

CHAPTER 167A

POLICE COMPLAINTS AUTHORITY

ARRANGEMENT OF SECTIONS

SECTION

Preliminary

1. Short title.
2. Interpretation.

The Authority

3. Establishment of Authority.
4. Powers of the Authority.
5. Functions of the Authority.
6. Administration and staff.
7. Supervision of investigations.
8. Powers of the Authority in relation to investigations.
9. Procedure after direct investigation by the Authority.

Complaints Office

10. Complaints Office of the Force.

Handling of Complaints

11. Making complaints.
12. Where complaint may be made.

SECTION

13. Handling of complaints.
14. Securing evidence.
15. Frivolous complaints etc.
16. Informal resolution of complaints.
17. Formal resolution of complaints.
18. Powers of Authority in respect of final investigation report.
19. Powers of Commissioner in respect of formal resolution of disputes.
20. Rules.

Review of Complaints by the Authority

21. Reviews by the Authority.
22. Where complaint satisfactorily disposed of.
23. Where complaint not satisfactorily disposed of.
24. Conduct of hearings.

General

25. Proceedings before the Authority.
26. Disclosure of information.
27. Offences.
28. Funds.
29. Accounts.

SECTION

- 30. Reports.
- 31. Remuneration.
- 32. Regulations.

CHAPTER 167A**POLICE COMPLAINTS AUTHORITY**

An Act to provide for the establishment of a Police Complaints Authority and for matters incidental thereto. 2001-10.
2006-34.

[1st May, 2004] Commence-
ment.
2004/56.

Preliminary

1. This Act may be cited as the *Police Complaints Authority Act*. Short title.

2. In this Act,

"Authority" means the Police Complaints Authority;

Interpreta-
tion.

"Chairman" means the Chairman of the Authority;

"Commissioner" means the Commissioner of Police;

"complaint" means a complaint brought in accordance with section 11 in respect of the conduct of a police officer;

"Complaints Office" means the office of the Police Force established under section 10;

"Force" or "Police Force" means the Royal Barbados Police Force;

"police officer" or "officer" means a member of the Police Force.

The Authority

- Establishment of Authority.
3. (1) The Police Complaints Authority is hereby established.
- (2) The Authority shall be a body corporate.
- Schedule.
- (3) The *Schedule* has effect with respect to the constitution of the Authority and otherwise in relation thereto.
- Powers of the Authority.
4. (1) The Authority may sue and be sued in its corporate name.
- (2) The Authority may enter into contracts for the purposes of this Act.
- (3) The Authority shall have a common seal.
- Functions of the Authority.
5. (1) The functions of the Authority are to
- (a) monitor the investigation by the Police Force of any complaint with a view to ensuring that the investigation is conducted impartially;
- (b) supervise the investigation of complaints or other matters in accordance with section 7;
- (c) undertake the direct investigation of complaints where it thinks necessary; and
- (d) review complaints in accordance with sections 21 to 24.
- (2) Subject to the provisions of the *Constitution* relating to the powers of the Director of Public Prosecutions and the Police Service Commission, the Authority is not subject to the directions or control of any other person in the exercise of its functions under this Act.
- Administration and staff. Cap. 21.
6. (1) The staff of the Authority shall be public officers and the offices of the staff shall be established in accordance with the *Civil Establishment Act*.
- (2) The Authority may require any officer or any committee of the Authority to perform any of its functions.

7. (1) The Authority shall supervise the investigation of

Supervision
of investiga-
tions.

- (a) any complaint alleging that the conduct of a police officer resulted in the death of or serious injury to some other person;
- (b) any other matter, whether or not the subject of a complaint, referred to the Authority by the Commissioner, which in the opinion of the Commissioner should be supervised because of its gravity or its exceptional circumstances.

(2) In the exercise of its function under this section, the Authority may require the Commissioner to give directions to a police officer as to a particular investigation; and it shall be the duty of the officer to comply with the directions.

8. (1) The Authority may for the purposes of section 5(1)(c) examine any person who in its opinion is able to give any information relating to the matter under investigation.

