
ICAC COMPLAINTS COMMITTEE

Annual Report 1999

12 June 2000

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

Dear Chief Executive

**ICAC Complaints Committee
1999 Annual Report**

I have the honour to forward to you the annual report of the ICAC Complaints Committee for the year 1999. This is the fifth annual report of the Committee. It gives a summary of the work carried out by the Committee in the past year.

Yours sincerely

T. L. Yang

(T. L. YANG)
Chairman
1999 ICAC Complaints Committee

INDEPENDENT COMMISSION AGAINST CORRUPTION COMPLAINTS COMMITTEE

1999 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 1999, the Committee was chaired by the Honourable YANG Ti-liang. A list of 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 non-criminal 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 (the Internal Investigation and Monitoring Group) in the Operations Department of the ICAC is responsible for assessing and investigating such complaints, and the Commissioner of the ICAC will forward his conclusion and recommendations regarding every complaint to the Committee through the Secretary.

6. In each case, the Secretary will prepare a discussion paper on the investigation report, and circulate both documents 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:
Administration Wing of the Chief Secretary for Administration's Office,
12/F, Central Government Offices, West Wing,
Ice House Street, Hong Kong.
(Telephone number: 2810 3503)

Sub-judice Cases

7. Complaints received are investigated by the ICAC 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. 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 1999, 37 complaints against ICAC officers were received. This compared to 25 complaints received in 1998 and 30 complaints in 1997. The 37 complaints contained a total of 110 allegations. The majority (56%) of these allegations concerned misconduct of ICAC officers. The rest related to abuse of power (23%) and neglect of duties (21%). A summary of the statistics is shown in the table below.

Category of allegation	Number of allegations (%) in 1999	Corresponding number (%) in 1998
1. Misconduct	62 (56%)	30 (56%)
2. Neglect of duties	23 (21%)	10 (18%)
3. Abuse of power		
(a) search	2	0
(b) arrest/detention/bail	8	5
(c) interview	1	1
(d) handling property	0	1
(e) legal access denied	13	3
(f) improper release of identities of witnesses/informants/suspects	<u>1</u>	<u>1</u>
Sub-total	25 (23%)	11 (20%)
4. Inadequacies of ICAC procedures	0 (0%)	3 (6%)
Total	<u>110</u>	<u>54</u>

10. Of the 37 complaints received in 1999, investigations on 22 were concluded and the relevant reports were considered by the Committee during the year. At the end of the year, the investigation of seven was continuing, while the remaining eight were regarded as “sub-judice” and their investigations deferred.

INVESTIGATION REPORTS CONSIDERED

11. The Committee held three meetings during the year. At the first meeting held in March 1999, the Committee considered investigation reports from the ICAC on seven complaints. Of these, five complaints were received in 1998 and two in 1999. At the second meeting held in June 1999, the Committee considered investigation reports on eight complaints. Of these, two complaints were received in 1997 and six in 1999. At the third meeting held in November 1999, the Committee considered 15 complaints, one of which was received in 1998 and 14 in 1999. A summary of an

investigation report considered by the Committee is attached as Annex B.

Annex B

12. Of the 30 complaints considered by the Committee, seven contained allegations which were found to be either substantiated or partially substantiated. Of these seven complaints, one was found to be substantiated on matters other than the original allegation. The substantiated or partially substantiated allegations related to impoliteness, failure to inform a complainant of the result of the investigation and failure to produce identification. Letters of apology from the Commissioner were subsequently sent to the complainants.

13. In addition to the above complaints which the ICAC had carried out full investigation, the Committee also considered and endorsed five assessment reports from the ICAC—two at the meeting in March, one at the meeting in June and two at the meeting in November 1999—on five complaints received during the year. Preliminary enquiries by the ICAC indicated that there was no substance to these complaints. The Committee endorsed the ICAC's recommendation that no further investigative action be taken and the complainants were advised of the outcome.

IMPROVEMENTS TO PROCEDURES

14. An important and positive effect of investigating into a complaint is that through examination of relevant issues, both the ICAC and the Committee can carefully scrutinise existing ICAC internal procedures, guidelines and practices to see whether these need to be updated, clarified or formalised, with a view to making improvements.

15. As a result of the 30 investigation reports considered by the Committee in 1999, the ICAC reviewed some of its procedures and made a number of improvements. For

instance, following an unsubstantiated complaint that Guarding Officers of the ICAC Detention Centre had deliberately delayed a detainee's request to use the toilet, Guarding Officers are now required to record not only the time a detainee actually uses the toilet, but also the time when the request is made. Also, on the recommendation of the Committee, the format of a Notice displayed at ICAC offices under the Personal Data (Privacy) Ordinance has been revised to enable members of the public to be better informed of their rights. The safe-custody of medicines found in the possession of detainees and the procedures on how the medicines may be taken by the detainees, with advice from government doctors where necessary, were reviewed by the Committee. Clear instructions are now set out for the Guarding Officers of the ICAC Detention Centre to follow.

