry. In consequence, the cancellation of a permit would not be captured in IMSS at all. Director Mitchell stated that it would be better if the system were able to capture the notice of cancellation of a permit and automatically generate a refund order for that employer.

The IRIS system is where the application for a refund is first electronically recorded. If the client is not already in the system, the FD has to request that Treasury add this client to their list of accounts. Many of the tasks are handled manually. And the systems are not always up-to-date: currently there is a new fee structure in Regulations that has to be re-designed and put into the computer system.

OCC comment: It is acknowledged that IRIS is a complex programme, which can be unavailable from time to time and which can crash in the middle of the entry of data for a cheque batch order. However, the OCC does not accept that such technical problems should be considered as a major contributory factor to refund delays.

The relationship between Treasury and the Department was examined, including the Service Level Agreement. Evidence from Treasury, which was accepted as accurate, reveals that cheque batches are generated on the same day the order is placed in most cases. A test was completed by doing a sample batch and the evidence was confirmed. An examination of batch codes and refund orders was attempted but the coding used was not consistent and thus the individual cheque orders could not be traced.

OCC comment: The above-mentioned state of affairs should not be allowed to continue. Appropriate software should be in place.

Refund process

The right to obtain a refund from the Department can arise in many different circumstances and creates challenges for the FD. A refund may be due when: a customer is overcharged; a temporary work permit is refused by an administrative unit or a work permit is refused by the Work Permit Board; a work permit is cancelled by an employer; an appeal is refused; or a Trade & Business License is refused or cancelled.

In order to initiate the refund process, the FD relies on either written requests from those applying for a refund or notifications from the administrative unit that addresses temporary permits. In cases of permits being declined, the file and refund order is walked over straight to the FD and the refund is usually processed fairly quickly. But in other cases, the FD must search for the paper file associated with the refund request (the state of the Department's filing system is covered in the section below).

Once the file has been located, the generation of a refund payment must go through many steps. First, it must be determined that a refund is due, and then that no debt is due from the payee to the Department from previous transactions. If a debt is due, the refund will be reduced to satisfy that debt. The refund amount then is entered in IMSS. A payment order is created, crossed checked by a supervisor and entered manually into IRIS in a cheque order batch. If the payee has never before received a payment from government, a day can be lost as the payee's identity is entered in the software system. (If a company has merged or otherwise changes its name, it must be re-established in the system.) The order for a batch of cheques (some refunds, some creditor payments etc) is processed by Treasury and printed cheques are generated on or about the following day. The cheques are collected and cross-checked and then covering letters are generated. Finally, the letters and cheques are put in envelopes and taken to the post office for delivery.

The process is further complicated by, and thus delayed by, the source of the refund request. For example, Director Mitchell stated that if an application has moved into the

appeal process, a refund is not due until the appeal decision is made. In some cases, applicants write and request a refund immediately after they are notified of the decision of the Immigration Board ("the Board"), but others assume the refund process happens automatically. Some refunds arise from cancelled work permits, but the notification of the cancellation by the employee is not regularly sent to the FD. Similarly, the FD is not notified if an officer at the front counter overcharges a customer; it is only the customer's request that triggers the start of an FD investigation and eventual refund.

The audit also found how delays can occur if the refund request is delivered by hand to the Trade & Business Licensing desk in the annex building. Problems with the internal mail delivery system mean that such letters might not arrive at the FD for 5-10 days. Delays can also occur if the refund letter is addressed to the Board rather than the FD, since the letter may be delayed in the registration process at the Board's administrative desk.

OCC comment: The process of assessing and approving a refund must be redesigned.

Staffing

There is no team in the FD solely responsible for processing refunds. The responsibility falls to the accounts payable section, whose workload can often be very heavy. As well as processing refund payments, this section organises the weekly payroll, processes all purchase orders, pays all suppliers/vendors, processes all official travel request/claims, pays monthly salary cheques for the visa office staff in Honduras and Jamaica, completes journal entries and compiles various accounting reports. Director Mitchell spoke of other duties that impact the Department's productivity: her staff are sometimes redeployed to cover the reception area, the ticket person in the lobby, sick day/vacations and other staff members taking lunch.

During our audit, it was argued that the staff complement was inadequate to complete the work in a timely manner. The OCC obtained and reviewed the organisational chart of the FD and the job descriptions of its staff. There are eight posts in the accounts payable section, which represents one-third of the manpower in the FD. The job descriptions do not contain information showing how much time was allotted for processing refunds.

The organisational chart showed a total of 33 positions in the FD, 29 of which were actively filled at the time of this investigation. The important post of Accounts Officer 1 was among those vacant, and Director Mitchell or her deputy had to complete these duties. Director Mitchell stated that FD could hire people for the vacant positions, but she lacked space for them. Single offices are split into two to create another workstation, but while this allows for another staff member, it also creates a more cramped workspace.

OCC comment: The OCC does not accept that the FD is short staffed, but if so, it should take action to fill the post of Accounts Officer.

Working environment

The FD is housed in a very limited area and the workspace is not conducive to maximum productivity. Two staff members share space usually assigned to one person. Director Mitchell is constantly interrupted by staff or cell phones. Acting Director Ritch spoke to the fact that the crowded workspace tended to decrease concentration and affect productivity.

The Department's filing system is far from satisfactory. Paper files are stacked throughout the offices and hallways of the Department, and it often takes a number of days to find a particular file. At one point in 2007, it was agreed that the FD would move to new premises by the airport, but in the end the lease was never agreed.

Poor internal communication within the Immigration Department makes matters worse. For example, Director Mitchell stated she had no prior knowledge of our first scheduled interview with her.

OCC comment: The OCC accepts that the working conditions in the FD do not assist in reaching the recommended target for refund processing.

Changing regulations

It was suggested by the FD that the Immigration Regulations had changed many times over the past few years and that this fact complicated a process that was already under strain. Many changes had occurred including those to fees due and thus fee amounts to be refunded.

OCC comment: While changes to regulations might make the FD's job more complex, changes should by now have been assimilated into the system.

Lack of clearly stated performance targets

The Public Service Management Law requires Chief Officers to make performance agreements with employees. These set goals and performance measures for employees or teams of employees.

On 16 September 2008, the OCC requested in writing from Director Mitchell a copy of her annual performance agreement with the Department. On 22 September 2008, CIO Manderson discussed the request with the OCC via e-mail. To date, this information has not been received, and it is our finding that none exists.

The Public Finance and Management Law also requires Chief Officers to set outputs and performance targets for main outputs and supporting actions. These are outlined in the Annual Plan and Estimates and the Annual Budget Statement. The processing of refunds is not mentioned in these documents.

Refunds are certainly made, and there is an informal target of completing a least one batch of refund cheques each week. However, there are no consequences for inefficient service. There appears to be a *laissez-faire* attitude built into the system. Responsible governance should have expectations and targets clearly stated, and it is our view that these targets should accord with our recommendation.

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 closing letter to the Immigration Department of 15 November 2007, the Commissioner found maladministration. The fact that a small business had to wait more than four months for a refund of money was beyond acceptable limits even by relaxed

standards. The Commissioner made the following recommendation at the time, which has not been complied with: "The Department's officer responsible for refunds be instructed to process refunds due within 30 days of properly documented requests for a refund."

The monitoring efforts by the OCC regarding this recommendation have been ongoing since the date of the completion of the investigation, and to date this recommendation has not been complied with.

Office of the Complaints Commissioner

26 November 2008.