

**ICAC COMPLAINTS COMMITTEE**

**Annual Report 2000**

5 June 2001

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  
2000 Annual Report**

I have the honour to forward to you the annual report of the ICAC Complaints Committee for the year 2000. This is the sixth 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)  
Chairman  
2000 ICAC Complaints Committee

**INDEPENDENT COMMISSION AGAINST CORRUPTION  
COMPLAINTS COMMITTEE**

**2000 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 2000, 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 Committee<sup>1</sup>, 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.

### **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.

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<sup>1</sup> *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)*

## COMPLAINTS RECEIVED

9. In 2000, 44 complaints against ICAC officers were received. This compared to 37 complaints received in 1999 and 25 complaints in 1998. The 44 complaints contained a total of 116 allegations. The majority (59%) of these allegations concerned abuse of power by ICAC officers. The rest related to neglect of duties (22%) and misconduct (19%). A summary of the statistics is shown in the table below.

Category of allegation		Number of allegations (%) in 2000	Corresponding number (%) in 1999
1.	Misconduct	22 (19%)	62 (56%)
2.	Neglect of duties	25 (22%)	23 (21%)
3.	Abuse of power		
	(a) search	6	2
	(b) arrest/detention/bail	16	8
	(c) interview	27	1
	(d) handling property	5	0
	(e) legal access denied	14	13
	(f) improper release of identities of witnesses/informants/suspects	1	1
	Sub-total	69 (59%)	25 (23%)
4.	Inadequacies of ICAC procedures	0 (0%)	0 (0%)
	<b>Total</b>	<b><u>116</u></b>	<b><u>110</u></b>

10. Of the 44 complaints received in 2000, investigations on 17 were concluded and the relevant reports were considered by the Committee during the year. At the end of the year, two complaints were withdrawn and the investigation of 11 was continuing, while the remaining 14 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 2000, the Committee considered investigation reports from the ICAC on five complaints. Of these, one complaint was received in 1998, three in 1999 and one in 2000. At the second meeting held in July 2000, the Committee considered investigation reports on 12 complaints. Of these, four complaints were received in 1999 and eight in 2000. At the third meeting held in November 2000, the Committee

considered 12 complaints, three of which were received in 1998, one in 1999, and eight in 2000. A summary of an investigation report considered by the Committee is attached as Annex B.

**Annex B**

12. Of the 29 complaints with 69 allegations considered by the Committee, ten allegations (15%) in ten complaints (35%) were found to be either substantiated or partially substantiated. Of these ten allegations, two were found to be substantiated on matters other than the original allegation. The substantiated or partially substantiated allegations related to giving incorrect advice to a complainant, delay in returning case property to its owner, and failure to attend to a request by an interviewee for a copy of a record of his interview, to take action on a complaint received, to handle case property in accordance with internal procedures and to take proper administrative action on conclusion of an investigation. With the Committee's endorsement, disciplinary action was taken against or verbal advice given to individual ICAC officers as appropriate. Letters of apology from the Commissioner were also sent to the relevant complainants.

13. In addition to the above complaints on which the ICAC had carried out full investigation, the Committee also considered and endorsed 12 assessment reports from the ICAC – five at the meeting in March, five at the meeting in July and two at the meeting in November 2000 – on ten complaints received in 1999 and two 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 complaints is that through examination of relevant issues, both the ICAC and the Committee are able to carefully scrutinise the ICAC internal procedures, guidelines and practices to see whether these need to be updated, clarified or formalised, with a view to making improvements.

15. Arising from the investigation reports considered during the year of 2000, the ICAC reviewed some of its procedures and made a number of improvements. For example, following the recommendations of the Committee, the ICAC reviewed its procedures relating to the use of official notebooks and issued a training bulletin to remind officers of the correct procedures for recording matters of evidential value in their notebooks. In addition, the Committee also made recommendations on the handling of case property, which have been forwarded to a Committee set up by the ICAC to review and revise the procedures dealing with the management of case property and all other property coming into the custody of the ICAC.

**INDEPENDENT COMMISSION AGAINST CORRUPTION  
COMPLAINTS COMMITTEE**

*Membership (as from 1 January 2000 to 31 December 2000)*

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, SC	
The Ombudsman or her representative	(ex-officio)

## **SUMMARY OF AN INVESTIGATION REPORT**

### **COMPLAINT**

Mr. X complained that after being interviewed at ICAC offices -

- (a) Senior Investigator A failed to keep a promise that at the conclusion of the investigation he would provide Mr. X with a letter, confirming that he had been falsely accused;
- (b) in a separate ICAC investigation involving Mr. X, Senior Investigator B had served him with a 'Notice to Persons Under ICAC Investigation' at the ICAC Detention Centre (DC) as a tactic to exert pressure on him;
- (c) Investigator C and Senior Investigator B pressed Mr. X to answer questions during two separate interviews; and
- (d) Senior Investigator B failed to provide Mr. X with copies of the interview records on request.

