

廉政公署事宜投訴委員會

ICAC COMPLAINTS COMMITTEE

二零零五年年報

Annual Report 2005

12 June 2006

The Honourable Donald TSANG Yam-kuen, GBM
Chief Executive
Hong Kong Special Administrative Region
Government House
Hong Kong

Dear Chief Executive,

**ICAC Complaints Committee
2005 Annual Report**

I have the honour to forward to you the annual report of the ICAC Complaints Committee for the year 2005. This is the eleventh annual report of the Committee. It gives a summary of the work carried out by the Committee in the past year.

Yours sincerely,

(signed)
(Andrew LIAO)
Chairman
2005 ICAC Complaints Committee

INDEPENDENT COMMISSION AGAINST CORRUPTION COMPLAINTS COMMITTEE

2005 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 2005, 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.

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

¹ *Address of the ICAC Complaints Committee Secretariat is:
Administration Wing of the Chief Secretary for Administration's Office,
5/F, Central Government Offices, East Wing,
Lower Albert Road, Hong Kong.
(Telephone number: 2810 5503; Fax number: 2524 7103)*

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 investigation of the complaint.

COMPLAINTS RECEIVED

9. In 2005, 32 complaints against ICAC officers were received. This compared to 21 complaints received in 2004 and 29 complaints in 2003. The 32 complaints contained a total of 106 allegations registered during the year. Of the 106 allegations, 65 allegations arose from 10 complaints in four corruption investigations. The 106 allegations were concerned with misconduct (54%), neglect of duties (11%) and abuse of power (35%) by ICAC officers. A summary of the statistics is shown in Table 1 below.

Table 1 – Number and category of allegations registered in 2004 and 2005

Category of allegation	Number of allegations (%) in 2005	Corresponding number (%) in 2004
1. Misconduct	57 (54%)	17 (32%)
2. Neglect of duties	12 (11%)	17 (32%)
3. Abuse of power		
(a) search	5	5
(b) arrest/detention/bail	8	4
(c) interview	12	3
(d) handling property	0	3
(e) legal access	11	4
(f) Improper release of identity of witnesses/informants/suspects	1	0
Sub-total :	37 (35%)	19 (36%)
4. Inadequacies of ICAC procedures	0 (0%)	0 (0%)
Total	106	53

10. Of the 32 complaints received in 2005, 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 19 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 26 reports, comprising of 22 investigation reports and four assessment reports.

12. At the first meeting held in March 2005, the Committee considered investigation reports from the ICAC on seven complaints. Of these, one complaint was received in 2002 and six in 2004. At the second meeting held in July 2005, the Committee considered investigation reports on six complaints. Of these, one complaint was received in 2004 and five in 2005. At the third meeting held in November 2005, the Committee considered nine complaints, three of which were received in 2002 and the remaining six in 2005. A summary of an investigation report considered by the Committee is attached as Annex C.

Annex C

13. Of the 22 complaints with 59 allegations considered by the Committee in 2005, eight allegations (13%) in seven complaints (32%) were found to be substantiated. Of these eight 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 2004 and 2005

Category of allegation	2005		2004	
	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	2 (3%)	24	2 (3%)
2. Neglect of duties	13	3 (5%)	14	5 (8%)
3. Abuse of Power				
(a) search	2	1	6	0
(b) arrest/detention/ bail	5	1	4	0
(c) interview	7	0	4	0
(d) handling property	2	1	1	0
(e) legal access	11	0	6	0

Category of allegation	2005		2004	
	Number of allegations considered	Number of allegations (%) found substantiated/ partially substantiated	Number of allegations considered	Number of allegations (%) found substantiated/ partially substantiated
(f) improper release of identity of witnesses/ informants/ suspects	0	0	0	0
Sub-total :	27	3 (5%)	21	0 (0%)
4. Inadequacies of ICAC procedures	0	0 (0%)	1	0 (0%)
Total	59	8 (13%)	60	7 (11%)

14. The substantiated allegations include:

- inappropriately handcuffed two suspects on separate occasions during conveyance, resulting in them being seen by the public;
- having been rude to a person found on a premises during the course of an ICAC search operation and taken inordinately long time to verify the person's identity;
- technical non-compliance of the provisions of a search warrant by acceding to a request of the owner to have access to her seized mobile phone which had been sealed in a bag;
- failure to inform the interviewee that he was a subject of investigation;
- failure to issue a receipt for seized property;
- failure to exercise proper judgement when instructing a subordinate to arrange an interview appointment with a witness, resulting in the officer failing to keep the appointment on time.

