
ICAC COMPLAINTS COMMITTEE

Annual Report 1997

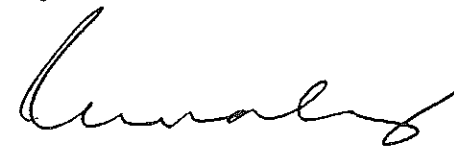
17 July 1998

The Honourable Tung Chee Hwa
Chief Executive
Hong Kong Special Administrative Region
5/F, Central Government Offices
Main Wing
Lower Alber Road
Central
Hong Kong

Dear Chief Executive,

**ICAC Complaints Committee
1997 Annual Report**

I have the honour to forward to you the annual report of the ICAC Complaints Committee for the year 1997. This is the third annual report of the Committee. It gives a summary of the work carried out by the Committee in the past year.

Yours sincerely,


(Rosanna WONG)
Chairman
1997 ICAC Complaints Committee

**INDEPENDENT COMMISSION AGAINST CORRUPTION
COMPLAINTS COMMITTEE
1997 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 Council and the Legislative Council. The Committee was previously serviced by joint Secretaries from the Independent Commission Against Corruption (ICAC) and the former Office of the (non-government) Members of the Executive and Legislative Councils. In March 1994, the Administration Wing of the then Chief Secretary's Office (now known as the Chief Secretary for Administration's Office) took up the Committee's secretariat duties.

MEMBERSHIP

2. During 1997, the Committee was chaired by the Honourable Rosanna WONG Yick-ming. A list of other members serving on the Committee during the year is attached as Annex A.

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 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 Chief Executive.

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, set out the allegations and 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 her conclusion and recommendations to the Committee through the Secretary.

6. In each case, the Secretary will prepare a discussion paper together with the investigation report and circulate them to Members for consideration. Members may seek additional information and clarification from the ICAC regarding the investigation reports. All papers and investigation reports will be discussed at a meeting of the Committee.

¹ Address of the ICAC Complaints Committee Secretariat is:
Chief Secretary for Administration's Office, Administration Wing,
121F, Central Government Offices, West Wing,
Ice House Street, Hong Kong.
(Telephone: 2810 3503)

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 ongoing criminal enquiries 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, and these may touch upon the circumstances surrounding the criminal proceedings and possibly result in 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 so warrant, 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 1997, 30 complaints against the ICAC and its officers were received. This compared to 22 complaints received in 1996. Of the 30 complaints received in 1997, 19 contained more than one allegation. Of the total 76 allegations, a majority (47%) concerned the alleged misconduct of ICAC officers, one-third related to neglect of duties and the rest related to abuse of power (16%) and to

ICAC procedures (4%). A summary of the statistics is shown in the Table below.

Category of allegation	Number of allegations (%) in 1997	Corresponding number (%) in 1996
1. Misconduct	36 (47%)	31 (40%)
2. Neglect of duties	25 (33%)	13 (17%)
3. Abuse of power		
(a) search	1	4
(b) arrest/detention/bail	5	12
(c) interview	1	5
(d) handling property	–	2
(e) legal access denied	4	5
(f) improper release of identities of witnesses/informants/suspects	1	4
Sub-total	12 (16%)	32 (42%)
4. Inadequacies of ICAC procedures	3 (4%)	1 (1%)
Total	76	77

10. Of the 30 complaints received in 1997, investigations on 12 were concluded during the year and the relevant reports were considered by the Committee. At the end of the year, investigations into 14 were continuing, while the remaining four were regarded as 'sub-judice' and investigations on them were deferred.

INVESTIGATION REPORTS CONSIDERED

11. At a meeting held in July 1997, the Committee considered 14 investigation reports² from the ICAC on 25 complaints. Of these, eight complaints were received during 1997. At another meeting in December 1997, the Committee received seven reports on seven complaints, of which four

² Of the 14 investigation reports, one covered 11 complaints submitted by 11 complainants who were involved in the same case. Similarly, another report dealt with two complaints.

were received during 1997. A summary of an investigation report considered by the Committee is attached as Annex B. Annex B

12. Of the 32 complaints considered by the Committee in 1997, nine complaints contained allegations which were found to be either substantiated or partially substantiated and letters of apology from the Commissioner were sent to the complainants. Examples of the substantiated or partially substantiated allegations included a delay in providing a receipt on a seized property, indiscreet handling of a dissatisfied member of the public, failure to explain to a detainee the reason for his extended detention, and refusing a suspect's request to inform his supervisor of his arrest.

