

POLICE COMPLAINTS AUTHORITY ACT

CHAPTER 15:05

Act
8 of 2006

Current Authorised Pages

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Note on Subsidiary Legislation

This Chapter contains no subsidiary legislation.

Note on Section 53

Section 53 amends section 23(6) of the Domestic Violence Act, Chap. 45:56.

See Act No. 8 of 2006.

CHAPTER 15:05

POLICE COMPLAINTS AUTHORITY ACT

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CHAPTER 15:05

POLICE COMPLAINTS AUTHORITY ACT

8 of 2006. **An Act to establish an independent body to investigate criminal offences involving police officers, police corruption and serious police misconduct and for other related matters.**

*[ASSENTED TO 13TH APRIL 2006]

Preamble. WHEREAS it is enacted *inter alia* by subsection (1) of section 13 of the Constitution that an Act to which that section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 of the Constitution and, if any such Act so declare, it shall have effect accordingly:

And whereas it is provided by subsection (2) of the said section 13 of the Constitution that an Act to which this section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all the members of that House:

And whereas it is necessary and expedient that the provisions of this Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution:

PART I

PRELIMINARY

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

Commencement. **2.** This Act came into operation on 1st January 2007.
[329/2006].

Act inconsistent with Constitution. **3.** This Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.

*See section 2 for the date of commencement.

4. In this Act—

Interpretation.

“Authority” means the Police Complaints Authority established under section 5;

“Commission” means the Police Service Commission established under section 122(1) of the Constitution;

“Commissioner” means the Commissioner of Police;

“complaint” includes an allegation of—

- (a) police corruption;
- (b) serious police misconduct;
- (c) the commission of a criminal offence by a police officer; or
- (d) the commission of a criminal offence by any other person but involving a police officer,

which is submitted to the Authority;

“financial institution” means a company which carries on or used to carry on all or any aspect of banking business or business of a financial nature as defined in the Financial Institutions Act; Ch. 79:09.

“Minister” means the Minister to whom responsibility for national security is assigned;

“police corruption” means an act done with an intent that is illegal, dishonest or fraudulent or failing to act in order to receive an advantage or reward whether financial or otherwise, personally or for another person, group or organisation, or exercising a legitimate discretion for improper reasons, or employing illegal means to achieve approved goals;

“police officer” means—

- (a) a member of the Police Service;
- (b) a member of the Municipal Police Force, established under the Municipal Corporations Act, and Ch. 25:04.

- Ch. 15:03. (c) a member of the Special Reserve Police, established under the Special Reserve Police Act,
at the material time;
- Ch. 15:01. “Police Service” means the Police Service established under section 4 of the Police Service Act;
- Sub. Leg. “serious police misconduct” means the commission of a disciplinary offence under the Police Service Regulations which the Authority considers to be so serious as to bring the Police Service into disrepute;
- “Service Commission” means a Service Commission established under the Constitution.

PART II

THE POLICE COMPLAINTS AUTHORITY

Establishment of the Authority.

5. (1) There is established a body to be known as the Police Complaints Authority.

(2) The Authority shall be a corporate body.

Membership of the Authority.

6. (1) The Authority shall comprise a Director and a Deputy Director to be appointed by the President on the joint advice of the Prime Minister and the Leader of the Opposition.

(2) In the event the Prime Minister and the Leader of the Opposition cannot agree on the joint advice, the President shall appoint the Director and the Deputy Director, after consultation with the Prime Minister and the Leader of the Opposition.

Qualification of Director and Deputy Director.

7. A person appointed by the President as Director or Deputy Director shall have at least ten years experience as an Attorney-at-law, and may be appointed from within the Commonwealth.

Disqualification of Director and Deputy Director.

8. No person is qualified to be appointed as Director or Deputy Director if that person—

(a) is a member of—

(i) the Senate;

(ii) the House of Representatives;

- (iii) the Tobago House of Assembly;
- (iv) a Municipal Corporation; or
- (b) was at any time during the three years preceding appointment—
 - (i) a member of the Senate;
 - (ii) a member of the House of Representatives;
 - (iii) a member of the Tobago House of Assembly;
 - (iv) a member of a Municipal Corporation; or
 - (v) a candidate for election to membership of the House of Representatives, the Tobago House of Assembly or a Municipal Corporation; or
- (c) is or was a police officer;
- (d) is an undischarged bankrupt;
- (e) has at any time had a record of a criminal conviction for any indictable or summary offence which carries a term of imprisonment of three or more months; or
- (f) has been dismissed from the Public Service.