### **BACKGROUND**

2. In June 1996, ICAC commenced investigation into an allegation that Mr. X (a Police Officer) might have a corrupt relationship with a drug dealer. Senior Investigator B was the investigating officer. No evidence of any corrupt connection was established between Mr. X and the drug dealer, but it was found that Mr. X had a close association with a triad member who was actively involved in loan-sharking in the district where Mr. X was posted. Simultaneously, the Police were conducting an internal investigation into this dubious association.

3. In August 1997, Madam Y alleged that police officers had received bribes for settling an assault case and were protecting her from triad interference. Investigation revealed that Mr. X and other police officers had sought the assistance of the triad member to provide protection to Madam Y. It was further believed that Mr. X had obtained loans from Madam Y.

4. On 22 December 1997, Mr. X and other police officers were invited to ICAC offices for interview. They all denied corruption. The Department of Justice advised against prosecution, due to the unreliability of Madam Y. The case went



before the Operations Review Committee (Sub-Committee) [ORC(SC)] which endorsed a recommendation that no further investigative action be taken but the case be referred to the Commissioner of Police for consideration of disciplinary action. Allegation (a) arose from the interview with Mr. X on 22 December 1997.

5. On 12 December 1998, resulting from the police internal investigation into the association between Mr. X and the triad, Mr. X was suspended from police duties. He was subsequently found guilty by a disciplinary tribunal and was notified that he would be compulsorily retired from the police with effect from 11 February 1999. He appealed against the finding and remained suspended from duty pending determination of the appeal.

6. Meanwhile, the investigation into the corrupt association between Mr. X and the triad member continued. In February 1999, evidence was revealed indicating that Mr. X, other police officers and triad members were involved in a conspiracy to pervert the course of public justice by attempting to influence the result of a police investigation into a hit-and-run traffic accident. On 3 February 1999, Mr. X and a number of other suspects were invited to ICAC offices for interview. They all denied corruption while Mr. X elected not to answer any question. In September 1999, the Operations Review Committee (Main Committee) endorsed a recommendation of no further investigative action by ICAC and a report was forwarded to the Commissioner of Police for consideration of internal disciplinary action against Mr. X and the other police officers concerned. Allegations (b), (c) and (d) arose from the interview with Mr. X on 3 February 1999.

7. On 13 February 1999, Mr. X lodged his complaints against ICAC officers. When interviewed by officers of the Internal Investigation and Monitoring Group (L Group), he said that he attended ICAC office for an interview on 22 December 1997 at the request of ICAC. A Training and Staff Relations Chief Inspector (TSR/CI1) accompanied him during the interview. Senior Investigator A was the interviewing officer. Before the interview commenced, Mr. X asked Senior Investigator A whether ICAC would prove his innocence, should the allegations against him be unsubstantiated. Mr. X alleged that Senior Investigator A had promised him that in that event, he would be sent a letter confirming that another person had wrongly accused him. At a later stage, he received a letter from ICAC informing him that no further action would be taken. This letter did not say he had been falsely accused. Therefore, he complained that Senior Investigator A had not kept his promise. [Allegation (a)]

8. Mr. X stated that at about 10 a.m. on 3 February 1999, he had attended ICAC office for an interview. This time, another Training and Staff Relations Chief Inspector (TSR/CI2) accompanied him. On arrival at ICAC, Senior Investigator B and Investigator C escorted him to the DC where he saw a male Guarding Officer (GO). The GO asked Senior Investigator B if charges were to be laid. Senior Investigator B replied that he just came to collect a form 'Notice to Persons Under

ICAC Investigation'. The notice was then served on Mr. X who signed to acknowledge receipt. Thereafter, Mr. X and TSR/CI2 were brought to the interview room. Mr. X was unhappy that Senior Investigator B had served the notice on him at the DC and believed he had done so deliberately to exert pressure on him before the commencement of the interview. [Allegation (b)]

9. Mr. X stated that in the interview room he told Senior Investigator B and Investigator C that he would not answer any questions. Despite this, Investigator C told him that he should prove his innocence if he had done nothing wrong. Mr. X was not satisfied with the attitude of Investigator C and felt that he was being pressed to answer questions. Mr. X stated that he returned to ICAC in the afternoon for a second interview, accompanied by his solicitor. Before the second interview commenced, Senior Investigator B told him that he must answer the questions as he had the right to ask him. He was extremely dissatisfied that Senior Investigator B pressed him to answer questions during the second interview. [Allegation (c)]

10. Mr. X stated that immediately after the conclusion of the second interview, he had asked Senior Investigator B to provide him with copies of the records of the two interviews. Senior Investigator B told him that the investigation was on-going and the records of interview could not be supplied at that stage. Despite insistence by Mr. X, Senior Investigator B declined to supply those records. Mr. X complained that Senior Investigator B failed to provide him with a copy of the interview records on request. [Allegation (d)]

11. With regard to his compulsory retirement, Mr. X made an application to the High Court for a Judicial Review seeking to have the decision reversed. The application was unsuccessful.

