

ICAC
Complaints Committee

1995 Annual Report

MEMBERS OF THE EXECUTIVE COUNCIL

行政局議員

3 April 1996

The Right Honourable Christopher Patten
Governor
Government House
Hong Kong


Dear

Governor,

**ICAC Complaints Committee
1995 Annual Report**

One of the recommendations of the ICAC Review Committee is that all the committees of the ICAC should submit annual reports to the Governor which should be published. I have the honour of forwarding to you the annual report of the ICAC Complaints Committee for the year 1995.

Yours sincerely,



(Rosanna WONG)
Chairman
ICAC Complaints Committee

ICAC COMPLAINTS COMMITTEE

1995 Annual Report

INTRODUCTION

The ICAC Complaints Committee (the Committee) was set up on 1 December 1977. It has always consisted mainly of Members of the Executive and Legislative Councils, with the Attorney General as an ex-officio member. The Committee was previously serviced by joint Secretaries from the ICAC and the Office of the (non-government) Members of the Executive and Legislative Councils, later known as Office of the (non-government) Members of the Legislative Council. In March 1994, the Administration Wing of the Chief Secretary's Office took up the Committee's secretariat duties.

MEMBERSHIP

2. A list of the members serving on the *Annex A* Committee during 1995 is at *Annex A*. Following the resignation of the Right Honourable Baroness DUNN, the Honourable Rosanna WONG Yick-ming was appointed Chairman on 21 November 1995. The appointments of the other members expired on 31 December 1995.

TERMS OF REFERENCE

3. The terms of reference of the Committee are -
- (1) to monitor, and where it considers appropriate to review, the handling by the Independent Commission Against Corruption (ICAC) of complaints by anyone against the ICAC and officers of the ICAC;
 - (2) to identify any faults in ICAC procedures which lead or might lead to complaints; and
 - (3) when it considers appropriate, to make recommendations to the Commissioner of the ICAC, or, when considered necessary, to the Governor.

HANDLING OF COMPLAINTS

4. Any person who has a complaint against the ICAC or its officers may write to the Secretary of the ICAC Complaints Committee at the Chief Secretary's Office, Administration Wing, Central Government Offices, East Wing, Lower Albert Road, Hong Kong. He/she may also complain to the ICAC at any of its offices in person, by telephone or in writing.

5. The ICAC will confirm receipt of the complaint in writing, setting out the specific point(s) of complaint, and will forward a copy to the Secretary of the Committee for information. In cases where the complaint is received directly by the Secretary, he/she will acknowledge receipt and forward the complaint to the ICAC for follow up action. A special group in the Operations Department of the ICAC is responsible for investigating such complaints. When

an investigation has been concluded, the Commissioner of the ICAC will forward his conclusion and recommendations to the Committee through the Secretary.

6. In each case, the Secretary will prepare a discussion paper and circulate it to Members for consideration, with the investigation report attached. Members may seek information and clarification from the ICAC as and when they receive the papers. All discussion papers arising from investigation reports will be discussed at a meeting of the Committee.

Sub-judice Cases

7. Investigation will be conducted into complaints as soon as possible. However, where the allegations in a complaint are directly or closely associated with an ongoing criminal enquiry or criminal proceedings, the investigation will usually be deferred until the conclusion of the enquiries or proceedings. In effect, the complaint will be regarded as 'sub-judice'. This is because the investigation of complaints very often involves in-depth interviews with the complainant which may touch upon the circumstances surrounding the criminal proceedings, and may possibly produce a statement to the disadvantage of the complainant.

8. Despite the general rule, where a complainant is legally represented the investigation may proceed if the Commissioner of the ICAC considers the circumstances to warrant an immediate investigation, or if a solicitor acting on behalf of the complainant in the matter of the complaint wishes

the investigation to proceed, and the Commissioner, having considered all the circumstances, directs that it should do so. However, when a complainant seeks immediate investigation of a complaint made but the subject matter of the complaint appears to be closely related to issues on which the courts will have to decide, the Commissioner will seek legal advice and then decide whether or not to defer the investigation of the complaint.

