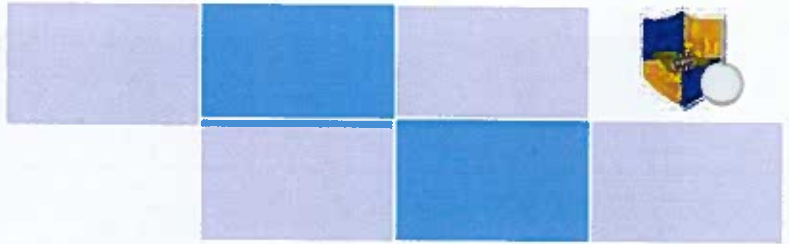




**INVESTIGATION INTO THE
FAILURE OF AN EMPLOYEE
OF THE TRANSPORT
AUTHORITY TO FILE
STATUTORY DECLARATIONS
WITH THE COMMISSION**

**INTEGRITY COMMISSION
JUNE 2022**



This Publication until tabled in Parliament shall be confidential.

Section 55 and 56 of the Integrity Commission Act states:

"(4) Anything said or information supplied or any document or thing produced by any person for the purpose or in the course of any investigation by or proceedings before the Commission under this Act, shall be absolutely privileged in the same manner as if the investigation or proceedings were proceedings in a court of law.

(5) For the purposes of the Defamation Act, any report made by the Commission under this Act and any fair and accurate comment thereon shall be deemed to be privileged.

56.—(1) Subject to section 42(3)(b), every person having an official duty under this Act, or being employed or otherwise concerned in the administration of this Act (hereinafter called a concerned person) shall regard and deal with as secret and confidential, all information, Statutory Declarations, government contracts, prescribed licences and all other matters relating to any matter before the Commission, except that no disclosure made by the Commission or other concerned person in the proceedings for an offence under this Act or under the Perjury Act, by virtue of section 17(2) of that Act, shall be deemed inconsistent with any duty imposed by this subsection.

(2) The obligation as to secrecy and confidentiality imposed by this section, in relation to any documents, or information obtained under this Act continues to apply to a person despite the person having ceased to have an official duty, be employed or otherwise concerned in the administration of this Act.

(3) Every concerned person who is required under subsection (1) to deal with matters specified therein as secret and confidential who at any time communicates or attempts to communicate any such information, declaration, letter and other document or thing referred to in subsection (1) disclosed to his in the execution of any of the provisions of this Act to any person—

(a) other than a person to whom he is authorized under this Act to communicate it; or

(b) otherwise than for the purpose of this Act,

commits an offence and shall be liable on summary conviction in a Parish Court to a fine not exceeding one million dollars or to a term of imprisonment not exceeding one year.

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1. Summary of Investigation and Findings

- 1.1 This investigation by the Director of Investigation concerns the allegation that **Ms. Avery Sommerville**, an employee of the Transport Authority failed to file with the Integrity Commission (hereinafter the Commission), Statutory Declaration for the period ending December 31, 2019.
- 1.2 It was found that Ms. Avery Sommerville was required to file a statutory declaration with the Commission at the material time and having failed to do so committed an offence under Section 39 of the Integrity Commission Act (hereinafter ICA).



2. Chapter 1 – Background

2.1 Why was this investigation initiated?

2.1.1 This investigation was initiated based on a referral by the Director of Information and Complaints. The complaint alleged that Ms. Sommerville is in breach of the **ICA** by virtue of her failure to file her Statutory Declaration with the Commission for the period ending December 31, 2019.

2.2 Jurisdiction and decision to investigate

2.2.1 Section 33 of the ICA gives the Director of Investigation the authority to investigate non-compliance with the Act by public officials.

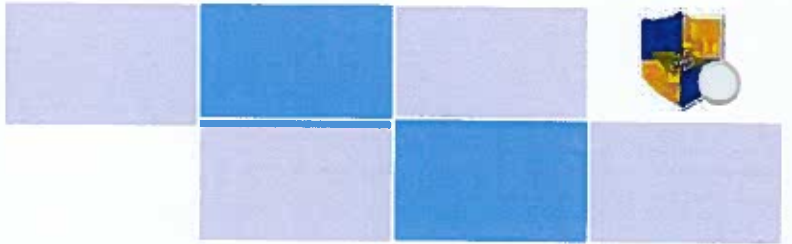
2.3 The Investigation

2.3.1 During the investigation, Officers of the Investigation Division under the authority of the Director of Investigation pursued the following lines of enquiry/actions:

a) obtained information and witness statements from the responsible officers at:

(i) Transport Authority; and

(i) Information and Complaints Division of the Integrity Commission.



b) reviewed the information and statements collected and prepared the case file and report.

