

Western Cape, South Africa

Western Cape Community Safety Act, 2013

Western Cape Provincial Police Ombudsman Regulations, 2015

Provincial Notice 364 of 2015

Legislation as at 22 October 2015

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Western Cape Provincial Police Ombudsman Regulations, 2015

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1. Definitions

In these regulations a word or expression to which a meaning has been assigned in the Western Cape Community Safety Act, 2013 ([Act 3 of 2013](#)), has the meaning so assigned and, unless the context indicates otherwise—

"complainant" means a person or member of the Provincial Parliament contemplated in section 16 of the Act who submits a complaint to the Ombudsman;

"complaint" means a complaint submitted to the Ombudsman in terms of [section 16\(1\)](#) or (2) of the Act;

"investigating officer" means a staff member or other suitable person designated as investigating officer in terms of section 18(3) of the Act;

"staff member" means a staff member of the Office of the Ombudsman established by section 10 of the Act;

"the Act" means the Western Cape Community Safety Act, 2013 ([Act 3 of 2013](#)).

2. Submitting complaints

- (1) A complaint submitted to the Ombudsman should preferably be in writing but an oral complaint submitted in person or by telephone may be accepted—
 - (a) if it is not possible for a person who wishes to submit a complaint to reduce it to writing;
 - (b) if it is not possible for a person who wishes to submit a complaint to send a written complaint to the Office of the Ombudsman; or
 - (c) if the complaint concerns an urgent matter making it inadvisable to insist on a written complaint.
- (2) An oral complaint must as soon as is reasonably possible be reduced to writing by a staff member who is duly designated by the Ombudsman, on the form provided for in Annexure A.
- (3) The duly designated staff member must, after an oral complaint has been reduced to writing in terms of subregulation (2), verify the correctness thereof by reading it back to the complainant and making amendments, if necessary.
- (4) Subject to subregulation (1), a complaint is submitted in writing by submitting a completed and signed form in Annexure A to the Office of the Ombudsman.

- (5) A complaint must specify—
- (a) the name, identity or passport number and contact particulars of the complainant, if available;
 - (b) the nature of the complaint;
 - (c) the date and place of the incident;
 - (d) a description of the incident and the grounds on which the complainant believes that the complaint should be investigated;
 - (e) the name of any police official involved in the incident or matter, if known to the complainant;
 - (f) the name of the police station, if applicable;
 - (g) the names and addresses, if available, of any person who can provide information relevant to the complaint;
 - (h) information regarding other mechanisms that the complainant has used in an attempt to resolve the complaint;
 - (i) particulars of any person who was involved in an attempt to resolve the complaint; and
 - (j) any other relevant information or documents that can be used during the investigation.
- (6) The completed and signed form in Annexure A must be accompanied by the following documents:
- (a) a copy of the complainant's identity document or passport, if available; and
 - (b) if a person is submitting the complaint as a member or in the interests of a group or class of persons or on behalf of an association or organisation, proof that the person submitting the complaint is authorised to act on behalf of the group or class of persons or on behalf of the association or organisation.
- (7) A staff member who is duly designated by the Ombudsman must render the necessary assistance, free of charge, to enable any person to comply with this regulation.

3. Manner of submitting complaints

- (1) An oral complaint in person or by telephone as contemplated in regulation 2(1) may be submitted to the Office of the Ombudsman as contemplated in regulation 2(2) and (3).
- (2) A written complaint contemplated in regulation 2(4) must be submitted to the Office of the Ombudsman in the following manner:
- (a) by handing it in at the Office of the Ombudsman during office hours;
 - (b) by facsimile;
 - (c) by registered post, in which case the complainant must keep proof that the complaint has been posted;
 - (d) by e-mail; or
 - (e) by completing and submitting a complaint form online on the website or social-media page of the Office of the Ombudsman or the website of the Department.
- (3) A complainant may give notice of his or her intention to submit a complaint to the Office of the Ombudsman by sending a message to the Office of the Ombudsman by Short Message Service (SMS).

- (4) A complainant contemplated in subregulation (3) must as soon as reasonably possible submit his or her complaint orally in terms of regulation 2(1), (2) and (3) or in writing in terms of regulation 2(4) and subregulation (2) to the Office of the Ombudsman.

4. Processing of complaints

- (1) The Ombudsman must acknowledge receipt of a complaint submitted to the Office of the Ombudsman.
- (2) The Ombudsman must upon receipt of a complaint determine whether the complaint falls within the ambit of section 16(1) or (2) of the Act.
- (3) Any complaint or aspect thereof may be referred in writing by the Ombudsman to an appropriate authority or institution that is competent to deal with the complaint.
- (4) The complainant must be informed in writing by the Ombudsman of the referral of a complaint to an appropriate authority or institution.
- (5) If a complaint is investigated by the Ombudsman, the complainant must be informed in writing by the Ombudsman that his or her complaint is being investigated by an identified investigating officer and of the name and contact details of the investigating officer.

