



OMBUDSMAN

SINT MAARTEN

Notice of Termination Investigation

(Article 16 and 17 sub 3 National Ordinance Ombudsman)

Ministry of Public Housing, Spatial Planning, Environment and Infrastructure
F.a.o.: The Honorable Minister Gumbs
Clem Labega Square
Philipsburg
Sint Maarten

Your ref.no.:

Our ref.no.: OM-OBM 0262/2015

Your letter of:

Complaint no.: 2014/00197

Re: Complaint filed with the Ombudsman

Philipsburg, 23 April 2015

Honorable Minister Mr. Gumbs,

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

Summary of Complaint:

On 4 November 2014 Complainant wrote a letter to the Minister of Housing, Spatial Development, Environment and Infrastructure (VROMI) to file a complaint about the fact that the Minister of VROMI issued a building permit to a contractor that built the house he sold to her on an unsuitable plot of land, that is continuously sinking. Complainant also alleges that during the process of building her house there were many wrongdoings, the inspectors of VROMI did not perform their duty as they ought to, despite the strong deficiencies in workmanship of the contractor. Nor did Complainant get an answer from the Ministry of VROMI on her complaint; as such she doesn't know what will be done about her complaint.



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Findings:

Starting October 2004 Complainant resided in a house that was built for by a contractor who obtained a piece of land and a building permit from Government. Since January 2005 Complainant informs government regularly about the deplorable state of her house; the house is poorly built, it is constantly wet and sinking. Complainant also complains with the contractor and in 2014 started court proceedings against the contractor. Subsequently, by letter of 4 November 2014 Complainant requested government's attention again for this issue. On 19 December 2014 Complainant files a complaint with the Ombudsman because Government did not respond to her letter dated 4 November 2014. As such a Notification of Complaint (NOC) dated 22 December 2014 was sent to the Minister VROMI.

On 18 January 2015 the Ombudsman received a response from the Ministry of VROMI to the NOC. Attach to the pertinent email was an answer to Complainant's letter of 4 November 2014; a so called "*zelfstandig schadebesluit*" dated 22 December 2014, signed by the former Minister of VROMI. The "*zelfstandig schadebesluit*" mentioned that Complainant had six weeks to appeal the decision.

Subsequently, the Ombudsman informed complainant about the response to the NOC, and inquired whether the letter dated 22 December 2014 was received. Complainant was not aware of the decision, however on 28 January 2015 Complainant informed the Ombudsman that she finally received the pertinent decision in her mailbox.

Since the decision dated 22 December 2014 was signed by the former Minister of VROMI, who resigned on 19 December 2014, the Ombudsman queried the current Minister of VROMI regarding the legality of the "*zelfstandig schadebesluit*".

On 9 March 2015 the Ombudsman received a letter from the Minister of VROMI, confirming the decision taken on 22 December 2014. In the pertinent letter the Minister refers to another letter allegedly sent to the Complainant as a confirmation of said decision. Complainant could not confirm having received any letter from the Minister of VROMI following the decision of 22 December 2014.

A Preliminary Findings Report (PFR) dated 9 April 2015 was drafted by the Ombudsman. The Minister of VROMI was informed that Complainant has not received a confirmation regarding the legality of the "*zelfstandig schadebesluit*" and recommended to send all formal decisions to citizens by registered mail.

On 15 April 2015 the Ombudsman received an email with an attached; a letter from the



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Ministry of VROMI, dated 4 March 2015 directed to Complainant, confirming the aforementioned “*zelfstandig schadebesluit*”. The letter dated 4 March 2015 mentioned that Complainant had 6 weeks to appeal the decision. The Ministry of VROMI was contacted the same day by the Ombudsman to indicate that the Ministry of VROMI is responsible to ensure that the letter confirming the “*zelfstandig schadebesluit*” reaches the Complainant. As such the Ministry of VROMI emailed a copy of the “*zelfstandig schadebesluit*” that had been signed for receipt on that same day by Complainant to the Ombudsman. The Ombudsman was informed that the letter of 4 March 2015 was also sent by registered mail, but the Ministry was not aware that Complainant did not receive the confirmation of the decision dated 22 December 2014.