With the Committee's endorsement, advice was given to individual ICAC officers as appropriate. Letters of apology from the Commissioner 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 and endorsed four assessment reports from the ICAC – two at the meeting in March and two at the meeting in July 2005 – on one complaint received in 2004 and three during the year. Regarding these 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.

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 scrutinize existing ICAC internal procedures, guidelines and practices to see whether these need to be updated, clarified or formalized, with a view to making improvements.

17. Arising from the investigation reports considered during the year 2005, the ICAC reviewed a number of procedures and made improvements. For example, on the recommendations of the Committee after examining two allegations in relation to alleged misuse of handcuffs on suspects, the ICAC reviewed the relevant procedures and subsequently revised its Commission Standing Order requiring officers to submit reports to their supervisors on each occasion that handcuffs were used in operational duties. In addition, training in the proper handling of suspects and the appropriate use of handcuffs will be enhanced in future training courses.

Independent Commission Against Corruption
Complaints Committee
Membership List
(from 1 January 2005 to 31 December 2005)

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

Members : Mr Anthony CHAN Kin-keung, SC

The Hon Tommy CHEUNG Yu-yan, JP

Miss Anna CHOW Suk-han

The Hon Fred LI Wah-ming, JP

The Hon Jasper TSANG Yok-sing, GBS, JP

Ms WONG Mee-chun, JP

Mr Tony MA

(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 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	G/F, Fu Hing Building 230 Castle Peak Road Yuen Long 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, a civil servant, complained that on 14 October 2004, Investigators A and B had (a) taken away or switched off the mobile telephone of his elder brother Mr X after his arrest, thus depriving Mr X of the right to seek legal advice and maintain outside contacts; and (b) during the search of his mother Mdm Y's home, Senior Investigator C had unreasonably prevented her from receiving her telephone call.

BACKGROUND

2. In April 2004, the ICAC commenced an investigation into the activities of the director of two cleansing companies, Mr X and his father, Mr Z, who were suspected to have offered bribes to a Housing Department (HD) officer as a reward for assisting them to secure HD cleansing contracts.

3. On 14 October 2004, an operation was mounted to effect the arrest of Mr X and three other persons, to search their home and offices as well as that of Mr Z and another person, who were to be interviewed as potential suspects. Investigator A, Investigator B and Assistant Investigator D were assigned to deal with Mr X, while Senior Investigator C, Assistant Investigators E, F and G, and ex-Assistant Investigator H were assigned to deal with Mr Z.

4. At 0635 hrs., Investigator A arrested Mr X at his home in the presence of his wife. He and his team members then executed a search and, in the course of which, he instructed Investigator B to seize a number of items including Mr X's mobile telephone. After conclusion of the search at 0755 hrs., the team of officers then escorted Mr X to his office to conduct a search before returning to the ICAC offices.

5. About the same time, Senior Investigator C and his team arrived at Mr Z's home at 0640 hrs. and commenced to search the premises in the presence of Mr Z and his wife, Mdm Y. About 0700 hrs., when Assistant Investigators E, G and ex-Assistant Investigator H were searching the master bedroom in the presence of Mr Z, Mdm Y went to the kitchen where she made a telephone call to inform her daughter of the ICAC operation. Assistant Investigator F, who overheard the telephone conversation, told her to return to the sitting room and reported the matter to Senior Investigator C. Senior Investigator C then explained to Mdm Y that whilst the operation was ongoing, the officers had to screen all incoming and outgoing telephone calls in order to prevent other persons subject of investigation from being alerted or taking any action to compromise the investigation. At this juncture, the complainant made a call to the premises and Mdm Y rushed over to

pick up the receiver of a telephone in the sitting room. Allegedly, Senior Investigator C prevented her from answering the call by saying, “(You are) not allowed to listen to the call 唔准聽電話”. After the search was concluded, Mr Z accompanied the officers to the ICAC offices where he was interviewed in the presence of his solicitor before he left the ICAC offices on the same day.

