

ONE HUNDRED AND EIGHTH REPORT

OF THE

SALARIES REVIEW COMMISSION

OF THE

REPUBLIC OF TRINIDAD AND TOBAGO

November 10th, 2017

ONE HUNDRED AND EIGHTH REPORT OF THE SALARIES REVIEW COMMISSION

Determination of the salary and other conditions of service of the offices of Information Commissioner and Deputy Information Commissioner, Office of the Information Commissioner

By letter dated May 02, 2017, His Excellency the President conveyed his approval for the Salaries Review Commission (SRC) to determine the salary and other conditions of service of the offices of Information Commissioner (the Commissioner) and Deputy Information Commissioner (DIC), Office of the Information Commissioner. These offices were placed within the purview of the SRC by virtue of Legal Notice No. 58 dated April 27, 2016.

2. The Office of the Information Commissioner is a body corporate which was established by Section 7 of the Data Protection Act, Chap. 22:04 (the Act). The Act makes provision for the protection of personal privacy and information by both public bodies and the private sector. The objective of the Act is to ensure that personal information in the custody or control of an organization, whether public or private, shall not be disclosed or processed, except with the consent of the individual and where exemptions are clearly defined. Section 8 states that there shall be an Information Commissioner referred to as "the Commissioner" who shall be the Head of the Office of the Information Commissioner and an Attorney-at-Law with at least ten (10) years standing and training or experience in Economics, Finance, Information Security, Information Technology, Auditing or Human Resource Management. With respect to the DIC, Section 11 points to the appointment of no more than two (2) DICs who should meet the same requirements for qualifications or experience as the Commissioner.

Duties and responsibilities of the Commissioner

3. The Commissioner performs the critical role of monitoring the administration of the Act to ensure that its purposes are achieved. The specific functions entrusted to the Commissioner are to:

- a) Provide executive direction, management, control and oversight of the operations of the Office of the Information Commissioner and supervise the performance and execution of the duties of the DICs;
- b) Conduct audits and investigations to ensure compliance with the Act;
- c) Advise on the privacy protection implications of proposed legislative schemes or government programmes and receive representations from the public concerning data protection and privacy matters;
- d) After hearing representations from the head of a public body or an organization subject to a mandatory code of conduct and who may be engaged in processes that may be in contravention of the Act, order that public body or organization to cease collection practices or destroy collections of personal information that contravene the Act;

- e) Authorize the collection of personal information otherwise than directly from the individual in appropriate circumstances, and to make orders regarding the reasonableness of fees required by an organization subject to the Act;
- f) Authorize data matching by a public body/bodies;
- g) Make orders, including such terms and conditions as the Commissioner considers appropriate, following an appeal or complaint filed by an individual pursuant to Section 58, 78 or 79A of the Act;
- h) Make orders regarding compliance with the General Privacy Principles set out in Section 6 by a public body or an organization subject to a mandatory code of conduct;
- i) Publish guidelines regarding compliance with the Act, including but not limited to guidelines on the development of industry codes of conduct, firm compliance policies, procedures for handling complaints, guidelines dealing with conflict of interest for industry bodies or individuals who mediate or deal with complaint resolution, guidelines dealing with security of information and information systems, and guidelines for information sharing agreements or data matching agreements;
- j) Receive all revenues of the Office of the Information Commissioner;
- k) Carry out special studies or research regarding privacy or related issues;
- l) Prepare and issue public reports on the status of compliance with the Act;
- m) Review and approve privacy impact assessments as required by the Act;
- n) Design and implement communication strategies to educate the public about their rights under the Act; and
- o) Exercise such other functions that may be assigned to him/her under any other written law.

Additionally, the Commissioner is required to submit a report annually to Parliament on the activities of the Office of the Information Commissioner, and by order, publish in the *Gazette* and at least two daily newspapers in Trinidad and Tobago, a list of countries which have comparable safeguards for personal information as provided by the Act.

