

廉政公署事宜投訴委員會

ICAC COMPLAINTS COMMITTEE

二零一一年年報

Annual Report 2011

1 June 2012

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
2011 Annual Report**

I have the honour to forward to you the annual report of the ICAC Complaints Committee for the year 2011. This is the seventeenth annual report of the Committee. It gives a summary of the work carried out by the Committee in the past year.

Yours sincerely,



(Dr the Hon C. H. Leong)
Chairman

2011 ICAC Complaints Committee

INDEPENDENT COMMISSION AGAINST CORRUPTION COMPLAINTS COMMITTEE

2011 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. In 2011, the Committee was chaired by Dr the Hon Leong Che-hung. A membership list of the Committee from 1 January 2011 to 31 December 2011 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/she 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. When 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 to the ICAC direct, 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 the complaints, and the Commissioner will forward his conclusions and recommendations in respect of each complaint to the Committee via 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 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 Committee’s conclusions in writing.

HANDLING OF SUB-JUDICE CASES

6. The ICAC investigates each complaint as soon as practicable. 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 such 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 prejudice the complainant’s position in *sub-judice* cases. The complainants will be informed in writing that the 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 decide whether

¹ The address of the Secretary of the ICAC Complaints Committee is as follows -
Administration Wing of the Chief Secretary for Administration’s Office,
25/F, Central Government Offices, 2 Tim Mei Avenue, Tamar, Hong Kong
(Telephone number: 2810 3503 ; Fax number: 2524 7103)

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 2011, 14 complaints containing 44 allegations against ICAC or its officers were received, as compared with 34 complaints containing 76 allegations received in 2010. Allegations registered in the year were related to misconduct (59%) of ICAC officers; neglect of duties (25%); abuse of power (9%); and inadequacies of ICAC procedures (7%). A summary of the statistics is at Table 1 below.

Table 1 – Number and category of allegations registered in 2010 and 2011

Category of allegation	Number of allegations (%) in 2011	Number of allegations (%) in 2010
1. Misconduct	26 (59%)	42 (55%)
2. Neglect of duties	11 (25%)	29 (38%)
3. Abuse of power		
(a) search	0	1
(b) arrest/detention/bail	2	0
(c) interview	2	1
(d) handling property	0	0
(e) legal access	0	0
(f) improper release of identity of witnesses/informants/suspects	0	2
(g) provision of information/documents	0	0
<i>Sub-total :</i>	4 (9%)	4 (5%)
4. Inadequacies of ICAC procedures	3 (7%)	1 (2%)
Total :	44	76

8. Of the 14 complaints received in 2011, investigations into 10 complaints covering 18 allegations were concluded with the relevant reports considered by the Committee during the year. Investigations into the remaining 4 complaints covering 26 allegations were on-going.

REPORTS CONSIDERED

9. The Committee held three meetings during the year to consider a total of 45 cases, comprising 29 investigation reports covering 30 complaints (with one investigation report covering two complaints) and 16 assessment reports covering 17 complaints (with one assessment report covering two complaints).

Investigation Reports

10. At the first meeting held in March 2011, the Committee considered investigation reports from the ICAC on one complaint received in 2009 and 18 received in 2010. At the second meeting held in July 2011, the Committee considered investigation reports on one complaint received in 2010 and five in 2011. At the third meeting held in November 2011, the Committee considered investigation reports on five complaints received in 2011. A sample of an investigation report considered by the Committee is at *Annex C*.

11. Of the 30 complaints covering 70 allegations considered by the Committee in 2011, three allegations (4%) were found to be substantiated or substantiated other than alleged. A summary of the statistics is at Table 2 below.

Table 2 – Number and category of allegations found substantiated or partially substantiated by the Committee in 2010 and 2011

Category of allegation	2011		2010	
	Number of allegations considered	Number of allegations (%) found substantiated/ partially substantiated	Number of allegations considered	Number of allegations (%) found substantiated/ partially substantiated
1. Misconduct	40	3	33	1
2. Neglect of duties	26	0	26	3
3. Abuse of power				
(a) search	1	0	3	0
(b) arrest/detention/bail	0	0	4	1
(c) interview	0	0	0	0
(d) handling property	0	0	0	0
(e) legal access	0	0	1	0

(f) improper release of identity of witnesses/ informants/ suspects	2	0	0	0
(g) provision of information/ documents	0	0	0	0
<i>Sub-total:</i>	3	0	8	1
4. Inadequacies of ICAC procedures	1	0	0	0
Total	70	3 (4%)	67	5 (7%)

12. Of the three complaints found substantiated or substantiated other than alleged, the findings were as follows:

- The first case: an ICAC officer had engaged in private telephone calls during an interview with a complainant;
- The second case: an ICAC officer had inappropriately asked the complainant questions over the phone and required her to fax him a document; and
- The third case: an ICAC officer had failed to refer to her supervisor a request made by the complainant of a corruption report.