COMPLAINTS RECEIVED

9. In 1995, 24 complaints against the ICAC and its officers were received. Most complainants made more than one allegation in their complaints. Of the total of 82 allegations, 42 (51%) alleged abuse of power by ICAC officers; 25 (30%) complained against the conduct of officers; 12 (15%) alleged negligence of duties by officers; and 3 (4%) complained about ICAC procedures.

10. One complainant subsequently withdrew his complaint during the year. Of the remaining 23 cases, investigations into seven were concluded during the year and the relevant reports were considered by the Committee. Investigations into six are continuing, while investigations into the remaining ten have been deferred because they are considered 'sub-judice'.

INVESTIGATION REPORTS CONSIDERED

11. At its meeting in June, the Committee considered seven investigation reports (involving eight complaints) from the ICAC. The December

meeting was deferred to 9 January 1996. At that meeting, Members considered 13 investigation reports, including seven on complaints received during 1995 and two where the complainant had withdrawn his complaint but where the Commissioner had decided to continue with the investigation. A summary of an investigation report

Annex B considered by the Committee is at *Annex B*.

12. Of the 20 investigation reports considered by the Committee, four complaints were found to be partially substantiated and the rest unsubstantiated. In each of the four partially substantiated complaints, the Commissioner of the ICAC sent a letter of apology to the complainant. In three of these cases, suitable advice was given to seven officers about the shortcomings that had been revealed. The Commissioner also sent a letter of apology to one complainant regretting the inconvenience caused although the complaint was not substantiated and no fault was attributable to the ICAC officers concerned.

13. The 'oldest' case considered by the Committee in the year was a complaint filed in March 1989 involving a complicated court case. Following the dismissal of his appeal to the Court of Appeal, the complainant made a number of criminal allegations against ICAC officers, the trial Judge, the prosecuting Crown Counsel and prosecuting witnesses in his High Court trial. It was not until the criminal allegations had been settled that investigations into the complaint could commence.

IMPROVEMENTS TO PROCEDURES

14. An important and positive effect of an investigation into a complaint is that related ICAC internal procedures, guidelines and practices are carefully scrutinised during the investigation. This requires both the ICAC and the Committee to examine the adequacy of existing procedures, guidelines and practices, and consider such issues as whether any procedures need to be updated, whether clear and specific guidelines need to be drawn up, whether any improvements are required and whether any existing practices should be formalised.

15. As a result of the 20 complaint investigation reports considered by the Committee this year, the ICAC has drawn up or is in the process of drawing up new guidelines on the referral of complaints to other government departments, on informing detainees of their overnight detention where appropriate, and on formalising and improving the procedures for handling press enquiries. The ICAC has also clarified in one of its guidelines that it is the team leader's responsibility to see to the issue of receipts for property seized. Apart from improvements to guidelines, the ICAC has reviewed two separate notices, to persons detained and to persons in custody, and confirmed that they should be maintained. The ICAC is also considering revising the wording on a chop containing a declaration by the detainee to a question, and is exploring the feasibility of having a room temperature reading instrument with a legible indicator in each interview room.

OTHER MATTERS

16. In the June meeting, Members of the Committee considered the issue of declarations of interests. Members decided to continue with the practice of declaring, where appropriate, any actual or potential conflict of interest at the relevant meeting before discussion of an investigation report begins. The Secretary will circulate the guidelines on declarations of interests to Members before each meeting.

