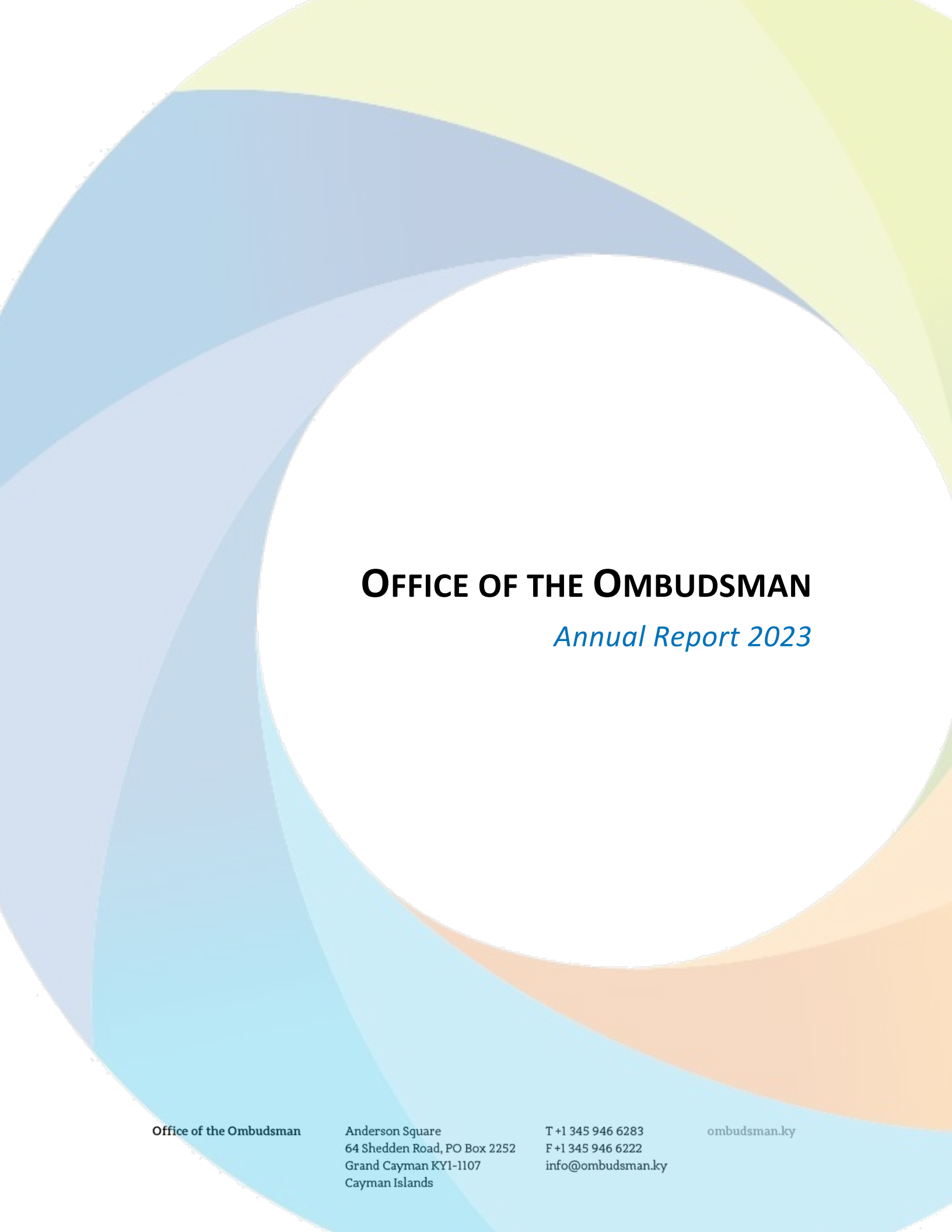




OFFICE OF THE OMBUDSMAN

Annual Report 2023

Office of the Ombudsman

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Message from the Ombudsman

“The reward for work well done is more work.” – Will Wight

The year 2023 marked the first full year of my administration at the Office of the Ombudsman. In reviewing this year, despite our daily operational challenges and some lingering struggles with staffing issues, I cannot help but consider the above quote positively in our own context. There is no doubt the people of the Cayman Islands have confidence in the work being conducted within our office – the proof being that we are receiving more of it than in any year since opening in September 2017.

If 2022 had been a reset year, 2023 was about a significant resumption of our services while we evolved to meet the changing needs and demands of members of the public who appear to seek, more than ever, the alternate avenue of justice the Office of the Ombudsman provides.

In each of our five service areas, the number of cases received, as well as the number of cases resolved, increased during 2023. The sheer volume of complaints and breach reports is worth noting. For instance, the number of data protection breach reports received went from 90 in 2022 to 178 during 2023 – nearly doubling.

Even more impressive, the number of data breach cases resolved went from 65 in 2022 to 152 last year, a record number, and a tribute to the hard work of our Information Rights Team.

Meanwhile, Freedom of Information Act (FOIA) appeals – now in the 15th year since the legislation came into effect in Cayman – also increased. Our office received 30 appeals in 2023, a small increase over the 25 received in 2022, as well as resolved 34 in 2023, again an increase over 2022.

The Complaints Team also received and resolved a record number of complaints in both main areas of maladministration (complaints against the government) and police complaints (by the public).

Maladministration investigators resolved 100 cases in 2023, a number heretofore unseen by our office and more than doubling the number of cases resolved in 2022 (45). On the Police complaints team, our investigators resolved nearly 40 matters – again an increase from 2022, achieved in the context of increasingly complex and detailed work, often involving other agencies for criminal referrals.

Complaints under the Whistleblower Protection Act, while still relatively few in number also increased during 2023,

compared to previous years. We are reporting the resolution of some of these matters in this annual report for the first time, under strict constraints provided by our legislation requiring confidentiality for whistleblowers.

Significant investigation work and supervision conducted by both our police investigators and data protection analysts, along with our partners in other government agencies, resulted in some high-profile criminal investigations being brought before the courts during 2023. This type of inter-agency relationship had not previously been tested to this extent in our history and whilst the outcome of some of these matters is still pending, we are proud of the role we have played in getting these matters before the courts. These cases serve as examples of the expanding role our office now plays as demand for services goes beyond the classic Ombudsman duties of resolving complaints against government.

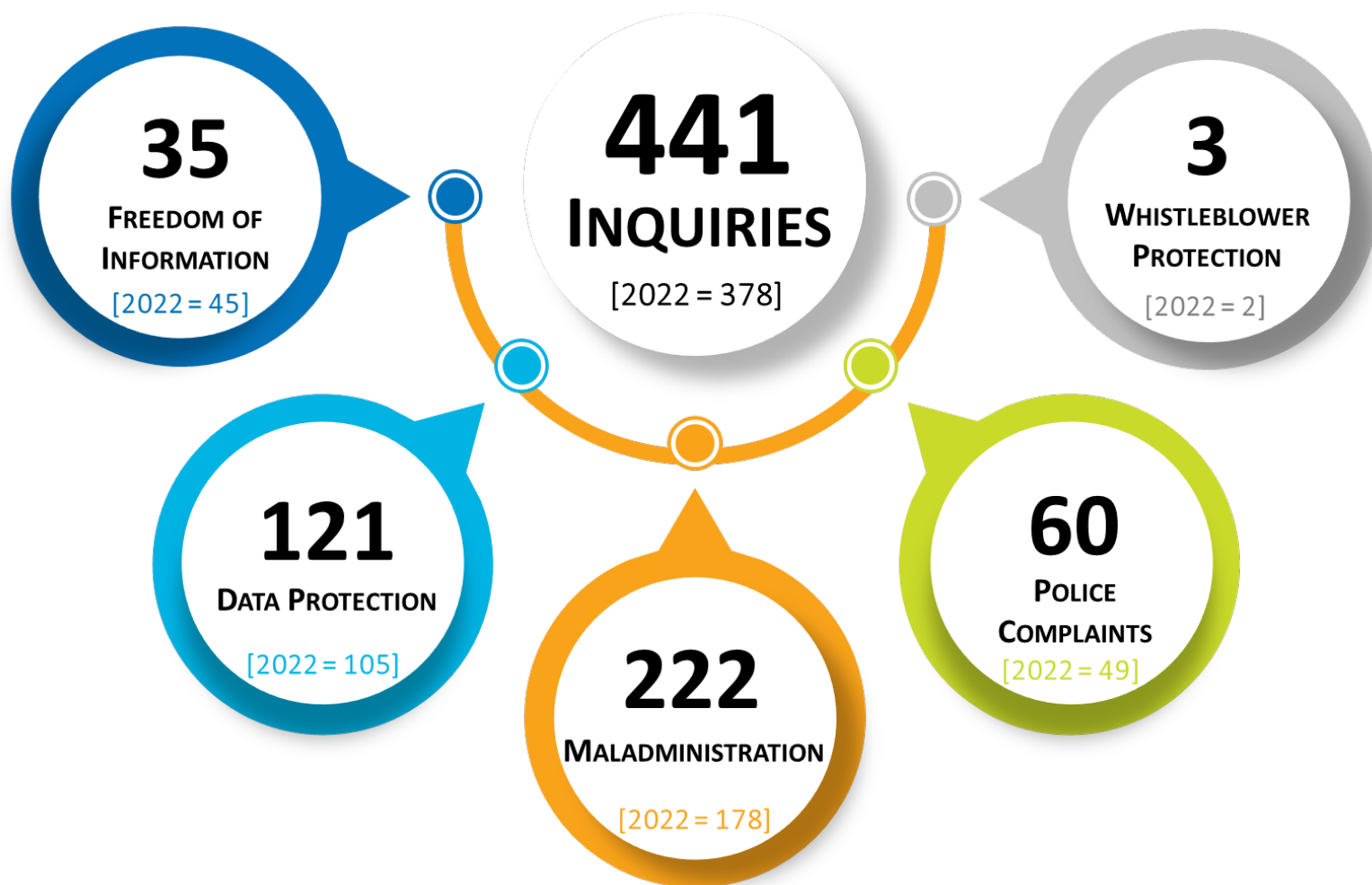
This report also provides the opportunity to address an issue which has been raised in public forums. It is around the issue of public reporting by the Office of the Ombudsman. Our Office has a public reporting function to Parliament and the Parliamentary Oversight Committee responsible for this Office. We table both our annual reports, like this one, and own-motion investigations in Parliament prior to their public release. However, even when those reports are released, we must protect the identity of complainants, as well as the personal data of those who may be included. We appreciate the need to promote our important work, particularly on matters of public interest, but we must be mindful too of not breaching the confidentiality and the confidence our Office has sought to earn and maintain with the Cayman Islands public. It is a delicate balance that we endeavour to get right every day.

In that spirit, the Office of the Ombudsman is pleased to present our 2023 Annual Report.

Overview

INQUIRIES

(01 January – 31 December 2023)



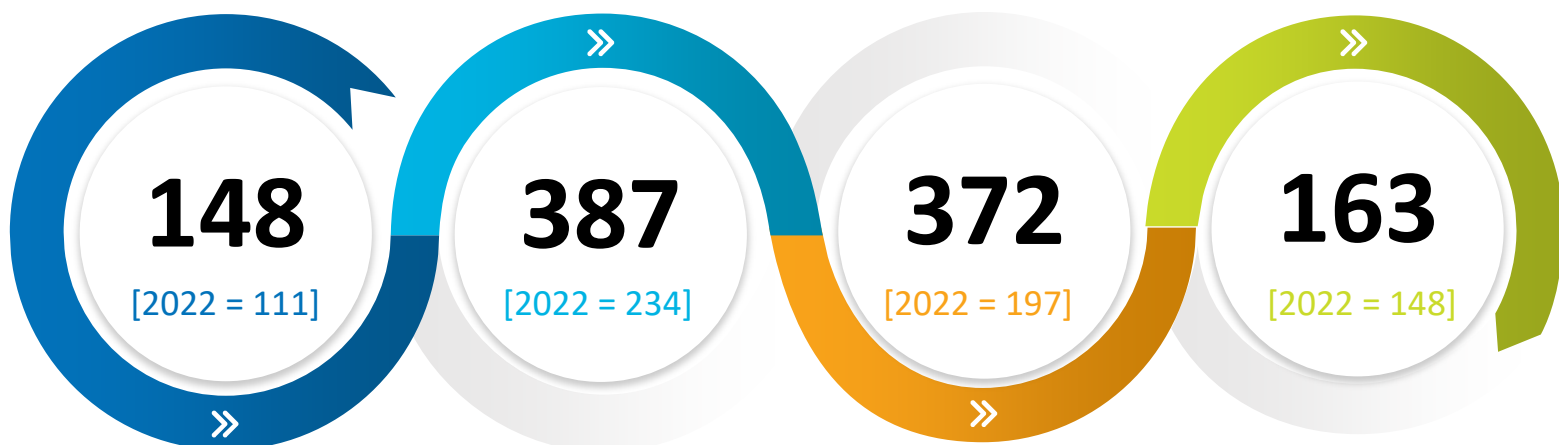
CASES

CASES RECEIVED IN 2023

FREEDOM OF INFORMATION	30
DATA PROTECTION	220
MALADMINISTRATION	84
POLICE COMPLAINTS	47
WHISTLEBLOWER PROTECTION	6

OPEN CASES AS AT 31 DECEMBER 2023

FREEDOM OF INFORMATION	8
DATA PROTECTION	109
MALADMINISTRATION	11
POLICE COMPLAINTS	32
WHISTLEBLOWER PROTECTION	3



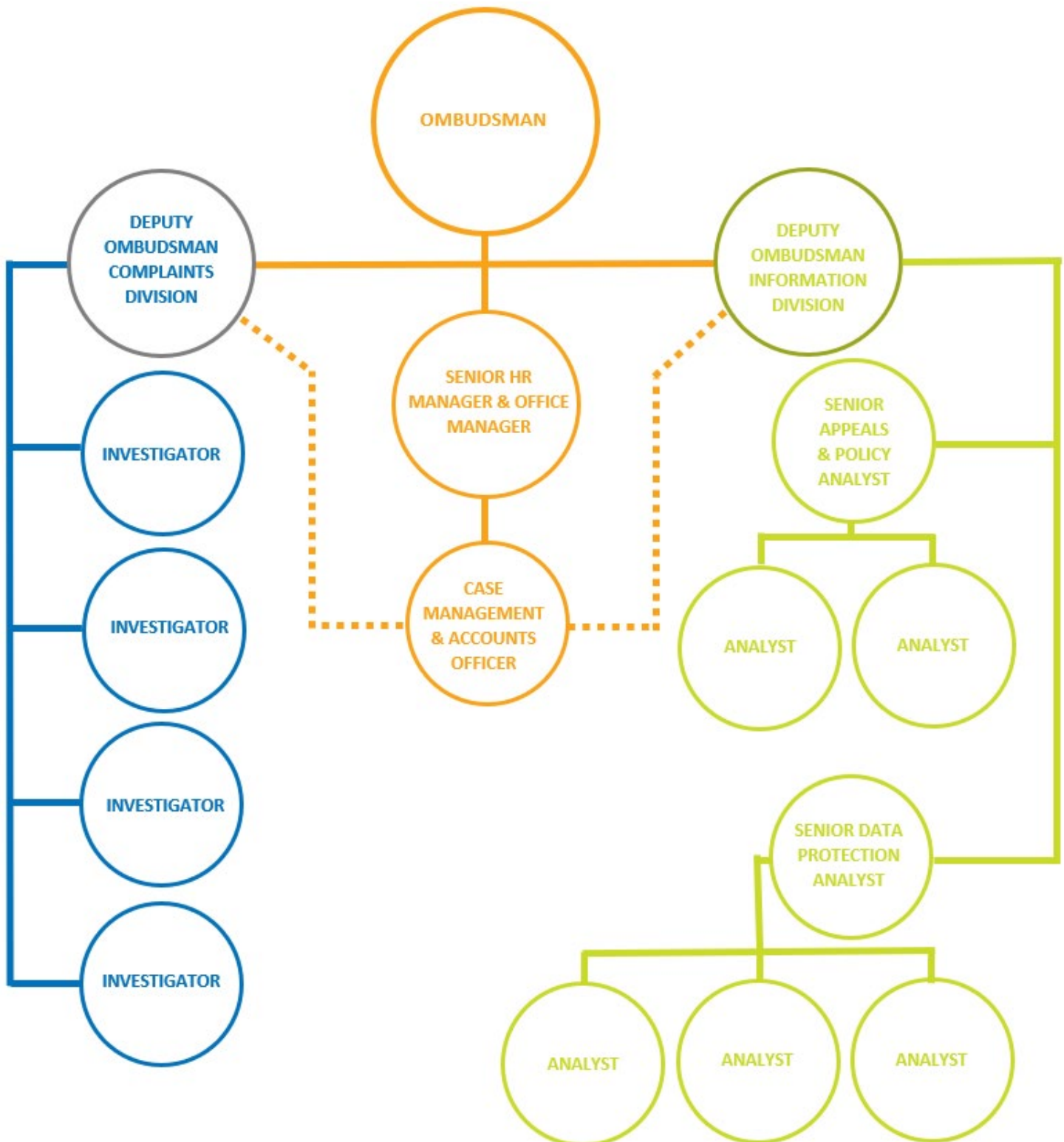
CASES CARRIED FORWARD FROM 2022

FREEDOM OF INFORMATION	13
DATA PROTECTION	81
MALADMINISTRATION	27
POLICE COMPLAINTS	24
WHISTLEBLOWER PROTECTION	3

CASES CLOSED IN 2023

FREEDOM OF INFORMATION	35
DATA PROTECTION	192
MALADMINISTRATION	100
POLICE COMPLAINTS	39
WHISTLEBLOWER PROTECTION	6

ORGANIZATIONAL CHART



Human Resources

Following a challenging staff shortage during most of the preceding year, we commenced 2023 with the addition of two new Investigators in the Complaints division and one new Analyst in the Information Rights Division to assist with increasing caseloads.

We also commenced 2023 with significant training for all staff in both Divisions and all of whom received investigator accreditation by the UK's TCM Group. This is a designation our office will continue to renew on an annual basis. This training was important to ensure that case interviews and evidence gathering practices by our office are consistent and effective, irrespective of the nature of complaint received. The training has also allowed our investigators and analysts to handle sometimes difficult complaints with confidence, and in confidence, understanding that confidentiality is one of the core tenets of Ombudsman work.

During 2023, some of our new staff members completed mediation training and achieved certification in that area. This means that all of our staff, across both Divisions, are now also certified mediators. Given that our complaints process attempts to informally resolve complaints before

moving to a formal investigation stage, the mediation certification was important to again give confidence to our team as they attempt to informally resolve matters in the first instance.

In late 2023, we commenced the process to recruit a new Deputy Ombudsman for the Complaints Division. This post had not been filled since it was vacated by the current Ombudsman. This post is expected to be filled early in the 2nd quarter of 2024.

Also late in 2023, the Office was surprised by the decision of the Deputy Ombudsman for the Information Rights Division to seek early retirement after 6 years in the current role as well as almost 8 years in the Information Commissioner's office. The early retirement will take effect from early in the 2nd quarter of 2024 and recruitment efforts to fill the post will commence early in the first quarter of 2024. The Office thanks Jan Liebaers for his contributions to the Cayman Islands, particularly in helping develop the area of information rights, including helping draft important legislation such as The National Archive and Public Records Act, The Freedom of Information Act and the Data Protection Act. We wish him well in his retirement years.

INFORMATION RIGHTS DIVISION

Freedom of Information

2023 was the 15th year since the *Freedom of Information Act (2021 Revision)* (FOIA) was enacted. The FOIA grants the public a general right of access to records held by public authorities, except where an exemption applies. The Act has continually been used by members of the public to request access to government information, and to appeal public authorities' decisions and perceived violations to the Ombudsman.

The number of FOIA appeals made to the Office of the Ombudsman has continued to rise since the end of the pandemic, with 30 appeals made (+20%) and 35 appeals resolved (+30%) in 2023.

Of these, 6 appeals resulted in a formal hearing decision by the Ombudsman, and 29 were resolved informally by the integrated Information Rights Team.

Of the formal decisions, one appeal was non-jurisdictional (because it pertained to judicial functions), one was about the reasonableness of a search, 3 resulted in full or partial disclosure of the requested records, and one was dismissed.

The formal decisions dealt with a variety of topics involving the functions and records of public authorities, including personal information in a recruitment exercise, beach access signage, videos of court proceedings, tourism sponsorships and partnerships in the UK, an evidence exhibits book of the Police, and the transparency of a salary increase process.

The informal resolutions dealt with a wide range of topics, including the causes of death of COVID-19 victims, Permanent Residency tests, roadworthiness and car safety recalls, electronic monitoring, disciplinary action against lawyers and judges, and 911 audio recordings. Sample case summaries can be found below.

The Information Rights Team also responded to 35 inquiries about FOI from members of the public, public officers and FOI Information Managers with questions about the workings of the FOIA.

We continued to be part of the training of new government Information Managers organized by the Information Rights Unit at the Cabinet Office, and did 4 presentations

and “lunch & learns” on Freedom of Information. Our FOIA awareness efforts centered on media and social media events

around International Right to Know Day (28 September) including our usual appearance on Radio Cayman.

