

# 廉政公署事宜投訴委員會

## ICAC COMPLAINTS COMMITTEE

二零一四年年報

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Annual Report 2014

8 June 2015

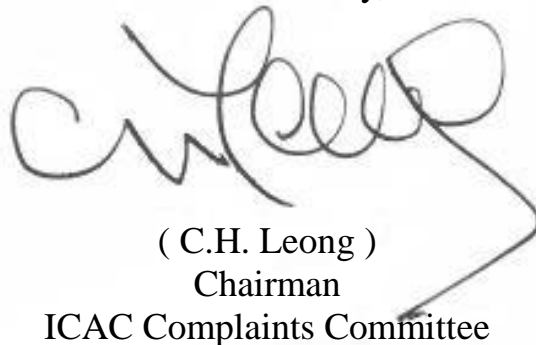
The Honourable C Y Leung, GBM, GBS, JP  
The Chief Executive  
Hong Kong Special Administrative Region  
People's Republic of China  
Chief Executive's Office  
Tamar  
Hong Kong

Dear Sir,

**ICAC Complaints Committee  
2014 Annual Report**

I have the honour to forward to you the annual report of the ICAC Complaints Committee for the year 2014. This is the twentieth annual report of the Committee, which gives a summary of the work carried out by the Committee in the past year.

Yours sincerely,



( C.H. Leong )  
Chairman  
ICAC Complaints Committee

# INDEPENDENT COMMISSION AGAINST CORRUPTION COMPLAINTS COMMITTEE

## 2014 Annual Report

### INTRODUCTION

Established on 1 December 1977, the Independent Commission Against Corruption Complaints Committee (“the Committee”) is responsible for monitoring and reviewing the handling by the Independent Commission Against Corruption (“ICAC”) 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 is also 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 2014, the Committee was chaired by Dr LEONG Che-hung. A membership list of the Committee from 1 January 2014 to 31 December 2014 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 (“the 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 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. 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<sup>2</sup>, and the Commissioner will forward his conclusions and recommendations in respect of each complaint to the Committee via the Secretary.

**B**

5. The Secretary will arrange all investigation reports received from the Commissioner to be discussed at Committee meetings. Members may seek additional information and/or clarifications from the ICAC concerning the reports and will consider the recommendations made in the reports. 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 complainants’ position in *sub-judice* cases. Pursuant to the legal advice obtained, 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

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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: 3655 5503; Fax number: 2524 7103)

2 Should circumstances require, the Commissioner may make ad hoc arrangement to assign a particular complaint to designated officers outside the Internal Investigation and Monitoring Group for assessment and investigation.

investigation of his/her complaint but the subject matter of the complaint appears to be closely related to issues on which the court may have to decide, the Commissioner will seek further legal advice and then 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 2014, 16 complaints against the ICAC or its officers were received, a noticeable drop as compared with 31 complaints received in 2013. The 16 complaints contained a total of 64 allegations registered during the year. Apart from these, two additional allegations<sup>3</sup> were registered in 2014 in respect of a complaint received in 2013. Hence, a total of 66 allegations were registered in 2014 as compared with 86 allegations registered in 2013. These allegations were related to misconduct of ICAC officers (47%); neglect of duties (45%); abuse of power (5%); and inadequacies of ICAC procedures (3%). A summary of the statistics is at Table 1 below.

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<sup>3</sup> The relevant complaint received in 2013 covered a total of nine allegations, seven of which were registered in 2013 and the remaining two in February 2014 arising from new issues subsequently raised by the complainant.

Table 1 – Number and category of allegations registered in 2013 and 2014

| Category of allegation   | Number of allegations (%) in 2014 | Number of allegations (%) in 2013 |
|--|-----------------------------------|-----------------------------------|
| 1. Misconduct (e.g. behaving in a poor/impolite manner)                                  | 31 (47%)                          | 38 (44%)                          |
| 2. Neglect of duties (e.g. failure to conduct a thorough investigation)                  | 30 (45%)                          | 32 (37%)                          |
| 3. Abuse of power  |                                   |                                   |
| (a) search   | 0                                 | 1                                 |
| (b) arrest/detention/bail  | 2                                 | 6                                 |
| (c) interview  | 1                                 | 1                                 |
| (d) handling property  | 0                                 | 2                                 |
| (e) legal access   | 0                                 | 1                                 |
| (f) improper release of identity of witnesses/informants/suspects                        | 0                                 | 0                                 |
| (g) provision of information/documents   | 0                                 | 2                                 |
| <i>Sub-total :</i>   | 3 (5%)                            | 13 (15%)                          |
| 4. Inadequacies of ICAC procedures (e.g. refusing to disclose the requested information) | 2 (3%)                            | 3 (4%)                            |
| <b>Total :</b>   | <b>66<sup>4</sup></b>             | <b>86</b>                         |