9. (1) The appointment of a person as the Director or Deputy Director shall, subject to this Act, be for a period not less than three years, but not exceeding five years. Tenure of office.

(2) A person mentioned in subsection (1) is eligible for reappointment.

10. The first appointment of the Director and Deputy Director and every subsequent appointment shall be published by the Authority in the *Gazette*. Gazetting of membership.

11. Where the Director or Deputy Director is absent or unable to perform his duties, the President may, in accordance with sections 6 and 7 appoint another person to act in the place of the Director or Deputy Director. Acting appointment.

Revocation of appointment.

12. The President, acting in his discretion, may revoke the appointment of a person as Director or Deputy Director where he is satisfied that the person—

- (a) has, without reasonable excuse, failed to carry out his prescribed duties for a continuous period of three months;
- (b) is unable to discharge the functions of his office, whether arising from infirmity of mind or body or any other cause, or for misbehaviour; or
- (c) has become a person who would be disqualified for appointment pursuant to section 8.

Resignation.

13. (1) The Director or Deputy Director may resign from his office, by instrument in writing addressed to the President.

(2) A resignation under this section takes effect from the date of receipt of the instrument of resignation by the President.

Remuneration.

14. (1) The President shall determine the salary and allowances to be paid to the Director and Deputy Director.

(2) The salary and allowances of the Director and Deputy Director shall be a charge on the Consolidated Fund.

(3) The salary and allowances payable to the holder of an office to which subsection (1) applies and his other terms of service shall not be altered to his disadvantage after his appointment.

Location.

15. (1) The Authority shall be located in the place provided for it by the Government and its address shall be immediately published in the *Gazette* and in two daily newspapers in circulation in Trinidad and Tobago and thereafter such publication shall be made annually.

(2) Where the address of the Authority is changed, the new address shall be published in accordance with subsection (1).

16. (1) The Authority shall be provided with adequate staff Staff. for the discharge of its functions.

(2) The Authority shall employ such members of staff as it requires for the performance of its functions on such terms and conditions as are agreed upon between the employee and the Authority.

(3) An officer in the Public Service may, with the approval of the Authority and the appropriate Service Commission, consent to be appointed on transfer to the service of the Authority upon terms and conditions no less favourable than those enjoyed by him in the Public Service.

(4) For the purpose of superannuation and pension rights, an officer shall, upon transfer, be treated as continuing in the Public Service.

(5) An officer in the Public Service may, with the approval of the Authority and the appropriate Service Commission, consent to be seconded to the service of the Authority.

(6) Part III of Chapter III of the Civil Service Ch. 23:01. Regulations shall apply to an officer who is seconded to the Authority under subsection (5).

17. The funds of the Authority shall consist of such monies Funding. as are appropriated to it by Parliament from time to time.

18. (1) The Authority shall keep an account of all its Auditing of accounts. financial transactions in accordance with General Accounting Principles and Practices, and ensure that all payments out of the funds of the Authority are duly authorised.

(2) The accounts of the Authority shall be audited annually by the Auditor General or by an auditor authorised by him for such purpose.

19. The Authority is not subject to the direction or control of Independence of the Authority. any other person in the performance of its functions under section 21 and the exercise of its powers under section 22.

Annual report.

20. (1) The Authority shall, within three months of the end of each financial year, submit to the Minister in respect of the preceding financial year—

- (a) an annual report of its activities in the preceding financial year; and
- (b) a copy of the audited statement of accounts and such information relating to the operation of the Authority as the Minister may require.

(2) The Minister shall cause a copy of the annual report and audited statement to be laid in Parliament within three months of its receipt and if Parliament is not then in session, within twenty-eight days of the commencement of its next session.

(3) The Authority may on its own initiative or at the request of the Minister conduct an investigation and submit a special report to the Minister who shall cause it to be laid in Parliament in accordance with subsection (2).

