

廉政公署事宜投訴委員會

ICAC COMPLAINTS COMMITTEE

二零零六年年報

Annual Report 2006

20 June 2007

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

Dear Chief Executive,

**ICAC Complaints Committee
2006 Annual Report**

I have the honour to forward to you the annual report of the ICAC Complaints Committee for the year 2006. This is the twelfth 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
2006 ICAC Complaints Committee

INDEPENDENT COMMISSION AGAINST CORRUPTION COMPLAINTS COMMITTEE

2006 Annual Report

INTRODUCTION

The Independent Commission Against Corruption Complaints Committee (the Committee) was set up on 1 December 1977. The Committee is responsible for monitoring and reviewing the Independent Commission Against Corruption's (ICAC) handling of non-criminal complaints against the ICAC and its officers. It is an established practice for the Committee to submit annual reports to the Chief Executive. The annual reports will be tabled at the Legislative Council and made available to the general public. This is to enable the public to understand more about the work of the Committee and to enhance the transparency and accountability of the Committee.

MEMBERSHIP

2. The Chairman and members of the Committee are appointed by the Chief Executive. Members include two Executive Council Members, two Legislative Council Members, three distinguished members of the community and a representative from The Ombudsman's Office. During 2006, 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**. **A**

TERMS OF REFERENCE

3. The terms of reference of the Committee are –
- (a) 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;
 - (b) to identify any faults in ICAC procedures which lead or might lead to complaints; and
 - (c) 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**.

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 or her 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 complainants, and these may touch upon the circumstances surrounding the criminal proceedings and possibly result in a statement to the disadvantage of the complainants.

¹ *The Committee was previously serviced by joint Secretaries from the 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.*

*The 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 3503 ; Fax number: 2524 7103)*

8. The complainants will be informed in writing that investigation into their complaints are 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 investigation of the complaint.

COMPLAINTS RECEIVED

9. In 2006, 15 complaints against ICAC officers were received, a noticeable drop compared with 32 complaints received in 2005 and 21 complaints in 2004. The 15 complaints contained a total of 42 allegations registered during the year. Other than these, two additional allegations were registered in 2006 in respect of a complaint received in 2005. These 44 allegations were concerned with misconduct (27%), neglect of duties (27%) and abuse of power (43%) by ICAC officers. The rest related to inadequacies of ICAC procedures (3%). A summary of the statistics is shown in Table 1 below.

Table 1 – Number and category of allegations registered in 2005 and 2006

Category of allegation	Number of allegations (%) In 2006	Corresponding number (%) in 2005
1. Misconduct	12 (27%)	57 (54%)
2. Neglect of duties	12 (27%)	12 (11%)
3. Abuse of power		
(a) search	3	5
(b) arrest/detention/bail	8	8
(c) interview	2	12
(d) handling property	2	0
(e) legal access	1	11
(f) Improper release of identity of witnesses/informants/suspects	3	1
Sub-total :	19 (43%)	37 (35%)
4. Inadequacies of ICAC procedures	1 (3%)	0 (0%)
Total	44	106

10. Of the 15 complaints received in 2006, investigations on five covering 12 allegations were concluded and the relevant reports considered by the Committee during the year. At the end of the year, investigations into six cases

were continuing, while the remaining four were regarded as “sub-judice” cases with the investigations being deferred.

INVESTIGATION REPORTS CONSIDERED

11. The Committee held three meetings during the year to consider a total of 25 reports, comprising 23 investigation reports on 24 complaints and two assessment reports.

Investigation Reports

12. At the first meeting held in March 2006, the Committee considered investigation reports from the ICAC on 14 complaints. Of these, one complaint was received in 2004 and 13 in 2005. At the second meeting held in July 2006, the Committee considered investigation reports on six complaints. Of these, four complaints were received in 2005 and two in 2006. At the third meeting held in November 2006, the Committee considered four complaints, one of which was received in 2005 and the remaining three in 2006. A summary of an investigation report considered by the Committee is attached as **Annex C**.

C

13. Of the 24 complaints with 84 allegations considered by the Committee in 2006, five allegations (6%) in five complaints (21%) were found to be substantiated or partially substantiated. 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 2005 and 2006

Category of allegation	2006		2005	
	Number of allegations considered	Number of allegations (%) found substantiated/ partially substantiated	Number of allegations considered	Number of allegations (%) found substantiated/ partially substantiated
1. Misconduct	45	1 (1%)	19	2 (3%)
2. Neglect of duties	12	1 (1%)	13	3 (5%)
3. Abuse of Power				
(a) search	4	1	2	1
(b) arrest/detention/ bail	4	1	5	1
(c) interview	8	0	7	0
(d) handling property	0	0	2	1

