

# Year in Review 2018

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**I'm delighted to share an overview of the work we accomplished in our first full year of operation. We hope you agree that we are doing meaningful work that improves the lives of all residents of the Cayman Islands.**

The statistics we have included provide an overall sense of our workload in responding to both informal enquiries and formal complaints and appeals.

The case summaries include a sample of the types of cases we resolved last year. We seek to resolve complaints and appeals as early in the process as possible. The cases are categorised under headings such as 'Early Resolution' and 'Informal Resolution'. During this phase we are less formal in our

communication, often using in-person meetings with the parties involved, telephone conversations and email messages.

If we are unable to resolve a complaint or appeal informally then we move to our formal investigation or hearing process. We write letters and review written submissions when dealing with these types of cases. We produce investigation reports and decisions to reflect the outcomes of the complaints/appeals.

Going forward, we will post case summaries regularly on our website [ombudsman.ky](http://ombudsman.ky). We are also developing a quarterly e-newsletter. Let us know if you would like to be added to our email list for the newsletter by sending us a request at [info@ombudsman.ky](mailto:info@ombudsman.ky). You can also subscribe by signing up on our Facebook page.

**Sandy Hermiston | JP**  
Ombudsman

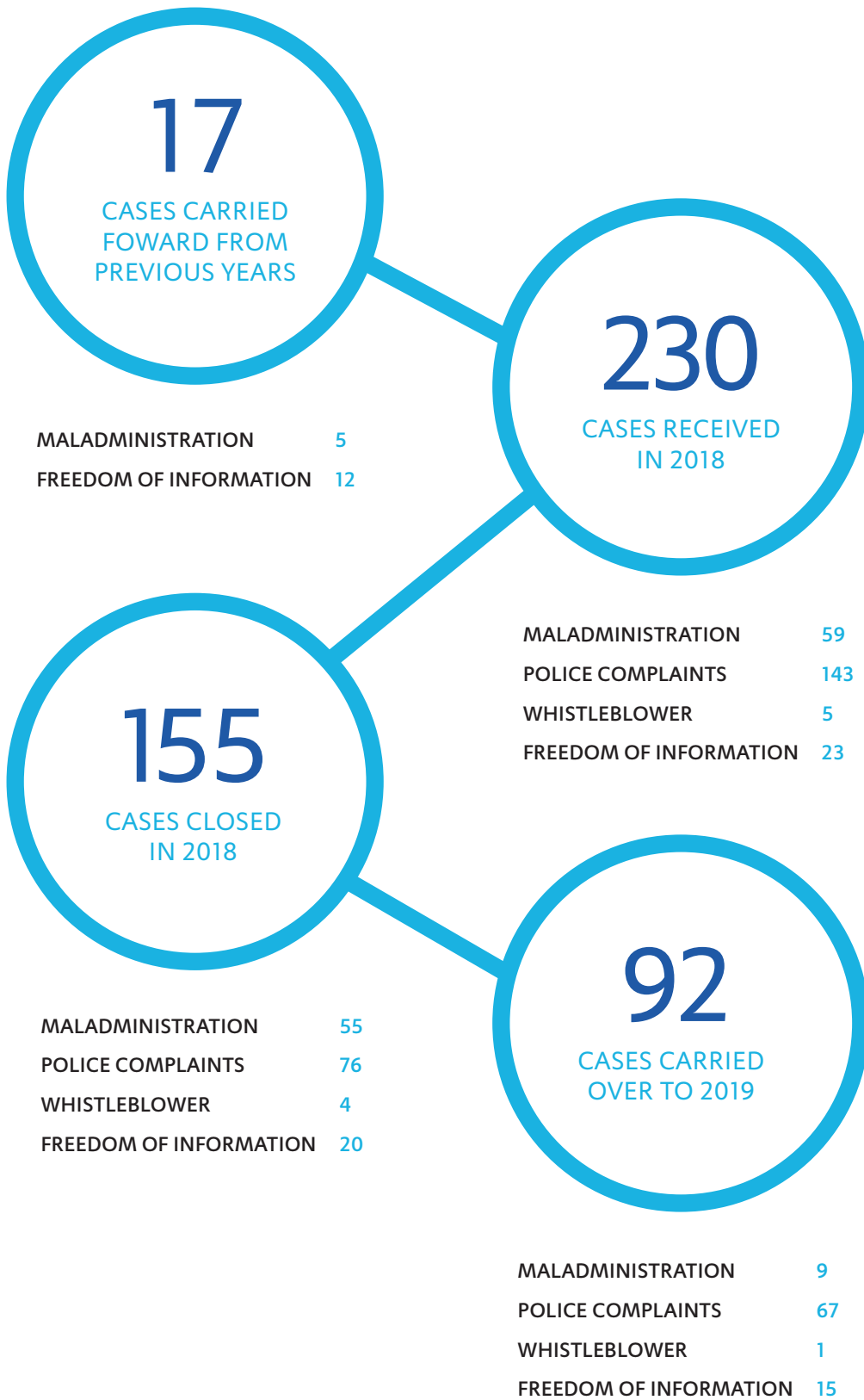
# Overview

(1 January to 31 December 2018)

## INQUIRIES



## CASES



# Information Rights Division

## Case Summaries

(Informal Resolution)

### REPORT ON TAXI FARES Ministry of District Administration, Tourism & Transport (DATT)

An applicant requested a copy of the Report on the Public Transport Unit (PTU)'s taxi fares completed by Deloitte. Access was withheld because the Report had not yet been submitted to the Ministry, and the applicant appealed the matter to the Ombudsman.

**During our investigation we confirmed that the Report had not yet been received by the Chief Officer or the Chairman of the Public Transport Board, and therefore DATT was neither required, nor authorised to disclose it. Upon our suggestion, the engagement letter and the Department of Tourism's Departmental Tenders Committee Evaluation Report were disclosed to the applicant in the spirit of the FOI Law, and the applicant withdrew the appeal.**

### BEACH ACCESS REPORT Lands & Survey Department (L&S)

This request was for the Beach Access Report dealing with the public's right of way to beaches around the Islands. L&S deferred access for 30 days while the Report was awaiting presentation to Cabinet. The applicant disagreed and made an appeal to the Ombudsman.