IMPROVEMENTS TO PROCEDURES

13. 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 existing ICAC internal procedures, guidelines and practices, to see whether these need to be updated, clarified or formalised, or if any improvements are required. Many improvement measures have been implemented following recommendations made by the Committee.

14. As a result of the 21 investigation reports considered by the Committee in 1997, the Commission reviewed some of its procedures and made a number of improvements. For instance, the Commission would now ensure that defence counsel is provided with a video tape copy of the recorded interview of the defendant before the transcript is completed in order to minimize any delay to defence counsel's access to the tape. The Commission also made it clear in the "Notice To Persons In Custody" that a detainee has the right to seek legal representation at any time.

15. Besides, upon the request of members of the Committee, the ICAC has conducted a review of the final classification of the result of complaint investigations. As a result, the ICAC adopted an additional category of classification, namely, "substantiated other than reported" in addition to the original three categories of "substantiated", "partially substantiated" and "unsubstantiated". The Commission has also reviewed its bail procedures and formalised existing practices in granting bail.

**INDEPENDENT COMMISSION AGAINST CORRUPTION
COMPLAINTS COMMITTEE**

***Membership (as from 1 January 1997 to
31 December 1997)***

The Honourable Rosanna WONG Yick-ming, JP Chairman

Mr Denis CHANG Khen-lee, SC, JP

Dr HUANG Chen-ya

The Honourable Howard YOUNG How-wah, JP

Mrs Elizabeth WONG CHIEN Chi-lien, JP

The Honourable TAM Yiu-chung, JP

Ms Anna WU Hung-yuk, JP

(resigned with effect from 9 July 1997)

The Ombudsman or his representative (ex-officio)

SUMMARY OF AN INVESTIGATION REPORT

COMPLAINT

Ms A was arrested by the Independent Commission Against Corruption (ICAC) in March 1995 and was released on ICAC bail pending conclusion of the ICAC investigation against her. Ms A was charged in April 1996.

2. Ms A's husband, Mr B, made a complaint in December 1995 alleging that -

(a) the investigation by the ICAC on his wife, Ms A, was unreasonably delayed, causing her inconvenience and disruption to her daily life (Allegation A); and

(b) when Ms A was under ICAC investigation, the cash bail imposed on her was excessive and unreasonable (Allegation B).

3. Mr B made a third allegation in April 1996 that on 11 April 1996, when he accompanied Ms A to the ICAC Detention Centre where she was charged, an ICAC officer (ICAC officer D) adopted a hostile attitude towards him and, without good reason, attempted to remove him from the Detention Centre (Allegation C).

4. Mr C was arrested by the ICAC in March 1995 and was released on ICAC bail. He complained in January 1996 that the ICAC investigation was unreasonably delayed, causing him difficulties in obtaining employment and inconvenience in his daily life (Allegation D).

5. The complaints of Mr B and Mr C involved the same investigation handled by the same ICAC officers.

BACKGROUND

6. Ms A and Mr C were former security guard supervisors of a company contracted by the Housing Department to provide security services to public housing estates. Between November 1994 and March 1995, the ICAC received five allegations regarding the activities of the company's security guards and their supervisors deployed to two public housing estates (Estates I and II) in the New Territories. There were two allegations that Ms A and Mr C conspired to accept advantages and to defraud the company.

7. On 29 March 1995, Ms A was arrested on suspicion of accepting advantages and conspiracy to defraud. Mr C was arrested for the same offences the following day. Both were released on bail in their own recognizance of \$50,000 pending further enquiries. Thereafter they were re-bailed every six weeks while the investigation proceeded.

8. In December 1995, when Ms A answered her bail, she was informed that she would be formally charged when she reported the next time and she should be prepared to put up a cash bail of \$20,000. Mr B, who accompanied Ms A, was not satisfied with the arrangement and complained that the investigation against Ms A had been unreasonably delayed (i.e. Allegation A). He also complained that the cash bail was excessive (i.e. Allegation B). But he did not wish to have Allegation B formally registered until the investigation and court proceedings against Ms A were concluded.

9. In January 1996, when Mr C's bail was further extended he made Allegation D.

10. Ms A and Mr C were not charged until 11 April 1996. On that day Mr B again accompanied Ms A to the ICAC offices where they were received by two ICAC officers (ICAC officers D and E). Mr B had a confrontation with ICAC officer D and he made Allegation C.

11. In July 1996, Mr C was convicted of one count of theft. He was sentenced to 3 months imprisonment, suspended for 12 months, and was ordered to pay costs of \$1,000. In August 1996, Ms A was convicted of one count of false accounting. She was fined \$4,000. In October 1996, Allegation B was formally registered in accordance with Mr B's wish.