2.4 Who is the concerned public official pertinent to this Investigation?

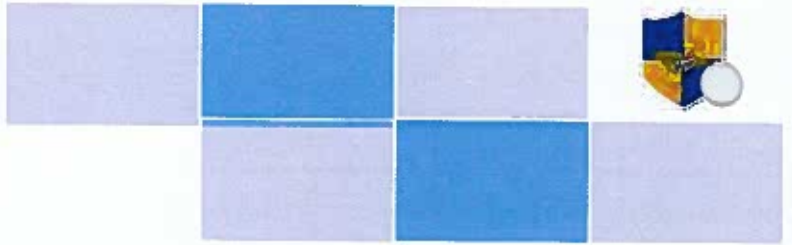
2.4.1 Ms. Avery Sommerville is the concerned public official, employed to Transport Authority.



3. Chapter 2 – Terms of Reference

3.1 The Director of Investigation sought to establish the following in respect of the declarant, Ms. Sommerville, whether:

- a) Ms. Sommerville is a public official as set out under **Section 2 of the ICA**;
- b) She was in receipt of the qualifying emoluments as prescribed under **Section 39(2) of the ICA**, occupies a post that was published in a Gazette by the Commission or was requested to file the referenced Statutory Declarations under **Section 41(2)(a) of the ICA**;
- c) She failed to file her required Statutory Declarations as prescribed under **Section 39(1) of the ICA**;
- d) Her failure to file her required Statutory Declarations constitutes an offence under the Act;
- e) Recommendations ought to be made to the Director of Corruption Prosecution; and
- f) Recommendations ought to be made in respect of any act of corruption and/or anti-corruption initiatives.



4. Chapter 3 – The Law, Evidence and Discussion of Findings

4.1 The Law

4.1.1 The overarching objective of the Commission's investigation was to determine whether there is merit in the allegation that Ms. Sommerville failed to file her Statutory Declarations as outlined under **Section 39, 41(2), 41(4) and 43(1) of the ICA**, which states:

4.1.2 **Section 39 of the ICA :**

This Section requires public officials; who are in receipt of emoluments of three million five hundred thousand dollars (\$3,500,000) or more, to submit statutory declarations to the Director of Information and Complaints outlining their assets, liabilities and income.

4.1.3 **Section 41(2) of the ICA**

Section 41(2) requires that public officials who fall within the categories published in the Gazette by the Commission to submit their statutory declarations within the period specified.

4.1.4 **Section 41(4) of the ICA**

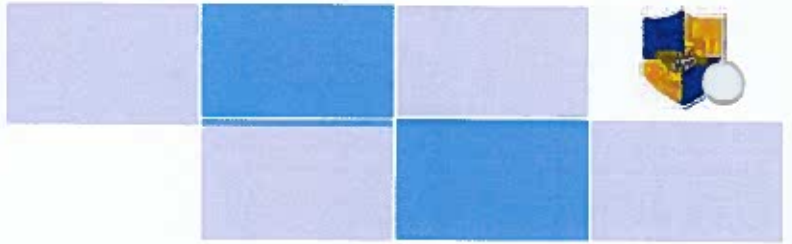
Under Section 41(4) declarants have three (3) months from the date of the declaration to file their declarations.



4.1.5 **Section 43(1) of the ICA:**

Under Section 43(1) of the ICA a person who is required to submit a statutory declaration and who fails to do so, without reasonable cause commits an offence.

See Sections 39(1), 41(1), 41(4) and 43(1) of the Integrity Commission Act
at appendix 1.



4.2 The Evidence

4.2.1 Is Ms. Sommerville a public official as defined under Section 2 of the ICA?

4.2.1.1 Ms. Sommerville is employed to the Transport Authority as a Route Inspector. This was proven by the evidence provided by the Director of Human Resource and Industrial Relations at Transport Authority. Ms. Sommerville therefore falls within the definition of a "public official" under Section 2 of the ICA.