## COMPLAINTS CONSIDERED

8. The Committee held three meetings in 2014. Of the 16 complaints received in 2014, investigation into 11 complaints<sup>5</sup> covering 23 allegations was concluded with the relevant investigation reports considered by the Committee during the year. The Committee also considered nine complaints received in 2013 covering 30 allegations<sup>4</sup> and one complaint received in 2012 covering 15 allegations. A sample of an investigation report on a complaint considered by the Committee is at *Annex C*.

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<sup>4</sup> Including two allegations of a complaint received in 2013 but subsequently raised in 2014 by the complainant.

<sup>5</sup> The remaining five complaints covering 41 allegations were still under investigation as at the end of the year.

9. Of a total of 21 complaints covering 68 allegations considered by the Committee in 2014, eight allegations (12%) in four complaints (19%) were found to be substantiated or partially substantiated. 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 2013 and 2014*

| Category of allegation   | 2014                             |  | 2013                             |  |
|--|----------------------------------|--|----------------------------------|--|
|  | Number of allegations considered | Number of allegations (%) found substantiated/ partially substantiated | Number of allegations considered | Number of allegations (%) found substantiated/ partially substantiated |
| 1. Misconduct (e.g. behaving in a poor/impolite manner)                                  | 27                               | 1  | 34                               | 11   |
| 2. Neglect of duties (e.g. failure to conduct a thorough investigation)                  | 23                               | 6  | 21                               | 0  |
| 3. Abuse of power  |                                  |  |                                  |  |
| (a) search   | 3                                | 0  | 0                                | 0  |
| (b) arrest/detention/bail  | 7                                | 0  | 0                                | 0  |
| (c) interview  | 0                                | 0  | 1                                | 0  |
| (d) handling property  | 3                                | 1  | 1                                | 1  |
| (e) legal access   | 1                                | 0  | 0                                | 0  |
| (f) improper release of identity of witnesses/ informants/suspects                       | 0                                | 0  | 0                                | 0  |
| (g) provision of information/ documents  | 0                                | 0  | 2                                | 0  |
| <i>Sub-total:</i>  | 14                               | 1  | 4                                | 1  |
| 4. Inadequacies of ICAC procedures (e.g. refusing to disclose the requested information) | 4                                | 0  | 1                                | 0  |
| <b>Total :</b>   | <b>68</b>                        | <b>8(12%)</b>  | <b>60</b>                        | <b>12 (20%)</b>  |

10. Of the four complaints with allegations found substantiated or partially substantiated, four officers were variously found, in one of the complaints, to have unreasonably seized and/or retained properties unrelated to an investigation, and failed to clearly list out or accurately record some of the seized items in the relevant seizure lists.

11. In the second case, two officers were found not well justified in refusing to disclose to a complainant the identity of the officer(s) who had decided not to investigate the complainant's report alleging that false information was provided to the ICAC.

12. In the third case, an officer had failed to take a further witness statement from the complainant to accurately reflect the change in circumstances regarding the allegation made and make proper written records of his communications with the complainant.

13. In the fourth case, an officer had failed to make an accurate description of some seized computer accessories in the seizure list and related internal property transfer records, and another officer had failed to properly re-pack on return of these accessories after forensic examination.

14. The above substantiated or partially substantiated complaints concerned nine officers, eight of whom were given advice by their senior officers. As the remaining officer had already left ICAC service before the investigation into the relevant complaint was concluded, the Committee noted that no further action would be taken against that former officer.

15. In addition, ten officers in six of the complaints were each given advice by their senior officers, although the allegations made against them were found not substantiated. The advice was given as part of ICAC's continuing efforts to upkeep the professionalism of officers. The officers were advised, among other things, to take more initiative to explain matters more thoroughly to address the complainants' concerns, to be more vigilant in the preparation and execution of search warrants and to enhance their communication skills with witnesses to avoid misunderstanding.