FREEDOM OF INFORMATION	2018	2019	2020	2021	2022	2023
Inquiries	87	60	45	47	45	35
Appeals carried forward	12	15	13	17	15	13
Appeals received	23	26	24	31	25	30
Appeals resolved	20	28	20	33	27	35
Open appeals	15	13	17	15	13	8

FREEDOM OF INFORMATION

Case Summaries | Informal Resolution

DISCIPLINARY ACTION CONCERNING THE JUDICIARY Judicial Administration

An applicant requested statistical information on disciplinary actions taken by the Chief Justice concerning lawyers and judges, as well as an affidavit required in a court appeal. The initial decision was that the disciplinary actions fell under the exclusion relating to judicial functions which excludes such matters from the FOIA, and the affidavit was disclosed. The internal review by the Court Administrator and Chief Officer confirmed that some statistics were held from 2013 onwards, but that further work was needed before they could be completed and disclosed. The applicant appealed to the Ombudsman.

In the course of our investigation, the Judicial Administration disclosed the available statistics. The applicant expressed dissatisfaction with parts of the disclosed record and demanded that the record be authenticated. We mediated between the parties, as a result of which

the Judicial Administration revised and reissued the record using their letterhead. The applicant maintained that some areas where clarification was requested were not addressed but agreed that the matter could be closed.

PERMANENT RESIDENCY TEST Workforce Opportunities & Residency Cayman (WORC)

A member of the media requested information about the Permanent Resident test from April 2021 until the test was revised. No initial decision was communicated and although an internal review was requested, none was done. The applicant appealed to the Ombudsman.

In the course of our investigation we met with WORC and communicated extensively with both parties. We also examined the records closely, as a result of which various records about the tests were disclosed. An additional query was quickly resolved, and the appeal was closed.

STATISTICS AND CAUSES OF DEATH RELATING TO COVID-19 PATIENTS

Health Services Authority (HSA)

A member of the media submitted a request to the HSA for records relating to statistics and cause(s) of death of individuals listed as COVID-19 deaths. The applicant was directed to information that was already in the public domain, and other records were withheld citing the exemption relating to personal information.

After accepting the appeal, we received the responsive records for review, a meeting with HSA was held, and we were told that other discussions were ongoing about the matter and a further response would be forthcoming. However, the HSA, in conjunction with the Ministry of Health and Wellness, maintained its stance not to disclose the records. The applicant asked for a formal hearing decision from the Ombudsman. However, before the hearing commenced, the Deputy Solicitor General advised that a Public Health Spotlight published by the Ministry of Health and Wellness contained the requested statistical information. The applicant was satisfied, and the appeal was withdrawn.

ELECTRONIC MONITORING CENTRE RECORDS REQUESTED

Department of Public Safety Communications (DPSC)

An applicant submitted a request for records from the Electronic Monitoring Centre of the DPSC. No response was provided by the Department and a request for an internal review also went unanswered, after which the applicant made an appeal to the Ombudsman. The Department claimed not to have received the request.

After some delays DPSC provided responsive records for part of the request, but other records were withheld, as DPSC claimed that disclosure would unreasonably divert their resources. DPSC also applied the exemption relating to trade secrets and commercial values to additional records.

The applicant expressed his concerns with the completeness and accuracy of the disclosed records, and agreed to narrow the time period of the request. We asked DPSC to undertake a further search for one particular record, as a result of which further records relating to the electronic monitoring system were located and disclosed. This concluded the DPSC's obligations under the FOIA, and the case was closed.

DEPARTMENT OF VEHICLE AND DRIVERS' LICENSING (DVDL) ASSERTS RECORDS NOT HELD Department of Vehicle and Drivers' Licensing (DVDL)

An applicant made a request to DVDL for records relating to licensing, roadworthiness of an imported vehicle, and safety recalls. The Department responded to each query, but the applicant sought further clarification on some of the explanations. After no further response was received, the applicant made an appeal with the Office of the Ombudsman, particularly questioning whether a reasonable search had been conducted, as required under the FOI Regulations.

The applicant slightly expanded the scope of the request, and pointed out that the contact information on DVDL's website appeared to be incorrect. DVDL disclosed a number of records, including their Official Inspection Manual, the Vehicle Inspection Check Sheet, and other records. DVDL also informed us that it did not hold, and was not required to hold records relating to other parts of the request (e.g. vehicle recalls). Upon our request, DVDL shared its search efforts with the applicant, and further responses and explanations were also provided. We shared our opinion with the applicant that the search efforts were robust, DVDL had a good understanding of the request, and the quality of analysis was satisfactory. The applicant then agreed that the appeal could be closed.

DELAYS INCURRED IN THE DISCLOSURE OF 911 AUDIO RECORDINGS

Department of Public Safety Communications (DPSC)

An applicant made a request to the DPSC for 911 audio recordings concerning a vehicle collision as well as for records relating to an incident involving fallen debris. No initial decisions were given, and upon internal review the Acting Chief Officer of the Ministry of Home Affairs exempted the records, claiming that disclosure would prejudice the effective

conduct of public affairs, and because they contained personal information.

The matters were appealed to the Ombudsman, and we started a long series of communications with DPSC and the Ministry in order to clarify their position, resulting in long delays. A formal hearing was started, but before it commenced DPSC provided a substantive response and concluded that the records in both matters would be disclosed. These cases were closed without a formal hearing decision.

FREEDOM OF INFORMATION	2018	2019	2020	2021	2022	2023
Assessment/disposition	n/a	7	3	1	0	10
Non-jurisdictional	n/a	7	3	1	0	10
Informal resolution	16	9	9	26	19	19
Full disclosure	7	1	3	12	4	8
Partial disclosure	5	5	2	7	6	5
Late appeal request denied	1	0	0	0	0	0
Non-disclosure	1	3	4	2	5	2
No records found	1	0	0	0	0	0
Deferred	1	0	0	0	0	0
Other	0	0	0	5	4	4

FREEDOM OF INFORMATION

Case Summaries | Appeal Decisions

RIGHT TO ONE'S OWN PERSONAL DATA DESPITE FOI EXEMPTIONS Ministry of Health and Wellness

An applicant requested records relating to a recruitment exercise at the Mosquito Research and Control Unit (MRCU) in which he was a candidate. One part of the request was dealt with by MRCU, resulting in the disclosure of numerous records, and the other part was handled by the Ministry of Health and Wellness. After numerous delays, the Ministry eventually disclosed a heavily redacted email about the recruitment process involving the applicant. It claimed that further disclosure would prejudice free and frank deliberations and the effective conduct of public affairs.

As required under the amended FOIA, the Ombudsman considered the impact of the Data Protection Act (DPA) and found that the Ministry had disclosed some, but not all, of the applicant's own personal data he was entitled to. The Ombudsman ordered that all the relevant personal data be disclosed.

SEARCH FOR BEACH ACCESS RECORDS WAS REASONABLE Ministry of District Administration and Lands

An applicant made a request to the Ministry for records relating to beach access signage for Cayman Shores Development. The Ministry had searched for responsive records, and disclosed a number of records, but it could not locate additional records that were believed to exist.

After a review of the search efforts undertaken, the Ombudsman concluded that the Ministry met its obligations to "make reasonable efforts to locate" responsive records, and to "make a record of its efforts". While the IM could have conducted further interviews with the applicant, in the circumstances of this case there was little to be gained by doing so as the request was communicated in great detail and was well-understood. The Ministry was not required to take any further steps.

VIDEOS OF COURT PROCEEDING ARE PART OF THE JUDICIAL FUNCTIONS OF A COURT Judicial Administration

An applicant requested copies of video recordings of court proceedings he was involved in from the Judicial Administration. The Judicial Administration initially denied access on the basis that the President of the Court of Appeal had refused access. The IM then reformulated the response, stating that the video recordings are part of the court proceedings and that the FOIA does not apply to the judicial functions of a court. The Court Administrator and Chief Officer confirmed this decision in the internal review, and the matter was appealed to the Ombudsman.

On the basis of the submissions received from both the Judicial Administration and the applicant, the Ombudsman decided in this preliminary hearing that the video recordings were records of court proceedings, and as such they pertained to the judicial functions of a court. Therefore, the FOIA did not apply to the recordings.

The Ombudsman also made recommendations on records management and the establishment of internal procedures for a legal hold on requested records scheduled for destruction, as it appeared that some of the recordings had been deleted after the FOI request was made.

TRANSPARENCY AND ACCOUNTABILITY FOR SALARY INCREASE PROCESS Ministry of Home Affairs

An applicant made a request to the Ministry of Home Affairs for records relating to the fairness and compliance of salary increases in the Cayman Islands Fire Service. The Ministry provided the applicant with guidance from the Portfolio of the Civil Service, but claimed that the other responsive records were exempt because their disclosure would inhibit the free and frank exchange of views and prejudice the effective conduct of public affairs. They also consisted of third-party personal information.

In the circumstances of this case, the Ombudsman found that the names, salaries and other information that would allow the identification of the individuals who received an increase were exempt because their disclosure would prejudice the conduct of public affairs. However, the remaining parts of the records, including the names and other information of the civil servants who actioned the salary increases, as well as the information that demonstrates the process used to apply for, and obtain, permission to action the salary increases, were ordered disclosed.

TOURISM SPONSORSHIP BUSINESS CASES AND AGREEMENTS TO BE DISCLOSED Department of Tourism

An applicant made a request to the Department of Tourism for records related to overseas sponsorship and partnership agreements, and public relations campaigns, as well as related business cases and costs from 2020-2022. Over a period of several months, the DOT granted access to a number of records, some of which were partially redacted, but it withheld the business cases and exempted part of the sponsorship/partnership agreements, claiming prejudice to commercial values and interests.

The Ombudsman found that the records withheld did not contain trade secrets, and the disclosure of the business cases and agreements would not prejudice any commercial value or commercial interests. As well, the names, positions and official contact information of DOT employees were not personal information, and it was reasonable to disclose them. However, the contact details and signatures of the private entities that received a sponsorship or engaged in a partnership were found to be personal information, and they could be withheld.

The Ombudsman ordered the business cases and agreements to be disclosed in full, except for the above-mentioned personal information of the private persons. She also pointed out a number of procedural issues, including the fact that no internal review had been conducted, and that delays of a full year had been encountered.

MISSING EXHIBIT BOOK AND ENTRIES

Royal Cayman Islands Police Service (RCIPS)

An applicant made a request to the RCIPS for an exhibit book containing the entry for a specified exhibit, and for raw data relevant to a past trial. The RCIPS responded that the exhibit book containing the entry could not be found. The raw data had been redacted in the course of court proceedings, and, since the judicial functions of a court are excluded from the application of the Act, the RCIPS claimed that the FOIA did not apply. The issues being appealed were the search efforts made by the RCIPS, and the application of the judicial exclusion to the raw data.

The IM continued the search during the hearing and belatedly located the exhibit book, but it did not contain an entry for the named exhibit and was therefore not responsive to the request. The Ombudsman found that a reasonable search had not been conducted until the final stages of the hearing. The IM had not conducted an interview with the applicant, however, this did not impede the search. In regard to the second part of the request, the Ombudsman confirmed that the court had endorsed the redactions of the raw data, and the FOIA therefore did not apply to these records.

The Ombudsman noted that the RCIPS had responded outside the statutory timelines, and that the Chief Officer (or delegate) had not conducted an internal review as requested. The Ombudsman also recommended that the RCIPS review its recordkeeping procedures for the documentation of confiscated items and strengthen its procedures in support of the FOI process in order to avoid delays in the future.

FREEDOM OF INFORMATION	2018	2019	2020	2021	2022	2023
Decisions	4	12	8	6	8	6
Non jurisdictional	1	0	0	0	0	0
Appeal upheld	1	1	4	2	1	1
Appeal partially upheld	0	3	2	1	3	2
Appeal dismissed	2	6	2	3	0	1
Reasonable search	0	2	0	0	0	0
Other	0	0	0	0	4	2

INFORMATION RIGHTS DIVISION

Data Protection

The *Data Protection Act (2021 Revision)* (DPA) regulates how personal data is used by public and private entities, and grants important rights to individuals concerning their own personal data. The Ombudsman is tasked with investigating complaints and data breaches, and may issue binding information, enforcement and monetary penalty orders.

Our Data Protection workload under the DPA grew tremendously in 2023 in all areas, including enforcement and outreach. The number of inquiries we responded to grew by 16%, complaints received increased by 56%, and complaints closed by 67%. The number of data breaches received grew by 99%, and data breaches resolved increased by an astonishing 134%.

This exponential caseload growth was particularly challenging – and at times overwhelming - amidst continued staff vacancies and long-term medical absences in the Information Rights Team. Our positive response was made possible, first of all, by the exemplary dedication and teamwork of the Information Rights Team, which is being integrated and cross-trained so that all analysts now work on both FOI and Data Protection cases. We also implemented a new streamlined approach

to low-risk personal data breaches, which has improved the efficiency of our resolution of such cases.

During our investigations, the Ombudsman issued 3 information orders. Such orders are used when a data controller does not adequately cooperate with an informal request for information needed in an investigation.

Formal enforcement orders were issued in 5 cases, relating to mandatory COVID testing for employees of a bank, a significant data breach at a real estate company, non-responsiveness to an individual's subject access request, and excessive personal data collection by a public authority.

The Information Rights Team cooperated with the Maladministration Team in a joint own-initiative investigation relating to election registration and the processing of voter data under the Elections Act.

Our informally resolved complaints and data breaches encompassed a wide range of subjects, including non-responsiveness to requests for individuals' own personal data (subject access requests), the inclusion of personal details in the register of electors, mandatory rules about an employee's image on a staff directory, sharing of

personal data by an employee of a telecommunications company, the inadvertent misdirection of various types of personal data to the wrong recipients, and multiple cases of phishing, ransomware and other malicious attacks involving the exfiltration of personal data.

In addition, the Information Rights Team responded to 121 inquiries during the year, and we did 7 presentations on Data Protection, including a series of “lunch & learns” for Data Protection Leaders in the Public Sector. We celebrated International Data Protection Day on 28 January with various media and social media events.

DATA PROTECTION	2018	2019	2020	2021	2022	2023
Inquiries	65	192	120	138	104	121
Presentations	45	45	9	4	0	3

DATA PROTECTION - COMPLAINTS

Case Summaries | Informal Resolution

MEMBER OF THE PUBLIC REQUESTS REMOVAL FROM ELECTION REGISTER

Citing the right to demand that processing cease in section 10 of the DPA, a member of the public notified the Elections Office that they wished to be removed from the voting register. The Elections Office did not respond within the statutory timeline and a complaint was made to the Ombudsman. After significant delays, the Elections Office responded to the complainant outlining the disqualifying criteria for electors, citing the Elections Act and the Cayman Islands Constitution.

The Elections Office relied on its legal mandate to maintain the register of Electors, and on an exception (section 10(2)(b)) to the general right to demand that processing cease in cases where “the processing is necessary for compliance with any legal obligation of which the data controller is subject”. Therefore, the Elections Office did not have to comply with the complainant’s notice and the complaint was closed.

CIVIL SERVANT CLAIMS UNLAWFUL ACCESS TO TRAVEL HISTORY

An individual made a complaint to the Ombudsman on suspicion that her government employer used a database to access her travel history in relation to a query about annual leave, without having a proper legal basis to do so. The complainant also made a subject access request (SAR) for her own accumulated and outstanding leave information.

Although the Ministry incurred significant delays, which exceeded the statutory period for responding to a SAR, it disclosed the analysis of the complainant’s annual leave and a report from the government’s financial system (IRIS), thereby satisfying the needs of the SAR.

The Ministry also explained the basis of its queries about annual leave under the Personnel Regulations, and denied that it had accessed any travel database. The remaining dispute was an HR matter, which fell outside the jurisdiction of the DPA, and the case was closed.

EMPLOYEE IMAGE IN DIRECTORY DOES NOT VIOLATE THE DPA

A civil servant was informed that she was required by her government employer to upload her image to the HR administration platform. The data subject objected, believing this violated her data protection rights, and asked the Ombudsman to investigate whether the publication of the image was lawful under the DPA, and whether the image constituted “sensitive personal data”. The data controller clarified that the image would be used in the employee directory, but not, for the time being, in the employee’s Outlook profile, which would be a separate purpose that would be analyzed separately.

We investigated the matter and concluded that the image might potentially reveal some sensitive personal data, but the intended, limited use would not constitute a significant risk. Since the personal data relates to the employee’s work, there is only a limited expectation of privacy, and inclusion of the image in the employee directory is reasonably required. We did recommend that criteria be introduced to identify circumstances when employees could request to opt out. A sheet with FAQs, which was provided to employees upfront, met the requirements of the right to be informed. No further action was required.

NO PERSONAL DATA HELD BY LOCAL LAW FIRM

A complainant alleged that a local law firm was collecting photos of him, his family, friends and guests on a private property and public beach and did not answer questions about how or why the information was being held or used. The local law firm, which appeared to be acting as a data controller, responded by asking the complainant to direct all future correspondence through the complainant's attorney. The complainant followed up, but received no response. This appeared to render the data controller non-compliant with the statutory timeframe of thirty (30) days allowed for a subject access request.

Our investigation confirmed that no personal data was being held. Nonetheless, even if no data is being held, the complainant should have been informed of this fact. After some further delays, the data controller responded to the complainant and provided evidence of the communication to us, and the matter was closed.

IMMIGRATION SERVICE PROVIDER LOCATES MISSING DOCUMENTS

A complainant used an immigration service to assist with an application for a new passport and provided a number of original documents for that purpose. However, the data controller did not reply to repeated requests for an update and/or a return of documents. The complaint centered on the apparent denial of access to the data subject's personal data, and the lack of security provided to the original

documents, some of which were suspected to have been lost.

After significant delays we contacted the head of the immigration service provider, and established that the company had ceased to operate in 2021. They had assisted the complainant in securing replacement documents, and a report had been filed with the Police about one document that had gone missing. The documents initially submitted were located and were restored to the complainant, after which the case was closed.

DATA PROTECTION – COMPLAINTS	2018	2019	2020	2021	2022	2023
Complaints carried forward	n/a	0	1	7	20	21
Complaints received	n/a	12	22	30	25	39
Complaints resolved	n/a	11	16	17	24	40
Open complaints	n/a	1	7	20	21	20
Assessment/disposition	n/a	7	6	4	9	18
Non-jurisdictional		2	2	1	1	7
Complaint refused (s. 43(4))		5	1	3	6	8
Complaint abandoned		0	0	0	0	1
Complaint withdrawn		0	2	0	0	2
Other		0	1	0	2	0
Informal resolution	n/a	4	9	10	13	17
Complaint supported		4	8	7	4	11
Complaint not supported		0	1	3	8	4
Complaint withdrawn		0	0	0	0	0
Complaint abandoned		0	0	0	0	0
Other		0	0	0	1	2

DATA PROTECTION - COMPLAINTS

Case Summaries | Enforcement Orders

SERIOUS DATA BREACH AT REAL ESTATE COMPANY

Betty Boo Real Estate Sales

A complaint was made against the data controller who had been made aware of a breach to their business email account, but had not taken mitigating action. The personal data of multiple individuals was exposed and two clients fell victim of the hackers and suffered a substantial monetary loss.

The Office of the Ombudsman investigated the matter, and found that the data controller had violated the first principle (privacy notice), the statutory requirements to report personal data breaches, and the seventh principle (lack of appropriate technical and organizational measures).

Amongst other things, the Ombudsman required the data controller to migrate her business email to a more robust platform, retain the services of IT support to ensure ongoing compliance, undertake cybersecurity awareness training and annual data protection training, and develop appropriate policies and procedures to ensure that personal data is

safeguarded and maintained in compliance with the requirements of the DPA, going forward.

THE RIGHT TO ACCESS ONE'S OWN PERSONAL DATA

Department of Education Services

A member of the public submitted a complaint to the Ombudsman against the Department of Education Services (DES). The complainant submitted a request for data consisting of feedback on her job application to the data controller, but she received no substantive response.

After investigating this complaint, the Ombudsman issued an enforcement order, finding that the data controller contravened the sixth data protection principle (data subject rights) and section 8 (right to access one's own personal data) by not responding to the subject access request.

The Ombudsman ordered the DES to provide the complainant with the requested personal data regarding the job application submitted within 5 business days.

PROOF OF VACCINATION HAD NO LEGAL BASIS AND WAS EXCESSIVE

CIBC First Caribbean International Bank (Cayman)

In September 2021 employees of the data controller were informed that a new policy was being implemented, requiring them to provide proof of Covid-19 vaccination or weekly negative PCR test results. Employees who failed to comply were required to go on unpaid leave. Two employees complained to the Office of the Ombudsman, alleging violations of the DPA.

The Ombudsman investigated the matter and found that there were no violations of the first principle (right to be informed), the second principle (further processing), or the fifth principle (retention). However, the Ombudsman noted that the data controller did not have a legal basis (data processing condition) for the processing, as required under the first data protection principle. As well, the processing of the vaccination status and PCR testing was excessive, as it was not necessary to meet the obligations under the Labour Act, which was the legal basis invoked. A reminder email to employees who had not yet provided their data, sent without use of BCC, risked inferences to be made about the individuals' health and/or medical status, and therefore violated the seventh principle.