## **INVESTIGATION OF THE COMPLAINT**

### **Interview with Senior Investigator A**

12. Senior Investigator A stated that he interviewed Mr. X on 22 December 1997 in the presence of TSR/CI1 and another Assistant Investigator. Before the interview commenced and in response to a question from Mr. X, Senior Investigator A explained that if the allegations against him were not substantiated, ICAC would recommend to the ORC(SC) that no further action be taken. If the recommendation was endorsed, a letter would be sent to him informing him that ICAC would not take any further investigative action. If necessary, the case would be referred to the police for consideration of disciplinary action. Senior Investigator A denied he had told X that if the allegations were not substantiated, a letter would be sent to him stating that he was falsely accused by other persons. The Assistant Investigator who was present at the interview supported the version as given by Senior Investigator A.

### **Interview with the Assistant Investigator**

13. The Assistant Investigator confirmed that Senior Investigator A had not told Mr. X that he would receive a letter in the form suggested by Mr. X.

### **Interview with TSR/CI1**

14. The TSR/CI1 who had accompanied Mr. X in the interview stated that due to the lapse of time, he had no recollection of the matter in question.

### **Interview with Senior Investigator B**

15. Senior Investigator B stated that on 3 February 1999, together with Investigator C, he collected Mr. X and TSR/CI2 from the Reception Area at the ground floor and took them to the 10th floor where he had reserved an interview room. However, he found it was occupied by other officers. Therefore, he and Investigator C brought Mr. X and TSR/CI2 to the waiting area of the DC, which was also on the 10th floor, to await the allocation of another interview room. At the DC, he spoke to a GO who told him there was no vacant interview room available. Whilst waiting, Investigator C asked the GO to issue video tapes for the interview. At this point, Mr. X said he wanted his interview to be recorded in writing and not on video. Senior Investigator B agreed. He then obtained a copy of the 'Notice to Persons Under ICAC Investigation' from a tray in the DC. In the presence of TSR/CI2, he served the notice on Mr. X and explained its contents to him, which was standard ICAC practice. Mr. X acknowledged receipt of the notice by signing on its copy. Senior Investigator B denied that a GO had asked him if he was going to lay charges or if he required a fingerprint form. Senior Investigator B also denied that he had exerted pressure on Mr. X by serving him a copy of that notice.

16. About 10 minutes later, an interview room was allocated. Before the interview commenced, Mr. X indicated to Senior Investigator B that he would not answer any questions. Senior Investigator B explained that he was duty bound to ask the questions but Mr. X had the right to remain silent. He denied that he had pressed Mr. X to answer questions. He further denied that, prior to this interview, Investigator C advised Mr. X he should prove his innocence if he had done nothing wrong.

17. Senior Investigator B stated that at the conclusion of that interview, Mr. X expressed the view that TSR/CI2, who was present throughout the interview, was unable to provide him with legal advice and suggested he return in the afternoon for a further interview when a legal representative would be present. It was agreed that a second interview be conducted at around 2.30 p.m. that afternoon.

18. Senior Investigator B said that at around 3 p.m. that day, a solicitor accompanied Mr. X to attend the second interview. Senior Investigator B showed the solicitor the records of the earlier interview. Having read that record, the solicitor had a private consultation with Mr. X before the interview commenced. At the start of this

interview, Mr. X immediately requested the interview be terminated as he would not answer any questions and would remain silent. Senior Investigator B agreed and ceased the interview forthwith. Senior Investigator B denied having told Mr. X that he had the right to ask questions and that Mr. X must answer them.

19. Senior Investigator B said that at the end of the second interview, Mr. X asked for copies of the record of the two interviews. Senior Investigator B told Mr. X he had to seek the consent of his senior officer before those records could be released as the investigation was on-going. He also proposed to Mr. X that the records be supplied to him at a later stage. Senior Investigator B said Mr. X consulted the solicitor who said the records were not required immediately. As a result, it was mutually agreed that the solicitor would contact Senior Investigator B for the records some time later. Senior Investigator B said he was never contacted by either the solicitor or Mr. X and therefore, did not supply the interview records. Senior Investigator B also denied Mr. X had insisted the records must be supplied immediately after the conclusion of the second interview.

### **Interview with Investigator C**

20. Investigator C corroborated the version of events given by Senior Investigator B. He denied that prior to the interview that morning, he had told Mr. X that if he had done nothing wrong he should prove his innocence. He denied that he had ever pressed Mr. X to answer questions.