13. The above substantiated allegations concerned three ICAC officers, two of whom were given appropriate advice by their seniors. As the remaining officer had already left the ICAC, the Committee endorsed the recommendation that no action would be taken against the officer whilst the subject matter would be recorded on file.

Assessment Reports

14. After preliminary assessment of a complaint, if the ICAC considered that a full investigation is not warranted, the ICAC would state the reason(s) and submit an assessment report for the Committee's consideration. During 2011, the Committee considered and endorsed 16 assessment reports. Preliminary enquiries showed that there were no grounds or justifications in these complaints that would warrant formal investigations, and the Committee agreed that no further investigative actions be taken. The complainants were so advised in writing.

IMPROVEMENTS TO PROCEDURES

15. An important and positive outcome 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.

16. Arising from the investigation reports considered during 2011, the ICAC had issued guidelines reminding officers to refrain from engaging in telephone calls in the course of their dealings with members of the public, unless the making of these calls were necessary for the discharge of their official duties or in exceptional circumstances where there was great urgency of doing so. In any event, ICAC officers who need to make any such telephone calls should keep them as brief as practicable.

**Independent Commission Against Corruption
Complaints Committee
Membership List
(from 1 January 2011 to 31 December 2011)**

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

Members : Mr CHAN Chi-hung, 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, who had made a corruption report to the ICAC, complained that -

- (a) during an interview with Senior Investigator A on a specified date in February 2010, Senior Investigator A acted in an unprofessional manner in that Senior Investigator A engaged in private telephone calls;
- (b) when engaging in the private telephone calls, Senior Investigator A kept the door of the interview room open which might lead to the disclosure of his identity as a complainant; and
- (c) during a telephone conversation on a specified date in May 2010, Senior Investigator A refused to accept further information on his corruption report and spoke to him in an impolite manner.

BACKGROUND

2. On a specified date in January 2010, Mr X made a corruption report to the ICAC. The case was assigned to Senior Investigator A for investigation.

3. Between 2012 hours and 2110 hours on a specified date in February 2010, Senior Investigator A interviewed Mr X in relation to his corruption report in an interview room in the ICAC Building. Allegations (a) and (b) arose from this interview.

4. On a specified date in May 2010, Mr X telephoned Senior Investigator A with a view to providing her with additional information. Allegation (c) arose from this telephone conversation. On the same day, Mr X lodged a complaint against Senior Investigator A with the ICAC Report Centre (“RC”).

5. When being interviewed by an officer of the ICAC Internal Investigation and Monitoring Group (“the L Group”), Mr X gave a statement setting out allegations (a) to (c). Regarding allegation (a), he alleged that Senior Investigator A had received at least three private telephone calls, each lasted for about two minutes, during the interview. He overheard that the contents of the calls were related to her private matters such as when she would be off duty or fixing time for social gatherings. As she was the only interviewing officer, the interview had to be suspended during the phone calls. For allegation (b), Mr X alleged that Senior Investigator A had answered two of the phone calls outside the interview room, leaving the door open. He opined that anyone who was passing by the room might be aware of his status as a complainant. In respect of allegation (c), Mr X elaborated that Senior Investigator A had advised him to make a fresh corruption report to the RC if he would like to supply any additional information which was not covered in his original corruption report. When he queried

the arrangement, she allegedly asked him, in an impolite manner, to approach directorate officer(s) should he have any dissatisfactions.

6. Since Mr X refused to make a fresh report to the RC, Senior Investigator A reported the matter to her supervisor Acting Chief Investigator B. He then directed another ICAC officer to interview Mr X on a specified date in May 2010. Mr X's additional information related to a new corruption allegation. Since this allegation was similar to those in Mr X's original corruption report, Acting Chief Investigator B then instructed Senior Investigator A to investigate this allegation together with Mr X's original corruption report.

7. The investigation into Mr X's corruption report, including his new allegation, revealed no evidence of corruption. On a specified date in August 2010, the Operations Reviews Committee (Sub-Committee) ("ORC(SC)") endorsed the recommendation of no further investigative action to be taken by the ICAC. On the following day, Mr X was informed of the outcome of the investigation.

INVESTIGATION OF THE COMPLAINT

8. Senior Investigator A denied all of the allegations against her. With regard to allegation (a), she was unable to recall if she had received any phone calls during the interview with Mr X. However, she stated that it was her usual practice to answer phone calls during interviews to ascertain whether there were any urgent matters concerning her daughter. If some other persons phoned her, she would keep the conversations short in order to minimise the interruption to the interview.