The processing of personal data that lead to the complaints is no longer in practice, and therefore no corrective action was required. As requested by the Ombudsman, the data controller also demonstrated how it was meeting the requirements of the eighth data protection principle, relating to the international transfer of personal data.

EXCESSIVE DATA GATHERING FOR BEACH WEDDINGS

Public Lands Commission

A member of the public made a complaint to the Ombudsman against the Public Lands Commission (PLC). The complainant claimed that the PLC was unnecessarily collecting personal data from marriage officers, their staff, and visiting clients, who used public beaches for wedding ceremonies, and that the frequency with which the personal data was being collected was excessive.

The Ombudsman investigated the matter, but, due to a lack of response, had to issue an Information Order to obtain information needed in the investigation. The Ombudsman found that the PLC had a legal basis for processing personal data, but it contravened the DPA's first and third data protection principles, respectively, by not providing a privacy notice and excessively collecting personal data.

The Ombudsman ordered the PLC to provide a privacy notice to data subjects when their data is being collected, and to cease collecting excessive personal data (e.g. copies of passports) of individuals who are organizing wedding ceremonies on public land or are engaging in other activities for which, by law, no permit is required. The PLC may continue to process

personal data that is strictly necessary for avoiding scheduling conflicts and ensuring accountability for potential damage to public lands or facilities, such as names and contact details. Such data should only be retained for as long as required for the purposes for which it was gathered, in accordance with the fifth data protection principle.

DATA PROTECTION – COMPLAINTS	2018	2019	2020	2021	2022	2023
Order	n/a	0	1	3	2	5
Enforcement order issued		0	1	3	1	5
Monetary order issued		0	0	0	0	0
Enforcement and monetary order issued		0	0	0	0	0
Other		0	0	0	1	0

DATA PROTECTION - BREACHES

Case Summaries | Informal Resolution

RISK MANAGEMENT ENTITY SENDS MISDIRECTED SHAREHOLDER DATA

An email that contained board minutes for a group structured under a publicly owned company, which included the personal data of shareholders, was erroneously sent to an unintended recipient. The record contained bank names, bank account numbers, signatories, and dividend information.

When the data controller became aware of the error, the representative of the parent company was informed and the unintended recipient was alerted of the error and instructed to delete the email, which was confirmed to have been done. We were made aware of the matter and supported the actions taken and recommended that revisions be made to the entity's breach response procedures and directed them to our website for further guidance on personal data breaches.

MEDICAL CLINIC INADVERTENTLY SENDS HEALTH RECORDS TO THE HEALTH PRACTICE BOARD

A medical office erroneously sent an email containing health records accompanying a doctor's application to the Health Practice Board (HPB). The doctor was informed about the breach and the administrative officer conducted a message recall and requested that recipients delete the email.

After we were notified, we noted that the recall report proved unsuccessful and that the responses to an email request for HPB recipients to delete the email did not indicate all users had deleted the email. Upon our prompting, the data controller asked for, and received, further confirmations of deletion by the remaining HPB users. The medical office was directed to our website for further guidance on responding to a personal data breach.

LOCAL LAW FIRM MADE AWARE OF PERSONAL DATA BREACH

A local law firm was notified by their IT service provider (their data processor) of a business email compromise involving a member of staff, which appeared to have resulted in a personal data breach.

The law firm requested the IT service provider to investigate the breach and an independent investigation was launched by a third-party auditing firm. We asked for access to the investigation reports, but the Ombudsman had to issue an Information Order to obtain them.

Whilst the breach was serious in nature, and the investigation reports showed that a successful phishing attack had exposed an employee's email account, an attempt to fraudulently change bank account details was detected in time and stopped, which resulted in no financial loss to any involved party.

All recommendations from the third-party auditing firm to protect the firm from similar future attacks were implemented. We considered the measures appropriate and recommended a regular review of the firm's security in accordance with best practices.

REGULATOR INCORRECTLY DISCLOSES AN ENTITY APPLICATION

A regulator was made aware of a breach involving two applications containing the personal information of 5 individuals being sent to an unintended entity via a filing submission system. The data included dates of birth, country of birth, name of the entity's ultimate beneficial owner, directors, and AML service providers.

The regulator promptly contained the breach by contacting the unintended entity to confirm the document downloaded was deleted from the company's system, and ensure no other information was accessed. The regulator also immediately adjusted and corrected the unintended entity's access profile in the filing submission system.

The regulator's response to the breach was appropriate. However, the notification of the affected individuals fell short of the statutory requirement, since it should also provide details on how the breach occurred and the actions taken to remedy the error. The regulator revised the notification following our recommendations, and the case was closed.

INVESTOR PERSONAL DATA LEAKED ON THE DARK WEB

A security incident at a Cayman Islands fund resulted in the exfiltration of personal data of several directors across numerous jurisdictions, and its publication on the dark web. The unauthorized access took place through a firewall device and resulted in an attempted ransomware attack. The fund notified the affected directors, providing information on the breach and communicating the steps taken to contain the impact. An investigation was launched with a leading cyber forensic expert who outlined the response.

We noted that the Ombudsman had been notified outside the statutory notification period. The fund explained that given the high volume of data and number of affected directors, and the location of the incident (In Hong Kong), it had not been immediately apparent that the entities and directors in Cayman had been affected. We assessed the response and found that appropriate measures were taken, and the case was closed.

A HEALTHCARE PROVIDER SUFFERS PHISHING ATTACK FROM FORMER EMPLOYEE EMAILS

A healthcare provider reported that employee email accounts were subject to a phishing attack targeting the company's Cayman office. Initially, the attack was seen as a spoofing attempt, without any personal data being breached. However, later reports unveiled that various types of data subjects had been affected, including clients and vendors. An investigation was initiated by the company's IT service provider, and clients were made aware of the breach, as was the Office of the Ombudsman.

The healthcare provider immediately changed all passwords on all company devices. Their IT service provider recommended the implementation of a quarterly user awareness training program on data protection and phishing, an SIEM (Security Information and Event Management) solution for central saving, a policy to block USB devices from workstations, multi-factor authentication on all remote services, a mobile device management solution, restricting external laptop usage to management staff and during emergencies, and a review of current policies. We added a regular review of overall security and processes to that list, to reflect best practices.

PROCESSOR EMPLOYEES FALL VICTIM TO A SMISHING ATTACK ALLOWING ACCESS TO CUSTOMER INFORMATION

Former and current employees of a global financial services provider (a data processor) fell victim to a malicious smishing text message. The message directed employees to a fake login page which resembled the original page. The page then captured employee credentials to access internal processor administrative tools and applications which resulted in a breach of certain customer information.

The attack affected over 70,000 customers, only one of whom resided in Cayman. The data impacted included email addresses, partial phone numbers, and processor IDs, and the breach resulted in spam, unsolicited direct marketing emails, and attempts to access employee and customer accounts.

The provider investigated and implemented several measures in response to the attack. A cybersecurity awareness blog post was made available on the entity's website and sent to all customers. Upon review of the actions taken, we determined that the institution failed to notify the affected data subjects within the statutory 5 days, and did not inform them what data was impacted.

While helpful, the blogpost did not fulfil this role. We communicated the need to comply with all the statutory requirements (section 16) of the DPA.

HR SYSTEM REPORTS ARE SENT TO INCORRECT MINISTRY

An automated report from a Cayman Islands Government HR system was incorrectly disseminated to the wrong ministry. The government portfolio was made aware of the breach when a chief financial officer advised they received an incorrect HR test report as part of a pilot program, 4 hours after the report was generated. The report included information on 9 employees, such as banked time liability calculation for ministry employees, employee names, titles, departments, and hourly rates which involved information on a total of 21 employees.

The portfolio reported the breach to the Ombudsman, and advised the technical problem was resolved within one day of the breach occurring. Upon review, we determined that the initial 9 employees should have been notified within the statutory timeframe of 5 days. The portfolio was urged to ensure the statutory notification period is adhered to in the future.

FUND ADMINISTRATOR SYSTEM SENDS A REPORT CONTAINING FINANCIAL DETAILS TO AN UNINTENDED RECIPIENT

A fund administrator sent an order acknowledgment containing two investors' data via a transfer agency to an unintended fund manager. The error was identified by the transfer agency and escalated to the technology team for investigation. The administrator contacted the recipients and requested the information to be deleted, which was confirmed to have been done the same day. The technology team determined that a fault in their system caused the acknowledgment to be sent to the incorrect fund manager and confirmed that no other reports were affected. The impacted parties were notified and advised to be on alert for any unknown or suspicious contacts.

Measures implemented to mitigate the error from recurring included: adjustments and updates to the report run time scheduler, a fix for the system bug and necessary testing. The technology team implemented a manual control to check the report and intended recipients. We reviewed and assessed the breach and were satisfied with the steps taken to address the breach.

BREACH AT LOCAL TELECOMMUNICATIONS COMPANY

The Ombudsman received a data breach notification from a local telecommunications service, providing details concerning one of the data controller's ex-employees unlawfully sharing personal data of a customer with a police officer for their personal use, which may constitute a serious violation of section 54 of the DPA.

As part of our investigation, we obtained the data controller's data protection policies and procedures, the ex-employee's data protection training records, the confidentiality agreement with their employer, personal call logs, system audit logs, and witness statements from relevant parties.

We investigated potential contraventions by the data controller, and considered whether any acts or omissions of the data controller contributed to the breach. However, we concluded that the data controller had adequate organizational and technical measures in place to secure the data. The RCIPS carried out a criminal investigation into the circumstances of this personal data breach, as a result of which charges were laid, and the matter remains before the courts.

LOCAL HOSPITAL SENDS PATIENT COVID-19 RESULTS TO UNINTENDED RECIPIENT

A contained data breach originating from a local hospital's COVID-19 testing facility was detected when the test lab processed a batch of results through the hospital's testing portal system. One patient's results were sent to 27 unintended recipients/patients of the hospital.

Upon investigation, the hospital discovered that a change in its information system resulted in a disconnection affecting the transmission of patient registration data to the portal system. The error caused all contacts in the test batch to have missing registration data, but one patient had a good registration record which resulted in the incorrect distribution of results.

The hospital notified us of the breach, informed the affected patient, apologized, and advised that the portal and information systems were reprogrammed to prevent any future disconnections. Patient results are no longer sent in batches – each result is now sent separately after verification - and are sent in the form of password-protected, encrypted PDF attachments. As well, new communications algorithms are introduced between clinical systems to ensure data transfer errors are captured before processing test results. Lastly, the hospital introduced an internal incident report for quality assurance in order to mitigate any future issues. We supported the actions taken and closed the matter.

RESTRUCTURING ADMINISTRATOR SECURITY INCIDENT RESULTS IN A NON- JURISDICTIONAL BREACH

An overseas law firm notified us of a personal data breach on behalf of its client, a global restructuring administrator. The breach was due to a cyber threat that targeted a telecommunications company and subsequently affected the account of

an employee in a sophisticated “SIM swapping” attack that affected almost 80,000 individuals. The incident compromised non-sensitive personal data including personal data of 69 residents in Cayman.

Upon review of the breach notification details we determined that, as the global restructuring administrator was not registered in Cayman and the data was not being processed here, we did not have any jurisdiction in this matter.

DATA PROTECTION – BREACH NOTIFICATIONS	2018	2019	2020	2021	2022	2023
Breach notifications carried forward	n/a	0	16	29	34	60
Breach notifications received	n/a	25	65	101	91	181
Breach notifications resolved	n/a	9	52	96	65	152
Open breach notifications	n/a	16	29	34	60	89
Assessment/disposition	n/a	3	42	85	54	68
Non-jurisdictional		1	4	6	2	5
Appropriate actions taken		2	34	78	50	60
Other		0	4	1	2	3
Informal resolution	n/a	6	9	9	9	84
Resolved informally		6	9	9	9	83
Other		0	0	0	0	1
Orders	n/a	0	1	2	2	0
Enforcement order issued		0	1	1	1	0
Monetary order issued		0	0	0	0	0
Enforcement and monetary orders issued		0	0	0	0	0
Other		0	0	1	1	0

COMPLAINTS DIVISION

Maladministration

During 2023, the maladministration and whistleblower complaints section of the Ombudsman's office received more complaints than it ever has in a single year. The two-person staff also managed to resolve a total of 100 complaints for the year – another record since our office was established in 2017.

The numbers tell a story of two major successes; first, our investigators completed a total of 16 formal investigations during 2023 while at the same time informally resolving a further 19 complaints without the need for a full investigation. Second, the number of complaint matters carried over from 2022 went from 27 at the end of that year to just 11 by December 2023. This means the office reduced a significant number of older, historical complaints, compiled during a severe staffing shortage in 2022, while at the same time completing a record number of new cases during 2023.

Maladministration complaints ran the gamut during 2023 to include complaints about public education, to government-run cemeteries, to the police, even one administrative complaint about a constitutionally-appointed commission. Readers will find updates in the case summaries section which state where the

Ombudsman's recommendations in these matters have been followed, as well as matters where a response to the recommendations is still pending. Our staff members continue to follow up periodically with government agencies to ensure progress is made on those outstanding recommendations.

Whether or not this was initially intended by legislators in setting up our office, the maladministration section continues to serve as a sort of clearinghouse for information about government services and entities. Our office fielded a total of 222 such inquiries from the general public in 2023, compared to 178 in 2022 – a 25 percent increase occurring at the same time our office was receiving a significantly increased number of maladministration and whistleblower complaints.

The final issue we highlight for this year's report is an unusually high number of non-jurisdictional complaints reviewed in 2023. There are various reasons for this, but one significant recurring theme is complaints related to government human resources matters. These complaints can sometimes present a conundrum for Ombudsman investigators, as our legislation, the ***Complaints (Maladministration) Act*** ("the

Act”) sets strict limits on what complaint matters can be reviewed when it comes to government employment.

Paragraph 6 of the Schedule to the Act states as follows:

Matters not subject to investigation

6. *Action taken in respect of appointments or removals, pay, discipline, or other personal matters in relation to*
- (a) service in any office or employment under the Government; or*
 - (b) service in any office or employment, or under any contract for services, in respect of which power to take action, or to determine or approve the action to be taken, in such*

matters is vested in the Government

This paragraph has been interpreted to mean that decisions in respect to government hiring, firing, pay or discipline cannot be investigated by our office. However, guarantees to lawful administrative action in section 19 of the Constitution Order’s Bill of Rights, may also affect the interpretation of the above paragraph when it comes to policies and procedures related to government hiring. As a result, there is a concern that civil servants subjected to unfair HR processes or procedures may have ultimately nowhere to turn for relief but the courts. This is an issue the Ombudsman will continue to address with our partners in the civil service, as well as with the Oversight Committee.

MALADMINISTRATION	2018	2019	2020	2021	2022	2023
Inquiries	58	106	109	122	178	222
Complaints carried forward	5	9	6	11	23	27
Complaints received	59	72	59	65	49	84
Complaints resolved	55	75	54	53	45	100
Open complaints	9	6	11	23	27	11

MALADMINISTRATION

Case Summaries | Early Resolution

CONFUSION OVER FINANCIAL ASSISTANCE APPLICATION Needs Assessment Unit (NAU)

The complainant stated that an application for NAU financial assistance was delayed for more than four months without a response and that, when they complained to the NAU internally about the delay, they did not receive a response for another month.

The Office of the Ombudsman (OMB) sought to resolve the matter informally with the NAU and found the agency was initially unaware that any internal complaint had been made. Upon further review, the NAU noted it had received an internal complaint, but that the complaint was not made by the individual who was seeking the financial assistance. Rather the complaint had been made by a relative who was not directly involved in the financial application.

NAU advised the person seeking the assistance that they could make a complaint of delay to the NAU if they wished. The applicant was further advised of additional financial assistance they had received at that time.

OMB spoke with both the initial complainant and the NAU and it was agreed the matter had been resolved for the time being. If any further delays occurred, the applicant was advised of their right to make a formal complaint to the OMB.

No investigation was conducted in this matter and, therefore, no recommendations were made by the OMB.

COMPLAINT AGAINST NO RESPONSE TO REQUEST FOR INFORMATION Ministry of Home Affairs

The complainant was named in an investigation and was transferred to the Ministry with oversight of his section. There was a delayed response to his request for information, so a written complaint was sent to the Ombudsman.

The ICP Officer and ACO in the relevant Ministry contacted the complainant and sent a copy of the report. The complainant stated a preference for more information but accepted their right to provide a summary.

DISPUTE OVER PUBLIC BUS FARES

Ministry of Tourism/Public Transport Board

A complaint of unreasonable delay was received against the Public Transport Board (PTB) and the Public Transport Unit (PTU), both of which operate under the Ministry of Tourism and Transport. The complainant stated the bus operators have been asking the PTB to raise bus fares since March 2022. In early September 2022, it was publicly reported that having had no decision from the PTB on their request, the bus operators put up signs indicating fares had been increased for passengers. They were informed on 2 Sept 2022 by the PTU that these fees had not been approved by the PTB and bus drivers had no legal authority to raise fees on their own. As far as the bus operators were aware, the PTB never decided on the operators' request for a fee increase.

After making an internal complaint with the government and receiving no response, a formal complaint was made to the Ombudsman. After determining the complaint was jurisdictional to our office, we began the informal resolution process an effort to resolve this complaint.

The informal resolution process became somewhat protracted, as our office realized there was some uncertainty concerning the way public bus fares were being set. First, the specific fees did not appear to have been set in legal regulations. Second, there was confusion concerning who in government had the ultimate responsibility for setting public bus fares. The Ministry of Tourism sought to obtain legal advice on these questions.

Following the receipt of this advice, the government determined it was the Cabinet that maintained the authority to set these bus fares, not the PTB or the PTU. Further, it was determined there was a need for the Cabinet to set the bus fare rates in the relevant regulations. As a result of this outcome, the PTU communicated with the bus operators that the PTB could not legally consider the request to raise fares. The matter of setting the public bus fares within the regulations was passed on to the Cabinet.

As this complaint was informally resolved, the Ombudsman made no formal recommendations to the government on the matter.

CONFUSION OVER APPEALS TRIBUNAL RULING

Workforce Opportunities & Residency Cayman (WORC)

The complainant stated that his Caymanian status (now known as the Right to be Caymanian), received more than a decade ago, was revoked by the Caymanian Status and Permanent Residency Board and was later reinstated by the Immigration Appeals Tribunal (IAT). Following the reinstatement order being issued by the IAT, the complainant stated he was awarded a new grant of Caymanian status and asked to pay a fee of \$1,000 for this grant, which he felt was unfair. The complainant also raised concerns about being “locked out” of the Jobs Cayman website, which assists unemployed individuals with finding jobs. The complainant stated he could not access this site and it appeared that the IAT-ordered reinstatement of his status had not been fully communicated within WORC.

The Ombudsman sought to resolve the matter via an informal resolution process, similar to mediation. Shortly after this began, the complainant received contact details for employees managing the Jobs Cayman website and was able to register there and take advantage of its services. After further discussions with WORC officials, it was determined that the initial letters granting the applicant a new Caymanian status were not entirely accurate and WORC wrote back to the

complainant confirming his original Caymanian status, granted some 14 years prior, had been reinstated. In addition, it was determined the \$1,000 fee for the new grant of status was issued erroneously and was eliminated.

It was determined following these discussions that all outstanding matters which could be resolved by WORC had been resolved and the complainant agreed to close the complaint. As the matter was resolved informally, the Ombudsman made no recommendations regarding this complaint.

COMPLAINT AGAINST NO RESPONSE TO REQUEST FOR INFORMATION

Department of Children and Family Services (DCFS)

The complainant sent an email requesting information on a family matter at the DCFS and due to no response to his email, sent a complaint to the Ombudsman.

The DCFS responded to the complainant with partial information. There might have been some initial confusion regarding the reason for his complaint to the Ombudsman. Subsequently, they addressed his request to reply to his email and they also held a meeting to discuss his complaint at the DCFS.

DELAYED RESPONSE IN PAYMENT DISPUTE

Ministry of Finance

A private business owner was involved in a contractual dispute with the Cayman Islands Government over payments the business owner stated they were owed for earlier services provided to the government. The business owner complained to the Ministry of Finance about the matter and had not received any response more than a month after emailing the Ministry.

The complainant made a complaint of non-response with the Ombudsman. According to the Schedule of the *Complaints (Maladministration) Act*, the Ombudsman is not able to investigate complaints involving pay disputes within government entities, including those complaints made by private contractors. However, in this matter, the complaint involved the government not responding to the complainant for more than a month. Our office informed the complainant that we could review the issue of non-response, to ensure they were provided with an update from the government, but that we would not be able to investigate the substance of the claims regarding non-payment.

After the Ombudsman intervened in the matter, the Ministry provided a written

response to the complainant indicating the government would review the entire matter, have the responsive agency compile a report and provide this to the complainant as a response. The complainant agreed this approach was satisfactory and the matter was closed.

As no investigation was conducted, the Ombudsman made no recommendations as a result of the complaint.