**Our investigation confirmed that the Report had been completed but had not yet been presented to Cabinet. We encouraged L&S to identify a reasonable period for review and presentation of the Report. Before further steps were taken, Cabinet reviewed the Report and it was disclosed on the L&S website, after which the applicant withdrew the appeal.**

### CCTV FOOTAGE Department of Public Safety Communications (DPSC)

An applicant requested a copy of specific CCTV footage, but DPSC denied access under the CCTV Code of Practice. DPSC also claimed that the FOI Law did not apply to the records in question because the records were strategic and operational intelligence gathering activities under section 3 of the FOI Law. The applicant disputed this and appealed the matter to the Ombudsman.

**In our investigation we clarified DPSC policies and procedures on the correlation and destruction of CCTV footage as well as the circumstances for viewing CCTV footage. The DPSC agreed to facilitate a controlled viewing of the requested footage, rather than provide a copy of the footage as requested, which required specialised software which was not yet available. The applicant agreed, and the appeal was withdrawn.**

## DECISIONS OF THE LABOUR TRIBUNAL AND LABOUR APPEALS TRIBUNAL

### Department of Labour & Pensions (DLP)

This request was for decisions of the Labour Tribunal and Labour Appeals Tribunal for a specific period, including full details of each case, written judgements, transcripts or summaries of evidence, and reasons for each decision. DLP granted partial access to the minutes of both Tribunals but redacted what they considered commercially sensitive and personal information. An internal review was not conducted within the statutory timeline, and the applicant appealed to the Ombudsman.

**In our investigation we confirmed some of the redactions, but explained that information on public officers acting in their official capacity is excluded from the definition of personal information in the FOI Regulations. DLP agreed to remove some redactions and provided the applicant with 22 sets of minutes. The applicant was satisfied, and the appeal was closed.**

## REPORT ON THE PORT AUTHORITY

### Office of the Auditor General (OAG)

A request for records concerning irregularities at the Port Authority was submitted to the OAG. The applicant was granted partial access to the Port Authority 2017 - Potential Abuses/Fraud Report but some alleged personal information was redacted. The applicant was not satisfied with the redactions and appealed to the Ombudsman.

**We reviewed the redactions and discussed our findings with the OAG. Since the FOI Regulations do not recognise information relating to the position or functions of a public officer as personal information, some redactions were removed. The remaining redactions relied on prejudice to public affairs rather than personal information. The applicant was satisfied with the redactions and agreed to close the appeal.**

## RECORDS RELATING TO A MISSING PERSON INVESTIGATION

### Royal Cayman Islands Police Service (RCIPS)

An applicant asked for records concerning the investigation of the disappearance of a close family member. The RCIPS withheld the records arguing disclosure would affect their investigation. An internal review was not conducted within the statutory timeline, and an appeal was made to the Ombudsman.