PART III

POWERS AND FUNCTIONS OF THE AUTHORITY

Functions of the Authority.

21. (1) The functions of the Authority are to—

- (a) investigate criminal offences involving police officers, police corruption and serious police misconduct;
- (b) undertake inquiries into, or audits of, any aspect of police activities for the purpose of ascertaining whether there is police corruption or serious police misconduct or circumstances that may be conducive to both;
- (c) monitor an investigation conducted by any person or authority in relation to any matter mentioned in paragraph (a) and to undertake audits of those investigations;
- (d) advise the Police Service and other public authorities on ways in which police corruption and serious police misconduct may be eliminated;

- (e) gather evidence that may be admissible in the prosecution of a person who is not a police officer for a criminal offence in relation to the Police Service and to furnish that evidence to the Director of Public Prosecutions, or where an authority outside the State is concerned, the Attorney General;
- (f) gather evidence that may be used in the investigation of serious police misconduct and furnish such evidence to the Commissioner or the Commission for appropriate action;
- (g) gather evidence that can be used in the prosecution of a police officer involved in a criminal offence and furnish such evidence to the Director of Public Prosecutions; or
- (h) perform any other functions that may be conferred on it by any other written law.

(2) Evidence referred to in subsection (1)(e) and (f) may be accompanied by any observation that the Authority thinks appropriate together with recommendations as to what action the Authority considers should be taken in relation to the evidence.

(3) If the Authority obtains any information in the course of an investigation under subsection (1) relating to the exercise of the function of a public body or authority, other than the Integrity Commission or Ombudsman, the Authority may furnish the information to the Minister responsible for the body or authority together with such recommendations relating to the exercise of the function of that body or authority as the Authority thinks appropriate.

(4) Notwithstanding any written law to the contrary, information and evidence obtained by the Authority in the performance of its function under this Act is confidential.

(5) Subsection (4) shall not apply if the information and evidence is required for proceedings under the Official Secrets Act, 1911, for perjury or contempt of the Authority.

Powers of the Authority.

Ch. 19:01.

22. (1) For the purpose of the performance of its functions and subject to this Act, the Authority has the powers of a commission of enquiry established under the Commissions of Enquiry Act as if it were a commission of enquiry for the purpose of that Act.

(2) Notwithstanding subsection (1), the Authority shall also have the power to require—

- (a) any person to produce, within a specified time, all books, records, accounts, reports, data, stored electronically or otherwise, or any other documents relating to the functions of any public body or authority;
- (b) any person, within a specified time and in writing, to provide any information or to answer any question which the Authority considers necessary in connection with any investigation which the Authority is empowered to conduct under this Act; and
- (c) that any facts, matters or documents relating to a complaint, be verified or otherwise ascertained by oral examination of the person making the complaint.

(3) Notwithstanding subsection (1), where, in the course of an investigation, the Authority is satisfied that there is a need to expand its investigations, it may exercise the following powers:

- (a) require any person to furnish a statement in writing—
 - (i) enumerating all real or personal property belonging to or possessed by that person in Trinidad and Tobago or elsewhere, or held in trust for him, and specifying the date on which each property was acquired, the consideration paid and whether it was acquired by way of purchase, gift, inheritance or otherwise;

- (ii) specifying any monies or other property acquired in Trinidad and Tobago or elsewhere or sent out of Trinidad and Tobago by him or on his behalf during a specified period;
- (b) require any person to furnish, notwithstanding any other law to the contrary, all information in his possession relating to the affairs of any person being investigated and to produce or furnish any document or copy of any document relating to the person under investigation and which is in the possession or under the control of the person required to furnish the information;
- (c) require the manager of any financial institution, in addition to furnishing information specified in paragraph (b), to furnish any information or certified copies of the accounts or the statement of accounts at the financial institution of the person being investigated.

(4) A person who fails or refuses to disclose any information or to produce any document under this section commits an offence and is liable on summary conviction to a fine of fifty thousand dollars and to imprisonment for five years.

23. In the performance of its functions, the Authority may, as it thinks appropriate—

Co-operation with any person or body.

- (a) work in co-operation or in consultation with; or
- (b) disseminate intelligence and information to,

any person or body, whether public or private.

