

ICAC COMPLAINTS COMMITTEE

Annual Report 2001

21 June 2002

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
2001 Annual Report**

I have the honour to forward to you the annual report of the ICAC Complaints Committee for the year 2001. This is the seventh 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
2001 ICAC Complaints Committee

**INDEPENDENT COMMISSION AGAINST CORRUPTION
COMPLAINTS COMMITTEE
2001 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 2001, 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 (the Secretary), or

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; Fax number: 2524 7103)*

complain to the ICAC at any of its offices in person, by telephone or in writing. A list of the ICAC offices is attached as Annex B.

Annex B

5. The ICAC will confirm receipt of the complaint in writing, set out the allegations, and forward a copy to the Secretary 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 recommendation 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. The complainants and the ICAC officers involved will be advised of the conclusion of the Committee in writing.

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. The complainants will be informed in writing that investigation into his complaint is deferred, pending the conclusion of relevant criminal enquiries or proceedings. 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 2001, 26 complaints against ICAC officers were received. This compared to 44 complaints received in 2000 and 37 complaints in 1999. The 26 complaints contained a total of 81 allegations. In addition, the complainants of two complaints made in 1997 and 1999, the investigation of which had been deferred made six and five further allegations respectively when the investigation of their original complaints commenced. This makes a total of 92 allegations registered during the year. The majority (48%) of these allegations are concerned with abuse of power by

the ICAC officers. The rest related mainly to misconduct (25%) and neglect of duties (24%). A summary of the statistics is shown in Table 1 below.

Table 1 – Number and category of allegations registered in 2000 and 2001

Category of allegation		Number of allegations (%) in 2001	Corresponding number (%) in 2000
1.	Misconduct	23 (25%)	22 (19%)
2.	Neglect of duties	22 (24%)	25 (22%)
3.	Abuse of power		
	(a) search	2	6
	(b) arrest/detention/bail	17	16
	(c) interview	16	27
	(d) handling property	3	5
	(e) legal access	6	14
	(f) improper release of identities of witnesses/informants/ suspects	0	1
Sub-total		44 (48%)	69 (59%)
4.	Inadequacies of ICAC procedures	3 (3%)	0 (0%)
Total		<u>92</u>	<u>116</u>

10. Of the 26 complaints received in 2001, investigations on 11 were concluded and the relevant reports were considered by the Committee during the year. At the end of the year, one complaint was withdrawn and the investigation of nine was continuing, while the remaining five were regarded as “sub-judice” and their investigations deferred.

INVESTIGATION REPORTS CONSIDERED

11. The Committee held three meetings during the year to consider a total of 32 investigation or assessment reports. At the first meeting held in March 2001, the Committee considered investigation reports from the ICAC on six complaints. Of these, one complaint was received in 1998 and five in 2000. At the second meeting held in July 2001, the Committee considered investigation reports on ten complaints. Of these, one complaint was received in 1998, one in 1999, six in 2000 and two in 2001. At the third meeting held in November 2001, the Committee considered ten complaints, one of which was received in 2000 and the remaining nine in 2001. A summary of an investigation report considered by the Committee is attached as Annex C.

Annex C

12. Of the 26 complaints with 85 allegations considered by the Committee in 2001, 11 allegations (13%) in five complaints (19%) were found to be either

substantiated or partially substantiated. Of these 11 allegations, seven were found to be substantiated on matters other than the original allegation. A summary of the statistics is shown in Table 2 below.

Table 2 – Number and category of allegations found substantiated or partially substantiated by the Committee in 2000 and 2001

Category of allegation	2001		2000	
	Number of allegations considered	Number of allegations (%) found substantiated/ partially substantiated	Number of allegations considered	Number of allegations (%) found substantiated/ partially substantiated
1. Misconduct	21	0 (0%)	27	0 (0%)
2. Neglect of duties	24	4 (5%)	17	7 (10%)
3. Abuse of Power				
(a) search	0	0	3	0
(b) arrest/ detention/bail	11	1	7	0
(c) interview	19	1	6	1
(d) handling property	3	3	1	1
(e) legal access	4	2	6	1
(f) improper release of identities of witnesses/informants/ suspects	0	0	2	0
Sub-total	37	7 (8%)	25	3 (4%)
4. Inadequacies of ICAC procedures	3	0 (0%)	0	0 (0%)
Total	85	11 (13%)	69	10 (14%)

13. The substantiated or partially substantiated allegations related to the improper refusal of a witness' request for a receipt for property provided to the ICAC, the failure to properly handle a witness' query, update records of investigations, explain to a subject of investigation the reason for extending his bail and handle a request by a solicitor for access to a detainee. Allegations also include failing to take an accurate witness statement, promptly entertain a request for return of seized property, take proper care of a record of investigation and a seized document. 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.