9. Concerning allegation (b), Senior Investigator A said that if she had answered any phone calls outside the interview room, she would have kept the door of the interview room ajar so that she could monitor the situation therein. She stated that it was difficult for any person passing by the room to identify Mr X through the small gap.

10. In respect of allegation (c), Senior Investigator A stated that the additional information provided by Mr X was related to a new corruption allegation. She thus followed the established procedures to explain to him the reporting mechanism and invited him to make a new report to the RC. She further explained to him that the new report would be considered by the Directorates of the ICAC who would then decide whether to commence an investigation into the report. Nevertheless, he rejected her suggestion and indicated to complain against her. She denied having spoken to him in an impolite manner as alleged.

11. Acting Chief Investigator B stated that Senior Investigator A had reported to him that on a specified date in May 2010, Mr X had called her with a view to providing additional corruption information. She then advised him to make a fresh report to the RC but the latter refused. In the circumstances, Acting Chief Investigator B instructed another officer to interview Mr X and obtain the additional information from him. Considering that Mr X's additional information, though a new corruption allegation, was closely related to his original corruption report, Acting Chief Investigator B thus instructed Senior Investigator A to investigate this new allegation together with Mr X's original corruption report.

12. Examination of the relevant ICAC investigation file showed that the additional information provided by Mr X was related to a new corruption allegation. It was subsequently investigated together with his original corruption report. The investigation however revealed no evidence to substantiate the allegations. A report, covering both the original allegations and the new allegation, was submitted to the ORC(SC), which on a specified date in August 2010, endorsed the recommendation where no further investigative action would be taken by the ICAC.

ASSESSMENT OF THE COMPLAINT

13. Regarding to allegation (a), Senior Investigator A was unable to recall if she had received any phone calls during the interview with Mr X on a specified date in February 2010. However, she stated that it was her usual practice to answer phone calls during interviews to ascertain if there were any urgent matters concerning her daughter. She would also answer phone calls from other persons but would keep the conversations short in order to minimise the interruption caused to the interviewees.

14. According to Mr X, Senior Investigator A received at least three phone calls, each lasting for about two minutes. Two of these phone calls were answered outside the interview room. Mr X said that he also overheard that the contents of the phone calls were related to her private matters such as when she would be off duty or fixing time for social gatherings.

15. Having considered the accounts of the events given by Mr X and Senior Investigator A, it is believed that Senior Investigator A did engage in private phone calls during the interview. It also appears that those phone calls were non-urgent in nature, for if they were one would expect that these calls would have left a deep impression on Senior Investigator A and she would then be able to recall the content of the conversations when being interviewed by L Group officers. This conduct of Senior Investigator A had a disrupting impact upon the course of the interview and at that time, she answered three phone calls and in respect of two of them, left the interview room in order to speak to the callers. Since she was the only interviewing officer, she should have avoided engaging in the said private phone calls which caused interruptions to the interview. Hence, allegation (a) is substantiated.

16. For allegation (b), Senior Investigator A said that she would have left the door of the interview room ajar had she talked on the phone outside the room during the interview with Mr X in order to monitor the activities therein. Thus, it would be difficult for any passer-bys to identify Mr X through the small gap. Senior Investigator A's explanation was not unreasonable as she had to ensure the safety of Mr X, who was alone in the interview room, by leaving the door ajar while she was answering the call outside. Even if any person was passing by the interview room, it was unlikely that the complainant's identity and his status as a complainant would have been uncovered in the circumstances. Therefore, allegation (b) is not substantiated.

17. With respect to allegation (c), Senior Investigator A stated that Mr X's further information provided to her over the phone on a specified date in May 2010 concerned

a new allegation. She thus explained to him the reporting mechanism and invited him to make a new report to the RC, which is in line with the ICAC policy. She denied that she had spoken to him in an impolite manner. In the absence of evidence other than Mr X's own assertion, allegation (c) is not substantiated.

18. Since Mr X refused to make a fresh report to the RC concerning his additional information, Acting Chief Investigator B instructed another ICAC officer to interview him and obtained the information. His additional information was confirmed to be a new corruption allegation. Considering that the new corruption allegation was closely related to the allegations where Mr X had originally reported, Acting Chief Investigator B then arranged it to be investigated together with his original corruption report. The findings of the investigation were reported to the ORC(SC) as stated in paragraph 7.

CONCLUSION

19. The Commissioner of the ICAC agreed that allegation (a) is substantiated and allegations (b) and (c) are not 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.