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KERICHO COUNTY ACTS, 2019

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THE KERICHO COUNTY INSPECTORATE SERVICE ACT, 2019

No. 7 of 2019

Date of Assent: 30th September, 2019

Date of Commencement: See Section 1

AN ACT of the Kericho County Assembly to establish the Kericho County Inspectorate Service and provide for its organization, functions, and powers and for connected purposes

ENACTED by the Kericho County Assembly as follows—

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Kericho County Inspectorate Service Act, 2019.

Interpretation

2. (1) In this Act unless the context otherwise provides—

“Arrest” means the act of apprehending a person suspected of commission of an offence or by the action of legal authority;

“Board” means the Kericho County Public Service Board established by section 57 of the County Government Act, 2012;

“Chief Inspector” means the Chief Inspector appointed under section 7;

“Commissioned officer” means an officer of the inspectorate whose rank is confirmed by the prescribed county government document;

“Inspectorate” means the Kericho County Inspectorate established by section 4;

“Inspectorate officer” means an officer appointed to serve as an inspection officer in the inspectorate;

“Inspector post” means a place designated by the Chief Inspector, as an inspector post under section 18;

“Member of the County Executive Committee” means the member of the County Executive Committee for the time being responsible for matters relating to the Inspectorate;

“Reasonable time” means any period of time between six o’clock in the forenoon and six o’clock in the afternoon of any day of the week.

Objects and Purpose

3. The objects of this act are to—

- (a) give effect to the provisions of Article 187 of the Constitution that require the county executive committee to implement county legislation and to implement within the county, national legislation to the extent that the legislation so requires;
- (b) give effect of the provisions of Article 189(1)(b) that require the county government to assist, support and as appropriate, implement legislation of the national government; and
- (c) establish by law, pursuant to Article 185(2) of the constitution, an inspections mechanism so as ensure the effective performance and exercise of the powers conferred on the county government under part 2 of the Fourth Schedule of the Constitution.

PART II—THE INSECTORATE SERVICE**Establishment of the Inspectorate**

4. (1) There is hereby established service to be known as the Kericho County Inspectorate Service.

(2) The Inspectorate shall be a department within the County Public Service.

(3) The Inspectorate shall consist of—

- (a) such maximum number of officers as shall be determined from time to time by the county Public Service Board;
- (b) the ranks shall be set out in subsection (4).

(4) The ranks of the inspectorate shall consist of—

- (i) Chief Inspector;
- (ii) Deputy Chief Inspector;
- (iii) Assistant Chief Inspector;
- (iv) Principal Inspector;
- (v) Senior Inspector;
- (vi) Inspector I;
- (vii) Inspector II;

(b) Non commissioned officers including—

- (i) Senior Sergeant;
- (ii) Sergeant;
- (iii) Corporal; and
- (iv) Constable

(5) Inspectorate officers shall have seniority according to their position as set out in section (4).

(6) All persons who were immediately before the commencement of this Act were officers or employees of the city inspectorate shall upon commencement of this act become members of the Inspectorate in accordance with this Act in such ranks as the Board shall designate.

(7) Notwithstanding subsection (6), all officers referred to in the subsection (6) shall undergo vetting by the Board to assess their suitability and competence to continue in service with regards to compliance with requirements of Chapter six of the constitution, the Leadership and Integrity Act and other written law applicable to public officers.

(8) The Board shall discontinue the inspectorate of any inspectorate officer who fails in the vetting referred to under subsection (7).

Recruitment and Composition of the Inspectorate

5. The recruitment and composition of the Inspectorate shall, so as far as is reasonably practicable—

- (a) uphold the principle that not more than two thirds of the appointments shall be of the same gender;
- (b) reflect the regional and the ethnic diversity of the county; and
- (c) ensure the equity of opportunity amongst all the wards in the county

6. (1) The functions of the Inspectorate shall be to—

- (a) assist the National Police Service in the maintenance of law and order in the county by—
 - (i) ensuring adherence to county legislation;
 - (ii) ensuring adherence, within the county, to national legislation so requires;
- (b) carry out inspections within Kericho County to ensure compliance with set standards in respect of the functions of the county Government as specified under part 2 of the Fourth Schedule to the constitution;
- (c) regulate and control traffic on the county roads and keep order and prevent obstructions in county public places;
- (d) provide security services to county government properties;
- (e) perform any other duties that may be prescribed by this Act or any other written law from time to time.