14. In addition to the above complaints on which the ICAC had carried out full investigation, the Committee also considered and endorsed six assessment reports from the ICAC – one at the meeting in March, three at the meeting in July and two at the meeting in November 2001 – on two complaints received in 2000 and four 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

15. An important and positive effect of investigating into complaints is that through the 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.

16. Arising from the investigation reports considered during the year of 2001, the ICAC reviewed a number of procedures and made improvements. For example, following the recommendations of the Committee, the ICAC reviewed its procedures for handling requests by legal representatives for access to detainees. On the basis of legal advice, guidelines were issued to remind officers of the legal basis for handling requests for legal access. In addition, internal instructions were issued to reinforce the procedures for handling requests by a witness for a copy of his statement and for the issue of a receipt when property was seized by or surrendered to the ICAC to assist investigations. Suitable advice was given to ICAC officers underlining their important duty to ensure safe custody and handling of seized property.

**INDEPENDENT COMMISSION AGAINST CORRUPTION
COMPLAINTS COMMITTEE**

**Membership
(from 1 January 2001 to 31 December 2001)**

The Hon YANG Ti-liang, GBM, JP	Chairman
Dr HUANG Chen-ya	
The Hon Howard YOUNG How-wah, JP	
The Hon TAM Yiu-chung, GBS, JP	
Professor NG Ching-fai	
Mr Ambrose HO, SC	
Mr Robert TANG Ching, SC, JP	
Mrs Betty NEOH (Representative of The Ombudsman)	(ex-officio)

LIST OF ICAC OFFICES

Office	Address & Tel No.
ICAC Report Centre (24 hours a day)	G/F, Murray Road Carpark Building, 2 Murray Road, Central Tel: 2526 6366
ICAC Regional Office – Hong Kong West/Islands	G/F, Harbour Commercial Building 124 Connaught Road Central Hong Kong Tel : 2543 0000
ICAC Regional Office – Hong Kong East	G/F, Tung Wah Mansion 201 Hennessy Road Wanchai Tel : 2519 6555
ICAC Regional Office – Kowloon Central	G/F, 21E Nga Tsin Wai Road Kowloon City Tel : 2382 2922
ICAC Regional Office – Kowloon East/Sai Kung	Shop No. 4, G/F, Kai Tin Building 67 Kai Tin Road, Lam Tin Tel : 2756 3300
ICAC Regional Office – Kowloon West	G/F, Nathan Commercial Building 434-436 Nathan Road Tel : 2780 8080
ICAC Regional Office – New Territories South West	G/F, 271-275 Castle Peak Road Tsuen Wan Tel : 2493 7733
ICAC Regional Office – New Territories North West	Shops 4-5 and 22-24 Level 1, Trend Plaza (North Wing), 2 Tuen Shun Street, Tuen Mun Tel : 2459 0459
ICAC Regional Office – New Territories East	G06 - G13 Shatin Government Offices 1 Sheung Wo Che Road Shatin Tel: 2929 4555

SUMMARY OF AN INVESTIGATION REPORT

COMPLAINT

Mr. X and his wife Madam Y complained that –

- (a) on 30 October 2000, when Mr. X answered his bail at ICAC offices and told Senior Investigator A that he would not enter into any further bail, Senior Investigator A forced him to enter into further bail by threatening to detain him in ICAC offices for 24 hours until a court order was obtained to surrender his travel documents;
- (b) on 1 November 2000, when Senior Investigator A saw Madam Y in ICAC offices, Senior Investigator A dishonestly denied that on 30 October 2000 he had forced Mr. X to enter into further bail;
- (c) as a result of Mr. X's indication that he would not enter into any further bail, ICAC obtained a court order to surrender Madam Y's travel documents as a punitive measure;
- (d) the application by ICAC for a court order to surrender the travel documents of both Mr. X and Madam Y when Mr. X declined to enter into further bail was an abuse of power;
- (e) on 22 March 2001, when Madam Y requested to be provided with a copy of a notebook seized from her residence by ICAC, Assistant Investigator B unreasonably required her to engage a legal representative to make the request on her behalf; and
- (f) ICAC officers had been negligent in taking care of Madam Y's notebook because according to a letter from Chief Investigator C, the notebook in question could not be located.