24. The powers and functions of the Authority are exercisable by—

Exercise of the functions of the Authority.

- (a) the Director or Deputy Director personally;
- (b) any person not being a police officer appointed by the Authority to conduct an investigation; or

(c) any other person acting under and in accordance with the general or special instructions of either the Director or Deputy Director.

Power to appoint specialists.

25. The Authority may, on such terms and conditions as it thinks fit, engage any suitably qualified person to provide it with services and assistance in the exercise of its functions.

PART IV

INVESTIGATIONS

Investigation on receipt of complaint.

26. The Authority may conduct an investigation on its own initiative or on the basis of a complaint made by a member of the public, a police officer, a public body or authority, or the appropriate unit or a disciplinary tribunal of the Police Service.

Limitation to make complaint.

27. (1) A complaint shall not be entertained under this Act unless it is made to the Authority not later than one year from the day on which the person making the complaint first had notice of the matter alleged in the complaint.

(2) The Authority may conduct an investigation pursuant to a complaint not made within the period prescribed in subsection (1) if it considers that there are special circumstances which make it proper to do so.

Making or continuing of complaint on behalf of complainant.

28. Where a person—

- (a) makes a complaint under this Act and dies;
- (b) makes a complaint and for any reason is unable to act for himself after making the complaint; or
- (c) could have made a complaint but died before doing so or is for any reason unable to act for himself,

the complaint may be made or continued by his personal representative, a member of his family or other individual suitable to represent him.

29. The Authority shall ensure that a permanent record of every complaint, the proceedings and the result of the investigation are maintained.

Recording of complaint.

30. (1) The Authority may conduct a preliminary investigation to assist it to identify whether or not there is conduct to justify a more complete investigation under the Act, or refer it to the Director of Public Prosecutions, Commissioner or the Commission for further action.

Preliminary investigation.

(2) The Authority may, in considering whether or not to conduct, continue or discontinue an investigation have regard to such matters as it thinks fit including whether or not in its view—

- (a) the subject matter of the investigation is trivial;
- (b) the conduct or matter concerned occurred at too remote a time to justify an investigation; or
- (c) the complaint is frivolous, vexatious or not made in good faith.

(3) Where the Authority has decided to refer a matter under subsection (1) or to discontinue a matter under subsection (2), the Authority shall, in writing, immediately inform the person who made the complaint of the decision taken and the reason for that decision.

31. (1) For the purpose of an investigation, the Authority may—

Entry to public premises.

- (a) enter and inspect any premises occupied or used by a public body or authority in that capacity;
- (b) inspect any document or other thing in the premises; and
- (c) take copies of any document in the premises.

(2) A public body or authority shall make available to the Authority such facilities as are necessary to enable the powers conferred by this section to be exercised.

(3) Subsection (1) shall not apply where—

- (a) under any law an objection to production of the document or other thing may be upheld;

- (b) public interest may justify an objection to an inspection of the premises;
- (c) a public or local authority or public official acting in such capacity enjoys a privilege under any law; or
- (d) under any law, any duty of secrecy or other restriction on disclosure applies to a public authority or public official.

Entry to private premises.

32. (1) Where the Authority wishes to enter private premises in furtherance of an investigation it shall first get a search warrant from a Court.

(2) For the purpose of an investigation, the Authority may—

- (a) enter and inspect any premises occupied or used by a person;
- (b) inspect any document or other thing in the premises; and
- (c) take copies of any document in the premises.

(3) A person shall make available to the Authority such facilities as are necessary to enable the powers conferred by this section to be exercised.

Application to High Court.

33. The High Court may, on an application made by the Authority, make any order, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing this Act.

PART V HEARINGS

Hearings.

34. The Authority may hold hearings for the purpose of conducting an investigation.

Public and private hearings.

35. The Authority may hold its hearings in public or in private, or partly in public and partly in private as it considers appropriate.

36. (1) When conducting a hearing the Authority is not bound by the rules or practice of evidence and can inform itself on any matter in such manner as it considers appropriate.

Evidence and procedure.

(2) The Authority is required to exercise its functions with as little formality and technicality as is possible.

