

# OFFICE OF THE CONTRACTOR GENERAL OF JAMAICA

## Special Report of Investigation

### Enquiry Conducted into the Auction Process for Abandoned Motor Vehicles by the Jamaica Customs Department (JCD) on 2009 June 30 and 2009 July 1

#### Ministry of Finance and the Public Service

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#### INTRODUCTION

On 2009 July 2, the Office of the Contractor General (OCG), acting on behalf of the Contractor General, and pursuant to Sections 15(1) and 16 of the Contractor General Act (1983), initiated an Investigation into the Auction Process for Abandoned Motor Vehicles, which was conducted by the Jamaica Customs Department (JCD), at the Queen's Warehouse, in Kingston on 2009 June 30 and 2009 July 1, respectively.

Section 15 (1) of the Contractor General Act provides that “...a Contractor General may, if he considers it necessary or desirable, conduct an investigation into any or all of the following matters-

- (a) *the registration of contractors;*
- (b) *tender procedures relating to contracts awarded by public bodies;*
- (c) *the award of any government contract;*
- (d) *the implementation of the terms of any government contract;*
- (e) *the circumstances of the grant, issue, use, suspension or revocation of any prescribed licence;*
- (f) *the practice and procedures relating to the grant, issue, suspension or revocation of prescribed licences”.*

Section 16 of the Contractor General Act expressly provides that *“An investigation pursuant to section 15 may be undertaken by a Contractor General on his own initiative or as a result of representations made to him, if in his opinion such an investigation is warranted”*.

The Investigation was initiated following, *inter alia*, the publication of several electronic media reports, newspaper articles and complaints which were made to the OCG by concerned citizens, regarding the conduct of the Public Auction for Abandoned Vehicles, which was conducted by the JCD, on 2009 June 30 and 2009 July 1, respectively.

The concerns and allegations which were contained in the media reports/articles and complaints from the concerned citizens alluded to, *inter alia*, (a) impropriety, (b) irregularity and (c) non-adherence to the procedures that govern the process for Public Auctions, particularly as it regards the alleged award of motor vehicles to alleged representatives of the Jamaica Constabulary Force (JCF), without the payment of the mandatory deposit which is payable by all successful bidders.

It is instructive to note that at the outset of the OCG’s Investigation, the Commissioner of Customs, Mr. Danville Walker, challenged the allegations that the referenced Auction of abandoned motor vehicles, by the JCD, was tainted by irregularities and impropriety. In a *Gleaner* article, which was dated 2009 July 3, and which was entitled *“‘We were right’ - Walker defends Customs against allegations of corruption”*, it was reported that:

***“Commissioner of Customs Danville Walker has rebutted claims that an auction of abandoned vehicles by his department at the Queen’s Warehouse was tainted by irregularities and partiality.***

*Walker was responding to the news that the Office of the Contractor General (OCG) will be launching an enquiry into the matter.*

*In a release to the media yesterday, the OCG stated that it saw the need to launch the investigation “amid allegations of irregular, improper and question-able procedures in the conduct of the auctions” which have been “reported both in the media and directly to the OCG”.*

### ***Above reproach***

Walker told **The Gleaner** that his arms are outstretched to welcome his fellow public servant as he was sure the Customs Department had been above reproach in its dealings.

**"We have no doubt that everything has been done in accordance with the rules and regulations and done properly - we will cooperate fully with them,"** said Walker.

**The Customs head said his only hope was that the suggestions of the contractor general at the end of his enquiry will lead to more efficiency and transparency instead of bureaucracy. (OCG Emphasis).**

*The cause of the controversy seemed to have come from the involvement of the police in the auction. The police were purchasing a number of vehicles and driving their prices beyond market value.*

### ***Upset [sic]***

*"Some people were upset that they weren't getting the vehicles that they came to get, some were upset that they were not getting the vehicles for the prices that they were hoping to get them for,"* Walker explained.

*Peter Brooks, who had visited the auction on Monday with the intent of purchasing a vehicle, is one of those who was outraged by the presence of police personnel.*

*"... The auction process continued with one person winning the first five of six bids. It became apparent to the public that no one could outbid this person even if you carried the bids over double the market value - as some of us were wont to do to test our theories,"* Brooks wrote in a letter expressing his concerns to **The Gleaner**.

*"In any Sunday classifieds, one can see a 2005 Honda Fit going from a low \$795,000 to a high of about \$1.2 million. Why then were these agents of the state willing to pay between \$1.5-\$1.6 million? Who will pay for these excesses?"*

*Walker, however, argued that the involvement of the police in the auction was not an irregularity of the auction but, in fact, a normal feature.*

*"The police coming to the auction is a normal course of an auction and we even have an opinion from the Attorney General's office that that is the way they should proceed," Walker explained.*

*The Customs boss further stated that he did not support the position of some that the involvement of the police was unfair.*

*On the contrary, Walker said the police should be allowed to purchase vehicles for which they have justifiable need. They will have to justify spending excessively, he argued.*

***"Some people are suggesting that we take out some cars for the police to get and auction the other ones and tell the police they can't bid on those. I disagree with that approach because I think that is somewhat manipulative," he said.***<sup>1</sup> (OCG Emphasis)

These allegations and inferences, *inter alia*, raised several concerns for the OCG, especially in light of the fact that the auction of the abandoned motor vehicles constitutes, in essence, the divestment of State-owned or State-liened assets, a matter over which the OCG has lawful jurisdiction.

The auction of the abandoned motor vehicles, which arises due to the statutory lien which the State possesses over such goods, pursuant to the provisions of the Customs Act, will, upon the acceptance of a successful bid, mark the consummation of a formal contract between the JCD (a Public Body) and the successful bidder.

It is, therefore, important to note that Section 4 (1) of the Contractor General Act requires, *inter alia*, that Government of Jamaica contracts must be awarded “*impartially and on merit*” and that *the circumstances of award must “not involve impropriety or irregularity”*.

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<sup>1</sup> Gleaner article which was dated 2009 July 3 and which was entitled 'We were right' - Walker defends Customs against allegations of corruption'

It must be noted that, at the outset of the Investigation, Mr. Danville Walker, Commissioner of Customs, questioned the OCG's authority to investigate the alleged irregularities at the JCD's Public Auction which was held on 2009 June 30 and July 1. According to a newspaper article which was published in the Jamaica Gleaner, on Wednesday, 2009 July 15, it was reported, *inter alia*, that:

*“Commissioner of Customs Danville Walker says he will be launching his own investigation into whether the Contractor General Act indeed grants the Office of the Contractor General (OCG) the right to investigate auctions run by the Department of Customs... (OCG Emphasis)*

*...Walker, however, though careful not to say directly that the OCG was wrong, has made it clear that he and his office doubt the OCG's reasoning and will be having the matter investigated.*

*"My staff is of the view that the sections he quotes do not apply to auctions. We will have that checked.*

*"I am no lawyer, but the legislation that sets out his jurisdiction is fairly clear as to where his jurisdiction covers ... His legislation defines what it means as government contracts," Walker said.*

*He then stated his grouse very plainly: "I don't see his locus standi in the matter." (OCG Emphasis).*

*Walker stated that though he had his concerns, he would be complying with the contractor general in his inquiry.”*

Despite the foregoing, to date, the OCG has not been formally advised by Mr. Walker of any of the positions which were publicly raised by him. It is also instructive to note that Mr. Walker has complied with those of the OCG's Requisitions, into the matter, which were directed to him.

At the commencement of the Investigation, the OCG undertook a review of the allegations which were contained in the complaints from the concerned citizens as well as those allegations which were reported in several media articles. This was done in an effort to inform the direction of the Investigation as well as to determine the most efficacious method by which to proceed.

The Terms of Reference of the OCG's Investigation were primarily developed in accordance with the provisions which are contained in Section 4 (1) and Section 15 (1) (a) to (d) of the Contractor General Act and the provisions of the Customs Act.

Additionally, the OCG was guided by the recognition of the very important responsibilities which are imposed upon Public Officials and Officers by, *inter alia*, the Contractor General Act, the Public Bodies Management and Accountability Act, as well as the Corruption Prevention Act.

The Findings of the OCG's Investigation into the Auction Process for Abandoned Motor Vehicles, which was conducted by the JCD, at the Queen's Warehouse in Kingston, on 2009 June 30 and 2009 July 1, are premised primarily upon an analysis of the sworn statements and the documents which were provided by the respondents who were Requisitioned by the OCG, during the course of the Investigation.

## **TERMS OF REFERENCE**

### ***Primary Objectives***

The primary aim of the Investigation was to ascertain whether there was compliance with the provisions of the Contractor-General Act (1983), the Guidelines which govern Public Auctions that are conducted by the JCD and the requisite provisions of the Customs Act. The following specific objectives were targeted:

### ***Specific Objectives***

1. To determine if there were breaches of the JCD's auction guidelines/procedures at the JCD's Public Auction for Abandoned Motor Vehicles which was held on 2009 June 30 and July 1;
2. To determine whether the process which led to the award of several motor vehicles to bidders, by the JCD, on 2009 June 30 and July 1, was fair, impartial and transparent;
3. To determine whether there was any impropriety and/or irregularity at the JCD's Public Auction for Abandoned Motor Vehicles which was held on 2009 June 30 and July 1.



## **METHODOLOGY**

The OCG, in the conduct of its Investigations, has developed standard procedures for evidence gathering. These procedures have been developed and adopted pursuant to the powers which are conferred upon a Contractor-General by the 1983 Contractor-General Act.

It is instructive to note that Section 17 (1) of the Contractor-General Act empowers a Contractor-General “to adopt whatever procedure he considers appropriate to the circumstances of a particular case and, subject to the provisions of (the) Act, to obtain information from such person and in such manner and make such enquiries as he thinks fit.” (OCG Emphasis).

The Terms of Reference of the OCG’s Enquiry into the Auction Process for Abandoned Vehicles by the Jamaica Customs Department on 2009 June 30 and 2009 July 1, were primarily developed in accordance with those of the mandates of the Contractor-General which are stipulated in Section 4 (1) and Section 15 (1) (a) to (d) of the Contractor-General Act.

The Terms of Reference of the Investigation, and the development of the written Requisitions/Questionnaires that were utilized throughout the course of the Investigation, were guided by the OCG’s recognition of the far-reaching responsibilities and requirements that are imposed upon Public Officials and Public Officers by the GPPH, the Public Bodies Management and Accountability Act, the Contractor General Act and the Customs Act.

In addition, the OCG was guided by Section 21 of the Contractor-General Act which provides that “If a Contractor-General finds, during the course of his Investigations or on the conclusion thereof that there is evidence of a breach of duty or misconduct or criminal offence on the part of an officer or member of a public body, he shall refer the matter to the person or persons competent to take such disciplinary or other proceeding as may be appropriate against that officer or member and in all such cases shall lay a special report before Parliament.” (OCG Emphasis)

A preliminary Requisition/Questionnaire, which was dated 2009 July 2, was sent by the OCG to Mr. Danville Walker, Commissioner of Customs.

Further Requisitions/Questionnaires were subsequently directed to other Public Officials, who were considered material to the Investigation.

Where it was deemed necessary, Follow-up Requisitions were directed to a number of Respondents in an effort to clarify certain issues which were identified in their initial declarations and responses. These Follow-up Requisitions were also designed, *inter alia*, to clarify any discrepancy in the information which was supplied by the Respondents.

The Requisitions/Questions which were utilized by the OCG included specific questions that were designed to elucidate critical information from Respondents on the matters which were being investigated.

However, in an effort to not limit and/or exclude the disclosure of information which was germane to the Investigation but which might not have been specifically requisitioned by the OCG, the OCG asked all Respondents the following question:

*“Are you aware of any additional information which you believe could prove useful to this Investigation or is there any further statement in regard to the Investigation which you are desirous of placing on record? If yes, please provide full particulars of same.”*

**Very importantly, the form of written Requisition, which was utilized by the OCG, also required each Respondent to provide, under the pain of criminal prosecution, complete, accurate and truthful written answers to a specified list of written questions and to make a formal declaration attesting to the veracity of same before a Justice of the Peace.**

The Requisitions were issued pursuant to the powers that are reserved to the Contractor-General under the Contractor-General Act and, in particular, Sections 4, 15, 17, 18 and 29 thereof. The

Requisitions were also issued pursuant to Sections 2 and 7 of the Voluntary Declarations Act and Section 8 of the Perjury Act.

It is instructive to note that **Section 18 (2) of the Contractor-General Act** provides that, “*Subject as aforesaid, a Contractor-General may summon before him and examine on oath –*

- a. any person who has made representations to him; or*
- b. any officer, member or employee of a public body or any other person who, in the opinion of the, Contractor-General is able to furnish information relating to the Investigation,*

**and such examination shall be deemed to be a judicial proceeding within the meaning of section 4 of the Perjury Act.**” (OCG Emphasis).

Further, **Section 18 (3) of the Contractor-General Act** provides that, “**For the purposes of an Investigation under this Act, a Contractor-General shall have the same powers as a Judge of the Supreme Court in respect of the attendance and examination of witnesses and the production of documents**”. (OCG Emphasis)

**Section 2 (1) of the Voluntary Declarations Act** provides that, “*In any case when by any statute made or to be made, any oath or affidavit might, but for the passing of this Act, be required to be taken or made by any person or persons on the doing of any act, matter, or thing, or for the purpose of verifying any book, entry, or return, or for any other purpose whatsoever, it shall be lawful to substitute a declaration in lieu thereof before any Justice; and every such Justice is hereby empowered to take and subscribe the same.*” (OCG Emphasis)

**Section 7 of the Voluntary Declarations Act** provides that, “*In all cases when a declaration in lieu of an oath or affidavit shall have been substituted by this Act, or by virtue of any power or authority hereby given, or when a declaration is directed or authorized to be made and subscribed under the authority of this Act, or of any power hereby given, although the same be*

*not substituted in lieu of an oath, heretofore legally taken, such declaration, unless otherwise directed under the powers hereby given, shall be in the form prescribed in the Schedule.”*

**Section 8 of the Perjury Act** provides, *inter alia*, that, “Every person who knowingly and willfully makes (otherwise than on oath) a statement false in a material particular and the statement is made-

(a) in a voluntary declaration; or ....

(c) in any oral declaration or oral answer which he is required to make by, under, or in pursuance of any enactment for the time being in force,

*shall be guilty of a misdemeanour, and liable on conviction on indictment thereof to imprisonment with hard labour for any term not exceeding two years, or to a fine, or to both such imprisonment and fine”.*

The material import of the foregoing, *inter alia*, is that the sworn and written evidence that is provided to a Contractor General, in response to his Statutory Requisitions, during the course of his Investigations, is (a) provided in accordance with certain specified provisions of the Statutory Laws of Jamaica, and (b) provided in such a manner that if any part thereof is materially false, the person who has provided same would have, *prima facie*, committed the offence of Perjury under Section 8 of the Perjury Act and, as will be seen, would have also, *prima facie*, committed a criminal offence under Section 29 (a) of the Contractor General Act.

The OCG considers the above-referenced evidence-gathering procedures to be necessary in order to secure, *inter alia*, the integrity and evidentiary cogency of the information which is to be elicited from Respondents. The implications of the subject requirements also serve to place significant gravity upon the responses as well as upon the supporting documents which are required to be provided by Respondents.

**It is instructive to note that the OCG, in the conduct of its Investigation, prefers to secure sworn written statements and declarations from Respondents, under the pain of criminal prosecution. This ensures, *inter alia*, that there is no question as to what has been**

**represented to the OCG. Nor will there be any doubt as to the integrity or credibility of the information which is furnished to the OCG and on which its consequential Findings, Conclusions, Referrals and Recommendations will be necessarily based.**

The OCG also went to great lengths to ensure that Respondents were adequately and clearly warned or cautioned that should they mislead, resist, obstruct or hinder a Contractor-General in the execution of his functions or fail to provide a complete, accurate and truthful response to any of the Requisitions or questions which were set out in its Requisition, they would become liable, *inter alia*, to criminal prosecution under Section 29 of the Contractor-General Act.

**Section 29 of the Contractor-General Act** provides as follows:

*“Every person who -*

*(a) willfully makes any false statement to mislead or misleads or attempts to mislead a Contractor-General or any other person in the execution of his functions under this Act; or*

*(b) without lawful justification or excuse -*

- i. obstructs, hinders or resists a Contractor-General or any other person in the execution of his functions under this Act; or*
- ii. fails to comply with any lawful requirement of a Contractor General or any other person under this Act; or*

*(c) deals with documents, information or things mentioned in section 24 (1) in a manner inconsistent with his duty under that subsection, shall be guilty of an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.”*

Further, in addition to the **sworn** written answers which the Respondents were required to provide, the OCG also requested that in respect of the assertions and/or information which were to be provided, Respondents should submit documentary evidence to substantiate the statements that were made.

Requisitions/Questionnaires were directed by the OCG to the Public Officers/Officials who are listed below. In addition, comprehensive reviews of certain relevant information were undertaken by the OCG to assist it in its Investigation. Details of these are also summarized below.