INVESTIGATION OF THE COMPLAINTS

Interview with Mr B

12. Officers of the ICAC Internal Investigation and Monitoring Group (L Group) interviewed Mr B, Ms A and Mr C. Mr B said that in December 1995 when he accompanied Ms A to answer bail, they were informed that the bail would be further extended and Ms A would be formally charged when she next returned. They were asked to prepare to put up \$20,000 cash bail next time. Mr B said that he was not satisfied with the prolonged investigation which had caused inconvenience to Ms A's work and daily life. He also considered the bail amount too high and unreasonable.

13. On Allegation C, Mr B stated that on 11 April 1996 when he arrived at ICAC offices with Ms A to answer her bail, they saw ICAC officers D and E and were told that Ms A would be charged later. Mr B said that upon his request, ICAC officers D and E agreed that he could accompany Ms A to the Detention Centre where formal charging would take place.

14. After Ms A and Mr B arrived at the Detention Centre, Ms A was escorted by ICAC officer E to a room where she was formally charged, leaving ICAC officer D and Mr B in the waiting area. Mr B asked ICAC officer D for his full name and his role in Ms A's case. Mr B said that ICAC officer D was very unfriendly and responded that it was none

of his business. He also warned Mr B to stop making any noise, otherwise he would remove Mr B from the Detention Centre. Mr B said that he retorted by saying that if it was not his business, he should not have been allowed to come to the Detention Centre. Mr B then produced a piece of paper and asked ICAC officer D to write down his full name, which ICAC officer D did.

15. Following the charges, Ms A was admitted to a cash bail of \$10,000 to appear before a Magistrate's Court. Mr B complained that he regarded the bail amount excessive.

16. The L Group interviewing officer noted that Mr B, while making his statement of complaints, had lost his temper quickly several times without good reason. The officer had the opinion that Mr B was a difficult person to handle.

Interview with Ms A

17. Ms A said that on the day she was charged, Mr B accompanied her to the ICAC offices where they were taken to the Detention Centre by ICAC officers D and E. When they arrived, she noted that there were already five or six persons waiting to be charged. Mr B queried why the investigation was still not concluded for almost a year. Ms A said that ICAC officer D immediately accused Mr B of being noisy and warned that he would remove him from the Detention Centre. She said that she heard Mr B ask ICAC officer D to write down his name on a piece of paper.

18. Ms A conceded that Mr B had exchanged angry words with ICAC officer D, but she said it was all because of the officer's impolite attitude towards Mr B.

Interview with Mr C

19. Mr C stated that following his arrest, he had been repeatedly required to report on bail. He complained that the investigation had affected his search for work and had interfered with his daily life.

Examination of Investigation Files

20. The L Group examined eighteen volumes of investigation files related to the corruption investigations of the case. The following information was extracted -

- (a) Among the five corruption complaints received, four were made anonymously against Ms A and Mr C in relation to the security services of Estate I in the New Territories. The fifth was related to Estate II. Mr C, as supervisor of both Estates, provided the link between the two enquiries. The same officer, ICAC officer E, was therefore appointed to investigate all five complaints.
- (b) The investigation of the case of Estate I involved about 45 security guards while the one related to Estate II involved another 40 security guards. Some of the security guards had already left the security company concerned.
- (c) Following the arrest of Ms A and Mr C in March 1995, four other persons were arrested on suspicion of corruption and fraud.
- (d) Legal advice was sought on several occasions between October 1995 and February 1996. In accordance with the advice, enquiries had to be made into the bank accounts of the security company concerned and that Mr C needed to be formally identified by witnesses before charges were recommended.

- (e) Charging procedures were delayed when Mr C refused to attend an identification parade.
- (f) The final legal advice on the case of Estate I was received in March 1996 and charges against Ms A were recommended. When she answered bail on 11 April 1996, Ms A was charged with 3 counts of false accounting, 5 counts of deception and 2 counts of accepting advantages. Mr C was charged with a single count of theft on the same day after he was identified by a witness by means of a street confrontation.
- (g) Following the initial arrest, the bails of Ms A and Mr C had been extended nine times at intervals of six weeks before they were formally charged.
- (h) During the same period, a total of 87 interviews were conducted, 46 witness statements taken and 120 pages of interview summaries conducted under video recording were transcribed.
- (i) There were also 20 requests made relating to the bank accounts of 12 persons and the security company concerned from various banks. Some of the replies took as long as 43 days.
- (j) Apart from the trials of Ms A and Mr C, the investigation on the case of Estate II also resulted in two separate trials of 4 other defendants on charges of conspiracy to defraud and deception. The investigation on the security company concerned as a whole resulted in the conviction of Ms A, Mr C and three other employees of the company. Final court proceedings ended in December 1996.

