

**Question 9:** What are the procedures that are typically employed by the Contractor-General in carrying out an Investigation and producing a Report of Investigation?

**Answer:** Typically, in the first instance, the Office of the Contractor-General (OC-G) sends out a preliminary set of written Requisition Questionnaires to relevant public officials and/or other persons of interest. These Requisition Questionnaires contain specific questions that are directed to each respondent. Each respondent is required to provide written answers to all of the questions, and the requisition form requires each respondent to provide, under pain of criminal prosecution, complete, accurate and truthful answers and, further, to make a formal declaration attesting to the veracity of same before a Justice of the Peace. Additionally, all respondents are expressly provided with the opportunity to furnish, for the record, any *other* additional information that they may have or may be aware of, which they may deem to be of importance to the investigation.

Respondents are specifically advised that any document that is supplied by them in support of a response must be properly labeled, numbered and marked to identify what it is, and the question to which it relates. On the basis of an analysis of the evidence amassed in the first instance, the investigation will progress utilizing further Requisition Questionnaires which are sent out to an increasingly narrowing or expanding pool of respondents, depending upon the shape of the investigation.

The OCG Investigation Team also utilizes a battery of information data-bases to assist it in the analyses of the evidence that have been gathered. Subsequent to the analyses of the evidence, a rigorous series of due diligence procedures are done to ensure that the Reports of Investigations, based on the evidence received, are accurate, comprehensive, objective and thorough.

**Question 10:** What are the powers that have been given to the Contractor-General to facilitate the effective discharge of his functions and are there powers that a Contractor-General has that other State Bodies lack, which may explain why he may be called upon, from time to time, to undertake certain investigations?

**Answer:** A Contractor-General is conferred with a number of far-reaching powers, under statute, inclusive of wide-ranging powers of enquiry, inspection and discovery, to facilitate the effective discharge of his lawful obligations. These powers are distinctive in their nature and scope and this may explain why other state bodies may, from time to time, call upon the Contractor-General to undertake certain investigations. These powers include:

- The right to be advised of the award of any Government contract by a public body (see Section 4(2), C-GA).
- The power to secure access to certain premises, documents, records, stores, property or information which are associated with contracts or licences and/or which, in his discretion, he might deem vital to the discharge of his functions under the Act (see Sections 4(2), 4(3) and 4(4), C-GA).

- The power to require any public body to furnish in such manner and at such times, as may be specified by him, any information regarding the award of any contract as he might consider desirable (see Section 4(3), C-GA).
- The power to require any public officer or any person to furnish in such manner and at such times, as may be specified by him, any information regarding the issue, suspension or revocation of any prescribed licence as he might consider desirable (see Section 4(4), C-GA).

In respect of his investigative powers, a Contractor-General may:

- Require any officer or member of a public body or any other person to furnish information and or produce any document that may assist an investigation that is in his or her possession or under his or her control (see Section 18(1), C-GA).
- Summon before him and examine on oath any person who has made representations to him or any officer, member or employee of a public body or any other person who, in his opinion, is able to furnish information relating to the investigation (see Section 18(2), C-GA).

**Question 11:** Can a Public Official, including but not limited to Cabinet Members, rely on an Oath of Secrecy to refuse to provide information lawfully requested by a Contractor-General?

**Answer:** No. Subject to Sections 18 (5) and 19 (1) of the C-GA, a Public Official cannot rely upon an Oath of Secrecy to refuse to provide information lawfully requested by a Contractor-General. The Contractor-General Act expressly prohibits the application of any obligation to maintain secrecy or any restriction on the disclosure of information or the production of any document or paper or thing imposed on any person and by or under the Official Secrets Act, in relation to the disclosure of information or the production of any document or thing by that person to a Contractor-General for the purpose of an investigation (see Section 18 (4), C-GA).



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## The Office of the Contractor-General



Promoting efficiency and ensuring transparency in the award of government contracts



## Q&A Information Guide

### The Powers & Procedures Employed by the Contractor-General in the Conduct of Investigations

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## Powers & Procedures Employed by the Contractor-General in the Conduct of Investigations

An oft-posed question by stakeholders of the Office of the Contractor-General (OC-G) is: **what are the powers exercised by a Contractor-General in the conduct of an investigation, and what are the procedures he employs to ensure that the results are consistently credible, unbiased, objective and thorough?**

The following Information Guide – structured in a Q&A format – answers this question in a fulsome way. Indeed, it goes further to address sub-parts to this question and other closely associated issues which ineluctably spring from its premise and, oftentimes, pervade the public debate about the Contractor-General and his functions in Jamaica's national life.

Thus, this Information Guide provides a quick reference for answers to questions relating to the Contractor-General and it will assist critical stakeholder publics to negotiate the myriad issues that emerge, from time to time, in the on-going public conversation about the work of the Contractor-General and the OC-G.

It will provide stakeholders, particularly the General Public and the Media, with accurate and relevant information in respect of the work of this critically important Independent Commission of Parliament and the work it engages in on behalf of the People and Taxpayers of Jamaica. Significantly too, this Information Guide contains important facts that can effectively repel the misinformation that is often times publicly disseminated about the investigations, work, functions and powers of a Contractor General.

