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SINT MAARTEN

Minister of Justice
Fao: Mr. Egbert Jurendy Doran
Soualiga Road #1, Pond Island
Philipsburg
Sint Maarten

Your ref.no.:

Our ref.no.: OM-OBM 2018/00450_37

Your letter of:

Complaint no.: 2018/00450

Re: Final Report

Philipsburg, 28 January 2020

Honorable Minister Doran,

This letter is to inform you that the Ombudsman prepared a Final Report regarding the complaint of Ms. Humera Alam filed on 12 November 2018 with the Ombudsman. The Report is enclosed.

The Ombudsman requests a response to the recommendations issued in the Final Report **within two (2) weeks** from the date of this letter, **however no later than 12 February 2020.**

Sincerely,

Ms. Florence Marlin
Investigator



Encl.: - Final Report

Cc: - Mr. Russell Ursula, Secretary General
- Mr. Carl John, Chief KPSM
- Mrs. Kathren Weeks-van Putten, Complaint Liaison KPSM
- Ms. Humera Alam, Complainant



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SINT MAARTEN

FINAL REPORT

(Article 21 sub 1 National Ordinance Ombudsman)

Complainant: Ms. Humera Alam
Date complaint filed: 12 November 2018
Complaint no.: 2018/00450_38

Department: Korps Politie Sint Maarten (KPSM)
Ministry: Justice

Summary of Complaint:

On 12 November 2018 Complainant filed a complaint with the Ombudsman against KPSM regarding their procedures and treatment after being towed. As Complainant did not yet comply with the duty to inform ("*kenbaarheidsvereiste*") the complaint was put on hold.

In an email dated 26 November 2018 Complainant submitted a complaint at the Police Department regarding her vehicle that was towed in the vicinity of Emmaplein in Philipsburg by a towing company working with the Police Department. Complainant claimed that the process of having her vehicle towed and the subsequent treatment she received by the persons in charge as a result thereof, were not adequate.

Complainant claimed that even though the situation was fairly settled, the manner in which it was handled raises many questions. Complainant is requesting that the Police Department provide the legal basis and procedures regarding the towing of vehicles.

In an email dated 3 December 2018 Complainant requested a confirmation of receipt after her email dated 26 November 2018. In a response email dated 4 December 2018 a Complaint Liaison of the Police Department confirmed receipt of the email dated 26 November 2018 and stated that the complaint is being investigated by the Internal Affairs Department of the Police.

The Ombudsman proceeded with an Intervention Proposal on 25 January 2019 as no response had been received to Complainant's complaint filed with the Police Department.



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SINT MAARTEN

Conclusion:

The core task of the Ombudsman is the investigation of *Propriety* applied by government bodies and government agencies in their relationship and dealings with the public. The scope of *Propriety* goes beyond the law; it reflects the norms expected from government in executing the laws, policies and established procedures. Government is expected to be open and clear, respectful, involved and result oriented, honest and trustworthy.

The main question for consideration is: Did KPSM observe propriety in handling Complainant's concerns in the manner in which her vehicle was towed and the subsequent treatment received?

After no follow up response was received to the Intervention Proposal of the Ombudsman, a Notification of Complaint (NOC) was sent to KPSM with the request to respond to the questions posed.

By letter dated 5 March 2019 KPSM provided the Ombudsman with a partial response to the questions posed in the NOC. The SG of the Bureau Ombudsman sent a reminder to the SG of the Ministry of Justice to provide a complete response to the NOC questions. A hearing was convened on 1 October 2019 whereby KPSM was requested to provide the answers to the NOC questions and further information regarding the case.

To date of this Final Report (FR) no response has been provided to Complainant's email dated 26 November 2018 nor to the conclusion of the facts gathered during the hearing held on 1 October 2019 and the request from the Ombudsman to KPSM to provide additional information.

