

*The following statement was issued on Tuesday (January 8) by Attorney General Patrick Atkinson on the recent news release from the Acting Contractor General referring the Cabinet to the DPP for Criminal Prosecution. The statement reads:*

“The Cabinet of Jamaica has asked me to re-emphasize that while it is driven to improve the country’s economic prospects by attracting foreign investments amongst other measures, it remains resolute in its fight against corruption not only amongst public officials but throughout the society. It is also the mission of this administration to have clearly defined laws governing the duties and obligations of public offices to avoid bureaucratic blunders and unnecessary obstructions to doing business in Jamaica. There are no inconsistencies between the above objectives.

Recently the acting Contractor General issued a “Media Release” claiming what he described as “discretionary powers that are reserved to a contractor general”, wherein he announced that he referred the Cabinet of Jamaica to the DPP [Director of Public Prosecutions] for criminal prosecution for alleged failure to comply with Statutory Requisitions relating to four major projects. In what can be described as strident and arrogant language, the acting CG accuses the Cabinet of obstructing the OCG, and in flagrant violation of the rule of law. In this regard the acting CG has acted inappropriately and out of a misunderstanding of his duties and the primacy of the Constitution of Jamaica. The Cabinet of Jamaica has asked me to respond on its behalf.

The Cabinet refutes the acting CG’s characterizations and states that its position is lawful and in accord with its duties under the Constitution of Jamaica as the principal instrument of policy. The Constitution of Jamaica vests the Cabinet with the general direction and control of the Government of Jamaica, and it is collectively responsible therefore to the Parliament of Jamaica and not to the OCG. It is to be emphasized that in every instance where the OCG made requisitions of the Cabinet, it sought, obtained and acted upon my advice as Attorney-General.

The OCG insists that it has a right to issue media releases concerning its investigations, even before it reports to Parliament, under some unsubstantiated discretionary powers. I am of the view that under Jamaican law, Submissions, Cabinet Notes, or other documents created for the

purpose of submission to the Cabinet for its consideration, and have been or are intended to be submitted, are Official Documents and exempt from publication and disclosure to the public. It was upon my unequivocal advice that the Cabinet decided not to release its documents, until the Supreme Court has ruled on issues relevant to the interpretation of the Contractor General Act which clearly states that the OCG "shall regard as secret and confidential all documents, information and things disclosed to that office...".

The Supreme Court has been asked, by Judicial Review, to define the powers of the OCG, in its pre-Contract monitoring empowerment, in light that *Lawrence v Ministry of Works* and the Attorney General was a 1991 case, and subsequent thereto in 1999 there was an amendment to the Contractor General act which made fundamental changes. Those changes include the creation of a National Contracts Commission (NCC) to promote efficiency and transparency in the awarding and implementation of contracts, and gave some pre contract functions to the NCC.

The Cabinet is mindful of its duties towards strategic development projects for Jamaica, and necessary confidentiality of information communicated in confidence to the Government of Jamaica on behalf of foreign governments or organizations. Having such information being at risk of inappropriate and untimely disclosure in some uncontrolled Media Release, could deter prospective investors from considering Jamaica as a place to invest.

It will also have a chilling and prohibitive effect on the free, unfettered and candid contributions of Cabinet members in discussions which involve the formulation of national policy, and other important decisions, if Cabinet documents and material are available to an office which considers itself as having its own discretion to make Media Releases completely unfettered.

I regret having to be forced by the circumstances created by the OCG's Media Release to respond to damaging innuendos suggesting that The Cabinet of Jamaica has been irresponsible or may have some hidden motive in refusing to provide Cabinet information to the OCG. I emphasize that the Cabinet of Jamaica acted upon the advice of the Attorney General of Jamaica, and acted appropriately."

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