6. At 1217 hrs. after documentation at the ICAC Detention Centre (DC), Mr X was allowed to contact his solicitor and family members and, from then on, he had made a total of 20 telephone calls until his release on the following day at 2314 hrs. During his detention in the ICAC, Mr X was interviewed on four occasions in the presence of his legal representatives.

7. At 2200 hrs. on 14 October 2004, the complainant telephoned the ICAC Report Centre and requested to speak to Mr X. His request was declined as he refused to fully identify himself. As a result, he indicated that he would make a complaint against the ICAC.

8. When contacted by an officer of the Internal Investigation and Monitoring Group on 15 October 2004, the complainant verbally lodged his complaint over the telephone. He declined to be interviewed or to give a statement and indicated that none of his family members would assist in the complaint investigation. In respect of allegation (b), he said that when Mdm Y answered his call, he heard a male voice saying in the background, “(You are) not allowed to listen to the call 唔准聽電話” before the line was disconnected.

INVESTIGATION OF THE COMPLAINT

Interview with ICAC officers

9. Investigator A denied allegation (a), and gave his version of the events as set out in para. 4. He maintained that Mr X had not requested any outside contact including contacting a solicitor until the documentation process was completed at the DC. In respect of Mr X’s mobile telephone, he said he had to examine the data stored in it for the purpose of the investigation and, hence, he instructed Investigator B to seize it. In the event, he had found nothing of evidential value and returned it to Mr X at the time of his release.

10. Investigator B denied allegation (a) and corroborated Investigator A. He stated that when he seized the mobile telephone, it was already in the off mode.

11. Assistant Investigator D, who was only involved in the search of Mr X’s home and office, corroborated the version of Investigator A and B as set out in para. 4.

12. Senior Investigator C denied allegation (b) and gave his version of the events as set out in para. 5. He said he had only told Mdm Y to wait for a moment

(等一等, 唔好聽電話住) when she rushed over to pick up the telephone receiver. She then told the caller that she was busy (唔得閒呀) and hung up the telephone without saying anything further.

13. Assistant Investigator F corroborated the version of Senior Investigator C. Assistant Investigators E, G and ex-Assistant Investigator H were not aware of what had happened in the sitting room as they were then searching the master bedroom in the presence of Mr Z.

Examination of ICAC Records

14. The Arrest and Detention Sheet (AD Sheet) shows that Mr X had, during the period of his detention, made a total of 21 requests to use the telephone to make outside contact and that all except one, in respect of which the person to be contacted was his secretary, who was about to be interviewed as a witness, were allowed. In addition, he had, apart from being accompanied by his legal representatives at four interviews, received legal visits on 11 occasions.

ASSESSMENT OF THE COMPLAINT

15. Investigator A denied allegation (a) and was corroborated by Investigator B and Assistant Investigator D. He was duty bound to examine Mr X's mobile telephone for the purpose of the investigation and was empowered to do so under s.10C (1)(c) of the ICAC Ordinance¹. The AD Sheet clearly shows that Mr X had not been prevented from making outside contact, save that of his request to contact his secretary, who was about to be interviewed as a witness in connection with the investigation. Based on the above investigation findings, allegation (a) is not substantiated.

16. It was the duty of Senior Investigator C to screen the incoming and outgoing telephone calls in order to prevent the operation from being compromised, particularly in cases where multiple targets were involved. In the event, Mdm Y had responded to Senior Investigator C's request by hanging up the telephone on her own volition. Given the situation, the request made by Senior Investigator C was perfectly proper and reasonable. Allegation (b) is not substantiated.

CONCLUSION AND RECOMMENDATION

17. The Commissioner of the ICAC agreed that allegation (a) and (b) were not substantiated. The ICAC Complaints Committee endorsed the conclusions of the investigation by the ICAC. The complainant has been so informed by the ICAC.

¹ Under s.10C(1)(c) of the ICAC Ordinance, an officer authorized by the Commissioner of the ICAC may seize and detain anything which such officer has reason to believe to be or to contain evidence.