The Ombudsman observes that the standard of *Active and adequate information provision* provides that public bodies are required to actively and upon request provide adequate information to the public. This implies among others the obligation to answer letters from citizens, sending an acknowledgement of receipt, and an interim notice in case the handling of a request takes longer than anticipated. It took the intervention of the Ombudsman and almost four (4) months for Complainant to receive some information regarding her complaint. Notwithstanding KPSM's response to the Ombudsman dated 5 March 2019, Complainant's inquiry with regards to legal aspects (Police Report, payment receipt, regulation governing the towing of vehicles) were not properly addressed. Through various correspondence Complainant was assured that the complaint was received by KPSM and that it was being investigated. Complainant was further assured during the hearing that a formal



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SINT MAARTEN

response was forthcoming by 22 October 2019. However, Complainant has yet to receive a formal response from KPSM to her complaint.

Providing adequate information can clear up the air between public bodies and the citizens. In general an individual is more willing to accept a situation when there is an explanation, or the outcome of a request is motivated. To ensure a high level of credibility in public bodies, transparency is essential. Being open and clear in providing adequate information regarding plans and actions of the government, that affect the interest of the citizen is a requirement for enhancing the credibility of public bodies.

Administrative bodies are required to actively and upon request provide adequate information to the public, this entails on the one hand the duty to provide citizens with information upon request, as well as the duty to inform the citizen on its own initiative about proceedings that have a direct effect on them. Proper information provision creates legal certainty for all. Complainant is entitled to receive a thorough response to her complaint filed. The standard of *Active and adequate information provision* is applicable in this case.

The Ombudsman further observes that the standard of *Adequate organization of services* requires administrative bodies to organize their administration and operation in a manner which guarantees proper service to the public. It has been established in the hearing held that the administration of KPSM is inadequately organized. A proper record keeping of vehicles towed and the subsequent payments made hereafter cannot be accounted for. No written statement regarding Complainant's violation could be provided. Proper service refers to the principle of meticulousness in the administration. Proper service also includes organizing the administration in a manner that is lawful, effective, transparent, accessible, equipped to provide prompt service and information. Continuity should be guaranteed; proper registration and archiving are essential in achieving and guarantee continuity in the administration. There is no proper data on "*proces verbalen/mutaties*" regarding parking violations and the towing of pertinent vehicles. There is no written published policy regarding the process of towing of vehicles. The standard of *Adequate organization of services* is applicable in this case.

Furthermore, the Ombudsman observes that the standard of *Correct Treatment* requires that government acts with due care towards the citizens. Respect for human dignity, professionalism, service and courtesy are required as a norm in dealing with the public. A civil servant should be unbiased and reasonable. Complainant was subjected to inhumane and unprofessional behavior by the towing company handling on behalf of KPSM as a result of



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SINT MAARTEN

her vehicle being towed. Complainant was not afforded the dignity of a reaction when KPSM was approached to address the matter. A formal response to her complaint is still outstanding. A public body is required to show respect and treat its citizens with *dignity*. Moreover, a public body should be careful not to increase the dependency of a citizen on the government by giving the citizen a feeling of powerlessness. There is no policy guiding the operations of the towing company in its dealings with the public. Professionalism entails that civil servants are expected to adhere to higher standards regarding their behavior towards citizens. The basic assumption is that the interests of the citizen are prioritized by the civil servant even though the citizen may be unreasonable or even impolite. By not providing a formal response to Complainant's complaint KPSM has displayed a disregard for proper governance. Thus a public body in general is always helpful and polite towards the citizen. Being polite and helpful embodies everything from giving directions, to making sure the citizen is able to make use of every option available to them in a procedure.