(2) the inspectorate shall be deployed in Kericho county for the performance of the functions specified in this Act or any other law.

(3) A delegation under this Act—

(a) shall be in writing

(b) shall be subject to any conditions the chief Inspector may impose;

(c) shall not divest the chief Inspector of the responsibility concerning the exercise of the powers or the performance of the duty delegated; and

(d) may be withdrawn, and any decision made by the person so delegated may be withdrawn or amended by the Chief Inspector.

8. (1) The functions of the chief inspector shall be to—

(a) foster cooperation and collaboration between the Inspectorate service and the National Police in the performance of the inspectorate functions and shall in so doing ensure obedience to any directions issued by the Inspector General of police;

(b) ensure the implementation of policy and operational directions of the inspectorate;

(c) prepare the budgetary estimates and develop an Inspectorate plan before the end of each financial year, setting out the priorities and objectives of the inspectorate and the justification thereof;

(d) determine the establishment and maintenance of Inspectorate posts, outposts, units, or unit bases in the county and determine the boundaries of the inspectorate outposts or unit bases;

(e) determine the distribution of the deployment of officers and the inspectorate;

(f) recommend the establishment of, manage and maintain training of officers joining the Inspectorate and other officers;

(g) promote cooperation with the national police service and other security agencies;

(h) issue and document Inspectorate Rules;

(i) co-operate with other public or private bodies to provide reliable statistics on crime rates, detection rate, public confidence in the inspector, number of complaints against the inspector, as well as personnel statistics;

(j) perform any other lawful act on behalf of the inspectorate.

(2) The Inspectorate Standing Orders issued under Subsection (1) shall—

- (a) be administrative orders;
- (b) be for the general control, direction and information of the inspectorate, and
- (c) not be inconsistent with the Constitution, this Act or any written law.

(3) the Inspectorate Standing Orders shall be made available to each serving inspectorate officer and wherever possible, be accessible to the public.

(4) In the performance of functions set out under this Act or any other law, the Chief Inspector shall—

- (a) have all the necessary powers for the performance of such functions; and
- (b) uphold the national values, principles and objects set out in Articles 10 and 232 of the Constitution.

9. (1) The County Assembly shall allocate adequate funds to enable the Inspectorate to perform its functions and the budget for the Inspectorate shall be a separate vote.

(2) The Chief Inspector shall ensure that every inspector post, outposts and unit is allocated sufficient funds to finance its activities.

Establishment of Inspector Training Institution

10. (1) The Inspectorate shall establish and maintain an inspector training institution for purposes of training and re-training of its officers.

(2) Training in the institutions referred to in subsection (1) shall be conducted in accordance to the training curriculum.

(3) The Inspectorate may collaborate with other training institutions to provide training to its officers.

(4) The Board shall develop guidelines on the curriculum, examination and certifications of inspectorate trainees.

Certificate of Appointment

11. (1) The Board shall ensure that a is issued to certificate of appointment every person who is appointed as inspectorate officer.

(2) A certificate of appointment shall be in a form prescribed by the rules and be signed by a Gazetted inspectorate officer authorized by the Chief Inspector for the purpose.

(3) An Inspectorate Officer shall produce the certificate of appointment issued under subsection (2) on being requested to do so by any person in relation to whom the officer is exercising or is about to exercise a power conferred by this Act.

(4) A failure to comply with subsection (3) shall invalidate any purported exercise of the power that the officer is seeking to exercise.

(5) A certificate issued to an Inspectorate Officer under this section shall be evidence of officer's appointment not only for the purposes of legal proceedings but for all other purposes.

Administration of oaths /affirmation

12. An Inspectorate Officer shall upon being enlisted, make and sign before an officer authorized by the law to administer oaths or before the Chief Inspector, in English or Swahili and in such manner as the officer may declare to be most binding on his conscience, the oath or the affirmation set out in the First Schedule.

Conflict of Interest

13. (1) No member of the Inspectorate shall engage in any trade, business or employment, if the trade or business or employment is in conflict of interest with the performance of the inspectorate officer's duties.