## **ASSESSMENT REPORTS**

16. For complaints which the ICAC considers that a full investigation is not warranted after preliminary assessment, the ICAC would process them by way of assessment reports. Such cases include complaints which are incoherent or irrational, repeated complaints previously disposed of through the Committee, the subject matters of complaints already decided by the courts, etc. In respect of each case, the ICAC would state the reason(s) and submit an assessment report for the Committee's consideration. During 2014, the Committee considered and endorsed eight 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**

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

18. Arising from the investigation reports considered during 2014, the ICAC had reviewed certain operational procedures and made improvement. For example, the ICAC had implemented a revised procedure to require officers to make a detailed and accurate description in records in respect of seizure of computers and related accessories. The ICAC had also reviewed and refined its procedure on inviting Government servants for interview as witnesses on matters not relating to their official duties.

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**Independent Commission Against Corruption  
Complaints Committee  
Membership List  
(from 1 January 2014 to 31 December 2014)**

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

Members : Mr CHAN Chi-hung, SC

The Hon CHEUNG Chi-kong, BBS, JP

The Hon Jeffrey LAM Kin-fung, GBS, JP

Ms Angela LEE Wai-yin, BBS, JP

Dr the Hon Priscilla LEUNG Mei-fun, SBS, JP

The Hon Alice MAK Mei-kuen, JP

Mr Tony MA

*(Representative of The Ombudsman)*

## List of ICAC Offices

| Office   | Address and Telephone Number   |
|--|--|
| ICAC Report Centre<br>(24-hour service)              | G/F, 303 Java Road<br>North Point<br>Tel: 2526 6366<br>Fax: 2868 4344<br>e-mail: ops@icac.org.hk |
| ICAC Regional Office –<br>Hong Kong West/Islands     | G/F, Harbour Commercial Building<br>124 Connaught Road Central<br>Central<br>Tel: 2543 0000      |
| ICAC Regional Office –<br>Hong Kong East             | G/F, Tung Wah Mansion<br>201 Hennessy Road<br>Wanchai<br>Tel: 2519 6555                          |
| ICAC Regional Office –<br>Kowloon East/Sai Kung      | Shop No. 4, G/F, Kai Tin Building<br>67 Kai Tin Road<br>Lam Tin<br>Tel: 2756 3300                |
| ICAC Regional Office –<br>Kowloon West               | G/F, Nathan Commercial Building<br>434-436 Nathan Road<br>Yaumatei<br>Tel: 2780 8080             |
| ICAC Regional Office –<br>New Territories South West | Shop B1, G/F, Tsuen Kam Centre,<br>300-350 Castle Peak Road<br>Tsuen Wan<br>Tel: 2493 7733       |
| ICAC Regional Office –<br>New Territories North West | G/F, Fu Hing Building<br>230 Castle Peak Road<br>Yuen Long<br>Tel: 2459 0459                     |
| ICAC Regional Office –<br>New Territories East       | G06 - G13, G/F, Shatin Government Offices<br>1 Sheung Wo Che Road<br>Shatin<br>Tel: 2606 1144    |

## **A sample of an Investigation Report**

### **COMPLAINT**

Madam X complained that -

- (a) the Case Officer of the corruption investigation in which she was involved had failed to return to her some cables, a keyboard and a mouse which were seized by the ICAC together with the hard-disk of a desktop computer at her residence;
- (b) the ICAC had returned a malfunctioned hard-disk to her on a specified date in December 2013;
- (c) Investigator A had unreasonably delayed in returning to her some supermarket coupons, which were all expired upon their return; and
- (d) Investigator A had falsely purported to her that the Court had confiscated a recording pen and a camera seized at her premises

### **BACKGROUND**

2. In January 2012, during the course of a corruption investigation, it was revealed that Madam X might have deceived money from her employer by (“the Employer”) submitting false claims for allowances to the Employer in relation to the work allegedly performed by a person under her supervision. A corruption investigation (“the Corruption Investigation”) into this matter was then conducted by an investigation section of the ICAC.

3. Subsequent ICAC investigation revealed that between 2009 and 2011, Madam X had submitted seven claim forms to the Employer claiming that some persons were hired for performing certain work under her supervision. The amount of individual claims was higher than the salary actually payable. Believing that all the information contained in the claim forms was true and accurate, the Employer paid the persons direct by cheque. After the persons had received the payment, Madam X either asked the persons for a refund or requested them to purchase items, including computer equipment, digital recorder, digital camera, bookstore and supermarket coupons and cake coupons for her. She then kept the monies or the items herself without returning them to the Employer or marked the items as inventory of the Employer.

