

# 廉政公署事宜投訴委員會

ICAC COMPLAINTS COMMITTEE

二零零八年年報

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Annual Report 2008

5 June 2009

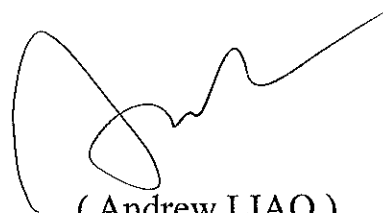
The Honourable Donald TSANG Yam-kuen, GBM  
Chief Executive  
Hong Kong Special Administrative Region  
Government House  
Hong Kong

Dear Chief Executive,

**ICAC Complaints Committee  
2008 Annual Report**

I have the honour to forward to you the annual report of the ICAC Complaints Committee for the year 2008. This is the fourteenth annual report of the Committee. It gives a summary of the work carried out by the Committee in the past year.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Andrew Liao', written in a cursive style.

( Andrew LIAO )  
Chairman  
ICAC Complaints Committee

# INDEPENDENT COMMISSION AGAINST CORRUPTION COMPLAINTS COMMITTEE

## 2008 Annual Report

### INTRODUCTION

Established on 1 December 1977, the Independent Commission Against Corruption Complaints Committee (“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. Each year the Committee submits an annual report to the Chief Executive to provide an account of its work in the preceding year. With a view to enhancing the transparency and accountability of the Committee, the report will also be tabled at the Legislative Council and made available to the public.

### MEMBERSHIP

2. The Chairman and members of the Committee are appointed by the Chief Executive. During 2008, the Committee was chaired by Mr Andrew LIAO Cheung-sing. A membership list of the Committee from 1 January 2008 to 31 December 2008 is in *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 (“Commissioner”), or when considered necessary, to the Chief Executive.

## HANDLING OF COMPLAINTS

4. If a person wishes to lodge a complaint against the ICAC or its officers, he may write to the Secretary<sup>1</sup> of the Committee (“the Secretary”), or complain to the ICAC at any of its offices in *Annex B* in person, by phone or in writing. Where the complaint is received by the Secretary, he/she will acknowledge receipt and forward the complaint to the ICAC for follow up action. Upon receipt of the Secretary’s referral or a complaint made directly to the ICAC, the ICAC will write to the complainant setting out the allegations with a copy sent to the Secretary. 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 will forward his conclusions and recommendations in respect of each complaint to the Committee through the Secretary.

**B**

5. For each case, the Secretary will prepare a discussion paper on the investigation report received from the Commissioner and circulate both documents to Members of the Committee for consideration. Members may seek additional information and/or clarifications from the ICAC concerning the investigation reports. All papers and investigation reports will be arranged to be discussed at a Committee meeting. The complainants and ICAC officers involved will subsequently be advised of the conclusions of the Committee in writing.

## HANDLING OF SUB-JUDICE CASES

6. The ICAC investigates each complaint as soon as possible. Where the allegations in a complaint are directly or closely associated with ongoing criminal enquiries or proceedings (“sub-judice cases”), the investigation will usually be deferred until the conclusion of the relevant criminal enquiries or proceedings. Investigation of complaints often involves in-depth interviews with the complainants, and these may touch upon the circumstances surrounding the criminal proceedings and could possibly result in a statement to the disadvantage of the complainants in sub-judice cases. The

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<sup>1</sup> 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 (currently known as the Chief Secretary for Administration’s Office) took up the Committee’s secretariat duties.

The address of the Secretary of the ICAC Complaints Committee is as follows:  
Administration Wing of the Chief Secretary for Administration’s Office,  
12/F, Central Government Offices, West Wing, Lower Albert Road, Hong Kong.  
(Telephone number: 2810 3503 ; Fax number: 2524 7103)

complainants will be informed in writing that investigation into their complaints is deferred, pending the conclusion of relevant criminal enquiries or proceedings. If a complainant still wishes to seek immediate investigation of his complaint 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 decide whether or not to defer the investigation of the complaint. The ICAC provides a summary on sub-judice cases to the Committee for discussion at each Committee meeting.

