



OMBUDSMAN

SINT MAARTEN

Notice of Termination Investigation

(Article 16 and 17 sub 3 National Ordinance Ombudsman)

The Honorable Minister of Public Housing, Spatial Development, Environment and Infrastructure, Mr. Marcel Gumbs,
Juancho Yrausquin Blvd. #6
Second Floor
Philipsburg
Sint Maarten

Your ref.no.:

Our ref.no.: OM-OBM 0318/2015

Your letter of:

Complaint no.: 2014/00182

Re: Complaint filed with the Ombudsman

Philipsburg, 7 July 2015

Dear Minister Gumbs,

This letter is to inform you that the Ombudsman refrains from further investigation of the abovementioned complaint of Complainant in accordance with the National Ordinance Ombudsman ("*Landsverordening Ombudsman Ab 2010 GT no.20*").

Summary of Complaint:

Complainant was of the opinion that her plight with regard to the condition of the Chin Cactus Road was not being taken seriously and that government had no regard for the situation in which the residents of Chin Cactus Road find themselves.

Despite numerous correspondences between the Complainant and the Ministry of Public Housing, Spatial Development, Environment and Infrastructure (VROMI) about the condition of the Chin Cactus Road and the ramifications of the ongoing situation, to date of filing the complaint with the Ombudsman, Complainant was still unaware as to when the road to her residence would be paved.

Findings:

On 23 May 2014 Complainant sent a letter (via email) to the attention of the Minister of



OMBUDSMAN

SINT MAARTEN

VROMI requesting information as to when the Chin Cactus Road would be paved. In the letter, Complainant mentioned that she had broken two CV-joints on her car because of the condition of the road. Complainant also mentioned in her letter that other residents of the Chin Cactus Road had requested the Minister's attention in the matter. A copy of the letter was also forwarded to Mr. Claudius Buncamper, the Head of Infrastructure Management.

By email of 16 June 2014 the Head of Infrastructure Management informed Complainant that the department was in the process of finalizing the price agreement with the contractor that won the public tender and so the work could begin within two weeks.

On 18 August 2014 Complainant emailed the Head of Infrastructure Management informing him that there was construction activity on the road in early August and as a result at least four residents, including herself, could no longer access their driveways. In the email, Complainant stated her frustration regarding the situation and asked when construction on the road would be completed.

In a response email later that day, the Head of Infrastructure Management informed Complainant that he would look into the matter and let her know what was happening.

By email of 19 August 2014 Complainant requested an update on the situation from The Head of Infrastructure Management.

Later that day the Head of Infrastructure Management informed Complainant (by email) that the department would ensure that the driveways were accessible to Complainant and the other residents by the next day. In the email, the Head of Infrastructure Management also apologized for the way in which the work was being carried out.

On 22 August 2014 Complainant again contacted the Head of Infrastructure Management informing him that she still had no access to her driveway and that the road was now in worse condition after the construction work had begun.

The Head of Infrastructure Management responded by saying the project managers were on their way to handle the situation and ensure that Complainant had access to her driveway.

On 25 August 2014 Complainant emailed the Head of Infrastructure Management, thanking him for the temporary solution, as she could now access her driveway. In the same email Complainant asked once again, when the road would be paved.

The Head of Infrastructure Management informed Complainant that he hoped to be ready in about two weeks.



OMBUDSMAN

SINT MAARTEN

By email of 2 September 2014 Complainant informed The Head of Infrastructure Management that the rainfall had washed away the majority of the sand that had been used on the road the previous weekend. Complainant also informed The Head of Infrastructure Management that seashells had been used as a bottom layer and one had slashed her tire, and asked where she would be able claim damages.

On 11 September 2014, Complainant sent a reminder to The Head of Infrastructure Management (via email), as she had not received a response to her email of 2 September 2014.

In his response sent later that day, The Head of Infrastructure Management suggested that Complainant send a picture of the object in the tire, along with a bill so that a request could be sent to the contractor for processing.

By email of 16 September 2014 Complainant thanked The Head of Infrastructure Management for his willingness to assist in the matter, however there had been no pictures taken. In the email, Complainant mentioned that she had been told on 25 August 2014 that it would take an additional two weeks to work out the final contract, after which work would resume on the Chin Cactus Road. Complainant then asked for a date on which the work would resume. Complainant also mentioned that she was considering contacting the Ombudsman due to the amount of time that it was taking to remedy the situation.

On 23 September 2014 Complainant sent an email to Mr. Louis Brown, Secretary General of the Ministry of VROMI requesting that he look into the matter of paving the Chin Cactus Road.