Category of allegation	2006		2005	
	Number of allegations considered	Number of allegations (%) found substantiated/ partially substantiated	Number of allegations considered	Number of allegations (%) found substantiated/ partially substantiated
(e) legal access	8	1	11	0
(f) improper release of identity of witnesses/ informants/ suspects	2	0	0	0
Sub-total :	26	3 (4%)	27	3 (5%)
4. Inadequacies of ICAC procedures	1	0 (0%)	0	0 (0%)
Total	84	5 (6%)	59	8 (13%)

14. The five substantiated or partially substantiated allegations included -
- (a) failure to return promptly after examination the personal notes seized from a suspect during an operation;
 - (b) delay of legal visit when the complainant was interviewed by an ICAC officer. The visit to the complainant by his/her legal representative was delayed since the Operational Control room had difficulty reaching the interviewing officer due to poor signal reception of the interviewing officer's mobile phone;
 - (c) making an inaccurate qualifying remark that the complainant was alleged as a suspect of a corruption case in a written summary of a video-recorded interview;
 - (d) giving incorrect reasons to a complainant as to why the details of a concluded investigation could not be disclosed to him; and
 - (e) refusal of a detainee's request to contact a friend for advice on ICAC powers and legal representation.

Appropriate advice was given to three ICAC officers in relation to three substantiated or partially substantiated complaints. As regards the remaining two complaints, one resulted from a technical telecommunication problem with no fault attributed to the officer concerned, and the other related to a former officer who resigned from the Commission in 2005.

Assessment Reports

15. Where, after preliminary assessment of a complaint, the ICAC considers that a full investigation is not warranted, the ICAC would submit an assessment report for the Committee's consideration. During 2006, the Committee considered and endorsed two assessment reports on complaints received during the year. Preliminary enquiries by the ICAC indicated that there was no substance in these two complaints that would warrant formal registration and investigation. The Committee agreed with the ICAC's assessment that no further investigative action be taken, and the complainants were so advised by the ICAC by letters.

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 revised, with a view to making improvements.

17. Arising from the investigation reports considered during the year 2006, the ICAC reviewed a number of procedures and made improvements. For example –

- (a) the procedures for video-recorded interviews with suspects were reviewed and revised. If a suspect is invited for a video-recorded interview but prior to the interview he expresses his wish that he does not want the interview be video-recorded, the officer would respect the suspect's wish and records this fact in his official notebook. The interview will then be recorded by audio recording or in writing; and
- (b) as a result of a complaint on delaying medical treatment to a detainee, the procedures for medical attention for detainee have been streamlined.

**Independent Commission Against Corruption
Complaints Committee
Membership List
(from 1 January 2006 to 31 December 2006)**

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 Fax: 2868 4344 e-mail: ops@icac.org.hk
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 Yaumatei Tel: 2780 8080
ICAC Regional Office – New Territories South West	G/F, Foo Yue Building 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, Mr X, complained that –

- (a) when he was detained at the ICAC Detention Centre (DC) on a date in 2006, Chief Investigator A and Investigator B unreasonably refused his request to contact his friend Mr Y;
- (b) after his request was refused, an unidentified ICAC officer of DC asked him to sign on an inaccurate record written in English stating that he did not seek to telephone his friend; and
- (c) on the following day, he made a request for medication, but his request was delayed by Investigator B.

BACKGROUND

2. In February 2006, the ICAC commenced an investigation into Mr X, a civil servant, who was suspected to have corruptly solicited \$200,000 from a man for giving favour to the man in the performance of Mr X's duty.

3. Investigation revealed that Mr X had arranged to collect the corrupt payment from the man's wife on a date in 2006. At 1605 hrs on that date, Mr X was arrested by Investigator B, after collecting a sum of money from an ICAC officer posing as the man's wife. Following the arrest, Mr X was taken to the ICAC Headquarters for further enquiries. He was given a "Notice to Persons in Custody" (the Notice) informing of his rights while detained in the ICAC.

4. Respectively at 1754 hrs and 2116 hrs on the same date, Mr X made two telephone calls at the DC to his solicitors but they were not available. During the intervening period, Mr X agreed to be interviewed in the absence of a solicitor. After the interview, which Mr X made no admission, Investigator B and two Assistant Investigators took Mr X to his home for a search. During the search, Mr X informed Investigator B that he suffered from hypertension and needed to take medicine every morning. Mr X further took out a bottle of medicine and requested Investigator B to take it to the DC for him. Investigator B agreed but informed Mr X that according to ICAC procedures, he needed to take Mr X to see a government doctor before he was allowed to take any medicine.

5. On returning to the DC, Mr X requested Guarding Officer D, at 2252 hrs, to call Mr Y, his former schoolmate and a former ICAC directorate officer. However Mr X did not provide Guarding Officer D the relevant telephone number. Allegedly Mr X had told Guarding Officer D that he wanted to obtain Mr Y's advice in relation to ICAC powers and to assist him in getting a lawyer for advice. Guarding Officer D reported Mr X's request to Guard Commander E, the Duty Officer of the DC, and contacted Investigator B. After consultation with Chief Investigator A, Investigator B informed Guard Commander E that Mr X was not allowed to make outside contact with Mr Y, except his legal representative and family members. Guard Commander E informed Mr X of the result and in the presence of Guarding Officer D made an entry recording the matter in the Arrest/Detention Sheet of Mr X (A/D Sheet).

