

廉政公署事宜投訴委員會

ICAC COMPLAINTS COMMITTEE

二零零九年年報

Annual Report 2009

3 June 2010

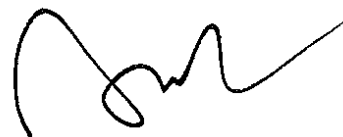
The Honourable Donald TSANG, GBM
The Chief Executive
Hong Kong Special Administrative Region
People's Republic of China
Government House
Hong Kong

Dear Sir,

**ICAC Complaints Committee
2009 Annual Report**

I have the honour to forward to you the annual report of the ICAC Complaints Committee for the year 2009. This is the fifteenth annual report of the Committee. It gives a summary of the work carried out by the Committee in the past year.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Andrew Liao', written in a cursive style.

(Andrew Liao)
Chairman
2009 ICAC Complaints Committee

INDEPENDENT COMMISSION AGAINST CORRUPTION COMPLAINTS COMMITTEE

2009 Annual Report

INTRODUCTION

Established on 1 December 1977, the Independent Commission Against Corruption Complaints Committee (“the Committee”) is responsible for monitoring and reviewing the Independent Commission Against Corruption’s (“ICAC”) handling of non-criminal complaints against the ICAC and its officers. Since 1996, each year the Committee submits an annual report to the Chief Executive to provide an account of its work in the preceding year. With a view to enhancing the transparency and accountability of the Committee, the report will also be tabled at the Legislative Council and made available to the public.

MEMBERSHIP

2. The Chairman and members of the Committee are appointed by the Chief Executive. During 2009, the Committee was chaired by Mr Andrew LIAO Cheung-sing. A membership list of the Committee from 1 January 2009 to 31 December 2009 is at *Annex A*.

A

TERMS OF REFERENCE

3. The terms of reference of the Committee are –
- (a) to monitor, and where it considers appropriate, to review, the handling by the ICAC of non-criminal complaints by anyone against the ICAC and officers of the ICAC;
 - (b) to identify any faults in ICAC procedures which lead or might lead to complaints; and
 - (c) when it considers appropriate, to make recommendations to the Commissioner of the ICAC (“Commissioner”), or when considered necessary, to the Chief Executive.

HANDLING OF COMPLAINTS

4. If a person wishes to lodge a complaint against the ICAC or its officers, he may write to the Secretary¹ of the Committee (“the Secretary”), or complain to the ICAC at any of its offices at **Annex B** in person, by phone or in writing. Where the complaint is received by the Secretary, he/she will acknowledge receipt and forward the complaint to the ICAC for follow-up action. Upon receipt of the Secretary’s referral or a complaint made directly to the ICAC, the ICAC will write to the complainant setting out the allegation with a copy sent to the Secretary. A special group, the Internal Investigation and Monitoring Group in the Operations Department of the ICAC, is responsible for assessing and investigating such complaints, and the Commissioner will forward his conclusions and recommendations in respect of each complaint to the Committee through the Secretary.

B

5. For each case, the Secretary will prepare a discussion paper on the investigation report received from the Commissioner and circulate both documents to Members of the Committee for consideration. Members may seek additional information and/or clarifications from the ICAC concerning the investigation reports. All papers and investigation reports will be arranged to be discussed at a Committee meeting. The complainants and ICAC officers involved will subsequently be advised of the conclusions of the Committee in writing.

HANDLING OF SUB-JUDICE CASES

6. The ICAC investigates each complaint as soon as possible. Where the allegations in a complaint are directly or closely associated with ongoing criminal enquiries or proceedings (“*sub-judice* cases”), the investigation will usually be deferred until the conclusion of the relevant criminal enquiries or proceedings. Investigation of complaints generally involves in-depth interviews with the complainants, and these may touch upon the circumstances surrounding the criminal proceedings and could possibly result in a statement to the disadvantage of the complainants in *sub-judice* cases. The complainants will be informed in writing that investigation into their complaints is deferred, pending the conclusion of relevant criminal enquiries or proceedings. If a complainant still wishes to seek immediate investigation of his complaint but the subject matter of the complaint appears to be closely related to issues

¹ The address of the Secretary of the ICAC Complaints Committee is as follows -
Administration Wing of the Chief Secretary for Administration’s Office,
12/F, Central Government Offices, West Wing, Lower Albert Road, Hong Kong.
(Telephone number: 2810 3503 ; Fax number: 2524 7103)

on which the courts may have to decide, the Commissioner will seek legal advice and decide whether or not to defer the investigation of the complaint. The ICAC provides a summary on *sub-judice* cases to the Committee for discussion at each Committee meeting.

