

**Cayman Islands
Human Rights Commission
Policies and Procedures Manual**

Updated January, 2013

Preface

The purpose of this manual is to act as an operational guide for the Commissioners of the Human Rights Commission (HRC).

It specifies the internal procedures, rules and processes that the Commission has established to govern its operation and is published on the HRC website to assist the members of the public to understand the operation of the HRC including the procedures necessary to file a complaint regarding a perceived breach of human rights.

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Part A:
**Constitutional Guidelines, Roles,
Responsibilities and Administrative Matters**

1. Constitutional Guidelines

The constitutional guidelines for the Human Rights Commission (HRC) are found in Section 116 of the Cayman Islands Constitution Order 2009 (the Constitution) and reads as follows:

116.-(1) There shall be in and for the Cayman Islands a Human Rights Commission (referred to in this section as “the Commission”).

(2) The Commission’s primary responsibility shall be promoting understanding and observance of human rights in the Cayman Islands.

(3) The Commission shall consist of a Chairman and four other members appointed by the Governor, acting after consultation with the Premier and the Leader of the Opposition, at least two of whom shall be experienced lawyers.

(4) In the exercise of their functions, the Commission and its members shall not be subject to the direction or control of any other person or authority.

(5) The Commission shall replace the Human Rights Committee.

(6) The Commission shall have power to –

(a) receive and investigate complaints of breaches or infringements of any right or freedom contained in the Bill of Rights or international human rights treaties that have been extended to the Cayman Islands, and investigate such possible breaches or infringements on its own initiative;

(b) provide advice to persons who consider that their rights or freedoms have been infringed;

(c) provide a forum for dealing with complaints by mediation or conciliation or by making recommendations;

(d) issue guidance on procedures for dealing with any complaints of breaches or infringements of rights and freedoms;

(e) contribute to public education about human rights;

(f) issue reports relating to human rights issues on its own initiative; and

(g) undertake such other functions, for the purpose of fulfilling its primary responsibility under subsection (2), as may be conferred on it by a law enacted by the Legislature.

(7) The Commission shall have no power to –

(a) represent or provide representation to parties to litigation;

(b) act in a judicial capacity or make binding determinations as to whether any right or freedom contained in the Bill of Rights or any international human rights treaty or instrument has been breached; or

(c) compel any person to do anything against his or her will;

but any public official to which the Commission addresses a recommendation must respond in writing within a reasonable time, and such responses shall be published by the Commission unless there is a good reason to withhold publication.

(8) The Commission shall make an annual report to the Legislative Assembly about its activities.

(9) Further provision relating to the establishment and operation of the Commission may be made by the Legislature, but such legislation shall not derogate from any provision of this section.

(10) Nothing contained in or done pursuant to this section or any law made under subsection (9) shall –

(a) oblige a person to refer any complaint of a breach or infringement of any right or freedom referred to in the Bill of Rights to the Commission; or

(b) prevent a person from seeking redress directly from the Grand Court in relation to any breach or infringement of a right or freedom referred to in the Bill of Rights, and the fact that such person had previously sought the assistance of the Commission with respect to such breach or infringement shall not prejudice any legal action.

2. The Role, Purpose and Powers of the Commission

2.1 Role

In accordance with Section 116 of the Constitution, the Human Rights Commission (HRC) has been formally created to take responsibility for promoting the understanding and observance of the essential rights of citizens in order to create a fairer and better society according to our democratic principles. The HRC shall replace the Human Rights Committee. By understanding and adhering to the human rights legislation detailed in the Bill of Rights, Freedoms and Responsibilities (Bill of Rights) set out in Part I of the Constitution, the people of the Cayman Islands can strive toward becoming a stronger society where all human beings are equally valued, can participate fully and are treated with fairness, dignity and respect.

2.2 Purpose

Under Section 116 of the Constitution the primary purpose of the HRC is to promote the understanding and observance of human rights in the Cayman Islands.

2.3 Powers

The HRC has the power to –

- a.** receive and investigate complaints of breaches or infringements of any right or freedom contained in the Bill of Rights or international human rights treaties that have been extended to the Cayman Islands, and investigate such possible breaches or infringements on its own initiative;
- b.** provide advice to persons who consider that their rights or freedoms have been infringed;
- c.** provide a forum for dealing with complaints by mediation or conciliation or by making recommendations;
- d.** issue guidance on procedure for dealing with any complaints of breaches or infringements of rights and freedoms;
- e.** contribute to public education about human rights;
- f.** issue reports relating to human rights issues on its own initiative; and
- g.** undertake such other functions, for the purpose of fulfilling its primary responsibility under subsection (2), as may be conferred on it by a law enacted by the Legislature.