**We facilitated several meetings between the parties, and as a result, the RCIPS promised to undertake regular communications with the family members. The RCIPS also disclosed some records while redacting specific personal and law enforcement information. Some records could not be disclosed until the court issued letters of administration concerning the estate of the missing person. Consequently, the appeal was closed.**

# Decision Summaries

## **COLD CASE REVIEW REPORT Royal Cayman Islands Police Service (RCIPS) HEARING 58-00717**

An applicant requested a cold case review report from the RCIPS. The request was denied on the basis that its disclosure would constitute a contempt of court since the record in question was subject to a court order which prohibited dissemination.

**The Ombudsman confirmed that the record was subject to a court order and concluded that it is exempted from disclosure under section 17(b)(ii) of the FOI Law.**

## **STAMP DUTY ABATEMENTS Ministry of Finance and Economic Development (FED) HEARING 60-01617**

An applicant requested information on stamp duty abatements from FED by date range and by block and parcel numbers. The Ministry located responsive records within the given date range, which were redacted and disclosed, but said they were unable to locate any records in relation to the block and parcel numbers.

The applicant believed more records existed and filed a second request for the records by block and parcel numbers. This led to the identification and

disclosure of further responsive records by block and parcel numbers. The applicant appealed to the Ombudsman because she was not satisfied with the Ministry's response to her original request.

**The Ombudsman found that the Ministry misinterpreted the original request, had searched for only part of the request and failed to interview the applicant. The Ministry missed several chances to resolve the matter in a positive and customer-friendly manner.**

**The Ombudsman dismissed the appeal since the applicant, on her own initiative, was able to secure the records she was seeking.**

## **CIIPA RECORDS Cayman Islands Institute of Public Accountants (CIIPA) HEARING 62-00618**

An individual made a request to the Cayman Islands Institute of Public Accountants (CIIPA) for access to information including policies and procedures and his own personal information. In its response CIIPA stated that it was not a public authority and was therefore not subject to the FOI Law. The individual contacted the Ombudsman to appeal CIIPA's response. He argued that CIIPA was a statutory body and fell within the definition of public authority in section 2 of the FOI Law.

**The Ombudsman considered the preliminary question of whether she had jurisdiction in this matter, and whether the application fell within the ambit of the FOI Law.**

**The Ombudsman concluded that CIIPA was not a public authority under the FOI Law. Consequently, the FOI Law did not apply to it, and there was no legal right to request and access records held by the organisation, or to appeal a denial of access to the Ombudsman.**

## **TAXI OPERATOR STATISTICS Ministry of District Administration, Tourism and Transport (DATT) HEARING 65-201800212**

An applicant requested information about taxi operators such as the number of operators, how many were also employed by the Cayman Islands Government (in particular how many were employed by the Royal Cayman Islands Police Service and Her Majesty's Prison Service) and how many were Caymanian/status holders.

The Ministry argued that while the Public Transport Unit held potentially responsive records, the PTU did not keep statistics on the occupation or the place of birth of the operators. DATT also argued that retrieving the responsive records would constitute an unreasonable diversion of resources under section 9(c) of the FOI Law.

**The Ombudsman concluded that the FOI Law does not require the creation of new records such as the requested statistics. She also concluded that providing redacted copies of the application forms and supporting documentation would be excessively costly, particularly in terms of the time required to adequately redact the records. This would therefore unreasonably divert the resources of the Ministry and PTU, as claimed.**

**The Ombudsman flagged the Ministry for an audit of its information handling practices.**

# Complaints Division

## Maladministration Case Summaries

(Early Resolution)

### OVERTIME COMPENSATION

#### Ministry of Human Resources and Immigration

A police officer complained that officers were not paid appropriately for working on Elections Day in May 2017. The RCIPS set a rate of pay for officers who were required to work on that day which was different from the provisions in the *Public Service Management Regulations*. The officer insisted the law was quite clear regarding the overtime rates of pay for civil servants. The Ministry referred the matter to the Office of the Attorney General for a legal opinion. The complainant approached our office frustrated that the Ministry had not responded to his complaint eight months later.