4. In May 2012, Madam X was arrested by the ICAC for the suspected offence of agent using document with intent to deceive her principal, contrary to section 9(3) of the Prevention of Bribery Ordinance (Cap. 201) (“POBO”). Her office and residence were searched pursuant to search warrants issued by a magistrate. In April 2013, Madam X was charged by the ICAC for seven counts of the offence under section 9(3) of the POBO. In September 2013, she was convicted of all the charges after trial.

5. On a specified date in December 2013, Madam X contacted the investigation section making a request for the return of seizures. Two days later, she attended the ICAC offices and a batch of seizures not produced as exhibits was returned to her.

6. On the following day of Madam X collecting the seizures from the ICAC, she complained to the investigation section that a computer hard-disk (“the Hard Disk”) that was returned to her was found not functioning [allegation (b)]. Besides, she claimed that the Hard Disk should come with a paper box containing some cables, a keyboard and a mouse, but ICAC officers failed to return the same to her [allegation (a)]. In addition, 10 supermarket coupons, each worth \$50, that were returned to her were all expired [allegation (c)]. Senior Investigator B of the investigation section then made an enquiry with Senior Investigator C who had been transferred out earlier. Senior Investigator C was the then Case Officer of the Corruption Investigation and also the arresting officer of Madam X. Senior Investigator C, however, had no recollection that he had seized a paper box containing the computer accessories. Besides, Senior Investigator B had examined the relevant seizure list and internal property transfer records (see paragraph 19 below), both of which had not recorded any computer accessories seized along with the Hard Disk. Senior Investigator B then replied to Madam X that following an enquiry, it was confirmed that the ICAC had not seized the said computer accessories. Madam X was not satisfied with the reply and suspected that “theft” or “professional misconduct” might be involved. On a later date in December 2013, the investigation section referred Madam X’s complaint to the Internal Investigation and Monitoring Group of the ICAC (“L Group”) for handling.

7. When contacted by L Group in January 2014, Madam X said that as she was busy with personal matters, she would meet L Group officers later to give a statement. When being invited to bring the Hard Disk to ICAC offices for checking by ICAC’s Computer Forensics Section, Madam X said she would consider it. In March 2014, Madam X stated that she would not give any statement to L Group and requested L Group to conduct an internal investigation based on the information she had provided to Senior Investigator B previously. She also stated that she would not bring the Hard Disk to the ICAC for the time being. Besides, she made a further allegation that Investigator A had previously told her that a recording pen and a camera seized at her premises during the ICAC operation could not be returned to her because the Court had confiscated them. However, Madam X had recently read through the transcript of the trial and did not find that the presiding magistrate had made such a confiscation order. She therefore alleged that Investigator A had lied to her in that regard [allegation (d)].

8. In April 2014, in accordance with established procedure in dealing with criminal complaints against ICAC officers, L Group sought legal advice from the Department of Justice (“DoJ”) on whether allegation (a) made by Madam X warranted a criminal investigation. In May 2014, DoJ advised that the complaint did not warrant a criminal investigation by the ICAC, but the complainant should be advised to report to the police if she wished to pursue the matter. L Group then commenced the internal investigation after informing Madam X the same.

## INVESTIGATION OF THE COMPLAINT

9. Investigator A was interviewed by L Group and stated that in late November 2012, he was transferred to the investigation section and newly took up the Corruption Investigation. He was responsible for preparing a report for legal advice to the DoJ to see if there was sufficient evidence to prefer charges against Madam X. He denied all the allegations and gave an account of events detailed in paragraphs 10 to 14 below.

10. In respect of allegation (c), Investigator A stated that before the operation, there was information suggesting that Madam X might have instructed a number of persons under her supervision to buy supermarket coupons for her after the latter had received their wages from the Employer. During the operation, among other seizures, 10 supermarket coupons each of \$50 worth were seized at Madam X's residence. Besides, a memo note attached to a claim form was seized at her office which showed that Madam X might have instructed Madam Y, one of the persons under her supervision, to buy bookstore coupons, cake coupons and supermarket coupons for her. However, Madam Y when interviewed by the officers of the investigation section could not recall if she had bought supermarket coupons for Madam X. The advising counsel of the DoJ, having considered the circumstances, agreed that the seized supermarket coupons, the memo note and the claim form should be produced in the trial as evidence. One or two days after the trial had commenced in August 2013, however, the trial counsel reviewed the evidence and considered that there was insufficient evidence to prove the linkage between the seized supermarket coupons and the charges. As such, the seized supermarket coupons were removed from the exhibit list and not produced as exhibits.