The HRC does not have the power to –

- a. represent or provide representation to parties in litigation;
- b. act in a judicial capacity or make binding determinations as to whether any right or freedom contained in the Bill of Rights or any international human rights treaty or instrument has been breached; or
- c. compel any person to do anything against his/her will.

2.4 Control

The Human Rights Commission is a wholly independent body that is not subject to the direction or control of any other person or authority.

3. Composition, Appointments and Responsibility of the Commissioners

3.1 Composition

The Commission must consist of a Chairman and four other members, at least two of whom shall be experienced lawyers.

3.2 Appointments

All Commissioners are appointed by the Governor, acting after consultation with the Premier and Leader of the Opposition.

3.3 Terms and Remuneration

Appointments to the Human Rights Commission will be for renewable terms of between two to four years, with Commissioners serving for different periods, so that new appointments or re-appointments can take place in a staggered fashion. The Commissioners are volunteer members of the public who receive a small stipend for their hard work and dedication. Commissioners receive \$100 per meeting with a maximum stipend of \$500 per month and the Chairman receives \$200 per meeting with a maximum stipend of \$1000 per month.

3.4 Responsibilities

The Chairman and the other Commissioners are expected to attend each meeting and participate in the activities of the Commission. The Chairman sets the agenda for and chairs each meeting whilst overseeing the participation of all of the Commissioners in the activities of the HRC. Additionally in

the event that a vote is tied during a decision making process the Chairman shall have a casting vote in addition to his or her original vote.

3.5 Concerns

Concerns regarding the behaviour of a Human Rights Commission member as it pertains to their role on the Commission must be directed to His Excellency the Governor.

4. Administrative Matters

4.1 Meetings

The standing meeting time for the HRC will be the 1st Wednesday of every month at 3:30 pm. All meetings of the HRC will be held in private. The HRC will make available the option of holding public meetings when the need arises.

4.2 Minutes

The minutes of any meeting of the HRC shall be posted on the Commission's website after they have been confirmed however any information that is sensitive and exempt under the FOI law will be redacted prior to the posting of the said minutes.

4.3 Quorum

The quorum for any meeting of the HRC has been set at a minimum of three (3) members of the Commission.

4.4 Decision Making

Decisions of the HRC will be made by consensus and members of the Commission have the option of recording their dissenting opinions. In the event that a consensus cannot be reached, decisions will be made by way of a majority vote. In the event that the vote is tied the Chairman shall have a casting vote in addition to his or her original vote.

4.5 Spokesperson

The members agreed that the Chairman would act as the official spokesperson for the HRC. It was noted however that other members of the Commission can express their opinions on matters, but must ensure that in doing so it is made clear that these are personal opinions and are not being made on behalf of the HRC.

4.6 Chairman

In the event that the Chairman named by the Governor is unable to attend any meeting of the Human Rights Commission, the members shall choose an Acting Chairman as the need arises.

4.7 Reporting Requirements

The HRC must make an annual report to the Legislative Assembly about its activities.

4.8 Analytical/Administrative Support

Analytical and administrative support for the HRC is provided by a joint Commissions Secretariat, consisting of a Manager and up to five staff. The Secretariat has been established under the aegis of the Deputy Governor's Office.

4.9 Confidentiality

All members of the HRC take the issue of confidentiality seriously and no matters related to the Commission shall be discussed outside of the Commission meetings.

Part B:
The Cayman Islands Constitution Order 2009

5 Bill of Rights

5.1 Overview

The Bill of Rights is the cornerstone of democracy. All the rights and freedoms contained carry responsibility.

The Bill of Rights:

- i. Embeds protection for fundamental rights;
- ii. Tailors to local needs and values;
- iii. Includes extra rights in other treaties like the ICCPR/ UDHR;
- iv. Details standards in service; and
- v. Promotes culture for the respect of rights

The Bill of Rights, Freedoms and Responsibilities came into effect on 6th November 2012 (except for sections 6 (2) and (3) which come into effect on 6th November 2013). This allowed Government sufficient time to amend laws and complete other administrative or related preparations. The Bill of Rights details fundamental human rights and freedoms in Part One of the Constitution as well as the responsibilities for adherence placed on all Government bodies and public sector officials.