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NAU BENEFITS FOR ELDERLY CAYMANIAN

Needs Assessment Unit (NAU)

The complainant, an elderly man experiencing medical problems, is unable to work and his former profession did not leave him any pension for retirement. An application for financial assistance was made to NAU by the man, but this was turned down as his family's total income was above the eligibility level set by the NAU in its policy.

A complaint was made to the Ombudsman that this was not fair. The complainant asked whether any additional NAU assistance could be provided, given the man's health and financial situation. A review of the matter found that NAU had acted within its eligibility policy in denying personal financial assistance, but that the complainant had not applied for any other kinds of assistance such as food vouchers or utility bills. As part of the informal resolution process of the complaint, the complainant agreed to reapply for additional types of financial assistance with the NAU. The matter was settled informally, without the need for a formal investigation.

This complaint raised some concerns about the lack of pension allotment for an elderly member of the community. The Ombudsman may look into this matter separately, however, as it was not the subject of this complaint.

COMPLAINT AGAINST NO RESPONSE TO REQUEST FOR SCHOOL REFERENCE

Department of Education Services

The complainant sought to confirm the request for a reference for her son to be acknowledged and completed. The lack of response was affecting the admissions process for his school term and travel plans. Despite requests in person and email, she was not being assisted with information on whether they had the request.

The Internal Complaints Process Manager replied to our inquiry and stated there was a technical issue with receipt of the email. The matter was immediately addressed, and the complainant received an email from the party to whom she wanted to make a request for the school reference.

EMPLOYEE GRIEVANCE PROCEDURES DELAYED Portfolio of the Civil Service

A government employee who was involved in two separate grievance processes, one of which had been filed against him and another of which he filed, complained that no response had been provided on either matter by the Portfolio of the Civil Service (PoCS) for a number of months. A complaint was made to the Office of the Ombudsman (OMB) alleging non-response maladministration.

According to the Schedule of the ***Complaints (Maladministration) Act*** (the Act), the Ombudsman is not able to investigate complaints involving decisions or actions taken with respect to employment discipline or other personnel matters within government entities. However, in this matter, the complaint involved the PoCS not taking any action to respond to the complainant for several months, delaying his ability to appeal the matters to the Civil Service Appeals Commission (CSAC). Our office informed the complainant that we could review the issue of non-response, to ensure they were provided with an update from the

government, but that we would not be able to investigate the substance of the grievance issues or any decisions made by the government in respect to those matters.

Based on a limited complaint regarding the allegations of administrative non-response, OMB agreed to seek an informal resolution of this matter.

The informal resolution process ended with the complainant receiving written responses from the government on both grievances, allowing his matters to proceed through the appeals process set out in the *Public Service Management Act*. OMB reiterated to both the complainant and the government that section 19 of the Cayman Islands Constitution Order requires the government to respond in writing providing reasons to anyone who is adversely affected by a decision taken by the government.

As no formal investigation was undertaken, the OMB did not make any recommendations in relation to this complaint.

COMPLAINT AGAINST PUBLIC TRANSPORT UNIT

Ministry of Transport - Public Transport Unit / Public Transport Board

The complainant had concerns related to the delayed response by the Public Transport Unit's processing of his application for renewal of a transport license and adding a vehicle to a current fleet of vehicles. He considered some of the new requirements to be arbitrary and not based on proper policy directives. These issues included contradictory requirements for VIN numbers on forms, mandatory requirements for drug testing to be carried out at the Health Services Authority only, and a lack of guidance on the business plan requirement.

There was an alleged delay in obtaining all the information but there was clarification of some issues as forms were updated and information provided on requirements. There was an extension of 28 days for a review of maladministration to confirm whether requirements were based on a written policy that resulted in informal meetings with the PTU employees and lengthy email correspondence. There is a primary source of authority in the Traffic (Public Passenger Vehicles) Regulations (2020 Revision) that provides for the PTU to state the information required for reasonable consideration of permits to be issued.

The OMB received background information on the mandatory requirement for HSA labs (comparison of labs, minutes by the Public Transport Board and legal direction). The complainant was also provided with assistance to complete his renewal application, which had only been deferred due to incomplete information. The complainant's views regarding transport industry norms that he thought were excluded and or misunderstood in the current practices of the Director, were brought to the attention of the Director and Senior Inspector of the PTU.

Several issues were informally resolved during the course of the investigation, some concerns for change were outside the scope of investigation and the complainant was informed of an offer to receive personal assistance, which he has acknowledged and would alleviate any further delays.

COMPLAINT AGAINST THE DEPARTMENT OF PLANNING

Department of Planning

The complainant submitted a complaint against the Department of Planning for not addressing lack of development notification by owners in adjacent property via planning notice sent by registered mail and lack of response to his complaints since 2021 regarding the building of a fence without permission of the adjacent landowners.

The matter was investigated but informally resolved as the Department of Planning was able to provide evidence that the complainant was not the registered owner of the property at the time of development; during a visit to the Department of Planning he was provided with information on notification of property owners; and that he had attended meetings of the CPA but not as an objector to the development.

NAU APPLICATION PROCESS

MISUNDERSTOOD

Needs Assessment Unit (NAU)

The complainant was receiving financial assistance and food vouchers from the NAU for a period of three months and was then discontinued for the assistance after that period ended. The aid was discontinued after NAU determined the applicant possessed finances in excess of what its eligibility criteria policy allowed for NAU clients. The applicant came to the Ombudsman complaining of administrative unfairness in the decision.

The matter was determined to fall within the Ombudsman's jurisdiction and we informed both parties that we would be seeking to resolve the matter informally.

Following a discussion with NAU on the matter, it was determined that the applicant had not understood certain specifics of either the application process or the requirements for financial assistance the NAU sets for its clients. The Ombudsman suggested that a more fulsome explanation be provided to the complainant as to the reasons her application was not successful.

This explanation was provided to the complainant in writing and further reviewed the reasons NAU gave for why it had reached this decision. The complainant was not best pleased with the letter she received but noted that she had reapplied for financial assistance and was awaiting the outcome of that application. The complainant accepted she had misunderstood the temporary nature of the NAU's financial assistance and agreed that she would reach out to the Ombudsman again for assistance if there were any inordinate delays on her new NAU application.

As the matter was informally resolved, the Ombudsman did not make any recommendations as a result of the complaint.

COMPLAINT AGAINST CHARGES ON INCORRECT PERSON'S RECORD

Judicial Administration

The complainant stated that the identity on court documents with charges under her name was wrong and had filed an internal complaint with the Judicial Administration. A complaint of no response was filed with the Ombudsman.

The Internal Complaints officer replied to our inquiry and stated there was a technical issue with receipt of the first email. The matter was immediately addressed and the correct department and manager for correcting information of charges under a person's name was provided and also notified. The complainant was provided with assistance from the Criminal Records Office and no further investigation was required. The matter was informally resolved, and the complainant's issue was addressed.

COMPLAINT AGAINST UNREASONABLE DELAY IN RESPONSE

Utility Regulation and Competition Office (OfReg)

The complainant stated that the Utility Regulation and Competition Office (OfReg) had unreasonably delayed providing a decision on request for permission to set a utility rate. The project was approved under the National Energy Policy and only required an approval/denial of rate to further commercial negotiations.

During the informal resolution process the complainants were given confirmation to their request so the Ombudsman could effectively close the matter.

LACK OF RESPONSE TO PRISONER ON CATEGORISATION, COMPLAINTS

His Majesty's Cayman Islands Prison Services (HMCIPS)

A prisoner at one of the secure facilities in the Cayman Islands complained concerning several matters to the Ombudsman. The complaints included:

- Prisoners not being provided either Ombudsman or Human Rights Commission complaints forms at the prison facility
- A number of internal complaints made within the prisons service had not been responded to
- The prisoner's security classification had been "upgraded" (to a more secure classification) in a decision the prisoner felt was administratively unfair
- Certain confidential prisoner data had been divulged about the prisoner

The last concern about the data privacy was referred to the Ombudsman's Information Rights Team. The issue regarding the complaint forms was immediately resolved by working with the prisons service to ensure these complaint forms were made available to all prisoners upon request.

The remaining two matters, those of the internal complaints non-response and the prisoner's classification were dealt with via the Ombudsman's informal resolution process. During this process, the prisons service agreed to provide further details to the prisoner regarding the decision to reclassify them to a higher security level. This information allowed the prisoner to appeal the classification to the prison Categorisation Board. In addition, the prisons director provided the prisoner with additional details in writing about the earlier complaints that were made.

Following the dissemination of the additional information to the prisoner it was determined that all complaint matters had been resolved and that the issue was closed. As there was no formal investigation of the matter, the Ombudsman made no recommendations to the prisons service.

COMPLAINT AGAINST FAIRBANKS PRISON

His Majesty's Cayman Islands Prison Services (HMCIPS)

The complainant is an inmate at the Fairbanks Women Prison, who has alleged lack of access to her personal files, inconsistent counselling for specific addictions, lack of professionalism/bullying by several persons of same nationality employed at Fairbanks.

During the mediation process with the ICP officer for Prison Services, miscommunication was addressed.

Forms were provided but unrelated to her specific complaint, so the sample was sent to the prison for distribution directly to the Complainant.

The complainant was provided with forms and reminded that the Ombudsman is not authorised to investigate personnel matters such as hiring and the discipline of employees.

MALADMINISTRATION	2018	2019	2020	2021	2022	2023
Assessment/disposition	26	47	28	28	26	65
Non-jurisdictional	26	47	26	28	25	63
Complaint refused	0	0	1	0	0	1
Complaint withdrawn	0	0	1	0	1	1
Early resolution	9	7	18	21	11	19
Successfully resolved	9	7	17	21	11	18
Complaint withdrawn	0	0	1	0	0	1

MALADMINISTRATION

Case Summaries | Investigation

RULES FOR SPECIAL EDUCATIONAL NEEDS ASSISTANCE

Ministry of Education/Department of Education Services (DES)

A concern was raised regarding the provision of Special Educational Needs (SEN) assistance to two children at a local government school. The concern was that the children could not receive the specialised assistance they required at the government school and an application was made on their behalf seeking Alternative Education Funding (AEF) so they could attend another school where such additional assistance might be provided. DES did not accept the application for two reasons: 1. The children had already been withdrawn from the government school and 2. The children had not exhausted all of the options available to them at the government school, and were also determined to be performing adequately.

Attempts to resolve the complaint informally were unsuccessful and the complaint was moved to a formal investigation.

The investigation found the following:

- The two students were unable to “exhaust” available provisions at the government school because school administrators determined they were performing adequately in their studies
- The determination of adequate performance is left in the Education Regulations to the school
- The decision to withdraw the children from the government school was made
- It was unclear whether the regulations contemplated permitting Caymanian private school students applying for AEF or alternate placement

The Ombudsman did not support the complaint, finding that there had been no unreasonable delay in the consideration of the children’s application. She also found that the school and the DES had followed all applicable regulations and policies in making its decision. However, there were two recommendations made as a result of the findings:

- **That the Ministry/DES obtain a legal opinion regarding whether Caymanian private school students are prevented from, or allowed to, apply for alternative education funding/placement under currently existing laws and regulations**
- **Based upon the outcome of that legal advice, the Ministry consider forwarding the complainant's application to the AEPP and/or the Education Council for consideration**

Our office will continue to monitor the recommendations in relation to this matter.

NAU FINANCIAL ASSISTANCE RULES

Needs Assessment Unit (NAU)

The complainant applied on multiple occasions to NAU for some form of financial assistance and was refused. In the latest refusal, the complainant appealed to the NAU director who stated the application was not successful because the complainant had access to more than \$8,000 KYD in various bank accounts. This sum is more than the limit contained in the NAU's eligibility criteria policy which is currently set at \$8,000 KYD. The complainant stated the NAU had not taken into account certain factors

relative to the complainant's personal situation and made a formal complaint to the Office of the Ombudsman (OMB) challenging the NAU director's decision.

The OMB first attempted an informal resolution process, akin to mediation, in an attempt to resolve the matter. OMB received a detailed response from the NAU which was provided to the complainant, however, the complainant remained unsatisfied and sought a formal investigation.

The investigation found that NAU had followed its existing policies with regard to the financial constraints set for providing long-term financial assistance to applicants. However, it was noted that NAU needed to set a written policy on how the agency decides who owns a bank account. The complaint was not supported by the OMB, but one recommendation was made due to the findings of the final report.

Recommendations:

- **The NAU should reduce its stated policy on ownership of bank accounts to writing and it should make this available to the public in whatever form it sees fit if it has not already done so.**

The recommendation was followed by the NAU later on in 2023 and the matter was closed.

TWO-YEAR BAN ON NAU SERVICES

Needs Assessment Unit (NAU)

The complainant was informed via letter that she had been barred from receiving further services from NAU for two years. The NAU stated the complainant had violated NAU policy and provided false/misleading information, or that she deliberately withheld information that was pertinent to the NAU assessment process for her financial assistance application. The complainant disputed the infractions alleged by NAU, stating that she did provide case workers the information and they either simply didn't take her phone calls or it was stated she did not provide the information in a timely manner, as required by the policy.

Upon review of the complaint, the Office of the Ombudsman (OMB) noted that activities similar to the ones alleged by the NAU could lead to an allegation of crime being made to the RCIPS. However, the letter from the NAU was not definitive as to whether any such report was made. It was later determined that no allegations had been filed with the police, but that the NAU had still barred the applicant from services due to her alleged misleading and false statements.

The OMB sought to informally resolve the matter with the NAU and the complainant and this elicited a further, more detailed explanation to the OMB as to why the NAU took the decisions it did

in relation to her application. However, as nothing was provided to the complainant in writing and the complainant remained unsatisfied with the result of the informal process, OMB moved the matter to a formal investigation.

The findings of this investigation were as follows:

Issue 1: Was the NAU's decision to deny services for two years administratively fair?

- It would appear based on our investigation the NAU did not have the legal authority to bar the complainant from services and did not follow the tenets of its eligibility criteria policy in doing so. The Ombudsman found maladministration did occur and recommended administrative remedies.

Issue 2: Did the NAU provide adequate reasons to the complainant for the decision to bar her from services?

- The complainant was provided with exhaustive reasons for the decision, however, the Ombudsman found the NAU's decision did not accord with existing legislation and policies.

The following recommendations were made as a result of the findings:

- That the two-year ban, done without lawful or policy authority, should be reconsidered. *(For the avoidance of doubt, the OMB did NOT recommend that the complainant in this case should be referred to the RCIPS. The passage of time, among other matters considered, would cause an injustice to be done to the complainant if this was to occur.)* If she should apply again and act in a fraudulent or untruthful manner, she should be advised that this will be reported to the police.
- That a provision in the NAU eligibility criteria policy regarding fraudulent cases be rewritten to comply with section 28 of the Financial Assistance Act and all other relevant legislation. This should be completed within 90 days with a copy provided to OMB.
- That the NAU eligibility criteria policy be further amended to indicate the criteria for barring clients from services, including whether and how clients can be legally barred in the absence of any criminal conviction. This should be done within 90 days with a copy provided to OMB.

The OMB will now monitor these recommendations to ensure compliance.

COMPLAINT AGAINST THE RCIPS

Royal Cayman Islands Police (RCIPS)

The complainant had a one-vehicle accident and unintentionally damaged two tires of the assigned work vehicle. On Friday the day of the accident, the complainant submitted a verbal report of the incident but not a formal claims form. The fleet manager indicated that an email was distributed to all employees stating the claim was to be sent within 24 hours. Despite being sent the next business day it was not accepted as within the 24-hour period. Estimates for the repair were not discussed but upon submission of complaints the amount was recalculated and finally, the deductible for the insurance claim was deducted from the complainant's salary without prior notification.

The RCIPS conceded that there were no written policies for this specific situation as section 107 of the *Police Act (2021 Revision)* had been generally applied to similar accidents. The Ombudsman concluded that there was maladministration and stipulated two recommendations for the RCIPS to complete within a stated period: 1) provide written policies on how to determine the liability of employees who accidentally damage assigned work vehicles and 2) distribute their proposed reimbursement within 30 days.

BUSINESS LICENSING ISSUES

Department of Commerce and Investment

The complainants stated a local business owner was operating his company on a property adjacent to their address. They stated the individual operating the company had a license from the DCI, but the license did not allow the business owner to operate at that address. The complainants reported the matter to several government departments but stated they did not receive a response from the Department of Commerce and Investment (DCI) and did not believe DCI had carried out an investigation according to existing policies and procedures.

The Office of the Ombudsman (OMB) attempted to informally resolve this matter with the DCI and did receive a response stating DCI officers had made several visits to the address complained of and noted during these visits that no business was being carried on at the location. DCI believed the reports at the property were more aligned with the responsibilities of the Department of Planning and the Department of Environmental Health and believed that the complaint matter had already been dealt with. The complainants were unsatisfied with the response and requested that a formal investigation be conducted.

The subsequent investigation determined that the initial response to the complaints regarding the property had been unreasonably delayed, as had the responses provided in writing to the complainant from the DCI. Further, the investigation found a general lack of policies and procedures concerning how DCI officers should conduct such inquiries and a lack of clarity in the relevant legislation around what was meant by “carrying on business” at a specific location. The Ombudsman supported both issues raised by the complainants.

The following recommendations were made and will be monitored for compliance by the OMB going forward:

- a written policy (or policies) should be developed to direct the handling of both enforcement and compliance-related complaints received by the DCI. This is to be completed within 90 days with a copy provided to the OMB.
- the DCI should seek further legal advice to determine what the phrase “carrying on business” means in relation to s. 17(1) of the relevant legislation and whether it includes anything ancillary to “carrying on business”, including storage of business-related materials at a property

- a written apology be sent to the complainant due to the delays experienced in the processing of this complaint
- All recommendations were followed by the Ministry and the DCI and the matter was closed.

PR FEES REFUND REQUESTION

Ministry of Border Control and Labour

This complaint involved a married couple, one of whom had received Caymanian status just after their spouse's annual permanent residency fees became due. The fees, totaling over \$27,000, had already been paid and the complainants sought a refund of the "unused" portion of that payment. An application to Cabinet was made to have the fees refunded, but the Ministry stated that there was no provision in legislation to allow the refund of immigration fees already paid, except those paid for work permits.

Our investigation revealed that there is a provision in the Immigration Regulations allowing for individuals to apply to Cabinet to have immigration fees waived or reduced. However, the government has

interpreted this to mean that a waiver or reduction of fees is different than a refund and, therefore, a refund could not be granted in any case - save for work permit fees which the *Immigration (Transition) Act (2022 Revision)* does allow in prescribed circumstances.

The Ombudsman issued the following recommendation in this case:

- The Ministry, together with the Cabinet and Legal Department, continue to review the current legislation relating to immigration fees, refunds, and waivers with a view to providing clear processes for any applications requiring the Cabinet's involvement. Written guidance on the application process and on the types of fees that are non-refundable would be helpful.

The Ministry has sought to bring legislative change regarding this issue to the Cabinet and has submitted proposals to legal drafting for consideration in upcoming amendments to the *Immigration (Transition) Act*. As the matter is ultimately one for Parliament's consideration, the Ombudsman adjudged that the Ministry had responded to the recommendations as best it could by having legislation drafted to address the refunds issue.

CONCERNS ABOUT HSA TENDERING PROCESS

Health Services Authority (HSA)

The complainant alleged that their medical practice was not considered fairly during a tendering process conducted by HSA. The Ombudsman did not support the complaint, however, she did make recommendations regarding the process used by the HSA in any future concessions agreements it might seek to make.

This complaint was also somewhat new territory for the Ombudsman, as our office had not previously reviewed a government tendering process. We received legal advice prior to opening an investigation that this complaint was a matter our office could review as the complainant challenged the administrative process used, and not the award of the contract itself.

Prior to investigating the complaint, an informal resolution process was attempted with the HSA and a response was provided in writing. However, the complainant stated they were not satisfied with this response and the Ombudsman agreed to proceed with the investigation. The matters investigated were:

- Allegations of delayed response to the complainant's interest in the HSA tender

- Allegations of unfair administrative process in the procurement

Following the completion of the investigation, the Ombudsman did not support the complaint. Notwithstanding this, the Ombudsman did make two recommendations regarding the operations of the HSA tendering process in the future.

Recommendations were made as follows:

- With assistance from the Ministry of Health & Wellness and the Central Procurement Office, the HSA should develop a policy for concession agreements and submit a copy to the OMB within 90 days of the date of this letter.
- The investigation demonstrated the desirability of having wider public notice of Request for Proposals (RfPs), beyond the Bonfire platform, when an award is substantial and long-lasting, as in this case. The Ministry of Health and Wellness should raise this with the Central Procurement Office for guidance and recommend legislative amendments if it is deemed necessary

All recommendations were followed to the satisfaction of the Ombudsman as of 25 August 2023 and the matter was closed.

DOA COMPLAINT POLICIES, PROCEDURES LACKING

Department of Agriculture (DOA)

The complaint alleged maladministration by DOA in both undertaking an investigation and in responding to the subject's internal complaint about the professional conduct of two employees.

Our office first attempted to resolve this complaint through our informal resolution process. However, these attempts were unsuccessful and it was agreed to move forward with a formal investigation into the matter.