## COMPLAINTS RECEIVED

7. In 2008, 22 complaints<sup>2</sup> against ICAC officers were received compared with 18 complaints received in 2007 and 15 complaints received in 2006. The 22 complaints contained a total of 48 allegations registered during the year. These 48 allegations were mostly concerned with neglect of duties (46%) and misconduct (42%) of ICAC officers. The rest was about abuse of power (12%). A summary of the statistics is shown in Table 1 below.

*Table 1 – Number and category of allegations registered in 2007 and 2008*

		<b>Number of allegations (%) in 2007</b>
1. Neglect of duties	22 (46%)	17 (40%)
2. Misconduct	20 (42%)	12 (28%)
3. Abuse of power		
(a) search	0	3
(b) arrest/detention/bail	1	5
(c) interview	4	3
(d) handling property	0	1
(e) legal access	0	1
(f) provision of information/documents	1	0
<i>Sub-total :</i>	6 (12%)	13 (30%)
4. Inadequacies of ICAC procedures	0 (0%)	1 (2%)
		<b>43</b>

<sup>2</sup> The figure excludes those complaints where the ICAC considers that a full investigation is not warranted after preliminary assessment of the complaints. For details, please refer to paragraph 14.

8. Of the 22 complaints received in 2008, investigations on 17 covering 33 allegations were concluded and the relevant reports were considered by the Committee during the year. Investigations into the remaining five cases covering 15 allegations were continuing at the end of the year.

## **REPORTS CONSIDERED**

9. The Committee held three meetings during 2008 to consider a total of 27 reports, comprising 22 investigation reports and five assessment reports.

### ***Investigation Reports***

10. At the first meeting held in March 2008, the Committee considered investigation reports from the ICAC on four complaints, all received in 2007. At the second meeting held in July 2008, the Committee considered investigation reports on seven complaints which were all received in 2008. At the third meeting held in November 2008, the Committee considered investigation reports on 11 complaints, one of which was received in 2007 and the remaining ten in 2008. A sample of an investigation report considered by the Committee is attached in *Annex C*. C

11. Of the 22 complaints with 46 allegations considered by the Committee in 2008, three allegations (7%) in two complaints (9%) were found to be substantiated. Of these three allegations, one was found to be substantiated on matters other than the original allegation. A summary of the relevant statistics is shown in Table 2 on the next page.

Table 2 – Number and category of allegations found substantiated or partially substantiated by the Committee in 2007 and 2008

			2007	
				Number of allegations (%) found substantiated/ partially substantiated
1. Neglect of duties	22	3	16	2
2. Misconduct	18	0	20	0
3. Abuse of power				
(a) search	1	0	6	0
(b) arrest/detention/bail	1	0	10	0
(c) interview	4	0	6	0
(d) handling property	0	0	3	0
(e) legal access	0	0	1	0
(f) improper release of identity of witnesses/ informants/suspects	0	0	2	0
<i>Sub-total:</i>	6	0	28	0
4. Inadequacies of ICAC procedures	0	0	1	0
				<b>2 (3%)</b>

12. The three substantiated allegations were about –

- (a) an officer exercising poor judgement in allowing two complainants of a corruption case to assist in transcribing copies of their taped evidence with technical terms away from ICAC premises and allowed the complainant and his solicitor to have sight of the legal advice on the case with a view to explaining the negative outcome of the ICAC investigation;
- (b) another officer commencing an investigation into new information received during the course of a corruption investigation without going through the registration procedure; and
- (c) the same officer in (b) inappropriately instructing his subordinates to

visit the suspect's home in a morning despite a message having been left the day before for the suspect and her husband to contact the ICAC.

13. In relation to these substantiated allegations, one ICAC officer was issued a written warning and another officer was given appropriate advice.