(2) For the avoidance of doubt, the laws on anti-corruption, the Public Officers Ethics Act 2003, the Leadership and Integrity Act and other relevant laws shall apply to members of the Inspectorate.

Keeping / Use of Article

14.(1) Unless specifically authorized by rules, no Inspectorate Officer shall be entitled to keep or use for private benefit any article that has been supplied to the officer at the public expense, but shall hold every such article at the order and disposal of the County.

(2) An Inspectorate officer who keeps or uses an article in contravention of subsection (1) commits a disciplinary offence.

Surrender of Article

15. (1) An Inspectorate officer who is dismissed from the Inspectorate, or resigns from office, or otherwise leaves the Inspectorate, shall forthwith deliver over to the person authorized by rules or appointed for that purpose every article which has been supplied to him and which he or she has not been expressly authorized to keep or use for his private benefit.

(2) Any person who —

- (a) fails to comply with subsection (1); or
- (b) returns such property in a damaged condition, the damage not being attributable to the proper discharge of his duties in the Inspectorate,

Commits an offence, and shall be liable on conviction, whether or not any penalty is otherwise imposed, for the cost of replacing such property, or, as the case may require, for the cost of repair, and such cost shall be recoverable by the Government by deduction from any moneys due to such person, and shall be a debt due from such person to the Government.

Rights of an Inspectorate Officer

16. (1) Subject to this section, an Inspectorate Officer shall be entitled to all rights set out in the constitution.

(2) Subject to Article 24, 25 and 35 of the Constitution, the rights and fundamental freedoms of an officer of the Inspectorate may be limited for the purposes, in the manner and to the extent set out by law.

(3) A limitation of a right or fundamental freedom under subsection (2) shall be reasonable and justifiable in open and democratic society based on human dignity, equality and freedom and shall be limited only for purposes of ensuring—

- (a) the protection of classified information;
- (b) the security and safety of officers of the Inspectorate;
- (c) the independence and integrity of the Inspectorate; and
- (d) the enjoyment of the rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others.

(4) A limitation of a right or fundamental freedom under this section shall relate to—

- (a) The right to privacy to the extent of allowing—
 - (i) a person, home or property to be searched;
 - (ii) possession to be seized;
 - (iii) information relating to a person's family or private affairs to be required or revealed;
 - (iv) the privacy of a person's communications to be investigated;

- (b) the freedom of expression to the extent of limiting the freedom to impart information for officers of the inspectorate;
 - (c) the right to access to information to the extent of protecting the inspectorate from—
 - (i) demands to furnish persons with information; and
 - (ii) publicizing information affecting the county or where applicable, the nation;
 - (d) the freedom of association to the extent of limiting the right of officers of the inspectorate from joining or participating in the activities of any kind of association other than those authorized under the Act
 - (e) the right to assemble, demonstrate, picket and petition public authorities to the extent of ensuring discipline in the inspectorate;
 - (f) the right to fair labor relations to the extent of prohibiting officers of the inspectorate from joining and participating in activities of a trade union and going on strike.
- (5) An officer shall not be barred from voting at any election if, under the laws governing the said election, the officer has a right to vote.

Limitation of a Right

17. Subject to Article 24 of the constitution and any other law enacted pursuant to article 35 of the Constitution, a limitation of a right shall be reasonable and justifiable in an open and democratic society based on human dignity, equality and shall be limited only for purposes of ensuring—

- (a) the protection of classified information;
- (b) the maintenance and preservation of national security;
- (c) the independence and integrity of the inspectorate; and
- (d) the enjoyment of the rights and fundamentals freedoms by any individual does not prejudice the rights and fundamental freedoms of others.

PART III—COMPLIANCE

Inspectorate posts.

18. (1) The Chief Inspector may, by a notice in the Gazette designate Inspectorate posts.

(2) In designating Inspectorate posts under subsection (1), the chief inspector shall ensure that such Inspectorate posts are equitable distributed amongst the different wards in the county.

(3) The Inspectorate posts under subsection (I) shall be the unit for Inspectorate delivery.

(4) Each Inspectorate post shall—

(a) be the center for the administrative and command functions of the inspectorates in respect of the area of jurisdiction; and

(b) provide room for operational creativity to the inspectorate officers under the Inspectorate.