The Complaints (Maladministration) Act defines maladministration as inefficient administration including unreasonable conduct or delay. In this matter, the Ombudsman found that it was administratively unfair of the DOA to reject the complaint from a member of the public. The Ombudsman also found that the internal investigation by the DOA of the complaint was administratively unfair.

Further findings from the investigation indicated that the DOA failed to provide adequate reasons in writing to the complainant regarding the outcome of its internal investigation. It was also found that the DOA had no written policy or procedure that sets out clearly what should happen when there is a formal complaint relating to the conduct of its enforcement officers. Without such a

policy, the Ombudsman found there is substantial risk that future incidents may not be appropriately reported nor investigated properly, leaving other members of the public in the same position as the complainant in this matter.

A number of recommendations were made following this investigation, indicating that the DOA should seek to do the following:

- formulate an internal complaints policy and standard operating procedure dealing with independent investigations of conduct complaints against enforcement officers.
- provide enforcement officers with body cameras.
- draft a code of conduct and performance standards for enforcement officers, similar to the RCIPS code of conduct
- make the DOA logo clearly visible on the front of enforcement officers' vests.
- publish the powers of enforcement officers
- issue a formal apology to the complainant for the DOA's failure to deal with this complaint appropriately

Upon following up with the Department of Agriculture on the various recommendations over a period of months, it was determined that all

recommendations had been implemented to the satisfaction of the Ombudsman.

POLICE SEXUAL HARASSMENT POLICY NOT FOLLOWED

Royal Cayman Islands Police Service (RCIPS)

Our office received a complaint alleging maladministration on the basis that the RCIPS had not responded fully to a sexual harassment complaint in the workplace concerning the actions of a police officer and had failed to provide the complainant with adequate reasons for, or information on, the outcome of the complaint. In addition, it was alleged that the RCIPS had not followed the guidelines in the government's sexual harassment policy in responding to the complaint made against the officer.

The complaint presented some unusual jurisdictional issues for the Ombudsman in that there had been no criminal investigation of the incident by the RCIPS, and that the matter, in the view of the Ombudsman, extended beyond the scope of a standard workplace grievance. A complaint about an ongoing criminal investigation or a workplace grievance proceeding would have both been non-jurisdictional to our office, but in this case the Ombudsman explained reasons to both parties as to why this matter involved government policy and concerns under section 19 of the CI Constitution Order

(lawful administrative action). Attempts to resolve the complaint via informal resolution were unsuccessful.

The subsequent investigation by the Ombudsman found the RCIPS did respond in a variety of ways to the complainant, but took several months to do so, leading to a finding of undue delay in informing the complainant of the outcome of the complaint. The Ombudsman further found that the RCIPS did not provide the complainant adequate reasons for its decision-making in respect to the complaint. The Ombudsman further found the RCIPS did not follow the government's policy against sexual harassment in the workplace in its response to the complaint.

In light of the findings, the Ombudsman made several recommendations which are currently being reviewed in conjunction with the police:

- **That the complainant is provided with written reasons for the RCIPS's conclusion that the officer's behavior did not meet the threshold for criminal or disciplinary proceedings.**
- **That the complainant is provided with a written apology for the delay in dealing with her complaint and the failure to comply with administrative fairness principles contained in the Cayman Islands Constitution.**
- **That the RCIPS should implement the government's policy against bullying, harassment and discrimination as part of its internal governance**

documents and mandate training on its provisions across the organization.

- That the complainant should be compensated for any reasonable out-of-pocket expenses incurred as a result of the failure by the RCIPS to follow the government's policy against sexual harassment, particularly in its failure to provide the complainant with a safe and health work environment.

Toward the end of 2023, it was determined that all recommendations made in this matter were acted upon by the RCIPS and the matter was closed.

CONFUSION OVER MOBILE BAR LICENCES

Liquor Licensing Board of Cayman Brac and Little Cayman

Our office received a complaint that an official on the Liquor Licensing Board had denied adequate participation rights to an applicant seeking the temporary use of a mobile bar license. The applicant further alleged they were not provided adequate reasons for why the application had been refused and that the board official had overstepped statutory authority in denying the license application.

The investigation into the complaint found that the board official had not overstepped or acted outside their lawful authority.

However, the Ombudsman found there were some instances where rules around the application process were unclear – even to the government officials administering the licensing process. Further, the Ombudsman found the applicant was not given adequate reasons for the decision to refuse the licence application.

The Ombudsman made the following recommendations in the matter, which are now being monitored for compliance by our office:

- The chairman of the Liquor Licensing Board of Cayman Brac and Little Cayman provide the applicant with the full reasons in writing for his decision to refuse the mobile bar licence.
- The Ministry should seek the assistance of the Legal Department to create an appeals process for mobile bar licenses by way of regulations or an amendment to the Act
- The Ministry, in conjunction with the Liquor Licensing Boards, should work to create transparent and unambiguous policies around the decision-making process for mobile bar licence applications.
- If it has not been done already, implement the recommendation of the former Complaints Commissioner and make the operating rules and procedures available to the public.

UPDATED POLICY FOR COMPLAINTS AGAINST JUDGES

Judicial and Legal Services Commission (JLSC)

The complainant stated the Judicial and Legal Services Commission (JLSC) neglected to maintain a current, updated complaints policy allowing members of the public to file complaints against sitting judges. Although the JLSC did have such a policy at the time the complaint was made, the complainant stated it had not been updated in line with the 2016 amendments to the Cayman Islands Constitution Order. The complainant alleged both a lack of applicable policy and unreasonable delay against the JLSC, which he stated had been informed about the policy shortcomings as early as 2021 and perhaps earlier.

As a matter of jurisdiction, the Ombudsman cannot hear complaints against judges under the Complaints (Maladministration) Act, however, as this matter involved an administrative policy required to be maintained by the JLSC under the Constitution Order, it was determined to be a matter the Ombudsman could review.

The Ombudsman's office attempted to informally resolve the complaint, but after further discussion between the parties it was determined the resolution process was ultimately unsuccessful.

The Ombudsman commenced an investigation into the complaint, which was hindered in some respects by confusion over what government office or agency had constitutional responsibility for the JLSC. On this point, the Ombudsman was required to obtain some legal advice prior to proceeding with the conclusion of its investigation, which was reached in November 2023.

The investigation supported the complaints of lack of applicable policy and unreasonable delay in regard to the updating of that policy. The following recommendations were made:

- the JLSC update its current policy for complaints against judges to bring it in line with the CI Constitution within the next 30 days.
- the overall staffing of the Commissions Secretariat, which serves the JLSC and the other Constitutionally created Commissions, be reviewed to determine adequacy of staffing levels.

An updated complaints policy was placed on the JLSC's website and a copy was provided to the Ombudsman, so the first recommendation was met. Our office continues to monitor the second issue.

DELAYS, CONFUSION IN NAU APPLICATION PROCESS

Needs Assessment Unit (NAU)

The Office of the Ombudsman (OMB) received a complaint alleging considerable delays and maladministration from an applicant seeking financial assistance from the Needs Assessment Unit (NAU). The complainant alleged it had taken eight months for NAU to process the application, that the NAU did not provide sufficient reasons for why the application had been refused, that NAU staff members had actually reached different decisions at different times regarding the assistance application – one had awarded the assistance and the other had refused it - and finally that NAU had unfairly restricted the applicant to a brief period of aid when other applicants had not been so restricted.

The OMB attempted to resolve these matters informally with the NAU, but those discussions were not successful, and later opened a formal investigation into the four separate areas of the complaint.

The OMB supported the complainant in the first three areas including that the delay in the application was unreasonable, that NAU did not provide sufficient reasons for the refusal, and that administrative unfairness in the decision-making process had occurred. However, the OMB did not support the final complaint, that the applicant had

been unfairly restricted in receiving assistance.

Due to some staffing issues that occurred at the OMB between late 2021 and 2022, the investigation into this complaint was delayed. The OMB reflected this in her recommendations to the NAU, noting that changes to financial assistance legislation and guidelines may have already addressed the issues raised in the complaint:

Based on the findings of the investigation the following recommendations were made:

- If the NAU has not already done so, issue a formal, written apology to the complainant for its handling of this application and invite him to reapply for financial assistance if he remains in need. This should be done within 30 days.
- If not already in place, the NAU should have a written policy detailing the role of the Compliance and Operations Manager and the general internal process for complaints resolution if it does not have one already.
- If not already in place, the NAU should use a list of standard questions for all applicants to reduce the need to go back and forth with clients to reduce delays in processing claims.
- If it has not already done so, the NAU should consider conducting a comprehensive review or audit of

recent NAU decisions to identify if there are systemic issues in the decision-making process. Such an investigation would aim to ensure fair and proper treatment for all clients.

Later in the year, the Needs Assessment Unit provided documentation showing that all policy recommendations had been followed to the satisfaction of the Ombudsman and noted an apology letter was issued to the complainant.

MINISTRY OF EDUCATION SCHOOL ADMITTANCE POLICY

Ministry of Education/Department of Education Service (DES)

A concerned parent contacted the Ombudsman with a complaint concerning an application to place her minor child in a public school for the beginning of the school year. The parent was told by both the Ministry of Education (“the Ministry”) and the Department of Education Services (“DES”) that the government entities could not approve the placement in the school year she wished, due to the age of the child. The child, who had completed the previous school year at a private school had a birthday that fell after September 1 of the upcoming year and it was noted that the school would have to start the child in the year she had just completed in the private school. It was also noted later that the

school did not have the space to accommodate the child. The parent filed a complaint with the Ombudsman after going through the DES’s internal complaints process.

The Ombudsman’s office sought to resolve the issue informally through the DES and noted that there were some issues of administrative policy connected to the complaint which may require further investigation. The complainant remained unsatisfied with the results of the informal resolution process and we moved ahead with a formal investigation.

The findings of the investigation were as follows:

- The DES and the Ministry appropriately followed the immigration-related requirement for entry into the public school system in this case. However, it was noted that there were instances where the public schools’ guidelines on age-related placement were not followed. Failure to adhere to established policy can amount to maladministration. However, in this matter, the Ombudsman found there was no maladministration, as the school placement standards may require some flexibility, particularly in relation to finding #2 below.
- There was a lack of established, written policy concerning specific age requirements for public school children. Further, it was found that there was a lack of policy for gifted

and talented students in the public school system that could lead to administrative unfairness in decision-making by the Ministry and the DES regarding the placement of children.

- It was found that the DES did not unreasonably delay the minor child's application to attend public school.

The complaint was therefore supported in part and not supported in part. The Ombudsman made the following recommendations at the end of the investigation:

- that the DES produce and approve a policy for gifted & talented students which should include the factors for consideration by the DES for recommending a child bypass a grade or grades, as the case may be.
- that if the year-by-year age policy is to be adopted by the DES/Ministry of Education, it must be inserted in the National Education Policy and made available to the public.

Later in the year, the Ombudsman issued a final closing letter to the government entities involved after all recommendations had been addressed.

CONFUSION OVER APPEALS HEARING

Planning Appeals Tribunal

The Office of the Ombudsman closed a complaint in 2022 which involved an appeal application before the Planning Appeals Tribunal (PAT) which had remained undecided for more than 11 months, leading to a claim of unreasonable delay.

The investigation of the complaint found that the Ministry of Planning had a current policy on how to appeal decisions of the Central Planning Authority (CPA) to the PAT, but no guidance with respect to professional licenses governed by other appointed bodies that might be appealed to the PAT.

The Ombudsman found maladministration in both the delay in hearing the appeal and in the lack of process and/or policies in addressing such a situation.

Several recommendations were made to the Ministry as a result of this investigation, including:

- The pending appeal before the PAT should be heard within 30 calendar days
-

That the PAT and/or the Ministry update policies regarding appeals That support is given to amending the Electricity Act to clarify the appeals process

- **That the PAT or Ministry provide a written apology to the complainant for the delays**

In 2023, following the Ombudsman's office work with the relevant authorities, it was found all outstanding recommendations had been followed and a final closing letter was sent to the Ministry chief officer.

CEMETERY MANAGEMENT COMPLAINT

Department of Environmental Health (DEH)

The complainants raised a number of concerns regarding the management of both government-owned and private cemetery plots, arising out of a dispute over the ownership of a cemetery plot on Grand Cayman. We noted to the complainants that issues of ownership of specific cemetery plots could not be addressed by the Ombudsman, however, there were certain areas of the complaint that deal with the administration of local cemeteries that were determined to be jurisdictional to the Ombudsman.

We first attempted an informal resolution with the parties involved, which included the Department of Environmental Health

(DEH) which has responsibility for the management of local cemeteries. The DEH was very responsive and helpful in this matter, but ultimately we could not reach a resolution and a formal investigation was opened.

Two issues were identified for investigation:

- Is there a lack of established, written policies for cemetery works/plot construction?
- Is there a lack of transparent processes and policies regarding cemetery records and maintenance?

The Ombudsman's findings were as follows:

Issue 1: The existing policies governing cemetery works and plot construction lack specifics. They are not backed by enabling legislation or regulations, and the DEH has no enforcement mechanism available if the policies are violated. The public is also unlikely to be aware that they must check with the DEH before undertaking works on cemetery plots.

Issue 2: There is no current legislation governing cemetery maintenance or burials in the Cayman Islands. The process implemented by the DEH for recording purchases of cemetery plots excludes any plots purchased before 1994. There is currently no written policy that sets out a dispute resolution process, either for members of the public or for the DEH internally.

Given these findings, the Ombudsman made the following recommendations:

- As a priority, the Director of DEH should make a concerted effort to have appropriate legislation drafted that governs all aspects of cemetery and burial administration, particularly within the Island of Grand Cayman. The Ombudsman requests that first drafts of such legislation be submitted for our review within 6 months of the date of this letter.
- In the meantime, the Cemetery/Burial Review Committee should support the creation of cemetery maintenance rules to govern burials as part of the ongoing Public Health Act review to include a policy for dispute resolution. Draft rules should be concluded within a time frame of 3 months from the date of the Ombudsman's closing letter (15 June 2023), with periodic updates to the OMB during that timeframe on the progress of the Committee, and at the conclusion of the review.
- The adoption by the relevant authorities of any outstanding recommendations from the 2015 Cemetery/Burial Review Committee report
- The creation of a written policy for the public and DEH administrators to address the process for proving

and acknowledging the purchase of cemetery plots before 1994.

These recommendations will be monitored by our office for completion.

LANDS FOR PUBLIC PURPOSE DISPUTE

Dept of Planning, Lands & Survey Dept

The complainant stated a parcel of land in their family for generations was designated by the Director of Planning as lands for public purpose (LPP) in 2018 without the owners' knowledge. There was a significant delay in reporting this complaint because the complainant stated they were not aware of the designation until they attempted to use the land for a private purpose and were denied permission to do so without first making payments for the use of the land.

There was no dispute that the parcel did belong to the complainant and their family. However, the government clarified that the designation as LPP essentially prevented the family from using the land for private purposes. During our review of this matter, the Office of the Ombudsman (OMB) learned that there are potentially several Caymanians in similar situations with LPP-designated parcels that they are largely unable to use.

The complainant made internal complaints to both the Department of Planning (DoP) and Lands and Survey (L&S) and both entities acknowledged they were looking into the matter. However, responses had been delayed for nearly a month and the OMB decided at that time to attempt an informal resolution of the issue. Responses from both agencies were received within a few weeks, but it was clear from the complainant's response to those statements that an information resolution would not be possible.

Given the informal resolution had failed the OMB notified the parties of a formal investigation. The process involved the review of hundreds of government documents, dating back six decades in some cases, as well as interviews with both L&S and DoP officials, who were all very helpful in explaining the rather complex and long-standing issues that arose. Ultimately, the OMB did find that maladministration had occurred in this matter and that the complainants were not properly informed of the designation of their land as LPP.

The Ombudsman made the following recommendations:

- **The matter of the LPP/POS designation of the property is to be referred to the Central Planning Authority (CPA) or to the Planning Appeals Tribunal, if the latter is deemed to be the more**

appropriate forum, for reconsideration.

- **Appropriate notices for such hearing are to be given to the complainant in this matter, with the right to present arguments, following due process principles.**
- **Given the age of this matter, I would request that the hearing be arranged as soon as possible but no later than by 15th December 2023**

OMB will continue to monitor these recommendations for compliance in the months ahead.

COMPLAINT AGAINST CINICO HEALTHCARE POLICY

Cayman Islands National Insurance Company (CINICO)

The complainant raised two issues in a complaint against the Cayman Islands National Insurance Company (CINICO).

The complainant sought reimbursement after attending the A&E at CI Hospital. The complainant waited in the ER for more than an hour and stated they were never seen and then went to another hospital for care, which was paid out of pocket. The complainant also noted that CINICO policies require the patient to receive a referral to see a private doctor where, in the case of a medical emergency, that is practically impossible to achieve.

This complaint was unusual in that the Ombudsman (OMB) issued a special exemption under section 11(3) of the Complaints (Maladministration) Act to allow the office to investigate a matter which had already been reviewed by an appellate tribunal. It was determined that since the complaint involved an allegation that CINICO's coverage policy itself was unfair and unjust, the OMB could investigate the complaint despite the appeal already having been heard. It was also noted that the matter would move directly to a formal investigation as there was nothing further which could be informally resolved in the complaint.

A formal investigation was opened into the complaint with both CINICO and the Health Services Authority (HSA).

The investigation concluded with a finding that CINICO's healthcare coverage policy had been followed and that, given the nature of the injury in this matter,

there was nothing unreasonable about the delay at the A&E section of the CI hospital. This finding was based on a review of HSA patient care policies, as well as ER practices elsewhere in the Western Hemisphere.

It was noted, however, that civil servants, private sector healthcare providers and the government administration itself had long desired the expansion of CINICO healthcare coverage to a preferred provider network outside the public hospital system. CINICO managers discussed plans to do so which were in place and due to be implemented in the first stage prior to the end of 2023.

As a recommendation in the complaint, the OMB directed staff to monitor the implementation of the network expansion which was announced by government in April 2022.

MALADMINISTRATION	2018	2019	2020	2021	2022	2023
Investigation	20	21	8	4	8	16
Supported	5	7	6	2	8	10
Not supported	14	14	2	0	0	4
Resolved informally	1	0	0	0	0	1
Complaint withdrawn	0	0	0	2	0	1

COMPLAINTS DIVISION

Public Complaints About Police Conduct

This was our sixth year with oversight of public complaints concerning allegations of unsatisfactory conduct of a police officer in the performance of their duty. It remains our goal to improve public confidence in the RCIPS through this external robust and impartial process.

We received 60 new inquiries in 2023, an increase of 18 percent from the previous year. In addition to the 16 complaint cases carried forward from the previous year we received 47 new complaints, a 13 percent increase over the previous year's 41. We resolved 39 cases compared to 33 in 2022.

A total of 15 cases were formally investigated while two (2) were informally resolved. Of the remainder, 13 were refused as non-jurisdictional or were time-barred, and five (5) were abandoned or withdrawn by the complainant.

Additionally, we refused to investigate four (4) complaints because we determined that they were trivial, vexatious, or malicious. We have 32 open cases to carry forward into 2024.

We continue to receive complaints from members of the public who state they are not being provided with a response or adequate updates relating to their criminal complaint investigations. Although this does not amount to a complaint in accordance with the ***Police (Complaints by the Public) Act, 2017*** we have urged the RCIPS Professional Standards Unit (PSU) to improve upon this lack of communication, as it can amount to maladministration. With the appointment of a new Commissioner of Police and new Chief Inspector in the PSU, we will work with the RCIPS to improve in this area which is a leading frustration for the public.

POLICE COMPLAINTS	2018	2019	2020	2021	2022	2023
Inquiries	18	33	52	60	49	60
Complaints carried forward	0	67	24	15	16	24
Complaints received	143	62	57	28	41	47
Complaints resolved	76	105	66	27	33	39
Open complaints	67	24	15	16	24	32

POLICE CONDUCT

Case Summaries | Investigation

MEMBER OF PUBLIC LODGES COMPLAINT THAT POLICE OFFICER DISPLAYED UNPROFESSIONAL CONDUCT

The Office of the Ombudsman (“the OMB”) received a complaint from a member of the public (the complainant) concerning the alleged unprofessional conduct of a member of the RCIPS during the course of an investigation in response to a welfare check initiated by the officer who is attached to the RCIPS Community Policing Unit (CPU).

The complainant states they locked the elderly person whom they care for inside their home to attend church. While praying at the altar the officer entered the church and interrupted them. The complainant further states that they were not pleased with the way in which they were approached by the officer and was concerned about the reputation of the church and the impact the officers’ presence may have on their reputation.

The complainant says the officer should have found another way of communicating with them, instead of visiting the church.

The OMB had to decide, based on a balance of probabilities, whether:

- the police officer’s conduct was aligned with the RCIPS Code of Ethics and Standards of Professional Behaviour.
- Was it necessary and appropriate for the officer to contact the complainant during a church service.

The investigation included gathering statements and interviewing the officer and complainant. This also included a review of the RCIPS Code of Conduct and Standards of Professional Behavior.