5. Notice of investigation

The Ombudsman must give written notice to the executive head of the municipal police service concerned or the Provincial Commissioner, as the case may be, of an investigation in terms of section 17 of the Act and invite the police service concerned to submit written comment on the complaint to the Ombudsman within the period stated in the notice.

6. Publication of information regarding investigations

If the Ombudsman is investigating a complaint and it appears that further information is required from members of the public, the Ombudsman may, in addition to the notice in the *Provincial Gazette* in terms of section 17(3) of the Act, publish information regarding the complaint being investigated and, if applicable, information required in connection with the investigation in any newspaper circulating in the area concerned and invite members of the public to make written representations regarding the complaint to the Ombudsman.

7. Cooperation by organs of state in investigations

- (1) The Ombudsman must, before exercising the power in terms of section 18(1) or (2) of the Act to direct, or request an explanation from, a police official or person employed by an organ of state first try to obtain the co-operation in terms of subregulations (2) to (7) of the police service or organ of state concerned for purposes of investigating the complaint.
- (2) The Ombudsman may, during the performance of his or her functions, request through the Provincial Commissioner or the executive head of the relevant municipal police service or organ of state an interview with a police official or official of the organ of state relating to the investigation of a complaint.
- (3) The purpose of the interview contemplated in subregulation (2) is to—
 - (a) where necessary, inform the police official or official of the organ of state concerned more fully of the complaint;
 - (b) obtain the view of the police official or official of the organ of state concerned regarding the complaint and the factual averments on which the complaint is based; and
 - (c) if possible, resolve the complaint.

- (4) During the interview contemplated in subregulation (2), the police official or official of the organ of state must—
 - (a) provide the information relevant to the investigation, either in writing or orally, as may reasonably be required; and
 - (b) produce any document in his or her possession or under his or her control, as may reasonably be required.
- (5) A police official or official of an organ of state required to attend an interview may, depending on the circumstances, be given reasonable notice either orally or in writing of the nature and purpose of the interview and the date, place and time thereof.
- (6) The Ombudsman must bring section 30(1) of the Act to the attention of a police official or official of an organ of state that attends an interview contemplated in subregulation (2).
- (7) The Ombudsman must ensure that any document received from the police or organ of state is duly recorded and kept in safe custody.
- (8) Any refusal by a police official or official of an organ of state to co-operate with the Ombudsman in terms of this regulation must be brought to the attention of the Provincial Commissioner or executive head of the relevant municipal police service or organ of state, as the case may be, and the Provincial Minister.

8. Methods of investigation

The method, including the following methods or any combination thereof, to be followed in conducting an investigation in terms of section 17 of the Act must be determined by the Ombudsman with due regard to the circumstances of each case:

- (a) communication by telephone, e-mail or any other form of correspondence;
- (b) research, inspections in loco, surveys or questionnaires;
- (c) meetings with affected persons reasonably believed to have information relevant to the investigation;
- (d) appearance of a person before the Ombudsman for purposes of obtaining or clarifying information, or to produce any document as contemplated in section 18(1) of the Act;
- (e) requests to persons to give explanations as contemplated in section 18(2) of the Act.

9. Form of directions and requests

- (1) A direction or request by the Ombudsman in terms of section 18(1) or (2) of the Act must be in writing and contain the following:
 - (a) particulars of the matter in connection with which the person is—
 - (i) directed to appear, submit an affidavit or affirmed declaration or to produce any document; or
 - (ii) requested to give an explanation;
 - (b) the date, time and place of the appearance or where the affidavit or affirmed declaration must be submitted, the document must be produced or the explanation must be submitted; and
 - (c) the reason the person has been—
 - (i) directed to appear, submit an affidavit or affirmed declaration or to produce any document; or

- (ii) requested to give an explanation.
- (2) The direction or request must be signed by the Ombudsman and be served by registered post or by hand on the person who is required to appear, submit an affidavit or affirmed declaration, produce any document or to give an explanation.

