

## **The Investigatory Powers Tribunal Rules, 2006**

**THE ROYAL COURT**, in exercise of the powers conferred upon it by section 60 of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003<sup>a</sup>, and all other powers enabling it in that behalf, hereby orders: -

### PART I

#### *General provisions*

#### **Citation and commencement**

1. These Rules may be cited as the Investigatory Powers Tribunal Rules 2006, and shall come into force on 4<sup>th</sup> July 2006.

#### **Interpretation**

2. (1) In these Rules -

“**the Law**” means the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2004;

“**complainant**” means a person who brings section 7 proceedings or, as the case may be, makes a complaint;

“**complaint**” means a complaint for which the Tribunal is the appropriate forum by virtue of section 56(2)(b) and section 56(4) of the Law;

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<sup>a</sup> Order in Council No. XXX of 2003.

“**Convention right**” has the same meaning as in the Human Rights (Bailiwick of Guernsey) Law, 2000<sup>b</sup>;

“**section 7 proceedings**” means proceedings under section 7(1)(a) of the Human Rights (Bailiwick of Guernsey) Law, 2000 in relation to which the Tribunal is the only appropriate tribunal by virtue of section 56(2)(a) of the Law;

“**the Tribunal**” means the tribunal established under section 56(1) of the Law.

(2) The Interpretation (Guernsey) Law, 1948<sup>c</sup> applies to the interpretation of these Rules throughout the Bailiwick as it applies to the interpretation of an enactment.

(3) Any reference in these Rules to an enactment, rule or order is reference to that enactment, rule or order as amended, extended, re-enacted or applied by or under any other enactment, rule or order (including these Rules).

### **Application of Rules**

3. These Rules apply to section 7 proceedings, and to complaints.

### **Exercise of Tribunal's jurisdiction**

4. The jurisdiction of the Tribunal may be exercised by any two or more members of the Tribunal designated for the purpose by the President; and different members of the Tribunal may carry out functions in relation to different complaints at the same time.

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<sup>b</sup> Order in Council No. XIV of 2000.

<sup>c</sup> Ordres en Conseil Vol. XIII, p.355.

**Functions exercisable by single member**

**5.** The following powers and duties may be exercised or performed by a single member of the Tribunal-

- (a) the power under rule 7(4) or rule 8(4) to invite the complainant to supply information or make representations;
- (b) the power under section 59(2) of the Law to require the Commissioner to provide assistance;
- (c) the power under section 59(6) of the Law to require the disclosure or provision of documents or information;
- (d) the power under paragraph 4(2) of Schedule 3 to the Law to authorise an officer to obtain documents or information on the Tribunal's behalf;
- (e) the power under section 7(3)(b) of the Human Rights (Bailiwick of Guernsey) Law, 2000 to extend the time limit for section 7 proceedings;
- (f) the power under section 58(5) of the Law to extend the time limit for complaints;
- (g) the duty under rule 13 to notify the complainant of any of the determinations described in that rule;

- (h) the duty, in considering a complaint, to investigate the matters described in section 58(3)(a) and (b) of the Law.

### **Disclosure of Information**

6. (1) The Tribunal shall carry out their functions in such a way as to secure that information is not disclosed to an extent, or in a manner, that is contrary to the public interest or prejudicial to national security, the prevention, detection, investigation or prosecution of serious crime, the economic well-being of the Bailiwick or the continued discharge of the functions of any of the intelligence services.

(2) Without prejudice to this general duty, but subject to paragraphs (3) and (4), the Tribunal may not disclose to the complainant or to any other person-

- (a) the fact that the Tribunal have held, or propose to hold, an oral hearing under rule 9(4);
- (b) any information or document disclosed or provided to the Tribunal in the course of that hearing, or the identity of any witness at that hearing;
- (c) any information or document otherwise disclosed or provided to the Tribunal by any person pursuant to section 59(6) of the Law (or provided voluntarily by a person specified in section 59(7));

- (d) any information or opinion provided to the Tribunal by the Commissioner pursuant to section 59(2) of the Law;
- (e) the fact that any information, document, identity or opinion has been disclosed or provided in the circumstances mentioned in sub-paragraphs (b) to (d).

(3) The Tribunal may disclose anything described in paragraph (2) with the consent of-

- (a) in the case of sub-paragraph (a), the person required to attend the hearing;
- (b) in the case of sub-paragraphs (b) and (c), the witness in question or the person who disclosed or provided the information or document;
- (c) in the case of sub-paragraph (d), the Commissioner and, to the extent that the information or opinion includes information provided to the Commissioner by another person, that other person;
- (d) in the case of sub-paragraph (e), the person whose consent is required under this rule for disclosure of the information, document or opinion in question.

(4) The Tribunal may also disclose anything described in paragraph (2) as part of the information provided to the complainant under rule 13(2), subject to the restrictions contained in rule 13(4) and (5).

(5) The Tribunal may not order any person to disclose any information or document which the Tribunal themselves would be prohibited from disclosing by virtue of this rule, had the information or document been disclosed or provided to them by that person.

(6) The Tribunal may not, without the consent of the complainant, disclose to any person holding office under the Crown (except the Commissioner) or to any other person anything to which paragraph (7) applies.