During our investigation, we spoke with the officer who refuted that they were unprofessional towards the complainant and provided investigators with some background information leading up to why

there was immediate concern for the welfare of an elderly person and that it was imminent that the complainant be located immediately.

The officer who is attached to the CPU was carrying out their duties as part of their community work when they made a welfare check on an elderly person and received no response. They waited for a period of time to see if someone would return to the premises. During this time, they spoke with a neighbor, who informed them the elderly person who is disabled was often left alone, and their food which is delivered by a community organization was left out in the sun for hours. The neighbor also stated that their caretaker (the complainant) often left them alone for extended periods of time.

The officer returned to the premises and knocked on the window, approximately twenty minutes later they were able to speak with the elderly person who was having difficulty getting to the door due to their disability.

The officer inquired who was caring for them and they stated it was the complainant; however, they did not have a cell phone or contact information to contact them.

The officer contacted the community organization manager who provides the food delivery service and was informed that they had received a similar complaint that the food was being left outside the home for extended periods of time.

The officer conducted inquiries which led them to the complainants' Church. Upon arrival the officer spoke to a security guard who did not know the complainant. The security guard made inquiries in the Church on behalf of the officer and a short while later an unknown person informed the officer that the complainant was finishing at the altar and would come outside soon. The officer said they waited outside for about fifteen minutes and never entered the Church or discussed the matter with anyone.

When the complainant came outside, they informed the officer that they had indeed left the elderly person, locked the door and taken the keys with them. The officer told the complainant they should not lock the elderly person in and leave them alone for extended periods of time. The complainant stated they were attending to the elderly person alone in the absence of the other caregiver and that they could not attend to them around the clock. It was then agreed the complainant would return as soon as possible.

The officer recorded this information in the police report and further made a referral to the Multi Agency Safeguarding Hub (M.A.S.H) so that Social Services were made aware of the incident. The officer also stated that they would continue to make sporadic welfare checks during their patrols.

The OMB concluded from the information obtained by the investigators that this was not an isolated incident, and the officer had every right to be concerned for the safety and welfare of the elderly person.

The officer was unable to obtain a contact number for the complainant; therefore, the only available option was to follow up on the information that the complainant was at Church.

The officer denied entering the Church, as previously reported by the complainant and it was later confirmed by the complainant during their interview that the officer did not.

The OMB found that based on the information obtained and on a balance of probabilities, the officer's conduct in the performance of their lawful duties was not unsatisfactory or fell below the RCIPS Standards of Professional Behaviour.

The complaint was not upheld.

EXCESSIVE USE OF FORCE DURING ARREST

In April 2022, the Office of the Ombudsman ("the OMB") received a complaint from a member of the public (the complainant) concerning the alleged unsatisfactory conduct of a police officer, namely excessive use of force, resulting in injury to the complainant and a failure by the police to obtain evidence to support their allegation.

The incident occurred in May 2021 which means the complaint was not made within six months of the alleged incident as required under s. 4 (4) of the Act; however, this section also provides the OMB with discretion to accept a complaint outside this timeframe. The OMB accepted the complaint out of time due to the alleged serious harm and the gravity of the allegations.

The element of "serious harm" required the OMB to give notice to HE the Governor and the Director of Public Prosecutions (ODPP), pursuant to s. 6 (4) of the Act.

The OMB had to decide, based on a balance of probabilities, whether:

- the police officer used reasonable force in accordance with the law and the RCIPS Code of Ethics and Standards of Professional Behaviour.

- the police officers 'Conduct' was in keeping with the RCIPS Code of Ethics and Standards of Professional Behaviour.

Our investigation included analysis of CCTV, use of an independent CCTV expert, and interviewing witnesses and the police officer. We also reviewed applicable RCIPS policies and Law.

During the investigation we learned that the complainant had escaped lawful custody and was wanted by the police. The complainant was later located and detained but again tried to escape and resist arrest by punching and throwing objects at the officer causing them injuries. The complainant did not deny this; however, when the officer drew their baton, the complainant sat on the ground and presented no further threat. It was alleged by the complainant the officer then struck him over the head with the baton causing a serious injury to the head.

The complainant was arrested and taken to hospital and received several stitches.

During the complainant's police interview they complained about the use of force and requested the CCTV from the location. The CCTV was never collected by the police during their investigation and the

complainant was charged with assaulting the officer. The CCTV was later presented by the complainant at court, and they were released, and the charges dropped.

During an interview with us the officer denied striking the complainant over the head and said that their baton struck a box and not the complainant. The CCTV was sent to an independent expert who analysed the footage, and they deduced *that the final strike of the baton is more likely to have made contact with the subject who is on the floor, than the boxes.*

We also identified an independent witness that was at the scene, and they too corroborated the complainant's account.

When weighing up the accounts of both parties, the independent witness, the CCTV supporting the complainant's allegation, and the conclusions of the CCTV expert. The OMB found the complainant's account to be the most credible and that the use of force while the complaint was at on the ground and posing no further threat to the officer was unnecessary and excessive.

The OMB upheld the complaint and recommended that the Commissioner of Police consider discipline.

Pursuant to s. 7(1)(d) of the Act, the OMB had reasonable grounds to believe that a criminal offence may have been committed by the officer and submitted a copy of this final investigation report to the ODPP.

Other considerations:

The OMB invited the Commissioner of Police to investigate why the CCTV was not seized since it would have been significant in the decision to charge the complainant.

POLICE COMPLAINTS	2018	2019	2020	2021	2022	2023
Assessment/disposition	41	48	33	12	24	22
Non-jurisdictional	8	10	12	2	9	10
Investigation time barred	2	0	1	1	6	3
Investigation refused (s. 3(2)g))	8	8	4	0	5	4
Complaint withdrawn	18	14	6	4	0	1
Complaint abandoned	5	16	10	4	3	4
Other	0	0	0	1	1	0
Informal resolution	18	22	16	11	3	2

POLICE CONDUCT

Case Summaries | Own Motion

MEDIA RELEASE THAT ARMED POLICE USED EXCESSIVE FORCE ON UNARMED MEMBER OF THE PUBLIC

The Office of the Ombudsman (“the OMB”) received a complaint from a member of the public (the complainant) concerning the alleged unsatisfactory conduct of members of the RCIPS Firearm Response Unit (FRU), namely excessive use of force, resulting in injury to the complainant’s shoulder and the police detaining them unlawfully.

The OMB had to decide, based on a balance of probabilities, whether:

- the police officers had lawful authority to detain and search the complainant.
- the police officers used reasonable force in accordance with the law and the RCIPS Code of Ethics and Standards of Professional Behaviour

The investigation included analysis of police information, intelligence, police body worn cameras footage, collating statements, and interviewing police officers. This also included a review of applicable RCIPS policies and Law.

The OMB learned that the RCIPS had received information that the complainant was in possession of an illegal firearm. Officers from the FRU were spontaneously deployed to the location where they set up a cordon to detain the complainant in the safest possible way to ensure the safety of the public.

The complainant was identified by the police wearing the clothing that supported the information they had received. When the complainant left the restaurant, officers moved towards them to detain them for the purpose of a search in accordance with Section 18 (12) of the Firearms Act, which states:

“If a constable has reasonable cause to suspect any person of having a firearm or bullet-proof vest with him in a public place or to be committing or about to commit an offence under the foregoing provisions of this part, he may search that person and detain him for the purpose of searching him.”

The OMB was satisfied that the officers’ reasons were justified given the information that the complainant was believed to be in possession of a firearm.

Analysis of the police body worn camera footage clearly showed the complainant repeatedly ignored the officers’ commands. One officer could be heard shouting as he advanced toward the complainant, “Police, don’t move, hands up”. He repeats the instructions several times and said, “Don’t move, don’t move”. The officer delivered further verbal instructions, “Hands up now, don’t move, get down, get down now”. The complainant could be seen to move their hands from above the head to their waist. Another officer grabbed the complainant and took them to the floor where they were searched, and then handcuffed.

Section 153 of the Police Act authorizes a police officer to use as much force as is reasonably necessary to effect an arrest.

In assessing the reasonableness of the force used the OMB was satisfied that the

officers’ reasons were justified given the information that the complainant was believed to be in possession of a firearm in a public place. Furthermore, the complainant was known to the police and repeatedly refused to follow their commands to keep their hands up and get on the ground. The RCIPS received credible information that the complainant was in possession of an illegal firearm and the police have a duty of care to ensure the safety of the public.

The OMB found that officers had an honest held belief that the complainant was lowering their hands and may be armed; therefore, it was determined that the force used was reasonable and proportionate under the circumstances.

The complaint was not upheld.

Other considerations

During the investigation the OMB requested a copy of the Stop and Search form relating to the complainant. The OMB was informed that one was not completed. A recommendation was made that all officers were to be reminded of their duty to make a record concerning searches, and the complainant’s entitlement to a copy of the search record in accordance with 43 of the Police Act (2021 Revision). This recommendation was accepted by the Commissioner of Police and implemented.

K9 BARON

On Saturday 9 July 2022 at 7:45 p.m., the Royal Cayman Islands Police Service (RCIPS) notified the The Office of the Ombudsman (“the OMB”) that Police Dog Baron (K9 Baron) had died in his kennel at George Town Police Station (GTPS) after a police dog handler had failed to open the shaded part of the dog Kennel leaving K9 Baron outside and exposed to the elements.

After assessing the circumstances and the preliminary reports provided by the police, the OMB commenced an ‘own motion’ investigation on 12 July 2022. The investigation was initiated pursuant to section 3(c) of the Act which permits the Ombudsman *to deal with any other matter whether or not it is the subject of a complaint provided the Ombudsman is of the opinion that it should be investigated because of its gravity or its exceptional circumstances or because it is in the public interest.*

An initial severity assessment had to consider that the officer may have committed an offence pursuant to The Animal Act. The OMB is not a prosecuting agency; therefore, a decision was made that the Department of Agriculture (DOA) would be the most suitable investigatory body to conduct an independent investigation with our oversight, along with our own parallel investigation into the ‘Conduct’ of the police officer.

Our office can provide oversight, pursuant to s. 3 (d) of the Law – *to keep under review any investigation undertaken by the Unit (PSU), an investigatory body or a person authorised by the Unit or the Ombudsman under this Law.*

As part of our review, the OMB conducted an early inspection of the kennels along with the DOA and identified several areas needing immediate attention. These included:

- The need for a permanent roof outside the kennels, which are located outside in the back of the police station property.
- The need to clean debris from unused kennels and the removal of chemical cleaning supplies from the kennel area
- The need to provide an enrichment area for the police dogs to exercise.
- The creation of a welfare and observation log for each RCIPS dog handler
- The need for air conditioning maintenance at the kennels to be conducted on a regular basis.
- The need to clear debris outside the kennels to prevent rats from entering the area and potentially biting the dogs.

Based on these findings, the OMB made recommendations to the RCIPS, and periodic inspections of the kennels were conducted. All the above recommendations have been implemented.

A file was submitted to the Director of Public Prosecutions (ODPP) on 13

September 2022 and the trial was concluded in December 2023. The OMB will not be substantively commenting on her own findings until the completion of any action taken by the Cayman Islands Court.

The verdict is due in February 2024.

POLICE COMPLAINTS	2018	2019	2020	2021	2022	2023
Investigation	17	35	17	4	6	15
Supported	7	10	3	1	2	4
Not supported	10	18	11	1	3	8
Complaint withdrawn	0	7	1	0	0	0
Complaint abandoned	0	0	1	1	1	2
Other	0	0	1	1	0	1

COMPLAINTS DIVISION

Whistleblower Protection

The number of complaints and inquiries made under the *Whistleblower Protection Act (WPA)* also increased during 2023. While the overall number remains small, and there are still outstanding issues with the legislation that the Ombudsman is addressing with the Parliamentary Oversight Committee, our office has reported the findings and recommendations from various whistleblower investigations for the first time publicly in this year's annual report.

There is some circumspection required in the public reporting of these matters, as our office maintains strict confidentiality for whistleblowers and takes all reasonable steps to protect their identity. Still, we feel the need to report some of our work in this area to help better educate the public on matters which may come before the Ombudsman.

We have found that there is a general misunderstanding around whistleblower complaints. Section 5 of the WPA clearly states that these complaints must be made in the public interest, not in the whistleblower's own personal interests in the case of a personal injury or workplace maltreatment claim. The requirement for a disclosure to be made in the public interest

is there to prevent employees from making disclosures purely in their own self-interest or using the Act to bring employment disputes to the Ombudsman.

Also, the Act states that improper conduct is what must be reported to the Ombudsman. Improper conduct is defined in section 2 of the Act as follows:

Section 2 – Improper conduct means

- (a) a criminal offence which has been committed, is being committed or is likely to be committed;*
- (b) a failure to carry out a legal obligation;*
- (c) conduct that has resulted, is resulting or is likely to result in a miscarriage of justice; (d) conduct which is or is likely to be a detrimental action;*
- (d) conduct that has resulted, is resulting or is likely to result, in a violation of the human rights set out in the Constitution of the Islands;*
- (e) conduct that has resulted, is resulting or is likely result, in a*

- threat to the health or safety of a person or of the public;*
- (f) conduct that has resulted, is resulting or is likely to result, in a threat or damage to the environment;*
- (g) conduct that shows gross mismanagement, impropriety or misconduct in the carrying out of*

any activity that involves the use of public funds; or (i) wilful concealment of any act described in paragraphs (a) to (h);

Finally, it is also important to highlight that an employee will not be protected under the WPA if they disclose information that is legally privileged, steal in order to obtain such information, or disclose a matter that is not in the public interest.

WHISTLEBLOWER PROTECTION	2018	2019	2020	2021	2022	2023
Inquiries	1	2	6	4	2	3
Disclosures carried forward	0	1	0	2	3	3
Disclosures received	5	4	4	2	3	6
Disclosures resolved	4	5	2	1	3	6
Open disclosures	1	0	2	3	3	3

WHISTLEBLOWER PROTECTION

Case Summaries | Investigation

WHISTLEBLOWER PROTECTION ACT COMPLAINT REFERRED

Utility Regulation and Competition Office (OfReg)

In October 2018, the Office of the Ombudsman received a disclosure under the (then) Whistleblower Protection Law, relating to certain actions of the then-Chair of the board of directors of the Utility Regulation and Competition Office (“OfReg”), which alleged improper conduct.

The subsequent investigation by the Ombudsman found that eight of the nine separate allegations made did not rise to the level of improper conduct. The ninth allegation made was separated into three distinct claims. In two of those claims, no improper conduct was found, in one of them, improper conduct was determined to have occurred.

While the Ombudsman found that the majority of the allegations made did not meet the threshold for improper conduct as defined under the then-Whistleblower Protection Act, the investigation did reveal broader administrative concerns with the operations of OfReg as it then existed.

Following investigation, the Ombudsman made the following recommendations:

1. The Board engage a consultant to assist with a self-assessment of the Board’s operations and a performance appraisal. This process should encompass and address, in particular:
 - a. The novel challenges presented by the structure of the Board, and the inclusion on the Board of executive members reflecting the various regulated sectors and who are also employees of the statutory authority;
 - b. The formation of defined roles and responsibilities and associated policies to improve structural organisation; and
 - c. An evaluation of the Board’s current competencies and the training required to address any deficiencies identified.
2. The Board develop and implement a comprehensive Board Charter as per Part 3 of the Cayman Public Sector Governance Handbook and Governance Policies. It is understood

that many of the responsibilities of the Board and the CEO are covered in the (former) Public Authorities Law and the (former) Utility Regulation and Competition Law. However, supplemental and more comprehensive direction via a Board Charter would promote clarity, understanding and confidence and would reduce ambiguity and mistakes.

Specific benefits of establishing a Board Charter could include:

- a. Establishing a Mission, Vision and Values – the statement which defines the principles and sets the culture for the organization;
- b. Defining the roles and function of the Board, identifying duties and responsibilities of members, stipulating the conduct and frequency of meetings and regulating how the Board's performance should be assessed;
- c. Clarifying the Board's overall responsibilities and the interface with the operational authorities and expectations of the CEO; and 22
- d. Articulating clear expectations in respect of communications both internally and externally.

3. Enhanced Board Governance Policies should be implemented. Although there were some policies provided in a draft format concerning how Board meetings were to be managed and minutes were to be prepared, these policies were not comprehensive and did not cover many critical areas. Board Governance Policies should include, for example:

- a. Code of Conduct, which establishes the standards expected of Board members in accordance with Schedule 2 to the Standards in Public Life Law, 2014 and the actions that should be taken in the event that a member does not comply with these standards;
- b. Code of Ethics, which governs decision-making in accordance with key moral principles such as honesty, fairness, equality, dignity and individual rights;
- c. Policy relating to conflicts of interest and how these should be addressed to supplement the provisions in section 17 of the (former) Public Authorities Law; and
- d. Complaints Policy encompassing a process for dealing with both internal and external complaints

All recommendations have now been followed and/or adopted to the extent that OfReg is able and file has been closed.

MONITORING OF ACCESS TO CBC DATABASE

Customs and Border Control (CBC)

The Office of the Ombudsman (Ombudsman) received a Confidential Whistleblower complaint, which provided notification that the Cayman Islands Customs and Border Control (CBC) appears not to monitor if/when its officers and other public officials access CBC's computerised records management system. These systems contain commercially sensitive information about private businesses and a significant amount of personal information supplied by various users.

The Ombudsman investigated this complaint under the authority granted by section 30 of the Whistleblower Protection Law, 2015.

Based on our findings, it appears the CBC is not currently able to log or audit any user's query "footprint"; the user's access to its

computerised record-keeping system is not obvious. The system has the ability to add an audit log function. However, such a function has to be developed for a cost. The Ombudsman has recommended that CBC implement such functionality as soon as possible, if it is not considered impractical in terms of budget constraints, and should then develop a policy and procedure around how it periodically tracks or audits user queries in that system.

Issues identified in our report present significant risks to the CBC as long as they continue. Those risks include potential violation of the Data Protection Act, 2021 Revision (DPA) if unauthorised users access personal information for unintended purposes or in the event CBC does not have appropriate organisational or technical measures in place to protect any personal data that is contained in its IT systems.

The CBC responded to five recommendations made by the Ombudsman as a result of this investigation. Four recommendation responses are currently in progress and CBC has requested additional information from the Ombudsman on the fifth. Our office will continue to monitor CBC's progress on this throughout 2023.

WHISTLEBLOWER PROTECTION ACT COMPLAINT REFERRED Private company

A whistleblower complaint was made to the Office of the Ombudsman (OMB) against a private company in the Cayman Islands.

Following a review of the complaint, which included a protected disclosure made by the complainant, the OMB referred the matter to other agencies to investigate as is required by the Whistleblower Protection Act (WPA). The investigation was closed pending the outcome of the other investigations.

WHISTLEBLOWER PROTECTION	2018	2019	2020	2021	2022	2023
Assessment/disposition	4	3	2	1	3	4
Referred to another agency	1	1	0	0	0	0
Non-jurisdictional	3	2	2	1	3	4
Early resolution	0	0	0	0	0	0
Supported	0	0	0	0	0	0
Not supported	0	0	0	0	0	0
Investigation	0	2	0	0	0	2
Supported	0	1	0	0	0	1
Not supported	0	1	0	0	0	0
Referred to Another Agency	0	0	0	0	0	1

FINANCIAL INFORMATION

Budget

As in the previous year, each quarter of 2023 ended under budget and for the same reasons, namely, decreased salary and benefit payouts due to the number of staff

vacancies. This had knock on effects on some operational items including on office consumables so we ended 2023 with a surplus of just under CI\$200,000.00.

GOVERNMENT OF THE CAYMAN ISLANDS

OFFICE OF THE OMBUDSMAN

AUDITED FINANCIAL STATEMENTS

FOR THE YEAR ENDED 31 DECEMBER 2023

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STATEMENT OF RESPONSIBILITY FOR THE FINANCIAL STATEMENTS

These financial statements have been prepared by the Office of the Ombudsman in accordance with the provisions of the *Public Management and Finance Act (2020 Revision)*.

We accept responsibility for the accuracy and integrity of the financial information in these financial statements and their compliance with the *Public Management and Finance Act (2020 Revision)*.

As Ombudsman I am responsible for establishing; and have established and maintained a system of internal controls designed to provide reasonable assurance that the transactions recorded in the financial statements are authorised by Act, and properly record the financial transactions of the Office of the Ombudsman.

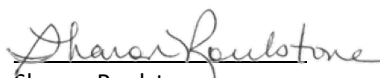
As Ombudsman and Chief Financial Officer, we are responsible for the preparation of the Office of the Ombudsman financial statements, representation and judgments made in these statements.

The financial statements fairly present the financial position, financial performance and cash flows for the financial year ended 31 December 2023.

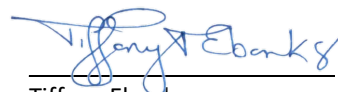
To the best of our knowledge we represent that these financial statements:

- (a) Completely and reliably reflect the financial transactions of Office of Ombudsman for the year ended 31 December 2023;
- (b) fairly reflect the financial position as at 31 December 2023 and performance for the year ended 31 December 2023;
- (c) comply with International Public Sector Accounting Standards as set out by International Public Sector Accounting Standards Board under the responsibility of the International Federation of Accountants. Where additional guidance is required, International Financial Reporting Standards (IFRS) issued by the International Accounting Standards Board are used.