11. When preparing the report for legal advice, Investigator A was aware that the supermarket coupons would expire on a specified date in June 2013. He explained that since it was initially intended that the supermarket coupons would be produced in the trial as exhibits as they might represent proceeds of crime, the expiry date was not an issue relevant for consideration.

12. In respect of allegation (d), Investigator A explained that the recording pen and camera in question were produced in the trial as exhibits by way of section 65C of the Criminal Procedure Ordinance (Cap. 221). On a specified date in October 2013 after the verdict, the Prosecution submitted a Disposal List to the Court and a copy of the same was also served on the defence counsel. In the Disposal List, it was clearly stated that the recording pen and camera were to be confiscated. The confiscation of the two items was discussed at Court, when Madam X and her counsel were present, before the magistrate approved the means of disposal as stipulated in the Disposal List.

13. For allegation (a), Investigator A explained that he had no personal knowledge on the computer accessories which were allegedly seized at Madam X's residence along with the Hard Disk, as he took up the case after the ICAC operation. He stated that according to the relevant seizure list and the internal property transfer records, the Hard Disk was described as "A grey colored desktop harddisk case" with a serial number, and that there was no record as to the existence of the said computer accessories. Besides, when he retrieved the Hard Disk from the Central Property Unit ("CPU")<sup>1</sup> on a specified date in July 2013 for court purpose, the Hard Disk was then

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<sup>1</sup> The Central Property Unit is a unit within the ICAC Operations Department responsible for providing centralised storage services for the safe custody of seizures and exhibits.

fully wrapped and sealed and did not come with any computer accessories. As Investigator A was on leave during the concerned period in December 2013, he was not involved in returning the relevant seizures, including the Hard Disk, to Madam X.

14. As for allegation (b), Investigator A stated that to his knowledge, the Hard Disk was sent to ICAC's Computer Forensics Section for examination after the operation. After examination, the Hard Disk was wrapped and sealed and transferred to the CPU for storage. He was not aware that it was not functioning as alleged.

15. Senior Investigator C was the then Case Officer of the Corruption Investigation and the arresting officer of Madam X. In relation to allegation (a), Senior Investigator C stated that he had no recollection whether he had seized a paper box containing the computer accessories along with the Hard Disk at the residence of Madam X on the date of her arrest. According to the relevant seizure list signed by both Madam X and him on the following day, there was no record showing that the alleged computer accessories were seized. Senior Investigator C gave Senior Investigator B the same account when the latter inquired with him about the matter in December 2013.

16. Assistant Investigator D, Senior Investigator C's team member on the day of operation, was interviewed by L Group in relation to allegation (a). She also had no recollection if a paper box containing the alleged computer accessories was seized along with the Hard Disk at the residence of Madam X on the date of her arrest.

17. Assistant Investigator E of the Computer Forensics Section was interviewed by L Group. Regarding allegations (a) and (b), he stated that on a specified date in June 2012 (Friday) before lunch time, Senior Investigator C brought some computer seizures, including the Hard Disk, to the Computer Forensics Section for forensic examination. The Hard Disk came with a power cord and a mouse and Assistant Investigator E accordingly marked these items on the forensics log as peripherals. Assistant Investigator E then conducted a forensic examination on the Hard Disk in the afternoon of the same day. Based on the forensics log, Assistant Investigator E recalled that the Hard Disk was not functioning properly and he had to use more advanced forensics tools to try replicating the data stored therein. At 1800 hours on the same day, the forensic examination was not yet finished. Assistant Investigator E continued and completed the examination in the morning of the following Monday. Assistant Investigator E then wrapped the hard-disk and sealed it in accordance with established procedure, but he had, inadvertently, forgotten about the power cord and the mouse, which were then left in the computer forensics laboratory unattended until a specified date in March 2014 when L Group requested a thorough search be conducted at the Computer Forensics Section<sup>2</sup>. Assistant Investigator E denied to have kept the power cord and the mouse for personal use or any malicious purpose. He stressed that no keyboard was handed over to him on the specified date in June 2012, or else he would have also recorded it on the forensics log.

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<sup>2</sup> On the specified date in March 2014, L Group requested the Computer Forensics Section to conduct a thorough search at their offices because the forensics log showed that a power cord and a mouse were handed over to Assistant Investigator E on the specified date in June 2012 for the purpose of forensic examination, but there was no subsequent record showing that the accessories were returned to the investigation section. Later on the same day, they were recovered at the Computer Forensics Section. Madam X was informed of the same.