The Government as a whole, including all public officials and civil servants under current employment must adhere to the Bill of Rights. This also includes any delegated person and/or organization such as an NGO.

5.2 Human Rights

Human rights are the essential rights and freedoms that belong to all individuals regardless of their nationality and citizenship. These rights are considered fundamental to maintaining a fair and just society.

Ideas about human rights have evolved over many centuries. They achieved strong international support following the Holocaust and World War II. To protect future generations from a repeat of these horrors, the United Nations adopted the Universal Declaration of Human Rights in 1945. In 1946, the European Convention on Human Rights (ECHR) (formally known as the Convention for the Protection of Human Rights and Fundamental Freedoms) came into effect by nations of the Council of Europe to defend human rights, parliamentary democracy and the rule of law.

The ECHR now serves as the most enforceable human rights treaty in the world. It is interpreted as a "living instrument" that can be interpreted by the Courts as such.

All across the world, many countries are learning to 'take human rights home' by introducing constitutions or human rights laws and commissions to safeguard the rights of their citizens.

5.3 Absolute, Limited and Qualified Rights

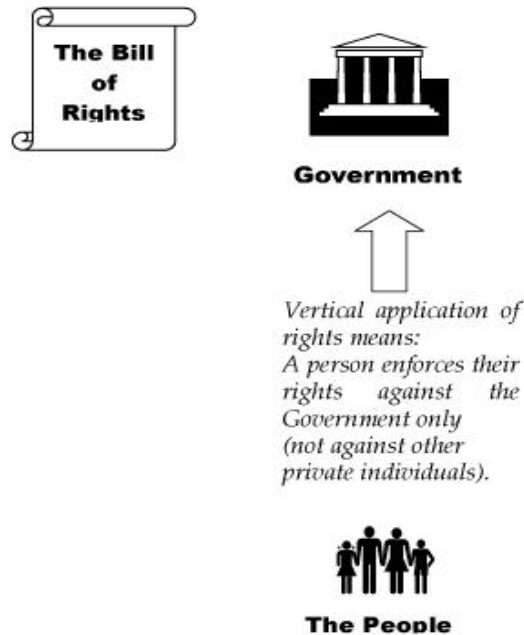
Absolute rights: These rights could not be limited in any way. They could not be reduced or amended. Examples would include the right to protection from slavery or torture.

Limited rights: These rights would come with expressed or implied exceptions. An example would be the right to liberty, which could be lawfully restricted. Lawful arrest would also be an example of a limited right.

Qualified rights: The Government interference with these rights would be allowed in special circumstances, and only when necessary in a democratic society. The interference must fulfill a pressing social need; pursue a legitimate aim; and be proportionate to the aims being pursued. An example would be government restrictions on the right to assembly and association, in order to calm a riot.

5.4 Vertical Application of Rights

'Vertical application' of human rights: means rights will apply vertically so that they can be enforced by a citizen against the Government only – but not against other private individuals or companies. The Constitution details these types of rights only.



It should be noted however, the Government will have to take account of the human rights set out in the Constitution when passing local laws, so there will be 'indirect' horizontal application of human rights principles to private individuals.

Part C:
Violations of Human Rights

6 Complaints

6.1 Breaches or Infringements of Human Rights

The Cayman Islands have been subject to the European Convention on Human Rights since the 1950's and as such individuals have been able to obtain a remedy for breach of the provisions of this international treaty by lodging a complaint in the European Court of Human Rights. In addition, the law of the Cayman Islands previously recognised a number human rights and fundamental freedoms under the common law and statute law.

The 6 November, 2012 marked Implementation Day, the day in which our own Bill of Rights, Freedoms and Responsibilities now allow an individual able to remedy a breach in our local courts. Individuals may also still directly petition the European Court of Human Rights, after exhausting domestic remedies, to seek a remedy for the decision of a public official or legislation which infringes or breaches the obligations under the European Convention on Human Rights.

The Commission can now receive and investigate complaints that decisions or actions of a public official have breached or infringed the Bill of Rights, Freedoms or Responsibilities or that local legislation violates human rights and freedoms.