1. The following representatives were required to provide written responses and documentation to formal Requisitions which were directed to them by the OCG:
  - a. Mr. Daemion Rose, Customs Officer;
  - b. Mrs. Myrna Thompson, Manager of the Queen's Warehouse;
  - c. Mr. Paul McLaren, Customs Officer;
  - d. Mrs. Lorna Rhoden, Collector of Customs - Kingston;
  - e. Miss. Cordelia Brown, Deputy Commissioner - Operations;
  - f. Major Stanley Ford, Assistant Commissioner - Border Protection;
  - g. Mrs. Anneke Rousseau, Director, Public Relations\*<sup>2</sup>;
  - h. Mr. Danville Walker, Commissioner of Customs;
  - i. The Honourable Daryl Vaz, Minister without Portfolio, with responsibility for Information and Telecommunications, Office of the Prime Minister;
  - j. Major (Retired) Richard Reese, the then Permanent Secretary, Ministry of National Security;
  - k. Mrs. Rosalie Brown, Acting Commissioner, Inland Revenue Department; and
  - l. Mr. Owen Ellington, former Acting Deputy Commissioner of Police.

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<sup>2</sup> \* Please note that the OCG received a letter which was dated 2009 August 12, from Mrs. Patricia Wiggan-Chambers, Director, Executive Services, JCD, which indicated that "Mrs. Rosseau has resigned from the position (of Director, Public Relation, JCD) effective July 16, 2009 and had since migrated." She was therefore unavailable to respond to the OCG's Requisition.

2. Follow-up Requisitions/Questionnaires, requesting clarification on certain issues, were directed by the OCG to the following Public Officials:
  - a. Mr. Danville Walker, Commissioner of Customs;
  - b. Major (Retired) Richard Reese, the then Permanent Secretary, Ministry of National Security.
  
3. The OCG also conducted an interview on 2009 July 8, with a 'Concerned Citizen' who made a formal complaint to the OCG. The interview, which was held at the OCG, commenced at 10:15 a.m. The sworn statement which was given in the interview by the 'Concerned Citizen' was reduced into writing, and was confirmed by the Citizen in the presence of an 'In- House' Justice of the Peace (JP).

### ***Special Considerations which informed the OCG's Investigation***

As a creature of law, the OCG is bound by statute and, accordingly, considered the nature of the information which it might unearth during the course of its Investigation and the propriety of using and publishing the content contained therein in its Special Report of Investigation.

This special consideration arose particularly out of the OCG's realization that alleged representatives of the JCF were allegedly involved in the JCD's Auction which was held on 2009 June 30 and 2009 July 1.

More importantly, and out of an abundance of caution, the OCG was cognizant of the fact that although its Investigation focused upon the auction processes at the JCD, and not the JCF, it was nonetheless important that the OCG's assessment of the involvement of alleged representatives of the JCF, and the OCG's enquiries regarding same, were designed to ensure the legitimacy of the allegations which were made, regarding the alleged involvement of members of the Security Forces.

It is, therefore, instructive to record and highlight the following provisions of the Contractor General Act which are the germane provisions which speak to the restrictions that are placed upon a Contractor General in the publication of information which is received during the course of an Investigation.

The exceptions are as follows:

1. Contracts entered into or licences issued or granted for purposes of defence or for the supply of equipment to the Security Forces.

A Contractor General is prohibited from carrying out an investigation into any of the foregoing unless he obtains the prior approval of the Cabinet. The prohibition, however, does not extend to the contract monitoring activities of the Contractor General. (Section 15.2).

2. Where the Cabinet notifies a Contractor General that the disclosure by a Contractor General of any document or information would involve the disclosure of proceedings of Cabinet (relating to matters of a secret or confidential nature and is likely to be injurious to the public interest) or would prejudice Jamaica's relations with a foreign Government or international organization, or would prejudice the detection of offences, a Contractor General is thereby prohibited from communicating the said information or document. (Section 19.1.a).
3. Where the Cabinet certifies that the giving of any information or the answering of any question or the production of any document or thing would prejudice the security or defence of Jamaica, a Contractor General shall not further require such information or answer to be given or such document to be produced. (Section 19.1.b).

Section 30 of the Contractor General Act also provides as follows:



- “1. *A Contractor-General may initiate or continue any investigation and report thereon pursuant to this Act notwithstanding any legal proceedings relating to the subject matter of the investigation.*
  
2. *Nothing in subsection (1) shall be construed as preventing a court from ordering the Contractor-General not to publish a report or part thereof if the court is of opinion that such publication is likely to prejudice any proceedings pending before the court.”*

It is the OCG’s considered opinion that the subject Investigation did not fall within the parameters of the restrictions/exceptions which are detailed above.

**In particular, it must be emphasized that the referenced Investigation was one which was initiated into allegations which were made by members of the public regarding a Public Auction which was undertaken (a) by a Public Body which was neither the JCF, the Ministry of National Security nor a member or agency of the Security Forces of Jamaica; (b) by the JCD pursuant to an advertisement which was issued to members of the public inviting them to participate in the said Public Auction and; (c) in circumstances in which the persons who were subsequently discovered to be representatives of the JCF had actually registered and participated in the Auction as private citizens.**

## **FINDINGS**

### ***The ‘Concerned Citizen’s Account of the Sequence of events which took place during the JCD’s Public Auction for Motor Vehicles that was held on 2009 June 30 and 2009 July 1***

A citizen who attended the referenced Auction made contact with the OCG, indicating that he was desirous of sharing with the OCG the events which took place at the Public Auction for Motor Vehicles, which was held on 2009 June 30 and 2009 July 1.

This witness will be hereinafter referred to as the ‘Concerned Citizen’. The Interview with the ‘Concerned Citizen’ was conducted on 2009 July 8, at 10:15 am at the offices of the OCG. The ‘Concerned Citizen’, in his statement to the OCG, indicated, *inter alia*, that:

1. *“I attended the auction of the Jamaica Customs Department on June 30, 2009, at 230 Spanish Town Road;...the auction was scheduled to start at 10:30 am but actually started at 11:00 am.*
2. *...five (5) properly dressed gentlemen came in, three sat in the front row and the others stayed in the back.... When the bidding started the gentlemen held their hands up and did not take it down on the bidding for all of the vehicles from number one (1) to eighty one (81). People who were there when this started to happen started to raise their eyebrows and were asking what is happening, what is going on here.*
3. *The gentlemen were driving up the price of the vehicles, they went from number one (1) to eighty one (81) and no one said anything.*
4. *What happened then is that at lunchtime, it was said by customs..., normally customs wants you to put down 10% by lunchtime and if you do not do that you would be penalized for two (2) auction meetings and the vehicles would be returned to the auctions.*

5. *At about lunch period these gentlemen went upstairs, to the area where the money was to be paid, the 10 percent was not paid.” According to the Concerned Citizen, one of the Policemen whom he [the ‘Concerned Citizen’] knew came downstairs and said that “you guys are free now to bid.”*
6. *“At 1:00 pm when the session started back, and the auctioneer indicated that the vehicles were relisted and that everyone could bid on them. They started the bidding again from one (1) to eighty one (81), they went through to number ninety three (93) then a call came in to one of the senior ladies at the bidding, I don’t remember her name.*
7. *As the call came in they stopped the auctioneer and said they got a call from the minister, they didn’t say which minister it was...Bidders were informed that the auction had to stop as of now and that those who didn’t pay their money, shouldn’t pay it and those who had already paid would be reimbursed and the vehicles that the cops had bid on they would be getting it.*
8. *There and then there were two (2) owners of the vehicles, the cops who bid on them earlier and the others who had just bid on them. This auction was stopped at about 2:15 when the call came in.”*
9. *The ‘Concerned Citizen’, in providing clarification regarding the vehicles which were being auctioned by the JCD in the afternoon session, indicated that “it was the same set of vehicles which the cops had already placed a bid on and the rest on the list.”*
10. *“The bidders were told to come back tomorrow and everything would be sorted out. When bidding resumed on July 1, 2009, four (4) cops were present this time and the other bidders were getting angry asking what were the cops doing there again.*
11. *The bidders were informed that everything was sorted out and that the cops wouldn’t be bidding beyond that which the vehicles were valued.*

12. *They started bidding at number one hundred and nine (109) most of the vehicles between 93 and 109 were withdrawn. These guys, same cops, 15073, this was the same cop sitting in the front row, that was the card, that was the one cop that was bidding on all the vehicles and was getting them at some ridiculous prices. The guys started to say this is worse and you need to bring in someone with authority.*
13. *Mrs. Rhoden, Collector of Customs and a PR Lady came, the TV cameras were there but they couldn't come inside. They had blocked them by the gate. Now the cops told me that what they were doing was unfair. The PR Lady approached me and told me to "tell my boys to meet me upstairs we have to have a meeting with them". She tried to get me into the meeting, thought I was a cop, but I said no. She still didn't know I wasn't a cop.*
14. *After the meeting she came back downstairs and told everyone that things were taken care of and that the auction could be resumed. We can start all over. The guys were unwilling to do that because there were two owners of the vehicles and it still had to be sorted out. There were nine (9) guys in the front and the PR person told them that the nine (9) of them couldn't stop the bid, at that time everyone else started to get upset and she backed off when she saw that.*
15. *Mrs. Rhoden didn't do anything, so they said what do you want us to do? Well you have to sort this out, it cannot go on like that...The PR Lady asked if they wanted to call the auction off?...they told her yes, call the auction off because it has to be worked out.*
16. *I must tell you this, on the first day when Customs called the auction off, they did not get the 10 percent, they didn't get anything from Government. That afternoon, a document came to Customs to authorize what they were doing (the 'Concerned Citizen' then handed the OCG Representatives a copy of the document).*
17. *That document was tendered to Customs that afternoon, it came from Mr. Walker's office. The document was not distributed."*

18. The 'Concerned Citizen' indicated that "*Customs broke the law in many ways*" and made reference to Section 122 of the Customs Act whilst further indicating that "*if they (bidders) failed to pay the 10 percent they cannot even come back on the compound after lunch once you don't pay. Those guys (the Police Officers) were allowed to come back the following day and bid again.*"
19. According to the 'Concerned Citizen', "*the PR person went as far as to say, do you guys know why we take 10 percent, we said no, she went on to say that we take 10 percent from you because we don't know you guys, we know the government and they are giving a guarantee so they don't have to pay the ten percent.*"
20. *We were saying this is double standard and everything and we are being penalized for not paying our ten percent ...I cannot see a policeman bidding and spending my tax dollar, there is a specific vehicle that I will outline here, ...a 2003 white freightliner box body truck, they bid \$3,400,000 for a 2003 box body truck... item # 68.*
21. *So I don't understand whose money they are spending I know that you cannot spend money through the government wouldn't coming through this office in your name. All of these cards are in the police officers private names, it doesn't say government on them. I was told before that they went down to the car lot about 3 days before the auction started and marked off about one hundred 100 and odd vehicles with red paint on the back wheel because they wanted those vehicle.*
22. *I understand that Section 122 of the Customs Act states that they cannot give to any Government entity any unless it goes through the auction twice and are refused then they can have it so I understand that they were running up these prices not to let the legitimate buyers get them so they can be re-auctioned and turned over to them. So in actuality this was not a real auction, they were just there to run the legitimate bidders away. I thought this unfair coming from the Government... ”<sup>3</sup>*

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<sup>3</sup> Extracts of the OCG's Interview with the 'Concerned Citizen' who was present at the JCD Auctions. The interview was conducted on 2009 July 8, at 10:15 am.

***Mr. Danville Walker's (Commissioner of Customs) Account of the Sequence of events which took place during the Public Auction for Motor Vehicles which was held on 2009 June 30 and 2009 July 1***

In order to corroborate the representations which were made by the 'Concerned Citizen', the OCG, by way of a letter which was dated 2009 July 2, requested that Mr. Danville Walker, Commissioner of Customs, submit to the OCG "*An Executive Summary outlining the sequence of events which took place during the referenced Auction on June 30, 2009 and July 1, 2009.*"<sup>4</sup>

In response to the OCG's Requisition, Mr. Danville Walker, under cover of a letter, which was dated 2009 July 16, submitted an Executive Summary in which he indicated as follows:

1. *" In exercise of the power of sale provided for in Section 87-88 of the Customs Act, the Customs caused a notice detailing its intention to conduct an auction sale of motor vehicles at the Queens Warehouse,...on June 30, 2009 to July 1, 2009, as well as a list of the said goods to be published in the Jamaica Gazette...In addition, in accordance with departmental procedures, the Customs advertised particulars relating to the proposed sale in the Gleaner dated May 30, 2009...*
2. *On June 30, 2009, at approximately 9.30 a.m. registered bidders were presented with copies of the Auction Sales List, indicating the units available for sale...*
3. *At the beginning of the sale, sixty seven (67) motor vehicles on the Auction Sales List were available. This included ten (10) motor vehicles that were relisted, as the said units were not sold at previous auctions. A total of one hundred and nine (109) motor vehicles were withdrawn from the said list, of which one hundred (100) were duty paid by the importer. It is to be noted that one (1) entry is to be ascertained for item # 88 on the said list. Further, eight (8) vehicles were withdrawn as they were the subject of Valuation Reviews/Appeals. Deposits were made in relation to eight (8) units and one (1) vehicle*

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<sup>4</sup>OCG's letter, which was dated 2009 July 2, to Mr. Danville Walker, Commissioner of Customs.

was withdrawn as a result of letter received from the Ministry of Finance and the Public Service.

4. The Auction Sale began at approximately 10:50 a.m. The bidders were reminded of the rules governing the Sale, **including the requirement for a ten percent (10%) non-refundable deposit on all motor vehicles by each successful bidder.** (OCG Emphasis)
5. The Crier (Mr. Damion Rose, Customs Officer) announced the first available item on the list, commencing the bidding process. In accordance with the procedure, bidders are acknowledged by a show of card and offers are made verbally. The Crier, as well as the Auctioneer, Mrs. Myrna Thompson, (Manager of the Queen's Warehouse) records the accepted bids on the Auction List...
6. The Auctioneer was concerned that the units sold up to Item 18 of the said List, went to bidder registered as 15071. Based on the Auctioneer's experience, this appeared unusual and the concern related to whether the deposits would in fact be made. As a result, the Auctioneer discussed the matter with Mr. Paul McLaren, Customs Officer, who indicated that bidder 15071 attended a viewing of the motor vehicles on June 27, 2009, in the capacity of a Police Officer and that other Police Officers were in attendance at the Auction.
7. The Auctioneer contacted the Collector of Customs-Kingston, Mrs. Lorna Rhoden, and advised her accordingly. Further enquiries were made of the said Collector regarding her awareness of the fact that Police Officers were participating in the Auction. The Collector of Customs responded in the negative. The Auctioneer reminded the Collector that if the deposits were not paid by the bidder, the motor vehicles would be re-listed to be auctioned in the afternoon session.
8. At the end the morning session, twenty-three (23) vehicles were sold, of which twenty-one (21) went to the bidders identified by identification numbers 15071, 15067, 15065 and 15073, later identified as Police Officers and two (2) motor vehicles went to other bidders.

9. *During the luncheon break, the Auctioneer was approach by five (5) gentlemen, who identified themselves as Police Officers assigned to the Transport Division of the Jamaica Constabulary Force. The Auctioneer made enquires about the deposit in relation to the twenty one (21) units sold to the said officers who indicated that they were not instructed to provide a deposit; they were only instructed to bid on the items. The Auctioneer reminded them of the applicable procedure and the meeting concluded. The Police Officers subsequently left the compound.*
10. *The afternoon session resumed at approximately 1.15 p.m. and the twenty-one (21) units (previously sold to the Police Officers) were re-listed. Of this total, nineteen (19) units were sold. The Crier continued at Item 84 of the said List and an additional eleven (11) units were sold. (OCG Emphasis)*
11. *At approximately one hour after resumption, Miss Cordelia Brown, Deputy Commissioner, Operations, contacted the Auctioneer and indicated that she was instructed by the Commissioner to advise that the bids won by the Police Officers should remain as sold and the motor vehicles should not be re-listed. (OCG Emphasis)*
12. *The Auctioneer announced that all successful bids, in the afternoon session, of Items appearing between number 2 and 81 on the Sales List would be disregarded and no deposit should be made in respect of same. It was noted that bidders had already made the required ten percent (10%) deposit. The Auctioneer then refunded the deposits to the bidders who were present. However, one particular bidder from item #41... had already paid and had left the compound before the announcement was made. Subsequently, the bidder, on payment of the remaining sum, took possession of the motor vehicle.*

*At this point, the sale ended in an uproar as the bidders were demanding an explanation. (OCG Emphasis)*



13. *The Sale resumed at Item 109 on July 1, 2009 with the first five (5) motor vehicles going to bidder 15073, previously identified as a Police Officer. At this point the other bidders started to show their dissatisfaction. Several attempts were made to continue the Sale but to no avail, as the bidders became disorderly.*
14. *The said Collector was informed of the situation by the Auctioneer. At approximately 12:15 p.m. that day, the Collector, the Assistant Commissioner Border Protection, Major Stanley Ford and Mrs. Anneke Rousseau, Director Public Relations visited the Queens Warehouse.*
15. *The afternoon session of July 1, 2009 was reconvened at about 1:30 p.m. with an address by the Director, Public Relations. The bidders continued to show their dissatisfaction and a decision was taken to end the proceedings for the day.”<sup>5</sup>*

Based upon the foregoing, the OCG found that Mr. Walker’s account of the sequence of events concurred with multiple aspects of the sworn statement which was given to the OCG by the ‘Concerned Citizen’.