4. The SRC was advised that the Act also operates to amend the Freedom of Information Act Chap.22:02 (FOIA) by:

- allowing complaints from individuals who have been refused access to official documents under the FOIA, to be reviewed by the Commissioner;
- making decisions of the Commissioner under the FOIA binding on public bodies;
- treating any request for access to personal information under the FOIA as a request under the Data Protection Act;

- making the Commissioner responsible for reviewing the effectiveness of the FOIA, providing expert advice to senior officers in respect of access to information under the Act and designing and implementing systems and policies to ensure compliance by public authorities; and
- making the Commissioner the official responsible for compiling and reporting on the administration of the FOIA to Parliament.

Duties and Responsibilities of the DIC

5. Section 11(1) of the Act, provides that the President may appoint no more than two DICs. Where more than one DIC is appointed, the President shall specify which function each respective DIC shall perform, under either the Act or the FOIA, or any other written law. Section 11(4) states that a DIC may in the absence or incapacity of the Commissioner, act in his place. Similarly, where the post of Information Commissioner is vacant, a DIC may act as the Commissioner until such time as a Commissioner is appointed to the vacant post. The duties and responsibilities of the DIC include, but are not limited to:

- Reporting to and providing executive support to the Commissioner for the general management, direction and control of the Office of the Information Commissioner as well as operational management of freedom of information and/or data protection portfolios as applicable, and as assigned by the Commissioner at the direction of the President.
- Serving as a member of the Tribunal appointed by the Information Commissioner to hear and determine complaints and/or disputes involving matters related to data protection and freedom of information as assigned by the Commissioner.
- Conducting audits and investigations to ensure compliance with any provision of the Act, as assigned by the Commissioner.
- Advising on privacy protection implications and assessing privacy impacts of proposed legislative schemes or government programmes and receiving representations from the public concerning data protection and privacy matters, as assigned by the Commissioner.
- Hearing representations from the head of a public body or an organization subject to a mandatory code of conduct and who may be engaged in processes that may be in contravention of the Act, and after such hearing, ordering the public body or organization to cease collection practices or destroy collections of personal information that contravene this Act, as assigned by the Commissioner.
- Authorizing the collection of personal information otherwise than directly from the individual in appropriate circumstances, as delegated by the Commissioner.
- Making orders, as delegated by the Commissioner or as a member of a Tribunal appointed by the Commissioner, including such terms and conditions as he/she considers appropriate.

- Making orders with respect to compliance with the General Privacy Principles set out in the Act, by a public body or a private organization subject to a mandatory code of conduct, as delegated by the Commissioner.
- Reviewing and approving privacy impact assessments as required by the Act, as delegated by the Commissioner.
- Preparing and issuing public reports on the status of compliance with the Act, as assigned by the Commissioner.
- Reviewing the effectiveness of the FOIA and the Act and proposing possible amendments, as assigned by the Commissioner.
- Providing expert advice to senior officials regarding access to information (under the FOIA) and data privacy issues (under the Act) as assigned by the Commissioner.

Qualifications, Training and Experience

6. With regard to the education qualifications and experience necessary for the offices, the SRC was advised that both the Commissioner and the DIC are required to be in possession of a Bachelor of Laws Degree (LLB) and a Legal Education Certificate (LEC) and have at least ten (10) years' work experience as an Attorney-at-Law. Both office holders are required to have extensive experience, that is, over (8) years in monitoring, investigation and research methodologies and experience in Economics, Finance, Information Security, Information Technology, Auditing or Human Resource Management.

7. Additionally, both incumbents must possess, among other things:

- well-developed analytical, problem-solving and decision-making skills;
- excellent oral and written communication skills;
- the ability to advise, liaise, consult and negotiate with members of the public, public bodies and organizations;
- sound knowledge of the Act, FOIA and other related legislation including their interpretation and application;
- working knowledge of data collection methods and the Financial Regulations;
- proficiency in the use of Microsoft Office Suite; and
- the ability to develop and maintain effective working relationships with heads of public authorities, heads of private organizations, colleagues and clients.