(7) This paragraph applies to any information or document disclosed or provided to the Tribunal by or on behalf of the complainant, except for the statements described in rule 7(2)(a) and (b) or, as the case may be, rule 8(2)(a) and (b).

## PART II

### *Proceedings and complaints*

#### **Bringing section 7 proceedings**

7. (1) Section 7 proceedings are brought by a complainant sending to the Tribunal a form and other information in accordance with this rule.

(2) The form must be signed by the complainant and must:

(a) state the name, address and date of birth of the complainant;

(b) state each public authority against which the proceedings are brought;

- (c) describe the nature of the claim (including details of the Convention right which it is alleged has been infringed) and of the complainant's interest; and
- (d) specify the remedy which the complainant seeks.

(3) The complainant must also supply, either in or with the form, a summary of the information on which the claim is based.

(4) At any time, the Tribunal may invite the complainant to supply further information or to make written representations on any matter.

### **Making a complaint**

8. (1) A complaint is brought by a complainant sending to the Tribunal a form in accordance with this rule.

(2) The form must be signed by the complainant and must-

- (a) state the name, address and date of birth of the complainant;
- (b) state the person or authority whose conduct, to the best of the complainant's knowledge or belief, is the subject of the complaint; and
- (c) describe, to the best of the complainant's knowledge or belief, that conduct.

(3) The complainant must also supply, either in or with the form, a summary of the information on which the claim is based.

(4) At any time, the Tribunal may invite the complainant to supply further information or to make written representations on any matter.

**Forms of hearing and consideration**

9. (1) The Tribunal's power to determine their own procedure in relation to section 7 proceedings and complaints shall be subject to this rule.

(2) The Tribunal shall be under no duty to hold oral hearings, but they may do so in accordance with this rule (and not otherwise).

(3) The Tribunal may hold, at any stage of their consideration, oral hearings at which the complainant may make representations, give evidence and call witnesses.

(4) The Tribunal may hold separate oral hearings which-

(a) the person whose conduct is the subject of the complaint,

(b) the public authority against which the section 7 proceedings are brought, or

(c) any other person specified in section 59(7) of the Law,

may be required to attend and at which that person or authority may make representations, give evidence and call witnesses.

(5) Within a period notified by the Tribunal for the purpose of this rule, the complainant, person or authority in question must inform the Tribunal

of any witnesses he or it intends to call; and no other witnesses may be called without the leave of the Tribunal.

(6) The Tribunal's proceedings, including any oral hearings, shall be conducted in private, unless the Tribunal directs otherwise.

### **Representation**

**10.** (1) A person entitled to make representations at an oral hearing may appear in person or may be represented by any person he may appoint for that purpose, subject to paragraph (2).

(2) The leave of the Tribunal is required except where the representative is an Advocate of the Royal Court of Guernsey.

### **Evidence**

**11.** (1) The Tribunal may receive evidence in any form, and may receive evidence that would not be admissible in a court of law.

(2) The Tribunal may require a witness to give evidence on oath.

(3) No person shall be compelled to give evidence at an oral hearing under rule 9(3).

### **Remedies**

**12.** (1) Before exercising their power under section 58(7) of the Law, the Tribunal shall invite representations in accordance with this rule.

(2) Where they propose to make an award of compensation, the Tribunal shall give the complainant and the person who would be required to pay

the compensation an opportunity to make representations as to the amount of the award.

(3) Where they propose to make any other order (including an interim order) affecting the public authority against whom the section 7 proceedings are brought, or the person whose conduct is the subject of the complaint, the Tribunal shall give that authority or person an opportunity to make representations on the proposed order.

### **Notification to the complainant**

**13.** (1) In addition to any statement under section 59(4) of the Law, the Tribunal shall provide information to the complainant in accordance with this rule.

(2) Where they make a determination in favour of the complainant, the Tribunal shall provide him with a summary of that determination including any findings of fact.

(3) Where they make a determination-

- (a) that the bringing of the section 7 proceedings or the making of the complaint is frivolous or vexatious;
- (b) that the section 7 proceedings have been brought, or the complaint made, out of time and that the time limit should not be extended; or
- (c) that the complainant does not have the right to bring the section 7 proceedings or make the complaint;

the Tribunal shall notify the complainant of that fact.

(4) The duty to provide information under this rule is in all cases subject to the general duty imposed on the Tribunal by rule 6(1).

(5) No information may be provided under this rule whose disclosure would be restricted under rule 6(2) unless the person whose consent would be needed for disclosure under that rule has been given the opportunity to make representations to the Tribunal.

## **EXPLANATORY NOTE**

*(This note is not part of the Rules)*

These Rules are for the Tribunal established under Part IV of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003. The Tribunal has an extensive jurisdiction, as set out in section 56(2) of the Law; these Rules only govern the jurisdiction described in paragraphs (a) and (b) of that subsection.

The Rules cover:

- (a) cases brought under section 7(1)(a) of the Human Rights (Bailiwick of Guernsey) Law 2000 for which the Tribunal is the appropriate tribunal: this category of case is explained in subsections (3) and (5) to (8) of section 56 of the 2003 Law;
- (b) complaints for which the Tribunal is the appropriate forum: this function is explained in subsections (4), (5), (7) and (8) of section 56.

Section 59 of the 2003 Law provides that, subject to anything in these Rules, the Tribunal are entitled to determine their own procedure.