We encourage feedback from all stakeholders. Feedback can be given at the stakeholder's own convenience and should be directed to our Communications Department, using our listed telephone numbers or email contacts. Moreover, we invite queries from all stakeholders and also encourage them to visit our web-site at <http://www.ocg.gov.jm/ocg/> for regular, timely updates on the activities of the OC-G and the two Independent Commissions of Parliament it serves: the Commission of the Contractor-General and the National Contracts Commission (NCC). Also, for further information, supplementing what is contained herein, please click on the *About Us - Contractor-General Overview* hyperlink found at our website.

Please note that, unless otherwise indicated, any references made in this Information Guide to legislation, are in relation to the Contractor-General Act of Jamaica, 1983.

## Mission & Mandates of the Contractor-General

**Question 1:** What is the significance, in law and in fact, of the descriptive reference of the Contractor-General as an Independent Commission of Parliament?

**Answer:** This essentially means that the Commission of the Contractor-General is a creature of statute that is constituted and promulgated by the Parliament of Jamaica, and not the Executive arm of Government. The significance of this is that the Commission carries out its statutory mandates on behalf of the Parliament and, by extension, the People of Jamaica, and in accordance with the Contractor-General Act. In other words, the Contractor-General is an appointed representative of the People of Jamaica, who exercises his statutory mandates on their behalf and theirs alone.

Further, the Commission of the Contractor-General is Independent and, therefore, is not subject to the direction or control of any other person or authority inside or outside of Government. This Independence has been prescribed, by law, to effectively insulate the Contractor-General, particularly from the dictates and influence of the Government. Without it, his ability to carry out his functions in accordance with the law would be compromised. (Section 5 (1), C-GA).

**Question 2:** What are the primary functions of the Contractor-General? Is the conduct of Investigations one of these?

**Answer:** Yes, one of the primary functions of the Contractor-General is to conduct investigations. The other primary functions of the Contractor-General are the monitoring of the award, implementation and or termination of government contracts, as well as the grant, issue, suspension or revocation of prescribed government licenses to ensure that the circumstances of same do not, *inter alia*, involve impropriety or irregularity (see Section 4 (1) (a) & (b), C-GA). It should be noted, however, that in respect of his monitoring functions, the Contractor-General is mandated to monitor contracts, permits and licenses, whilst he has a discretionary power in respect of exercising his investigative functions.

**Question 3:** Is the Contractor-General responsible for approving government contracts, and is he responsible for the slow pace of the approval and implementation of contracts, as has been alleged from time to time?

**Answer:** No. The Contractor-General does not approve contracts and he is not responsible for the pace at which government contracts are endorsed. The statutory mandates of the Contractor-General are confined to *monitoring and investigating* the award and implementation, or termination, of contracts, permits and licenses, pursuant to Sections 4 and 15 of the Contractor-General Act.

A separate and distinct Commission of Parliament, known as the National Contracts Commission (NCC), is mandated to endorse recommendations for the award of contracts that are above certain value thresholds, emanating from Public Bodies.

## The Conduct of Investigations

**Question 4:** What are the matters that a Contractor-General can investigate?

**Answer:** A Contractor-General can conduct an investigation into any one or all of the following matters: the registration of contractors; tender procedures relating to contracts awarded by public bodies; the award of any government contract; the implementation of the terms of any government contract; the circumstances of the grant, issue, use, suspension or revocation of any prescribed licence; and the practice and procedures relating to the grant, issue, suspension or revocation of prescribed licences (see Section 15, C-GA).

**Question 5:** Who determines whether an Investigation should be undertaken or discontinued and on what basis may either be done?

**Answer:** The decision on whether to initiate or discontinue an investigation is the sole lawful discretionary power of a Contractor-General. The Contractor-General may decide to start an investigation based upon his own initiative or on the basis of representations made to him by other persons, *if* in his opinion such an investigation is warranted (see Section 15 (1), C-GA).

**Question 6:** Can the Contractor-General be "commanded" to stop and or start a particular investigation by anyone, including, but not limited to, the Prime Minister or the Governor-General?

**Answer:** No. The Contractor-General, in exercising the powers conferred upon him, is prohibited by law from subjecting himself to the direction or control of any other person or authority (see Section 5 (1), C-GA).

**Question 7:** What is the nature of the proceedings that characterise the conduct of an investigation by a Contractor-General?

**Answer:** For the purposes of carrying out an investigation, the Contractor-General is clothed with the powers of a Judge of the Supreme Court of Jamaica, in respect of the attendance and examination of witnesses and the production of documents. As a consequence, the proceedings adopted for an investigation possesses an overarching judicial character and the Reports of Investigation, subsequently produced, bears the imprimatur of a judicial finder of facts (see Section 18 generally and Section 18 (3) specifically, C-GA).

## Procedures & Powers Used in Investigations

**Question 8:** Is a Contractor-General limited to any particular method or procedure when carrying out an Investigation?

**Answer:** No. A Contractor-General may adopt whatever procedure he considers appropriate to the circumstances of a particular case, to obtain information and to make enquiries, having regard to the provisions of the Contractor-General Act (see Section 17 (1), C-GA).