BACKGROUND

2. In November 1999, a complaint was received alleging that Mr. X, who was then a branch manager of a bank, had corruptly accepted advantages in a property transaction. The complaint was initially investigated by Investigator D and later by Senior Investigator A under the supervision of Chief Investigator C.

3. On 9 June 2000, Mr. X, Madam Y and other persons involved were invited to ICAC offices for interview. After the interview, Mr. X and Madam Y were arrested. They were released on bail to report to ICAC offices on 21 June 2000 pending further enquiries. On 21 June 2000, when they answered bail at ICAC offices, Mr. X and Madam Y were re-interviewed and re-bailed to 21 August 2000, and subsequently to 30 October 2000.

4. On 30 October 2000, accompanied by their legal representatives, a solicitor and a counsel, Mr. X and Madam Y answered bail at ICAC offices. They were met by Senior Investigator A, Assistant Investigator E and Assistant Investigator F. Mr. X's bail was extended to 1 November 2000 while Madam Y was released from ICAC bail on a non-prejudicial basis.

5. On 31 October 2000, ICAC applied to a Magistrate's Court for two notices under section 17A of the Prevention of Bribery Ordinance (POBO) for the surrender of the travel documents of Mr. X and Madam Y for a period of six months. The applications were granted.

6. On 1 November 2000, Senior Investigator A served the notices on Mr. X and Madam Y who surrendered their travel documents to ICAC. Mr. X was released from bail unconditionally on a non-prejudicial basis.

7. On 2 November 2000, in company with the two legal representatives, Mr. X and Madam Y attended ICAC offices to make a complaint. When interviewed by officers of the Internal Investigation and Monitoring Group (L Group), Mr. X stated that on 21 August 2000, he and his wife Madam Y answered bail at ICAC offices. He was informed by an ICAC officer that their bail was to be extended to 21 November 2000. He raised objection to the extension and asked for an earlier bail date, indicating that he would refuse to enter into further bail next time. After seeking instructions from his senior officer, the officer extended their bail to 30 October 2000. Mr. X then instructed his counsel to inform ICAC by letter that he would refuse bail next time.

8. Mr. X stated that on 30 October 2000, he and Madam Y answered bail at ICAC offices in company with their legal representatives. They were received by Senior Investigator A who brought them to an interview room where there were two other ICAC officers, Assistant Investigators E and F. Senior Investigator A told them that Madam Y was to be released from bail on a non-prejudicial basis whilst Mr. X was to be re-bailed. If Mr. X refused to be re-bailed, ICAC would apply to a Magistrate's Court for a notice requiring him to surrender his travel documents. As it was 5.00 p.m. and the magistrate might not be available to consider the application, ICAC would have to detain Mr. X for 24 hours until the notice was issued.

9. Mr. X said his counsel told Senior Investigator A that it was unreasonable to detain Mr. X for 24 hours as Mr. X had never failed to answer bail before. A reserve magistrate would always be available after office hours to consider the application. Furthermore, he had informed ICAC by letter dated 23 October 2000

beforehand of Mr. X's intention to decline a further extension of his bail. ICAC should have had sufficient time to apply for the notice without having to detain Mr. X. Senior Investigator A replied that he had to seek instructions from his senior officer and left the interview room. When he returned, Senior Investigator A said Mr. X would not be detained but would be re-bailed to 1 November 2000 so that ICAC could apply for the notice. Mr. X's counsel accepted the proposal, but protested that ICAC had no justification to make the application and he would seek a review from the court [Allegation (a)].