The Commission will receive 1) all complaints of breaches of infringements of any section of the Bill of Rights, Freedoms and Responsibilities committed by a public official; 2) all complaints of breaches or infringements of common law and statutory human rights and freedoms committed by public officials; and 3) all complaints that any international human rights treaty extended to the Cayman Island has been breached or infringed by the actions of public officials or by legislation to which the treaty applies.

It is important to note that the Commission will only accept complaints of alleged breaches of the Bill of Rights, Freedoms and Responsibilities which have occurred after 6 November, 2012. This may be a one off event that has occurred after 6 November 2012 or may be a continuing infringement of a right. In all cases, unless there is clear evidence that the alleged infringement is continuing, the Commission will not accept a complaint in relation to an alleged infringement that has taken place more than one (1) year prior to the date of the complaint.

PLEASE NOTE: THE HRC DOES NOT PROVIDE LEGAL ADVICE IN ANY CAPACITY.

6.2 List of International Human Rights Treaties Extended to the Cayman Islands

Below is a list of International Human Rights Treaties Extended to the Cayman Islands as at 1 May, 2010 based on information provided to the HRC by outside sources.

- European Convention on Human Rights (formally known as the Convention for the Protection of Human Rights and Fundamental Freedoms)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Convention on Consent to Marriage, Minimum Age and Registration
- Convention on the Abolition of Slavery
- International Convention on the Elimination of All Forms of Racial Discrimination
- Convention on the Rights of the Child
- Convention relating to the Status of Stateless Persons
- Convention on the Political Rights of Women
- Registry of the European Court of Human Rights September 2003
- International Labour Organisation Convention 29
- International Labour Organisation Convention 87
- International Labour Organisation Convention 98
- International Labour Organisation Convention No. 105
- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights
- United Nations Educational, Scientific and Cultural Organization Convention against Discrimination in Education

6.3 Options for Making a Complaint

If you believe that your rights and freedoms have been breached or violated, the Constitution has provisions to help you in two ways:

- (a) You may make a complaint to the HRC who can give guidance and or investigate and deal with the complaint by mediation or conciliation or by making recommendations; or
- (b) You may apply independently to the Grand Court, for a judgment concerning any alleged breach of your human rights under the Bill of Rights.

You do not have to take your complaint to the HRC. Nothing contained in or done pursuant to Section 116 of the Constitution shall –

- (a) oblige a person to refer any complaint of a breach or infringement of any right or freedom referred to in the Bill of Rights to the HRC; or
- (b) prevent a person from seeking redress independently from the Grand Court in relation to any

breach or infringement of a right or freedom referred to in the Bill of Rights, and the fact that such person had previously sought the assistance of the HRC with respect to such breach or infringement shall not prejudice any legal action.

6.4 Accessibility of the Human Rights Commission

The HRC can be accessed by completing the application form found in the appendices section of this document.

The HRC may be contacted through the Secretariat in the following ways:

Phone: 244-3685

Fax: 945-8649

Website: www.humanrightscommission.ky

E-mail: info@humanrightscommission.ky

Mailing Address: P.O. Box 391 KY1-1106

Physical Address: 1st Floor, Cayman Corporate Centre

FOI requests: foi.cos@gov.ky.

6.5 Conflicts of Interest

If at any time there exists a conflict of interest on the part of a member of the HRC in relation to a complaint received by the HRC, that member shall excuse him or herself from consideration of the complaint whether at a meeting of the HRC or otherwise and shall take no part in the investigation of the complaint or the HRC's deliberations on the matter.

6.6 Information Required by the Human Rights Commission

In order to access the HRC, the individual should attempt to include all of the following information in any Complaint:

- Name;
- Postal address;
- Physical address;
- Telephone number;
- Email address;
- An account of the situation or circumstances, including dates where relevant, that has given rise to the complaint;
- Any supporting documentation;

- An indication of which human rights are thought to be at issue; and
- Consent to the release of information form.

Failure to include all of the requested information in a complaint to the HRC, without good reason, may cause delay or prevent the acceptance of any such complaint.

The Human Rights Commission reserves the right to withhold or redact any identifying characteristics when releasing information in appropriate circumstances such as in those cases involving minor children or when harm could be caused if the respondent's identity is revealed.