However, Mr. Walker indicated that “...Miss Cordelia Brown, Deputy Commissioner, Operations, contacted the Auctioneer and indicated that she was instructed by the Commissioner to advise that the bids won by the Police Officers should remain as sold and the motor vehicles should not be re-listed.”<sup>6</sup>

The aforementioned statement by Mr. Walker conflicts with that of the ‘Concerned Citizen’, who indicated that “...a call came in to one of the senior ladies at the bidding, I don’t remember her name. As the call came in they stopped the auctioneer and said they got a call from the minister, they didn’t say which minister it was... Bidders were informed that the auction had to stop as of

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<sup>5</sup> Letter which was dated 2009 July 16 from Mr. Danville Walker, Commissioner, Jamaica Customs Department, in response to the OCG’s Requisition.

<sup>6</sup> Letter which was dated 2009 July 16 from Mr. Danville Walker, Commissioner, Jamaica Customs Department, in response to the OCG’s Requisition.

*now and that those who didn't pay their money, shouldn't pay it and those who had already paid would be reimbursed and the vehicles that the cops had bid on they would be getting it.”<sup>7</sup>*

For the purpose of clarity and to provide unequivocal evidence of the fact that representatives of the JCF were involved in the referenced Auction and were indeed successful bidders, it must be noted that Mr. Danville Walker, asserted that:

*“Police Officers were the successful bidders of 25 Units, as indicated on the Sales List attached with the relevant bidder’s identification numbers. There were four Police Officers bidding. Bidder#s:*

<i>15071-</i>	<i>8 Units</i>
<i>15067-</i>	<i>6 Units</i>
<i>15065-</i>	<i>6 Units</i>
<i>15073-</i>	<i>5 Units”<sup>8</sup></i>

In support of his response, Mr. Walker provided the OCG with a list of the vehicles which were auctioned, inclusive of those vehicles which were won by representatives of the JCF.

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<sup>7</sup> Extracts of the OCG’s Interview with the ‘Concerned Citizen’ who was present at the Auctions. The interview was conducted on 2009 July 8, at 10:15 am.

<sup>8</sup> Response from Mr. Danville Walker which was dated 2009 July 16

*Customs Representatives' Account of the Sequence of Events which took place at the JCD's Auction which was held on 2009 June 30 and 2009 July1*

Having reviewed the accounts of the Auction, which were given by Mr. Danville Walker and the 'Concerned Citizen', the OCG decided to requisition the alleged JCD representatives who were present at, and who were in charge of conducting the Auction. This was done in order to corroborate the statements which were given by Mr. Walker and the 'Concerned Citizen'.

In this regard, the OCG, in its Requisitions that were dated 2009 July 31, and which were addressed to Mr. Daemion Rose, Customs Officer/Auction Crier, Mrs. Myrna Thompson, Manager, Queens Warehouse/Auctioneer and Mr. Paul McLaren, Customs Officer, asked the following questions:

*"Were you present at the Jamaica Customs Department's Public Auction of motor vehicles, which was held at the Queens Warehouse, on June 30, 2009 and July 1, 2009? If yes, please indicate:*

- (i) Your reason(s) for attending the Auction;*
- (ii) The personal and/or official capacity in which you attended the referenced Auction;*
- (iii) The full particulars of the role which you played, if any, at the Auction; and*
- (iv) The sequence of events which took place at the Auction, as witnessed by you."*<sup>9</sup>

Mr. Daemion Rose, in his sworn response to the OCG's Requisition, which was dated 2009 August 13, indicated as follows:

*Yes.*

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<sup>9</sup> OCG's Requisitions which were dated 2009 July 31, to Mr. Daemion Rose, Mrs. Myrna Thompson and Mr. Paul McLaren.

- i. *I was asked to attend this auction.*
- ii. *Auction Cryer.[sic]*
- iii. *I was responsible for announcing the items for auction and to accept bids before a public audience.*
- iv. *The auction began on June 30, 2009 with the reading of the rules and the announcement of the vehicles that were no longer apart of the auction. I then proceeded to call the vehicles that were still there, in a sequential order and accepting the bids of persons who had made clear indication of interest by the raising of their, hands with bidder number cards exposed. As the auction progressed it became apparent that one group of gentlemen were the successful bidders repeatedly, no matter how high the cost of the vehicles went. I had to calm the other members of the public who became restive and unsettled. This was a matter of concern to the Manager of the Queens Warehouse who was present in her capacity of Auctioneer, so much so, that she got up and went upstairs to her office, after instructing me to continue with the auction. At this point I made an announcement that the bidders that were successful need to pay their 10% deposit before the afternoon session or the vehicles will be recalled. I continued calling a few more vehicles before being instructed to break for lunch by the manager.*

*The afternoon session began with the recalling of the vehicles that were previously won, as up to this point no deposit was made on these vehicles. On recalling the vehicles, it was observed that the successful bidders were not present for the second session. While doing this the manager who had returned to the table received a phone call, after which she announced to the public that they should not pay for the vehicles that were recalled as they will remain with the first bidders as per instructions of the Minister. This created a negative response from the public who became loud and out of control requesting to be furnished with an*

*explanation as to why this is so. The auction was therefore adjourned for the first day while the matter was sorted out.*

*On July 1, 2009, the gentlemen of the previous day had returned to the auction, and we continued where we had stopped previously. I offered a few more vehicles which were won by the same group of men and caused the public to become unsettled again, requesting explanation for the series of events that had happened. The personnel at the officiating table could not answer these questions so it was announced that we would get a Senior Customs Official to address their concerns at which point we stopped the auction.*

*The Director of Public Relations and the Assistant Commissioner of Enforcement came to the Queens Warehouse to find out the concerns of the public. The Director of Public Relations began to answer their questions when it became apparent that these responses did not go down well with the audience as they became out of control and would not calm down so as to allow us to continue with the auction. It was therefore agreed upon by the Assistant Commissioner that the auction should end, at which point we did so.”<sup>10</sup>*

The OCG found that Mr. Rose’s account of the sequence of events, which took place during the Auction, was consistent, in many material particulars, with the account which was given by the ‘Concerned Citizen’.

It is instructive to note that both Mr. Rose and the ‘Concerned Citizen’ indicated that during the Auction a call came in from a ‘Minister’ indicating that the vehicles which were relisted should remain with the original bidders; that is, the alleged representatives of the JCF.

However, in his statement to the OCG, Mr. Danville Walker indicated that “...Miss Cordelia Brown, Deputy Commissioner, Operations, contacted the Auctioneer and indicated that she was

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<sup>10</sup> Letter which was dated 2009 August 13, from Mr. Daemion Rose, in his response to the OCG’s Requisition.

*instructed by the Commissioner to advise that the bids won by the Police Officers should remain as sold and the motor vehicles should not be re-listed.”<sup>11</sup>*

Mrs. Myrna Thompson, the Manager of the Queen’s Warehouse, in her sworn response to the OCG’s Requisition, which was dated 2009 August 11, indicated as follows:

*“Yes, I was present at the Public Auction on Tuesday June 30, and Wednesday July 1, 2009.*

- i. I attended the Auction because I am assigned to the Queens Warehouse 230 Spanish Town Road and as such I have responsibilities for the conduct of Auction Sales.*
- ii. I attended the Auction in an official capacity as Manager, Queen’s Warehouse.*
- iii. As Manager in charge of The Queens Warehouse, I act as the Auctioneer of the Sale. In this regard, my duties include:*
  - 1. Verification of the Auction Sales List;*
  - 2. Verification of the Values of the goods on the Lists;*
  - 3. Recording the final offers of the bidders;*
  - 4. Oversee the operations of the sale.*
- v. The sequence of events as witnessed by me...*

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<sup>11</sup> Letter which was dated 2009 July 16 from Mr. Danville Walker, Commissioner of Customs, Jamaica Customs Department, in response to the OCG’s Requisition.

*...Mr. Rose, the Crier, read the rules of the action [sic]... Mr. Rose then proceeded to inform the bidders of all the motor vehicles on the list which were no longer available for auctioning.*

*The bidding began with item #2 and proceeded as listed.*

*I noticed that one particular bidder, #15071 was outbidding everyone else. The first eight items went to that bidder. I became concerned as this was rather unusual from experience it meant that that bidder would not pay. I had never seen that bidder before. I then asked Mr. Paul McLaren if he knew that bidder. It was then that he informed me that the said bidder was one of the police officer whom he had accompanied to view the vehicles on Saturday, July 28, 2009. I immediately called Mrs. Lorna Rhoden, Collector of Customs, to enquire if she was aware that members of the Jamaica Constabulary Force were participating in the auction. The Collector informed me that she was not aware. I enquired of the Collector how to proceed and reminded her that if the ten percent (10 %) deposit was not placed then the items would be relisted after lunch. The Collector promised to get back to me.*

*At the end of the first session twenty-three (23) vehicles were sold. Of the twenty-three (23), twenty-one (21) went to the bidders who were later identified as Police Officer and two (2) to another bidder.*

*During the luncheon break I had a meeting with five (5) individuals who identified themselves as Police Officers. I informed them of the requirements of the sale and they indicated that they were not aware of the requirements. Further they wanted to know if I was not briefed of their presence. I explained to them the rules of the sale and the requirement of the ten percent (10%) deposit. The Officers reiterated that they were not aware and they left.*

At the afternoon session of the sale the entire twenty-one (21) vehicles previously won by the 'Police Bidders' were recalled on the sales list. Nineteen (19) of these units were won by other bidders while two (2) were withdrawn. Another eleven (11) units on the list were sold to other bidders. Sometime during the sale of the last eleven (11) units, I received a telephone call from Ms Cordelia Brown, the Deputy Commissioner instructing me to allow the bids previously won by the members of the Jamaica Constabulary Force to remain intact. I informed her that the units were already relisted and sold. **The said Deputy Commissioner told me that it was Commissioner Walker's instructions.** I then made an announcement on the public address system that the bids won in relation to these relisted vehicles should be disregarded and no payments should be made. (OCG Emphasis)

At this point the sale ended in disarray.

Two (2) of the bidders affected had already paid. The bidder of item # 41 on the Sales List had already paid the ten percent (10%) deposit and left the compound.

The other bidder who was present was refunded.

On July 1, 2009, the second day of the sale I was informed by Mrs. Lorna Rhoden, the Collector of Customs, that the Police would be returning to continue their bids on the remaining vehicles. The Collector also informed me that she was in possession of a document from the Attorney General's Office with a ruling concerning the sale. I demanded that I be given a written directive on how to proceed. **I later received a copy of the above mentioned document with a directive not to re-list the vehicles won by the Police from the Commissioner of Customs, under the signature of Ms Cordelia Brown, the Deputy Commissioner.** (OCG Emphasis)

The sale began on day two with the first five (5) units going to the Police. At this point the sale again ended in uproar. The bidders berated the Police for outbidding everyone



*else and for wanting the entire number of vehicles on the list. Several attempts were made to continue the sale but to no avail. I then called Mrs. Rhoden, the Collector to inform her of the situation.*

*Sometime later, Major Stanley Ford, Assistant Commissioner of Border Protection Unit and Mrs. Anneke Rousseau, Director, Public Relations arrived on the scene. Mrs. Rhoden later arrived at this location. The Police Personnel were invited into the Manager's Office where a meeting was convened. Mrs. Rhoden addressed the Police and told them of the impact their presence was having on the auction. **An agreement was reached for the Police to settle for seven (7) of the remaining vehicles.** (OCG Emphasis)*

*The afternoon session was convened. Mrs. Anneke Rousseau decided to address the bidders. In her attempt the bidders took offence to something that she said and then the sale ended. I cannot recall what was said to cause the offence.*

*The status at the end of the sale was:*

<i>a. Police</i>	<i>25 units</i>	<i>*15071</i>	<i>-</i>	<i>8 units</i>
		<i>*15067</i>	<i>-</i>	<i>6 units</i>
		<i>*15065</i>	<i>-</i>	<i>6 units</i>
		<i>*15073</i>	<i>-</i>	<i>5 units</i>
<i>b. Public</i>	<i>14 units</i> <sup>12</sup>			

The OCG found that Mrs. Thompson's account of the sequence of events which took place at the Auction was consistent with that of Mr. Danville Walker. She also indicated that she was the person who received the call instructing her not to relist the vehicles which were won by the alleged JCF representatives and, in her response to the OCG, she also indicated that she received that call from Ms. Cordelia Brown, Deputy Commissioner - Operations.

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<sup>12</sup> Mrs. Myrna Thompson, in her sworn response to the OCG's Requisition, which was dated 2009 August 11,

It is instructive to note that the OCG, in its written Requisition, that was dated 2009 July 31, which was addressed to Ms. Cordelia Brown, required her to respond to the following question:

*“Did you, in any way, intervene in and/or give instructions in regard to the Public Auction which was held on June 30, 2009 and July 1, 2009? If yes, please provide:*

- (i) Details of the nature of your intervention and/or the instructions which were given by you;*
- (ii) Your reason(s) for giving the instructions and/or intervening in the process;*
- (iii) The authority under which the instructions were given and/or the intervention was made;*
- (iv) The ensuing results of such intervention and/or the instructions which were given.”<sup>13</sup>*

Ms. Cordelia Brown, in her sworn response to the OCG’s Requisition, which was dated 2009 August 12, indicated as follows:

*“Yes, I intervened in and/or gave certain instructions with regard to the above mentioned Auction.*

- i. Initially, I gave verbal instructions to the Collector of Customs, Mrs. Lorna Rhoden that the vehicles for which the Police were the successful bidders should not be re-listed in the afternoon session. Subsequently, I issued, on behalf of the Commissioner of Customs, Mr. Danville Walker, written instructions on the matter....*
- ii. The said Commissioner of Customs issued the directive and I duly instructed the staff.*

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<sup>13</sup> OCG Requisition to Ms. Cordelia Brown, which was dated 2009 July 31: Question # 5

- iii. *The said Commissioner advised me that the Ministry of Finance and the Public Service and the Ministry of National Security would be undertaking the necessary payment arrangement.*
- iv. *The vehicles that were re-listed in the afternoon (prior to the instructions) were withdrawn from the sale.”<sup>14</sup>*

With specific reference to the aforementioned, it must be noted that Ms. Cordelia Brown submitted to the OCG, a copy of the referenced memorandum which was dated 2009 June 30, which had been signed for and on behalf of Mr. Danville Walker. The memorandum indicated that **“This is to advise that the vehicles on which the police have successfully placed a bid should be removed from the auction list. They should not be re-listed. The Minister of National Security has guaranteed payment for the vehicles.”**<sup>15</sup> (OCG Emphasis)

The referenced memorandum was addressed to Mrs. Lorna Rhoden, Collector of Customs, Kingston.

Mr. Paul McLaren, in his sworn response to the OCG’s Requisition, which was dated 2009 August 10, regarding the sequence of events which took place at the Auction, as witnessed by him, indicated as follows:

*“Yes, I was at the auction on June 30, 2009, however, I was not present on July 1, 2009 as a Departmental Leave request was previously submitted for that day.*

- i) *I was the person who prepared the auction list and as such was required to do final checks on the morning of June 30, 2009 to ensure that the vehicles listed were still at the car parks and whether those still there were available for auction (as some vehicles were duty paid).*

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<sup>14</sup> Ms. Cordelia Brown, sworn response to the OCG’s Requisition which was dated 2009 August 12.

<sup>15</sup> Memorandum which was dated 2009 June 30, from Ms. Cordelia Brown.

- ii) *I was at the auction in an official capacity as a customs Officer TAIH...*
- iii) *I was the person who prepared the auction list and as such was required to do final checks on the morning of June 30, 2009 to ensure that the vehicles listed were still at the car parks and whether those still there were available for auction (as some vehicles were duty paid).*
- iv) *On the morning of June 30, 2009, the sale began with the singing of the National Anthem. A welcome to the bidders and recap of the rules was done by the Crier – Mr. Daemion Rose. The Crier proceeded to update the bidders on the list of vehicles that were no longer available for auction (duty paid or valuation appeal with T.A.S.D.). With all two out of the way, the Crier began calling the vehicles for auction one by one.*

*With most of the vehicles going to one bidder, the Auctioneer (Mrs. Myrna Thompson) asked who was that person, and I informed her that it was one of the persons whom I had seen on Saturday June 27, 2009 as a member of a party of persons from the Jamaica Constabulary Force which I had been instructed by her (Mrs. Thompson) to accompany them to view the vehicles available for auction. With this revealed, I was asked by Mrs. Thompson to sit at the desk for her as she went upstairs to make a phone call.*

*The auction continued with the representatives from the Jamaica Constabulary Force winning the majority of the bids, when the auction broke for lunch, the Crier made a reminder that failure to make the 10% deposit would result in the vehicles being recalled and sold to different bidders and the bidders who initially won the bids being banned from further participation in the auction.*

*After the lunch break, the representatives of the Jamaica Constabulary Force were not present and with no deposit made for their successful bids, the vehicles were*

*recalled and sold to new bidders with Mrs. Thompson back at the desk. I did not witness the end of the auction therefore to say anything more would be hearsay or speculation. (It should be noted that my only responsibility while at the auction desk was to record the price that each motor vehicle was sold for as well as the number of the bidder it was sold to).*<sup>16</sup>

The OCG found that the accounts which were given by the named JCD representatives were also similar to the accounts which were given by Mr. Danville Walker and the ‘Concerned Citizen’.