Subsequently, the Ombudsman observes that the standard of *Fair play* requires that administrative bodies and civil servants provide the citizen the opportunity to properly utilize procedural opportunities provided for by law and otherwise. Complainant was not provided with a written statement ("*proces verbaal*") nor a receipt in order to ascertain her options in objecting to her vehicle being towed nor to contest the payment made in order to retrieve her vehicle. The principle of Fair Play entails that a public body is expected to allow the citizen the opportunity to express and defend their views and opinions, while also being able to object the position and or point of view of a public body. Thus the behavior of the public body has to attest to openness, honesty and loyalty. In the hearing held on 1 October 2019 Complainant was assured of a copy of the mutation in her case and a formal response to her complaint, which would have afforded Complainant the possibility to utilize procedural options. A public body should be transparent and cannot prepare covert actions against a citizen. On the contrary a public body is required to actively assist the citizen in utilizing its procedural options.

The Ombudsman has taken note of various inquiries made and complaints filed against KPSM at the Bureau Ombudsman regarding requests for police reports and/or documentations of incidents filed. It behooves KPSM to act in the interest of transparency as well as accountability where it concerns actions of law enforcement. Persons should receive a copy of a complaint/incident filed/reported at KPSM.



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SINT MAARTEN

Considering all of the above mentioned, including the summary of unanswered questions and facts established in the hearing of 1 October 2019, the Ombudsman concludes that propriety has not been observed in this case. Government has to be meticulous in their administration which should be warranted of the public's trust.

Judgment:

- The complaint is founded the standards of *active and adequate information provision*, *adequate organization of services*, *correct treatment* and *fair play* have been violated;
- KPSM acted improper with regard to the complaint.

Considering that KPSM has not provided the requested documents and the many unanswered questions and facts established in the hearing held on 1 October 2019, the Ombudsman resolves to pursue an own motion investigation in the general interest of the public.

Bearing in mind the investigation and findings as stated hereinafter, the Ombudsman recommends as follows:

Recommendation(s):

- To provide Complainant with a concrete and motivated response to her email dated 26 November 2018;
 - To provide Complainant with a (written) fine and a receipt for payment as well as a police report of the incident.
- o I agree with the recommendation(s)
 - o I do not agree with the recommendation(s) (please explain by submitting a written reaction no later than 12 February 2020).

The Ombudsman requests a status report on the recommendation(s) within three (3) months from the date of this letter however no later than **29 April 2020**.

Elucidation:

Intervention:

By email dated 25 January 2019 the Ombudsman proposed that the Chief of Police provide Complainant with a motivated response to her email 26 November 2018 within one (1) week.



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SINT MAARTEN

Investigation:

28 January 2019: The Senior Policy Officer of KPSM confirmed receipt of the intervention proposal.

4 February 2019: As no response was received to the Intervention Proposal, a Notification of Complaint (NOC) was sent to The Senior Policy Officer of KPSM with the request to respond to questions posed by 5 March 2019. The questions posed are as follows:

1. Are you familiar with the above-mentioned complaint?
2. What is your response to the complaint? (Notwithstanding your answer to question 1).
3. Do you see a possibility to resolve this issue on a short term through intervention by the Ombudsman or otherwise?
If yes, please call us **within three (3) days** at tel.5421250/5421243 to inform us how this issue can be resolved immediately and or to discuss this matter further.

You are requested to answer the following questions:

4. How does the Towing Company determine that a vehicle is illegally/unlawfully parked?
5. Describe the procedures/legal basis used by the Police Department/Towing Company when towing an illegally parked vehicle. Include the information provided to the public in this instance as well as the financial aspects once a fine is given.
6. Is there an agreement/contract between KPSM and a Towing Company? If yes, with which company? Provide a copy of the agreement/contract.
7. Why was Complainant not provided with a (written) fine and a receipt for payment?
8. a. You are requested to submit a copy of the legislation or regulations applied in this case.
b. Explain how the pertinent legislation and or regulation is implemented in practice; provide documentation of the actual procedure followed, if any.

Enclose all information and documents relevant to the complaint.



OMBUDSMAN

SINT MAARTEN

20 February 2019: The Senior Policy Officer in an email to the Ombudsman apologized for not responding to the intervention proposal and mentioned that this was due to sick leave. The Ombudsman was assured of a response to the NOC by set deadline of 5 March 2019.