To date of registering the complaint with the Ombudsman, Complainant had not received a response to her last email sent on 23 September 2014 to the Secretary General of the Ministry of VROMI nor had she received a concrete answer as to when Chin Cactus Road will be paved. Subsequently Complainant filed a complaint with the Ombudsman on 2 October 2014.

On 19 November 2014 a Notification of Complaint (NOC) was sent to the Minister of VROMI. The Minister was requested to respond to the NOC within 4 weeks from the date of the letter, however no later than 17 December 2014.

The following questions were included in the NOC:

- Did the Department of Infrastructure Management commission the construction work,



OMBUDSMAN

SINT MAARTEN

which had begun in the beginning of August 2014?

- If yes, what were the instructions given with regard to the work to be done?
- If no, could you please explain why construction work had begun without prior authorization from the Department?
- What are the phases of project planning used by the Department? Please provide a thorough description of what these phases entail and the approximate time of each phase.
- What phase is the Department presently in with regard to the paving of Chin Cactus Road?
- When can Complainant expect a response to her inquiries as to when the Chin Cactus Road will be paved?

By email of 20 November 2014 Complainant informed the Ombudsman that a meeting was held with the residents of the Chin Cactus Road and Drive, Mr. Pantophlet of VROMI and Mr. Flanders, the contractor, informing them that work would begin within a week or two. Complainant also stated that they were further informed that the work being done was related to a drainage project and not a road-paving project.

On 12 December 2014 the Minister was reminded of the response deadline to the NOC of 17 December 2014.

Complainant informed the Complaint Officer of the Ombudsman on 12 December 2014 that construction was in progress and that she had been told that the scheduled date for completion was January 2015.

In a letter dated 16 December 2014, the Department Head of the Infrastructure Management Department of VROMI informed the Ombudsman that the department and the contractor held an information session with the residents of Chin Cactus drive on 19 November 2014.

In the letter, the Department Head stated that the project had started on 24 November 2014 and was on schedule. The Department Head further stated that completion date for the Chin Cactus Road was set for the end of January 2015.

Since no formal response was received to the NOC, and the pertinent project not completed, the Secretary General of the Ombudsman sent a reminder to the Secretary General of VROMI in a letter dated **5 February 2015**, in which one-week extension to date of the letter was



OMBUDSMAN

SINT MAARTEN

granted (12 February 2015).

In a letter dated 18 February 2015, Mr Louis Brown, the Acting Secretary General of VROMI responded to the questions posed in the NOC. The response entailed the following:

- Did the Department of Infrastructure Management commission the construction work, which had begun in the beginning of August 2014?

Yes, the commissioning of the construction work had been tendered but was waiting execution due to other critical priorities such as the aftermath of Hurricane Gonzalo and the torrential rains which followed. In November the execution of the project began.

- If yes, what were the instructions given with regard to the work to be done?
To execute the work as according to the terms of reference which were agreed upon.

- What are the phases of project planning used by the Department? Please provide a thorough description of what these phases entail and the approximate time of each phase.

As this present phase of the project, we don't see the necessity to provide a complete description of each and every phase. The project is near completion. Due to some minor problems during the execution, the project is indicatively planned for completion in week 11.

- In what phase is the Department presently in with regards to the paving of Chin Cactus Road?

The project is being executed at the moment and is in the final stages of completion and has already been hard surfaced.

- When can Complainant expect a response to her inquiries as to when the Chin Cactus Road will be paved?

The complainant was informed on December 16th 2014."

(According to Complainant, no correspondence was received on 16 December 2014.)

On 13 March 2015 The Daily Herald printed an article stating, "*Residents of Chin Cactus Road and Chin Cactus Drive can now enjoy ... improvements made to the roads...*".



OMBUDSMAN

SINT MAARTEN

By letter dated 9 April 2015 the Preliminary Findings Report (PFR) was sent to the Minister of VROMI. In the PFR, the Ombudsman issued the following recommendation:

- That the public should be promptly informed about plans and actions of government that may directly or indirectly affect citizens, including delays and status reports.

The Minister was requested to respond to the findings outlined in the PFR by 23 April 2015.

On 13 April 2015 Mr. Louis Brown, the Acting Secretary-General of the Ministry of VROMI responded to the PFR stating that the conclusion of the Ombudsman is considered unfair, considering the efforts made by the department to inform the residents of the project developments. The response included the following:

“On November 20th 2014, a public meeting was held with the residents of Sucker Garden and the residents of the Chin Cactus Road and Drive informing them of about the project plans for the drainage project and hard surfacing of the Chin Cactus Road and Drive in the Keys. In your chronological report it is stated by the complainant that during this public meeting the residents were not informed that the road would be hard surfaced. This is incorrect as we did extensively discuss this matter during our presentation to the residents.