Based upon the sworn evidence which was submitted to the OCG by the respondents, the OCG has found that Ms. Cordelia Brown was the person who indicated that the vehicles which were won by the alleged JCF representatives should not be re-listed and, further, that the JCF representatives were not required to pay the 10% deposit.

Consequently, Mrs. Myrna Thompson, Manager of the Queens’ Warehouse, complied with the instructions which were given by Ms. Brown and removed the vehicles which were previously won by the JCF representatives off the list.

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<sup>16</sup> Letter which was dated 2009 August 10, from Mr. Paul McLaren, in response to the OCG’s Requisition.

### ***The Guidelines which Govern the JCD's Auction of Abandoned Motor Vehicles***

Having reviewed the eye witness accounts of the Auction, which were given by Mr. Danville Walker, the 'Concerned Citizen' and the other Customs Representatives, who were present at the Auction, the OCG sought to examine the guidelines and rules which govern the Auction Process.

This review was undertaken in order to ascertain whether or not there were irregularities or any impropriety at the referenced auctions, insofar as the JCD's rules which govern the Auction are concerned.

In this regard, the OCG, in its Requisition, which was dated 2009 July 2, required Mr. Danville Walker to provide "*A copy of the JCD's process documentation used for the conduct of Auctions...*"

Additionally, the OCG, in a set of Requisitions which were dated 2009 July 31, that were sent to Mr. Daemion Rose, Mrs. Myrna Thompson, Mr. Paul McLaren, Mrs. Lorna Rhoden and Ms. Cordelia Brown, sought to establish each individual's awareness of the rules which govern the Auction process.

In the referenced Requisitions, to the abovementioned individuals, the OCG asked the following question:

*"Are you aware of the process and procedures which governed the Jamaica Customs Department's Public Auction of motor vehicles, which was held on June 30, 2009 and July 1, 2009? If yes, please provide:*

- i. *An Executive Summary of your exposure to, and familiarity with, the process and procedures. Please provide documentary evidence, where possible, to support your claims and assertions;...*<sup>17</sup>

All of the foregoing respondents submitted documents containing the Guidelines for the conduct of the JCD's Public Auctions. The following, *inter alia*, are extracts from the JCD's internal guidelines which are relevant to the Auctioning of Abandoned Motor Vehicles:

- c. *"...All lots are sold as is, where is and we are not responsible for any errors in description.*
- *All lots are sold to the highest bidder on the fall o [sic] the hammer and no other bid will be considered after that...*
  - *A minimum of 10% deposits are accepted in the case of motor vehicles which are non-refundable and must be paid prior to the beginning of the next session of the sale with final pmt to be made within 7 working days of the auction date...*
  - *We reserve the right to reject any bid, withdraw any lot or group of lots together if considered necessary.*
  - *The auctioneer's (manager's) decision is FINAL."*<sup>18</sup>

It is important to note that Mr. Danville Walker, Mrs. Thompson, Mrs. Rhoden and Ms. Brown, in their respective responses to the OCG's Requisitions, also submitted a document which was entitled "*Additional Rules to the Auction*".

The additional rules indicated as follows:

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<sup>17</sup> OCG's Requisitions which were dated 2009 July 31, to Mr. Daemion Rose, Mrs. Myrna Thompson, Mr. Paul McLaren, Mrs. Lorna Rhoden, Ms. Cordelia Brown.

<sup>18</sup> Guidelines in the Regulation of Public Auction Sales

**“ADDITIONAL RULES RELATING TO AUCTIONS**

1. *WHEN BIDDING ON ITEMS YOUR CARD MUST BE USED - **FINGERS ARE NOT ALLOWED.***
2. *WHEN COLLECTING YOUR ITEMS AFTER ANY AUCTION, PROPER IDENTIFICATION MUST BE SHOWN TO THE OFFICER - (**PASSPORT, DRIVER’S LICENCE OR NATIONAL ID.**)*
3. *TO AVOID FORFEITURE, ITEMS SHOULD BE REMOVED WITHIN THE SPECIFIED PERIOD OR THEY WILL BE RE-AUCTIONED...*
4. *PAYMENTS SHOULD BE MADE WITHIN THE SPECIFIED PERIOD TO AVOID BEING **BANNED.***
5. ***THE BANNED PERIOD IS -THREE (3) MOTOR VEHICLE AND SEVEN (7) GENERAL CARGO AUCTIONS.***

**WARNING:** *At the Auction the successful Bidder is required to:*

1. *Immediately make a **non-refundable deposit of 10% on all Motor Vehicles.** Final payments should be made within seven (7) days.*
2. *Immediately make full payment on all other goods.”<sup>19</sup>*

It must also be noted that the “Application for Bidder’s Registration” contained, *inter alia*, similar rules inclusive of the following:

**“WARNING: At the auction, the successful Bidder is required to:**

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<sup>19</sup> Additional Rules Relating to Auctions



1. *Immediately make a **non-refundable deposit of 10% on all Motor Vehicles**. Final payments should be made within **seven (7) days**.*
2. *Immediately make **full payment on all other goods**...*

*...All Sales conducted subject to Jamaican laws and rules laid down by the Commissioner of Customs”<sup>20</sup>*

It is instructive to note that some of the rules relating to the Auction, which was held on 2009 June 30 and 2009 July 1, were included in an advertisement, which was dated 2009 May 30, that was published in the Daily Gleaner. The referenced advertisement was entitled ‘*Jamaica Customs Department, Queen’s Warehouse Motor Vehicle Auction*’. The advertisement indicated as follows:

*“The Collector of Customs, Kingston, will offer for sale at Public Auction “Overtime goods” being Motor Vehicles, listed hereunder...*

*Vehicles are being sold on an “as is where is” basis and the Collector of Customs assumes no responsibility for any errors made in describing the goods, nor offers any warranty or refunds to purchasers of the goods....*

***Successful bidders who are unable to make full payment on the day of the sale will be required to deposit at least ten percent (10%) of their bids with the balance to be paid within seven (7) working days (10% is non-refundable).*** (OCG Emphasis)

*The Auctioneer reserves the right to reopen the bidding if no deposits are received... ”<sup>21</sup>*

Based upon the aforementioned information, the OCG has found that bidders were advised, both in the local print media and at the time of registration, that a “*non-refundable deposit of 10% on*

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<sup>20</sup> Additional Rules Relating to Auctions

<sup>21</sup> Gleaner Advertisement which was dated 2009 May 30.

*all Motor Vehicles.*” was immediately required for successful bids. Therefore, the 10% deposit was ostensibly held out and conveyed by the JCD to all prospective bidders, as being a component of the auction rules.

The OCG in its Requisition, which was dated 2009 July 31, to Mrs. Myrna Thompson, and Mr. Paul McLaren also asked the following question:

*“Are you aware of the Jamaica Customs Department’s rules and/or penalties should a successful bidder fail to pay the required monetary deposit? If yes, please provide particulars of same.”*<sup>22</sup>

Mr. Paul McLaren, Customs Officer, in his sworn response to the OCG’s Requisition, which was dated 2009 August 10, indicated that:

*“Yes, I am aware of the rules of the Jamaica Customs Department as it relates to a bidder who fails to pay the required deposit for a successful bid. **If the bidder fails to pay the deposit, then the vehicle is re-auctioned and the bidder is banned from taking further part in the auction.**”*<sup>23</sup> (OCG Emphasis)

Mrs. Myrna Thompson, Manager of Queen’s Warehouse, in her sworn response to the OCG’s Requisition, which was dated 2009 August 11, indicated that:

*“Yes, I am aware.*

*Once a bid has been won the successful bidder is required to collect a payment slip which is taken to the cashier for payment of the required 10% deposit or full payment. If the deposit is not paid the item is re-listed for sale at the next session of the sale. The bidder who won*

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<sup>22</sup> The OCG’s Requisitions, which were dated 2009 July 31, to Mrs. Myrna Thompson and Mr. Paul McLaren.

<sup>23</sup> Letter which was dated 2009 August 10 from Mr. Paul McLaren, in Response to the OCG’s Requisition.

*the previous bid and failed to pay the 10% deposit is then banned from participating in the rest of that sale and a number of subsequent Auction Sales.”<sup>24</sup>*

The OCG has found, based upon (a) the internal and the external guidelines which govern the Auction of Abandoned Motor Vehicles at the JCD; (b) the sworn responses which were given by the JCD representatives, and (c) the advertisement which was dated 2009 May 30, that a minimum deposit of 10% of the bid amount must be immediately paid by all successful bidders.

It was also indicated that where the minimum deposit is not paid, the JCD reserves the right to re-list items. Additionally, it was indicated that once a bidder fails to pay his or her deposit, he or she would be banned from subsequent Auctions.

Based upon the accounts which were given by Mr. Danville Walker, other JCD representatives and the ‘Concerned Citizen’, the vehicles which were won by the JCF representatives were initially relisted after it was found that the JCF representatives did not make the minimum 10% deposit. The relisting of these vehicles was done in accordance to the rules which govern the JCD’s Auction Process for Motor Vehicles.

However, the OCG has found, based upon the instructions which were given to the Auctioneer by Ms. Cordelia Brown, that the vehicles which had been won by the JCF representatives were (a) relisted in accordance with the rules, (b) were later removed from the list, despite the fact that other bidders had now bid on the relisted vehicles and, in more than one instance, had made the mandatory deposit, and (c) were subsequently awarded to the representatives of the JCF, despite the irregularities which had obtained during the auction process.

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<sup>24</sup> Letter which was dated 2009 August 11 from Mrs. Myrna Thompson, in response to the OCG’s Requisition.

The internal guidelines which govern the JCD's Auction Process stipulated that "*A minimum of 10% deposits are accepted in the case of motor vehicles which are non-refundable and must be paid prior to the beginning of the next session of the sale with final pmt to be made within 7 working days of the auction date.*"<sup>25</sup>

The document also indicated that "*We reserve the right to reject any bid...*".<sup>26</sup> However, the document which was entitled "*Additional Rules Relating Auctions*" as well as the "*Application for Bidder's Registration*" which was given to all bidders, did not indicate that the JCD reserves the right to reject any bid.

**Essentially, the OCG has found that there were irregularities at the referenced Auction as the guidelines were not followed. The JCD did not adhere to its own internal guidelines and/or the guidelines which it had publicly made available to bidders. It is also instructive to note that none of the clauses in the internal or external guidelines indicated that public entities or their representatives were exempted from making the minimum 10% deposit.**

Even then, the alleged JCF representatives were registered in their capacity as private citizens, in similar fashion and under the same strictures as all other registered bidders

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<sup>25</sup> Guidelines in the Regulation of Public Auction Sales

<sup>26</sup> Guidelines in the Regulation of Public Auction Sales

### *Irregularities at the JCD Auction which were Observed First Hand by JCD Representatives*

It is instructive to note that the OCG, in its written Requisitions to Mr. Daemion Rose, Auction Crier/Customs Officers and Mrs. Myrna Thompson, Auctioneer/Manager Queens Warehouse asked, *inter alia*, the following questions;

- ii. *“...Did you notice any irregularities and/or non-compliance with the established process and procedures at the Public Auction of motor vehicles that was held at the Queens Warehouse, on June 30, 2009 and July 1, 2009?”*
- iii. *If your answer to Question# 2 (ii) above is yes, please provide details of the irregularities and/or non-compliance, as witnessed by you, at the referenced Auction.”<sup>27</sup>*

Both Mr. Rose and Mrs. Thompson were present at, and actively involved in, the Auction which was held on 2009 June 30 and 2009 July 1. Detailed below are the verbatim and sworn responses which were provided by Mr. Rose and Mrs. Thompson.

#### Mr. Rose’s Response

- ii. *“Yes*
- iii. *We were not allowed to re-auction the motor vehicles that were bid on even though the 10% deposit was not made upon successfully winning the bid.”<sup>28</sup>*

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<sup>27</sup> The OCG’s Requisitions which were dated 2009 July 31, to Mr. Daemion Rose and Mrs. Myrna Thompson.

<sup>28</sup> Letter which was dated 2009 August 13, from Mr. Daemion Rose, in response to the OCG’s Requisition.

Mrs. Thompson Response

- ii. *“Yes, I noticed irregularities*
  
- iii. *My first observation related to the fact that the first set of vehicles sold i.e eight (8) all went to one bidder. This is unusual as it indicated to me that these units would not be paid for, based on experience. In addition, a total of twenty-five (25) units went to only four (4) bidders, later identified as police officers, and no deposits were made in relation to these units. Further I was instructed that the vehicles for which no deposits were made should not be re-listed in the afternoon session of June 30, 2009. Also, the refund of the deposits to successful bidders in the afternoon session could be viewed as an irregularity.”<sup>29</sup>*

The OCG has, therefore, found that these occurrences at the Auction, which was held on 2009 June 30 and 2009 July 1, were, in the opinion of the JCD’s representatives, irregular at best.

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<sup>29</sup> Letter which was dated 2009 August 13, from Mrs. Myrna Thompson in response to the OCG’s Requisition.

***Provisions of the Customs Act which relate to the participation of Public Bodies in JCD Auctions***

Due to the nature of the concerns which had been raised in regard to the JCD's Auction, the OCG also sought to examine the Customs Act with the view of ascertaining whether or not the Customs Act had any provisions regarding the participation of Public Bodies or their representatives in the JCD's auctions.

The OCG has found that there is no clause in the Customs Act which speaks directly to Public Bodies or their representatives participating in public auctions. However, it was found that Section 122 of the Customs Act indicates that:

*“ If any warehoused goods shall not be duly entered for used within the Island, or as aircraft's or ships' stores, or exported or re-warehoused, and the duties ascertained to be due on the deficiencies as aforesaid and any charges and expenses shall not be paid at the expiration of one year from the previous entry and warehousing thereof, or within such further period as shall be directed as aforesaid, the same shall, after one month's notice by advertisement in the Gazette and a daily newspaper, if any, published in Kingston, with all convenient speed be sold by public auction, and the proceeds thereof shall be applied to payment of the duties, expenses of the sale, and of any rent and charges due to the Government, then in discharge of any lien for freight and other charges, and the surplus, if any, shall be paid to the owner of such goods on his application for the same within two years from the time of sale, but otherwise shall be paid into the Consolidated Fund; and if such goods, being so offered for sale, cannot be sold for a sum to pay all duties, expenses, rent and charges due to the Government, then the same may be destroyed or otherwise disposed of as the Minister may direct; and the duties due upon any deficiency in any warehoused goods not allowed by law shall be forthwith paid by the warehouse –keeper.”*

Therefore the OCG found that if a good which is offered for auction cannot be sold for a sum to cover all duties, expenses, rent and charges due to the Government, the goods may be destroyed or the Minister may direct how it should be disposed of.

As such, and in accordance with the Customs Act, the OCG has found that the only way a good can be awarded to a public entity or its representatives, without going through the regular auction process and adhering to the rules and guidelines of the auction, is if the good cannot be sold and a decision as to the disposal of the good is made by the Minister.

Nonetheless, the OCG has not found any clause in the internal guidelines, the external guidelines for public auction and/or the Customs Act which indicates that public entities or their representatives are exempted from the regular rules and guidelines for the JCD's Public Auctions.