(5) The Chief Inspector shall ensure the development of procedures which facilitate uniform keeping of records at all Inspectorate posts.

Execution of Lawful Orders

19. An Inspectorate Officer shall obey and execute all lawful orders in respect of the execution of the duties of office which he may from time to time receive from his superiors in the Inspectorate and may—

(a) at any reasonable time, enter any place in which the officer believes on reasonable grounds that any person or persons is in any way contravening the provisions of this Act;

(b) apprehend any person who is in breach of any law or standards that is within the jurisdiction of the Inspectorate and for whose apprehension sufficient ground exists.

Powers of an Inspectorate Officer

20. (1) An Inspectorate officer on duty may stop any person whom the officer witnesses doing any unlawful act or thing or finds in possession of any unlawful act or thing in possession of any unlawful act or thing or finds in possession of any unlawful thing, or suspects of doing any unlawful act or thing or being in possession of anything for which a permit, license, or certificate or pass is required under any written law and has no such permit, license or certificate.

(2) A person who fails to produce a license, permit, certificate or pass within forty-eight hours when called upon to do so, may be arrested without a warrant unless he gives his name and address and otherwise satisfies the officer that he will duly answer any summons or any other proceedings which may issue or be taken against him or her.

(3) An Inspectorate officer who abuses the powers under this section commits an offence.

Powers to Arrest

21. Subject to Article 49 of the Constitution, an Inspectorate officer may without a warrant, arrest a person—

- (a) who is accused by another person breaching any law within his enforcement jurisdiction in any case in which the inspectorate officer believes upon reasonable ground that such breach has been committed;
- (b) who obstructs an Inspectorate officer while in the execution of duty;
- (c) who commits a breach of the peace in the presence of the inspectorate officer;
- (d) in whose possession is found anything which may reasonably be suspected of having committed an offence with reference to that thing;
- (e) whom the inspectorate officer suspects upon reasonable grounds of having committed or being about to commit a breach of a county law; or
- (f) whom the inspectorate has reasonable cause to believe a warrant of arrest has been issued.

Arrest and Detention

22. (1) An arrest by an Inspectorate officer, whether with or without a warrant, shall be subject to the rules contained in this section with the respect to arrest and detention.

(2) In the performance of the functions and exercise of the powers of arrest and detention set out in the Constitution and this Act or any other law, an Inspectorate officer shall carry out an arrest and detention only as provided for in the law.

(3) An Inspectorate officer shall accord an arrested or detained person all the rights set out under Articles 49, 50 and 51 of the Constitution.

(4) Every arrested person shall as soon as practically possible but in any event not more than three hours after arrest be handed over to the police station in the jurisdiction within which the offence has been committed.

(5) An Inspectorate officer who contravenes the provisions of this section shall be personally guilty of a disciplinary offence and may be tried for a criminal offence.

Use of non-violent means.

Use of non-violent means.

23. An Inspectorate officer shall perform the functions and exercise the powers conferred by the Constitution and this Act by use of non-violent means.

Power of Entry

24. (1) An Inspectorate officer may not enter a dwelling place except with the consent of the occupant or upon reasonable suspicion of the commission of an offence and the entry is necessary for the enforcement of the provisions of the Act.

(2) The time of such entry shall be between six o'clock in the forenoon and six o'clock in the afternoon of any day of the week.

(3) An Inspectorate officer who exercises the powers conferred under this section shall—

- (a) identify himself or herself beforehand;
- (b) record the action;
- (c) record the items taken, and
- (d) make report regarding such exercise and make it available for the superior.

Preliminary Report

25. An Inspectorate officer who carried out an inspection under this Act shall make a preliminary report immediately upon completion of the inspection in a prescribed format, a copy of which shall be retained in the premises.

False or Misleading Statement

26. (1) No person shall obstruct or hinder or knowingly make a false or misleading statement to an Inspectorate officer who is carrying out duties under this Act.

(2) A person who contravenes sub-section (1) commits an offence.

Powers of Seizure

27. (1) During an inspection under this Act, an Inspectorate officer may, in addition to the avenues provided for in this Act, seize any thing by means of which or in relation to which the officer believes, on reasonable grounds, that this Act has been contravened and a full inventory thereof shall be made at the time of the seizure by the officer.