COMPLAINTS RECEIVED

7. In 2009, 31 complaints² against ICAC officers were received, as compared with 22 complaints received in 2008 and 18 complaints received in 2007. The 31 complaints contained a total of 90 allegations registered during the year. These 90 allegations were mostly concerned with misconduct (49%) and neglect of duties (38%) of ICAC officers. The rest related to abuse of power (13%). A summary of the statistics is shown in Table 1 below.

Table 1 – Number and category of allegations registered in 2008 and 2009

Category of allegation	Number of allegations (%) in 2009	Number of allegations (%) in 2008
1. Misconduct	44 (49%)	20 (42%)
2. Neglect of duties	34 (38%)	22 (46%)
3. Abuse of power		
(a) search	4	0
(b) arrest/detention/bail	5	1
(c) interview	1	4
(d) handling property	0	0
(e) legal access	2	0
(f) improper release of identity of witnesses/informants/suspects	0	0
(g) provision of information/documents	0	1
<i>Sub-total :</i>	12 (13%)	6 (12%)
4. Inadequacies of ICAC procedures	0 (0%)	0 (0%)
Total :	90	48

8. Of the 31 complaints received in 2009, investigations on 15 covering 38 allegations were concluded with the relevant reports considered by the Committee

² The figure excludes those complaints where the ICAC considers that a full investigation is not warranted after preliminary assessment of the complaints. For details, please refer to paragraph 15.

during the year. Investigations into the remaining 16 cases covering 52 allegations were continuing at the end of the year.

REPORTS CONSIDERED

9. The Committee held three meetings during the year to consider a total of 23 reports, comprising 20 investigation reports and three assessment reports.

Investigation Reports

10. At the first meeting held in March 2009, the Committee considered investigation reports from the ICAC on five complaints received in 2008 and one in 2009. At the second meeting held in June 2009, the Committee considered investigation reports on three complaints which were all received in 2009. At the third meeting held in November 2009, the Committee considered 11 complaints, all received during the year. A sample of an investigation report considered by the Committee is attached at *Annex C*.

11. Of the 20 complaints with 53 allegations considered by the Committee in 2009, four allegations (8%) in two complaints (10%) were found to be substantiated. A summary of the statistics is shown in Table 2 below.

Table 2 – Number and category of allegations found substantiated or partially substantiated by the Committee in 2008 and 2009

Category of allegation	2009		2008	
	Number of allegations considered	Number of allegations (%) found substantiated/partially substantiated	Number of allegations considered	Number of allegations (%) found substantiated/partially substantiated
1. Misconduct	30	2	18	0
2. Neglect of duties	18	2	22	3

3. Abuse of power				
(a) search	0	0	1	0
(b) arrest/detention/bail	2	0	1	0
(c) interview	2	0	4	0
(d) handling property	0	0	0	0
(e) legal access	0	0	0	0
(f) improper release of identity of witnesses/ informants/ suspects	0	0	0	0
(g) provision of information/ documents	1	0	0	0
<i>Sub-total:</i>	5	0	6	0
4. Inadequacies of ICAC procedures	0	0	0	0
Total	53	4 (8%)	46	3 (7%)

12. The two substantiated allegations in the first case concerned–

- (a) an officer’s negligence in the drafting of authorizations from shareholders of two restaurants authorizing one common shareholder to give a statement to the ICAC and the common shareholder’s witness statement, and his supervisor’s failure in identifying the former officer’s shortcoming; and
- (b) another officer sending a draft statement to a witness by e-mail which was contrary to ICAC internal guidelines on transmission of classified information through the internet.

13. The two substantiated allegations in the second case were about –

- (a) an officer returning seized properties to their owners at the ground floor lobby of the ICAC Building, which was exposed to members of the public and therefore not a proper venue for returning seized properties; and
- (b) another officer inappropriately advising one of the owners to use the toilet at a nearby petrol station instead of directing the person to a toilet in the ICAC Building.

14. In relation to these substantiated allegations, two ICAC officers were each issued a verbal warning and three officers were given appropriate advice.