### **Interview with TSR/CI2**

21. TSR/CI2 stated she could not recall the purpose of entering the DC. However, she remembered that no GO had asked Senior Investigator B or Investigator C if they were going to lay charges or required a fingerprint form. She noticed that Mr. X was served with a copy of the 'Notice to Persons Under ICAC Investigation' whilst in the DC.

22. She recalled that Mr. X had adopted a hostile attitude when he first arrived at ICAC office. He appeared to lose his temper and gave Senior Investigator B a hard time. Both she and Senior Investigator B had to ask Mr. X to calm down.

23. She recalled that before the interview in the morning of 3 February 1999, Mr. X had said that he would not answer any questions. Senior Investigator B had explained that it was his duty to put the allegations to him and Mr. X had the right to remain silent. TSR/CI2 confirmed that it was Mr. X who initiated the arrangement for another interview, as he would employ a solicitor to be present with him. She stated that throughout her presence with Mr. X, neither Senior Investigator B nor Investigator C had pressed Mr. X to answer questions and both officers had acted properly, otherwise she would have lodged a complaint immediately. She was not present at the interview that took place in the afternoon as she left when the solicitor arrived.

### **Interview with the solicitor**

24. The solicitor recalled that the interview by Senior Investigator B and Investigator C was conducted in a fair and proper manner and that neither officer had pressed Mr. X to answer questions. He recalled that Senior Investigator B did not refuse to supply the records of the two interviews to Mr. X. Senior Investigator B had explained that approval needed to be sought from his seniors before the records could be supplied as the investigation was on-going. Senior Investigator B asked Mr. X if the relevant records could be supplied to him later if there was no urgency and Mr. X had agreed to the suggestion. The solicitor was happy with that arrangement and let Mr. X contact Senior Investigator B at a later stage.

### **Interview with the GOs**

25. The Guard Commander (GC) and the four GOs who were on the morning shift on 3 February 1999 were interviewed. None of them could recall having any contact with Senior Investigator B or Investigator C on that day. They denied having asked Senior Investigator B if he was going to lay charge or required a fingerprint form. The GC stated that copies of the 'Notice to Persons Under ICAC Investigation' were put in a tray at the counter of the DC and were accessible to investigating officers whenever necessary. There was no need for them to ask.

## **ASSESSMENT OF THE COMPLAINTS**

### **Allegation (a)**

26. The letter received by Mr. X was sent to him in accordance with the standard practice and signed by the Principal Investigator overseeing the investigation. It seemed unlikely that Senior Investigator A would make a promise to send a letter to Mr. X which was not in accordance with the standard practice without first seeking his senior officer's agreement. Furthermore, despite TSR/CI1 being unable to support Mr. X's allegation, it was unlikely that Senior Investigator A would make a false promise in the presence of Mr. X's senior officer. Allegation (a) was unsubstantiated.

### **Allegation (b)**

27. The Notice was served in accordance with the Rules and Directions for the questioning of suspects and taking of statements issued by the Secretary for Security. It was a standard practice that it had to be served on a subject of investigation before the commencement of an interview. Senior Investigator B had explained the reason for taking Mr. X to the DC. He was supported by TSR/CI2 who said both ICAC officers conducted themselves properly when the notice was served and during the interview. Allegation (b) was unsubstantiated.

### **Allegation (c)**

28. Both TSR/CI2 and Mr. X's solicitor supported the two officers. It was also clear from the records of the two interviews that the questions put by Senior Investigator B were pertinent to the allegations and Mr. X had declined to answer. Allegation (c) was unsubstantiated.

### **Allegation (d)**

29. There was support from the solicitor that he and Mr. X agreed to contact Senior Investigator B later to arrange to collect the copy records of interviews. However, Senior Investigator B had not consulted his senior officer immediately. He had made no attempt to supply the copy records to Mr. X. It was not until 25 February 1999 that officers of L Group supplied a copy of the records of interviews to Mr. X.

30. Senior Investigator B failed to comply with a Commission Standing Order which provides that copies of statements under caution and records of interview would be supplied to the suspect or his legal representative as soon as possible after the interview unless in the opinion of a Principal Investigator, to do so would jeopardise ICAC investigation. In such an event the situation would be closely monitored and the statement/record provided at the earliest appropriate opportunity. Allegation (d) was substantiated.

### **Conclusion and Recommendation**

31. The Commissioner of ICAC agreed that allegation (a), (b) and (c) were not substantiated while allegation (d) was substantiated. The ICAC Complaints Committee endorsed the conclusions of the investigation by ICAC. Senior Investigator B was given suitable advice by his Assistant Director. Mr. X was informed of the result of the investigation by letter.

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