Powers of
the
Authority in
relation to
investiga-
tions.

(2) The Authority, the investigative staff of the Authority and any other person authorised by the Authority shall, in the exercise of their duties under section 5(1)(c), have the same powers and privileges as are given by law to a police officer.

(3) For the purposes of a direct investigation, the Authority may require the Complaints Office or the police officer concerned to supply information, produce any document or thing or allow access by members of the Authority or an investigator appointed by the Authority to any premises.

9. On completion of a direct investigation, the Authority

- (a) shall submit a report thereon to the Commissioner;
- (b) where the report indicates that a criminal offence may have been committed, shall submit a report to the Director of Public Prosecutions and shall give a copy of the report to the Commissioner; and

Procedure
after direct
investigation
by the
Authority.

- (c) may make such recommendations as it thinks fit to the Commissioner.

Complaints Office

Complaints
Office of the
Force.

10. The Commissioner shall for the purposes of this Act establish and maintain a Complaints Office of the Police Force (by whatever name called), which shall be responsible for

- (a) investigating complaints made by members of the public against police officers; and
- (b) submitting to the Authority and to the Commissioner a monthly report in respect of the investigation of any complaint or matter that is being supervised by the Authority.

Handling of Complaints

Making
complaints.

11. (1) A complaint may be made by a member of the public who is aggrieved or by his authorised agent or, where the aggrieved person has died or is otherwise unable to make a complaint, by any member of the public.

(2) A complaint may not be made later than 2 years from the day on which the complainant first knew of the facts that gave rise to the complaint.

Where
complaint
may be
made.

12. A complaint may be made in the prescribed form at

- (a) any police station;
- (b) the Complaints Office; or
- (c) the office of the Authority.

Handling of
complaints.

13. (1) The person who receives a complaint under section 12 shall

- (a) record it in the prescribed manner and give the complainant a copy signed by himself and the complainant; and

- (b) furnish the complainant with a prescribed statement setting out the procedures to be followed in respect of the complaint.
- (2) Where a complaint
 - (a) is made at a police station, it shall be forwarded to the Complaints Office;
 - (b) is made at the office of the Authority, it shall be forwarded to the Complaints Office; or
 - (c) is made at the Complaints Office, a copy shall be forwarded to the Authority.
- (3) The officer in charge of the Complaints Office shall notify the Commissioner of all complaints.

14. The officer in charge of the Complaints Office shall take all reasonable steps to ensure that all available evidence, which otherwise might be lost if not secured immediately, is gathered. Securing evidence.

15. (1) The Commissioner may direct the officer in charge of the Complaints Office not to investigate or not to continue to investigate a complaint where, in the opinion of the Commissioner, Frivolous complaints etc.

- (a) the subject matter of the complaint is trivial;
- (b) the complaint is frivolous or vexatious; or
- (c) the aggrieved person does not desire that action be taken or continued, as the case may be.
- (2) Where any decision is taken pursuant to subsection (1),
 - (a) the complainant and the Authority shall be notified of the decision; and
 - (b) in the case of paragraphs (a) and (b) of subsection (1), the complainant shall be notified of his right to apply for a review under section 21.

Informal
resolution of
complaints.

16. (1) Where a complaint

(a) is not one that is specified under section 7; or

(b) in the opinion of the Commissioner, would not justify a criminal charge,

the Commissioner may direct the officer in charge of the Complaints Office to resolve the complaint informally.

(2) Where a complaint is resolved informally, a record shall be made of the manner in which the complaint was resolved; and the complainant and the police officer concerned shall signify in writing their agreement to the resolution.

(3) A copy of the record made under subsection (2) shall be given to the Authority, the complainant and the police officer concerned.

(4) Notwithstanding subsection (2), where the Authority or the Commissioner is of the opinion that an informal resolution was obtained as a result of a misunderstanding, a threat or other improper pressure, the Authority or the Commissioner may direct that the investigation be continued; and shall give reasons in writing to the officer in charge of the Complaints Office, the complainant and the police officer concerned for the continuation of the investigation.

Formal
resolution of
complaints.