Assessment Reports

15. After preliminary assessment of a complaint, if the ICAC considers that a full investigation is not warranted, the Commission would submit an assessment report for the Committee's consideration. During 2009, the Committee considered and endorsed three assessment reports on four complaints received. Preliminary enquiries by the ICAC indicated that there was no ground or justification in these complaints that would warrant formal registration or investigation. The Committee agreed with the ICAC's assessment that no further investigative action be taken, and the complainants were so advised by the ICAC by letters.

IMPROVEMENTS TO PROCEDURES

16. An important and positive effect of investigating into complaints is that through examination of relevant issues, both the ICAC and the Committee can carefully scrutinize existing ICAC internal procedures, guidelines and practices to see whether these need to be revised, with a view to making improvements.

17. Arising from the investigation reports considered during the year 2009, the ICAC has reviewed certain procedures and made improvements. For example, the ICAC has reminded officers to strictly comply with the internal guidelines in dealing with transmissions of classified documents through internet.

**Independent Commission Against Corruption
Complaints Committee
Membership List
(from 1 January 2009 to 31 December 2009)**

Chairman : Mr Andrew LIAO Cheung-sing, GBS, SC, JP

Members : Mr Anthony CHAN Kin-keung, SC

Miss Anna CHOW Suk-han

The Hon Albert HO Chun-yan

Mrs Stella LAU KUN Lai-kuen, JP

Dr the Hon Edward LEONG Che-hung, GBS, JP

The Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP

Mr Tony MA

(Representative of The Ombudsman)

List of ICAC Offices

Office	Address and Telephone Number
ICAC Report Centre (24-hour service)	G/F, 303 Java Road North Point Tel: 2526 6366 Fax: 2868 4344 e-mail: ops@icac.org.hk
ICAC Regional Office – Hong Kong West/Islands	G/F, Harbour Commercial Building 124 Connaught Road Central Central Tel: 2543 0000
ICAC Regional Office – Hong Kong East	G/F, Tung Wah Mansion 201 Hennessy Road Wanchai Tel: 2519 6555
ICAC Regional Office – Kowloon East/Sai Kung	Shop No. 4, G/F, Kai Tin Building 67 Kai Tin Road Lam Tin Tel: 2756 3300
ICAC Regional Office – Kowloon West	G/F, Nathan Commercial Building 434-436 Nathan Road Yaumatei Tel: 2780 8080
ICAC Regional Office – New Territories South West	G/F, Foo Yue Building 271-275 Castle Peak Road Tsuen Wan Tel: 2493 7733
ICAC Regional Office – New Territories North West	G/F, Fu Hing Building 230 Castle Peak Road Yuen Long Tel: 2459 0459
ICAC Regional Office – New Territories East	G06 - G13 Shatin Government Offices 1 Sheung Wo Che Road Shatin Tel: 2606 1144

A sample of an Investigation Report

COMPLAINT

Mr X, a civil servant, complained that when he and Madam Y attended ICAC offices on a specified date in July 2009 to collect a quantity of properties, including some documents, which had been seized by the ICAC earlier :-

- (a) Investigator A had improperly and unprofessionally arranged for him and Madam Y to receive the properties at the ground floor lobby of the ICAC Building;
- (b) Investigator A impolitely threw some of the documents to Madam Y when Madam Y was examining other properties;
- (c) Assistant Investigator B intentionally stood close to Madam Y when Madam Y was checking the properties thereby intruding the privacy of Madam Y and subjecting her to undue pressure; and
- (d) Assistant Investigator C unreasonably refused his request for using the toilet in the ICAC Building and directed him to use the toilet at a nearby petrol station.

BACKGROUND

2. In February 2007, the ICAC commenced an investigation into an allegation that Mr X and Madam Y, also a civil servant, might have obtained housing benefits from the Government by fraudulent means.

3. In August 2007, the case was turned overt when the home and office premises of Mr X and Madam Y were searched under warrants. Properties, including documents and photo albums, were seized. When interviewed under caution, Mr X and Madam Y denied the allegation. After the interview, some seizures were returned to Mr X leaving a total of 33 items kept by the ICAC for further investigation. A receipt was issued to Mr X and Madam Y in respect of the properties seized.

4. On legal advice, no prosecution was instituted against Mr X and Madam Y. The case was reported to the ICAC Operations Review Committee. The ICAC's recommendation that no further investigative action should be taken and that Madam Y's matter be referred to the Civil Service Bureau for necessary action was endorsed.