**INDEPENDENT COMMISSION AGAINST
CORRUPTION COMPLAINTS
COMMITTEE**

***Membership (as from 1 January 1999 to
31 December 1999)***

The Hon YANG Ti-liang, GBM, JP	Chairman
Mr Denis CHANG Khen-lee, SC, JP	
Dr HUANG Chen-ya	
The Hon Howard YOUNG How-wah, JP	
The Hon TAM Yiu-chung, GBS, JP	
Professor the Hon NG Ching-fai	
Mr Ambrose HO	
The Ombudsman or her representative	(ex-officio)

SUMMARY OF AN INVESTIGATION REPORT

COMPLAINT

Miss A complained that during a visit to her office on 22 January 1999, Investigator B -

- (a) insulted her by suggesting that she should improve the standard of her English;
- (b) accused her of being un-cooperative although she had tried her best to provide information as required; and
- (c) showed contempt for the position of a petrol station attendant.

BACKGROUND

2. During January 1999, the ICAC conducted a corruption investigation involving Miss A's brother, Mr C and his wife.

3. At the material time, Mr C was operating a petrol station where Miss A was employed as the manager. At 4 pm on 22 January 1999, Investigator B and three other Assistant Investigators D, E, & F went to the petrol station to locate Mr C and his wife. The officers saw Miss A who subsequently lodged complaints with the ICAC regarding the attitude of Investigator B.

4. Miss A was interviewed by officers of the Internal Investigation and Monitoring Group. She said on 22 January 1999, four ICAC officers went to the petrol station and requested to see Mr C who was unavailable. She invited them

into her office and requested the officers to produce their warrant cards. She then recorded the name and rank of each officer.

5. Miss A said she refused to give Mr C's telephone number to Investigator B as it was her brother's private number. Investigator B asked her to ring Mr C in his presence so he could speak to him over the telephone. She insisted on making the call in private and told the officers to remain outside her office which they did. After making the call, Miss A told Investigator B that Mr C could not be reached but a telephone message had been left for him to return her call. Investigator B then accused her as being un-cooperative and asked her to give the name of the licensee of the petrol station. Miss A replied she had no idea but Investigator B was not satisfied. Miss A became annoyed and uttered in English "That's what I'm saying". Investigator B then asked whether she could speak English and Miss A replied that she could not. Investigator B then remarked that she should improve her standard of English [Allegation (a)]. Miss A further alleged that during the visit, Investigator B said to her, "你態度好唔合作，我下次嚟有權鎖你 (You are so un-cooperative. I can handcuff you when I come next time)" [Allegation (b)]. Finally, before leaving the petrol station with the other ICAC officers, Investigator B allegedly remarked in Cantonese, "加油喇 (Go to refill petrol)". Miss A regarded these words as showing contempt for her position as a petrol station attendant [Allegation (c)].

INVESTIGATION OF THE COMPLAINT

Interview with Investigator B

6. Investigator B confirmed his encounter with Miss A at the petrol station. When he asked Miss A for the whereabouts of Mr C, she claimed to have no knowledge.

Miss A then took down the particulars from the ICAC officers' warrant cards, but queried the authenticity of the warrant cards for bearing no service numbers.

7. Investigator B asked Miss A to telephone Mr C. She agreed to do so but insisted she make the call in private. Investigator B agreed to wait outside the office, and noticed some mobile phone numbers posted on the door of the office. He asked Miss A whether Mr C could be reached at any of the numbers and she replied in the negative. Investigator B then instructed Assistant Investigator D to jot down the numbers. At this point, Miss A became increasingly uncooperative, hostile and evasive. She told Investigator B that she could not reach Mr C on the phone but a message had been left for him. He asked Miss A how long she had worked for Mr C and she replied that she did not know and that he should raise the question with Mr C himself. Being confused by the answer, Investigator B repeated the question. Miss A became irritated and shouted in Cantonese, “我也都唔知 (I know nothing)” and then in English, “That's what I'm saying! That's what I'm saying”.

8. As no information could be obtained from Miss A, Investigator B decided to leave. Before he left, he gave Miss A his telephone number by writing it on a piece of paper with his name and working unit in English. On receiving the piece of paper, Miss A asked Investigator B to write again in Chinese, adding that she did not know English. Investigator B replied that a Section in the ICAC was designated in English only, and that Miss A should know English as she had just spoken in that language. Miss A replied that she had not received much education, and did not know English. As Miss A appeared to be arguing with him on whatever he said, Investigator B considered it inappropriate to enter into further conversation with her and gave the paper to Miss A.