### ***Assessment Reports***

14. After preliminary assessment of a complaint, where the ICAC considers that a full investigation is not warranted, the ICAC would submit an assessment report for the Committee's consideration. During 2008, the Committee considered and endorsed five assessment reports on two complaints received in 2007 and three complaints received in 2008. Preliminary enquiries by the ICAC indicated that there was apparently no ground or justification in all these 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 in writing.

### **IMPROVEMENTS TO PROCEDURES**

15. An important and positive effect of investigating 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, with a view to making improvements, these need to be revised.

16. Arising from the investigation reports considered during 2008, the ICAC has reviewed certain procedures and made improvements. For example, the ICAC has promulgated a new guideline to remind officers that in response to requests for advice from a complainant or a witness, they are acting in their official capacity even though the advice given is not directly related to the corruption investigation. The ICAC has also made improvements on the record keeping system of seized property with a new provision for supervisors to check if a receipt has been issued to the owner of the property.



**Independent Commission Against Corruption  
Complaints Committee  
Membership List  
(from 1 January 2008 to 31 December 2008)**

Chairman : Mr Andrew LIAO Cheung-sing, GBS, SC, JP

Members : Mr Anthony CHAN Kin-keung, SC

Miss Anna CHOW Suk-han

The Hon Albert HO Chun-yan

Mrs Stella LAU KUN Lai-kuen, JP

The Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP

The Hon Jasper TSANG Yok-sing, GBS, JP<sup>1</sup>

Mr Tony MA

*(Representative of The Ombudsman)*

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<sup>1</sup> Mr TSANG resigned from the ICAC Complaints Committee upon his assumption of office as the President of the Legislative Council in October 2008.

## List of ICAC Offices

	Address and Telephone Number
ICAC Report Centre (24-hour service)	G/F, 303 Java Road North Point 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 Central 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

## **A Sample of an Investigation Report**

### **COMPLAINT**

Madam X, a flat owner of a private building (the Building), complained that Senior Investigator A had –

- (a) unreasonably and inconsiderately visited her home with other ICAC officers on a specified date in 2008, despite having left a message in her letter box the previous day requesting her and her husband to contact Senior Investigator A, thereby causing disturbance and stress to her and her family members;
- (b) without justification interviewed her husband and, despite her request, failed to produce any evidence to justify the interview of her husband; and
- (c) improperly disclosed the details of the officers' visit to the Chairman of the Incorporated Owners of the Building in which she resided.

### **BACKGROUND**

2. In 2007, the ICAC commenced an investigation into an allegation that Mr Z, Chairman of the Incorporated Owners of the Building, might have accepted advantages from a consultancy firm and a contractor for conniving at their use of substandard materials in a renovation project of the Building. The case was assigned to Senior Investigator A for investigation under the supervision of Chief Investigator B.

3. Subsequent investigation revealed no evidence to support the allegation against Mr Z. However, during the course of the investigation, Mr Z produced to Senior Investigator A two anonymous letters which suggested corruption against Madam X and her husband Mr Y in the renovation project of the Building.

4. According to ICAC laid down procedures, when any information of corruption is received, the information has to be passed to the Report Centre for processing before the case is allocated to an investigating section for investigation.

5. However, on receipt of the information suggesting corruption against Madam X and Mr Y, Senior Investigator A, without going through the registration process at the Report Centre, conducted an investigation with the agreement of Chief Investigator B. Subsequently, Senior Investigator A made a number of telephone calls to Madam X's home with a view to arranging an interview with the couple but without success.

6. In the afternoon of the date before the specified date in 2008, two Assistant Investigators, on the instruction of Senior Investigator A, visited Madam X's home. When they failed to locate Madam X and Mr Y, they left a message in the letter box requesting them to contact Senior Investigator A during office hours. Later on the same day, Senior Investigator A briefed Chief Investigator B on the development of the case. Chief Investigator B, in order to secure an interview with the couple, instructed Senior Investigator A and three other officers to visit Madam X's home at 0730 hours on the following day.

