

廉政公署事宜投訴委員會

ICAC COMPLAINTS COMMITTEE

二零零二年年報

Annual Report 2002

香港中環
下亞厘畢道
中區政府合署
中座 5 樓
香港特別行政區
行政長官
董建華先生

董先生：

廉政公署事宜投訴委員會
二零零二年年報

現謹向閣下呈交《廉政公署事宜投訴委員會二零零二年年報》。這是委員會發表的第八份年報，扼要報告過去一年委員會處理的工作。

二零零二年廉政公署事宜投訴委員會主席

楊鐵樑

二零零三年六月十三日

廉政公署事宜投訴委員會

二零零二年年報

引言

廉政公署事宜投訴委員會(下稱“委員會”)在一九七七年十二月一日成立，委員會成員主要由行政會議和立法會議員出任。委員會秘書的工作，以前是由廉政公署(下稱“廉署”)及前行政立法兩局(非官方)議員辦事處分擔的。由一九九四年三月起，委員會秘書的職務，改由當時的布政司辦公室(現稱政務司司長辦公室)轄下行政署擔任。

委員

2. 二零零二年委員會主席由楊鐵樑先生出任。委員會成員名單載於附件 A。

附件 A

職權範圍

3. 委員會的職權範圍如下：

- (1) 監察廉署如何處理任何人士對廉署及其人員所作不涉及刑事法的投訴，並在委員會認為恰當時進行檢討；
- (2) 找出廉署工作程序中任何導致或可能導致投訴的漏洞；以及
- (3) 在委員會認為恰當時，向廉政專員提出建議，或在認為有需要時，向行政長官提出建議。

處理投訴

4. 有意投訴廉署或其人員者，可以書面形式向廉政公署事宜投訴委員會秘書(下稱“秘書”)提出¹，亦可致電、以書面形式或親身到任何一間廉署辦事處作出投訴。廉署辦事處的一覽表列載於附件 B。

附件 B

5. 廉署接獲投訴後，會致函投訴人確認接獲其投訴，列明各項指控，並同時把覆函副本送交秘書備考。如投訴是直接向秘書提出的，則秘書會認收投訴，並把投訴交由廉署跟進。廉署執行處設有特別小組(內部調查及監察組)，負責評估和調查這些投訴。廉政專員會經秘書，向委員會提交其對每宗投訴所作的結論和建議。

¹ 廉政公署事宜投訴委員會秘書處的地址如下：
香港雪廠街中區政府合署西座 12 樓政務司司長辦公室轄下行政署
(電話：2810 3503；傳真：2524 7103)

13 June 2003

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
2002 Annual Report**

I have the honour to forward to you the annual report of the ICAC Complaints Committee for the year 2002. This is the eighth 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
2002 ICAC Complaints Committee

INDEPENDENT COMMISSION AGAINST CORRUPTION COMPLAINTS COMMITTEE 2002 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 2002, 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 Committee² (the Secretary), or complain to the ICAC at any of its offices in person, by telephone or in writing. A list of 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 of the Committee 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 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.

² *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)*

COMPLAINTS RECEIVED

9. In 2002, 38 complaints against ICAC officers were received. This compared to 26 complaints received in 2001 and 44 complaints in 2000. The 38 complaints contained a total of 109 allegations. In addition, the complainant of a complaint made in 2000, the investigation of which had been deferred, made two further allegations when the investigation of the original complaint commenced. This makes a total of 111 allegations registered during the year. These allegations were mainly concerned with abuse of power by ICAC officers (45%). The rest related to misconduct (31%), neglect of duties (20%) and inadequacies of ICAC procedures (4%). A summary of the statistics is shown in Table 1 below.