(3) The Authority may require hearings to be conducted with as little emphasis on an adversarial approach as is possible and wherever possible, written submissions may be presented.

37. Where the subject matter of a complaint or an investigation is the subject matter of judicial proceedings, the Authority shall not commence or continue an investigation pending the final outcome of those proceedings.

Hearings in relation to judicial proceedings.

38. Where a person satisfies the Authority that he has a substantial or direct interest in the subject matter of a hearing, the Authority may authorise him to appear at the hearing or a specified part of the hearing.

Right of appearance of interested person.

39. (1) The Authority may allow a person giving evidence at a hearing to be represented by an Attorney-at-law.

Legal representation.

(2) The Authority may appoint an Attorney-at-law to assist it at a hearing.

40. (1) The Authority may summon a person to appear at a hearing at a time and place named in the summons—

Power to summon witnesses.

(a) to give evidence; or

(b) to produce such documents or other things as are referred to in the summons.

(2) The Authority may require a person appearing at a hearing to give evidence on oath or affirmation.

(3) A witness who has been summoned to attend before the Authority shall appear and report from day to day unless he is excused from attendance or until he is released from further attendance.

(4) No person shall be compelled for the purpose of an investigation under this Act to give any evidence or produce any document which he could not be compelled to give or produce in judicial proceedings.

Examination and cross-examination of witness.

41. (1) A person authorised or required to appear at a hearing or his Attorney-at-law may, with the leave of the Authority, examine or cross-examine any witness on any matter that the Authority considers relevant.

(2) An Attorney-at-law appointed by the Authority to assist it may examine or cross-examine any witness on any matter that the Authority considers relevant.

(3) A witness examined or cross-examined under this section has the same protection and is subject to the same liabilities as a witness in judicial proceedings.

Legal assistance for witnesses.

42. (1) A witness who appears or is about to appear before the Authority may apply for legal assistance.

(2) The Authority may approve the grant of legal assistance to the applicant if it is satisfied that this is appropriate, having regard to—

- (a) any injustice to the witness if assistance is declined;
- (b) the significance of the evidence that the witness is giving or appears likely to give; and
- (c) any other relevant matter.

Financial assistance for witnesses.

43. (1) Subject to subsection (2), a witness who appears before the Authority may be paid such reasonable expenses as may be determined by the Authority.

(2) The Authority may pay such reasonable expenses to a witness if it is satisfied that this is appropriate, having regard to—

- (a) the prospect of hardship to the witness if assistance is declined; and
- (b) any other relevant matter.

44. (1) Upon the conclusion of an investigation, the Authority shall make an assessment and form an opinion as to whether or not the subject matter of a complaint—

Conclusion of investigation.

- (a) has or may have occurred;
- (b) is or may be occurring;
- (c) is or may be about to occur; or
- (d) is likely to occur.

(2) The Authority may, based on its assessment or opinion under subsection (1), recommend whether consideration should be given to prosecute any person for a criminal offence or invoke disciplinary proceedings against any person, and make recommendations for the taking of any other action that the Authority considers appropriate.

(3) The Authority shall, in writing, immediately inform the person who made the complaint and the police officer concerned of the action taken and the reasons for such action.

PART VI

MISCELLANEOUS PROVISIONS

45. (1) A person who—

Contempt of the Authority.

- (a) having been served with a summons to attend before the Authority as a witness, fails to attend;
- (b) is a witness and who departs from a hearing without the authority of the person holding the hearing;
- (c) having been served with a summons to produce any document or other thing in his custody or control, fails to do so;
- (d) being called or examined as a witness before the Authority, refuses to be sworn or to make an affirmation or refuses or otherwise fails to answer any question put to him;
- (e) misbehaves before the Authority;
- (f) interrupts the proceedings of the Authority;

- (g) obstructs or attempts to obstruct the Director, a Deputy Director or a person acting with the authority of the Authority in the exercise of any lawful function;
- (h) publishes or discloses, or permits or allows to be published or disclosed, any evidence given before the Authority or any of the contents of a document produced at a hearing which the Authority has ordered not to be published or disclosed; or
- (i) does any other thing that, if the Authority were a Court, would be contempt of Court,

commits a contempt of the Authority.