(2) The Inspectorate officer may direct that anything seized be kept or stored in the place where it was seized or that it be removed to another place.

(3) Unless authorized by an officer, no person shall remove, alter or interfere in any manner with any other thing seized.

(4) Any person from whom thing was seized may within thirty days after the date of seizure, apply to Court for an order of restoration, and shall send notice containing the prescribed information to the relevant Department within the prescribed time and in the prescribed manner.

Court Orders

28. (1) The court may order that the thing be restored immediately to the applicant if, on hearing the application, the court is satisfied that—

- (a) the applicant is entitled to possession of the thing seized; and
- (b) the thing seized is not and will not be required as evidence in any proceedings in respect of an offence under this Act.

(2) Where upon hearing an application made under sub-section (1) the court is satisfied that the applicant is entitled to possession of the thing seized but is not satisfied with respect to the matters mentioned in paragraph (b) of sub-section (1), the court may order that the thing seized be restored to the applicant on the expiration of seven days from the date of seizure if no proceedings in respect of an offence under this Act has been commenced before that time.

PART IV—OFFENCES

Degrading Treatment

29. (1) It shall be unlawful for an Inspectorate officer to subject any person to torture or other cruel, inhuman or degrading treatment.

(2) An Inspectorate officer who subjects a person to torture commits criminal offence and shall be liable on conviction to imprisonment for life.

(3) An Inspectorate officer who subjects a person to cruel, inhuman or degrading treatment commits a criminal offence and is liable on conviction to imprisonment for life.

30. (1) A person other than Inspectorate officer who, without the written authority of the Chief Inspector—

- (a) puts on or assumes, either in whole or part, the uniform, name, designation or description of Inspectorate officer, or a uniform, name or designation, resembling or intended to resemble the uniform, name or designation of an Inspectorate officer; or
- (b) in any way pretends to be an Inspectorate officer for any purpose which he would not by law be entitled to do of his own authority,

Commits an offence and shall be liable on conviction to a fine not exceeding one million shillings or to a term of imprisonment not exceeding ten years, or to both.

(2) Notwithstanding subsection (1) a person may, with the approval of the Chief Inspector use inspector uniform for artistic purposes.

Offences

31. Any person who—

- (a) assaults, resists or willfully obstructs an Inspectorate officer in the due execution of the inspectorate officers' duties;
- (b) assaults, resists or willfully obstructs any person acting in aid of the inspectorate officer;
- (c) attacks an animal belonging to the inspectorate, or
- (d) Intentionally or recklessly, destroys inspector property,

Commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year, or to both.

Penalty

32. (1) A person who contravenes the provisions of this Act for which no penalty is specified or fails to comply with any order or direction given under this Act, shall be punishable with fine not exceeding fifty thousand shillings.

(2) A person who having been convicted of an offence under this Act, is again found guilty and is convicted of an offence under this Act, shall be punishable upon conviction with double penalty provided for the offence.

PART V—PROVISIONS ON DELEGATED POWERS

Rules and Regulations

33. (1) The Member of the County Executive Committee may, upon recommendation by the Chief Inspector and prior to approval of the County Assembly make rules for the purpose of carrying out the provisions of this Act.

(2) Without prejudice to the generality of sub-section (1), the rules may provide for—

- (a) The prescribing of anything required to be prescribed in this Act;
- (b) prescribing administrative organization of the service;

- (c) the description, wearing and issue of uniform, accoutrements and necessities by the Inspectorate;
 - (d) monitoring and evaluating the performance of the functions of the Inspectorate;
 - (e) facilitating the involvement of the public in the activities of the inspectorate;
 - (f) establish an Inspectorate Reform Unit for ensuring continuous and sustainable inspectorate reforms;
 - (g) generally for the good order and management of the Inspectorate
 - (h) the penalties and disciplinary procedures applicable to Inspectorate officers who commit any of the offences against discipline set out in the Second Schedule.
- (3) For the purposes of Article 94(6) of the Constitution—
- (a) the purpose and objective of the delegation under this section is to enable the Inspector-General to make rules for better carrying into effect the provisions of this Act;
 - (b) the authority of the Inspector-General to make rules under this Act will be limited to bringing into effect the provisions of this Act and fulfillment of the objectives specified under this section;
 - (c) the principles and standards applicable to the delegated power referred to under section 46 are those found in—
 - (i) the Statutory Instruments Act, 2013
 - (ii) the Interpretation and General provisions Act;
 - (iii) the general rules of international law as specified under Article 2(5) of the Constitution; and
 - (iv) Any treaty and convention ratified by Kenya under Article 2(6) of the Constitution.