### ***The JCF's Involvement in the Auction***

In the OCG's Requisitions, which were dated 2009 July 31, that were addressed to Ms. Cordelia Brown, Mr. Paul McLaren, Mrs. Lorna Rhoden, Mr. Daemion Rose and Mrs. Myrna Thompson, the following questions were asked:

*"Are you aware of the involvement of members and/or representatives of the Jamaica Constabulary Force at the Public Auction which was held at the Queens Warehouse, on June 30, 2009 and July 1, 2009? If yes, please answer the following questions:*

- i. When did you become aware of the involvement of members and/or representatives of the Jamaica Constabulary Force in the Auction?*
- ii. How did you become aware of the involvement of members and/or representatives of the Jamaica Constabulary Force in the Auction?*
- iii. Are you aware of the names of the members and/or representatives of the Jamaica Constabulary Force who were in attendance at the Auction? If yes, please provide the names of the members and/or representatives of the Jamaica Constabulary Force who were present.*
- iv. Are you aware of any conversations or interactions between any officers and/or officials of the Jamaica Customs Department and members and/or representatives of the Jamaica Constabulary Force who were in attendance at the Auction? If yes, please provide:*
  - a) The names of the Customs representative(s) and the Jamaica Constabulary Force representative(s) who were involved in such an interaction/conversation.*

b) *Are you aware of the details of the conversation(s)/interactions? If yes provide full particulars of same.*”<sup>30</sup>

Mrs. Myrna Thompson, in her sworn response to the OCG’s Requisition, which was dated 2009 August 11, indicated that:

*“Yes, I am aware.*

- i. *I became aware of the involvement of members of the Jamaica Constabulary Force (JCF) on June 30, 2009.*
- ii. *I became aware when fellow Customs Officer Mr. Paul McLaren told me that the bidder and others were among a group of police officers who had viewed the vehicles on the Saturday before the sale.*
- iii. *Yes, I am aware. The names are:*
  - 15071 - Name not published by the OCG*
  - 15067 - Name not published by the OCG*
  - 15065 - Name not published by the OCG*
  - 15073 - Name not published by the OCG*
  - Name not published by the OCG – Transport Manager JCF*
- iv. *Yes, I am aware.*
  - i. *I, Myrna Thompson, Manager Queens Warehouse 230. Police Personnel: (Names not published by the OCG).*

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<sup>30</sup> OCG’s Requisitions which were dated 2009 July 31, to Mr. Daemion Rose, Mrs. Myrna Thompson, Mr. Paul McLaren, Mrs. Lorna Rhoden and Ms. Cordelia Brown.

ii. *The details of the conversation related to the payment of the 10% deposit. None of the JCF personnel indicated that they knew about the requirements. They informed me that they were just told to come and bid and if I was not briefed that they were coming. They mentioned that The Minister had instructed them to come. I informed them that as a Customs Officer I could only act on the written instruction of the Minister of Finance. The bottom line however, was the 10% deposit. They again informed me that they did not have it, so they would leave and not continue in the Sale. They left. This was 30<sup>th</sup> of June 2009.*

*On July 1, 2009, after the sale was disrupted there was another meeting. The Customs personnel present were the Collector of Customs, Mrs. Lorna Rhoden, the Assistant Commissioner of Customs Major Stanley Ford, Mrs. Anneke Rousseau, Director of Public Relations, Auditors, Mrs. Carol Ramsay and Mrs. Paula Dewar-Warren and, myself Myrna Thompson Manager, Queen Warehouse 230. Personnel from the Police were: (Names not published by the OCG).*

***The conversation then centred on the remainder of the Sale. The Collector informed the Police personnel that it was a Public Auction and they should allow other bidders to win some of the bids. The Policemen agreed to only bid on seven (7) of the remaining vehicles.***<sup>31</sup>*(OCG Emphasis)*

Ms. Cordelia Brown, in her sworn response to the OCG's Requisition, which was dated 2009 August 12, indicated that:

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<sup>31</sup> Letter which was dated 2009 August 11, from Mrs. Myrna Thompson, in her response to the OCG's Requisition.

*“Yes, I am aware of the involvement of members and/or representatives of the Jamaica Constabulary Force at the Public Auction which was held at the Queens Warehouse, on June 30, 2009 and July 1, 2009.*

- i. I was advised during the morning session of the sale held on June 30, 2009.*
- ii. The Collector of Customs, Mrs. Lorna Rhoden, advised me that representatives of the Jamaica Constabulary Force were participating in the Auction.*
- iii. Subsequently, I was advised that the following persons were in attendance at the auction purportedly on behalf of the Jamaica Constabulary Force:*

*Name not published by the OCG .....Registered Bidder*

*Name not published by the OCG .....Registered Bidder*

*Name not published by the OCG .....Registered Bidder*

*Name not published by the OCG .....Registered Bidder*

*Name not published by the OCG .....Transport Manager*

- iv. Yes, I was subsequently informed of conversations and/or interactions between officers and/or officials of the Jamaica Customs Department and members and/or representatives of the Jamaica Constabulary Force who were in attendance at the Auction.*

- 1. Ms. Mryna Thompson, Manager, Jamaica Customs Department*

*Name not published by the OCG*

*Name not published by the OCG*

*Name not published by the OCG*

*Name not published by the OCG*

*Name not published by the OCG*

2. *No, I am not aware of the details of the conversation(s)/interaction.”*<sup>32</sup>

Mr. Paul McLaren, in his sworn response to the OCG’s Requisition, which was dated 2009 August 10, indicated that:

*“Yes, I am aware of the involvement of members of the Jamaica Constabulary Force at the Public Auction held on June 30 and July 1, 2009 at the Queens Warehouse.*

*i. I became aware of the members of the Jamaica Constabulary Force at the auction when I saw them in the audience on the morning of June 30, 2009. I remembered seeing two of the persons on Saturday 27<sup>th</sup> June, 2009 at the car parks. I was instructed on Friday June 26, 2009 by my Manager Mrs. Myrna Thompson, to call and make arrangements with DCP Ellington of the Jamaica Constabulary Force to take him and a team to view the motor vehicles (for auction) on Saturday June 27, 2009*

*When I went to meet DCP Ellington, two (2) of the men that I saw on Saturday June 27, 2009, were present at auction on June 30, 2009. (DCP Ellington was not at the auction).*

*ii. I became aware of the involvement of members of the Jamaica Constabulary Force in the auction when I saw them bidding for motor vehicles being auctioned.*

*iii. No, I have no knowledge of the names of the Jamaica Constabulary Force members that were present at the auction.*

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<sup>32</sup> Letter which was dated 2009 August 12, from Ms. Cordelia Brown, in response to the OCG’s Requisition.

iv. *No, I have no knowledge of any conversation or interaction between officials of the Jamaica Customs Department and the Jamaica Constabulary Force.*<sup>33</sup>

Mrs. Lorna Rhoden, in her sworn response to the OCG's Requisition, which was dated 2009 August 12, indicated that:

"Yes.

- i *On June 30, 2009, during the morning session of the Auction.*
- ii *I was informed by the Manager of the Queen's Warehouse, the Auctioneer, Mrs. Myrna Thompson.*
- iii *Yes, I was subsequently made aware of the representatives of the Jamaica Constabulary Force who were in attendance at the Auction.*

*The names are:*

*Name not published by the OCG*

*Name not published by the OCG*

*Name not published by the OCG*

*Name not published by the OCG*

*Name not published by the OCG/did not participate in the Auction.*

- iv *Yes. I was informed by the Manager of the Queen's Warehouse, Mrs. Myrna Thompson.*

*(a) The name of the Customs representative is Mrs. Myrna Thompson, Manager of the Queen's Warehouse. The names of the Jamaica*

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<sup>33</sup> Letter which was dated 2009 August 10, from Mr. Paul McLaren, in response to the OCG's Requisition.

*Constabulary Force representatives are: (Names not published by the OCG).*

*(b) No, I am not aware of the details.”<sup>34</sup>*

In responding to the question about the JCF’s involvement in the referenced JCD Auction, Mrs. Rhoden also submitted copies of several emails regarding the involvement of the Ministry of National Security in the referenced Auction.

The documentary evidence which was provided to the OCG has revealed that on 2009 June 26, at “01:38 PM” Ms. Esther Williams of the JCF, sent an email to Mrs. Patricka Wigan-Chambers, Director, Executive Services, JCF, under the caption “*Motor Vehicle Auction List*”, the email stated “*Please see attached...*”<sup>35</sup>

On 2009 June 26, at “14:25:57”, the said attachment was sent in an email from Mrs. Patricka Wigan-Chambers to Minister Daryl Vaz. The email stated that:

*“As per your request of Commissioner Walker, please see attached the motor vehicle auction list. The auction is scheduled for Tuesday June 30th and Wednesday July 1 st.*

*I will send you the legislation that governs auction sales...”<sup>36</sup>*

It is instructive to note that Minister Daryl Vaz responded to the referenced email at “02:35 PM” on 2009 June 26, and stated “*Thanks. I need to know how legally the police can get the vehicles the [sic] choose. DV*”<sup>37</sup>

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<sup>34</sup> Letter which was dated 2009 August 12, from Mrs. Lorna Rhoden, in her sworn response to the OCG’s Requisition.

<sup>35</sup> Email which was dated 2009 June 26, at “01:38 PM”, from Ms. Esther Williams to Mrs. Patricka Wigan-Chambers

<sup>36</sup> Email which was dated 2009 June 26, at “14:25:57”, from Mrs. Patricka Wigan-Chambers to Minister Daryl Vaz.

<sup>37</sup> Email which was dated 2009 June 26, Minister Vaz at “02:35 PM” from Minister Daryl Vaz to Mrs. Patricka Wigan-Chambers.

On 2009 June 26, at “16:57:50PM”, an email was sent to Minister Vaz, from Mrs. Patricia Wigan-Chambers, which indicated that:

*‘Please be advised that all goods entered for the auction at the Queen’s Warehouse must be offered for sale, on two (2) auction sales prior to disposal by the Government or by Private Treaty.*

*All Vehicles advertised in the newspaper and the Jamaica Gazette must be offered for sale at the Public Auction unless cleared by the importers prior to the day of the auction.*

*We will consider any request if and when a Private Treaty is planned.*

*Under section 122 of the Customs Act the proceeds from the auction sale of any good shall be applied to payment of the duties, expenses of the sale, and of any rent and charges due to the government, then in discharge of any lien for freight and other charges, and the surplus, if any, shall be paid to the owner of such goods on his application for the same within two years from the time of the sale and otherwise shall be paid into the Consolidated Fund.”<sup>38</sup>*

On 2009 July 28, at “12:25 PM”, Minister Vaz sent an email to Mr. Douglas Leys, the Solicitor General, indicating that “*We spoke. Need response as auction is Tuesday.*”<sup>39</sup>

In response to Minister Vaz’s email, Mr. Douglas Leys’ sent an email, at “01:41 PM” on 2009 June 28, indicating that “*I will ask Ms. Cheryl Lewis to look at this matter as I am in the Privy Council tomorrow morning and cannot do anything from there.*”<sup>40</sup>

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<sup>38</sup> Email which was dated 2009 June 26 at “16:57:50PM” which was sent to Minister Vaz, from Mrs. Patricia Wigan-Chambers.

<sup>39</sup> Email which was dated 2009 July 28, at “12:25 PM” from Minister Vaz to Mr. Douglas Leys, the Solicitor General

<sup>40</sup> Email which was dated 2009 July 28, at “12:25 PM” from Mr. Douglas Leys, the Solicitor General to Minister Vaz.



Mrs. Rhoden also submitted to the OCG, a letter which was dated 2009 June 29, from the Attorney General's Chambers to Minister Vaz regarding the "*Motor Vehicle Auction List*". The referenced letter, which was dated 2009 June 29, was signed by Ms. Cheryl Lewis, Director, Commercial Affairs Division. This letter appears to be a copy of a letter which was sent from Ms. Cheryl Lewis to Minister Vaz in an email which was dated 2009 June 29, at 12:58:07 PM. The email indicated that "*Further to email below, please see attached a copy of my opinion which will be dispatched to your office shortly.*"<sup>41</sup>

The letter, which was dated 2009 June 29, from the Attorney General's Chambers read as follows:

*"Please refer to your email on June 28, 2009 to the Solicitor General in which you sought advice regarding how the motor vehicles scheduled to be auctioned by the Customs Department can be made available to the Jamaica Constabulary Force.*

*Our advice is as follows:*

- 1. Section 14 of the Customs Act requires the owner of imported goods to pay the relevant customs duties in order for the goods to be released for use in the Island.*
- 2. Section 113 of the Customs Act provides that the Commissioner of Customs has the power at the owner's expense to do all such reasonable acts that are deemed necessary for the proper custody and preservation of such goods, and there shall be a lien on the said goods for expenses so incurred. Section 114 of the Customs Act provides that the importer shall pay the expenses incurred at such times and in such manner as the Commissioner of Customs directs. If such expenses are not paid, the goods may be sold or otherwise dealt with and any proceeds applied as if they were goods which might be sold or otherwise dealt with under the provisions of section 122.*

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<sup>41</sup> An email from Mrs. Cheryl Lewis to Minister Daryl Vaz which was dated 2009 June 29 at 12:58:07 PM.

3. Where there is a failure to pay duties, charges and expenses incurred, though the ownership of the goods remains with the owner, the Customs Act creates a statutory lien with a power of sale of the goods to recoup the monies owing, without the consent of the owner or a court. The law provides a specific procedure that must be strictly adhered to and that any money collected from the sale of the warehoused goods in excess of the duties, charges and expenses is to be for the account of the owner on an application made by him within two years from the date of the sale. (OCG Emphasis)
4. Thus Section 122 of the Customs Act specifically provides for the disposal of warehoused goods for which there has been a failure by the owner to pay the relevant duties, charges and expenses. Section 122 reads,

“122. If any warehouse goods shall not be duly entered for use within the Island, or as aircraft’s or ships’ stores, or exported or re-warehoused, and the duties ascertained to be due on the deficiencies as aforesaid and any charges and expenses shall not be paid at the expiration of one year from the previous entry and warehousing thereof, or within such further period as shall be directed as aforesaid, the same shall, after one month’s notice by advertisement in the Gazette and a daily newspaper, if any, published in Kingston, with all convenient speed be sold by public auction, and the proceeds thereof shall be applied to payment of the duties, expenses of the sale, and of any rent and charges due to the Government, then in discharge of any lien for freight and other charges, and the surplus, if any, shall be paid to the owner of such goods on his application for the same within two years from the time of sale, but otherwise shall be paid into the Consolidated Fund; and if such goods, on being so offered for sale, cannot be sold for a sum to pay all duties, expenses, rent and charges due to the Government, then the same may be destroyed or otherwise disposed of as the Minister may direct; and the duties due upon a deficiency in any warehoused goods not allowed by law be forthwith paid by the warehouse – keeper.” (Emphasis Added)

5. *Section 122 of the Customs Act mandates that after the expiration of one year from the date of first entry of the warehoused goods or such further period as may be authorized, the goods shall be sold by way of a public auction and the proceeds applied in the order as specified in the section. The public auction should be advertised in the Gazette and in a daily newspaper at least one month prior to the date thereof.*
6. *From Section 122 of the Customs Act, it can be gleaned that the legislators intended that during the public auction, an offer for the goods should only be accepted in instances where the sum offered is at least sufficient to cover the duties and the additional charges and expenses. Thus, the section provides that if the goods after being offered for sale in a public auction cannot be sold for a sum sufficient to pay all duties, expenses, rent and charges due then the goods may be destroyed or the Minister may direct how they should be disposed of. So for example, the Minister may direct that a sum less than the total of duties, expenses, rent and charges owing be accepted.”*

The referenced letter from the Attorney General’s Chambers also offered the following recommendation:

***“Recommendation***

*Based on the foregoing, the Government could seek to acquire the motor vehicles for the Jamaica Constabulary Force in two ways. Firstly, it could decide to participate in the auction and offer a sum that is sufficient to satisfy the duties, charges and other expenses owing. Or secondly, it could await the outcome of the public auction and then the responsible Minister could direct that the remaining motor vehicles be disposed of to the Jamaica Constabulary Force under such terms and conditions as he thinks fit.”<sup>42</sup>*

In order to ascertain more information regarding the involvement of the JCF in the Auction, the OCG issued a Requisition, which was dated 2009 September 28, to Major (Retired) Richard Reese, the Permanent Secretary, Ministry of National Security (MNS).

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<sup>42</sup> The letter which was dated 2009 June 29 from the Attorney General’s Chambers to Minister Daryl Vaz.

In the referenced Requisition, Major Reese was asked the following questions:

1. *“Are you aware of the involvement of members and/or representatives of the Jamaica Constabulary Force at the Public Auctions which were held at the Queens Warehouse, on June 30, 2009 and July 1, 2009, respectively? If yes, please answer the following questions:*
  - i. *Under whose authority were they instructed to participate in the referenced Auctions?*
  - ii. *Are you aware of the names of the members and/or representatives of the Jamaica Constabulary Force who were in attendance at the Auctions? If yes, please provide the names and titles of the members and/or representatives of the Jamaica Constabulary Force who were present at the Auctions.*
2. *Did any member(s) and/or representative(s) of the JCF request advice from the Jamaica Customs Department the JCD regarding how and/or if they would be able to participate in the Auctions? If yes, please provide:*
  - i. *The name(s) of the individual(s) who made these enquiries;*
  - ii. *Provide the date(s) on which the enquires were made;*
  - iii. *Please detail the particulars of the enquiry;*
  - iv. *What advice was given to the member(s) and/or representative(s) of the JCF regarding their participation in the Auction?”<sup>43</sup>*

In his sworn response to the OCG’s Requisition, which was dated 2009 October 5, Major Reese indicated, *inter alia*, that:

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<sup>43</sup> OCG Requisition to Major (Retired) Richard Reese which was dated 2009 September 28

1. “(i) *I am not aware under whose authority did members of the Jamaica Constabulary Force (JCF) participate in the referenced auctions. This matter came to my attention when I became aware of reports in the electronic and print media that the referenced auctions were to be the subject of an investigation by the Office of the Contractor General.*

*I subsequently contacted the Commissioner of Police to determine if he had knowledge of the JCF’s participation in the auction and he advised me that he did not.*

- (ii) *I am not aware of the names of the JCF personnel or their representatives who were in attendance at the auctions.”*

2. *I am not aware whether any member(s) and/or representative(s) of the JCF requested advice from the Jamaica Customs Department (JCD) regarding how and/or if they would be able to participate in the Auctions.*
3. *I received a complaint from ...regarding a 2003 grey Toyota Yaris Hatchback motor car... which was imported... and which had been auctioned by the JCD to the JCF. Contact was made with JCD and two lists of the vehicles which were auctioned to the JCF, provided...”*
4. *On obtaining the list I discovered that...vehicles appeared on the list no. 2, which comprised of five (5) vehicles.*
5. *Following discussions with the JCD, it was recommended that all the vehicles on list No.2 be re-listed for public auction...”<sup>44</sup>*

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<sup>44</sup> Letter which was dated 2009 October 5, from Major Richard Reese in response to the OCG’s Requisition,

In a Follow-Up Requisition from the OCG, which was dated 2009 September 28, that was addressed to Mr. Danville Walker, Commissioner of Customs, he was asked the following questions:

*“Were you aware that a member(s) and/or a representative(s) of the Jamaica Constabulary Force (JCF) were interested in participating in the Public Auctions which were held at the Queens Warehouse on June 30, 2009 and July 1, 2009, respectively? If yes, please provide answers to the following questions:*

- (i) When did you become aware that member(s) and/or representative(s) of the JCF were interested in participating in the referenced Auctions;*
- (ii) How did you become aware that member(s) and/or representative(s) of the JCF were interested in participating in the referenced Auctions;*
- (iii) Did any member(s) and/or representative(s) of the JCF request advice from you and/or any representative of the JCD regarding how and/or if they would be able to participate in the Auctions? If yes, please provide:
  - a. The name(s) of the individual(s) who made these enquiries;*
  - b. Provide the date(s) on which the enquiries were made.*
  - c. Please detail the particulars of the enquiry;*
  - d. What advice was given to the member(s) and/or representative(s) of the JCF regarding their participation in the Auction?”<sup>45</sup>**

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<sup>45</sup> OCG Follow-Up Requisition, which was dated 2009 September 28, to Mr. Danville Walker, Commissioner of Customs.