4.2.2 Is Ms. Sommerville in receipt of the qualifying emoluments as prescribed under Section 39 of the IAC, occupies a post published in the Gazette by the Commission or was written to under Section 41(2) of the ICA and requested to file the Statutory Declaration?

4.2.2.1 The evidence provided by the Transport Authority showed that Ms. Sommerville is a public official who occupies a position which falls within the categories published in the Gazette by the Commission (see appendix 2) as outlined:

Table 2: Post Occupied

Period	Qualifying Criteria
December 31, 2019	Route Inspector as specified under Jamaica Gazette Vol. CXLII, dated Friday, December 6, 2019
December 31, 2020	N/A



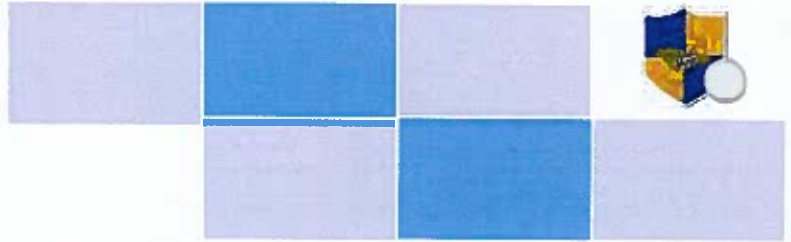
Ms. Sommerville was therefore required to file her Statutory Declaration for the time frame identified.

4.2.3 Did Ms. Sommerville fail to file her Statutory Declaration as required under Section 39 of the ICA?

4.2.3.1 The procedure for identifying a declarant who has not filed a statutory declaration begins with the Director of information and Complaints writing the Heads of all Ministries, Departments and Agencies and requesting a list of public officials who are qualified to file Statutory Declarations. When the referenced lists are received, the information is entered into a database, which provides the list of prospective declarants. Ms. Sommerville' name appeared on the aforementioned list of persons who were required to file Statutory Declarations with the Commission for the period ending December 31, 2019.

4.2.3.2 When Statutory Declarations are filed, they are entered into another database. This enables the Commission to generate a list of those declarants who have not complied with their statutory obligations under **Section 39 of the ICA.**

4.2.3.3 The evidence provided by the System Support Officer showed that Ms. Sommerville did not file her required Statutory Declaration for the period ending December 31, 2019.



4.2.4 Does Ms. Sommerville' failure to file the required Statutory Declarations constitute an offence under the Act?

4.2.4.1 The failure to file a statutory declaration is an offence under **Section 43(1)(a) of the ICA**, which states:

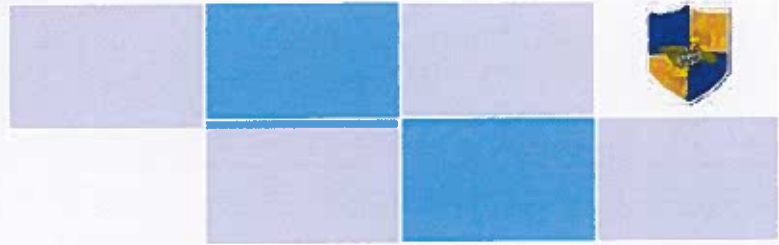
"A person who –

(a) *Fails, without reasonable cause, to submit a statutory declaration which he is required to submit in accordance with the provisions of this Part;*

commits an offence, ..." (See full Section at appendix 2)

4.3 Discussion of Findings

4.3.1 During the investigation into the allegations against Ms. Sommerville, the Director of Investigation followed all reasonable lines of enquiry, gathered evidential material and collected/recorded the statements of witnesses deemed necessary. Upon analyzing the evidential materials collected, the Director of Investigation is satisfied that there is evidence to support the allegation that Ms. Sommerville failed to file her required Statutory Declaration with the Commission for the period ending December 31, 2019.