17. (1) Where a complaint

(a) has not been resolved informally; or

(b) is not suitable for informal resolution,

the officer in charge of the Complaints Office shall cause an investigation to be made forthwith into the complaint.

(2) Subject to section 10, the officer in charge of the Complaints Office shall forward to the Commissioner and to the Authority a quarterly report during the course of the investigation referred to in subsection (1).

(3) The officer in charge of the Complaints Office shall forward to the Commissioner and the Authority a final investigation report after the investigation has been completed; and shall give notice thereof to the complainant and the police officer concerned.

18. (1) Where, after receiving the final investigation report, the Authority is of the opinion that the investigation was not conducted satisfactorily, the Authority

Powers of Authority in respect of final investigation report.

- (a) may notify the Commissioner in writing that in the opinion of the Authority the investigation was not conducted satisfactorily;
- (b) may direct that the matter be further investigated; or
- (c) may direct that any witness be interviewed or re-interviewed.

(2) Any investigation or interview conducted pursuant to subsection (1) shall be conducted by a police officer other than the officer who conducted the original investigation.

19. After consideration of the final investigation report and any requests from the Authority under section 18, the Commissioner may

Powers of Commissioner in respect of formal resolution of disputes.

- (a) refer the matter to the Director of Public Prosecutions, where he is of the opinion that a criminal offence justifying criminal prosecution has been committed;
- (b) institute disciplinary proceedings in accordance with the appropriate enactment; or
- (c) direct that no action is warranted.

20. The Commissioner may, with the approval of the Minister, make rules in respect of the handling, investigation and disposal of complaints by the Complaints Office.

Rules.

Review of Complaints by the Authority

Reviews by
the
Authority.

21. (1) A person who is aggrieved with the disposition of his complaint or with the findings of the investigation by the Police Force may apply in writing to the Authority for a review of the complaint by the Authority within 3 months of the notice of the disposition of the complaint or within 3 months of the receipt of the results of the investigation, as the case may be.

(2) On receipt of an application under subsection (1), the Authority shall notify the Commissioner in writing and request from the Commissioner all material relevant to the particular complaint.

(3) The Commissioner shall, upon receiving the request under subsection (1), furnish the Authority with all material relevant to the complaint.

Where
complaint
satisfactorily
disposed of.

22. Where on review the Authority is satisfied with the manner of the disposition of a complaint or with the findings of the investigation, it shall submit a report in writing to that effect to the Commissioner and shall furnish the complainant and the police officer concerned with a copy.

Where
complaint
not
satisfactorily
disposed of.

23. (1) Where the Authority is not satisfied with the manner in which a complaint is disposed of, the Authority may

- (a) institute a hearing to inquire into the complaint; or
- (b) submit a report to the Commissioner setting out its findings and recommendations in respect of the disposition of the complaint.

(2) Where the Commissioner does not implement the recommendations of the Authority, the Commissioner shall submit a report to the Authority and to the Governor-General setting out his reasons therefor, together with his comments.

(3) A copy of the Authority's report under this section shall be sent to the complainant and the police officer concerned.

24. (1) The Authority may institute a hearing under section 23 by sending a notice of the hearing to the Commissioner, the complainant and the police officer concerned. Conduct of hearings.

(2) The notice of hearing referred to in subsection (1) shall specify

(a) the purpose of the hearing; and

(b) the place and time of the hearing.

(3) It is the duty of the police officer concerned to attend the hearing referred to in subsection (1).

(4) Where the complainant, having had due notice of the time and place of the hearing, does not attend the hearing, the Authority may dismiss the application for review unless, having received a reasonable excuse for the non-appearance of the complainant, the Authority thinks it fit to adjourn the matter.

General

25. (1) Where, in relation to any matter before the Authority, proceedings have been or are instituted in any court, the Authority shall not commence proceedings, or, where proceedings have already commenced, shall discontinue proceedings in respect of the matter, until after the determination of the court. Proceedings before the Authority.

(2) Any proceedings before the Authority shall be conducted in private.