In his sworn response to the OCG's Requisition, which was dated 2009 October 8, Mr. Walker stated:

"Yes.

- i. *I am unable to recall dates, but it was within 30 days before the auction.*
- ii. *A phone call enquiring when the auction would be held and the procedures.*
- iii. *Yes.*
  - a. *DCP Ellington*
  - b. *Unable to recall the dates on which the enquiries were made.*
  - c. *He wanted to know the process by which the police could obtain motor vehicles from the auction.*
  - d. *They should register and bid with the general public."*<sup>46</sup>

The OCG, in its Follow-Up Requisition, which was dated 2009 September 28, also asked Mr. Danville Walker the following questions:

*"Prior to the Public Auctions, which were held at the Queens Warehouse, on June 30, 2009 and July 1, 2009, respectively, were you aware that members and/or representatives of the JCF were going to be participating in the referenced Auctions? If yes, please answers to the following questions:*

- i. *Were the JCD representatives who were slated to conduct the Auction officially informed that members and/or representatives of the JCF would be participating in the Auction? If yes, how, when and by whom were they informed, and provide the date(s) on which they were informed;*

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<sup>46</sup> Letter which was dated 2009 October 8, from Mr. Danville Walker in response to the OCG's Requisition.

- ii. *Were the JCD representatives informed that the JCF gave the JCD a guarantee that the mandatory 10% deposit which was required would be paid and that members and/or representatives of the JCF would not be required to make a deposit on bids?*
- iii. *If your answer to Question 4(ii) above is yes, please provide the name(s) of the Jamaica Customs Representative(s) who were informed;*
- iv. *If your answer to Question 4(ii) above is no, please state why they were not informed.”<sup>47</sup>*

In his sworn response to the OCG’s Requisition, which was dated 2009 October 8, Mr. Walker stated as follows:

“Yes

- i. *No*
- ii. *No*
- iii. *N/A*
- iv. *So as not to interfere with the market process”<sup>48</sup>*

Based upon the foregoing, Major (Retired) Richard Reese has asserted that he knew very little about the involvement of the police in the JCD’s Auction of 2009 June 30 and 2009 July 1, and further that he only became aware of the involvement of representatives of the JCF after hearing media reports that the auctions were the subject of an OCG investigation.

However, an email which was submitted to the OCG, by Mrs. Lorna Rhoden, which was dated 2009 June 29, and which was sent from Cheryl Gordon –Leach, on behalf of Minister Daryl Vaz, was forwarded to several persons and email addresses, inclusive of ‘[richard.reese@mns.gov.jm](mailto:richard.reese@mns.gov.jm)’,

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<sup>47</sup>OCG Follow-Up Requisition, which was dated 2009 September 28, to Mr. Danville Walker Commissioner of Customs.

<sup>48</sup> Letter which was dated 2009 October 8, from Mr. Danville Walker in response to the OCG’s Requisition.



under the caption “*Motor Vehicle List.*” The referenced email stated “*Please proceed with first recommendation*”

This is an indication that, as at 2009 June 29, Major (Retired) Richard Reese was sent an email regarding the JCD Auction. Based upon the email thread, the email appears to have been making reference to the first of the two recommendations which were given by the Attorney General’s Department in a letter, which was dated 2009 June 29, to the Hon. Daryl Vaz, regarding the JCF’s participation in the Auction.

As was previously articulated, the recommendations from the Attorney General’s Chambers were that “...*the Government could seek to acquire the motor vehicles for the Jamaica Constabulary Force in two ways. Firstly, it could decide to participate in the auction and offer a sum that is sufficient to satisfy the duties, charges and other expenses owing. Or secondly, it could await the outcome of the public auction and then the responsible Minister could direct that the remaining motor vehicles be disposed of to the Jamaica Constabulary Force under such terms and conditions as he thinks fit.*”<sup>49</sup>

Major Richard Reese’s response to the OCG’s Requisition, which indicated that he had no knowledge to the JCF’s participation in the Auction, also raised several concerns for the OCG particularly due to the fact that Major Richard Reese was then the Permanent Secretary in the Ministry of National Security; yet he had no knowledge regarding the acquisition of the vehicles by the representatives of the JCF.

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<sup>49</sup> Letter from the Attorney General’s Department in a letter which was dated 2009 June 29, to Hon. Daryl Vaz.

## *The Involvement of Minister Daryl Vaz in the JCD Auction*

Based upon the information which was contained in the previously mentioned emails, between Minister Daryl Vaz and JCD representatives, as well as the letter from the Attorney General's Chambers, regarding the Auction, the OCG found that the Hon. Daryl Vaz, who is the Minister with responsibility for Information, was also involved in the Auction, particularly at the pre-auction stage.

Consequently, the OCG sent a Requisition, which was dated 2009 September 28, to Minister Vaz requesting information about his involvement in the Auction. In the referenced Requisition, Minister Vaz was asked the following questions:

*“Were you, in any way, involved in any aspect of the Jamaica Customs Department’s (JCD) Public Auctions of abandoned motor vehicles, which were held at the Queens Warehouse, on June 30, 2009 and July 1, 2009, respectively? If yes please provide answers to the following questions:*

- i. Please provide an Executive Summary detailing:
  - a. The stage at which you became involved in the Auction Process; (for example, at the pre-auction stage, the post-auction stage or during the auctions)*
  - b. The date(s) on which you became involved in the Auction Process;*
  - c. Your reason(s) for becoming involved in the Auction Process;*
  - d. The nature of your involvement in the Auction Process;*
  - e. The result(s) of your involvement in the Auction Process.**
  
- ii. Please provide the name(s) and title(s) of the person(s) you interacted with regarding the referenced Auctions, and provide details of each interaction;*

- iii. *Please provide documentary evidence, where possible, to substantiate the claims and assertions which you have made in your responses to Question#1(i) and (ii) above.*<sup>50</sup>

In his sworn response to the OCG's Requisition, which was dated 2009 October 9, Minister Vaz stated as follows:

*“(i)Yes*

- a) I became involved in the pre-auction stage when I became aware that a public auction was to be held.*
- b) I became involved between June 23- 29, 2009*
- c) As a result of the urgent request for the police to get additional vehicles in their fleet.*
- d) To determine if the police could participate in the auction process.*
- e) The police were able to be involved in the auction.*

*(ii) - ACP Owen Ellington-Jamaica Constabulary Force*

*- Commissioner Danville Walker-Jamaica Customs Department*

*- Mrs. Patrica Wiggan-Chambers-Director-Executive Services, Jamaica Customs Department”<sup>51</sup>*

In his sworn response to the OCG, Minister Daryl Vaz also submitted copies of the same emails which were submitted to the OCG by Mrs. Rhoden.

The OCG, in its Requisition which was dated 2009 September 28, also asked Minister Vaz the following questions:

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<sup>50</sup> OCG's Requisition, which was dated 2009 September 28, to Minister Daryl Vaz.

<sup>51</sup> Letter which was dated 2009 October 9, from Minister Daryl Vaz, in response to the OCG's Requisition.

*“Did you, in any way, intervene in and/or give instructions in regard to the Public Auctions which were held on June 30, 2009 and July 1, 2009, respectively? If yes, please provide:*

- i. Details of the nature of your intervention(s) and/or the instruction(s) which was/were given by you;*
- ii. Your reason(s) for giving the instruction(s) and/or intervening in the process;*
- iii. The authority under which the instruction(s) was/were given and/or the intervention(s) was/were made;*
- iv. The name(s) and title(s) of the person(s) to whom the instruction(s) was/were given;*
- v. The date(s) on which the intervention(s) and/or instruction(s) was/were given; and*
- vi. The ensuing results of such intervention(s) and/or the instruction(s) which was/were given.”<sup>52</sup>*

In his sworn response to the OCG’s Requisition, which was dated 2009 October 9, Minister Vaz indicated that:

*“Yes*

- (i) I sought the advice of the Attorney General’s Department and communicated it to the Jamaica Customs Department and the Police.*
- (ii) Urgency of getting vehicles for the Police Department*
- (iii) Based on the Attorney General Department’s advise [sic] which I sought and passed on to the Jamaica Customs Department and the Police*
- (iv) No instructions were given. The advice of the Attorney General’s Department was forwarded.*
- (v) June 28 and 29 and subsequent dates.”<sup>53</sup>*

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<sup>52</sup> OCG’s Requisition, which was dated 2009 September 28, to Minister Daryl Vaz.

<sup>53</sup> Letter which was dated 2009 October 9, from Minister Daryl Vaz in response to the OCG’s Requisition.

The OCG, in its written requisition, which was dated 2009 September 28, also asked Minister Vaz the following questions:

*“Are you aware of the involvement of members and/or representatives of the Jamaica Constabulary Force (JCF) at the Public Auctions which were held at the Queens Warehouse, on June 30, 2009 and July 1, 2009, respectively? If yes, please provide answers to the following questions:*

- i. When did you become aware of the involvement of members and/or representatives of the JCF in the Auctions?*
- ii. How did you become aware of the involvement of members and/or representatives of the JCF in the Auctions?*
- iii. Are you aware of the name(s) and title(s) of the member(s) and/or representative(s) of the JCF who were in attendance at the Auctions? If yes, please provide the name(s) and titles of the member(s) and/or representative(s) of the JCF who was/were present.”<sup>54</sup>*

In his sworn response to the OCG’s Requisition, which was dated 2009 October 9, Minister Vaz stated:

“Yes

- (i) After receiving the Attorney General’s advice and the subsequent request for the Police to participate.*
- (ii) Based on the Attorney General’s advice I was made aware that the police would participate in the auction and subsequently confirmed this when I received a copy of the list identifying vehicles on which the JCF had made successful bids.*
- (iii) No”<sup>55</sup>*

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<sup>54</sup> OCG’s Requisition, which was dated 2009 September 28, to Minister Daryl Vaz.

<sup>55</sup> Letter which was dated 2009 October 9, from Minister Daryl Vaz in response to the OCG’s Requisition.

Based upon the foregoing, Minister Vaz indicated that he became involved in the JCD Auction during the pre-auction stage. Further, Minister Vaz indicated that this was due to an urgent request from the JCF to get additional vehicles; therefore, he requested advice from the Attorney General's Department as to how these vehicles could be acquired by the JCF.

Minister Vaz also indicated that he did not intervene in the Auction, and that he only forwarded the Attorney General's advice to the JCF, whilst indicating that he had interacted with Mr. Owen Ellington, the then Deputy Commissioner of Police, Mr. Danville Walker, Commissioner of Customs and Mrs. Patricka Wiggan-Chambers, Director, Executive Services, JCD, regarding the Auction.

***Former, Acting Deputy Commissioner of Police, Mr. Owen Ellington's Account of his Involvement in the JCD Auction***

The OCG issued a formal Requisition, which was dated 2009 October 13, to Mr. Owen Ellington, the then Acting Deputy Commissioner of Police, regarding the JCF's involvement in the Auction. The decision to requisition Mr. Ellington was taken after Mr. Paul McLaren, Customs Officer, Commissioner Danville Walker and Minister Daryl Vaz indicated that they had had communication with him regarding the Auction.

In the OCG's Requisition that was addressed to Mr. Ellington, which was dated 2009 October 13, the OCG asked the following questions:

*"Were you, in any way, involved in any aspect of the Jamaica Customs Department's (JCD) Public Auctions of abandoned motor vehicles, which were held at the Queens Warehouse, on June 30, 2009 and July 1, 2009, respectively? If yes please provide answers to the following questions:*

- i. Please provide an Executive Summary detailing:
  - a. The stage at which you became involved in the Auction Process; (for example, at the pre-auction stage, the post-auction stage or during the auctions)*
  - b. The date(s) on which you became involved in the Auction Process;*
  - c. Your reason(s) for becoming involved in the Auction Process;*
  - d. The nature of your involvement in the Auction Process;*
  - e. The result(s) of your involvement in the Auction Process.**
  
- ii. Please provide the name(s) and title(s) of the person(s) you interacted with regarding the referenced Auctions, and provide details of each interaction;*
  
- iii. Please provide documentary evidence, where possible, to substantiate the claims and assertions which you have made in your responses to Question#1(i) and (ii)*

*above.*”<sup>56</sup>

In his sworn response to the OCG’s Requisition, which was dated 2009 October 23, Mr. Ellington indicated that:

*“I was not in any way involved in any aspect of the Jamaica Customs Departments (JCD) Public Auctions of abandoned motor vehicles, which were held at the Queens Warehouse, on June 30, 2009 and July 1, 2009.”*<sup>57</sup>

Additionally, Mr. Ellington was also asked *“Are you aware of the involvement of members and/or representatives of the Jamaica Constabulary Force (JCF) at the Public Auctions which were held at the Queens Warehouse, on June 30, 2009 and July 1, 2009, respectively? If yes, please provide answers to the following questions:*

- i. When did you become aware of the involvement of members and/or representatives of the JCF in the Auctions?*
- ii. How did you become aware of the involvement of members and/or representatives of the JCF in the Auctions?*
- iii. Are you aware of the name(s) and title(s) of the member(s) and/or representative(s) of the JCF who were in attendance at the Auctions? If yes, please provide the name(s) and titles of the member(s) and/or representative(s) of the JCF who was/were present.”*<sup>58</sup>

In his sworn response to the OCG’s Requisition, which was dated 2009 October 23, Mr. Ellington stated:

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<sup>56</sup> OCG’s Requisition which was dated 2009 October 13, to DCP Ellington.

<sup>57</sup> Letter which was dated 2009 October 23, from DCP Ellington, in response to the OCG’s Requisition.

<sup>58</sup> OCG’s Requisition which was dated 2009 October 13, to DCP Ellington.



**“Yes**

- i. I become [sic] aware of their involvement on the days of the auction.***
- ii. The Transport Manager for the JCF Mr. Errol Reid spoke to me.***
- iii. Not all. Just Mr. Errol Reid mentioned in 1(ii) above”.***<sup>59</sup>

Mr. Ellington was also asked, by the OCG, in its Requisition, “*Did you, in any way, intervene in and/or give instructions in regard to the Public Auctions which were held on June 30, 2009 and July 1, 2009, respectively? If yes, please provide:*

- i. Details of the nature of your intervention(s) and/or the instruction(s) which was/were given by you;*
- ii. Your reason(s) for giving the instruction(s) and/or intervening in the process;*
- iii. The authority under which the instruction(s) was/were given and/or the intervention(s) was/were made;*
- iv. The name(s) and title(s) of the person(s) to whom the instruction(s) was/were given;*
- v. The date(s) on which the intervention(s) and/or instruction(s) was/were given; and*
- vi. The ensuing results of such intervention(s) and/or the instruction(s) which was/were given.”*<sup>60</sup>

In his sworn response to the OCG’s Requisition, which was dated 2009 October 23, Mr. Ellington indicated as follows:

**“Yes**

- i. Verbal communication with the Transport Manager advising him that the police could properly participate in the auction.***
- ii. I was advised by Minister Daryl Vaz that he had an opinion from the Attorney General which cleared the way for the Police to properly participate in the auction***
- iii. The Attorney General’s opinion***

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<sup>59</sup> Letter which was dated 2009 October 23, from DCP Ellington, in response to the OCG’s Requisition.

<sup>60</sup> OCG’s Requisition which was dated 2009 October 13, to DCP Ellington.