4.4 Conclusion and Recommendations

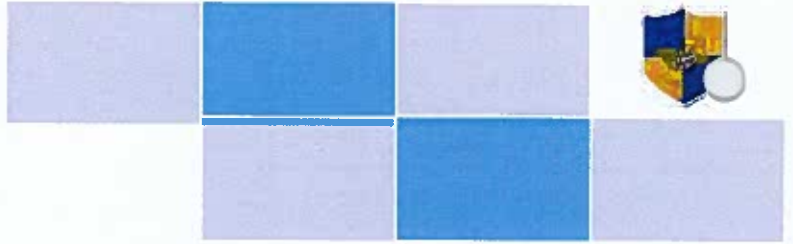
4.4.1 Conclusion

4.4.2 Based on the foregoing, the Director of Investigation finds reasonable grounds to conclude that the following have been established in respect of Ms. Sommerville:

- a) Ms. Sommerville is a public official as per Section 2 of the **ICA**;
- b) She occupies a post which was published in a Gazette published by the Commission requiring her to file the Statutory Declaration;
- c) She failed to file the Statutory Declaration for the period ending December 31, 2019;
- d) Her failure to file constitutes an offence under **Section 43(1)(a) of the ICA**; and
- e) She has provided no lawful explanation for her failure to file the referenced Statutory Declaration.

4.5 Recommendations

- 4.5.1 The Director of Investigation recommends that this report be referred to the Director of Corruption Prosecution for consideration.
- 4.5.2 The Director of Investigation further recommends that Public entities should ensure that public officials provide, annually, proof that they are compliant with the law in respect of filing their Statutory Declarations.

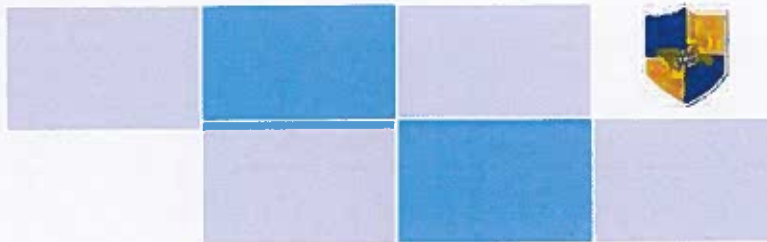


Public Bodies and the Office of the Services Commission should be engaged to ensure that compliance with **the Integrity Commission Act** becomes a requirement for employment and continued employment in the public service.

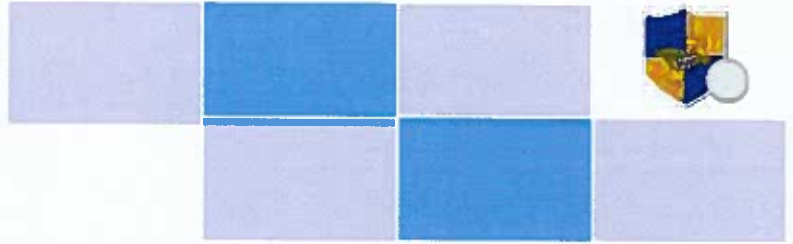
Kevon A. Stephenson, J.P
Director of Investigation

July 19, 2022

Date



APPENDICES



Appendix 1: Sections 39, 41(2), 41(4) & 43(1) of the Integrity Commission Act

Section 39 of the CPA :

“39.-(1) Subject to the provisions of this Act, every person who, on or after the appointed day, is a parliamentarian or public official, shall submit to the Director of Information and Complaints, a statutory declaration of his assets and liabilities and his income in the form set out in the Third Schedule.

(2) Subsection (1) shall not apply to a public official who is in receipt of total annual emoluments of less than three million five”

Section 41(2) of the CPA :

“(2) The Commission, acting upon the recommendation of the Director of Information and Complaints, may-

- (a) at any time, in writing, require any public official or parliamentarian to submit a statutory declaration to the Commission;*
- (b) by notice published in the Gazette, require such categories of public officials as are specified in the notice, to submit a statutory declaration within the period so specified.”*

Section 41(4) of the CPA :

“(4) A statutory declaration required to be made as at a particular date shall be submitted to the Director of Information



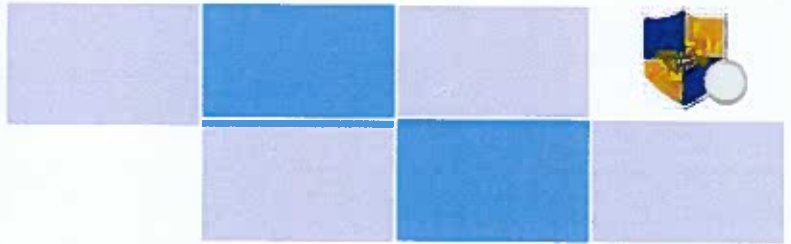
and Complaints on or before the last day of the third calendar month following that date."