(3) Any person who attends any proceedings before the Authority for the purpose of assisting in an investigation under this Act shall be entitled to the same fees and expenses as a witness in a court.

(4) Anything said or information supplied or any document produced by any person for the purposes of this Act, or in the course of an investigation or any proceedings before the Authority under this Act, is privileged in the same manner as if the investigations or proceedings were proceedings in a court.

Disclosure
of informa-
tion.

26. (1) The Authority and every person concerned with the administration of this Act shall regard as secret and confidential all documents, information or matters disclosed in the administration of this Act.

(2) No person shall publish or disclose to any person, otherwise than is necessary in the course of his duties, the contents of any documents, communication or information whatsoever, which relate to, and have come to his knowledge in the course of, his duties under this Act.

(3) A person who contravenes subsection (2) is guilty of an offence and is liable on summary conviction to a fine of \$5 000 or to imprisonment for a term of 2 years or to both.

(4) Any disclosure

(a) made by the Authority or any other person in proceedings for an offence under subsection (3); or

(b) which the Authority considers necessary in the discharge of its functions,

shall not be deemed inconsistent with any duty imposed under this section.

Offences.

27. (1) A person who

(a) wilfully makes a false statement intending to mislead or misleads the Authority or any other person in the discharge of the functions of the Authority or of that other person under this Act; or

(b) without lawful justification or excuse

(i) obstructs, hinders or resists the Authority or any other person in the discharge of the functions of the Authority or of that other person under this Act;

(ii) fails to comply with any lawful requirement of the Authority or any other person; or

(c) without reasonable cause

- (i) refuses or neglects to attend any proceedings before the Authority; or
- (ii) departs from any proceedings without the consent of the Authority or other person conducting the proceedings

is guilty of an offence and is liable on summary conviction to a fine of \$1 000 or to imprisonment for 2 years or to both.

(2) Paragraph (c)(i) of subsection (1) does not apply to the complainant.

28. The funds of the Authority shall consist of such sums as are Funds. appropriated to it by Parliament.

29. The Authority shall keep proper accounts of its transactions in Accounts. relation to the administration of the resources of the Authority in accordance with the directions of the Auditor-General, and shall submit to the Auditor-General a statement of accounts in respect of each financial year.

30. (1) The Authority Reports.

- (a) shall, at the end of every calendar year, submit to the Minister a general report on the discharge of its functions during that year; and
- (b) may submit a report to the Minister on any matters coming to its notice to which it considers that his attention should be drawn by reason of their gravity or of other exceptional circumstances.

(2) Any report submitted under subsection (1) shall omit any particulars that may lead to the identification of the parties to the complaint.

(3) The Minister shall lay any report submitted under subsection (1) before Parliament and shall cause the report to be published in the *Official Gazette*.

(4) The Authority shall, before making any report, afford any person upon whose conduct it proposes to make adverse comment an opportunity to be heard.

Remunera-
tion.

31. Members of the Authority shall be paid such remuneration by way of fees or allowances as are fixed by the Governor-General acting on the advice of the Minister.

Regulations.

32. The Authority may, after consultation with the Minister, make regulations

- (a) prescribing the form and procedure of hearings;
- (b) prescribing the practice and procedure to be adopted in respect of the review of complaints;
- (c) in respect of the handling of complaints by its officers;
- (d) generally in respect of its operations; and
- (e) generally in respect of this Act.

SCHEDULE

(Section 3(3))