ICAC COMPLAINTS COMMITTEE

Membership (as from 1 January to 31 December 1995)

The Rt Hon the Baroness DUNN, DBE, JP *Chairman*

As from 21 November

The Hon Rosanna WONG Yick-ming, *Chairman*
CBE, JP

The Hon Denis CHANG Khen-lee, QC, JP

Professor the Hon Edward CHEN Kwan-yiu,
CBE, JP

The Hon Allen LEE Peng-fei, CBE, JP

Ms Anna WU Hung-yuk

Dr Wilfred CHAN Siu-yuen, JP

Attorney General) (*ex-officio*)

Commissioner for Administrative Complaints)

Assistant Director of Administration, CSO *Secretary*

SUMMARY OF AN INVESTIGATION REPORT

COMPLAINT

Mr A complained in May 1994 that -

- (a) he was not appropriately informed of his overnight detention thereby causing him unnecessary inconvenience;
- (b) his overnight detention was unnecessary and unreasonable; and
- (c) the search of his home address in September 1993 was unnecessary and used to justify his overnight detention.

BACKGROUND

2. Mr A's complaint arose out of a criminal investigation into alleged syndicated corruption in a Government department involving disciplined service officers and triad members.

3. In July 1993, ICAC received reliable information that Mr A had offered an officer of the disciplined service (B) an all-expenses-paid trip to Malaysia in return for assistance in employing two triad members to extort money from Mr A's girlfriend who had embezzled the proceeds from the sale of a property held in their joint names. In September 1993, Mr A was arrested on suspicion of offering an advantage to B, contrary to Section 4 of the Prevention of Bribery Ordinance. His office and residence were searched and he was released on bail the following day. The investigation into this offshoot

of the main enquiry revealed insufficient evidence to charge Mr A. In April 1994, the ICAC Operations Review Committee advised that no further action should be taken.

Allegation (a)

4. Investigation into the case revealed that ICAC officers located Mr A before noon and invited him to ICAC offices for interview. During the interview Mr A denied the allegation. He conceded that B had introduced two men to assist him in recovering a debt from his girlfriend but without resorting to unlawful means. He had no knowledge of the identities and whereabouts of these two men. Mr A was arrested at 6 p.m. that day and taken to the Detention Centre.

5. In the Detention Centre Mr A had asked to see the case officer twice that evening. He had also asked if he was to be detained overnight but was not given a reply by the guarding officer. It was only at midnight that he eventually managed to speak to the Senior Investigator by telephone and was informed of his overnight detention. Although he had been allowed to call his wife in the evening and soon after midnight, it was too late for him to make additional arrangements.

6. The investigation also revealed that there was no guidance in the Commission Standing Orders requiring ICAC officers to inform a detainee of his overnight detention. It is, nonetheless, common sense that a detainee should be informed in advance

whenever possible if he is required to stay at ICAC overnight provided that such action is unlikely to jeopardise the investigation. Allegation (a) was therefore substantiated and the Commissioner sent a letter of apology to the complainant.

7. The ICAC Complaints Committee also endorsed ICAC's recommendation that specific guidelines in this respect should be drawn up. This has now been done.

Allegation (b)

8. B was arrested and interviewed on the same day as Mr A. He admitted that he had introduced a friend, Mr C and Mr C's friend, to Mr A to assist him in settling a money dispute, but denied the allegation of an all-expenses-paid trip. Mr A was therefore detained pending enquiries to locate Mr C and Mr A's girlfriend. However, these two could not be located on that day and active enquiries continued the next day.

9. Having regard to the magnitude of the main operation, which was conducted in three phases over three days and involved over 60 ICAC officers, and the length of hours the ICAC officers had worked, Mr A's overnight detention was considered essential and necessary in the circumstances of the case.

10. The ICAC Complaints Committee agreed that allegation (b) was unsubstantiated.

Allegation (c)

11. The search of Mr A's home address was to secure evidence of corruption and to trace Mr C and Mr A's girlfriend. Mr A believed that the search was unnecessary as it lasted only 2 minutes. The ICAC officers stated that the search lasted some 15 minutes and was a thorough one. Their assertion was corroborated by the record on the relevant search warrant.

12. The ICAC Complaints Committee agreed that allegation (c) was also unsubstantiated.