**We wrote to the Ministry indicating that the delay was unreasonable and requested a response on behalf of the complainant. The Ministry prompted the Office of the Attorney General for the legal opinion which found in favour of the complainant.**

### BUSINESS LICENSE REQUIREMENT

#### Ministry of Education, Youth, Sports, Agriculture and Lands (EYSAL)

A business owner contacted our office complaining that the Ministry refused to pay her for services she had provided in the amount of CI\$7,790.00. The Ministry explained to the complainant that she had to obtain a Trade and Business License before payment could be

approved. The complainant objected to this new requirement because they had been providing these services to the Ministry (and others in the Cayman Islands Government) for five years without being required to produce a business license.

**We explained that the Ministry was correct – a Trade and Business License was in fact required to be eligible for payment. The complainant obtained the required license and she received payment in full the next day.**

### TAXI PERMITS

#### Public Transport Appeal Tribunal (PTAT)

Two complainants were disqualified from holding a taxi permit by the Public Transport Unit of the Public Transport Board for allegedly operating a taxi without a meter; they appealed the decision to the PTAT. The PTAT did not provide a written judgement within 21 days of the hearing, as required by law. The complainants sought our assistance to obtain a response.

**We contacted the Chairman of the PTAT who acknowledged the transgression and apologised to the complainants. The Chairman delivered a judgement in favour of the complainants including the reimbursement of the complainants' legal fees.**



## **PARKING COMPLAINT**

### **Royal Cayman Islands Police Service (RCIPS)**

The complainant, while working as a courier, received a warning from a police officer for parking on a yellow line during a routine mail delivery. He asked the RCIPS whether courier services were allowed to park on yellow lines when making short deliveries, as was the current practice. The complainant was referred to several officers, but no one could answer his question.

**We reached out to the Head of the Traffic and Road Policing Unit, who confirmed that there are no exemptions that allow for courier vehicles to park on yellow lines when making deliveries. We advised the complainant of the answer and closed our file.**

## **UNREASONABLE TIME LIMIT**

### **Department of Immigration (DOI)**

An elderly woman visited our office at the end of June 2018 because she was told her immigration status did not permit her to stay. Her husband had permanent resident status but when he died in 2006, she was no longer entitled to live in the Cayman Islands because she did not have

permanent resident status herself. She was unaware of this issue and continued to reside in Cayman for the following 18 years. The DOI notified her she was required to leave by 1 August 2018 and the Chief Immigration Officer told her that he had no authority to extend her stay. She sought our assistance, citing a lack of fairness. She said that she needed more time to organise her personal affairs prior to departure. This included leasing her home, selling her vehicle and cancelling upcoming scheduled surgery. Additionally, she advised us that she was awaiting the outcome of an appeal in relation to her application for permanent residence which had been submitted earlier in the year.

**We contacted the Department's Internal Complaints Process Manager to gain a greater understanding of the situation and determine potential options for informal resolution of the complaint. The Department met with the complainant and she was granted an extension permitting her to remain on Island until December 2018, pending her appeal.**

# Maladministration Case Summaries

## (Investigation)

### REFUSAL TO WAIVE STAMP DUTY Ministry of Finance and Economic Development

The complainant and her husband bought a piece of property together. They applied for a stamp duty exemption even though only one of them was a first time Caymanian buyer. They argued that only ½ of the value of the property should be considered when determining whether to grant a stamp duty exemption.

**The Ombudsman concluded that to be considered for a waiver of stamp duty as defined by the *Stamp Duty Law (2013 Revision)*, the applicant must fall within the criteria set out in the law. The Ombudsman agreed with the Ministry's decision to consider the total value of the property. The Ombudsman did not support the complaint.**

### RENAMING OF ROAD Ministry of Education, Youth, Sports, Agriculture & Lands (EYSAL) and Lands & Survey Department (L&S)

A resident discovered the road adjacent to his property was being renamed. He emailed a complaint to EYSAL seeking an explanation as to why his neighbours were eligible to apply for a renaming of the street when they did not own any property adjacent to the street. He also asked why

he had not received notification of the renaming as required by *The Roads (Naming and Numbering) Law, 1997*. He also sought an explanation for the approval of the use of a name of a living person in contravention of the *Street Addressing Rules* published on the entity's website and the required forms. When he did not receive a response, he filed a complaint with our office.