6.7 Releases

Confidentiality for a complainant is of paramount importance to HRC and the Commission will not communicate any matters concerning a complainant to a third party. It is a matter of policy that the HRC will only deal with a complainant personally. If a complainant is a minor or is incarcerated HRC will, with an appropriately signed document, release information to a third party at a complainant's request.

The HRC will not accept complaints and requests on behalf of a complainant from a third party unless the complainant is a minor or under disability and the third party is his or her parent or guardian. HRC will require documentary proof of such relationship to be provided.

It is important to note that if, a complainant discloses or gives the Commission reason to believe that they are engaged in criminal conduct then the Commission will report such matters to the Royal Cayman Islands Police ("RCIP"). If a complaint alleges criminal conduct on the part of another then that conduct may also be reported to the RCIP.

6.8 Procedure

Once a complaint has been received by the Commissions Secretariat it will be registered as a formal complaint. It will then, in the first instance, be vetted by the Manager, Commissions Secretariat who will determine whether the complaint should be brought to the attention of the HRC. The Manager will have the discretion to determine if a complaint is obviously frivolous and to reject the complaint on the grounds that there is no evidence indicating a breach or infringement of your human rights; or to request further information. In other cases, the complaint will be passed on the HRC in order to determine whether it should be accepted. Should a complaint be accepted it will be placed on the agenda for the next available HRC meeting. At this meeting the HRC will further examine the complaint to see whether it discloses a possible breach of the Bill of Rights or any International Human Rights Treaty extended to the Cayman Islands. If it does then the HRC will decide on a

timetable and action plan to move the complaint forward; if it does not the file will be closed and the complainant notified.

Where a complaint is considered urgent, the Chairman of the HRC may circulate the complaint amongst all Commissioners and request that an action plan be decided without delay.

The creation of an action plan does not necessarily indicate that a complaint will ultimately be upheld. Rather, it signifies that the HRC believes that there is a concern that merits further inquiry.

Once the HRC has determined that the complaint discloses a possible breach of the Bill of Rights or any International Human Rights Treaty extended to the Cayman Islands the complaint will be investigated. In such cases, the HRC may ask the Commissions Secretariat to assist them in the investigation part of the process.

During the investigation details of your complaint will be shared with the respondent and they will be given an opportunity to make a formal reply to the complaint. In the process of the investigation, if the parties are amenable, the HRC can operate as a mediator in an effort to broker an amicable settlement between the parties. This settlement must, however, comply with the generally accepted interpretation of the right or rights at issue.

Once the HRC has obtained all of the information that it requires, it will make a determination as to the way forward including possible recommendations.

6.9 Reports and Findings

The Commission may choose to write a report on matters of interest from time to time. In those case reports will generally include the following:

- A summary of the complaint or matter of interest;
- An indication of whether any investigation and/or mediation was undertaken;
- The findings of the HRC;
- Recommendations on the case or topic at hand from the HRC;
- Broader general recommendations, if the HRC believes that these are appropriate.

Reports will be published on the HRC website and will, unless there are persuasive reasons otherwise, include the names of the parties involved. Copies of reports will also be sent to key personnel, including the respondent and/or representatives of the Cayman Islands Government, in an effort to ensure that any valid concerns receive the maximum possible exposure.

Once a report has been written, the HRC will not review the complaint unless new information is presented to the HRC which in their opinion may alter the outcome of the report.

Part D: Appendices

7 Complaints

7.1 Complaints Form

**Human Rights Commission
Cayman Islands
Complaint Form**

Part A – About you (the complainant)

1. Name Mr/Mrs/Miss/Ms: _____
2. Physical Address: _____
3. Mailing Address: P.O. Box _____ Postal Code: KY - _____
4. Contact numbers: Home: _____ Work: _____ Cell: _____
5. Email: _____

Only fill out this box if someone is assisting you with the complaint – for example a lawyer*

Name of representative: _____

Organisation or capacity in which providing assistance: _____

Please note: evidence of their authority must be provided e.g. signed letter of authority, power of attorney or court order

Physical Address: _____

Mailing Address: P.O. Box _____ Postal Code: KY - _____

Contact numbers: Work: _____ Cell: _____ Email: _____

*for the limited circumstances in which another person may assist with a complaint please see the Commissions' policies and procedures section 6.7 in the document library at <http://www.humanrightscommission.ky> or contact the Secretariat on (345) 244 3865 or by email info@humanrightscommission.ky.