9. Before Investigator B left, he said to Miss A, “你既然唔想俾資料，咁我都唔問你啦。記住提亞 C 生 C 太打俾我。而家有架車入緊嚟，咁你去入油喇，我都唔阻你啦 (Since you don't want to give us the information, I have no more questions. Remember to ask Mr and Mrs C to call me. There is a car coming in, you can go to fill it up with petrol. I don't want to bother you anymore)”. Miss A immediately lost her temper and shouted that she would lodge a complaint for what Investigator B said.

10. Investigator B denied telling Miss A to improve her English or accusing her of being un-cooperative. He also denied having been impolite and shown contempt for Miss A's occupation. He commented that Miss A was very emotional and hostile. As soon as he returned to his office, he recorded the entire incident in his official notebook which showed the details of their conversation and what he considered to be Miss A's offensive behaviour.

Interview with Assistant Investigators D, E & F

11. The three officers corroborated Investigator B's version of events and the conversation that took place. They confirmed that Investigator B had neither commented on Miss A's education standard or accused her of being un-cooperative. They said that Investigator B was polite but firm in his manner throughout whilst Miss A was hostile and un-cooperative.

Interview with Petrol Station Staff

12. The only staff member present in the petrol station office was Miss G, a cashier at the petrol station. She was interviewed on 11 March 1999 and said that when the four ICAC officers came to the petrol station on that day, they requested to see the person in-charge. They were received by Miss A who talked to them inside the office which was a

cubicle behind the counter. Since she was at the cashier counter outside and the office door was closed, she was unable to hear their conversation. Later when the ICAC officers left the petrol station, Miss G heard a male officer who appeared to be the leader of the team say in a loud voice, “你去加油喇 (You go to refill petrol)”. Miss G said she could not remember the rest of their dialogue but she thought the ICAC officers were not very friendly.

Examination of Investigation File

13. Examination of the investigation file showed a note for file dated 22 January 1999 prepared by Assistant Investigator E, recording the result of their visit to the petrol station on that date. The note indicated that Miss A was un-cooperative. Investigator B also produced his official notebook which recorded full details of their visit to the petrol station on 22 January 1999.

14. The file further indicated that Mr C was eventually reached through a mobile telephone number which Investigator B had instructed Assistant Investigator D to note down at Miss A's office. Mr C was finally interviewed. The corruption allegation was not substantiated and a recommendation of no further action was endorsed by the Operations Review Committee on 15 March 1999.

ASSESSMENT OF THE COMPLAINTS

15. Regarding allegations (a) & (b), Investigator B denied making any comment on Miss A's standard of English or making the accusation that she was being un-cooperative. Regarding allegation (c), Investigator B confirmed that before leaving the petrol station he had remarked that Miss A should fill up a car with petrol. He explained that he made the comment only when he saw a car entering the petrol station and had not intended to offend Miss A. No

corroborative evidence could be found to substantiate Miss A's complaint. The explanation given by Investigator B was supported by the three ICAC officers present at the petrol station.

16. However, the circumstances indicate this may be a case of a young and inexperienced officer failing to exercise sufficient self control under provocation. Investigator B joined the ICAC in late 1998 as an Investigator. After initial training he was posted to an investigating section. The incident occurred only six weeks after being posted.

17. Investigator B had led a team of ICAC officers to the petrol station to locate the suspect Mr C and his wife for interview. Mr C was not there so they sought the assistance of Miss A, the petrol station manager who was also Mr C's sister. Miss A was un-cooperative. She demanded to see the officers' warrant cards and noted the details, in the course of which, she queried the authenticity of the warrant cards. Miss A subsequently agreed to contact her brother but would only do so in private. She refused to provide the telephone number of her brother or allow Investigator B to speak to her brother directly on the phone. When she was handed a piece of paper written in English, She claimed that she did not know English. This attitude may have upset Investigator B, who allowed himself to be drawn into a heated conversation with Miss A. While other ICAC officers gave statements indicating that Investigator B adopted a polite and firm manner in dealing with Miss A, the evidence from Miss G, the petrol station cashier, contradicted that. Miss G stated that the attitude of the ICAC officers was not friendly.

18. An ICAC officer should exercise self control and be tactful when dealing with a less than co-operative member of the public. While the remark “你去加油喇 (You go to fill petrol)” which Investigator B made at the time was not

intended to be contemptuous of Miss A's occupation or to insult her, it might have given Miss A such an impression.

CONCLUSION AND RECOMMENDATION

19. The Commissioner of ICAC agreed that in the absence of any corroborative evidence, Miss A's complaint was not substantiated, but that Investigator B should be given suitable advice by his Assistant Director. The ICAC Complaints Committee endorsed the conclusions of the investigation by the ICAC. Miss A was informed of the result of the investigation by letter.