18. Assistant Investigator F of the investigation section was interviewed by L Group. She confirmed that on a specified date in March 2013, upon the instruction from her supervisor, she went to the Computer Forensics Section to collect, among other things, the Hard Disk, and then conveyed them to the CPU for storage. She stated that the Hard Disk was at that time wrapped and sealed, and that it did not come with any computer accessories.

### **Examination of ICAC Records**

19. Regarding allegation (a), the relevant seizure list, the internal property transfer records, records kept by the Computer Forensics Section and other file records were examined. According to the seizure list, the description of the Hard Disk was “A grey colored desktop harddisk case” with a serial number. There was no record showing a paper box or any computer accessories having been seized together with the Hard Disk. The seizure list was signed by both Senior Investigator C and Madam X soon after Madam X was released on bail around midnight on the date of arrest. The internal property transfer records gave the Hard Disk the same description. The records also showed that on a specified date in June 2012, Senior Investigator C brought the Hard Disk to the Computer Forensics Section for forensic examination. The remark “power cord, mouse” was made on the front page of the forensics log by Assistant Investigator E.

20. Regarding allegation (b), records from the Computer Forensics Section confirmed that a number of forensics tools were deployed in replicating the data stored in the Hard Disk.

21. Regarding allegation (c), file records confirmed that the supermarket coupons in issue were initially included as exhibits. They were removed from the exhibit list at the trial stage.

22. Regarding allegation (d), file records confirmed that the recording pen and camera in question were produced in the trial as exhibits. The Disposal List submitted to the Court confirmed that the two items had been confiscated by the Court.

### **ASSESSMENT OF THE COMPLAINT**

23. Regarding allegation (a), L Group enquiry confirmed that the power cord and the mouse were seized together with the Hard Disk during the ICAC operation in May 2012. They were not listed in the seizure list leading to the initial misunderstanding that they were not seized. Eventually they were recovered from the Computer Forensics Section after a thorough search. On the other hand, L Group enquiry revealed no evidence, other than Madam X’s claim, that a keyboard had also been seized along with the Hard Disk. The whole incident revealed negligence on the part of Senior Investigator C who had failed to make an accurate description in the seizure list to truly reflect that the power cord and the mouse were part of the Hard Disk seized, and on the part of Assistant Investigator E who had failed to assemble the Hard Disk and its accessories after conducting the forensic examination. L Group enquiry revealed that Investigator A was not responsible for this matter. As a result of this incident, a revised procedure has been implemented in April 2014 that a detailed and accurate description must be made in the seizure list and subsequently in the internal property transfer records. In sum, allegation (a) is not substantiated against



Investigator A but partially substantiated against Senior Investigator C and Assistant Investigator E. Senior Investigator C and Assistant Investigator E should be appropriately advised by a senior officer in respect of their negligence in handling seizures.

24. Regarding allegation (b), Assistant Investigator E stated that the Hard Disk was found not functioning properly at the time when it was handed over to him for forensic examination on the specified date in June 2012. In the event, more advanced forensic tools were deployed in order to replicate the data stored in the Hard Disk. Records from the Computer Forensics Section supported Assistant Investigator E's version. In view of Assistant Investigator E's explanation and given that Madam X was unwilling to return the Hard Disk to the ICAC for inspection, there is no basis for suggesting that ICAC was responsible for the malfunctioning of the Hard Disk. In the given circumstances, allegation (b) is not substantiated.

25. Regarding allegation (c), Investigator A denied the allegation and explained that as agreed by the advising counsel of the DoJ, the supermarket coupons were intended to be produced in the trial as exhibits. It was only until the trial stage that the trial counsel held a contrary view and decided not to produce the supermarket coupons. However, by that time the supermarket coupons had already been expired. Investigator A's version was supported by file records. In the given circumstances, allegation (c) is not substantiated.

26. Regarding allegation (d), Investigator A denied the allegation and his explanation is supported by the Disposal List. As such, allegation (d) is not substantiated.

## **CONCLUSION**

27. The Commissioner of the ICAC agreed that allegation (a) is partially substantiated against Senior Investigator C and Assistant Investigator E and that allegations (b), (c) and (d) are not substantiated. The ICAC Complaints Committee endorsed the conclusion of the investigation by the ICAC. Madam X was informed of the result of the investigation in writing. Concerning allegation (a), Senior Investigator C was given advice by a senior officer to remind him that a detailed and accurate record of seizures has to be made in the seizure list and internal property transfer records; and Assistant Investigator E was given advice by a senior officer to remind him that he should be more careful in handling seizures that are brought to the Computer Forensics Section for examination.