The Court Trials

21. Ms A first appeared at court in April 1996 to enter a plea and then in August 1996 for trial. She was admitted to court bail on the same amount of ICAC bail, i.e. \$10,000 cash, pending trial. On both occasions neither Ms A nor her lawyer raised objection to the bail condition.

22. During their respective trials, Mr C, Ms A and their legal representatives did not apply for a stay of proceedings on the grounds of undue delay in the investigations. The lawyer for Mr C had, in the early stage of the trial, indicated an intention to apply for stay of proceedings. The reason was not because the investigation had taken too long, but because the alleged offence was committed over three years ago. However, no formal application was made and the trial proceeded to conviction.

Condition of Bail

23. The ICAC's instructions make it clear that the purpose of admitting a detainee to bail is to secure a suspect's attendance at a specified place, date and time. The authority for admitting detainees to bail rests with officers of the rank of Principal Investigator. There are no formal guidelines governing the amount of cash bail to be imposed upon individual bailees. It is a decision made by the Principal Investigator, based on the circumstances of each case and the recommendation of his Chief Investigator supervising the investigation.

Interview with the head of the section investigating the corruption case (ICAC officer F)

24. ICAC officer F stated that the decision to grant bail to Ms A was made by his Principal Investigator (ICAC officer G) acting on his recommendation. Ms A's bail was changed from her own recognizance to cash when she was

charged on 11 April 1996 and re-bailed to appear at court later in the month. The change was to comply with the newly amended Criminal Procedures Ordinance (Chapter 221 of Laws of Hong Kong). Section 9D(3)(a) of the Ordinance came into effect seven months before Ms A was charged. The new legislation provided that "own recognizance" can no longer be accepted as bail condition by the court. The cash bail imposed by ICAC on Ms A was to ensure that she had sufficient cash to meet conditions of the court bail the next day.

25. ICAC officer F said that the reason for reducing Ms A's cash bail from an intended amount of \$20,000 to \$10,000 was because Ms A had indicated that she could only raise the lesser amount. ICAC officer F regarded the lower level of cash bail acceptable to both Ms A and the ICAC.

26. ICAC officer G resigned from ICAC in July 1996 and was not interviewed.

Interview with ICAC officer D

27. ICAC officer D said that when he and ICAC officer E arrived at the Detention Centre with Mr B and Ms A on 11 April 1996, there were other officers and members of the public waiting for documentation. He said that when he asked the couple to sit down and wait, Mr B became very unco-operative. Mr B raised his voice complaining that the charges were unreasonable and the investigation had been dragging on for too long. To avoid causing a disruption to others in the vicinity, ICAC officer D warned Mr B to lower his voice but Mr B kept yelling. ICAC officer D said that he was then obliged to warn Mr B that if he failed to control himself, he would be required to leave the Detention Centre.

At that juncture, Mr B asked for his full name which ICAC officer D wrote on a piece of paper. Ms A then entered an interview room with ICAC officer E to process charging formalities while ICAC officer D and Mr B remained in the waiting area of the Detention Centre.

28. Upon completion of the charging formalities, ICAC officer D asked Ms A to accompany him to the photograph and fingerprints taking area, whereupon Mr B held out his hands to stop Ms A from following ICAC officer D, yelling that the charges against Ms A were unreasonable. ICAC officer D explained to Mr B the procedures under section 10D of the Independent Commission Against Corruption Ordinance regarding the taking of photographs and fingerprints of arrested persons by ICAC officers. But this was ignored by Mr B. ICAC officer D again warned Mr B that if he continued to obstruct the performance of his duty, Mr B would have to leave the Detention Centre. Mr B replied that he would leave if he had to but he would also like to see an officer of L Group. ICAC officer D then contacted an officer of L Group who took over Mr B's complaint.

29. ICAC officer D denied Mr B's allegation and made a counter allegation that the dispute was caused by Mr B's loss of temper. ICAC officer D regarded that given the situation, his warning to remove Mr B from the Detention Centre was proper and justified. ICAC officer D said that after the incident on that day, he made a record in his official note book. An examination of ICAC officer D's notebook showed that the incident as described by him was recorded.

Interview with ICAC officer E

30. ICAC officer E stated that he considered that the time taken to complete the investigation was reasonable, given the amount of work involved. He gave details of the background enquiries and interviews of nearly 80 persons

conducted, the examinations of the documents of the security company concerned, which included three years' attendance records of all security guards and the employment and payroll records. He pointed out that the time taken to complete the bank enquiries, to process documentation and to prepare operations was considerable.