Table 1 – Number and category of allegations registered in 2001 and 2002

Category of allegation	Number of allegations (%) in 2002	Corresponding number (%) in 2001
1. Misconduct	34 (31%)	23 (25%)
2. Neglect of duties	22 (20%)	22 (24%)
3. Abuse of power		
(a) search	2	2
(b) arrest/detention/bail	15	17
(c) interview	10	16
(d) handling property	1	3
(e) legal access	14	6
(f) improper release of identity of witnesses/informants/suspects	8	0
Sub-total	50 (45%)	44 (48%)
4. Inadequacies of ICAC procedures	5 (4%)	3 (3%)
Total	<u>111</u>	<u>92</u>

10. Of the 38 complaints received in 2002, 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 17 was continuing, while the remaining nine 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 30 investigation or assessment reports. At the first meeting held in March 2002, the Committee considered investigation reports from the ICAC on 10 complaints. Of these, one complaint was received in 1999, two in 2000, six in 2001 and one in 2002. At the second meeting held in July 2002, the Committee considered investigation reports on eight complaints. Of these, one complaint was received in 1997, three in 2000, one in 2001 and three in 2002. At the third meeting held in November 2002, the Committee considered eight complaints, one of which was received in 2001 and the remaining seven in 2002. A summary of an investigation report considered by the Committee is attached as Annex C.

Annex C

12. Of the 26 complaints with 76 allegations considered by the Committee in 2002, 11 allegations (14%) in ten complaints (38%) were found to be substantiated. Of these 11 allegations, four were found to be substantiated on matters other than the original allegations. 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 2001 and 2002

Category of allegation	2002		2001	
	Number of allegations considered	Number of allegations (%) found substantiated/ partially substantiated	Number of allegations considered	Number of allegations (%) found substantiated/ partially substantiated
1. Misconduct	19	1 (1%)	21	0 (0%)
2. Neglect of duties	17	5 (6.5%)	24	4 (5%)
3. Abuse of Power				
(a) Search	4	0	0	0
(b) arrest/detention/ bail	14	0	11	1
(c) interview	7	1	19	1
(d) handling property	1	1	3	3
(e) legal access	7	2	4	2
(f) improper release of identity of witnesses/ informants/ suspects	6	1	0	0
Sub-total	39	5 (6.5%)	37	7 (8%)
4. Inadequacies of ICAC procedures	1	0 (0%)	3	0 (0%)
Total	76	11 (14%)	85	11 (13%)

13. The substantiated allegations include:
- failure to comply with the requirement of the Correctional Services Department when serving documents to a prisoner;
 - failure to seek the consent of a defendant before destroying his fingerprint impressions after he was acquitted by the court;
 - failure to notify as soon as practicable the head of department concerned of the detention of a public officer;
 - failure to provide proper receipts when receiving and returning documents provided by an individual;
 - failure to return seized property to its owner as soon as possible when the property was found to be not relevant to an investigation;
 - failure to promptly handle a legal access request;
 - negligence in handling a complaint referral that resulted in the revelation of the identity of a complainant despite his request for it be referred anonymously; and
 - improper concealment of facts when interviewing a person on oath.

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 four assessment reports from the ICAC – one at the meeting in March, one at the meeting in July and two at the meeting in November 2002 – on two complaints received in 2001 and two during the year. Preliminary enquiries by the ICAC indicated that there was no substance to these complaints that warrant formal registration and investigation. The Committee agreed with the ICAC's assessment 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 2002, the ICAC reviewed a number of procedures and made improvements. For example, following the recommendations of the Committee, the ICAC reviewed its procedures to ensure that the fingerprint impressions of a defendant will only be destroyed when all criminal proceedings in respect of the defendant are concluded. In addition, on the basis of legal advice, internal instructions were issued that a hood may be provided for a detainee to cover his face upon request in order to avoid media exposure, provided that doing so will not compromise the fairness of a trial of the detainee. Internal procedures on keeping complainant's identity confidential were also reviewed and strengthened.

**INDEPENDENT COMMISSION AGAINST CORRUPTION
COMPLAINTS COMMITTEE**

***Membership
(from 1 January 2002 to 31 December 2002)***

Chairman:	The Hon YANG Ti-liang, GBM, JP
Members:	The Hon Tommy CHEUNG Yu-yan, JP Mr Ambrose HO, SC The Hon Fred LI Wah-ming, JP Professor NG Ching-fai The Hon TAM Yiu-chung, GBS, JP Mr Robert TANG Ching, SC, JP
Ex-officio Member:	Mrs Betty NEOH (Representative of The Ombudsman)

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 Tsing 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: 2606 1144

SUMMARY OF AN INVESTIGATION REPORT

COMPLAINT

Mr. X, a government officer, complained that –

- (a) during an appearance at court on 1 June 1998, Chief Investigator A had ignored his request to cover his face to avoid having his photograph taken by reporters; and
- (b) his fingerprint impressions taken by the ICAC for the purpose of a court case record were destroyed without his consent.