The Office of the Auditor General conducts an independent audit and expresses an opinion on the accompanying financial statements. The Office of the Auditor General has been provided access to all the information necessary to conduct an audit in accordance with International Standards on Auditing.


Sharon Roulstone
Ombudsman

Date: 10 April 2024


Tiffany Ebanks
Chief Financial Officer

Date: 10 April 2024

AUDITOR GENERAL'S REPORT

To the Members of the Parliament and the Financial Secretary and Chief Officer of the Office of the Ombudsman

Opinion

I have audited the financial statements of the Office of the Ombudsman, which comprise the statement of financial position as at 31 December 2023 and the statement of financial performance, statement of changes in net assets/equity and statement of cash flows for the year ended 31 December 2023, and notes to the financial statements, including a summary of significant accounting policies as set out on pages 9 to 27.

In my opinion, the accompanying financial statements present fairly, in all material respects, the financial position of the Office of the Ombudsman as at 31 December 2023 and its financial performance and its cash flows for the year ended 31 December 2023 in accordance with International Public Sector Accounting Standards.

Basis for Opinion

I conducted my audit in accordance with International Standards on Auditing (ISAs). My responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of my report. I am independent of the Office of the Ombudsman in accordance with the International Standards Board for Accountants' *Code of Ethics for Professional Accountants (IESBA Code)*, together with the ethical requirements that are relevant to my audit of the financial statements in the Cayman Islands, and I have fulfilled my other ethical responsibilities in accordance with these requirements and the IESBA Code. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

Responsibilities of Management and Those Charged with Governance for the Financial Statements

Management is responsible for the preparation of the financial statements in accordance with International Public Sector Accounting Standards and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is responsible for assessing the Office of the Ombudsman's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless management either intends to liquidate the Office of the Ombudsman or to cease operations, or has no realistic alternative but to do so. Those charged with governance are responsible for overseeing the Office of the Ombudsman's financial reporting process.

Auditor's Responsibilities for the Audit of the Financial Statements

My objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with ISAs will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

AUDITOR GENERAL'S REPORT (continued)

As part of an audit in accordance with ISAs, I exercise professional judgment and maintain professional skepticism throughout the audit. I also:

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Office of the Ombudsman's internal control.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by management.
- Conclude on the appropriateness of management's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Office of the Ombudsman's ability to continue as a going concern. If I conclude that a material uncertainty exists, I am required to draw attention in my auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify my opinion. My conclusions are based on the audit evidence obtained up to the date of my auditor's report. However, future events or conditions may cause the Office of the Ombudsman to cease to continue as a going concern.
- Evaluate the overall presentation, structure and content of the financial statements, including disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

I have undertaken the audit in accordance with the provisions of section 60(1)(a) of the Public Management and Finance Act (2020 revision). I communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that I identify during my audit.



Sue Winspear, CPFA
Auditor General

10 April 2024
Cayman Islands

OFFICE OF THE OMBUDSMAN
STATEMENT OF FINANCIAL POSITION
AS AT 31 DECEMBER 2023
(Expressed in Cayman Islands Dollars)

Prior Year Actual		Notes	Current Year Actual CI\$000	Approved Budget CI\$000	Variance (Budget vs Actual) CI\$000
CI\$000					
Current Assets					
715	Cash and cash equivalents	2,15	580	638	58
35	Trade receivables	3,15,16	416	208	(208)
5	Other receivables	3	5	-	(5)
16	Prepayments	15	47	28	(19)
771	Total Current Assets		1,048	874	(174)
Non-Current Assets					
152	Property and equipment	4,15	79	92	13
1	Intangible assets	5	-	1	1
153	Total Non-Current Assets		79	93	14
924	Total Assets		1,127	967	(160)
Current Liabilities					
42	Accruals and other liabilities	6,15,16	73	35	(38)
21	Employee entitlements	7,15	3	27	24
-	Surplus payable	8,15,16	190	-	(190)
63	Total Current Liabilities		266	62	(204)
63	Total Liabilities		266	62	(204)
861	Net Assets		861	905	44
Equity					
861	Contributed capital	15	861	905	44
861	Total Equity		861	905	44

The accounting policies and notes on pages 9 -27 form part of these financial statements.

OFFICE OF THE OMBUDSMAN
STATEMENT OF FINANCIAL PERFORMANCE
FOR THE YEAR ENDED 31 DECEMBER 2023
(Expressed in Cayman Islands Dollars)

Prior Year Actual		Notes	Current Year Actual	Approved Budget	Variance (Budget vs Actual)
CI\$000			CI\$000	CI\$000	CI\$000
Revenue					
1,898	Sales of goods & services	9,15,16	2,290	2,498	208
1,898	Total Revenue		2,290	2,498	208
Expenses					
1,407	Personnel costs	10,15	1,607	1,862	255
195	Supplies and consumables	11,15	240	336	96
108	Leases	12,14	118	112	(6)
71	Litigation Cost	15	61	96	35
117	Depreciation and amortization	4,5,15	74	92	18
1,898	Total Expenses		2,100	2,498	398
-	Surplus for the year		190	-	(190)

The accounting policies and notes on pages 9 -27 form part of these financial statements.

OFFICE OF THE OMBUDSMAN
STATEMENT OF CHANGES IN NET ASSETS/EQUITY
FOR THE YEAR 31 DECEMBER 2023
(Expressed in Cayman Islands Dollars)

	Contributed Capital	Accumulated Surplus/(deficit)	Total Net Assets/Equity	Approved Budget	Variance (Budget vs. Actual)
	CI\$000	CI\$000	CI\$000	CI\$000	CI\$000
Balance at 1 January 2022	860	-	860	855	(5)
Equity Injection from Cabinet	1	-	1	25	24
Surplus for the year	-	-	-	-	-
Surplus repayable due for the year 2022	-	-	-	-	-
Balance at 31 December 2022	861	-	861	880	19
Balance at 1 January 2023	861	-	861	880	19
Equity Injection from Cabinet	-	-	-	25	25
Surplus for the year	-	190	190	-	(190)
Surplus repayable due for the year 2023	-	(190)	(190)	-	190
Balance at 31 December 2023	861	-	861	905	44

The accounting policies and notes on pages 9-27 form an integral part of the financial statements.

OFFICE OF THE OMBUDSMAN
STATEMENT OF CASH FLOWS
FOR THE YEAR ENDED 31 DECEMBER 2023
(Expressed in Cayman Islands Dollars)

Prior Year Actual		Notes	Current Year Actual CI \$'000	Approved Budget CI \$'000	Variance (Budget vs. Actual) CI \$'000
CI \$'000					
	Cash flows managed on behalf of Cabinet				
	Operating Activities:				
	Cash received				
2,048	Sales to Cabinet		1,909	2,498	589
2,048	Total Cash Received		1,909	2,498	589
	Cash used				
(1,409)	Personnel costs		(1,625)	(1,862)	(237)
(238)	Supplies and consumables		(301)	(545)	(244)
(108)	Lease Payments		(118)	-	118
293	Net cash flows from (used in) operating activities	13	(135)	91	226
	Investing Activities:				
	Cash Used				
(1)	Purchase of property and equipment	4,5	-	(25)	(25)
(1)	Net cash flows used in investing activities		-	(25)	(25)
	Financing activities:				
	Cash received/(used)				
1	Equity injections from Cabinet		-	25	25
(221)	Payment of surplus		-	-	-
(220)	Net cash flows from (used in) financing activities		-	25	25
72	Net increase/(decrease) in cash and cash equivalents held		(135)	91	226
643	Cash and cash equivalents at beginning of year		715	547	(168)
715	Cash and cash equivalents at the end of the year		580	638	58

The accounting policies and notes on pages 9-27 form an integral part of the financial statements.

**OFFICE OF THE OMBUDSMAN
NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 31 DECEMBER 2023
(Expressed in Cayman Islands Dollars)**

Description and principal activities

The Office of the Ombudsman (the “Entity”) was established on 13 September 2017 by the Ombudsman Act, 2017 as an independent entity responsible for:

- monitoring compliance with the Freedom of Information Act (2021 Revision) by public authorities
- investigating complaints of government maladministration pursuant to the Complaints (Maladministration) Act (2018 Revision)
- public complaints against the police in accordance with the Police (Complaints by the Public) Act, 2017
- receiving and investigation disclosures of improper conduct and detrimental actions under the Whistleblower Protection Act, 2015
- regulating data protection pursuant to the Data Protection Act (2021 Revision)

The Entity is an independent office of the Legislature and reports to an Oversight Committee of the Parliament for the purpose of establishing a budget and accounting for expenditures.

As at 31 December 2023, the Entity had 13 employees (2022: 13). The Entity is located on the 5th Floor of the Anderson Square Building, George Town Grand Cayman, Cayman Islands.

Note 1: Significant accounting policies

These financial statements have been prepared in accordance with International Public Sector Accounting Standards (“IPSAS”) issued by the International Federation of Accountants and its International Public Sector Accounting Standards Board using the accrual basis of accounting. Where additional guidance is required, International Financial Reporting Standards (“IFRS”) issued by the International Accounting Standards Board are used.

The accounting policies set out below have been applied consistently to all periods presented in these financial statements. There have been no significant changes to the accounting policies during the year ended 31 December 2023 other than the assessment of loss allowance on financial instruments which is now based on expected credit losses.

New accounting standards issued and applicable are set out below.

The Entity has adopted IPSAS 41: Financial Instruments as of the transition date of 1 January 2023, replacing IPSAS 29: Financial Instruments: Recognition and Measurement.

In accordance with the transitional provisions in IPSAS 41, comparative information for the 31 December 2022 period has not been restated. Adjustments arising from adopting IPSAS 41 are recognised in opening equity at 1 January 2023 (the date of initial application).

**OFFICE OF THE OMBUDSMAN
NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)
FOR THE YEAR ENDED 31 DECEMBER 2023
(Expressed in Cayman Islands Dollars)**

Note 1: Significant accounting policies (continued)

The accounting policies for the year ended 31 December 2023 have been updated to comply with IPSAS 41. The main changes to the Entity's accounting policies are:

- Trade and other receivables - This policy has been updated to reflect that the impairment of receivables are now determined by applying an expected credit loss model.
- Financial instruments and risk management - The policy has been updated to reflect:
 - the new measurement classification categories; and
 - a new impairment model for financial assets based on expected credit losses, which is forward-looking and may result in earlier recognition of impairment losses.

IPSAS 41 also significantly amended the disclosures of financial instruments of IPSAS 30. This has resulted in new or amended disclosures, mostly in relation to the financial instrument categories and to credit risk.

The tables below outline the classification of financial assets and liabilities under IPSAS 41 and IPSAS 29 on the date of initial application of IPSAS 41.

Measurement classification		
Financial assets	IPSAS 29	IPSAS 41
Cash and cash equivalents	Loans & Receivables	Amortised cost
Term Deposits	Loans & Receivables	Amortised cost
Trade and other receivables	Loans & Receivables	Amortised cost
Financial Liabilities	IPSAS 29	IPSAS 41
Accounts Payable	Amortised Cost	Amortised Cost

IPSAS 41 has had an immaterial impact on the Entity's measurement and recognition of financial instruments, as financial assets that were recognised as loans and receivables are now recognised as amortised cost.

IPSAS 42, Social Benefits (effective for period beginning on or after January 1, 2023) defines social benefits and determines when expenses and liabilities for social benefits are recognized and how they are measured. During the financial year it was assessed that IPSAS 42, Social Benefits doesn't have any significant impact on the Entity's financial statements.

New and revised accounting standards issued that are not yet effective for the financial year beginning 1 January 2023 have not been early adopted by the Entity.

Certain new accounting standards have been published that are not mandatory for the 31 December 2023 reporting year and have not been early adopted by the Entity. The Entity's assessment of the impact of these new standards are set out below.

IPSAS 43, Leases was issued in January 2022 and shall be applied for financial statements covering periods beginning on or after 1 January 2025. IPSAS 43 sets out the principles for the recognition, measurement, presentation and disclosure of leases. The impact on the Entity's financial statements will be assessed closer to the effective date of adoption.

**OFFICE OF THE OMBUDSMAN
NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)
FOR THE YEAR ENDED 31 DECEMBER 2023
(Expressed in Cayman Islands Dollars)**

Note 1: Significant accounting policies (continued)

IPSAS 44, Non-Current Assets Held for Sale and Discontinued Operations (effective for periods beginning on or after January 1, 2025,) specifies the accounting for assets held for sale and the presentation and disclosure of discontinued operations. The impact will be assessed fully, closer to the effective date of adoption.

IPSAS 45, Property, Plant, And Equipment (effective for periods beginning on or after January 1, 2025) replaces IPSAS 17, Property, Plant, and Equipment by adding current operational value as a measurement basis in the updated current value model for assets within its scope, identifying the characteristics of heritage and infrastructure assets, and adding new guidance on how these important types of public sector assets should be recognized and measured. The impact on the Entity's financial statements will be assessed closer to the effective date of adoption.

IPSAS 46, Measurement (effective for periods beginning on or after January 1, 2025) provides new guidance in a single standard addressing how commonly used measurement bases should be applied in practice. The impact on the Entity's financial statements will be assessed closer to the effective date of adoption.

IPSAS 47, Revenue (effective for periods beginning on or after January 1, 2026) replaces IPSAS 9, Revenue from Exchange Transactions, IPSAS 11, Construction Contracts, and IPSAS 23, Revenue from Non-Exchange Transactions and is a single source for revenue accounting guidance in the public sector, which presents two accounting models based on the existence of a binding arrangement. The impact on the Entity's financial statements will be assessed closer to the effective date of adoption.

IPSAS 48, Transfer Expenses (effective for periods beginning on or after January 1, 2026) provides accounting requirements for transfer expenses, and presents two accounting models based on the existence of a binding arrangement. The impact on the Entity's financial statements will be assessed closer to the effective date of adoption.

IPSAS 49, Retirement Benefit Plans (effective for periods beginning on or after January 1, 2026) establishes comprehensive accounting and reporting requirements for the financial statements of retirement benefit plans, with participants comprising current and former public sector employees and other eligible members. The new pronouncement will bring increased transparency and accountability to these public sector entities, ensuring they can fulfill their obligations to employees and other eligible participants who are members of the retirement benefit plan. It is anticipated that IPSAS 49 will not have an impact on the Entity's financial statements.

(a) Basis of preparation

These financial statements have been prepared on a going concern basis. The financial statements are presented in Cayman Islands dollars and the measurement base applied to these financial statements is the historical cost basis.

(b) Reporting period

The current reporting period is for the 12 months commencing 1 January 2023 and ending 31 December 2023.

**OFFICE OF THE OMBUDSMAN
NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)
FOR THE YEAR ENDED 31 DECEMBER 2023
(Expressed in Cayman Islands Dollars)**

Note 1: Significant accounting policies (continued)

(c) Budget amounts and budget period

The 2023 budget amounts were prepared using the accrual basis of accounting and the accounting policies have been consistently applied with the actual financial statement presentation. The 2023 budget was presented in the 2022-2023 Budget Statement of the Government of the Cayman Islands and approved by the Parliament on 8 December 2021.

The appropriations presented in a Budget Statement covers a budget period of two financial years. The 2022-2023 Budget Statement covers the two financial years commencing 1 January 2022 to 31 December 2023. The 2022-2023 appropriations lapse at the end of the budget period ending 31 December 2023.

(d) Judgments and estimates

The preparation of financial statements in accordance with IPSAS requires judgments, estimates, and assumptions affecting the application of policies and reported amounts of assets and liabilities, revenue and expenses. The estimates and associated assumptions are based on historical experience and various other factors that are believed to be reasonable under the circumstances. The account balances that require judgement are receivables from exchange transactions, property and equipment and accruals and other liabilities. Actual results may differ from these estimates.

The estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognised in the reporting period and in any future periods that are affected by those revisions.

As at 31 December 2023, no reliable fair value estimate of contributed goods and services provided to Office of the Ombudsman by government entities could be made and therefore no estimate of amounts are recorded in these financial statements.

(e) Revenue

Revenue is recognised in the accounting period in which it is earned. Revenue received but not yet earned at the end of the reporting period is deferred as a liability. The Office of the Ombudsman derives its revenue through the provision of services to Cabinet, to other agencies in government and to third parties. Revenue derived from third parties in 2023 were nil (2022: nil). Revenue is recognised at the agreed value of services provided as set out in the published budget statements.

(f) Expenses

Expenses are recognised when incurred on the accrual basis of accounting. In addition, an expense is recognized for the consumption of the estimated fair value of contributed goods and services received, where an estimate can realistically be made.

(g) Operating leases

Leases, where a significant portion of the risks and rewards of ownership are retained by the lessor, are classified as operating leases. Payments made under operating leases are recognised as expenses on a straight-line basis over the lease term.

**OFFICE OF THE OMBUDSMAN
NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)
FOR THE YEAR ENDED 31 DECEMBER 2023
(Expressed in Cayman Islands Dollars)**

Note 1: Significant accounting policies (continued)

(h) Cash and cash equivalents

Cash and cash equivalents include cash on hand, cash in-transit and bank accounts with a maturity of no more than three months from the date of acquisition which are subject to an insignificant risk of changes in value. Although cash and cash equivalents at 31 December 2023 are subject to the expected credit loss requirements of IPSAS 41, no allowance has been recognised as the estimated allowance is negligible due to the high credit quality of the counterparty banks.

(i) Trade Receivables

Trade receivables are amounts due from customers for items sold or services performed in the ordinary course of business. Trade receivables and other receivables comprise of balances due from other Government entities, including Output Receivables and balances due from third parties.

(j) Prepayments

The portion of amounts paid for goods and services in advance of receiving such goods and services are recognised as a prepayment.

(k) Property and equipment

Property and equipment is stated at historical cost less accumulated depreciation. Items of property and equipment are initially recorded at cost. Where an asset is acquired for nil or nominal consideration, the asset is recognized initially at fair value, where fair value can be reliably determined, and as revenue in the statement of financial performance in the year in which the asset is acquired.

Depreciation is expensed on a straight-line basis at rates calculated to allocate the cost or valuation of an item of property and equipment; less any estimated residual value, over its estimated useful life. Leasehold improvements are depreciated either over the unexpired period of the lease or the estimated useful lives of the improvements, whichever is shorter.

Asset Type

Estimated Useful life

• Computer hardware and software	3 – 5 years
• Office equipment and furniture	3 – 10 years
• Other equipment	5 – 10 years
• Leasehold improvements	5 years – over the term of lease

The assets residual values and useful lives are reviewed, and adjusted if appropriate, at year end. Assets that are subject to depreciation are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount may not be recoverable. An asset's carrying amount is written down immediately to its recoverable amount if the asset's carrying amount is greater than its estimated recoverable amount. The recoverable amount is the higher of the asset's fair value less costs to sell and its value for use in service.

Disposals

Gains and losses on disposal of property and equipment are determined by comparing the sale proceeds with the carrying amount of the asset on disposal. Gains and losses on disposals during the year are included in the statement of financial performance.

**OFFICE OF THE OMBUDSMAN
NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)
FOR THE YEAR ENDED 31 DECEMBER 2023
(Expressed in Cayman Islands Dollars)**

Note 1: Significant accounting policies (continued)

(l) Employee benefits

Employee entitlements to salaries and wages, annual leave, long service leave, retiring leave and other similar benefits are recognised in the statement of financial performance when they are earned by employees. Employee entitlements to be settled within one year following the year-end are reported as current liabilities at the amount expected to be paid.

Pension contributions for employees of the Office of the Ombudsman are paid to the Public Service Pension Fund and administered by the Public Service Pension Board (the "Board"). Contributions of 12% on basic salary - employer 6% and employee 6% - are made to the Fund by the Office of the Ombudsman. Contributions of 12% on acting, duty allowances – employer 6% and employee 6% - are made to the Fund by the Office of the Ombudsman.

Prior to 1 January 2000, the Board operated a defined benefit scheme. With effect from 1 January 2000 the Board continued to operate a defined benefit scheme for existing defined benefit employees and a defined contribution scheme for all new employees.

All eligible employees for the defined contribution plan are included in these financial statements. Any employees belonging to the defined benefit plan are recognised at the entire Public Sector level as an Executive liability managed by the Ministry of Finance and accordingly not recognised in these financial statements. IPSAS 39, Employee Benefits, has no impact on these financial statements.

(m) Financial instruments

Financial assets and financial liabilities are recognised in the Entity's statement of financial position when the Entity becomes a party to the contractual provisions of the instrument.

Initial Recognition

Financial assets and liabilities are initially measured at fair value. On initial recognition, transaction costs directly attributable to the acquisition or issue of financial liabilities are added to or deducted from the fair value of the financial assets or financial liabilities, as appropriate.

Subsequent measurement and classification

IPSAS 41 requires financial assets to be subsequently measured at fair value through surplus or deficit (FVTSD), amortised cost, or fair value through other comprehensive revenue and expense (FVTOCRE). Additionally, IPSAS 41 requires financial liabilities to be measured at either amortised cost or FVTSD.