- iv. *The Transport Manager Mr. Errol Reid*
- v. *Some time during the week immediately prior to the auction*
- vi. *The Police participated in the auction and made successful bids on several vehicles*”<sup>61</sup>

Based upon the foregoing, the OCG has found that Mr. Ellington indicated that he became aware of the involvement of the JCF on the days of the Auction and that he “... *was not in any way involved in any aspect of the Jamaica Customs Departments (JCD) Public Auctions of abandoned motor vehicles, which were held at the Queens Warehouse, on June 30, 2009 and July 1, 2009.*”<sup>62</sup>

However, Mr. Ellington further indicated that he had communicated with “...*the Transport Manager advising him that the police could properly participate in the auction*” and that he “*was advised by Minister Daryl Vaz that he had an opinion from the Attorney General which cleared the way for the Police to properly participate in the auction.*”<sup>63</sup>

It is instructive to note that it was indicated by Mr. Paul McLaren, Customs Officer, in his response to the OCG’s Requisition, which was dated 2009 August 10 that “*I was instructed on Friday June 26, 2009 by my Manager Mrs. Myrna Thompson, to call and make arrangements with DCP Ellington of the Jamaica Constabulary Force to take him and a team to view the motor vehicles (for auction) on Saturday June 27, 2009*

*When I went to meet DCP Ellington, two (2) of the men that I saw on Saturday June 27, 2009, were present at auction on June 30, 2009. (DCP Ellington was not at the auction).*”<sup>64</sup>

It is instructive to note that Mr. Walker also indicated that DCP Ellington requested information regarding the Auction prior to the Auction, as in the OCG’s Follow-Up Requisition, which was

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<sup>61</sup> Letter which was dated 2009 October 23, from DCP. Ellington, in response to the OCG’s Requisition.

<sup>62</sup> Letter which was dated 2009 October 23, from DCP. Ellington, in response to the OCG’s Requisition.

<sup>63</sup> Letter which was dated 2009 October 23, from DCP. Ellington, in response to the OCG’s Requisition.

<sup>64</sup> Letter which was dated 2009 August 10 from Mr. Paul McLaren, in response to the OCG’s Requisition.

dated 2009 September 28, Mr. Walker was asked, *inter alia*, "... Did any member(s) and/or representative(s) of the JCF request advice from you and/or any representative of the JCD regarding how and/or if they would be able to participate in the Auctions? If yes, please provide:

- a) *The name(s) of the individual(s) who made these enquiries;*
- b) *Provide the date(s) on which the enquiries were made.*
- c) *Please detail the particulars of the enquiry;*
- d) *What advice was given to the member(s) and/or representative(s) of the JCF regarding their participation in the Auction*"<sup>65</sup>

Mr. Walker, in his sworn response to the OCG's Requisition, which was dated 2009 October 8, indicated, *inter alia*, as follows:

"Yes.

- a. *DCP Ellington*"<sup>66</sup>

Further, Mr. Walker, in his response to the OCG' Requisition, regarding the particulars of the query, inclusive of the date of the query and the nature of the advice which was given, indicated as follows:

- b) *"Unable to recall the dates on which the enquiries were made.*
- c) *He wanted to know the process by which the police could obtain motor vehicles from the auction.*
- d) *They should register and bid with the general public.*"<sup>67</sup>

The referenced information would indicate that Mr. Ellington had prior knowledge of the JCD Auction, and also had interactions with Minister Vaz, Mr. Errol Reid, the Transport Manager of the JCF and Mr. Danville Walker, regarding the Auction.

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<sup>65</sup> OCG Requisition to Mr. Danville Walker which was dated 2009 September 28

<sup>66</sup> Sworn Response from Mr. Danville Walker which was dated 2009 October 8.

<sup>67</sup> Sworn Response from Mr. Danville Walker which was dated 2009 October 8.

The OCG has, therefore, found that although DCP Ellington was not at the Auction, he was involved during the pre-auction stage. Further, DCP Ellington knew that the JCF representatives would have been involved in the Auction as he had requested information regarding the Auction prior to the Auction and made arrangements with the JCD to view the vehicles which were up for Auction.

### ***The Intervention which was made during the Auction Process***

The OCG, in its written Requisition, which was dated 2009 July 31, requested that Mrs. Rhoden, Ms. Cordelia Brown and Mrs. Myrna Thompson, amongst others, provide answers to the following questions:

*“Did you, in any way, intervene in and/or give instructions in regard to the Public Auction which was held on June 30, 2009 and July 1, 2009? If yes, please provide:*

- i. Details of the nature of your intervention and/or the instructions which were given by you;*
- ii. Your reason(s) for giving the instructions and/or intervening in the process;*
- iii. The authority under which the instructions were given and/or the intervention was made;*
- iv. The ensuing results of such intervention and/or the instructions which were given.”<sup>68</sup>*

Mrs. Lorna Rhoden, in her sworn response to the OCG’s Requisition, which was dated 2009 August 12, indicated that:

*“Yes.*

- i. During my visit to the Queen’s Warehouse, the Manager, Mrs. Myrna Thompson convened a meeting with the members of the Jamaica Constabulary Force. Also present, were two (2) Internal Auditors from Customs Mrs. Carol Ramsay and Mrs. Paula Warren, the Director Public Relations, Mrs. Anneke Rousseau and the Assistant Commissioner, Border Protection Unit Major Stanley Ford. I advised the*

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<sup>68</sup> OCG’s Requisitions which were dated 2009 July 31, to Mrs. Myrna Thompson, Mrs. Lorna Rhoden and Ms. Cordelia Brown.

*representatives of the Jamaica Constabulary Force “to allow” the regular bidders to get possession of some of the vehicles remained to be Auctioned which they agreed.*

*I gave instructions to the Manager of the Queens Warehouse, Mrs. Myrna Thompson and the Crier Mr. Damion Rose that the Sale be aborted for the afternoon on July 1, 2009 due to the conduct of the bidders.*

- ii. My reason for giving the “advise” was in an effort to allow the regular bidders to participate and win bids of their choice. Customs would also be able to continue the Auction, as the bidders I understood were very disgruntled and were adamant that they will ensure that the Sale does not continue.*
- iii. I intervened in my capacity as the Collector of Customs, Kingston ultimately responsible for the Queen’s Warehouse.*
- iv. This intervention/instructions resulted in the bidders on behalf of the Jamaica Constabulary Force deciding not to bid on all the remaining vehicles to be Auctioned.”<sup>69</sup>*

Ms. Cordelia Brown, in her sworn response to the OCG’s Requisition, which was dated 2009 August 12, indicated that:

*“Yes, I intervened in and/or gave certain instructions with regard to the above mentioned Auction.*

- i. Initially, I gave verbal instructions to the Collector of Customs, Mrs. Lorna Rhoden that the vehicles for which the Police were the successful bidders should not be re-listed in the afternoon session. Subsequently, I*

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<sup>69</sup> Letter which was dated 2009 August 12, from Mrs. Lorna Rhoden in response to the OCG’s Requisition.

issued, on behalf of the Commissioner of Customs, Mr. Danville Walker, written instructions on the matter...” (OCG Emphasis)

- ii. The said Commissioner of Customs issued the directive and I duly instructed the staff. (OCG Emphasis)
- iii. *The said Commissioner advised me that the Ministry of Finance and the Public Service and the Ministry of National Security would be undertaking the necessary payment arrangement.*
- iv. *The vehicles that were re-listed in the afternoon (prior to the instructions) were withdrawn from the sale.”<sup>70</sup>*

Mrs. Myrna Thompson, in her sworn response to the OCG’s Requisition, which was dated 2009 August 11, indicated that:

*“Yes, I gave instructions.*

- i. *In the afternoon session of June 30, 2009, I instructed the crier, Daemion Rose to recall the units previously won by the members of the Jamaica Constabulary Force. Also I instructed the bidders not to pay for a number of items that were previously sold to them in the afternoon session.*
- ii. *This was done because of the non payment of the required 10% deposit on vehicles which were sold in morning session of the Sale. In relation to the second instruction I so advised the bidders, because I was directed to do so.*
- iii. **I gave the instruction because I was instructed by Ms. Cordelia Brown, the Deputy Commissioner.** (OCG Emphasis)

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<sup>70</sup> Letter which was dated 2009 August 12, from Ms. Cordelia Brown, in response to the OCG’s Requisition.

- iv. *When I addressed the gathering and informed the bidders of the second instruction they (the bidders) reacted by becoming loud and disruptive.”<sup>71</sup>*

The OCG has therefore found that whilst the Auction was in process, directives which were contrary to the public and documented rules that govern the Auction, were being issued and implemented.

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<sup>71</sup> Letter which was dated 2009 August 11, from Mrs. Myrna Thompson, in response to the OCG's Requisition.



***Have the vehicles been paid for and registered by the JCF?***

In order to ascertain if the twenty five (25) vehicles which were reportedly won by the representatives of the JCF were actually in the possession of the JCF, a formal Requisition, which was dated 2009 October 13, was sent by the OCG to Mrs. Rosalee Brown, Acting Commissioner, Inland Revenue Department.

The OCG deemed it prudent to establish for a certainty, the legitimacy of the transaction insofar as it pertained to the involvement of representatives of the JCF, **particularly due to the fact that the JCF representatives were registered to bid in their capacity as private citizens.** As such, ascertaining the whereabouts and registration details of the vehicles which were reportedly won by the JCF representatives was of paramount importance. (OCG Emphasis)

The OCG's Requisition asked the following questions:

1. *“With reference to Table 1 overleaf, please provide particulars of the listed vehicles bearing serial numbers as detailed below:*
  - a. *The date(s) on which each of the listed vehicles were first registered in Jamaica;*
  - b. *Particulars of historical ownership/ownership transfer information;*
  - c. *Any other pertinent vehicle description and identification particulars for the each of the listed vehicles.*

*Please provide documentary evidence in support of your response.*

**TABLE 1**

<b>Number</b>	<b>Vehicle Description</b>	<b>Serial Number</b>
1	2008 Blue Toyota Hiace Window van	KDH223-0005122
2	2004 Green Toyota Hiace Window van	KDH200-0002525
3	2005 White Toyota Hiace Window van	KDH200-0015715
4	2005 Silver Honda Fit	GD1-2223813
5	2002 White Toyota Hiace	LH184-1015266
6	2004 Silver Nissan Caravan Window van	VWE25-060012
7	2007 Silver Suzuki Swift	ZC11S-186204
8	2006 Grey Subaru Forester	SG5-107898
9	2005 White Toyota Probox Wagon	NCP51-0098685
10	2006 Black Honda Fit	GD3-2007353
11	2005 White Toyota Probox Wagon	NCP51-0097233
12	2008 Grey Honda Fit	GD1-2344542
13	2005 Silver Toyota Noah	AZR60-0416662
14	2004 Red Honda CRV	RD4-1251128
15	2006 Grey Dodge Ram 1500 Pick-up	1D7HAN16S594168
16	2005 Blue & Silver Suzuki Grand Vitara	JS3TE62V054200372
17	2003 White Freightliner Box Body Truck	1FVABSAK03HK84976
18	2004 Black Ford F-350 Superduty F-350 Superduty Flat bed Pick-up Truck	1FDWF36L34ED89099
19	2004 Blue Honda Civic	2HGES16354H583160
20	2005 White Toyota Corolla	JTDBR32E170102135
21	2005 Silver Honda Accord	CL7-3101912
22	2005 Silver Honda Accord	CL8-1100437
23	2005 Red Toyota Corolla Fielder	ZZE122-0219790
24	2007 Blue Honda Civic Ferio	ES1-1604397
25	2007 Green Suzuki Swift	ZC71S-408530

2. *Are you aware of any additional information which you believe could prove useful to this Investigation or is there any further statement in regard to the Investigation which you are desirous of placing on record? If yes, please provide full particulars of same.”<sup>72</sup>*

Mrs. Rosalee Brown, in her sworn response to the OCG’s Requisition, which was dated 2009 October 23, indicated as follows:

1. *“An investigation has been carried out with respect to the table in your letter and there is currently no information on the Automated Motor Vehicle System (AMVS) for any of these vehicles.*
  - a. *We are unable to provide information relating to the registration of these vehicles as they are not on the AMVS.*
  - b. *These vehicles have not yet been registered in Jamaica and as such we are unable to provide historical ownership /ownership transfer information.*
  - c. *The vehicles are not on the AMVS and therefore we are unable to provide pertinent vehicle description and identification particulars for the listed vehicles.*
2. *Checks were also made on the manual documents that we have in our possession and we did not find any relating to the table presented.*

*Correspondence has been sent to the Customs Department and both departments have had dialogue to ensure that the correct procedure is followed to properly register auctioned vehicles.”<sup>73</sup>*

Based upon the information which was submitted by the Inland Revenue Department, the OCG found that up until 2009 October 23, the vehicles which were reportedly won by the representatives of the JCF were not yet registered in Jamaica and were definitely not registered in the name of the JCF or the Ministry of National Security.

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<sup>72</sup> OCG’s Requisition, which was dated 2009 October 13, to Mrs. Rosalee Brown, Acting Commissioner, Inland Revenue Department.

<sup>73</sup> Letter which was dated 2009 October 23, from Mrs. Rosalee Brown in response to the OCG’s Requisition.

Consequently, another Follow-Up Requisition, which was dated 2009 November 4, and which was addressed to Mr. Danville Walker, was sent by the OCG. In the referenced Requisition, the OCG asked the following questions:

*“In response to the OCG’s requisition which was dated July 2, 2009, you indicated in an Executive Summary, which was submitted under cover of a letter which was dated July 16, 2009, that “ the status of the Motor Vehicles sold at the end of the Auction is as follows: Police Officers were successful bidders for 25 Units...”. Reference is also made to a list of twenty five (25) vehicles which were won by the Police that was submitted by you under cover of the said letter.*

*Please provide responses to the following question:*

- i. *Have the vehicles which were won by the Police been paid for in full? If yes, please provide answers to the following questions:*
  - a) *When were these vehicles paid for?*
  - b) *How were they paid for?*
  - c) *Please indicate the name(s) of the individual(s) and/or entity(ies) who paid for the referenced vehicles.*

*Provide documentary evidence to support the responses which you have given above.*

2. *If your response to Question # 1 above is no, please account for and provide exact details of (a)the physical location of each of the twenty five (25) vehicles and (b) details regarding the ownership of same.*
3. *Are you aware of any additional information which you believe could prove useful to this Investigation or is there any further statement in regard to the Investigation which you are*

*desirous of placing on record? If yes, please provide full particulars of same.”<sup>74</sup>*

In his sworn response to the OCG’s Requisition, which was dated 2009 November 13, Mr. Walker indicated that:

1. *“No, they were not paid for in full. However, the duties and administrative cost were waived by the Ministry of Finance and Public Service.*
  - a) *The waiver letter was dated July 22, 2009 (See waiver attached)*
  - b) *N/A*
  - c) *N/A*
  
2.
  - a) *All 25 vehicles have been delivered to the Ministry of National Security*
  - b) *Certificates were issued for transfer of ownership to the Minister of National Security.*
  
3. *The Ministry of National Security will make the necessary arrangements for the payment of the outstanding amount. (See letter attached)”<sup>75</sup>*

The Waiver letter, which was dated 2009 July 22, from the Hon. Audley Shaw, Minister of Finance and the Public Service, to Mr. Danville Walker, and which was submitted by Mr. Walker, indicated as follows:

*“The import duty and administrative cost on the following vehicles have been waived as per the attached list.*

*The total duty and administrative cost waived is \$17,927,000.00 and \$143,557.00. Please ensure the quick release of these vehicles to the Jamaica Constabulary Force.”<sup>76</sup>*

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<sup>74</sup> OCG’s Follow-Up Requisition to Mr. Danville Walker, which was dated 2009 November 4

<sup>75</sup> Letter from Mr. Danville Walker, which was dated 2009 November 13, in Response to the OCG’s Requisition.

<sup>76</sup> Letter which was dated 2009 July 22, from Hon. Audley Shaw, to Mr. Danville Walker.

The other letter, to which Mr. Walker made reference, was from Major (Retired) Richard Reese to Mr. Walker, and was dated 2009 November 11. The letter indicated as follows:

*“Further to telephone discussions (Chambers/Reese) on November 10<sup>th</sup> and 11<sup>th</sup>, 2009 kindly submit the following documents:*

- 1. Ministry of Finance waiver letter*
- 2. Invoices for vehicles detailing cost breakdown structure*

*On receipt of your response, the Ministry of National Security will seek the necessary authorization and approval from the Ministry of Finance to purchase these second hand vehicles and disbursement of funds to effect payment.”<sup>77</sup>*

To confirm whether or not the vehicles were in the possession of the JCF and whether or not the bidders who represented the JCF were actually employed to the JCF, the OCG also issued a Follow-Up Requisition, which was dated 2009 October 13, to Major Richard Reese.

In the referenced Requisition, the OCG asked the following questions:

- 1. Are any of the following individuals employed to, or have any of the following individuals ever been employed to (a) the Ministry of National Security (MNS), (b) the Jamaica Constabulary Force (JCF) or (c) the Island Special Constabulary Force (ISCF)?*

- a) Name not published by the OCG;*
- b) Name not published by the OCG;*
- c) Name not published by the OCG;*
- d) Name not published by the OCG;*

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<sup>77</sup> Letter which was dated 2009 November 11 from Major Richard (retired) Reese to Mr. Danville Walker.