BACKGROUND

2. In November 1997, the ICAC commenced an undercover operation to investigate the activities of Mr. X and another government officer who were suspected to have accepted bribes from a number of decoration contractors operating in the vicinity of a public housing estate.

3. On 30 May 1998, Mr. X was arrested and detained until 1 June 1998 when he was charged and escorted to a magistracy by Senior Investigators B and C, and Assistant Investigator D.

4. On 19 June 1999, the trial of Mr. X commenced with a *voire dire* to determine the admissibility of tape-recorded evidence covertly obtained during the undercover operation. On 5 July 1999, the court ruled that the tape-recorded evidence was inadmissible and on 8 July 1999, Mr. X was acquitted when the prosecution offered no evidence against him.

5. On 9 July 1999, the Secretary for Justice (S for J) applied to the trial judge for a “Case Stated” for the purpose of appealing against his ruling on the admissibility of the undercover evidence. The application was granted and an appeal was heard by the Court of Appeal on 16 July 2000. The appeal was dismissed. S for J then appealed to the Court of Final Appeal which, on 26 June 2001, ordered that the case be remitted to the same judge for trial. Following resumption of the trial on 29 January 2002, the judge exercised his discretion to exclude all undercover evidence. On 7 February 2002, the prosecution again offered no evidence against Mr. X and he was acquitted of all charges.

6. In June 2002, a report was tabled before the ICAC Operations Review Committee and members agreed that the case concerning Mr. X should be referred to his head of department for consideration of administrative and disciplinary action.

7. On 24 August 2002, Mr. X lodged a complaint [Allegations (a) and (b)] with the ICAC. In respect of allegation (b), he stated that prior to the resumption of his trial on 29 January 2002, Chief Investigator E informed his solicitors that the set of his fingerprints taken at the time of charging had been destroyed and requested him to attend ICAC offices to have a fresh set taken. He complained that the ICAC had destroyed his fingerprints without his consent and demanded their return.

INVESTIGATION OF THE COMPLAINT

Allegation (a)

Interview with Chief Investigator A

8. Chief Investigator A stated that he did not escort Mr. X to the magistracy on 1 June 1998. The officers who did the escort duty were in fact Senior Investigators B and C, and Assistant Investigator D. Assistant Investigator D, who had left the service of the ICAC, was not interviewed.

Interview with Senior Investigators B and C

9. Senior Investigator B stated that when he, together with Senior Investigator C and Assistant Investigator D, escorted Mr. X to the magistracy on 1 June 1998, Mr. X had not asked for a hood to cover his face. He said that during the journey, he had told Mr. X that there might be reporters waiting outside the court building and asked if he would like to have a jacket to cover his face. However, Mr. X declined his offer. When they arrived outside the main entrance of the court building, they were already five minutes behind the appointed time. As there was insufficient time for Mr. X to be processed through the police office at court, he decided to take Mr. X to the courtroom through the main entrance.

10. Senior Investigator C corroborated Senior Investigator B's statement and confirmed that Mr. X had declined the offer of a jacket.

Allegation (b)

Interview with Chief Investigator E

11. Chief Investigator E stated that he had, following Mr. X's acquittal on 8 July 1999, notified the Criminal Records Bureau (CRB) of the acquittal by returning to them the relevant CRB form. He did not request the return of Mr. X's fingerprints because he was aware that S for J was considering an appeal against the acquittal. However, when an appeal was subsequently lodged by S for J, he did not inform CRB

of the appeal. He was not aware that CRB would destroy the fingerprints without informing the ICAC. It was only on 5 July 2001, when the case was listed for trial on 29 January 2002, that he became aware of the destruction of Mr. X's fingerprints. This was brought to the attention of Mr. X's solicitors on 20 July 2001 and Mr. X was requested to have a fresh set of fingerprints taken at ICAC offices. Mr. X refused and demanded the return of his fingerprints after he was acquitted for a second time. On 19 July 2002, CRB confirmed that Mr. X's fingerprints were destroyed four days after his first acquittal and this information was relayed to Mr. X's solicitors on 10 August 2002.