(2) Subsection (1)(h) does not apply to an officer of the Authority in the lawful performance of his functions.

Punishment of contempt.

46. (1) A contempt of the Authority may be dealt with in accordance with this section.

(2) The Director may present to the High Court, a certificate setting out the details which the Director considers constitute the contempt.

(3) Where an offence is certified under subsection (2), the Court may inquire into the matter and after hearing any witness who may be produced against or on behalf of the person charged for the offence, and after hearing any statement that may be offered in defence, deal with him in any manner in which the Court could deal with him if he had committed the like offence in relation to the Court.

(4) Where a person is punished under this section, he is not relieved from complying with a summons issued by the Authority, and the Authority may enforce his attendance by a warrant.

(5) A person is not liable to be punished for contempt of the Authority if he establishes that there was a reasonable excuse for the act or omission concerned.

47. A person who—

Offences.

- (a) obstructs an officer or member of staff of the Authority in the exercise of the functions or powers of the Authority;
- (b) procures false testimony of a witness;
- (c) knowingly gives false or misleading evidence at a hearing;
- (d) bribes a witness;
- (e) in any way causes a disadvantage to a person because that person appeared as a witness before the Authority;
- (f) impersonates an officer or member of staff of the Authority;
- (g) assaults an officer or member of staff of the Authority in the performance of his functions;
- (h) without lawful justification or excuse—
 - (i) hinders or resists the Authority or any other person in the discharge of functions under this Act;
 - (ii) fails to comply with any lawful requirement of the Authority or any other person under this Act; or
 - (iii) discloses confidential information;
- (i) knowingly misleads the Authority or an officer of the Authority by giving false information; or
- (j) knowingly makes or causes to be made, a false complaint,

commits an offence and is liable on summary conviction to a fine of fifty thousand dollars and to imprisonment for five years.

48. (1) Subject to subsection (2), nothing in this Act prevents or affects the exercise of the functions and powers of the Commission and the Commissioner under any law.

Effect of Act on the powers of the Commission and the Commissioner.

(2) Where the Commission or the Commissioner receives information or a complaint in relation to any of the

matters mentioned in section 21(1)(a), the Commission or the Commissioner shall immediately inform the Authority of the investigation in writing and the Authority shall have the sole responsibility for dealing with those matters.

Liability for proceedings.

49. (1) Subject to subsection (2), no matter or thing done by the Authority or any member of or any person acting under the authority of the Authority shall, if the matter or thing was done in good faith for the purpose of giving effect to the purpose of this Act or any other written law, subject the member or person so acting personally to any action, liability, claim or demand.

(2) In proceedings for defamation in relation to any hearing or other matter connected with the exercise of the functions of the Authority under this Act, there is a defence of absolute privilege for a publication to or by the Authority or an officer of the Authority as such officer.

Regulations.

50. The Minister may make Regulations to give effect to the purpose of this Act.

Transitional.

17 of 1993.

51. (1) Where before the date of commencement of this Act any complaint has been received or matter commenced by or under the authority of the Police Complaints Authority or the Police Service under the Police Complaints Authority Act, (repealed by this Act and hereinafter referred to as “the former Authority”), that complaint, matter or thing shall be dealt with and completed by the Authority as if it were received or commenced under this Act.

(2) Members of the Police Complaints Authority appointed under the former Authority shall continue in office in accordance with their respective instruments of appointment subject to the provisions of termination and removal under this Act.

(3) Any arrangement, contract, or document prepared, made or executed by or on behalf of the former Authority shall continue and is deemed to have been prepared, made or executed by the Authority pursuant to this Act.

(4) All rights, obligations and liabilities of the former Authority immediately before the date of commencement of this Act are, from that date, deemed to be the rights, obligations and liabilities of the Authority.

(5) In any written law and in any document, unless the context otherwise requires, any reference to the former Authority shall be construed as a reference to the Authority.

(6) Any monies standing to the account of the former Authority in any financial institution shall vest in and belong to the Authority from the date of commencement of this Act.

52. The Police Complaints Authority Act, 1993 is repealed.

Repeal.
17 of 1993.

***53.** { *This section has been omitted as it applies to an amendment to another Act which has been included therein.*

*See Note on page 2.