

廉政公署事宜投訴委員會

ICAC COMPLAINTS COMMITTEE

二零零四年年報

Annual Report 2004

16 June 2005


The Honourable Henry TANG Ying-yen, GBS, JP
Acting Chief Executive
Hong Kong Special Administrative Region
5/F, Central Government Offices
Main Wing
Lower Albert Road
Central
Hong Kong

Dear Acting Chief Executive,

**ICAC Complaints Committee
2004 Annual Report**

I have the honour to forward to you the annual report of the ICAC Complaints Committee for the year 2004. This is the tenth annual report of the Committee. It gives a summary of the work carried out by the Committee in the past year.

Yours sincerely,



(Andrew LIAO)
Chairman

2004 ICAC Complaints Committee

INDEPENDENT COMMISSION AGAINST CORRUPTION
COMPLAINTS COMMITTEE
2004 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 2004, the Committee was chaired by the Honourable Andrew LIAO Cheung-sing. 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 Committee¹ (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.

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 of the ICAC will seek legal advice and then decide whether or not to defer the

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)*

investigation of the complaint.

COMPLAINTS RECEIVED

9. In 2004, 21 complaints against ICAC officers were received. This compared to 29 complaints received in 2003 and 38 in 2002. The 21 complaints contained a total of 53 allegations registered during the year. These allegations were concerned with misconduct (32%), neglect of duties (32%) and abuse of power (36%) by ICAC officers. A summary of the statistics is shown in Table 1 below.

Table 1 – Number and category of allegations registered in 2003 and 2004

		Corresponding number (%) in 2003
1. Misconduct	17 (32%)	34 (49%)
2. Neglect of duties	17 (32%)	10 (14%)
3. Abuse of power		
(a) search	5	1
(b) arrest/detention/bail	4	4
(c) interview	3	10
(d) handling property	3	0
(e) legal access	4	9
(f) Improper release of identity of Witnesses/informants/suspects	0	1
		25 (36%)
4. Inadequacies of ICAC procedures	0 (0%)	1 (1%)
		70

10. Of the 21 complaints received in 2004, investigations on 10 were concluded and the relevant reports were considered by the Committee during the year. At the end of the year, three complaints were withdrawn and the investigation of seven was continuing, while the remaining one was regarded as “sub-judice” and its investigation deferred.

INVESTIGATION REPORTS CONSIDERED

11. The Committee held three meetings during the year to consider a total of 30 reports, comprising 22 investigation reports and 8 assessment reports.

12. At the first meeting held in March 2004, the Committee considered investigation reports from the ICAC on four complaints. Of these, one complaint was received in 2001 and three in 2003. At the second meeting held in June 2004, the Committee considered investigation reports on eight complaints. Of these, one complaint each was received in 2001 and 2002, five in 2003, and one in 2004. At the third meeting held in December 2004, the Committee considered ten complaints, one of which was received in 2003 and the remaining nine in 2004. A summary of an investigation report considered by the Committee is attached as Annex C.

Annex C

13. Of the 22 complaints with 60 allegations considered by the Committee in 2004, seven allegations (11%) in five complaints were found to be substantiated. Of these seven allegations, one was 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 2003 and 2004

			2003	
				Number of allegations (%) found substantiated/partially substantiated
1. Misconduct	24	2 (3%)	45	0 (0%)
2. Neglect of duties	14	5 (8%)	15	7 (7%)
3. Abuse of Power				
(a) search	6	0	1	0
(b) arrest/detention/ bail	4	0	16	1
(c) interview	4	0	7	0
(d) handling property	1	0	1	0

(e) legal access	6	0	8	2
(f) improper release of identity of witnesses/ informants/ suspects	0	0	3	0
				3 (3%)
4. Inadequacies of ICAC procedures	1	0 (0%)	4	0
				10 (10%)

14. The substantiated allegations include:

- failure to provide a suspect with a copy of the video recording of her interview in accordance with standard procedures;
- improperly caused a suspect to believe that there was a justified pre-condition to be met before the video recording of her interview could be released;
- negligence in ensuring the proper recording of an interview resulting in one video recording showing a partial coverage of the image of the persons present;
- failure to issue a receipt when receiving video recordings provided by a complainant for the purpose of investigation;
- failure to inform the Detention Centre Duty Officer of the arrival of a solicitor resulting in the delay of legal access to a detainee;
- failure to return a travel document surrendered by a suspect after the case was concluded; and
- failure to make appropriate arrangement for the return of case property to a complainant.