10. Mr. X said on 31 October 2000, he received a telephone call from Senior Investigator A who informed him that, in addition to the notice requiring him to surrender his travel documents, ICAC had also applied for a notice requiring Madam Y to surrender her travel documents. Senior Investigator A requested him and Madam Y to attend ICAC offices with their travel documents. Mr. X complained that as a result of his indication that he would not extend his bail, ICAC had obtained a notice requiring Madam Y to surrender her travel documents as a punitive measure [Allegation (c)]. He also complained that the application for the court orders was an abuse of power [Allegation (d)].

11. When interviewed by an L Group officer, Madam Y corroborated Mr. X's version of events. She said on 1 November 2000, when Mr. X answered bail at ICAC offices accompanied by his legal representatives, his counsel had asked Senior Investigator A for the justification in detaining Mr. X for 24 hours pending the application of the notice, in the event Mr. X declined to be re-bailed. Senior Investigator A had denied saying that, explaining it was only an option offered to the counsel for consideration. Madam Y complained that Senior Investigator A had been dishonest by failing to admit that he had said to the counsel and Mr. X that ICAC would detain Mr. X for 24 hours [Allegation (b)].

12. On 9 November 2000, Mr. X and Madam Y applied to the court for the return of their travel documents under section 17B of the POBO. The application was heard before a magistrate on 16 November 2000 and refused.

13. On 7 March 2001, at Madam Y's request, L Group officers interviewed her who repeated Mr. X's complaint that ICAC had abused its power in ordering the surrender of their travel documents. She wanted to speak to the senior officer responsible for the corruption investigation to find out what was the justification for requiring them to surrender their travel documents. In response to the request, L Group made arrangement for Madam Y to see Acting Assistant Director G and Principal Investigator H on 19 March 2001.

14. Madam Y further said that when she met Acting Assistant Director G on 19 March 2001, she had repeated her request for a copy of the notebook seized by ICAC during a search of her home on 9 June 2000. She said she had sent a letter to ICAC a week before making the request because the notebook contained information to prove that she and her husband were innocent.

15. On 22 March 2001, Madam Y accompanied Mr. X to ICAC offices. Whilst Mr. X was being seen by Principal Investigator H, she met Assistant Investigator B and asked her for a copy of the notebook. Assistant Investigator B replied that Madam Y had to engage a legal representative to make the request by letter. She asked Assistant Investigator B whether she could be provided with the copy if she could not afford to engage a legal representative. Assistant Investigator B replied that it was an established procedure. After she returned home, Madam Y telephoned Assistant Investigator B and asked for a written confirmation of the established procedure. Assistant Investigator B said she would reply to the request later. Afterwards, Assistant Investigator B telephoned her and said the notebook had not yet been found [Allegation (e)].

16. Mr. X later sent a letter to ICAC by fax making a formal request for the return of the notebook. Principal Investigator H informed Madam Y by telephone that the notebook could not be found and a written reply would be sent to her as confirmation. She subsequently received a letter from Chief Investigator C informing Mr. X that the notebook could not be located. She complained that ICAC officers concerned had been negligent by not taking care of her notebook [Allegation (f)].

INVESTIGATION OF THE COMPLAINT

Allegations (a) and (b)

Interview with Senior Investigator A

17. Senior Investigator A stated that in October 2000, information was received that Mr. X and his family would emigrate to Canada at the year end. A letter dated 23 October 2000 was received from Mr. X's legal representative requesting ICAC to release Mr. X and others involved in the investigation from bail unconditionally unless charges were preferred against them. The letter did not specify whether or not Mr. X would refuse to be re-bailed.

18. Senior Investigator A reported the position to Chief Investigator C. At a meeting with Chief Investigator C and Principal Investigator H, Principal Investigator H decided that if Mr. X refused to enter into further bail on 30 October 2000, an immediate application would be made to the court for a notice requiring Mr. X to surrender his travel documents. It was also decided that Madam Y would be released unconditionally.

19. Senior Investigator A said in the letter of 23 October 2000, Mr. X's solicitors had requested the reporting time be deferred from 2.30 p.m. to 6.30 p.m. On 30 October 2000, Mr. X and Madam Y answered bail at 5.10 p.m. Senior Investigator A saw Mr. X together with Assistant Investigators E and F in an interview room in the presence of Madam Y and their legal representatives. He informed Mr. X of Principal Investigator H's decision. He said as no magistrate was available to consider the application after office hours, Mr. X might have to be detained until the following

morning pending the notice being obtained. The legal representatives queried the justification for detaining Mr. X. They said a reserve magistrate was available after office hours to consider the application.