31. ICAC officer E said that although advice to charge Mr C was received in early February 1996, it was conditional upon whether or not a witness could positively identify Mr C. ICAC officer E added that Mr C's refusal to attend an identification parade had delayed the prosecution for six weeks until he next reported on bail. On that day a witness positively identified him in the street and Mr C was immediately charged.

32. Concerning Mr B's allegation against ICAC officer D, ICAC officer E corroborated ICAC officer D's explanation that while Mr B was at the Detention Centre, he acted irrationally and shouted that it was wrong for the ICAC to prosecute Ms A. ICAC officer E also held the same view as ICAC officer D that since there were other members of the public in the Detention Centre, Mr B's behaviour warranted the warning given by ICAC officer D.

Interview with officers present at the Detention Centre

33. Officers who were on duty at the Detention Centre on 11 April 1996 were interviewed but none could recall the incident between ICAC officer D and Mr B. One possible explanation was that at the time of the incident, an arrest operation was in progress and a number of persons were taken to the Detention Centre for processing. The area was therefore crowded and busy.

ASSESSMENT OF THE COMPLAINTS

Allegations A and D

Both Mr B and Mr C complained that the investigations in which Ms A and Mr C were arrested were unreasonably delayed, causing inconvenience to their daily life.

34. Ms A and Mr C had been put on bail for almost 13 months. However, given the scale and complexity of the investigation of the whole case, it was considered that the period was not excessive. Examination of the investigation files showed that the enquiries were conducted diligently.

35. It was considered significant that the lawyers representing Ms A and Mr C in contesting the cases in court made no mention of undue delay in the investigations.

36. The ICAC concluded that Allegations A and D were not substantiated.

37. Notwithstanding the recommendation that the allegations were unsubstantiated, the ICAC recognised that Ms A and Mr C, both lived in the New Territories, could have been inconvenienced by having to make repeated visits to ICAC offices in Central over a lengthy period of time.

Allegation B

The complaint by Mr B that the cash bail of \$10,000 imposed on Ms A was excessive and unreasonable.

38. Ms A had been charged with ten counts of offences including corruption, theft and deception. These carry a maximum penalty of imprisonment for 3 years, although a magistrate's court can only impose a maximum imprisonment sentence of 2 years. An amount of \$20,000 cash bail had originally been deemed appropriate. The amount was only reduced to \$10,000 when Ms A pleaded

that she was unable to raise the original amount required. Neither she nor her solicitor objected to the bail condition set by the magistrate which was the same as that of the ICAC.

39. The ICAC concluded that Allegation B was not substantiated.

Allegation C

The complaint by Mr B that ICAC officer D adopted a hostile attitude towards him and without good reason, attempted to remove him from the Detention Centre. His complaint was supported by Ms A.

40. ICAC officer D denied the allegation. He did not dispute giving a warning to Mr B in the presence of other ICAC personnel and members of the public. He considered it appropriate to do so with a view to maintaining order at the Detention Centre. In addition he stressed that -

- (a) Mr B had been permitted to accompany Ms A in the Detention Centre. Mr B's such request could have been refused if any officer wished to cause him trouble; and
- (b) when Mr B demanded to have his (ICAC officer D's) identity, he complied accordingly without query.

41. However, it was not difficult to imagine the situation where Mr B, angry that his wife, Ms A, was being charged and was annoyed at what he considered to be an excessive cash bail, could become irritated easily. Under the circumstances ICAC officer D should have exercised a more tactful approach in calming him down. The warning given by ICAC officer D and his conduct at the time, particularly in the presence of others, had obviously been regarded by Mr B as a hostile attitude.

42. On balance, the Investigating Officer of L Group concluded that Mr B had a justifiable cause for complaint.

43. The ICAC concluded that Allegation C was substantiated.

CONCLUSIONS

44. The Commissioner of ICAC agreed that Allegation C was substantiated and that the other allegations were not substantiated. The ICAC Complaints Committee endorsed the conclusions of the investigation by the ICAC. Mr B and Mr C had been advised of the result of this investigation.

45. Appropriate advice was given to ICAC officer D by his supervisor that he should exercise more tact in the handling of similar situations in the future.

46. ICAC officer E was advised that the complaints against him were not substantiated.

FOLLOW-UP REVIEW

47. Following the examination of this case, the ICAC, on the request of the ICAC Complaints Committee, has conducted a review on its bail procedures and has formalised its existing practices in granting bail.
