

# 廉政公署事宜投訴委員會

## ICAC COMPLAINTS COMMITTEE

二零一零年年報

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Annual Report 2010

1 June 2011

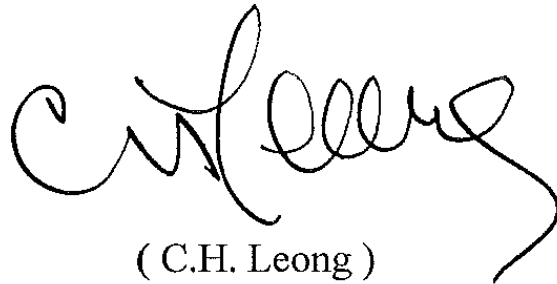
The Honourable Donald Tsang, GBM  
The Chief Executive  
Hong Kong Special Administrative Region  
People's Republic of China  
Government House  
Hong Kong

Dear Sir,

**ICAC Complaints Committee  
2010 Annual Report**

I have the honour to forward to you the annual report of the ICAC Complaints Committee for the year 2010. This is the sixteenth 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 read 'C.H. Leong', written in a cursive style.

( C.H. Leong )  
Chairman

2010 ICAC Complaints Committee

# INDEPENDENT COMMISSION AGAINST CORRUPTION COMPLAINTS COMMITTEE

## 2010 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 2010, the Committee was chaired by Dr the Hon Edward Leong Che-hung. A membership list of the Committee from 1 January 2010 to 31 December 2010 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 Secretary<sup>1</sup> 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 allegations 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 will be 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 on which the courts may have to decide, the Commissioner will seek legal advice and

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<sup>1</sup> 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)

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 2010, 34 complaints containing 76 allegations against ICAC officers were received, as compared with 31 complaints containing 90 allegations received in 2009. The 76 allegations registered in 2010 were mostly concerned with misconduct (55%) and neglect of duties (38%) of ICAC officers. The rest related to abuse of power (5%) and inadequacies of ICAC procedures (2%). A summary of the statistics is shown in Table 1 below.

*Table 1 – Number and category of allegations registered in 2009 and 2010*

Category of allegation	Number of allegations (%) in 2010	Number of allegations (%) in 2009
1. Misconduct	42 (55%)	44 (49%)
2. Neglect of duties	29 (38%)	34 (38%)
3. Abuse of power		
(a) search	1	4
(b) arrest/detention/bail	0	5
(c) interview	1	1
(d) handling property	0	0
(e) legal access	0	2
(f) improper release of identity of witnesses/informants/suspects	2	0
(g) provision of information/documents	0	0
<i>Sub-total :</i>	4 (5%)	12 (13%)
4. Inadequacies of ICAC procedures	1 (2%)	0 (0%)
<b>Total :</b>	<b>76</b>	<b>90</b>

8. Of the 34 complaints received in 2010, investigations into 12 complaints covering 23 allegations were concluded with the relevant reports considered by the Committee during the year. Investigations into the remaining 22 cases covering 53 allegations were on-going by the end of the year.

## REPORTS CONSIDERED

9. The Committee held three meetings during the year to consider a total of 31 reports, comprising 21 investigation reports (covering 25 complaints) and 10 assessment reports.

### *Investigation Reports*

10. At the first meeting held in March 2010, the Committee considered investigation reports from the ICAC on nine complaints which were all received in 2009. At the second meeting held in June 2010, the Committee considered investigation reports on one complaint received in 2009 and two in 2010. At the third meeting held in November 2010, the Committee considered investigation reports on three complaints received in 2009 and ten in 2010. A sample of an investigation report considered by the Committee is attached at *Annex C*.

11. Of the 25 complaints with 67 allegations considered by the Committee in 2010, five allegations (7%) in four complaints (16%) were found to be substantiated or partially 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 2009 and 2010*

Category of allegation	2010		2009	
	Number of allegations considered	Number of allegations (%) found substantiated/ partially substantiated	Number of allegations considered	Number of allegations (%) found substantiated/ partially substantiated
1. Misconduct	33	1	30	2
2. Neglect of duties	26	3	18	2
3. Abuse of power				
(a) search	3	0	0	0
(b) arrest/detention/bail	4	1	2	0
(c) interview	0	0	2	0
(d) handling property	0	0	0	0
(e) legal access	1	0	0	0

C

(f) improper release of identity of witnesses/ informants/ suspects	0	0	0	0
(g) provision of information/ documents	0	0	1	0
<i>Sub-total:</i>	8	1	5	0
4. Inadequacies of ICAC procedures	0	0	0	0
<b>Total</b>	<b>67</b>	<b>5 (7%)</b>	<b>53</b>	<b>4 (8%)</b>

12. Of the four complaints found substantiated or partially substantiated, in the first case, an officer had failed to record two seized properties with sufficient details on the seizure list.

13. In the second case, an officer had refused to provide his full name to a complainant despite the latter's request.

14. In the third case, a guarding officer had unreasonably declined a detainee's request to completely switch off the lighting in the detention cell during night time and another officer had deprived the same person who subsequently became an immunized witness of her right to witness allowance after the latter testified in court for the prosecution in an ICAC case.

15. In the fourth case, an officer and his supervisor had concluded an investigation without seeking legal advice which should have been sought given the findings of the investigation.

