



OMBUDSMAN

SINT MAARTEN

Notice of Termination Investigation

(Article 16 and 17 sub 3 National Ordinance Ombudsman)

The Honorable Minister of General Affairs,
Mr. Marcel Gumbs
Government Administration Building
Clem Labega Square
Philipsburg
Sint Maarten

Your ref.no.:

Our ref.no.: OM-OBM 0209/2015

Your letter of:

Complaint no.: 2014/00185

Re: Complaint filed with the Ombudsman

Philipsburg, 9 March 2015

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 claims that he was replaced as assistant supervisor during a period of long-term illness and that he has not been reinstated in his previous function since his return to work in March 2014.

To date of filing the complaint with the Ombudsman **on 19 November 2014**, Complainant had not received a response to his letter dated 26 September 2014.

Findings:

In a letter dated 26 September 2014 (received by Government on 2 October 2014), Complainant informed the Secretary General of the Ministry of General Affairs (AZ), Mr. Julien Larmonie, and the Head of Government Support Services, Mr. Erno Labega of the above stated situation and requested that the matter be regulated.

On 10 December 2014 a Notification of Complaint (NOC) was sent to the Minister of AZ. The Minister was requested to respond to the NOC within 4 weeks of the date of the letter, however no later than 9 January 2015.

The following questions were included in the NOC:

- Has complainant been (permanently) replaced as assistant supervisor?



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If yes, on what grounds was this done?

If no, please explain why complainant is not executing the tasks of assistant supervisor.

- When can complainant expect to receive a motivated answer to his letter dated September 26, 2014?

On 9 January 2015 the Minister was reminded of the response deadline.

Since no response was received to the requests to respond to the NOC, the Secretary General of the Bureau Ombudsman sent a reminder to the Secretary General of AZ on **4 February 2015**, in which one-week extension to date of the letter was granted (11 February 2015).

On 17 February 2015 Complainant however informed the Ombudsman that he was no longer interested in pursuing the matter, as he would be reaching the pensionable age shortly.

To date of this Notice of Termination, no response was received to the NOC dated 19 November 2014.

Legal Basis:

Article 19 National Ordinance Ombudsman (AB 2010, GT no. 20)

Pursuant to article 19 of the National Ordinance Ombudsman (AB 2010, GT no. 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.

Landsverordening Materieel Ambtenarenrecht (AB 2010, GT no. 25) (LMA)

Article 4b provides that relevant authority in relation to civil servants is the Governor.

Article 49 section 1 provides that if necessary the civil servant is obliged to carry out tasks other than the regular tasks, temporarily. Section 3 goes on to state that those activities are to be assigned by the relevant authority.

Pursuant to article 50 section 1, in the interest of service, the civil servant is obliged to carry out all tasks assigned to him by the relevant authority, considered reasonable taking into account Complainant personality and circumstances.

Standard(s) of proper conduct:

- *Promptness*; and
- *Active and adequate information provision.*

Promptness

A public body is expected to be dynamic and as such be decisive and swift in its decision-



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making. Hence, providing a response or decision within the legal timeframe or at least within a reasonable time is required.

Promptness requires a decision to be taken in less than the legal timeframe in matters of urgency.

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 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.

Conclusion:

Complainant claims that he was replaced as assistant supervisor during an extended period of illness, and has not been reinstated in his (previous) function since his return to work in March 2014.

In the course of the investigation, Complainant informed the Ombudsman that he was no longer interested in pursuing the matter, as he would be reaching the pensionable age shortly.

Considering the Complainant's request, the Ombudsman will refrain from further investigating this complaint. The Ombudsman however observes that, Complainant has not received an answer to his letter dated 26 September 2014, nor has he been informed as to when he can expect to receive a response to said letter. Complainant is entitled to a response to the above-mentioned letter within a reasonable timeframe. Five months cannot be considered a reasonable timeframe to provide Complainant with a response to said letter. As such the standard of proper conduct *promptness* has not been observed by government.

Administrative bodies are furthermore required to provide adequate information to the public actively and upon request. Administrative bodies also have the duty to inform the citizen on its own initiative about proceedings that have a direct effect on them. Complainant was not informed of his placement in a different position, or otherwise, nor has Complainant received



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a response to his inquiries. Considering the aforementioned, the standard of proper of conduct *active and adequate information* is also applicable in this case.

It should also be noted that article 19 National Ordinance Ombudsman has not been observed, and as such the law has been undermined.

Considering the above stated findings, the Ombudsman recommends to provide Complainant with a motivated response to his letter dated 26 September 2014 within two weeks of the date of this letter.

Upon the request of Complainant, the Ombudsman will proceed to close this file.

Philipsburg, 9 March 2015

Sincerely,

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

Cc: - H. Plantijn, Secretary General
- Complainant