



**OMBUDSMAN**

SINT MAARTEN

### **Notice of Termination Investigation**

(Article 16 and 17 sub 3 National Ordinance Ombudsman)

Ministry of Tourism, Economic Affairs, Traffic and Telecommunication,  
The Honorable Minister Connor  
Government Administration Building  
Clem Labega Square  
Philipsburg

**Your ref.no.:**

**Our ref.no.:** OM-OBM 2015 00166\_14

**Your letter of:**

**Complaint no.:** 2015 00166

**Re: Complaint filed with the Ombudsman**

Philipsburg, 10 July 2015

Dear Minister Connor,

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

#### **Summary of Complaint:**

On 14 January 2014 Complainant received power of attorney from Permit-holder, to act on his behalf and represent him in all matters related to his taxi-permit.

By letter dated 23 January 2014 addressed to the Minister of Transportation, the Permit-holder requested that his taxi-permit be transferred to Complainant. In her capacity as representative of Permit-holder, Complainant claims that she visited the Department of Public Transportation of the Ministry of Tourism, Economic Affairs, Traffic and Telecommunication (TEZVT) on many occasions about the request, and was told that the transfer would not be granted. However, to date of filing the complaint with the Ombudsman, on 3 June 2015, no written response was received to the above-mentioned request by either Complainant or the Permit-holder.

#### **Findings:**

On 14 January 2014 Complainant received power of attorney from the Permit-holder, to act on his behalf and represent him in all matters related to his taxi-permit.



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By letter dated 23 January 2014 addressed to the Minister of Transportation, the Permit-holder requested that his taxi-permit be transferred to Complainant. In her capacity as representative of Permit-holder, Complainant claims that she visited the Department of Public Transportation of the Ministry of TEZVT on many occasions about the request and was told that the transfer would not be granted. However, to date of filing the complaint with the Ombudsman on 3 June 2014, no written response had been received to the above-mentioned request by either Complainant or the Permit-holder.

On 22 June 2015 a **Notification of Complaint (NOC)** was sent to the Minister of TEZVT. The Minister was requested to respond to the NOC within 4 weeks from the date of the letter, however no later than 13 July 2015.

By email of 22 June 2015, Mrs. Valya Lake-Pantophlet, Department head of Economic Licenses and Public Transportation, responded to the NOC by informing the Ombudsman that the request would be worked on.

In a subsequent email on 22 June 2015 the Ombudsman received a copy of the response dated 22 June 2015 to the Permit-holder's request of 23 January 2014. In the letter, the Permit-holder was informed as follows:

*"We regret to inform you that your request has been denied, based on article 13 of the National Ordinance of the Transportation of Passengers ("Landsverordening personenvervoer"), which outlines "death of the license holder" as the only condition under which a license may be transferred. The article further states that the license could then only be transferred to a family member as a means to maintain the household."*

By email of 8 July 2015 from the Department head of Economic Licenses and Public Transportation, the Ombudsman received a copy of the above-mentioned response to the Permit-holder which was signed for by Complainant on 23 June 2015.

**Legal Basis:**

***Pursuant to article 19 section 1 of the National Ordinance Ombudsman (AB 2010, GTno. 20)***, the Ombudsman is authorized to request from government bodies, civil servants, the complainant, civil servants as experts or witnesses, all information and or documents pertaining to the investigation. The persons mentioned in the aforementioned article are obliged to respond to the request within the time indicated by the Ombudsman, except in cases where the persons can appeal to legal grounds ("verschoningsrecht"- see article 19 section 4).

**Standard(s) of Proper Conduct:**

The Ombudsman investigates whether the behavior of public bodies towards citizens is correct. The applicable standards of proper conduct in this case are *Promptness* and *Fair*



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*Play.*

**Promptness**

A public body is expected to be dynamic and as such be decisive and swift in its decision-making. Hence, providing a response or decision within the legal time frame or at least within a reasonable time is required. When a public body expects citizens to adhere to deadlines, based on the principle of equality the public body should strive to adhere to deadlines provided by law. Not adhering to a legal time frame will undermine the authority of the public body as well as tarnish its credibility with the citizen.

There are acceptable exceptions to the mentioned deadlines. A public body can miss a deadline in cases where more information is required to come to a decision. In such cases a public body is required to duly inform the citizen of the delay.

**Fair Play**

*Fair play* requires that administrative bodies and civil servants provide the citizen the opportunity to properly utilize procedural opportunities provided for by law and otherwise.

Examples where *Fair Play* is required: proper identification of complaints in order to adequately inform the citizen of his rights, procedures to be followed, protest or appeal; assistance in solving disputes; proper information provision to file a complaint, including a complaint against a civil servant, or make a statement („*aangifte*”) at the Police, as well as providing clarity about the follow up procedures; transparency of information, including information on file of a citizen; adequate information to the citizens regarding their rights.

**Conclusion:**

On 14 January 2014 Complainant received power of attorney from the Permit-holder, to act on his behalf and represent him in all matters related to his taxi-permit.

By letter dated 23 January 2014 addressed to the Minister of Transportation, the Permit-holder requested that his taxi-permit be transferred to Complainant. In her capacity as the representative of Permit-holder, Complainant claims that she visited the Department of Public Transportation Ministry of TEZVT on many occasions about the request and was told that the transfer would not be granted. However, to date of filing the complaint with the Ombudsman on 3 June 2015, no written response had been received to the above-mentioned request by either Complainant or the Permit-holder.

After sending the NOC to the Ministry of TEZVT, the Ombudsman was provided with a copy of the response dated 22 June 2015 to the Permit-holder's request of 23 January 2014.



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Considering the fact that a response has been provided to the request of 23 January 2014, the Ombudsman refrains from further investigation.

The Ombudsman however observes that it took the department one year and four months, and the intervention of the Ombudsman to provide a response to the request. During this period the Permit-holder was not formally informed of the status of his request.

The standard of proper conduct *Promptness* requires that administrative bodies provide a response or decision within the legal time frame or at least within a reasonable period. A year and four months cannot be considered a reasonable period to provide a response to the Permit-holder's request.

By not providing a formal decision on the request the Permit-holder has been deprived from appealing the decision, or otherwise take action to adequately deal with the situation considering his age.

Considering the aforementioned, the standards of proper conduct *Promptness* and *Fair Play* are not observed in this case.

The Ombudsman will proceed to close the investigation.

Sincerely,

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

Cc: - Mr. Miguel de Weever, Acting Secretary General;  
- Ms. V. Pantophlet-Lake, Department Head Economic Licenses & Public Transportation;  
- Complainant.