With the Committee's endorsement, disciplinary action was taken against or advice given to individual ICAC officers as appropriate. Letters of apology from the Commissioner of the ICAC were also sent to the relevant complainants.

15. In addition to the above complaints on which the ICAC had carried out full investigation, the Committee also considered eight assessment reports from the ICAC – one at the meeting in March, two at the meeting in June and five at the meeting in December 2004 – on one complaint received in 2002, two in 2003, and five during the year. Regarding the complaint received in

2002, the Committee agreed that no investigative action should be taken until the complainant, who disappeared after making the complaint, could be contacted. For five complaints, preliminary enquiries by the ICAC indicated that there was not any substance that would warrant formal registration and investigation. The Committee agreed with the ICAC's assessment that no further investigative action be taken on the complaints and the complainants were advised of the outcome. With regard to the remaining two cases, the Committee decided to conduct further review pending confirmation with the complainant on the substances of the complaints and the outcome of a related criminal investigation.

IMPROVEMENTS TO PROCEDURES

16. An important and positive effect of investigating into complaints is that through examination of relevant issues, both the ICAC and the Committee can 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.

17. Arising from the investigation reports considered during the year 2004, the ICAC reviewed a number of procedures and made improvements. For example, following the recommendations of the Committee, the ICAC issued a reminder to its officers that they should, in an operational situation, keep a record of the identity of officers from whom they had received verbal instructions. The ICAC also reminded its officers to strictly comply with established procedures in the handling of case property.

Independent Commission Against Corruption Complaints
Committee
Membership List
(from 1 January 2004 to 31 December 2004)

Chairman : The Hon Andrew LIAO Cheung-sing, SBS, SC, JP

Members : The Hon Tommy CHEUNG Yu-yan, JP

Miss Anna CHOW Suk-han

Mr Ambrose HO, SC

The Hon Fred LI Wah-ming, JP

Mr Robert TANG Ching^{*}, SC, JP

The Hon Jasper TSANG Yok-sing, GBS, JP

Ms WONG Mee-chun, JP

Mr Tony MA

(Representative of The Ombudsman)

* Mr Tang resigned on 22 March 2004.

LIST OF ICAC OFFICES

	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 (This office will cease operation with effect from 1 September 2005.)	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: 2606 1144

SUMMARY OF AN INVESTIGATION REPORT

COMPLAINT

The complainant is a resident of a private residential building (the building). He complained that on 7 January 2004, Assistant Investigator A had acted unprofessionally, in that Assistant Investigator A had improperly telephoned a subject of his complaint, asking that person to collect documents which the complainant had earlier provided to the ICAC for an investigation.

BACKGROUND

2. In 1999, the complainant reported to the ICAC that unidentified members of the Owners' Incorporation (OI) of the building might have accepted advantages from a construction company in return for awarding an electrical maintenance contract to the company. Subsequent investigation by ICAC revealed no evidence of corruption. On 6 March 2000, a report was tabled before the Operations Review Committee (Sub-committee) [ORC(SC)] recommending no further investigative action by the ICAC. The ORC(SC) endorsed the recommendation. The complainant was accordingly informed of the outcome.

3. In October 2003, the complainant telephoned the ICAC Report Centre. He made a corruption report similar to the previous one, but adding that the record of an OI meeting in 1999 had been fabricated. He named Messrs Y and Z as the then vice-chairman and secretary of the OI respectively, and stated that they were amongst the eight persons purporting to be present at the meeting to consider the selection of contractors.

4. On 13 November 2003, the complainant handed to the officer in charge of the investigation, Senior Investigator B, some OI documents including a book containing the record of the meeting that was allegedly falsified.

