

ICAC COMPLAINTS COMMITTEE

Annual Report 1996


23 May 1997

The Right Honourable Christopher Patten
Governor
Government House
Hong Kong

Dear Governor,

ICAC Complaints Committee
1996 Annual Report

I have the honour to forward to you the annual report of the ICAC Complaints Committee for the year 1996. This is the second annual report of the Committee. It gives a summary of the work carried out by the Committee in the past year.

Rosanna Wong


(Rosanna WONG)
Chairman
ICAC Complaints Committee

INDEPENDENT COMMISSION AGAINST CORRUPTION COMPLAINTS COMMITTEE

1996 Annual Report

INTRODUCTION

The Independent Commission Against Corruption Complaints Committee (the Committee) was set up on 1 December 1977. It consists mainly of Members of the Executive and Legislative Councils. 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. During 1996, the Committee was chaired by the Honourable Dame Rosanna WONG Yick-ming. A list of other members serving on the Committee during the year is at Annex A. The appointments of the Chairman and members expired on 31 December 1996. All, except the Attorney General who has been serving as an ex-officio member, have been re-appointed by the Governor to serve for another term until 31 December 1997. The withdrawal of the Attorney General from the Committee is intended to avoid any possible query about the independence of the Committee.

Annex A

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 Committee¹, or 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 allegations and will forward a copy to the Secretary of the Committee for information. Where the complaint is received directly by the Secretary, the Secretary 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.

1 Address of the ICAC Complaints Committee Secretariat is :

*Chief Secretary's Office, Administration Wing, Central Government Offices,
East Wing, Lower Albert Road, Hong Kong.*

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 papers arising from investigation reports will be discussed at a meeting of the Committee.

Sub-judice Cases

7. Complaints received are investigated 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 this 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 may 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 1996, 22 complaints against the ICAC and its officers were received. This number is similar to 1995, when 24 complaints, one of which was subsequently withdrawn, were received. Most complaints received contained more than one allegation. Of a total of 77 allegations, a majority related to complaints about abuse of power by ICAC officers or their conduct. Most of the rest alleged neglect of duties by officers and one related to ICAC procedures. A summary of the statistics is shown in the Table below.

| Category of allegation | Number of allegations (%) in 1996 | Corresponding number (%) in 1995 |
|---|-----------------------------------|----------------------------------|
| 1. Abuse of power | | |
| (a) search | 4 | 6 |
| (b) arrest/detention/bail | 12 | 7 |
| (c) interview | 5 | 8 |
| (d) handling property | 2 | 12 |
| (e) legal access denied | 5 | 3 |
| (f) improper release of identities of witnesses/informants/suspects | <u>4</u> | <u>6</u> |
| Sub-total | 32 (42%) | 42 (51%) |
| 2. Conduct | 31 (40%) | 25 (30%) |
| 3. Neglect of duties | 13 (17%) | 12 (15%) |
| 4. ICAC procedures | <u>1 (1%)</u> | <u>3 (4%)</u> |
| Total | <u>77</u> | <u>82</u> |

10. Of the 22 complaints received, ten were concluded during the year and the relevant reports were considered by the Committee. Investigations into eight are continuing, while investigations into the remaining four have been deferred because they are regarded as 'sub-judice'.

INVESTIGATION REPORTS CONSIDERED

11. At its meeting in July 1996, the Committee considered seven investigation reports from the ICAC, of which one related to a complaint received during 1996. At the meeting in December, the Committee received 12 reports, of which nine related to complaints received during 1996. To illustrate the Committee's work, a summary of an investigation report considered by the Committee is at Annex B.

Annex B

12. Of the 19 investigation reports considered by the Committee, two complaints were found to be substantiated and 17 unsubstantiated. One of the substantiated cases included an allegation of trespass. The Committee considered that while the officers had entered an apartment by invitation they had remained there longer than was necessary. Two supervisory officers who were responsible for the decision to remain in the apartment received appropriate advice. In the other substantiated case, two officers received verbal warnings concerning their handling of a complainant. In both substantiated cases, letters of apology from the Commissioner were sent to the complainants.