Part B – Your complaint

Who are you complaining about? (the respondent)

1. Name of respondent: _____

2. Position of respondent _____

3. Name of organisation: _____

4. Physical Address: _____

5. Mailing Address: P.O. Box _____ Postal Code: KY - _____

6. Contact numbers: Work: _____ Cell: _____ Email: _____

If you are complaining about more than one organisation, please provide this additional information on an extra page.

Why are you complaining to the Commission?

I am complaining because I believe my right to (check all that apply) have been breached or infringed upon:

- | | |
|---|---|
| <input type="checkbox"/> Guarantee of Rights, Freedoms and Responsibilities | <input type="checkbox"/> Right to Life |
| <input type="checkbox"/> Torture and Inhumane Treatment | <input type="checkbox"/> Slavery or Forced or Compulsory Labour |
| <input type="checkbox"/> Personal Liberty | <input type="checkbox"/> Treatment of Prisoners |
| <input type="checkbox"/> Fair Trial | <input type="checkbox"/> No Punishment without Law |
| <input type="checkbox"/> Private and Family Life | <input type="checkbox"/> Conscience and Religion |
| <input type="checkbox"/> Expression | <input type="checkbox"/> Assembly and Association |
| <input type="checkbox"/> Movement | <input type="checkbox"/> Marriage |
| <input type="checkbox"/> Property | <input type="checkbox"/> Non-discrimination |
| <input type="checkbox"/> Protection of Children | <input type="checkbox"/> Protection of the Environment |
| <input type="checkbox"/> Lawful Administrative Action | <input type="checkbox"/> Education |

Part C – Further information

Supporting evidence

Please attach copies of any documents that may help us investigate your complaint (for example, letters, pay slips, doctor's certificates or references). If you cannot do this, please tell us about the documents or other evidence and how this evidence can be obtained.

What outcome are you seeking?

Have you followed the internal processes set up by respondent agency?

(For example if this is a complaint regarding employment have you followed your internal workplace rules for filing a complaint; if you are a prisoner have you followed the internal prisoner complaints process?)

If so, you must provide details of the complaint procedure followed and any outcome. You should also attach copies of any letters you have received from the agency.

Have you made a complaint about this to another external agency? (For example the Office of the Complaints Commissioner)

If so, you must provide details of the complaint, the agency it was made to and any outcome. You should also attach copies of any letters you have received from the agency.

Have you tried to resolve your complaint in any other way? (For example through mediation)

If so, please give details:

I hereby swear that the above information is accurate to the best of my knowledge and is provided in good faith.

Signature: _____

Date: _____

Remember

- to sign and date page 5 of this document; and
- attach copies of any relevant documents.

FAILURE TO PROVIDE ALL INFORMATION AND DOCUMENTS REQUESTED MAY DELAY OR
PREJUDICE THE CONSIDERATION OF YOUR COMPLAINT

Send your completed form to:

Chairman, Human Rights Commission
P.O. Box 391
Grand Cayman KY1-1106
CAYMAN ISLANDS

Commissions Secretariat Use Only

Case Reference Number: _____ **Date Received:** _____

Name of Secretariat Representative: _____

Date Placed on the HRC Agenda: _____

Complaint Accepted and Investigated: Yes No

Date of Draft Report: _____

Date of Final Report: _____

Date of Publication of Final Report: _____

7.2 Release of Information Form

Consent to Release Information

I understand that the Human Rights Commission must work with various individuals and agencies to investigate the alleged breach or infringement of my rights as declared in the attached complaint form. Therefore I give my consent to the use and divulgence of any information the HRC feels is necessary to complete their investigation into this matter. I also understand that the HRC will use its discretion in sharing my information and that my information will only be shared with those persons or agencies considered necessary.

I understand that a report may be published on the HRC website and will, unless there are persuasive reasons otherwise, include the names of the parties involved. Copies of reports will also be sent to key personnel, including the respondent and/or representatives of the Cayman Islands Government, in an effort to ensure that any valid concerns receive the maximum possible exposure. Information will be released in accordance with the policies found in section six of this manual.

I further understand that if, a complainant discloses or gives the Commission reason to believe that they are engaged in criminal conduct then the Commission will report such matters to the Royal Cayman Islands Police (“RCIP”). If a complaint alleges criminal conduct on the part of another then that conduct may also be reported to the RCIP.

Signature: _____

Date: _____