



OMBUDSMAN

SINT MAARTEN

Notice of Termination Investigation

(Article 16 and 17 sub 3 National Ordinance Ombudsman)

Ministry of Justice
Fao: Office of Attorney General
Mr. A.R.E. Schram, Attorney General
Wilhelminaplein 14-16
Curaçao

Philipsburg, 11 February 2015

Your ref.no.:
Our ref.no.: OM-OBM 0144/2015

Your letter of:
Complaint no.: 2014/00171

Dear Mr. Schram,

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

Summary of Complaint:

On 16 October 2013 a court session took place against Complainant’s son. After the court session Complainant went to a restaurant across the Courthouse. Complainant claims that the Public Prosecutor Mrs. Karola Van Nie came to the aforementioned restaurant and treated her rude.

By letter received at the Public Prosecutor Services on 5 February 2014 Complainant filed a complaint with the Solicitor General Mr. T. Stein against the Public Prosecutor Mrs. Karola Van Nie. On 24 July 2014 Complainant filed a complaint with the Ombudsman, because she did not received a response on the complaint filed with the Solicitor General.

Findings:

On 15 August 2014 the Ombudsman sent a Notification of Complaint (NOC) to the Office of the Attorney General in which inter alia the following questions are posed:

- *Explain why the letter from Complainant received by the Public Prosecutor Services on 5 February 2014 remained unanswered?*
- *When can Complainant expect further information in regard to the pertinent complaint filed against the public prosecutor?*

By letter dated 29 September 2014 the Attorney General acknowledges receipt of the NOC.



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On 31 October 2014 the Ombudsman received the response to the NOC by email.

Aforementioned response entails as follows;

- The Public Prosecutors Services received the complaint of Complainant on 6 February 2014
- By letter dated 21 February 2014 the Chief Public Prosecutor informed Complainant about the investigation into her complaint and the outcome of same.
- The Attorney General agrees with the conclusion of the Chief Public Prosecutor that the complaint filed with the Public Prosecutors Office is unfounded. However, the Attorney General deemed it possible that Complainant did not receive the letter of 21 February 2014. Reason why aforementioned letter is added to the response to the NOC with the request to forward pertinent letter to Complainant.

Given aforementioned response the Ombudsman requested via email on 1 December 2014 that the Attorney General indicate how the letter dated 21 February 2014 was presented to Complainant. By email dated 1 December 2014 the Attorney General replied that Complainant's complaint did not have any information about her address, reason why an address search was done and the letter was sent via mail to Complainant her official address in Middle Region.

The Preliminary Findings Report (PFR) was sent to parties on 15 January 2015. The Ombudsman was in the possession of another address from Complainant than used by the Public Prosecutor's Office. The PFR was sent by special delivery to the address Complainant provided at the time of her complaint to the Ombudsman. On 19 January 2015 the PFR returned as undelivered to the Ombudsman, because Complainant was not living at that address.

The Attorney General responded to the PFR by letter dated 20 January 2015, stating that he agrees with the Ombudsman that a complainant should be heard, and in future cases this will be taken into account. Aforementioned is provided by the Kingdom complaint regulation Public Prosecutor (*Staatsblad* 2010/359).

On 21 January 2015 Complainant visited the Ombudsman and received the PFR, including copies of the response from the Chief Prosecutor to her complaint. Regarding the failure of mail to reach Complainant, she explained that she does not live anymore at the address that the Public Prosecutor used. Furthermore, the street name Complainant provided to the Ombudsman was not situated on Sint Maarten, but on Saint Martin.

After reading the letter dated 21 February 2014 from the Chief Public Prosecutor addressed to Complainant, Complainant stated that she does not agree with the response of the Chief Prosecutor to her complaint. Complainant is of the opinion that the description given is not in accordance with what really occurred.



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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 is: the *Right of both sides to a Hearing* and *Adequate Organization of Services*.

The standard of *Right of both sides to a Hearing* provides that any person whose rights, interests or legitimate expectations will be affected by a decision or finding is entitled to an adequate opportunity of being heard. In order to properly present their case, the person is entitled to know the grounds on which that decision or finding is to be taken.

The standard of an *Adequate Organization of Services* provides that administrative bodies are required to organize their administration and operation in a manner which guarantees proper service to the public.

Conclusion:

By letter received at the Public Prosecutor Services on February 5, 2014 Complainant filed a complaint with the Solicitor General Mr. T. Stein against the Public Prosecutor Mrs. Karola Van Nie. Complainant claims that she did not receive an answer to pertinent complaint. By letter dated 15 August 2014 the Ombudsman informs the office of the Solicitor General about the complaint. By letter of October 31, 2014 the Attorney General responds that the Chief Public Prosecutor already informed Complainant by letter dated 21 February 2014 regarding the outcome of the investigation. Aforementioned letter was sent to Complainant's address after an address search took place. The Ombudsman was presented with a copy of the letter dated February 21, 2014. It appeared however that the Complainant did not receive pertinent letter, and confirmed that she was no longer living at the address the response to her complaint was mailed. Having received a copy of abovementioned letter through the Ombudsman, Complainant informed the Ombudsman that she did not agree with the response of the Chief Public Prosecutor to her complaint.

The Ombudsman noted that Complainant was not invited by the Chief Public Prosecutor to be heard, nonetheless a decision was taken by the Chief Public Prosecutor on the pertinent complaint. As such the standard of proper conduct of the *Right of both sides to a hearing* has not been observed by the Chief Public Prosecutor.

The Ombudsman also noted that contacting the Complainant proves not to be easy. By mailing an important letter without a special delivery service, the Public Prosecutor Services did not warrant proper service, and unnecessary jeopardy as Complainant might not receive the letter. As such the standard of an *adequate organization of services* has not been observed.

Having received the response to her complaint through the Ombudsman, Complainant is advised to contact the Public Prosecutor Services with her reaction to the response. The Solicitor General / Public Prosecutor Services is hereby recommended to contact the



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Complainant at the address “....., Sint Maarten” to inform her personally or hear her to properly finalize the complaint filed at the Public Prosecutor Services.

Considering that Complainant has received a response to her complaint filed with the Chief Public Prosecutor/Solicitor General the Ombudsman refrains from further investigation, albeit with a note to the Public Prosecutor Services and will close this file.

Sincerely,

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

CC: Mr. D. Richardson, Minister of Justice
Mr. A. Maan, Chief Public Prosecutor
Mr. T. Stein, Solicitor General
Ms., Complainant