20. Senior Investigator A said he had suggested an alternative that Mr. X could be re-bailed for two days pending the application of the notice. He asked the two legal representatives to seek Mr. X's instruction and left the interview room. When he returned, Mr. X agreed to be re-bailed to 1 November 2000.

21. Subsequently, acting on the instruction of Chief Investigator C, Senior Investigator A applied to the court for two notices for the surrender of the travel documents in respect of Mr. X and Madam Y. He telephoned Madam Y to inform her of the decision, requesting her to attend ICAC offices with her travel documents on 1 November 2000.

22. At about 11.40 a.m. on 1 November 2000, Senior Investigator A saw Mr. X and Madam Y in the presence of their legal representatives together with Assistant Investigator I and served on them the notices. The counsel repeated his previous dissatisfaction with Senior Investigator A's suggestion to detain Mr. X for 24 hours pending the application for the notice. Senior Investigator A replied that there was no point to repeat what had been said as it was only an option to be considered by his client who had subsequently agreed to be re-bailed.

Interview with Assistant Investigators E and F

23. The two officers corroborated the version of events of Senior Investigator A regarding Mr. X's entering into further bail on 30 October 2000.

Interview with the solicitor and counsel

24. They corroborated Senior Investigator A's statement. They said there was no justification to detain Mr. X pending the application for the notice.

Interview with Principal Investigator H and Chief Investigator C

25. Both Principal Investigator H and Chief Investigator C stated that they had never given any instruction to Senior Investigator A that Mr. X was to be detained pending the application for the notice. Chief Investigator C said he was on leave on 30 October 2000, and was unaware of how Senior Investigator A dealt with Mr. X.

Allegations (c) and (d)

Interview with Chief Investigator C

26. Chief Investigator C stated that as a result of the letter dated 23 October 2000 received from the legal representatives requesting ICAC to release Mr. X from

bail unconditionally, he had a meeting with Principal Investigator H and Senior Investigator A either on 26 or 27 October 2000. At the meeting, it was agreed that in view of the information suggesting that Mr. X and his family would emigrate to Canada, it was necessary to apply for a notice to surrender Mr. X's travel documents should Mr. X refuse to be re-bailed. Chief Investigator C confirmed that on 30 October 2000, Mr. X agreed to be re-bailed to 1 November 2000 pending the application for a notice to surrender his travel documents.

27. Chief Investigator C instructed Senior Investigator A to submit an application to court for a notice requiring Mr. X to surrender his travel documents. In accordance with internal procedures, Senior Investigator A had to seek the approval of the Directorate before the application was made. When considering the application, the Directorate directed that an application should also be made for a notice requiring Madam Y to surrender her travel documents. The decision was made in view of the evidence implicating her involvement in corruption and the likelihood of her emigrating to Canada.

28. Chief Investigator C said the application was made in accordance with statutory procedures. When making the applications, Senior Investigator A had provided justifications in the Information he affirmed before the magistrate who was satisfied with the justifications and signed the application. Mr. X and Madam Y's legal representatives had afterwards applied to the court for the return of the travel documents under section 17B of the POBO. The magistrate refused the application.

Interview with Principal Investigator H

29. Principal Investigator H stated that at the meeting, Chief Investigator C and Senior Investigator A had reported to him the request from Mr. X's solicitor to release Mr. X from bail on 30 October 2000 and the information suggesting that Mr. X and his family would emigrate to Canada. He considered that it was necessary to surrender Mr. X's travel documents whether or not Mr. X refused to be re-bailed. He said Chief Investigator C and Senior Investigator A had misunderstood his instruction and believed that an application for the notice should be made only when Mr. X refused to be re-bailed. In any event, he received a file with the application for the notice from Senior Investigator A on 31 October 2000 for him to submit to the Directorate for approval.

Examination of the Investigation File

30. Records on the file showed that the application for the notice was prepared by Senior Investigator A in the afternoon of 30 October 2000 and submitted to Principal Investigator H on 31 October 2000.