5. Investigator A was assigned to liaise with Mr X for the return of the properties and arrangement was made with him to collect the properties at ICAC offices on a specified Saturday in July 2009. On the afternoon of that day, Mr X and Madam Y arrived at the ground floor lobby of the ICAC Building. Investigator A, assisted by Assistant Investigator C, carried the properties in a trolley to the ground floor lobby and returned the properties to Mr X and Madam Y who were sitting on a sofa there. Assistant Investigator B later came to assist Investigator A and Assistant Investigator C. The return of the properties was later changed to take place in a waiting room at the ground floor of the ICAC Building.

6. Four days later, Mr X sent a letter to the ICAC complaining against the officers as set out in allegations (a) to (d). When contacted by an officer of the Internal Investigation and Monitoring Group, Mr X declined an interview. He said that his letter contained sufficient details and the ICAC CCTV system should have recorded the whole incident.

INVESTIGATION OF THE COMPLAINT

7. Investigator A denied allegations (a) and (b). Concerning allegation (a), she explained that it should not take long for Mr X and Madam Y to collect the properties which were only 33 items and were all properly packed and labelled. Moreover, it was a Saturday afternoon and the passers-by in the lobby should be minimal. Interruption in the vicinity was not expected. There was also a long sofa for Mr X and Madam Y to sit and check the properties comfortably. Investigator A therefore decided to return the properties at the ground floor lobby of the ICAC Building.

8. For allegation (b), Investigator A stated that she picked up the properties from the trolley one by one and handed them to Madam Y for her to check against the seizure list. When checking and receiving the properties, Madam Y kept on querying the ICAC in seizing their properties and repeatedly asked if all their properties were there. She also examined each and every photo in the photo albums and asked if the ICAC had kept some of the photos. At one stage, Madam Y accused her and Assistant Investigator B respectively of throwing the documents to her and intruding her privacy by standing too close to her. Given Madam Y's attitude and having considered that the process would take longer than that she had anticipated, Investigator A arranged for Mr X and Madam Y to receive the properties in a waiting room at the ground floor. Investigator A's version was corroborated by Assistant Investigator B and Assistant Investigator C.

9. Assistant Investigator B denied allegation (c). She stated that she stood next to Madam Y to witness that the properties were properly checked and received by Madam Y as it was her assigned duty. However, Madam Y kept on alleging that Assistant Investigator B was standing too close to her and infringed her privacy. On the instruction of Investigator A, Assistant Investigator B moved a little bit away from Madam Y. Assistant Investigator B's version was corroborated by Investigator A and Assistant Investigator C.

10. Assistant Investigator C denied allegation (d). He stated that before Assistant Investigator B came to assist, Mr X requested to use a toilet. At that time, he was not aware that there was a toilet at the ground floor of the ICAC Building which was normally for the use by building attendants and renovation workers. In order not to leave Investigator A alone to deal with Madam Y, he considered it inappropriate to take Mr X to use the toilet in the ICAC offices upstairs. He then advised Mr X to use the toilet at the petrol station next to the ICAC Building. Mr X, at that time, raised no objection.

11. The ICAC records, including CCTV recordings, showed that Investigation A and Assistant Investigator C arrived at the ground floor with their trolley. An hour later, the officers brought Mr X and Madam Y to a waiting room at the ground floor. The CCTV recording did not cover the location of the said sofa where the return of the properties took place.

ASSESSMENT OF THE COMPLAINT

12. Investigator A denied allegations (a) and (b). Given the nature and quantity of the properties involved and the fact that Mr X and Madam Y were required to check and acknowledge receipt of the properties, it was improper for Investigator A to arrange Mr X and Madam Y to collect the properties at the ground floor lobby of the ICAC Building which is accessible to the public. Allegation (a) is therefore substantiated. There was no evidence that Investigator A had acted as alleged in allegation (b). Allegation (b) is not substantiated. Assistant Investigator B denied allegation (c) and offered a reasonable explanation. Allegation (c) is not substantiated. Concerning allegation (d), having regard to the circumstances, it was undesirable for Assistant Investigator C to have directed Mr X to use a toilet outside the ICAC Building. Allegation (d) is substantiated.

CONCLUSION

13. The Commissioner of the ICAC agreed that allegations (a) and (d) are substantiated and allegations (b) and (c) are unsubstantiated. The ICAC Complaints Committee endorsed the conclusions of the investigation by the ICAC. Mr X was informed of the result of the investigation in writing. Investigator A and Assistant Investigator C were each given appropriate advice by a senior officer concerning allegations (a) and (d).