7. At about 0730 hours on the specified date, Senior Investigator A and other ICAC officers arrived at the Building where Madam X lived. On the request of the caretaker, Senior Investigator A identified themselves without disclosing the unit they would be visiting. On arrival at Madam X's home, they were received by Mr Y. Madam X was out at the time. Mr Y was then interviewed at his home and he denied the allegation. Madam X later returned. She was uncooperative and said that ICAC should not have visited her at such an early time.

8. Madam X subsequently telephoned the ICAC Report Centre and made a complaint as set out in allegations (a) to (c). When interviewed by an officer of the Internal Investigation and Monitoring Group, Madam X provided a statement in which she said that since Senior Investigator A had left a message asking her to contact her (Senior Investigator A), she (Senior Investigator A) should have waited for her reply before visiting her home again. Madam X also produced a notice titled "Work Report Summary" issued to all residents of the Building by Mr Z. She stated that under the heading of "Rumour" in the notice, Mr Z had informed the residents that according to a report by the management office, several ICAC officers had visited an unspecified flat of the Building and conducted a search thereat. Madam X believed that Mr Z was referring to the ICAC visit made to her home by Senior Investigator A and suspected that Senior Investigator A had disclosed the visit to Mr Z.

9. During the internal investigation of Madam X's complaint, it was discovered that the corruption investigation into the allegation against Madam X and her husband

Mr Y by Senior Investigator A had been conducted without going through the registration process at the Report Centre. After being made aware of the situation, Chief Investigator B forwarded a report of the new information to the Report Centre to rectify the matter. After investigation, the ICAC revealed no evidence of corruption. The Operations Review Committee (Sub-Committee) later endorsed the recommendation of no further action by the ICAC.

## **INVESTIGATION OF THE COMPLAINT**

10. Senior Investigator A denied all the allegations. She explained that the information contained in the two anonymous letters had given rise to a reasonable suspicion that Madam X and Mr Y might have corruptly colluded with members of the Incorporated Owners of the Building to assist the contractor in obtaining a renovation project at the Building. In order to pursue the enquiry, the interviews with Madam X and Mr Y were necessary. Given the fact that efforts made to locate Madam X were not successful, she was not certain if Madam X actually lived at the reported address. When Chief Investigator B instructed her to visit Madam X's home at 0730 hours on the following day, in order not to delay the investigation, she decided to follow the instruction. She considered that the visit and the interview with Mr Y were reasonable and appropriate. She further explained that since the nature of the complaint against Madam X and her husband Mr Y was similar to the original allegation, and given the agreement of Chief Investigator B, she had conducted the investigation in parallel with the original allegation without opening a new file to deal with it.

11. Chief Investigator B provided the same explanation as Senior Investigator A regarding his instruction to Senior Investigator A for conducting the investigation against Madam X and her husband Mr Y and for visiting Madam X's home again.

## **ASSESSMENT OF THE COMPLAINT**

12. Senior Investigator A denied all the allegations. Apparently, the visit to Madam X's home by Senior Investigator A was inappropriate as she had given no opportunity for Madam X to respond to the message that ICAC had given her the day before. Allegation (a) is therefore substantiated. Since Senior Investigator A only made the visit on the instruction of Chief Investigator B, the latter should be responsible for the matter. Senior Investigator A should not be held accountable for it.

13. Concerning allegation (b), Senior Investigator A offered a reasonable explanation. The interview of Mr Y in the circumstances was justified. However, Chief Investigator B had not followed the laid down procedures of the ICAC before commencing the investigation. Allegation (b) is therefore substantiated against Chief Investigator B on a matter other than the original allegation.

14. As regards allegation (c), there is no evidence that Senior Investigator A had acted as alleged. Allegation (c) is unsubstantiated.

## **CONCLUSIONS**

15. The Commissioner of the ICAC agreed that allegation (a) is substantiated, but Senior Investigator A is not held responsible for it. Allegation (b) is substantiated on a matter other than the original allegation, and allegation (c) is not substantiated. The ICAC Complaints Committee endorsed the conclusions of the investigation by the ICAC. An apology was offered to Madam X in the letter informing her of the result of the investigation. Appropriate advice was given to Chief Investigator B concerning the two substantiated allegations.