The Commissioner

8. The SRC understands that the Government, as the largest custodian of personal information of the citizenry, would lead the way in providing for the protection of privacy and personal information. Also, that consistent with the International Treaty obligations of Trinidad and Tobago, certain minimum standards of privacy protection would need to be maintained nationally in order to facilitate international trade and e-commerce in particular. The Act recognizes that with rapid advances in technology and widespread internet usage, including the proliferation of e-commerce, the continuous collection and sharing of information, including personal information, has become a customary and sometimes necessary expedient in conducting business. In this regard, the Act protects individuals by requiring organizations to notify persons as to the purpose

for collecting their personal information and the organization's policies and practices for sharing such information. In light of the foregoing, the SRC acknowledged that the role of the Commissioner is crucial, that the establishment of the Office of the Information Commissioner in this jurisdiction is ground breaking and that significant work would be required to achieve the objectives of the Act. Additionally, it was agreed that there would be the need for the Commissioner to keep abreast of new developments in the constantly changing area of information and communication technology.

9. The SRC in its deliberations on an appropriate remuneration package for the office of the Commissioner, took into account the similarity that exists with regard to the nature of the job, scope of the duties and responsibilities, educational qualifications and experience required with that of the Chairmen of other Commissions and the office of Director, Police Complaints Authority. Although it was noted that there were similarities that exist amongst these offices, in that they function to uphold the tenets of the respective Acts by which they are governed, the closest comparator was found to be the office of Director, Police Complaints Authority.

10. The SRC examined the nature of the jobs of the Commissioner and the Director, Police Complaints Authority and it was revealed that both office holders perform a variety of duties and responsibilities that are unique to their specialized areas and have national impact. As executive heads of their entities, both are responsible for providing leadership, management and control of the affairs of their respective organizations and are required to exercise initiative and independent judgment to work towards influencing behavioural change, targeting in one case, the prevention of corruption and ensuring justice in Trinidad and Tobago and in the other, the protection of personal privacy and freedom to access information. It was noted however, that the Commissioner's role spans the functions of two (2) Acts, the Data Protection Act and the Freedom of Information Act, and that, as a result, the incumbent's scope of work is broader and a bit more complex than that of the Director, Police Complaints Authority. The focus of the Director, Police Complaints Authority, is the Police Service while the Commissioner's focus is on both public and private entities.

11. Further, it was noted that both office holders have investigative, audit, monitoring and advisory roles and are required to ensure that the public is sensitized and educated about their rights and freedoms under their respective Acts. A comparison of the responsibilities of these offices revealed that they bear similarities in nature with respect to managerial, administrative and advisory functions. However, one noted difference in functions which impacts the weight of the job is the fact that the Commissioner is a Receiver of Revenue while there is no similar requirement for the Director, Police Complaints Authority.

12. Both office-holders are responsible for receiving and investigating complaints and preparing and publishing appropriate guidelines for the avoidance of infringement of their respective Acts. Whereas, the Police Complaints 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, the Information Commissioner can hear representations personally or in a Tribunal and make orders thereafter.

DIC

13. The SRC noted that just as the Deputy Director, PCA provides support to the Director, PCA, the DIC provides managerial support to the Commissioner and as stated in the legislation, may in the absence or incapacity of the Commissioner, perform the duties of Commissioner in his place.

Recommendations

14. Notwithstanding the above, the SRC considered that the results of the Job Evaluation Exercise and Compensation Survey, which is being conducted at present for all offices within its purview, will provide a more transparent, rational and readily defensible position for the SRC in the determination of remuneration arrangements. It is therefore recommended that, in the interim, the offices of Information Commissioner and Deputy Information Commissioner be remunerated similarly to that of the offices of Director, PCA and Deputy Director, PCA respectively. The recommended remuneration arrangements for the offices are contained in **Appendix I**.

Effective Dates

15. With the exception of the Motor Vehicle Loan Facilities, Tax Exemptions under the Transport Facilities provision and Subsistence Allowance, it is recommended that the remuneration arrangements for the offices of Information Commissioner and Deputy Information Commissioner should be effective from April 27, 2016, that is, the date on which the offices were placed within the purview of the SRC. The Motor Vehicle Loan Facilities, Tax Exemptions and Subsistence Allowance should take effect from the date of the relevant memorandum/letter conveying the remuneration arrangements to be applicable to the offices.

Dated this 10th day of November, 2017.