16. In relation to these substantiated allegations concerning six ICAC officers, five were given appropriate advice by their senior officers. Regarding the remaining officer, the Committee endorsed the recommendation that no advice would be given to him for the allegation found substantiated against him as by then he had already proceeded on pre-retirement leave.

### ***Assessment Reports***

17. After preliminary assessment of a complaint, if it is considered that a full investigation is not warranted, the ICAC would submit an assessment report for the Committee's consideration. During 2010, the Committee considered and endorsed ten assessment reports. Preliminary enquiries showed that there was no ground or justification in these complaints that would warrant formal registration or investigation, and the Committee agreed that no further investigative action be taken. The complainants were so advised by letter.

### **IMPROVEMENTS TO PROCEDURES**

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

19. Arising from the investigation reports considered during the year 2010, the ICAC has reminded officers to adhere to the relevant internal guidelines in respect of work procedures in order to upkeep the professionalism of the ICAC.



**Independent Commission Against Corruption  
Complaints Committee  
Membership List  
(from 1 January 2010 to 31 December 2010)**

Chairman : Dr the Hon Edward LEONG Che-hung, GBM, GBS, JP

Members : Mr Anthony CHAN Kin-keung, SC

The Hon Albert HO Chun-yan

Mrs Stella LAU KUN Lai-kuen, JP

Ms Angela LEE Wai-yin, BBS, JP

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

The Hon YEH V-nee, 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	Shop B1, G/F, Tsuen Kam Centre, 300-350 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 civilian, complained that on a specified date in September 2009, during a telephone conversation with Senior Investigator A concerning his corruption report made to the ICAC, Senior Investigator A had :-

- (a) talked to him in a rude manner and questioned him as if he was a suspect;
- (b) refused to provide him with Senior Investigator A's full name despite his request; and
- (c) refused his request to transfer his telephone call to Senior Investigator A's supervisor.

**BACKGROUND**

2. On a specified date in September 2009, Mr X lodged a corruption complaint to the ICAC. The case was investigated by Assistant Investigator B under the supervision of Acting Chief Investigator C.

3. During the contact between Assistant Investigator B and Mr X in relation to Mr X's corruption complaint, Mr X was dissatisfied with the way that Assistant Investigator B handled his complaint. Five days later, Mr X spoke to Acting Chief Investigator C and requested to change the case officer. Acting Chief Investigator C replied that he would consider the matter.

4. Two weeks later when Acting Chief Investigator C was on leave, Mr X telephoned the office of the investigating section to look for Acting Chief Investigator C. His telephone call was answered by Senior Investigator A who was then acting for Acting Chief Investigator C taking charge of the investigating section. Mr X's complaint arose from the telephone conversation.

5. Later on the same day, Mr X made a complaint to the ICAC against Senior Investigator A as set out in allegations (a) to (c). When contacted by an officer of the ICAC Internal Investigation and Monitoring Group, Mr X declined an interview but repeated his complaint over the phone.

## **INVESTIGATION OF THE COMPLAINT**

6. Senior Investigator A denied the allegations. He stated that when he answered Mr X's telephone call, Mr X did not identify himself but asked if he was Acting Chief Investigator C. Senior Investigator A replied in the negative and identified himself with his surname. Mr X told Senior Investigator A that he would like to ascertain the case officer of his case. Senior Investigator A, without knowing the background of the case concerned, asked Mr X for his name and the details of his case so that he could check against the records. Mr X was not satisfied with Senior Investigator A's response and, after providing only his surname to Senior Investigator A, said that the ICAC had not found a suitable officer to investigate his case and he had to lodge a complaint. Senior Investigator A explained to Mr X that he could not follow up the matter without knowing the details of the case or the full identity of Mr X. Mr X did not accept Senior Investigator A's explanation and asked for Senior Investigator A's full name. Given that Mr X's identity could not be confirmed, Senior Investigator A only repeated his surname to Mr X and again asked Mr X to provide more information so that he could offer assistance to Mr X. Dissatisfied, Mr X asked to speak to Senior Investigator A's senior officer. Since Senior Investigator A was at that time the most senior officer in the investigating section, he considered that it was his responsibility to handle Mr X's query and that it was inappropriate to refer Mr X to his senior officer, particularly when Mr X's reason for speaking to his senior officer was not known. He then explained to Mr X that he was not able to discuss any case details with Mr X unless his identity was confirmed. Mr X was not satisfied with Senior Investigator A's explanation and hung up the phone.

## **ASSESSMENT OF THE COMPLAINT**

7. Senior Investigator A denied the allegations and provided an explanation. There is no evidence to support allegation (a) other than from the complainant. Allegation (a) is not substantiated. Clearly, Senior Investigator A had failed to provide his full name to Mr X when Mr X asked for it. Although Senior

Investigator A gave an explanation for not providing to Mr X his full name, it was considered not appropriate to refuse the request in the circumstances. Allegation (b) is therefore substantiated. However, no advice will be given to Senior Investigator A as he has already left the ICAC. The explanation offered by Senior Investigator A on allegation (c) was not unreasonable having regard to the circumstances. Allegation (c) is not substantiated.

## **CONCLUSION**

8. The Commissioner of the ICAC agreed that allegations (a) and (c) are not substantiated and allegation (b) is substantiated. The ICAC Complaints Committee endorsed the conclusion of the investigation by the ICAC. Mr X was informed of the result of the investigation in writing.