FIRST SCHEDULE

(s.12)

OATH/AFFIRMATION OF OFFICE

I.....do swear/do solemnly and sincerely affirm that I will be faithful and bear true allegiance to the Constitution and the Governor of Kericho County during my.....without favor or affection, malice or ill will; that I will at all times do my utmost to reserve the peace and to prevent offences against the peace; that while I shall continue to hold the said office, to the best of my skill and knowledge, discharge all the duties thereof faithfully according to law and will not; I will subject myself to the Constitution, all Acts, orders and rules now or in future within the jurisdiction of the Inspectorate and that I will discharge my duties and the duties of the Inspectorate according to law, without fear, favour, affection or ill-will. (SO HELP ME GOD).

OATH/AFFIRMATION OF SECRECY

I.....(full names) DO HEREBY SWEAR BY THE ALMIGHTY GOD/solemnly and sincerely AFFIRM THAT I will not, without due authority, disclose or make known to any person any information acquired by me by reason of my duties performed by me on behalf or under the direction of the Inspectorate or by reason of any office or employment held by me pursuant to the Kericho County Inspectorate Act. SO HELP ME GOD.

SECOND SCHEDULE (s.33 (2) (h))**Offences against Discipline**

1. It shall be an offence against discipline for any inspectorate officer to—

- (a) unlawfully strike, or use or threaten violence against any inspectorate officer or any other person;
- (b) use any obscene, abusive or insulting language in any form to any inspectorate officer;
- (c) uses threatening or insubordinate or disrespectful language, word, act or demeanor to an Inspectorate officer senior to him in rank;
- (d) cause a disturbance in any inspector premises;
- (e) be guilty of drunkenness while on duty;
- (f) drink intoxicating liquor or psychotropic substances or drugs, or smoke in uniform when actively engaged on duty in a public place;
- (g) willfully disobey any lawful command or order;
- (h) absent himself without leave;
- (i) be found sleeping while on duty;
- (j) leave his post or place of duty before he/she is regularly relieved, except in fresh pursuit of an offender who it is his/her duty to apprehend;
- (k) while under arrest or detention, leave or escape from such arrest or detention before he/she is set at liberty by proper authority;
- (l) neglect or refuse to assist in the apprehension of any inspectorate officer charged with any offence, when lawfully ordered to do so;
- (m) resist any lawful arrest;
- (n) negligently allow any prisoner, who is committed to his charge, or whom it is his/her duty to guard, to escape;
- (o) discharge any weapon without orders or without reasonable lawful cause;
- (p) without reasonable cause, fail to attend at any parade, instruction class or court or any other duty which he is required to attend;

- (q) sell, pawn, lose by neglect, make away with or willfully or negligently damage, or fail to report any loss or damage to, any arm, ammunition, accoutrement, uniform or other article of personal issue or any vehicle or other property committed to his charge belonging to the Government or for which the Government is responsible; or
- (r) be in improper possession of any public or private property; or
- (s) commit any act of plunder or wanton destruction of any property;
- (t) be negligent in the performance of his duty;
- (u) appear on duty untidy or dirty in his/her person, arms, clothing or equipment;
- (v) make or sign any false statement in any document or official record;
- (w) without proper authority, disclose or conveys any information concerning any investigation or other inspector matter;
- (x) malingering, or feign any disease or infirmity;
- (y) knowingly and willingly transmit any venereal disease or HIV/AIDS;
- (z) without proper authority demands or exacts from any person any carriage, portorage or provisions;
- (aa) commit an act which amounts to corruption by under of any law in force in Kenya;
- (bb) make any false statements upon joining the Inspectorate; or
- (cc) refuse or neglect to make or send any report or return which it is duty to make or send; or
- (dd) knowingly make any false accusation or complaint or statement against any inspectorate officer or other person, affecting the character of such person, or willfully suppress any material fact.