5. In the course of investigation, Mr Z was interviewed. He confirmed he had attended the meeting in 1999 and the records of which had been prepared by Mr Y. Mr Y, when interviewed, admitted having prepared the record of the meeting in question but stated that he had inadvertently forgotten to ask the other people in attendance to sign the record. Eventually

the investigation revealed no evidence of corruption or other criminal offence. On 6 January 2004, a report was tabled before the ORC(SC). The ORC(SC) agreed that no further investigative action be taken by the ICAC.

6. On the afternoon of 7 January 2004, Assistant Investigator A telephoned the complainant to advise him of the outcome of the investigation and to make arrangement for the return of the OI documents. When told of the outcome, the complainant immediately expressed his dissatisfaction. He abruptly terminated the conversation and switched off his mobile phone.

7. Assistant Investigator A then reported the situation to Senior Investigator B, who instructed her to make arrangement for the return of the documents through Mr Y or Mr Z if she could not, in the meantime, establish contact with the complainant. She did as instructed and eventually contacted Mr Y. Mr Y said he was no longer the OI vice-chairman and told Assistant Investigator A to return the documents to the OI chairperson.

8. On 8 January 2004, the complainant made a complaint to the ICAC that Assistant Investigator A had acted unprofessionally. When interviewed by an officer of the Internal Investigation and Monitoring Group (L Group), the complainant gave his version of the events as set out in para. 2, 3, 4 and 6. He said he had to terminate the telephone conversation with Assistant Investigator A and switch off his mobile phone on 7 January 2004 as he was then in the company of a caretaker of the building. He later learnt from the OI vice-chairman that Assistant Investigator A had asked Mr Y to collect the documents and he was concerned that such action might have led to Mr Y identifying him as the complainant. He later lodged a complaint against Assistant Investigator A on the afternoon of 8 January 2004 when he failed to get into contact with Assistant Investigator A. Later that evening, Assistant Investigator A telephoned him and acknowledged having made the approach to Mr Y. The complainant told Assistant Investigator A that the documents should be returned to him and this was eventually done on 12 January 2004.

INVESTIGATION OF THE COMPLAINT

9. When interviewed, Mr Y confirmed that Assistant Investigator A had asked him to collect the documents and that he had declined to do so as he was no longer the OI vice-chairman. He also confirmed that Assistant Investigator A had not said to him anything that would have led him to identify

the complainant in the corruption investigation.

Interview with Assistant Investigator A and Senior Investigator B

10. Assistant Investigator A gave her version of the events as set out in para. 6 and 7. She stated that the complainant had become abusive when being informed of the outcome of the investigation and had used foul language to swear at her before terminating the conversation. She then approached Mr Y on the instruction of Senior Investigator B and had only done so after making several futile attempts to contact the complainant.

11. Senior Investigator B stated that he had, in instructing Assistant Investigator A to return the documents through either Mr Y or Mr Z, taken into consideration the unreasonable behaviour of the complainant as reported to him by Assistant Investigator A. He considered it appropriate to do so since Mr Y and Mr Z were known to him to be office bearers of the OI, who had been interviewed as witnesses and were shown the documents in the course of the investigation.

ASSESSMENT OF THE COMPLAINT

12. Assistant Investigator A, who merely carried out the instruction of Senior Investigator B, should not be held accountable for making the approach to Mr Y.

13. Senior Investigator B's decision to approach Mr Y was, in the circumstances, not appropriate. His explanation was not convincing. He should be mindful of the fact that Mr Y's status in the corruption investigation was one of a suspect and would remain as such in the mind of the complainant notwithstanding the outcome of the investigation. He should have afforded more time for the complainant to calm down and to make further efforts to return the documents which, in the circumstances, should only be returned to him or a person authorized by him to act on his behalf. The allegation is, therefore, substantiated. Senior Investigator B should be given appropriate advice by his supervisor who, during the course of this investigation, expressed disapproval towards the way that Senior Investigator B had handled the situation.

CONCLUSION AND RECOMMENDATION

14. The Commissioner of the ICAC agreed that the allegation was substantiated. The ICAC Complaints Committee endorsed the conclusions of the investigation by the ICAC. The complainant has been so informed by the ICAC.