6 March 2019: As no response was received to the NOC a reminder was sent with the request to respond by 13 March 2019. That same day a letter dated 5 March 2019 was received from KPSM. The content of the letter reads as follows:

"(...)

Ms. Alam complained that she was inadequately treated by Police on November 12, 2018 when her car was towed for illegal parking on the Emma Plein in Philipsburg. The Police Force of St. Maarten (a.k.a. KPSM) is familiar with the abovementioned complaint. What transpired between the towing company representative and complainant Ms. Alam is unfortunate and we empathize in the manner wherein the situation transpired. However, the towing policy is based on established regulation from government, which was further clarified by the Public Prosecutor's Office through document nr. 84/2013 and dated July 19, 2013. Based on the mentioned instruction from government, KPSM enforces the law in this regard. Unfortunately, the government does not have an existing storage place to hold confiscated vehicles, hence the task of towing vehicles is outsourced. KPSM presently works with one designated towing company. Upon instruction from Police the designated towing company can remove a vehicle that directly obstructs the free movement of traffic flow, or if the safety on the road is at risk.

Investigating officers referred to in Article 8 of the Code of Criminal Procedure of the Netherlands Antilles are charged with the supervision of compliance of this regulation. Article 117, for instance details, the cases wherein a vehicle can be confiscated or towed. The driver is obliged to provide the investigating officer with the assistance necessary for the investigation. The motor vehicle may, insofar as no other driver is available, be supervised or, in so far as the person who draws up the official report considers this necessary, be confiscated. In the latter case, the motor vehicle is transferred at the expense of the owner or keeper to a place deemed appropriate by the reporting officer and stored there, until it is collected by or on behalf of the owner or keeper, if necessary against payment of the related costs.

As an extension to the law, KPSM has sharpened its towing procedures, based on policy from public prosecution. Finally, as you requested please find related documents enclosed regarding the established service level agreement between KPSM and the towing company.



OMBUDSMAN

SINT MAARTEN

15 March 2019: As no complete answers were provided to the NOC questions posed a SG reminder was sent to the SG of the Ministry of Justice with the request to provide answers to the questions posed in the NOC no later than 22 March 2019.

Hearing:

On 1 October 2019 a hearing was held by the Ombudsman. The Synopsis of Hearing dated 15 October 2019 is considered included in this FR. The Synopsis of Hearing was provided to KPSM with a request to react within seven (7) days on the content.

A summary of the facts established during the hearing:

1. Eight (8) months have passed since Complainant's request and to date of this Hearing no response was received from KPSM to Complainant's letter;
2. No reason that could account for the non-response to Complainant's letter was provided;
3. No written policy exists regarding the towing of vehicles; the towing of vehicles takes place in an ad hoc manner;
4. The administration/regulations regarding the towing of vehicles are not available;
5. Payment: no clear directives regarding the amount of the towing fee, who receives the fee paid, etc.
6. It cannot be determined that Complainant was at fault as there was no record of such;
7. Complainant was not provided with a receipt for payment;
8. No legal basis could be established for towing Complainant's vehicle as there was no PV given to Complainant;
9. There exist a verbal policy, however, KPSM staff is not (fully) aware of this;
10. Complaints surrounding the towing of vehicles are not addressed adequately;
11. KPSM has no overview of what the towing companies operations are;
12. The incident that took place at the towing company location was not addressed;
13. No information is provided to the public regarding the towing of vehicles as well as the financial aspects thereof;
14. KPSM has no database for PV's regarding illegal parking.

The Ombudsman further observed that though information was provided further clarity is needed regarding Complainant's case. KPSM had been requested to provide the following documents and information:

- 1) Copy of the Mutation form in Complainant's case;



OMBUDSMAN

SINT MAARTEN

- 2) A formal response to Complainant's email dated 26 November 2018 no later than 22 October 2019.

KPSM was requested to submit aforementioned documents in order for the Ombudsman to proceed with the investigation accordingly.