1. (1) The Complaints Authority shall consist of Constitution and appointment of Authority.
- (a) a Chairman, a Deputy Chairman and 2 other persons, all of whom shall be appointed by the Governor-General on the advice of the Minister; 2006-34.
- (b) one person who shall be appointed by the Governor-General in his absolute discretion;
- (c) one person who is a former gazetted police officer of the Police Force, who shall be appointed by the Governor-General on the advice of the Police Force Association, but subject to sub-paragraph (4)(c); and
- (d) the Head of the Civil Service, *ex officio*.
- (2) The Chairman and the Deputy Chairman shall be attorneys-at-law of at least 10 years standing. 2006-34.
- (3) The Governor-General shall appoint a member of the Authority to be its Secretary.
- (4) No person shall be eligible to serve as a member of the Authority if that person is or was during the last 5 years
- (a) a member of Parliament;
- (b) a candidate for election to membership of the House of Assembly;
- (c) a member of the Police Force;
- (d) a member of the Barbados Defence Force; or
- (e) declared bankrupt or moved against by his creditors.
- (5) No person convicted of a criminal offence is eligible to serve as a member of the Authority, unless the Governor-General in any special case otherwise directs.
2. Where the Chairman or any other member of the Authority is absent or unable to perform his duties, the Governor-General may, on the advice of the Minister, appoint another person to act in the place of the Chairman or the other member. Temporary appointment to the Authority.

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- Tenure. 3. (1) A member of the Authority shall hold office for a period not exceeding 3 years unless he resigns or his appointment is revoked in accordance with paragraph 6.
- (2) All members are eligible for re-appointment at the end of their tenure.
- Meetings and quorum. 4. (1) Where the Authority is required to exercise its functions under this Act, the Authority shall meet at least once a month.
- 2006-34. (2) The quorum shall consist of 4 members including the Chairman or, in the absence of the Chairman, the Deputy Chairman.
- 2006-34. (2A) The Chairman or, in the absence of the Chairman, the Deputy Chairman shall preside at all meetings.
- (3) Where the Authority considers it necessary to do so, the Authority may invite the Commissioner, the Deputy Commissioner or the head of the Complaints Office or any other relevant person to attend any of its meetings.
- (4) The Governor-General may direct that any member of the Authority who becomes the subject of a criminal investigation or who is charged with a criminal offence shall not attend meetings.
- Resignation. 5. (1) The Chairman may at any time, by instrument in writing addressed to the Governor-General, resign his office as Chairman of the Authority.
- (2) A member of the Authority other than the Chairman may at any time resign his office as member by instrument in writing addressed to the Governor-General and transmitted through the Chairman.
- (3) Where the Chairman ceases to be a member, he shall also cease to be Chairman.
- (4) The resignation of the Chairman or a member of the Authority shall take effect from the date of the receipt of the instrument of resignation by the Governor-General.
- Revocation. 6. The Governor-General may at any time by instrument in writing revoke the appointment of the Chairman or any member of the Authority if he is satisfied that the person
- (a) has, without reasonable excuse, failed to attend 3 consecutive meetings of the Authority;
- (b) has, without reasonable excuse, failed to comply with any direction given by the Authority for the purposes of this Act;

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- (c) is physically or mentally incapacitated to such an extent as to impair his ability to perform his duties, or is otherwise unable or unfit to perform his duties;
 - (d) has become a person who would be disqualified for appointment pursuant to paragraph 1(4); or
 - (e) has improperly discharged his functions.

7. (1) The appointment and cessation of appointment of the Chairman or a member of the Authority shall be published in the *Official Gazette*. Notices to be published.

(2) The address of the Authority shall be published in the *Official Gazette* and in each daily newspaper.

8. (1) All decisions made by the Authority and all documents of the Authority shall be signed by the Chairman or any other person so authorised to act. Signature and seal.

(2) The seal of the Authority shall be kept in the custody of the Chairman or such other member as the Authority may approve.

9. The decisions of the Authority shall be by a majority of votes, and in the event of an equality of votes the Chairman has a casting vote. Decisions.

10. Minutes of each meeting shall be kept in proper form by the Secretary or such other person as the Authority may appoint for the purpose; and shall be confirmed in writing at the next meeting. Minutes.

11. (1) The Authority may appoint committees of its members or other persons to assist with the proper discharge of its functions. Committees.

(2) Where the Authority appoints a person to a committee who is not a member, that person shall be a person who is not disqualified to serve as a member of the Authority under paragraph 1(4).

(3) Where a person who is not a member is appointed to a committee, the Authority may, with the approval of the Minister, determine the remuneration and allowances to be paid to that person.

12. Subject to the provisions of this Act, the Authority may regulate its own proceedings. Procedure.