**We investigated the matter to determine if he had been treated fairly and to ascertain if the policies and relevant legislation were followed during the approval process.**

**The Director of L&S admitted that they had failed to follow the requirements set out in the applicable laws. The Ombudsman concluded the complainant was treated unfairly. He had a legitimate expectation that his correspondence would be responded to in a timely manner and that a reasonable rationale would be provided for the decision taken to approve the application. She also found that EYSAL failed to comply with the process outlined in the law. L&S acknowledged that the rules published on their website were out of date and required updating.**

**The applicant was informed that the approval of the name change was withdrawn to allow the process to be followed as laid out in the law. In addition L&S agreed to remove the outdated information from their website. The Ombudsman's recommendations were accepted and are in the process of being implemented.**

## SPECIAL EDUCATION GRANT PROCESS

### Ministry of Education, Youth, Sports, Agriculture and Lands (EYSAL)

In June 2017 the Education Council sent a letter to the parents of a student advising them of a decision to deny their application for special education funding. The parents disagreed with the Council's decision and hand-delivered an appeal letter to the Ministry. The Ministry failed to respond to the appeal and the parents filed a complaint with our office.

The Ministry explained that the processing of Special Education Needs (SEN) Grants had changed in September 2017 as the newly appointed Minister decided to retain the authority for decisions on matters pertaining to education - rather than delegate it as was previously done. As a result, the Education Council did not have authority to deal with applications and appeals regarding SEN funding. The Ministry indicated that the complainants could have submitted an appeal to the Education Council or Chief Education Officer in June of 2017. The parents could have also made an application for an alternative program for their child. The Ministry acknowledged that the parents should have been notified of their appeal rights in the correspondence they received denying their application for SEN funding.

The complainants also submitted a new application for SEN funding for the 2018/19 school year on 1 March 2018, but it was not acknowledged until the Ombudsman contacted the Ministry.

**The Ombudsman determined that the Ministry's handling of the complainants' request for appeal and subsequent re-application for grant funding**

**was administratively unfair. The parents had a legitimate expectation that their correspondence would be responded to in a timely fashion.**

**No reasonable rationale was provided to explain the inaction and delay by the Ministry.**

**The Ombudsman recommended that all applicants be advised of their right to appeal in all future SEN funding decisions. The Ombudsman also recommended that systems be put in place to ensure correspondence is responded to in a timely manner. The Ministry accepted and implemented both recommendations.**

## REQUEST FOR PENSION PAYOUT Department of Labour & Pensions (DLP)

The complainant wrote to the DLP over several months requesting her pension funds as she was interested in leaving the Cayman Islands because she was unable to find employment locally. She complained that the Director and Deputy Director failed to respond to her email and alleged that this non-response and a lack of interest were administratively unfair.

The Ombudsman's investigator discovered that the complainant had used an incorrect email address in her request. Once this error was corrected and the application was properly received, a decision was made and the complainant was advised that future queries should be directed to the Deputy.

**The Ombudsman found that the decision was made fairly and in accordance with the *National Pension Law*. The Ombudsman did not support the complaint of unfair treatment as the Department staff had responded appropriately to the complainant's requests and their responses were in accordance with law and policy.**

# Complaints Division

## Police Complaints Case Summaries

(Informal Resolution Approved by the Ombudsman)

### POLICE CONDUCT DURING TRAFFIC STOP

A complaint was made by a member of the public following a traffic stop alleging the officer involved was rude, abrupt, aggressive and unprofessional in the handling of the situation. The complainant was also concerned as their young son was in the vehicle and felt the manner in which they were dealt with had a negative effect on the youth.

The Professional Standards Unit of the Royal Cayman Islands Police Service, with the agreement of the complainant and the officer involved, initiated an informal resolution. The officer heard the perspective of the complainant and offered an apology for the feelings he caused. The officer's supervisor was involved and spoke to the officer regarding the incident, providing guidance and recommending customer service training.

**Both the officer and complainant signed off on an agreement that they were satisfied with the informal resolution which was reviewed and approved by the Ombudsman.**

### FACE TO FACE DISCUSSIONS RESOLVE COMPLAINT

A complaint which originated in 2012 (prior to the new law) was reviewed by our office. The complainant alleged that the police came to his business because they received a complaint about loud music playing after midnight.

The police initially issued a warning to turn off the music, but as they left the area the music was turned on again. The police departed but were later called to respond to a report of a fight nearby. While in the area they again attempted to address the loud music however found that the access gate to the premises had been locked.

They arrested the owner of the premises and seized some sound equipment. The owner complained that the police unlawfully entered the premises and were heavy handed and used excessive force in making the arrest.