In an email dated **22 October 2019** to the Ombudsman, Complainant responded as followed to the Synopsis of Hearing:

"(...) I would first like to thank you and the Deputy CoP again for the opportunity and time to discuss my complaint in person. The hearing has been very informative and I am happy so see mostly everything reflected in your summary.

I have however, a few minor comments as well as questions that come to mind still.

- 1. I would like to draw attention to the fact that, as stated in your summary, KPSM was supposed to provide requested documentation by October 22, which has not happened.*
- 2. During the hearing, reference has been made often to political instability, policies and/or the status quo. Nowhere however could these be reproduced, nor can the actual implementation of these in my case, be sufficiently documented (i.e. there is no PV).*
- 3. With regards to the ACTPOL data, I believe it will be good governance to share the date up until which data is not retrievable. Additionally, it should be shared which data was stored in ACTPOL and is therefore considered loss (e.g. time-frame, content).*
- 4. With regards to lost data, I assume that the case under discussion is not the only one that is potentially impacted.*
- 5. The statement mentioned under para 5.5, states that parking on the street at Emmaplein/ Voges Street disrupts traffic flow. I notice however that parking on the street seems to be allowed at night and there is clearly enough space for two vehicles to pass each other, thereby using the road as a two-way traffic lane (I see parked vehicles there quite often). I am curious to learn if there is a difference between day and night and what the CoP's statement is based on (i.e. which research has shown that traffic flow is disrupted if parked on the street).*
- 6. The Deputy CoP states that it is impossible that a towing company has decided by themselves to tow a car. Seeing that still, KPSM cannot provide the proper data connected to*



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SINT MAARTEN

me being towed away, I can only conclude that a towing company 'is making business' out of this, with the support from KPSM officers. The fact that there is no clear payment tracing system only supports this (I was not even handed a receipt and payment could only be done in cash).

7. Lastly, I would like to know if KPSM has in the meantime stopped this practice and/or has adopted new policies and engaged into legally binding agreements with towing companies that clearly describe liabilities, roles, code of conduct, etc. to which towing companies are bound.

In general, this case and how it developed to come to this point, has me worried. I was physically threatened by an individual who, as far as I know, did not have the right to take my vehicle and I was extorted to pay a fee to retrieve my vehicle. Should anything have happened, the question of liability would have been extremely vague. Stating that things are done because that is how it has always been done, in my opinion, is never a good reason to continue a bad practice.

I hope that this case will provide insight in how KPSM can improve its service delivery through good governance by establishing firm, legally grounded policies and engagements with third parties (...)"

Findings:

On **12 November 2018** Complainant filed a complaint with the Ombudsman against KPSM for the handling of her complaint after being towed. As Complainant did not yet comply with the duty to inform ("kenbaarheidsvereiste") the complaint was put on hold until 6 January 2019.

In an email dated **26 November 2018** Complainant submitted a complaint at the Police Department regarding the manner in which her vehicle was towed from Emmaplein in Philipsburg by a Towing company working with the Police Department.

6 March 2019 a NOC was sent to KPSM. Later that day a letter with attachments addressed to the Ombudsman dated 5 March 2019 was received from KPSM. A summary of the partial response of KPSM to the NOC mentions these main points:

- According to KPSM the towing policy is based on established regulations from government, which has been clarified by the Prosecutor's office;
- The towing of vehicles are done upon instruction of KPSM;



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SINT MAARTEN

- Article 117 of the Traffic Ordinance details instances when a vehicle can be towed or confiscated.

As a result of incomplete answers to the NOC and unsubstantiated references to legislation, the Secretary General (SG) of the Ombudsman sent a NOC reminder dated **15 March 2019** to the SG of the Ministry of Justice requesting answers to all the questions posed.

On 1 October 2019 a hearing was held with Complainant and KPSM. A Synopsis of Hearing (see investigation) was made and provided to all parties with the request to provide a reaction to the synopsis within seven (7) days of the hearing. KPSM was requested to provide additional information.