Allegation (e)

Interview with Assistant Investigator B

31. Assistant Investigator B stated that on 22 March 2001, Chief Investigator C instructed her to see Madam Y who was at the reception area in ICAC offices. Madam Y was asking for a copy of a notebook previously seized from her home by ICAC. Chief Investigator C asked her to tell Madam Y to make the request in writing by herself or a legal representative. When she informed Madam Y accordingly, Madam Y responded in an emotional manner and asked whether she could be given a copy of the notebook if she had no money to engage a lawyer. Assistant Investigator B replied that it was only a suggestion that she could engage a lawyer to make the request; she could make the request in writing herself. Madam Y left ICAC offices and later the same day, telephoned Assistant Investigator B requesting her to confirm in writing that she had asked Madam Y to engage a lawyer to make the request in writing. Assistant Investigator B turned down the request. Assistant Investigator B denied that she had told Madam Y that it was an established procedure that a lawyer should make the request for a copy of a seizure.

32. Assistant Investigator B said she later reported Madam Y's response to Chief Investigator C. Chief Investigator C in turn reported to Principal Investigator H who advised that Madam Y be informed that the notebook could not be found. Acting on Chief Investigator C's instruction, Assistant Investigator B telephoned Madam Y and informed her accordingly.

Interview with Chief Investigator C

33. Chief Investigator C stated on 22 March 2001, he was aware that Madam Y had attended ICAC offices asking to see his officers. As Madam Y had already made complaints against other officers under his command, he sent Assistant Investigator B to see Madam Y. He advised Assistant Investigator B to be careful in her conversations with Madam Y and that if Madam Y made any request, she should be asked to make the request in writing. This was to refute any unfounded allegations made by her against ICAC. Chief Investigator C confirmed that he had said to Assistant Investigator B that Madam Y could either make the request in writing herself, or instruct a solicitor to do so on her behalf.

Allegation (f)

Interview with Investigator D

34. Investigator D stated that he was the case officer responsible for the investigation when the home of Mr. X and Madam Y was searched on 9 June 2000. He assigned Assistant Investigator J to handle the seizures, which included 25 items of documents. Assistant Investigator J had prepared a list of the items and kept the items

in his own cabinet. On 21 June 2000, upon Madam Y's request, four items were returned to her against her signature.

35. Investigator D stated that upon the posting of Assistant Investigator J to another section in September 2000, Assistant Investigator J handed over the items to him. Investigator D had not physically verified the items against the list at the time of handing over and had made no record of the transfer. A few days later, Senior Investigator A was posted to his section and the case was re-allocated to him. Investigator D handed over the items to Senior Investigator A. The items were once again not checked against the list at the time of handing over and no record was made of the transfer.

Interview with Assistant Investigator J

36. Assistant Investigator J who resigned from ICAC on 24 November 2000 confirmed that he had kept the seized properties in his own cabinet at the relevant time. He had not checked the items when he handed them over to Investigator D and was not sure whether the notebook had been mislaid at the time of the hand over.

Interview with Senior Investigator A

37. Senior Investigator A confirmed that he had not checked the seized items against the list when he received them from Investigator D. It was not until Madam Y made a request for a copy of the notebook that he discovered it missing. He had conducted a thorough search of the office, but could not find it.

Interview with Chief Investigator C

38. Chief Investigator C stated that when Senior Investigator A reported to him that he could not find Madam Y's notebook, he had interviewed Investigator D and Senior Investigator A and had caused a search of the office, but could not find the notebook.

39. Regarding Madam Y's claim that the notebook contained information to prove their innocence, Chief Investigator C stated that during the interview with Madam Y on 21 June 2000, Madam Y had had access to the notebook but she made no reference to it when answering the allegation, suggesting that it did not contain such evidence.

Examination of the seizures from Mr. X and Madam Y and the Case Property Register

40. Under Commission Standing Order (CSO) Nos. 15-08 and 15-14, seized case property should be recorded in the relevant case property register, i.e. valuable property in the "Valuable Case Property Register" and non-valuable property in the "Other Case Property Case Register". Valuable case property should be deposited in

the safe of the relevant Chief Investigator or Principal Investigator, or a strong room in the ICAC, depending on the value of the property. Non-valuable case property should be kept in a secured cabinet within the investigating section under the supervision of the case officer. When an item of case property is returned to its owner, he will be asked to acknowledge receipt by signing at the relevant column in the register or on a separate receipt form which should then be fixed to the register.