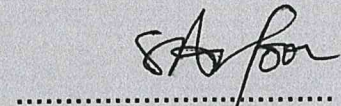
Kyle Rudden
(Chairman)



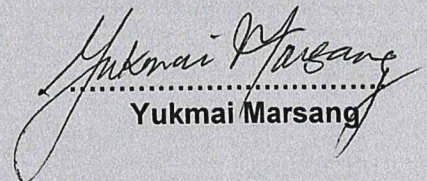
Gérard Pinard



Monica Clement



Surendra Arjoon



Yukmai Marsang

**Recommended Remuneration Arrangements for the
Offices of Information Commissioner and Deputy Information Commissioner, Office of
the Information Commissioner**

<u>Salary</u>	<u>\$ per month</u>
Information Commissioner	38,540
Deputy Information Commissioner	33,570

Transport Facilities

Information Commissioner

- (i) A maximum loan of \$350,000 at a rate of interest of 6% per annum repayable over a period of six (6) years to facilitate the purchase of either:-

- (a) a new motor vehicle with exemptions from Motor Vehicle Tax, Value Added Tax and Customs Duty limited to the following maxima:-

Motor Vehicle Tax	\$30,000
VAT (12.5%)	\$44,000
Customs Duty	\$90,000

or

- (b) a used motor vehicle with exemptions from Special Motor Vehicles Tax, Value Added Tax and Customs Duty limited to the following maxima:-

Special Motor Vehicle Tax	\$30,000
VAT (12.5%)	\$44,000
Customs Duty	\$90,000

- (ii) A loan to cover the cost of Motor Vehicle Insurance premium at a rate of interest of 6% per annum.
- (iii) A maximum loan of \$20,000 at a rate of interest of 6% per annum to effect repairs to a motor vehicle.
- (iv) A Transportation Allowance of \$4,560 per month.

Deputy Information Commissioner

(i) A maximum loan of \$250,000 at a rate of interest of 6% per annum repayable over a period of six (6) years to facilitate the purchase of either:-

(b) a new motor vehicle with exemptions from Motor Vehicle Tax, Value Added Tax and Customs Duty limited to the following maxima:-

Motor Vehicle Tax	\$30,000
VAT (12.5%)	\$32,000
Customs Duty	\$60,000

or

(b) a used motor vehicle with exemptions from Special Motor Vehicles Tax, Value Added Tax and Customs Duty limited to the following maxima:-

Special Motor Vehicle Tax	\$30,000
VAT (12.5%)	\$32,000
Customs Duty	\$60,000

(ii) A loan to cover the cost of Motor Vehicle Insurance premium at a rate of interest of 6% per annum.

(iii) A maximum loan of \$20,000 at a rate of interest of 6% per annum to effect repairs to a motor vehicle.

(iv) A Transportation Allowance of \$4,560 per month.

Service Allowance

\$5,050 per month

Subsistence Allowance

(i) \$200 per day when travelling on official business beyond a radius of sixteen (16) kilometres from official headquarters.

(ii) For travel to Tobago on official business, the cost of airfare, ground transportation, accommodation and meals, as necessary, to be met by the Office of the Information Commissioner.

(iii) For travel abroad on official business, the provisions of Minister of Finance and Circular No. 1 dated March 14, 2016 or any other relevant Circular.

Housing Allowance

Information Commissioner

\$12,360 per month.

Deputy Information Commissioner

\$10,080 per month

Vacation Leave

Thirty (30) calendar days per annum.

Overseas Travel Facilities

A Travel Grant of \$34, 500 per annum

Telecommunication Facilities

\$400 per month.

Entertainment Allowance

Actual expenses incurred for official entertainment to be met from an official Entertainment Vote under the control of the Information Commissioner

Medical Benefits

Entitlement to medical attention/treatment and prescribed drugs for self, spouse and children who are unmarried and under the age of eighteen, at any health care facility under the Regional Health Authorities, including the Eric Williams Medical Sciences Complex. Where such medical attention/treatment is not available at such health care facility, the office holder to be entitled to have the costs met at any other hospital, institution or nursing home in Trinidad and Tobago.

(‘Medical attention/treatment’ excludes optical and dental treatment/services.
‘Prescribed drugs’ exclude drugs which are obtainable without a prescription.)

Pension/Gratuity

Entitlement to a gratuity equivalent to 20% of gross salary earned over the term of office.