Standards 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 *Adequate organization of services and Fair play*.

Adequate organization of services entails that administrative bodies are required to organize their administration and operation in a manner which guarantees proper service to the public. In more general terms proper service refers to the principle of meticulousness in the administration. Proper service also includes organizing the administration in a manner that is lawful, effective, transparent, accessible, equipped to provide prompt service and information. Continuity should be guaranteed; proper registration and archiving are essential in achieving and guarantee continuity in the administration.

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. The principle of *Fair Play* entails that a public body is expected to allow the citizen the opportunity to express and defend their views and opinions, while also being able to object the position and or point of view of a public body. Thus the behavior of the public body has to attest to openness, honesty and loyalty. A public body should be transparent and cannot prepare covert actions against a citizen. On the contrary a public body is required to actively assist the citizen in utilizing its procedural options. There are various ways to provide the citizen the opportunity to utilize the different procedural options.



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Conclusion:

On 4 November 2014 Complainant wrote a letter to the Minister of VROMI complaining about allegedly wrongfully issuing a building permit and poor inspection of the construction by the Inspectors of the Ministry of VROMI , resulting in her house to be poorly build.

By Notification of Complaint dated 22 December 2014 the Ombudsman requested the Minister of Public Housing, Spatial Development, Environment and Infrastructure (VROMI) regarding its position of the complaint. On 18 January 2015 the Ombudsman received an email in which the Minister of VROMI indicated that a response dated 22 December 2014 was sent to the Complainant and that Government is not responsible for claims made by complainant relating to the building of her house. Attached to the email is a copy of a decision, a so-called ‘ “*zelfstandig schadebesluit*” ’, dated 22 December 2014. After consultation with Complainant, the Ombudsman is informed that she only received the pertinent document by regular mail on 28 January 2015.

Considering that the Minister who signed the “*zelfstandig schadebesluit*” resigned on 19 December 2014, the legality of the pertinent decision was questioned. By letter of 4 March 2015 the current Minister confirmed the decision taken by the former Minister of VROMI, who signed the ‘ “*zelfstandig schadebesluit*” ’ while no longer in office or authorized to do so. The Minister also stated that Complainant would be informed accordingly. However, it took approximately six weeks (15 April 2014) before Complainant actually received the confirmation dated 4 March 2014 regarding the status of the “*zelfstandig schadebesluit*”. Complainant was again given six weeks to appeal the decision. The Ministry of VROMI indicated that aforementioned letter was also sent by registered mail as recommended in the Preliminary Findings Report by the Ombudsman.

The Ombudsman observes that in this case the standard of proper conduct of *an adequate organization of services* is applicable, considering that a formal decision is sent at first by regular mail, and subsequently the legality of the pertinent decision is confirmed and sent by registered mail, without the Ministry of VROMI being aware whether the confirmation of the decision is received by the Complainant, or not. Complainant received the Confirmation of the decision from the Ministry of VROMI personally on 15 April 2015 only through intervention by the Ombudsman.

The standard of *Fair play* is also applicable in this case as the signing of the ‘ “*zelfstandig schadebesluit*” ’ by a former Minister created uncertainty about the legality of the pertinent



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decision, and subsequently legal actions available to the Complainant. The tardy receipt of confirmation regarding the legal status of a decision by a document dated 4 March 2015 again leaves Complainant doubting about the deadline for a possible appeal of the “*zelfstandig schadebesluit*”.

While the complaint is partly founded, and it is concluded that the Ministry of VROMI breached the *standards of proper conduct of adequate organization of services and fairplay*, the Ombudsman nonetheless refrains from further investigation of this complaint, because Complainant received an answer to her letter dated 4 November 2014, termed a “*zelfstandig schadebesluit*”. This gives Complainant the possibility to move forward and appeal accordingly. Having established that the original complaint pertaining to non-response by the Minister is handled, the Ombudsman will close this file.

Recommendations:

- The Minister is advised to send all future mail to citizens, which includes a formal decision, by special postal mail with delivery notification.

Sincerely,

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

Cc: - Mr. Brown L., Secretary General Ministry of VROMI
- Mr. William M., Policy Advisor Ministry of VROMI
- Ms., Complainant