10. Legal representation and reply to implications

- (1) A person directed to appear in terms of section 18(1) of the Act may not be assisted by a legal representative at an appearance unless he or she has applied to the Ombudsman to be so assisted and the Ombudsman has approved the application in terms of subregulation (2).
- (2) If the Ombudsman is satisfied that the factual or legal issues justify that a person contemplated in subregulation (1) be assisted by a legal representative, the Ombudsman may approve that the person be so assisted provided that neither the Ombudsman nor the Office of the Ombudsman is liable for the costs of the legal assistance.
- (3) A person directed to appear in terms of section 18(1) of the Act who is not in the employ of the state is entitled to witness fees in accordance with the tariff prescribed in the regulations issued in terms of section 191(3) of the Criminal Procedure Act, 1977 ([Act 51 of 1977](#)).
- (4) If it appears to the Ombudsman during the course of an investigation that any person is being implicated in the matter being investigated and that the implication may be to the detriment of that person or result in an adverse finding against that person, the Ombudsman must afford that person an opportunity to reply in connection therewith in any manner that may be expedient under the circumstances.
- (5) If the implication referred to in subregulation (4) is made by a person by virtue of a direction in terms of section 18(1) of the Act, the implicated person or his or her legal representative may not question the person who made the implication unless the Ombudsman is satisfied that the factual or legal issues justify the questioning.

11. Oath or affirmation

- (1) The Ombudsman and all staff members appointed immediately before the commencement of these regulations must within 14 days of the commencement of these regulations take an oath or make an affirmation that must be undersigned by him or her in the following form:

"I, [full name and surname], declare under oath or affirm that I will in my capacity as Western Cape Provincial Police Ombudsman/staff member of the Office of the Western Cape Provincial Police Ombudsman and in the exercise of my powers and the performance of my functions in terms of the Act—

 - (a) obey, respect and uphold the [Constitution of the Republic of South Africa, 1996](#), the [Constitution](#) of the Western Cape, 1997, and the fundamental rights entrenched therein, and all other laws of the Republic; and
 - (b) serve independently and impartially and act in good faith without fear, favour, bias or prejudice, subject to the [Constitution of the Republic of South Africa, 1996](#), the [Constitution](#) of the Western Cape, 1997, and the law. (In the case of an oath: So help me God.)".
- (2) Any successor to the Ombudsman referred to in subregulation (1) or staff members appointed after the commencement of these regulations must before commencing to exercise or perform the powers or functions in terms of the Act, take an oath or make an affirmed declaration that must be undersigned by him or her in the form contemplated in subregulation (1).

12. Confidentiality and disclosure

- (1) Every person employed in the execution of the functions of the Ombudsman, including any person appointed or designated to take down or record the proceedings of an investigation in

writing or mechanically, or employed to transcribe the records so taken down or recorded, must preserve the confidentiality of any matter or information that may come to his or her knowledge in the performance of his or her duties in connection with the said functions, except in so far as the publication of such matter or information is necessary or incidental to any report of the Ombudsman.

- (2) No person may disclose to any other person any matter or information obtained for the purpose of and in connection with an investigation in terms of sections 17 or 18 of the Act or allow any other person to have access to any records of the Ombudsman relating to an investigation, except in so far as it is necessary in the performance of his or her duties in connection with the functions of the Ombudsman or unless the Ombudsman determines otherwise.
- (3) The Ombudsman may in the interest of justice direct that any category of persons or all persons whose presence is not desirable may not be present at an appearance in terms of [section 18\(1\)](#) of the Act.

13. Recording of proceedings

- (1) When a person appears before the Ombudsman to give oral evidence in terms of section 18(1) of the Act, the proceedings must be taken down or recorded in a manner determined by the Ombudsman.
- (2) A person appointed or designated to—
 - (a) take down or record the proceedings in terms of section 18(1) of the Act, must at the outset take an oath or make an affirmation that must be undersigned by him or her in the following form:

"I, [full name and surname], declare under oath or affirm that I will faithfully and to the best of my ability take down or record the proceedings and related matters by using the method determined by the Ombudsman or a person designated in terms of section 18(3) of the Western Cape Community Safety Act, 2013 ([Act 3 of 2013](#)). (In the case of an oath: So help me God.)"; and
 - (b) transcribe the record of proceedings of the Ombudsman referred to in paragraph (a) must upon completion of the transcription take an oath or make an affirmation that must be undersigned by him or her in the following form:

"I, [full name and surname], declare under oath or affirm that I have fully and to the best of my ability transcribed the whole of the record of the proceedings of the Ombudsman handed to me in this matter. (In the case of an oath: So help me God.)".

14. Methods of resolving complaints

The Ombudsman must try to resolve a complaint at the earliest possible opportunity in any appropriate manner in accordance with these regulations, including the following:

- (a) where insufficient information has been provided, by requesting the complainant to provide further information;
- (b) where sufficient information has been provided, by sending a notice contemplated in regulation 5 to the executive head of the municipal police service concerned or the Provincial Commissioner and requesting a response to the complaint;
- (c) where all the required information is received, by proceeding with a negotiation and conciliation process, if necessary;
- (d) where the complaint cannot be resolved by a negotiation and conciliation process, by finalising the investigation and submitting a report and recommendation to the Provincial Minister.