13. The 'oldest' case considered by the Committee during the year was a complaint filed in July 1993. The investigation into this complaint could not commence until a long series of court appearances by the defendant, which included trial, conviction, sentence and appeal, had been concluded. The complainant committed suicide whilst on remand in prison in September 1995 and investigation of his complaints commenced thereafter. Upon legal advice, the conclusion of the case was withheld pending the result of the inquest into the death. It was only after the inquest hearing in October 1996, which returned a verdict of suicide, that a report was presented to the Committee for consideration in the December meeting.

IMPROVEMENTS TO PROCEDURES

14. An important and positive effect of an investigation into a complaint is that through examination of a complaint, both the ICAC and the Committee carefully scrutinise the adequacy of the existing ICAC internal procedures, guidelines and practices, to see whether these need to be updated, clarified or formalised, or any improvements are required. An example is that following recommendations by the Committee in 1995, the ICAC installed a room temperature reading instrument with a legible indicator in each interview room, and revised the wording of the form on which detainees are asked if they have any complaints regarding their detention.

15. As a result of the 19 complaint investigation reports considered by the Committee this year, the Commission has reviewed some of its procedures and made certain improvements. These included amendments to the ICAC Standing Orders requiring ICAC officers to identify themselves whilst discharging their duties and to obtain written, rather than verbal, consent from a suspect if the property seized is returned to a third party. The Commission is also reviewing the existing procedures governing unused material relating to trial proceedings. In addition to improvements to its existing procedures, the ICAC is looking into the issue of burden of proof in the investigation of a complaint against its officers.

**INDEPENDENT COMMISSION AGAINST CORRUPTION
COMPLAINTS COMMITTEE**

***Membership (as from 1 January to
31 December 1996)***

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

The Hon Denis CHANG Khen-lee, QC, JP

The Hon HUANG Chen-ya, MBE

The Hon Howard YOUNG How-wah, JP

The Hon Elizabeth WONG CHIEN Chi-lien,
CBE, ISO, JP

Ms Anna WU Hung-yuk

Mr TAM Yiu-chung

Attorney General)

The Ombudsman) (ex-officio)
(formerly known as Commissioner for
Administrative Complaints)

Assistant Director of Administration, Secretary
Chief Secretary's Office

SUMMARY OF AN INVESTIGATION REPORT

COMPLAINT

Miss A complained in September 1996 that -

- (a) without good reasons, Independent Commission Against Corruption (ICAC) officers interviewed Mr B, who was a defence witness, during the course of the trial; and
- (b) during the interview by the ICAC, Mr B was harassed and treated roughly by ICAC officers.

BACKGROUND

2. Mr B was a defence witness in a case of alleged corruption on the part of a Mr C, who was a project manager of an industrial company. In January 1996, the ICAC received a report from the director of an engineering company (Mr D) that Mr C had solicited advantages from him for recommending contract quotations to Mr C's employer. Mr C subsequently turned up at a pre-arranged meeting with Mr D and accepted \$4,000 from Mr D. The conversations in the meeting, which were recorded by ICAC officers, supported the allegation. After accepting the money, Mr C was arrested by ICAC officers and subsequently charged with five counts of soliciting and accepting advantages under the Prevention of Bribery Ordinance, Chapter 204.

3. Mr C's trial commenced in May 1996. Mr C's counsel put up a defence that the \$4,000 accepted by Mr C from Mr D was a personal loan, which was not related to the contract bids submitted by Mr D. In June 1996, Mr B, an engineer of Mr C's industrial company, testified as a defence witness. Mr B testified that in January 1996, when he was travelling in a vehicle with Mr C and Mr D, he heard Mr D told Mr C that the several thousand dollars Mr C wished to borrow would be available the following week. Mr C replied that if he had received his salary by then, he would not need the loan.

4. In early June, after final submissions by counsel, the case was adjourned to mid-June for verdict. During the period, Mr B was interviewed by ICAC officers on suspicion that the evidence he gave for the defence was false. Mr B denied the allegation.