**Following discussions with our investigators the complainant agreed to an informal resolution. Both parties met with our investigators to discuss the matter. During the discussion both the complainant and the officer admitted that they could have conducted themselves differently on the night of the occurrence and likely avoided the complaint and years of negative feelings. They took turns describing their perspectives about the incident, which brought about an understanding of the story to both sides.**

**The complainant said that the opportunity to sit down with the officer to discuss the matter was one of the most positive police experiences in their lifetime.**

**Both the officer and the complainant signed off on an informal resolution agreement, which was accepted by the Ombudsman.**

# Case Summaries

## (Final Investigation Report)

### COMPLAINT ABOUT LACK OF POLICE RESPONSE

The complainant made four complaints of police corruption to the RCIPS alleging that he reported a number of domestic violence incidents against him and the police failed to investigate them. The complainant also alleged that a police officer disposed of a urine certificate for a person which tested positive for illegal drugs.

The Commissioner of Police referred the complaint to the Ombudsman and requested she investigate the matter.

**The Ombudsman reviewed 43 police reports, 9 police statements, correspondence between the Department of Public Prosecutions and the complainant's attorney as well as 5 drug certificates.**

**The Ombudsman found there was no evidence that the RCIPS wilfully or neglectfully failed to investigate the complaints of domestic violence made by the complainant. She also examined the management and processing of the urine specimen by the RCIPS and found it was handled appropriately and in accordance with law and policy.**

### PROGRESS REPORT REQUESTED

A complainant contacted our office because they were unable to obtain a progress report or a copy of their statement from the RCIPS. Our investigator contacted the district

commander and he complied with the complainant's request two days later.

The complainant wrote to us saying **"Many thanks for your assistance with my recent requests, you are correct the response was extremely prompt once I directed my requests via your office. It is comforting to know your office can be relied on when elsewhere appears to be in limbo mode. Keep up the good work!"**

### TASER POLICY UNDER REVIEW

In February 2018 two RCIPS officers participated in a 'career day' at a primary school. Two Tasers were displayed as part of a presentation highlighting police equipment. A Taser is a conducted energy device, that when fired, emits two barbed probes which conduct an electrical charge.

During a demonstration by police officers a Taser was accidentally discharged striking a young student. A doctor, who was also attending the career day, was available to render assistance to the child who sustained only minor injuries to their upper body. The child did not require hospital treatment.

We conducted a review of all documentation including statements from all police officers involved in the incident together with relevant RCIPS policies and protocols surrounding the use and deployment of Tasers.

The officer responsible for the handling and ultimate discharge of the Taser was authorised to do so having undergone specialist training.

The officer was unable to account for how a cartridge came to be attached to the Taser and ultimately deployed from the weapon injuring the child.

The investigation determined that one of the two Tasers supplied by the RCIPS armory for the event was capable of discharging the probes associated with it despite having been checked by the RCIPS armorer prior to being allocated for the demonstration.

A review of RCIPS policy documents revealed that despite the **Taser Policy** stating that there should be an ‘unintentional discharge policy’ displayed at every armory, this does not happen, nor was there any policy document pertaining to the care and handling of weapons.

The RCIPS has a dedicated Officer Safety Training Committee, whose remit extends to the use of Tasers. This committee was not made aware of the accidental discharge. The RCIPS **Taser Policy** does not incorporate standards for Tasers being used for demonstration purposes in a civilian setting.

The lack of confidence and the absence of policy or protocols for the use of Tasers in a situation such as this career day was of significant concern to the Ombudsman.

**Recommendations to the Commissioner of Police included that the RCIPS carry out an assessment of their policies and training programs relating to the deployment of Tasers, specifically in situations where demonstrations involve the presence of children.**

**The Ombudsman also recommended that all future accidental discharges be brought to the attention of the Officer Safety Committee who should be required to carry out a post incident assessment of any such event. The Ombudsman afforded the RCIPS a six-month implementation period.**

## INVESTIGATION OF DOG FATALITY

In May of 2018 police officers executed a properly obtained search warrant in George Town.

The operation was authorised by officers at the Superintendent and Chief Inspector rank. The warrant was aimed at the recovery of unlawful firearms and was part of a pre-planned police operation. All officers carrying firearms were duly trained and authorised to do so.

The planning of the operation included detailed intelligence pictures of the premises to be searched, together with intelligence regarding the occupants. The plan included measures to deal with dogs on the premises. A trained customs dog handler was on site to provide expertise. During the execution of this warrant a loose dog acted aggressively towards an officer who was able to avoid the dog. Later the same dog ran aggressively towards another officer. The officer tried to retreat from the animal, however, the dog continued to charge the officer. A single shot was discharged at the dog. An animal welfare officer on scene removed the dog and transported it to a veterinary hospital where it was determined that the injury to the dog was catastrophic and the best course of action was to euthanise the animal. A post mortem examination revealed the dog suffered a single shot to the neck area.