Complainant responded to the hearing in an email dated 22 October 2019 by stating that no response to her email dated 26 November 2018 was provided by KPSM as agreed during the hearing. Complainant bemoaned the absence of a “*proces verbaal*” (PV) as well as the lack of a payment tracking system and the requested information regarding data stored in ACTPOL (KPSM database). Complainant further questioned the statement made by KPSM regarding the flow of traffic on the Emmaplein and inquired if KPSM continues to implement the present towing system or have adopted new policies in this regard.

To date of this FR no reaction has been received from KPSM to Complainant’s email nor to the request by the Ombudsman to provide additional information.

Legal Basis:

Pursuant to article 19 section 1 of the **National Ordinance Ombudsman (AB 2010, GT no. 20)**, the Ombudsman is authorized to request from government bodies, civil servants, the Complainant, civil servants as experts or witnesses, all information and or documents pertaining to the investigation.

The persons mentioned in the aforementioned article are obliged to respond to the request within the time indicated by the Ombudsman, except in cases where the persons can appeal to legal grounds (“*verschoningsrecht*” - see article 19 section 4).

- *Wegenverkeersverordening, AB 1969 no. 1*



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SINT MAARTEN

Standard(s) of Proper Conduct:

The Ombudsman investigates whether the behavior of public bodies towards citizens is correct. The applicable standards of proper conduct in this case are *active and adequate information provision, adequate organization of services, correct treatment and fair play.*

Active and adequate information provision

In the interest of managing the affairs of the citizens administrative bodies are required to actively and upon request provide adequate information to the public. This implies among others the obligation to answer letters from citizens, sending an acknowledgement of receipt, and an interim notice in case the handling of a request takes longer than anticipated.

Providing adequate information can clear up the air between public bodies and the citizens. In general an individual is more willing to accept a situation when there is an explanation, or the outcome of a request is motivated. To ensure a high level of credibility in public bodies, transparency is essential. Being open and clear in providing adequate information regarding plans and actions of the government, that affect the interest of the citizen is a requirement for enhancing the credibility of public bodies.

Adequate organization of services

Administrative bodies are required to organize their administration and operation in a manner which guarantees proper service to the public. Proper service refers to the principle of meticulousness in the administration. Proper service also includes organizing the administration in a manner that is lawful, effective, transparent, accessible, equipped to provide prompt service and information. Continuity should be guaranteed; proper registration and archiving are essential in achieving and guarantee continuity in the administration.

Correct treatment

Administrative accuracy requires that government acts with due care towards the citizens. Respect for human dignity, professionalism, service and courtesy are required as a norm in dealing with the public. A civil servant should be unbiased and reasonable. Correct treatment can be classified in two main categories, namely dignity and impartiality. A public body is required to show respect and treat its citizens with dignity.

Moreover, a public body should be careful not to increase the dependency of a citizen on the government by giving the citizen a feeling of powerlessness. Professionalism entails that civil servants are expected to adhere to higher standards regarding their behavior towards citizens. The basic assumption is that the interests of the citizen are prioritized by the civil servant even though the citizen may be unreasonable or even impolite. Thus a public body in general



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SINT MAARTEN

is always helpful and polite towards the citizen. Being polite and helpful embodies everything from giving directions, to making sure the citizen is able to make use of every option available to them in a procedure.

Fair play

Fair play requires that administrative bodies and civil servants provide the citizen the opportunity to properly utilize procedural opportunities provided for by law and otherwise. The principle of Fair Play entails that a public body is expected to allow the citizen the opportunity to express and defend their views and opinions, while also being able to object the position and or point of view of a public body. Thus the behavior of the public body has to attest to openness, honesty and loyalty. A public body should be transparent and cannot prepare covert actions against a citizen. On the contrary a public body is required to actively assist the citizen in utilizing its procedural options. There are various ways to provide the citizen the opportunity to utilize the different procedural options.

Philipsburg, 28 January 2020


G.E. Mossel, LLM
Ombudsman