5. Mr C was subsequently acquitted of all charges. While in court, Mr C's counsel brought to the attention of the magistrate the fact that Mr B had been interviewed by the ICAC. The magistrate expressed concern over the matter and requested counsel to take it up with the ICAC, the Attorney General and if necessary, the Bar Association.

6. After the case was concluded, the ICAC received a letter from Miss A, criticising ICAC officers for having interviewed Mr B during the course of the trial, and alleging that Mr B had been harassed and treated roughly during the interview.

INVESTIGATION OF THE COMPLAINTS

7. Investigation into the case revealed that two ICAC officers (a Senior Investigator and an Assistant Investigator) had interviewed Mr B when the case had been adjourned for verdict. Mr B was informed during the interview, which was video recorded, that he was suspected of having attempted to pervert the course of public justice by giving false evidence in Mr C's trial. Mr B denied the allegation and maintained that his testimony was truthful. Mr B subsequently informed Mr C's counsel of the interview. The counsel was of the opinion that it was improper for the ICAC to interview him at that stage of the proceedings, and said that he would bring the matter to the attention of the magistrate.

8. As regards Complaint (b), Mr B said that he had never complained to the counsel that he was harassed or impolitely treated by the interviewing officers. He was content with the officers' manners and had no complaints whatsoever.

9. When the two ICAC officers were interviewed, both confirmed their suspicion that Mr B's evidence was untruthful for the following reasons -

- (a) the tape recorded conversation between Mr D and Mr C on the occasion when the latter was arrested indicated that the money received was a bribe, not a loan;
- (b) Mr C had never told investigators that he had a witness whose evidence suggested the money he received was a loan; and
- (c) Mr D had denied that Mr C had asked him for a loan.

10. Both ICAC officers denied that they had harassed or treated Mr B roughly in his interview.

11. An interview was also conducted with the ICAC officers' supervisor (a Chief Investigator), who explained that the tape recorded evidence secured at the meeting when the payment was made, together with Mr C's subsequent refusal to answer questions about it, left him in no doubt that the money had been accepted corruptly. Following discussions with the two ICAC officers concerned, he instructed them to interview Mr B since he strongly suspected that Mr B had conspired with Mr C to give false evidence. Since all witnesses had finished giving evidence and both counsel had given their final submissions, he considered the trial as having been, in effect, concluded.

12. The Chief Investigator believed that interviewing Mr B before the verdict would not adversely affect the outcome of the trial. On the contrary, if it could have been established, before the verdict, that Mr B had lied, a miscarriage of justice could be averted. The Chief Investigator understood that the Assistant Investigator had asked the prosecuting counsel for advice, but to no avail. He regarded the decision to interview Mr B as purely operational, and considered that in such circumstances there was no need to seek advice from the Attorney General's Chambers.

13. The prosecuting counsel, a barrister in private practice who prosecuted the case on a fiat, was also interviewed. He said that he was not in a position to comment on the truthfulness of Mr B's evidence. He became aware of Mr B's interview by ICAC officers only when Mr C's defence counsel mentioned it in court when the verdict was announced. He said that he had not been approached by any ICAC officer for advice as to whether or not Mr B should be interviewed.

14. The video tape which recorded Mr B's interview was scrutinised. The interview, which lasted for 15 minutes, was conducted by the two ICAC officers in a polite and professional manner. There was no indication that Mr B had been harassed.

CONCLUSIONS

15. On Complaint (a), the ICAC's investigations concluded that on the basis of the information available it was reasonable for the ICAC investigators to suspect that Mr B's testimony was untrue, and that the decision to interview him was made in good faith. Legal advice had also been obtained. The ICAC Complaints Committee agreed that the complaint was not substantiated, but that the Chief Investigator should be advised that it would have been desirable to inform the defence counsel of the proposed action beforehand.

16. On Complaint (b), since Mr B had no complaint against the manners of the interviewing officers, and examination of the video tape which recorded the interview revealed no impropriety, the ICAC Complaints Committee agreed that the complaint was not substantiated.