**The Ombudsman determined that officers were acting lawfully in the execution of the search warrant and that the discharge of a single shot was a measured response to the level of threat posed to the police.**

## UNREASONABLE USE OF FORCE

Following a routine roadside check, officers formed the opinion that the complainant may have been impaired through alcohol. The driver also failed to provide proof of insurance and vehicle registration. The exchange between the officers and the driver became heated after the driver refused to be breathalysed. A struggle ensued. The driver was arrested and taken to a police station. A further altercation took place at the police station between the driver and one of the arresting officers. The incident happened in the custody area of the station where the driver was struck repeatedly with a police baton.

**The Ombudsman rejected the officer's version of events when he claimed he was acting in self-defense. She concluded that other options were available to the officer, particularly because the driver was in police custody and unarmed. The Ombudsman found the amount of force used by the officer was unreasonable and she recommended the Commissioner of Police consider disciplinary action. The Police Commissioner accepted the Ombudsman's recommendations.**

## DUTY OF CARE

An individual was arrested by two police officers in relation to an allegation of assault. During the arrest, the accused was denied the use of

bathroom facilities prior to the journey to the Fairbanks Detention Center. The person defecated in the back of the police car en route to the Detention Center. On arrival at the Detention Center CCTV footage showed the accused naked and handcuffed in the custody area.

**The Ombudsman investigation concluded that although the arrest of the individual was lawful, and the amount of force used by the arresting officers was reasonable, there was a lack of care demonstrated towards the prisoner. The actions of the officers were at odds with the RCIPS' vision, mission and values. She found the arresting officers failed to demonstrate respect, courtesy and professionalism towards the prisoner in their care.**

**The Ombudsman recommended the Commissioner of Police consider disciplinary action against the arresting officers. The Police Commissioner accepted the Ombudsman's conclusions and recommendations.**

## REASONABLE USE OF FORCE

Police were called to a report of a domestic disturbance. Attending officers were met with hostility and aggression, which resulted in a violent struggle with the complainant. The complainant grabbed one of the officer's handcuffs and the officer used his baton to retrieve them. As a result, the complainant sustained injuries, which included fractures to two fingers. He was transported to the hospital where he stayed overnight for treatment. The next morning, he was arrested and bailed.

**We investigated the incident with a specific focus on whether the use of force during the arrest was reasonable and proportionate. Statements from the officers involved, eye witness accounts and medical evidence were all reviewed as part of the investigation which led the Ombudsman to conclude that the actions of the police were justified and proportionate in the circumstances. The complainant ought not to have taken the officer's handcuffs.**

**The complaint was not supported.**

## **MOTHER OWED EXPLANATION**

A mother approached two RCIPS uniformed officers who were questioning her son (who is a minor) on her property. The officers refused to provide her any reasons for their actions and walked away from her. The mother filed a complaint of unprofessional and disrespectful conduct against the police officers.

We recommended that the officers attempt to resolve the complaint informally with the mother; however, they were unable to do so. The complaint proceeded to a formal investigation where the Ombudsman reviewed the evidence including statements from all parties involved and a report from the RCIPS Professional Standards Unit.

**The Ombudsman determined that the mother was entitled to an explanation from the officers regarding the interaction they had with her son and that they should not have walked away from her in the manner they did. The Ombudsman further**

**recommended that the Commissioner of Police offer guidance to the officers concerned. The Commissioner agreed with the Ombudsman and directed the officers to speak with the mother and provide her with a full explanation. He also agreed that it was a missed opportunity to build a relationship in that community.**

## **POLICE PURSUIT UNDER REVIEW**

In 2016, the RCIPS received a report of an armed robbery in progress and several police cars were assigned to the incident. Police officers observed a motorcyclist wearing a mask near the location. The motorcyclist ignored the police direction to stop and the police pursued using cars and the police helicopter. The motorcyclist drove at high speed, overtaking vehicles and often travelling on the wrong side of the road into oncoming traffic. The dangerous driving continued for miles eventually ending when a collision occurred between one of the pursuing police vehicles and the rear wheel of the motorcycle. The rider was knocked from the bike and incurred serious but non-life-threatening injuries.

The operator of the motorcycle was charged with several offences including dangerous driving and failing to comply with a police signal. There were no charges laid in relation to the armed robbery. The RCIPS Professional Standards Unit conducted an internal investigation/review, as this was prior to the establishment of our office.



