



Cayman Islands Human Rights Commission

promoting, protecting and preserving human rights

2 September, 2011

Angelique Howell
Chief Inspector
Contingency Planning Unit
Royal Cayman Islands Police Service
George Town Police Station
Grand Cayman
CAYMAN ISLANDS

Dear Chief Inspector Howell,

Thank you for your e-mail via the Commissions Secretariat dated 14 July, 2011 in which you requested the Human Rights Commission (HRC) to comment on the Draft RCIPS Custody Policy.

Introduction

The principles and substance of the RCIPS Custody Policy is expected, in its final version, to reflect the Government's commitment to protecting fundamental human rights under the European Convention on Human Rights in addition to individuals' rights, freedoms, and responsibilities embedded within Part I of the Cayman Islands Constitution Order 2009. Essentially, the RCIPS, in its policies and practices, is required to balance the rights of detained persons against the powers vested in constables in accordance with the law.

Section 5 of Part 1 of the Cayman Islands Constitution Order 2009, in addition to Article 5 (paragraph 1) of the European Convention on Human Rights, points to a presumption that everyone should enjoy liberty and that a person can only be deprived of their liberty in exceptional circumstances. Thus, section 5 begins with an unqualified assertion of the right, "No one shall be deprived by government of liberty and security of the person" and this is *followed* by the structure that "the right to liberty does not extend to the following measures taken in relation to a person in accordance with a procedure prescribed by law...."

HRC Comments on draft RCIPS Custody Policy

While the HRC would like to commend the RCIPS for taking an interest in ensuring its Custody Policy is compliant with the Bill of Rights, Freedoms and Responsibilities found in Part One of the Cayman Islands Constitution Order 2009, we would like to make it clear that this document in its present condition is far from ready to be published and/or utilized. It should be considered as a very first working draft and further work and review needs to be undertaken.

The Commission recognizes that the Draft RCIPS Custody Policy is based almost verbatim on the UK Home Office/Hampshire Constabulary model. In this regard, the contents of the document have not been contextualized to the Cayman jurisdiction in many instances. The following observations and queries have resulted from undertaking a comparison of the said documents:

1. Each section of the Hampshire custody policy is prefaced by a Potential Equality Impact Assessment. As Cayman is subject to European Convention of Human Rights (ECHR) as

well as Bill of Rights Freedoms and Responsibilities, why is this assessment not included in RCIPS draft policy?;

2. There are a number of sections omitted from the RCIPS policy; the most significant of which, from a human rights perspective, include Defence Attorneys, Custody Inspection, and Maintenance; and
3. Each section of the RCIPS policy omits a number of paragraphs at the section end, the most significant omissions, from a human rights perspective, include Monitoring and Review.

At present the document is repetitive and unnecessarily long. It contains a multitude of spelling errors and is grammatically poor which in some cases changes the meaning of the content. The document in itself is very difficult to follow as it jumps from section to section and, without an index, readers find themselves searching for where they need to pick back up on the same topic further into the document. Additionally, it is noted that the section titles do not accurately represent the content contained in the said section and that in one instance there are two sections considered Section 7. While in some instances the document cross-references the sections which are similar or relevant, it does not cross-reference these numbers in all cases. The document should also add as appendices those policies which it obscurely mentions such as the Use of Force Policy, Prisoner Medical Form, and the Risk Assessment Questions. Where are these policies/documents? In the second section 7 the document actually references Annex B and Annex C yet there are no Annexes attached and it is unknown what Annex A is supposed to be. Additionally the document refers to those in custody as prisoners in most instances but in some instances as detainees. The reference to those in custody should remain consistent throughout this policy and all other RCIPS policies to avoid confusion.

It should be noted that the comments contained below are neither exhaustive nor a comprehensive review of the draft document but are simply initial observations of the Commission. As such, the comments below do not constitute "guidelines" to the RCIPS Custody Policy as suggested in the policy's preamble. They are non-binding on the RCIPS, and are not a substitute for legal advice which should be sought from CIG Legal Dept.

About this Policy

The way in which the Royal Cayman Islands Police Service carries out its role of ensuring that persons detained in police custody are treated with humanity and with respect for the inherent dignity for the human person should obviously be in keeping with not only with the requirements and considerations of the Part I of the Cayman Islands Constitution Order 2009 and the European Convention for Human Rights but also in accordance with the:

- a) The Inspection Standards for Prisons, Places of Detention and Immigration Detention Centres in the Cayman Islands as agreed by the Prisons Inspection Board (PIB); and
- b) Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman, Degrading Treatment or Punishment (OPCAT).

We would encourage you to cross reference your policy guidelines with these documents as mentioned above.

General: Section 1

Overall this section repeatedly uses this phrase "into custody" which is confusing as the person is already in custody as it is speaking to any person who has already been arrested.

1.2 All prisoners must be seen by the Custody officer an officer of at least the rank of Sergeant as soon as practicable after their arrival at a police station. Once a prisoner has arrived at a police station it is no longer an option to release them by de-arresting them.