6. At 0050 hrs on the following day, Mr X requested to make a record by himself of the fact that he had been refused to contact Mr Y. In the presence of Guarding Officer F, Guarding Officer G provided Mr X's A/D Sheet for him to make a record thereon. Upon reading the A/D Sheet Mr X complained that the content of the entry made by Guard Commander E was inaccurate but Mr X gave no explanation.

7. At 0645 hrs, Mr X informed Guarding Officer G that he was suffering from hypertension and requested to take his own medicine. At 0702 hrs, Guarding Officer G telephoned Investigator B, who was then off duty and at home in Yuen Long. He then informed Mr X that Investigator B would return to the office to take him to see a doctor. Meanwhile, Mr X ordered his breakfast from the DC, which was provided at 0740 hrs.

8. At 0908 hrs, Investigator B and Investigator C escorted Mr X to the Ruttonjee Hospital (RH) to receive medical attention. They arrived RH at 0930 hrs and after registration and initial assessment by a medical worker of RH, a doctor examined Mr X at about 1100 hrs, and allowed him to take his own medicine. Mr X was later escorted back to the DC. Mr X complained that he was taken to RH for medical attention only at 1000 hrs, despite his request made at 0645 hrs, resulting in him being attended to by a doctor at about 1200 hrs thereby causing him distress while waiting.

9. While Mr X was traveling to RH for medical attention, a team of ICAC officers proceeded to interview the man from whom Mr X had allegedly solicited the bribes. Between 1500 hrs and 1631 hrs Investigator B and Investigator C searched Mr X's office in his presence. Afterwards, Investigator B and Investigator C further interviewed Mr X at the ICAC offices, where he made no admission, before he was released on bail at 1819 hrs the same day.

10. When interviewed by an officer of the Internal Investigation and Monitoring Group (L Group) Mr X outlined his complaint. In June 2006, Mr X was charged with three counts of bribery offences.

INVESTIGATION OF THE COMPLAINT

11. Investigator B denied allegations (a) and (c). He explained that when Guarding Officer D informed him of Mr X's request for calling Mr Y, Mr X did not provide him with Mr Y's telephone number or revealed the purpose of the contact. However, he immediately consulted Chief Investigator A who denied Mr X's request for reason that it might cause unreasonable hindrance to the investigation as further enquiries had to be made on the following day. Investigator B stated that after he was informed by telephone by DC at 0702 hrs of Mr X's request for taking the hypertension medicine, he immediately returned to the office and took Mr X to see a government doctor at RH.

12. Chief Investigator A corroborated the version of Investigator B regarding the instruction and reasons to refuse Mr X's request to contact Mr Y. To allow the contact might leak the information of the arrest and detention of Mr X by ICAC to unauthorised person who might interfere with the witness or tamper with the evidence prior to the ICAC action. Investigator B informed Guard Commander E of Chief Investigator A's decision. Investigator C supported the version of Investigator B regarding the medical attention of Mr X at RH.

13. Guard Commander E asserted that he had made accurate records of what had happened in the A/D Sheet of Mr X. Guarding Officer D also confirmed that Mr X did not provide him with Mr Y's telephone number or disclose to him the reason for contacting Mr Y when making his request.

ASSESSMENT OF THE COMPLAINT

14. According to the Notice, a person detained by the ICAC is allowed to make telephone calls to friends or relatives, provided that no unreasonable delay or hindrance is reasonably likely to be caused to the process of investigation and administration of justice. The explanation given by Chief Investigator A did not appear to have sufficient grounds in refusing the request of Mr X to contact Mr Y, a former ICAC directorate officer. There was no information or suspicion that allowing Mr X to call Mr Y would likely compromise or hinder the investigation. Allegation (a) is substantiated.

15. Mr X alleged that the A/D Sheet entry made by Guard Commander E was inaccurate but he stopped short of explaining what was wrong therein. The information recorded in the alleged entry in fact was exactly what Mr X wanted to put in, i.e. his request for calling Mr Y was denied. Investigation failed to identify any inaccurate record written in English as alleged. Given the circumstances, Allegation (b) is not substantiated.

16. The A/D Sheet supported Investigator B that Mr X was taken for medical attention at 0908 hrs, not 1000 hrs as alleged. A doctor saw Mr X at 1100 hrs but not at 1200 hrs. Investigator B was off duty and lived far away

from the office. On receiving the call, he immediately returned to office and took Mr X to RH for medical attention. There was no unreasonable delay in attending to Mr X's request for medication. Allegation (c) is not substantiated.

CONCLUSION AND RECOMMENDATION

17. It is recommended that allegation (a) is substantiated but not allegations (b) and (c). Suitable advice will be given to Chief Investigator A by a senior officer. The complainant will be informed of the result of the investigation.