On November 21st 2014 all residents on the Chin Cactus Road and Drive were informed by letter (appendix 1) when the construction work (drainage and hard-surfacing) would commence and that during this period they would have no access to the road until the job is finished.

On November 25th 2014 we published the commencement of the project on our Facebook page and communicated this to the general public including photos of the condition of the road at that time (appendix 3).

On November 27th 2014, the Ministry of VROMI Issued a press release to all media partners (appendix 2) communicating to the general public about the project. A copy of the article was published on different media sites on the internet as well as broadcasted on local radio (appendix 4).

On December 16th 2014, we updated the progress of the project on our Facebook page including photos of the work being conducted. It Is also mentioned that the planned completion of the project would be March 2015 (appendix 5). We also informed the public that the work would be halted for the Christmas Holidays and would commence on January 5th 2015. Although the letter sent to ... on December 16th it is stated that the planned



OMBUDSMAN

SINT MAARTEN

completion would be end of January, this was adjusted after the letter was sent due to non-cooperation of one of the residents.

On January 22nd 2015, we updated our Facebook page and added 16 photos of the progress of the project on the Chin Cactus Road. Again it is stated, completion March 2015 (appendix 6).

On March 9th 2015, we updated our Facebook page and added 4 photos on the progress of the project (appendix 7).

On March 13th 2015, The Daily Herald published the article “Chin Cactus no longer in a deplorable state”, about the completion of the project on the Chin Cactus Road and Drive (appendix 8).”

Standard(s) of proper conduct:

The Ombudsman investigates whether the behavior of public bodies towards citizens is correct. The applicable standard of proper conduct in this case is *active and adequate information provision*.

Active and adequate information provision

In the interest of managing the affairs of the citizens, administrative bodies are required to provide adequate information to the public actively and upon request. This implies among others the obligation to answer letters from citizens, sending an acknowledgement of receipt, and an interim notice in case the handling of a request takes longer than anticipated.

Providing adequate information can clear up the air between public bodies and the citizens. In general, an individual is more willing to accept a situation when there is an explanation, or the outcome of a request is motivated. To ensure a high level of credibility in public bodies, transparency is essential. Being open and clear in providing adequate information regarding plans and actions of the government, that affect the interest of the citizen is a requirement for enhancing the credibility of public bodies.

That administrative bodies are required to provide adequate information to the public actively and upon request entails on the one hand the duty to provide citizens with information upon request. As well as the duty to inform the citizen on its own initiative about proceedings, that have a direct effect on them. Proper information provision creates legal certainty for all.



OMBUDSMAN

SINT MAARTEN

Conclusion:

Complainant's complaint is that her plight is not being taken seriously and that government has no regard for the situation in which the residents of Chin Cactus Road find themselves.

To date of filing the complaint with the Ombudsman on 2 October 2014, the department was unclear as to when the pertinent road to Complainant's residence would be paved. This despite numerous letters from the Complainant to the Ministry of VROMI about the condition of the Chin Cactus Road, the ramifications of the ongoing situation, and vague promises made pertaining to the execution of the road project.

In response to the PFR the Secretary General of the Ministry of VROMI presented a list of the department's efforts in the period of 20 November 2014 to 13 March 2015, to inform the residents of the 'road-paving' project.

The Ombudsman observes however that propriety required that the Complainant receive a response to her email of 23 September 2014. Considering the number of correspondence between Complainant and the department about the condition of the Chin Cactus Road, the Department should have informed Complainant directly on the progress of the project. By not responding to the email, Complainant was under the impression that nothing was being done.

In addition the Ombudsman observes that up to the point of intervention by the Ombudsman, the residents were not informed regarding the status, or progress of the project.

The standard of proper conduct *active and adequate information provision* requires administrative bodies to provide information to the public actively and upon request. This includes providing information about plans and actions of the government, that affect the interest of the citizen, as well as providing an interim notice in the event that the handling of a request takes longer than anticipated.

Providing adequate information can clear up the air between public bodies and the citizens. In general, an individual is more willing to accept a situation when there is an explanation, or the outcome of a request is motivated. To ensure a high level of credibility in public bodies, transparency is essential. Being open and clear in providing adequate information regarding plans and actions of the government, that affect the interest of the citizen is a requirement for enhancing the credibility of public bodies.

Considering that the project has been completed and access to the Chin Cactus Road has been



OMBUDSMAN

SINT MAARTEN

restored, the Ombudsman refrains from further investigation, with a note that propriety requires that letters and/or inquiries to the department from concerned citizens should be responded to at all times.

The Ombudsman will close this file.

Sincerely,

Dr. R. (Nilda) J.A. Arduin
Ombudsman

Cc: - Mr. L. Brown, Acting-Secretary General;
- Mr. C. Buncamper, Department Head of Infrastructure Management;
- Complainant.