*If yes, please provide full particulars relating to:*

- a) The title(s) and/or rank(s)/capacity in which each of the named individual was/is employed to the MNS/JCF and/or ISCF;*
- b) The division/department in which each of the named individuals is/was employed, (for example JCF or ISCF etc.);*
- c) The physical address location at which each of the named individuals is/was stationed; and*
  - (i) The substantive post that each of the named individuals held as at the dates of the Jamaica Customs Department's (JCD) Public Auctions of motor vehicles, which were held at the Queens Warehouse, on June 30, 2009 and July 1.”<sup>78</sup>*

In the Follow-Up Requisition, which was dated 2009 October 13, the OCG also requested that Major Reese indicate whether or not the twenty five (25) vehicles which were reportedly won by the JCF representatives were in the possession of the JCF.

In his sworn response to the OCG's Requisition, which was dated 2009 November 16, Major Richard Reese confirmed that the named JCF representatives were employed to the JCF. He also confirmed that all of the twenty five (25) vehicles which were won by the police were in the possession of the JCF.

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<sup>78</sup> OCG Requisition to Major Richard Reese dated 2009 October 13

## CONCLUSIONS

Based upon the documents which have been reviewed, as well as the sworn testimonies which were received from the Concerned Citizen, representatives of the JCF, the JCD, the Ministry of National Security and Minister Daryl Vaz, the OCG has arrived at the following considered Conclusions:

1. The 2009 June 30 and 2009 July 1 Auction for Abandoned Motor Vehicles, which was conducted by the JCD, at the Queen's Warehouse in Kingston, ended abruptly after several bidders became restive.

The OCG has found and concluded that the abrupt end to the Auction occurred after vehicles which were originally won by representatives of the JCF and which were relisted by JCD Representatives, because of non-payment of the mandatory 10% deposit, were taken off the Auction list and were awarded to the original winners (the JCF representatives) despite the fact that they did not pay the mandatory deposits within the stipulated time.

2. The OCG also found that the JCD rules, which govern the auctioning of motor vehicles, stipulate that a minimum deposit of 10% should be paid by all successful bidders. Based upon the JCD's rules if a bidder fails to pay the required deposit, the vehicle(s) should be relisted and the bidders should be banned from subsequent auctions.

3. **The OCG has also found that the bidders who were representing the JCF were registered to participate in the Auction in their capacity as private bidders/citizens.**

Further, some of the JCD Officials who were present at the Auction were not aware that the JCF representatives would have been participating in the Auction, nor were they informed that a guarantee was in place for them. (OCG Emphasis)

Therefore, upon failing to pay the mandatory 10% deposit, the vehicles which were won by the JCF representatives were relisted in accordance with the JCD's guidelines.



Some of the relisted vehicles were later won by other bidders. However, these very relisted vehicles were later taken off the list during the afternoon session of the 2009 June 30 Auction.

4. The OCG has also found that the instructions to remove the relisted vehicles from the list was given by Ms. Cordelia Brown, Deputy Commissioner, Operations, on behalf of Mr. Danville Walker, Commissioner of Customs. Such instructions were reduced to writing in the form of a Memorandum.
5. The OCG also found that Minister Daryl Vaz was involved in the Auction process and that he had requested information from JCD representatives regarding the Auction. It is also the case that Minister Daryl Vaz requested information as to whether or not representatives of the JCF could participate in the Auction. Minister Daryl Vaz also requested the Auction list.

Further, it was also revealed that Minister Vaz also sought and received advice from the Attorney General's Department regarding the ability and appropriate means by which representatives of the JCF could participate in the Auction.

6. The OCG has found and concluded that the then Permanent Secretary in the Ministry of National Security, Major Richard Reese, indicated that he did not know about the JCF's involvement in the Auction prior to the days of the Auction on 2009 June 30 and July 1. Indeed, Major Reese declared, in his sworn statement to the OCG, that "*the matter came to my attention when I became aware of reports in the electronic and print media that the referenced auctions were to be the subject of an investigation by the Office of the Contractor General*". Despite this, however, the OCG has seen evidence that an email from Minister Vaz, which was dated 2009 June 29, and which was under the subject "*Motor Vehicle Auction list*", was also copied to Major Richard Reese.

In Major Reese's response to the OCG's Requisition, which was dated 2009 October 13, he indicated that all of the twenty five (25) vehicles which were won by the representatives of the JCF were in the possession of the JCF.

In a letter from Major Richard Reese, to Mr. Danville Walker, which was dated 2009 November 11, it was indicated that:

*“...the the Ministry of National Security will seek the necessary authorization and approval from the Ministry of Finance to purchase these second hand vehicles and disbursement of funds to effect payment.”*

7. The OCG also found that the former Deputy Commissioner of Police, Mr. Owen Ellington, was involved during the auction process at the pre-auction stage. It must be recalled that Mr. Paul McLaren indicated in his sworn response to the OCG that *“I was instructed on Friday June 26, 2009 by my Manager Mrs. Myrna Thompson, to call and make arrangements with DCP Ellington of the Jamaica Constabulary Force to take him and a team to view the motor vehicles (for auction) on Saturday June 27, 2009*

*When I went to meet DCP Ellington, two (2) of the men that I saw on Saturday June 27, 2009, were present at auction on June 30, 2009. (DCP Ellington was not at the auction).”*

It was also indicated by Minister Vaz that he interacted with Mr. Owen Ellington regarding the Auction. Mr. Walker also indicated that Mr. Ellington interacted with him regarding the Auction, as he requested information regarding the process by which the JCF could participate in the Auction.

Therefore, the OCG has concluded that Mr. Ellington had interactions with Mr. Vaz, Mr. McLaren and Mr. Walker regarding the JCD’s Auction.

However, in his sworn response to the OCG, Mr. Ellington indicated that:

1. *“I was not in any way involved in any aspect of the Jamaica Customs Department’s (JCD) Public Auctions of abandoned vehicles, which were held at the Queens warehouse, on June 30, 2009 and July 1, 2009.*

2. He became aware of the JCF's involvement in the Auction on the days of the Auction.
3. He advised Mr. Errol Reid, Transport Manager, JCF, that the Police could **properly** participate in the Auction.
4. He also indicated that he was advised by Minister Daryl Vaz that he had an opinion from the Attorney General which cleared the way for the police to **properly** participate in the Auction.

The compendium of facts, as listed above, indicates that Mr. Owen Ellington was in fact involved in aspects of the Auction despite his assertion that *"I was not in any way involved in any aspect of the Jamaica Customs Department's (JCD) Public Auctions of abandoned vehicles, which were held at the Queens warehouse, on June 30, 2009 and July 1, 2009."*

It must be noted that the OCG's Requisition to Mr. Owen Ellington specifically asked:

*"Were you, in any way, involved in any aspect of the Jamaica Customs Department's (JCD) Public Auctions of abandoned motor vehicles, which were held at the Queens Warehouse, on June 30, 2009 and July 1, 2009, respectively? If yes please provide answers to the following questions:*

- ii. *Please provide an Executive Summary detailing:*
  - a. **The stage at which you became involved in the Auction Process; (for example, at the pre-auction stage, the post-auction stage or during the auctions)"**

The OCG has, therefore, concluded that although Mr. Owen Ellington was not present on the actual days of the Auction, he was nevertheless involved in the JCF representatives' participation in the Auction and, further, he was aware of the fact that representatives of the JCF were going to participate in the Auction.

In point of fact, and based upon Mr. Owen Ellington's own sworn statement to the OCG, he was the person who advised the Transport Manager of the JCF that representatives of the JCF could **properly** participate in the Auction.

8. The OCG also found that, based upon the information which was received from the Inland Revenue Department, up until 2009 October 23, the twenty five (25) vehicles which were won by the representatives of the JCF were not yet registered in Jamaica nor were they registered with the JCF or the Ministry of National Security.

However, Mr. Walker, in his sworn response to the OCG's Requisition, which was dated 2009 November 13, indicated that the vehicles were in the possession of the JCF, but had not yet been paid for in full.

Further, Mr. Walker indicated that the duties and administrative cost for the referenced vehicles were waived by the Ministry of Finance and the Public Service and that Certificates were issued for transfer of owner ship to the Ministry of National Security.

Major Reese, in his sworn response to the OCG, which was dated 2009 November 16, also indicated that the vehicles were in the possession of the JCF.

9. In the final analysis, and contrary to Mr. Danville Walker's own public assertions that "... *everything has been done in accordance with the rules and regulations, and done properly*", the OCG has concluded that there was improper conduct, irregularity and non-adherence to the rules which govern the JCD's Public Auctions of Motor Vehicles. This conclusion is premised, *inter alia*, upon the following reasons:

- a. The JCD rules which govern the auctioning of motor vehicles specifically states that all successful bidders must make a minimum ten percent (10%) deposit. The required deposit was not paid by the representatives of the JCF; however, several vehicles were awarded to them by the JCD.

- b. The OCG has seen no clause in the JCD guidelines which stipulates that a guarantee can be accepted *in lieu* of the mandatory deposit. Although the internal guidelines indicated that the JCD reserves the right to reject any bid, this was not included on the Bidder Registration Form nor on the additional guidelines and rules which are associated with the conduct of the auctions.
- c. The JCF representatives were allowed to revisit the Auction on the following day (2009 July 1) and were allowed to bid on other vehicles, although they did not make deposits for the vehicles which were won by them the day before. This is despite that fact that the JCD's rules indicate that "*Payments should be made within the specified period to avoid being banned.*"
- d. As at 2009 November 13, Mr. Walker indicated that the vehicles which were won by the JCF representatives were not paid for in full and that the duties and administrative cost for the vehicles were waived by the Ministry of Finance and the Public Service. The JCD rules of the Auction indicate that "*Final payments should be made with seven (7) days.*" Therefore payment for the referenced vehicles, in keeping with the rules of the Auction, was long overdue.
- e. The OCG has seen no clause in the Customs Act or the 'Guidelines in the Regulation of Public Auction Sales' which stipulates that public entities or their representatives can participate in auctions without making the requisite deposit and/or payments.
- f. The Auction process was unfair, irregular and improper as midstream the referenced Auction, the rules of the auctions were changed in favour of the representatives of the JCF and, as such, other bidders would have been placed at a disadvantage.
- g. Having regard to the opinion from the Attorney General's Chambers, the JCF, having elected to participate in the referenced Auction should have been required to participate in the Auction under the same rules, strictures and penalties as any of the

other bidders, in an effort to ensure transparency, fairness and integrity in the auction process.

- h. Further, it is important to recall that Mr. Walker, in his statement to the OCG indicated that he was aware that representatives of the JCF would have been participating in the Auction. However, according to Mr. Walker, the JCD representatives who were in charge of the Auction were not informed “**So as not to interfere with the market process.**” Based upon this statement from Mr. Walker, the OCG has concluded that the same rules which applied to the other bidders should have also been applied to the representatives of the JCF “**so as not to interfere with the market process**”.

## **REFERRALS**

The OCG, in the conduct of its Investigation, is required to be guided by Section 21 of the Contractor-General Act.

**Section 21 of the Contractor-General Act** provides as follows:

**“If a Contractor-General finds, during the course of his Investigations or on the conclusion thereof that there is evidence of a breach of duty or misconduct or criminal offence on the part of an officer or member of a public body, he shall refer the matter to the person or persons competent to take such disciplinary or other proceeding as may be appropriate against that officer or member and in all such cases shall lay a special report before Parliament.”**<sup>146</sup>

(OCG Emphasis)

1. Pursuant to the mandatory statutory obligations which are imposed upon a Contractor General by Section 21 of the Contractor General Act, the OCG is hereby formally referring a copy of this Report to the Attorney General for her to determine and to advise what steps may be taken to hold to account the Commissioner of Customs, Mr. Danville Walker, with regard to the instructions which were given by him and the role which was played by him which resulted in the irregularities which have been unearthed by the OCG in this matter.

The referral is being made on the basis that there is sufficient *prima facie* evidence which is contained herein and, more particularly and importantly, in the sworn statements that were furnished to the OCG by the relevant Respondents, to suggest that:

- a. That Ms. Cordelia Brown interjected in the Auction process of 2009 June 30 and July 1 under the instructions of Mr. Walker. This was done to in favour of, and to facilitate the JCF representatives who, based upon the prevailing rules of the Auction, did not satisfy at least one of the explicit and stated rules of the Auction.

- b. There was improper conduct, irregularity and non-adherence to the documented and publicized procedures which govern the JCD's Auction of Motor Vehicles.

The OCG is of the considered opinion that it is within the purview of the Attorney General to advise what appropriate and/or applicable actions may be taken or initiated against Mr. Danville Walker, having regard to all of the circumstances of the case.

2. Pursuant to the mandatory statutory obligations which are imposed upon a Contractor General by Section 21 of the Contractor General Act, the OCG is also hereby formally referring a copy of this Report to the Public Defender for him to determine what actions or legal recourse, if any, can be had against the JCD or the Government of Jamaica, by the aggrieved bidders who had **properly** won bids at the JCD's 2009 June 30 and July 1 Auction, but who were deprived of their right to consummate the purchases of the said vehicles because of the irregular and improper action of the JCD and the Commissioner of Customs which violated, *inter alia*, the JCD's own published rules for the conduct of the said Auction.
3. Pursuant to the mandatory statutory obligations which are imposed upon a Contractor General by Section 21 of the Contractor General Act, the OCG is also hereby formally referring a copy of this Report to the Auditor General for her to conduct a comprehensive audit to ensure regularity and propriety in the registration, disposition and use of the referenced twenty-five (25) vehicles. As at 2009 October 23, the vehicles, which had been irregularly secured by representatives of the JCF, at the JCD's 2009 June 30 and July 1 Auction, had not yet been paid for by the JCF, nor had they yet been registered by the JCF, or by the Ministry of National Security, despite, *inter alia*, the sworn assertions of Minister Daryl Vaz that there was an "*urgent request for the police to get additional vehicles in their fleet*".



## **RECOMMENDATIONS**

Section 20 (1) of the Contractor-General Act mandates that “*after conducting an Investigation under this Act, a Contractor-General shall, in writing, inform the principal officer of the public body concerned and the Minister having responsibility therefore of the result of that Investigation and make such Recommendations as he considers necessary in respect of the matter which was investigated.*” (OCG Emphasis).

1. In light of (a) the furore which was created by the irregularities which occurred at the referenced JCD Auction, (b) the disrepute which was brought to bear upon the process surrounding the conduct of the Auction, and (c) the lack of fairness and transparency which arose due to the variation, by the JCD, of the JCD’s auction rules in favour of representatives of the JCF, the OCG must recommend that, in the future, the JCD should ensure that the rules which govern the conduct of its auctions, and which are conveyed to all prospective bidders, should be strictly adhered to by all parties who are involved.

The observance and strict adherence to the rules should be undertaken with a view of ensuring probity, transparency, fairness, regularity and integrity in the public auction process.

2. The OCG recommends that Public Bodies, inclusive of the JCD, should ensure that any rules that are documented and ostensibly held out as the operating procedures/strictures which govern a competitive Government contracting or procurement process, are not arbitrarily changed whilst the process which it governs has been commenced and, particularly, where the rules have been conveyed to all prospective parties.
3. Having regard to the fact that the JCD’s rules, which govern its auctions, indicated that a mandatory ten percent (10%) deposit should be paid by all bidders, and the fact that the JCF offered a guarantee in lieu of same, the OCG recommends that the JCD, in

consultation with the Attorney General's Chambers, consider the feasibility of other payment options to effect the mandatory deposit.

The foregoing recommendation is made with due consideration being given to the constraints which a Public Body might face in providing the deposit and would, instead, opt to provide a guarantee to the JCD that the goods will be paid for. Such a provision should be considered as a formal component of the auction process, through the issuance of a bank guarantee, and with the intent of preventing the Public Body from having an unfair advantage over other bidders.

4. The OCG strongly recommends that in instances where a representative of a Public Body, is authorized and actually participates in a JCD auction, such a Public Body representative should be required to register, not in his personal capacity as a member of the public or as a private citizen, but in the name of the entity which is being represented, and the JCD representatives should be made aware of the participation of all such persons in the auctions.
5. Although the OCG's Investigation did not focus upon the JCF, the OCG has found and concluded that the reporting and administrative processes and relationship between the Ministry of National Security and JCF is seemingly not cohesive, particularly in light of the fact that the then Permanent Secretary in the Ministry of National Security, Major Richard Reese, was not aware of the JCF's participation in the Auction.

Further, and based upon the sworn statements that were adduced in response to the OCG's several Requisitions, Minister Daryl Vaz, the Minister without Portfolio in the Office of the Prime Minister, was more involved and significantly more knowledgeable about the JCD's Auction and the need for the JCF to "*get additional vehicles in their fleet*", than was the then Commissioner of Police and the then Permanent Secretary in the Ministry of National Security. At the least, this points to maladministration on the part of the referenced State authorities since the Commissioner of Police is an Accountable Officer

for the JCF and the Permanent Secretary in the Ministry of National Security is the Accounting Officer for the Ministry and the JCF. It is, therefore, recommended that the necessary approval and communications' channels be maintained between the Ministry of National Security and the JCF, and other relevant State authorities, in the interest, *inter alia*, of transparency and the adherence to good governance, reporting and accountability practices.