This classification is based on the business model for managing financial instruments, and whether the payments are for solely payments of principal or interest on the principal amount outstanding. The Entity assessed the business model for holding financial assets at the date of initial application. It determined that all of these are held to collect contractual cash flows that are solely payments of principal and interest. Therefore, financial assets are subsequently measured at amortised cost. Financial liabilities are subsequently measured at amortised cost.

Cash and cash equivalents, trade receivables and payables are recorded at amortised cost using the effective interest method less any impairment.

Derecognition

Financial assets are derecognised when the rights to receive cash flows have expired or have been transferred and the Entity has transferred substantially all risks and rewards of ownership. A financial liability is derecognised when it is extinguished, that is when the obligation is discharged, cancelled, or expires.

**OFFICE OF THE OMBUDSMAN
NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)
FOR THE YEAR ENDED 31 DECEMBER 2023
(Expressed in Cayman Islands Dollars)**

Note 1: Significant accounting policies (continued)

(n) Provisions and contingencies

Provisions are recognised when an obligation (legal or constructive) is incurred as a result of a past event and where it is probable that an outflow of assets embodying economic benefits will be required to settle the obligation and a reliable estimate can be made of the amount of the obligation.

Contingent liabilities are not recognised but are disclosed in the financial statements unless the possibility of an outflow of resources embodying economic benefits is remote. Contingent assets are not recognised but are disclosed in the financial statements when an inflow of economic benefits is probable.

(o) Foreign currency

Foreign currency transactions are recorded in Cayman Islands dollars using the exchange rate in effect at the date of the transaction. Foreign currency gains or losses resulting from settlement of such transactions are recognised in the statement of financial performance.

At the end of the reporting period the following exchange rates are to be used to translate foreign currency balances:

- Foreign currency monetary items are to be reported in Cayman Islands dollars using the closing rate;
- Non-monetary items which are carried in terms of historical cost denominated in a foreign currency are reported in Cayman Islands dollars using the exchange rate at the date of the transaction; and
- Non-monetary items that are carried at fair value denominated in a foreign currency are reported using the exchange rates that existed when the fair values were determined.

(p) Impairment

An asset is impaired when its carrying amount exceeds its recoverable amount. If there is any indication of impairment present, the entity is required to make a formal estimate of recoverable amount. Where an impairment exists, it will be recognized in the Statement of Financial Performance.

(q) Revenue from non-exchange transactions

The Office of the Ombudsman receives various services from other Government entities for which payment is made by the Government. These services may include but are not limited to computer repairs and software maintenance by the Computer Services Department and human resources management by the Portfolio of the Civil Service. The Office of the Ombudsman has designated these non-exchange transactions as Services in-Kind as defined under IPSAS 23 - Revenue from Non-Exchange Transactions. When fair values of such services can be reliably estimated then the non-exchange transaction is recorded as an expense and an equal amount is recorded in other income as a service in-kind. Where services in-kind offered are directly related to construction or acquisition of a property and equipment, such service in-kind is recognized in the cost of property and equipment.

OFFICE OF THE OMBUDSMAN
NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)
FOR THE YEAR ENDED 31 DECEMBER 2023
(Expressed in Cayman Islands Dollars)

Note 2: Cash and cash equivalents

As at 31 December 2023 the Office of the Ombudsman held no restricted cash balances. No interest was earned during the year on the amounts held in these bank accounts.

Prior Year Actual CI\$'000	Description	Current Year Actual CI\$'000	Approved Budget CI\$'000	Variance (Budget vs. Actual) CI\$'000
705	Operational Current Account - KYD	572	638	66
10	Payroll Current Account - KYD	8	-	(8)
715	Cash and cash equivalents	580	638	58

Note 3: Trade and Other receivables

Prior Year Actual CI \$'000	Trade Receivables	Current Year Actual CI \$'000	Approved Budget CI\$'000	Variance (Budget vs. Actual) CI\$'000
35	Outputs to Cabinet	416	208	(208)
-	Less: expected credit losses	-	-	-
35	Net Trade receivables	416	208	(208)

Prior Year Actual CI \$'000	Other Receivables	Current Year Actual CI \$'000	Approved Budget CI\$'000	Variance (Budget vs. Actual) CI\$'000
5	Other	5	-	(5)
-	Less: expected credit loss	-	-	-
5	Net Other receivables	5	-	(5)

OFFICE OF THE OMBUDSMAN
NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)
FOR THE YEAR ENDED 31 DECEMBER 2023
(Expressed in Cayman Islands Dollars)

Note 3: Trade and Other receivables (continued)

In measuring expected credit losses for third-party receivables, the estimated loss allowance for individually significant or other specific trade and other receivable balances are determined on an individual basis. Thereafter, the remaining third-party trade receivables have been assessed on a collective basis as they possess shared credit risk characteristics.

The Entity performed a specific expected credit loss assessment on any related party debtors with qualitative or quantitative factors indicating doubts around collectability. Given the low risk of default on the remaining related party receivables held by the Entity, the impact of the expected credit losses on these have been estimated to be negligible. These have a low risk of default due to the Cayman Islands Government's high credit rating, absence of historical losses on amounts due.

The Entity's policy is to recognise an expected credit loss of 100% for receivables over 90 days past due because historical experience has indicated that these receivables are generally not recoverable. Receivables are written off and/ or fully provided for when there is no reasonable expectation of recovery.

Prior Year Actual CI \$'000	Maturity Profile	Trade Receivables CI \$'000	Other Receivables CI \$'000	Net Receivables CI \$'000
40	1-30 days	208	5	213
-	Past due 31-60 days	208	-	208
-	Past due 61-90 days	-	-	-
-	Past due 90 and above	-	-	-
40	Total Trade Receivables	416	5	421

As at 31 December 2023 expected credit losses resulting from balances less than 90 days past due was nil (2022: nil).

OFFICE OF THE OMBUDSMAN
NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)
FOR THE YEAR ENDED 31 DECEMBER 2023
(Expressed in Cayman Islands Dollars)

Note 4: Property and equipment

Cost of Property and equipment

	Furniture & Fittings CI\$000	Computer Hardware CI\$000	Office Equipment CI\$000	Leasehold Improvements CI\$000	Total Property and Equipment CI\$000
Balance as at 1 January 2022	133	43	54	326	556
Additions	1	-	-	-	1
Disposal/ Derecognition	-	(4)	-	-	(4)
Balance as at 31 December 2022	134	39	54	326	553
Balance as at 1 January 2023	134	39	54	326	553
Additions	-	-	-	-	-
Disposal/ Derecognition	-	-	-	-	-
Balance as at 31 December 2023	134	39	54	326	553
<u>Accumulated Depreciation</u>					
	Furniture & Fittings CI\$000	Computer Hardware CI\$000	Office Equipment CI\$000	Leasehold Improvements CI\$000	Total Property and Equipment CI\$000
Balance as at 1 January 2022	36	29	34	197	296
Depreciation Expense	14	6	8	81	109
Disposal/ Derecognition	-	(4)	-	-	(4)
Balance as at 31 December 2022	50	31	42	278	401
Balance as at 1 January 2023	50	31	42	278	401
Depreciation Expense	14	4	7	48	73
Disposal/ Derecognition	-	-	-	-	-
Balance as at 31 December 2023	64	35	49	326	474
Net Book value 31 December 2022	84	8	12	48	152
Net Book value 31 December 2023	70	4	5	-	79

OFFICE OF THE OMBUDSMAN
NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)
FOR THE YEAR ENDED 31 DECEMBER 2023
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Note 5: Intangible Assets

Cost of Intangible Assets

	Computer Software CI\$000
Balance transferred as at 1 January 2022	52
Additions	-
Disposal/ Derecognition	-
Balance as at 31 December 2022	52

	Computer Software CI\$000
Balance transferred as at 1 January 2023	52
Additions	-
Disposal/ Derecognition	-
Balance as at 31 December 2023	52

Accumulated Amortization and impairment losses

	Computer Software CI\$000
Balance as at 1 January 2022	43
Eliminate on Disposal/Derecognition	-
Amortization Expense	8
Disposal/ Derecognition	-
Balance as at 31 December 2022	51

	Computer Software CI\$000
Balance as at 1 January 2023	51
Eliminate on Disposal/Derecognition	-
Amortization Expense	1
Disposal/ Derecognition	-
Balance as at 31 December 2023	52

Net Book value 31 December 2022	1
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Net Book value 31 December 2023	-
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OFFICE OF THE OMBUDSMAN
NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)
FOR THE YEAR ENDED 31 DECEMBER 2023
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Note 6: Accruals and other liabilities

Prior Year Actual CI\$'000	Description	Current Year Actual CI\$'000	Approved Budget CI\$'000	Variance (Budget vs. Actual) CI\$'000
35	Accruals	23	35	12
7	Core government trade with other public entities	50	-	(50)
42	Total Accruals and Other Liabilities	73	35	(38)

Payables under exchange transactions and other payables are non-interest bearing and are normally settled on 30-day terms.

Note 7: Employee entitlements

Prior Year Actual CI\$'000	Description	Current Year Actual CI\$'000	Approved Budget CI\$'000	Variance (Budget vs. Actual) CI\$'000
	<i>Current employee entitlements are represented by:</i>			
19	Annual leave	3	27	24
2	Salaries and wages	-	-	-
21	Total employee entitlements	3	27	24

Note 8: Surplus payable

Surplus payable represents accumulated surplus of \$190 thousand as at 31 December 2023 (2022: \$nil). Under the Public Management & Finance Act (2020 Revision) section 39 (3) (f), states the Entity may “retain such part of its net operating surplus as is determined by the Minister of Finance”. Surplus repaid during the year ended 31 December 2023, was nil (2022: \$221 thousand).

OFFICE OF THE OMBUDSMAN
NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)
FOR THE YEAR ENDED 31 DECEMBER 2023
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Note 9: Revenue

Prior Year Actual	Description	Current Year Actual	Approved Budget	Variance (Budget vs. Actual)
CI\$'000		CI\$'000	CI\$'000	CI\$'000
1,898	Outputs to Cabinet	2,290	2,498	208
1,898	Total Sale of Goods & Services	2,290	2,498	208

Note 10: Personnel costs

Prior Year Actual	Description	Current Year Actual	Approved Budget	Variance (Budget vs. Actual)
CI\$'000		CI\$'000	CI\$'000	CI\$'000
1,135	Salaries, wages and allowances	1,301	1,469	168
166	Health care	221	295	74
63	Pension	71	82	11
(1)	Leave	(17)	11	28
44	Other Personnel related costs	31	5	(26)
1,407	Total Personnel Cost	1,607	1,862	255

Note 11: Supplies and consumables

Prior Year Actual	Description	Current Year Actual	Approved Budget	Variance (Budget vs. Actual)
CI\$'000		CI\$'000	CI\$'000	CI\$'000
8	Supplies and Materials	12	24	12
134	Purchase of services	113	189	76
28	Utilities	27	44	17
-	Travel and Subsistence	-	28	28
20	Recruitment & Training	40	40	-
5	Interdepartmental expenses	48	5	(43)
-	Other	-	6	6
195	Total Supplies & Consumables	240	336	96

OFFICE OF THE OMBUDSMAN
NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)
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Note 12: Leases

Prior Year Actual	Type of Lease	Current Year Actual	Approved Budget	Variance (Budget vs. Actual)
CI\$'000		CI\$'000	CI\$'000	CI\$'000
108	Lease and Rent of Property and Sites	118	112	(6)
108	Total Lease	118	112	(6)

Note 13: Reconciliation of net cash flows from operating activities to surplus

Prior Year Actual	Reconciliation of Surplus to Net Operating Cash	Current Year Actual	Approved Budget	Variance (Budget vs. Actual)
CI \$'000		CI \$'000	CI \$'000	CI \$'000
-	Surplus from ordinary activities	190	-	(190)
	Non-cash movements			
117	Depreciation and amortization	74	92	18
	Changes in current assets and liabilities:			
150	Decrease/(Increase) in trade receivable	(381)	(1)	380
23	Decrease/(Increase) in prepayments	(31)	-	31
3	(Decrease)/Increase in accruals and other liabilities	31	-	(31)
-	(Decrease)/Increase in employee entitlements	(18)	-	18
293	Net cash flows from (used by) operating activities	(135)	91	226

Note 14: Commitments

Prior Year Actual		One Year or Less	One to Five Years	Over Five Years	Total	Approved Budget	Variance (Budget vs. Actual)
CI\$000	Type	CI\$000	CI\$000	CI\$000	CI\$000	CI\$000	CI\$000
	Operating Commitments						
72	Non-cancellable office space leases	139	525	-	664	180	(484)
72	Total Operating Commitment	139	525	-	664	180	(484)

The Office of the Ombudsman has a medium to long-term office space lease for the premises it occupies in George Town. The lease is for a period of 5 years and expires 31 August 2028.

**OFFICE OF THE OMBUDSMAN
NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)
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Note 15: Explanation of major variances against budget

The government operates a two-year budget appropriation cycle. Under Section 9(5) of the Public Management and Finance Act (2020 Revision), unused budget in the first year can be moved forward and used in the execution of the deliverables in the second year, in addition to the approved budget of the second year. The transferred budget is added to the budget allocation of the second year to form the new original budget for that year.

At the end of 2022, an unused capital expenditure budget of \$24 thousand was carried forward utilizing Section 9(5) of the Public Management and Finance Act (2020 Revision). Original appropriation for the 2023 fiscal year was \$25 thousand. The final capital budget for 2023 was therefore adjusted to \$49 thousand. However, the capital funding was not fully utilized since existing equipment remained in good working condition.

All unused budget appropriations expired on 31 December 2023.

The final budget is adjusted for amounts approved under Section 9(5) of the Public Management and Finance Act (2020 Revision).

Description	Operating Expenditure \$'000	Capital Expenditure \$'000
2023 Original Budget	2,498	25
Section 9(5) C/f to 2023 by output	-	24
Final Budget	2,498	49

Explanations for major variances for the Entity's performance against the original budget are as follows:

Statement of financial position

Cash and cash equivalents

Cash and cash equivalents are \$58 thousand dollars lower than budget primarily due to prepayments, trade and other receivables being higher than budgeted and this was offset by the surplus in the current year.

Trade receivables

Trade receivables are higher than budget by \$208 thousand as the budget factored in only one month of Cabinet billing totaling \$208 thousand as being due to the Entity at the end of the year. However, two months Cabinet billing remained due to the Entity at 31 December 2023.

Prepayments

Prepayments are \$19 thousand dollars higher than budget primarily due to an increase in system license, support and maintenance fees, as well as amounts prepaid for security and training at the end of the year.

Property and equipment

Property and equipment are lower than budget by \$13 thousand as the need for capital purchases in 2023 was lower than anticipated.

**OFFICE OF THE OMBUDSMAN
NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)
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Note 15: Explanation of major variances against budget (continued)

Statement of financial position (continued)

Accruals and other liabilities

Accruals and other liabilities are higher than budget by \$38 thousand mainly due to \$18k of legal fees accrued at the end of the year, and an increase in audit fees of \$14 thousand.

Employee entitlements

Employee entitlements are lower than budget by \$24 thousand as a result of staff taking more leave during the year than projected.

Surplus payable

Surplus payable is \$190 thousand higher than budget, which is due to a surplus achieved during the financial year not yet paid to Cabinet. This surplus was due to the entity having a reduction in operating cost over the amount billed to Cabinet.

Contributed capital

Contributed capital is under budget by \$44 thousand mainly due to 2022 and 2023 capital funding not fully utilized during the two year budget period.

Statement of financial performance

Sales of goods and services

Office of the Ombudsman is fully funded by Cabinet. In 2023 revenue was billed more in line with actuals and thus sales of goods and services was lower than budget by \$208 thousand.

Personnel Costs

Actual personnel costs are lower than budget by \$255 thousand primarily due to staff vacancies throughout the year.

Supplies and Consumables

Total supplies and consumables were \$96 thousand under budget due to reduced spending in the areas of purchase of services of \$76 thousand, travel of \$28 thousand, utilities of \$17 thousand, and supplies and materials of \$12 thousand, netted off against an increase in audit fees of \$43 thousand. Spending was primarily impacted by lower than planned staff numbers during the year as well as lower demand for services.

Litigation

Litigation costs are budgeted as contingencies and may vary from year to year depending on applications for Judicial review and the need for legal services. As a result, this expense was \$35 thousand under budget.

Depreciation and amortization

Depreciation and amortization are under budget by \$18 thousand as a result of lower than anticipated capital purchases during the year.

**OFFICE OF THE OMBUDSMAN
NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)
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Note 15: Explanation of major variances against budget (continued)

Statement of changes in net assets/equity

Equity Investment

During a two-year budget period unused funds can be transferred between the two financial years under Section 9(5) of the Public Management and Finance Act (2020 Revision). See below the equity investment movement for the budget period 2022 to 2023 in which unused equity investment funds are transferred from 2022 to cover asset purchases in 2023.

<i>Equity Investment</i>	CI\$000
2022 Approved Budget	25
2022 Equity Investment Used	(1)
Budget remaining as at 31 December 2022	24
2022 Unused Equity Investment carried forward	24
2023 Approved Budget	25
Total Equity Investment available for use in 2023	49

Equity Investment is under budget by \$44 thousand mainly due to 2022 and 2023 capital funding not fully utilised during the two year budget period. Equity investment funding is used as needed. During the financial year capital purchases were not required as existing equipment remained in good working condition.

Note 16: Related party and key management personnel disclosures

Related party disclosure

The Office of the Ombudsman is a wholly owned entity of the Government of the Cayman Islands from which it derives all of its revenue. The Office of the Ombudsman and its key management personnel transact with other government entities on a regular basis. These transactions were provided in-kind during the financial year ended 31 December 2023 and were consistent with normal operating relationships between entities and were undertaken on terms and conditions that are normal for such transactions. These transactions are as follows:

Prior Year Actual CI\$000		Current Year Actual CI\$000	Approved Budget CI\$000	Variance (Budget vs. Actual) CI\$000
Statement of financial position				
35	Trade receivables	416	208	(208)
7	Accrual and other liabilities	50	-	(50)
-	Surplus payable	190	-	(190)
221	Surplus repaid	-	-	-
Statement of financial performance				
1,898	Sale of goods and services	2,290	2,498	208

**OFFICE OF THE OMBUDSMAN
NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)
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Note 16: Related party and key management personnel disclosures (continued)

Key management personnel

Key management personnel, defined as the Ombudsman and the Deputy Ombudsmen.

Compensation of Key Management Personnel

For the year ended 31 December 2023 there are three full-time equivalent (2022: three full-time) personnel considered at the senior management level. Total remuneration includes regular salary, pension contribution, health insurance contribution, and allowances.

Total remuneration paid to key management personnel were as follows:

Prior Year Actual	Description	Current Year
CI\$'000		CI\$'000
406	Salaries & other short-term employee benefits	470
406	Total Remuneration	470

Note 17: Financial instrument risks

The Office of the Ombudsman is exposed to a variety of financial risks including credit risk and liquidity risk. The risk management policies are designed to identify and manage these risks, to set appropriate risk limits and controls, and to monitor the risks and adhere to limits by means of up to date and reliable information systems. These risks are managed within the parameters established by the Financial Regulations (2021 Revision).

Credit risks

Credit risk is the risk that the counter party to a transaction with the Entity will fail to discharge its obligations, causing the Entity to incur a financial loss. Financial assets that potentially subject the Entity to credit risk consist of Cash and Cash Equivalents, trade receivables and other receivables.

The average credit period on sales is 30 days. The Entity manage its Credit risk by transacting only with credit worthy counterparties. Generally, the Entity does not require collateral. Ongoing credit risk is managed through review of ageing analysis. Maximum exposures to credit risk as at year end are the carrying value of financial assets in the statement of financial position.

Expected credit losses are calculated on a lifetime basis for Trade Receivables.

The credit risk on cash and cash equivalents and short-term investments is limited. The Entity's main bank is Royal Bank of the Caribbean (RBC) which has a S&P Global Ratings of AA-.

Liquidity risk

Liquidity risk is the risk that the Entity is unable to meet its payment obligations associated with its financial liabilities when they are due.

**OFFICE OF THE OMBUDSMAN
NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)
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Note 17: Financial instrument risks (continued)

Liquidity risk (continued)

The ability of the Entity to meet its debts and obligation is dependent upon its ability to collect the debts outstanding to the Entity on a timely basis. In the event of being unable to collect its outstanding debts, it is expected that the Government of the Cayman Islands would temporarily fund any shortfalls for the Entity with its own cash flows. As at 31 December 2023, all of the financial liabilities with the exception of surplus payable were due within three months of the year end dates.

Currency risk

The Entity has minimal exposure to currency exchange risk.

Note 18: Subsequent events

Subsequent to the reporting date, an application for leave to apply for a judicial review was lodged in relation to a freedom of information decision issued by the Office of the Ombudsman. The matter is at an early stage hence difficult to predict the outcome. Exposure to the Office of the Ombudsman appears limited to the legal costs in defending the legal action.

Other than the event disclosed above, management is not aware any other event after the reporting date which would have had an impact on the financial statements.