41. The 25 items of seizures included a cheque book with 18 blank cheques, one isolated bank cheque, and eight bank passbooks which were valuable property.

42. When Assistant Investigator J, Investigator D and Senior Investigator A were interviewed by L Group officers about this allegation, examination of the seizures and the property registers by the L Group officers revealed that the valuable property had not been deposited in the relevant safe and the details of the seizures had not been recorded in the relevant registers in accordance with the requirements under the CSO. With regard to the four items which had been returned to Madam Y, a receipt form signed by her was attached to the list of the case property prepared by Assistant Investigator J and kept by Senior Investigator A in his cabinet containing the case property.

43. After the interview, Senior Investigator A had the valuable property transferred to Principal Investigator H's safe and the details of the case property and the receipt form entered in the relevant registers.

ASSESSMENT OF THE COMPLAINTS

Allegations (a) and (b)

44. Both Principal Investigator H and Chief Investigator C denied that they had given any instruction to Senior Investigator A to detain Mr. X pending the application for the notice. Senior Investigator A confirmed that it was his own initiative to tell Mr. X that Mr. X would be detained pending the application of the notice. He added that he had given an option to Mr. X that he could be re-bailed for two days pending the application. He denied that he had any intention to force Mr. X into entering further bail.

45. Under section 10A of the Independent Commission Against Corruption Ordinance, an ICAC officer of the rank of Principal Investigator or above is empowered to detain a person arrested under the Ordinance for the purpose of further enquiries. ICAC has no power to arrest and detain a person pending an application for a notice to surrender travel documents.

46. Accepting that Senior Investigator A had no intention to force Mr. X into entering further bail, he handled the matter in an unprofessional manner. Allegation (a) was substantiated other than reported against Senior Investigator A. Allegation (b) was not substantiated.

Allegation (c)

47. Chief Investigator C instructed Senior Investigator A to submit an application to surrender Madam Y's travel documents. It was an operational decision consented by the Court and was not a punitive measure. Allegation (c) was not substantiated.

Allegation (d)

48. The application was made in accordance with section 17A of the POBO. It was a matter for the magistrate to decide whether the application was justified. Mr. X and Madam Y had acted in accordance with section 17B of the POBO and sought a review of their notices. Allegation (d) was not substantiated.

Allegation (e)

49. Chief Investigator C denied that he had instructed Assistant Investigator C to require Madam Y to engage a legal representative to make the request for a copy of the notebook. However, he confirmed that he had instructed Assistant Investigator B to ask Madam Y to make the request in writing, either by herself or through a solicitor. The reason was to refute any further complaint which Madam Y might make.

50. The instruction given by Chief Investigator C to Assistant Investigator B was flawed. He should have considered what Madam Y was asking for before giving such an instruction. The request for a copy of the notebook should have been entertained without a written request. Allegation (e) was not substantiated against Assistant Investigator B but substantiated other than reported against Chief Investigator C.

Allegation (f)

51. Investigator D and Senior Investigator A had failed to record the items of the case property in the relevant case property registers as soon as practicable and have the valuable case property stored in the relevant safe. Chief Investigator C, as the Chief Investigator in charge, had failed his supervisory duty in ensuring that his subordinates handle the case property in a proper manner.

52. Furthermore, Investigator D and Senior Investigator A had been negligent in the safe-keeping of the notebook, resulting in its being mislaid. Investigator D and Senior Investigator A should be subject to disciplinary action for their failure to handle the case property in a proper manner, and Chief Investigator C for his lack of supervision. Allegation (f) was substantiated other than reported against the three officers.

CONCLUSION AND RECOMMENDATION

53. The Commissioner of ICAC agreed that allegations (b), (c) and (d) were not substantiated. Allegation (a) was substantiated other than reported against Senior Investigator A. Allegation (e) was not substantiated against Assistant Investigator B but substantiated other than reported against Chief Investigator C. Allegation (f) was substantiated other than reported against Chief Investigator C, Senior Investigator A and Investigator D. Disciplinary action had been taken against Chief Investigator C, Senior Investigator A and Investigator D. The ICAC Complaints Committee endorsed the conclusions of the investigation by ICAC. An apology was offered to Mr. X and Madam Y in the letter informing them of the result of this investigation.