**The Ombudsman decided to review this incident on her own initiative considering the significance of the injuries sustained by the rider and the public interest in high speed pursuits.**

**The Ombudsman did not identify any breaches of law. She did however, identify deficiencies in RCIPS policies, procedures, training and equipment relating to police pursuits and made recommendations regarding corrective action. The Ombudsman's recommendations were accepted by the Police Commissioner and she looks forward to confirmation that the deficiencies have been addressed.**

## COMPLAINT ABOUT UNPROFESSIONAL CONDUCT

The police were called to a dispute involving two drivers in a private car park. One driver accused the other of entering the car park via the exit and complained that it almost resulted in a collision. The driver who was accused of almost causing a collision was distressed because the other driver was threatening her and using abusive language directed at her. The behaviour continued even after the officers arrived and the officers attempted to calm the driver down. Eventually a police supervisor arrived and the driver who was being abusive alleged that one of the officers was biased and disrespectful towards him. The driver said he wanted the officer to be fired and replaced with a Caymanian. He also indicated he would lodge a complaint with the Department of Immigration to ensure that the officer was thrown off the island.

The driver who was abusive was later arrested and charged with several offences, including insulting the modesty of a woman. The driver submitted a complaint against the police officer to our office, saying the officer was rude and unprofessional during the incident.

**The Ombudsman did not support the complaint based on the statements of the other driver, officers involved and independent witnesses who all confirmed that the driver acted offensively and aggressively throughout the incident. The Ombudsman concluded that the officer acted reasonably.**

## POLICE INVOLVEMENT IN A NON-CRIMINAL DISPUTE

The complainant and his friend were working together on a renovation project when they had a disagreement, which resulted in the complainant firing his friend. The friend returned to the job site to collect his tools and discovered that the tools were gone and in the possession of the complainant. The complainant was holding the tools until he received repayment of money, which he believed the friend had stolen from his house. A police officer, together with the friend, visited the complainant at his home and the complainant returned some tools.

The friend was not satisfied that all the tools had been returned. The complainant offered to allow the police to search his premises, but the police said it would not be necessary. The complainant believed that the matter was finished.

Four months later, a police officer contacted the complainant and explained that he had been assigned to the case of the missing tools. He indicated that if the tools were not returned, the complainant could face arrest for theft. The complainant offered to pay for the missing tools to avoid arrest. The police officer contacted the former friend and relayed the offer. The friend indicated that the amount was not acceptable and made a counter offer. The complainant alleged that he was so afraid of being arrested that he agreed to pay the higher amount in order to avoid the expense of defending himself and the potential loss of earnings involved in doing so. The police officer drafted a written settlement agreement for the two men to sign. The complainant paid the money and signed the agreement. The complainant later complained to our office that he felt intimidated by the police officer and settled because he was afraid of being arrested.

**The Ombudsman found that the police officer had overstepped his authority when he became involved in a matter that should have been resolved in the civil court system. She recommended that the officers involved receive guidance regarding their role and authority to avoid such an incident in the future. The Ombudsman recommended that the Police Commissioner consider whatever disciplinary action he deemed appropriate. She also recommended that the complainant receive reimbursement for the funds he provided as settlement.**

**The Police Commissioner accepted all the Ombudsman's recommendations. The officer involved in the settlement plead guilty to the disciplinary offence of conduct to the prejudice of good order and police discipline. He received a reprimand.**

# Complaints Division

## Whistleblower Protection

### Case Summaries

#### BLOWING THE WHISTLE ON COLLEAGUE'S USE OF MOBILE PHONE

The whistleblower alleged that a Government employee was illegally and surreptitiously recording private, sensitive and Government business conversations using their mobile phone. She brought her concern to the attention of senior management at the department and an internal investigation was initiated.

The whistleblower said that a final decision was not relayed to her and she was unsure if any disciplinary action was ever taken.

**We determined that the matter did not fall under *The Whistleblower Protection Law, 2015* as the alleged inaction did not meet the definition of improper conduct nor was the matter of public interest.**

#### SEEKING WHISTLEBLOWER PROTECTION

An employee was concerned about financial irregularities which they observed in their organisation. The employee disclosed those concerns to another investigative body and assisted them in their investigation of those concerns.

In 2018 the other investigative body referred the employee to our office for advice about whether any protections were available under the ***Whistleblower Protection Law*** (the WPL). The Ombudsman advised the employee that because the WPL was not in force at the time of the initial disclosure the protections under the WPL were not available.

**We encouraged the employee to continue to work with the other investigative body.**