Enquiry with CRB

12. The procedure of CRB is that when they are notified of an acquittal of a defendant by the relevant police division or law enforcement agency, they will destroy the fingerprints of the defendant as soon as practicable in accordance with the Police Force Ordinance. Normally the fingerprints will be destroyed within a few days following such a notification unless there is a request by the police division or other law enforcement agency for their return or a notification that they are not to be destroyed pending an appeal.

ASSESSMENT OF THE COMPLAINT

Allegation (a)

13. The officers who escorted Mr. X to the magistracy were Senior Investigators B and C, and Assistant Investigator D. Chief Investigator A was not present and Mr. X had mistaken him to be one of the officers. Senior Investigator B denied that Mr. X had requested to have a hood to cover his face to avoid having his photograph taken by reporters. Senior Investigator B said, and was supported by Senior Investigator C, that he had offered to provide Mr. X with a jacket to cover his face but Mr. X declined. In fact, at that time, there were no procedures (and no hoods) in place to provide an ICAC suspect with a hood to conceal his identity. Allegation (a) was not substantiated. As a result of Mr. X's complaint, internal instructions were issued on the basis of legal advice that a detainee, who wishes to avoid media exposure, may request and be provided with a hood to cover his face provided that doing so will not compromise the fairness of a trial of the detainee.

Allegation (b)

14. Fingerprint impressions taken by the ICAC from defendants are forwarded to CRB for filing in the centralized records of criminal convictions. Under Section 10D of the ICAC Ordinance, when an ICAC defendant is discharged by the court, the fingerprint impressions should, as soon as reasonably practicable, be destroyed or, if the defendant prefers, delivered to him.

15. The Commission Standing Orders (CSO) provide that when an ICAC defendant is discharged by the court, CRB is informed of the result by a standard CRB

form completed and forwarded to CRB by the case officer. Furthermore, once S for J has decided not to appeal, the case officer will send a memorandum to CRB requesting the return of the fingerprints in order that action could be taken in accordance with the ICAC Ordinance.

16. On 8 July 1999, when Mr. X was acquitted, Chief Investigator E forwarded the form to CRB informing them of the result. Chief Investigator E explained that he had not asked for the return of Mr. X's fingerprints because S for J had decided to appeal against the acquittal. However, he did not inform CRB of the appeal and he was unaware that CRB would destroy the fingerprints without informing the ICAC.

17. The CSO do not provide for the situation that when there is an appeal against acquittal, CRB should be informed accordingly in order to retain the fingerprints concerned. The CRB procedure also does not provide that the fingerprints of an acquitted ICAC defendant should only be destroyed until the prosecution had decided not to appeal against his acquittal. In this case, Mr. X's fingerprints were destroyed on 12 July 1999, four days after his acquittal or three days before the expiration of a statutory seven-day appeal period when the prosecution was considering an appeal against his acquittal. When fingerprint impressions of ICAC defendants are destroyed by CRB, the obligation under the ICAC Ordinance, i.e. to give the defendant the option to have his fingerprints delivered to him, cannot be fulfilled.

18. As a result of this complaint, the relevant ICAC and CRB procedures were reviewed and the CSO amended accordingly to provide that following an acquittal or discharge of a defendant and irrespective of whether or not it is known if an appeal is to be lodged, the fingerprints of the defendant will immediately be retrieved from CRB and be held by the relevant ICAC investigating section. Also, the fingerprints will only be destroyed when it is confirmed that all criminal proceedings in respect of the defendant are concluded. Allegation (b) was substantiated, but no fault should be attributed to Chief Investigator E.

CONCLUSION AND RECOMMENDATION

19. The Commissioner of the ICAC agreed that allegation (a) was not substantiated. Allegation (b) was substantiated but no fault should be attributed to Chief Investigator E. The ICAC Complaints Committee endorsed the conclusions of the investigation by the ICAC. The complainant has been so informed by the ICAC.