Section 43(1) of the CPA :

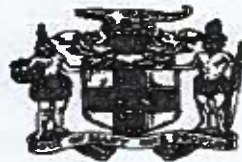
"43.-(1) A person who-

- (a) fails, without reasonable cause, to submit a statutory declaration which he is required to submit in accordance with the provisions of this Part;
- (b) fails, without reasonable cause, to provide any information as the Director of Information and Complaints may require in accordance with the provisions of this Act; or
- (c) fails, without reasonable cause, to attend an inquiry being conducted by the Director of Investigation that he is required to attend in accordance with the provisions of this Act,

commits an offence, and is liable on summary conviction in a Parish Court to a fine not exceeding five hundred thousand dollars, or to a term of imprisonment not exceeding six months and the Court may make an order mandating the person to comply with the requirement in respect of which the offence was committed."



Appendix 2: Jamaica Gazette Vol. CXLII



THE
JAMAICA GAZETTE
EXTRAORDINARY

1264A

Vol. CXLII

FRIDAY, DECEMBER 6, 2019

No. 277A

The following Notifications are, by command of His Excellency the Governor-General, published for general information.

SHOUNTAE BOOTHE, (MISS)
Governor-General's Secretary (Assigned).

GOVERNMENT NOTICES

MISCELLANEOUS

No. 400A

THE INTEGRITY COMMISSION ACT

Notice is hereby given, pursuant to section 4(2)(b) of the Integrity Commission Act, 2017 ("the Act"), that the following categories of public officials are required to submit to the Director of Information and Compliance a statutory declaration of their assets and liabilities as at December 31, 2019 and income for the period of twelve months ending December 31, 2019 by March 31, 2020.

Accounts Receivable/Accounts Payable Officers and Supervisors
All Inspectors
All Managers and Heads of Departments
All members of the Justice Consultative Forum including all District Constables
All members of the Jamaica Defence Force
All officers involved in the assessment and approval of licenses, permits and contracts
Board members/Commissioners involved in the assessment and approval of contracts, licenses and permits
Chief Financial Officer/Accountant/Manager
Chief Internal Auditor



Departments	Categories
Tax Administration Jamaica, <i>cont</i>	Excise Supervisor/Excise Officer Forensic Data-Mining Officer Motor Vehicle Title Officer Revenue Field Officer Senior Tax Auditor/Tax Auditor Stock Clerk/Warehouse Clerk/Store Clerk Supervisor, Stores (incoming and dispatch) Supervisor, Stock and Asset Management Valuation Surveyor Performer Sawyer Welder
Municipal Corporations, Portmore Municipal Council and Kingston & St. Andrew Municipal Corporation	Assistant Superintendent Building Officer Building Technician Cashier/Collection Officer Chief Engineer/City Engineer Deputy Superintendent Deputy Building Surveyor Disaster Preparedness Coordinator Enforcement Officer Field Officer Municipal Engineer Municipal Police Physical Planner Planning Coordinator Project Officer Superintendent Urban Planner Works Overseer
Petrojam Limited	All Engineers All Senior Supervisors All Supervisors Assistant Contracts Administrator Contracts Administrator Corporate Secretary/Legal Officer Data Entry Clerk Dry Technician-Product Movement Reconciliation Lab Technician Marine Operations Officer Marine Operations Assistant Marine Operations Coordinator Security Advisor/Security Coordinator Security Facilities Monitor
National Works Agency	All Engineers All Supervisors Assistant Parish Manager Building Officer Field Technician/Field Officer Fleet Supervisor Land Surveyor/Assistant Land Surveyor Maintenance Supervisor Planning Technologist Project Coordinator Project Officer/Senior Project Officer Quality Assurance Officer Quality Surveyor Regional Coordinator/Regional Supervisor



Dec. 6, 2019

THE JAMAICA GAZETTE EXTRAORDINARY

12642

<u>Departments</u>	<u>Categories</u>
Firearm Licensing Authority, <i>contd.</i>	Records Clerk Senior Audit & Complaints Officer Senior Firearm Examination Officer Senior Firearm Records & Information Officer Systems Engineer
Island Traffic Authority	AD Administrators Cashier/Collection Officer Chief Inspector Inspector Inspector 2
No. IC001	THE HON. JUSTICE SEYMOUR PANTON (RETIRED), OJ, CD Chairman Integrity Commission.

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