15. Conclusion of complaints

- (1) A complaint is concluded by the Ombudsman under the following circumstances:
 - (a) before or after conclusion of an investigation where the complaint is rejected due to the fact that it does not fall within the ambit of the Act or if it is frivolous or vexatious;
 - (b) if the complaint is resolved by means of agreement, negotiation or conciliation;
 - (c) after conclusion of an investigation where it is found that—
 - (i) there is police inefficiency or a breakdown in relations but it could not be resolved and if a report is submitted as contemplated in section 17(8) of the Act;
 - (ii) there was police inefficiency or a breakdown in relations and if the said police inefficiency or a breakdown in relations is remedied; or
 - (iii) there was police inefficiency or a breakdown in relations and the said police inefficiency or breakdown in relations has been reported to the Provincial Commissioner or the executive head of the municipal police service concerned to deal with the matter further;
 - (d) if a complaint is withdrawn by the complainant and the Ombudsman is satisfied that there are no compelling reasons to proceed with the investigation; or
 - (e) if a complainant despite request does not provide further information that is within his or her knowledge and which is required to finalise the investigation of the complaint.
- (2) The Ombudsman may within his or her discretion on appropriate grounds reopen any complaint that was concluded in terms of this regulation.
- (3) The Ombudsman must keep a record of the exercise of his or her functions, including the following:
 - (a) all complaints received, including the following categories:
 - (i) investigated complaints;
 - (ii) referred complaints;
 - (iii) concluded complaints;
 - (iv) complaints not concluded;
 - (b) the particulars of the complainant;
 - (c) the category of each complaint and the number of complaints received in each category;
 - (d) the police station or police unit involved;
 - (e) the outcome of all complaints referred by the Provincial Minister to the Provincial Commissioner or executive head of the municipal police service concerned; and
 - (f) the outcome of all complaints referred by the Ombudsman to any other appropriate authority or institution.

16. Reporting by Ombudsman

- (1) The Ombudsman must submit the report contemplated in section 13(1) of the Act to the Provincial Minister in writing within 30 days of the end of each financial year.
- (2) The Provincial Minister must table the report contemplated in section 13(1) of the Act in the Provincial Parliament within 30 days of receiving the report.

17. Certificate of appointment of investigating officers

- (1) A certificate of appointment issued to an investigating officer in terms of section 18(5) of the Act must be in writing, signed by the Ombudsman and set out the following:
 - (a) the full names and identity number of the investigating officer;
 - (b) a recent photograph of the investigating officer; and
 - (c) the functions in terms of sections 18(1) or (2) of the Act to be performed by the investigating officer.
- (2) An investigating officer must when performing a function in terms of sections 18(1) or (2) of the Act show his or her certificate of appointment to any person who is affected by the exercise of the functions of the investigating officer and requests to see the certificate.

18. Conditions of appointment

- (1) The remuneration payable to or conditions of appointment of an investigating officer who is not in the full-time service of the state must be determined in accordance with the laws governing appointments within the public service or the procurement of services at the time of the appointment.
- (2) An investigating officer contemplated in subregulation (1) performs his or her functions faithfully and diligently and subject to the control and directions of the Ombudsman.

19. Short title

These regulations are called the Western Cape Provincial Police Ombudsman Regulations, 2015.

Annexure A - Form 1**Western Cape Department of Community Safety**

Complaint to the Ombudsman

Western Cape Community Safety Act, 2013 ([Act 3 of 2013](#)) (Section 16 of the Act)

Details of Complainant

Surname:

.....

Full first names:

.....

Identity or passport number:

.....

Residential address:

.....

Postal address:

.....

Home tel. no.: Work tel. no.:

.....

Cell. no.: e-mail:

.....

Fax no.:

Details of the complaint *(Attach further pages if more space is required.)*

1. Provide a short explanation of the complaint.

.....

.....

.....

2. Date and place of
occurrence.....

3. Provide a description of the incident and explain why you believe that the complaint should be investigated.

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4. Provide the names and addresses of any other person who could provide information relevant to the complaint.

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5. Provide information regarding other mechanisms you have used to try to resolve the complaint.

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6. Provide particulars of any person who was involved in trying to resolve the complaint.

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7. Provide all other relevant information known to you.

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8. Provide the name of any police official(s) involved in the incident or matter, if known.

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.....

9. Provide the name of the police station and the police reference number, if known.

.....
.....
.....

I, the complainant whose details are provided above, confirm that the information provided by me is to the best of my knowledge true and correct.

Signature:

Date: