

# 廉政公署事宜投訴委員會

ICAC COMPLAINTS COMMITTEE

二零零七年年報

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Annual Report 2007

23 June 2008

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

Dear Chief Executive,

**ICAC Complaints Committee  
2007 Annual Report**

I have the honour to forward to you the annual report of the ICAC Complaints Committee for the year 2007. This is the thirteenth 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

## 2007 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. Each year the Committee submits an annual report to the Chief Executive to provide an account of its work in the preceding year. To enhance the transparency and accountability of the Committee, the report will also be tabled at the Legislative Council and made available to the general public.

### 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 Office of The Ombudsman. During 2007, the Committee was chaired by the Honourable Andrew LIAO Cheung-sing. A list of members serving on the Committee during the year is at *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 at **Annex B** in person, by phone or in writing. Where the complaint is received by the Secretary, he 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 clarifications from the ICAC regarding 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 criminal 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

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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 ICAC Complaints Committee Secretariat is:  
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)*

sub-judice cases. The 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 then 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 2007, 18 complaints<sup>2</sup> against ICAC officers were received, compared with 15 complaints received in 2006 and 32 complaints received in 2005. The 18 complaints contained a total of 43 allegations registered during the year. These 43 allegations were mostly concerned with neglect of duties (40%), abuse of power (30%) and misconduct (28%) by ICAC officers. The rest related to inadequacies of ICAC procedures (2%). A summary of the statistics is shown in Table 1 below.

*Table 1 – Number and category of allegations registered in 2006 and 2007*

Category of allegation	Number of allegations (%) in 2007	Number of allegations (%) in 2006
1. Misconduct	12 (28%)	12 (27%)
2. Neglect of duties	17 (40%)	12 (27%)
3. Abuse of power		
(a) search	3	3
(b) arrest/detention/bail	5	8
(c) interview	3	2
(d) handling property	1	2
(e) legal access	1	1
(f) improper release of identity of witnesses/informants/suspects	0	3
<i>Sub-total :</i>	13 (30%)	19 (43%)
4. Inadequacies of ICAC procedures	1 (2%)	1 (3%)
<b>Total :</b>	<b>43</b>	<b>44</b>

<sup>2</sup> Excluding those complaints where the ICAC considers that a full investigation is not warranted after preliminary assessment of the complaints. For details, please see paragraph 12.

8. Of the 18 complaints received in 2007, investigations on 11 complaints covering 24 allegations were concluded and the relevant investigation reports were considered by the Committee during the year. One complaint was withdrawn. At the end of the year, investigations into five cases were continuing, while one was regarded as sub-judice case with the investigation being deferred.

## **REPORTS CONSIDERED**

9. The Committee held three meetings during the year to consider a total of 26 reports, comprising 23 investigation reports and three assessment reports.

### ***Investigation Reports***

10. At the first meeting held in March 2007, the Committee considered investigation reports from the ICAC on seven complaints. Of these, one complaint was received in 2001<sup>3</sup> and six in 2006. At the second meeting held in July 2007, the Committee considered investigation reports on seven complaints which were all received during the year. At the third meeting held in December 2007, the Committee considered nine complaints, one of which was received in 2005, four in 2006 and the remaining four in 2007. A summary of an investigation report considered by the Committee is attached as ***Annex C***.

C

11. Of the 23 complaints with 65 allegations considered by the Committee in 2007, two allegations (3%) in two complaints (9%) were found to be substantiated. A summary of the statistics is shown in Table 2. The two substantiated allegations included –

- (a) incorrectly addressing the name of the complainant; and
- (b) failure to accurately itemize documents seized during a search in a seizure list.

In relation to these substantiated allegations, two ICAC officers were given appropriate advice.

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<sup>3</sup> *This was a sub-judice case.*

Table 2 – Number and category of allegations found substantiated or partially substantiated by the Committee in 2006 and 2007

Category of allegation	2007		2006	
	Number of allegations considered	Number of allegations (%) found substantiated/ partially substantiated	Number of allegations considered	Number of allegations (%) found substantiated/ partially substantiated
1. Misconduct	20	0 (0%)	45	1 (1%)
2. Neglect of duties	16	2 (3%)	12	1 (1%)
3. Abuse of power				
(a) search	6	0	4	1
(b) arrest/detention/bail	10	0	4	1
(c) interview	6	0	8	0
(d) handling property	3	0	0	0
(e) legal access	1	0	8	1
(f) improper release of identity of witnesses/ informants/ suspects	2	0	2	0
<i>Sub-total:</i>	28	0 (0%)	26	3 (4%)
4. Inadequacies of ICAC procedures	1	0 (0%)	1	0 (0%)
<b>Total :</b>	<b>65</b>	<b>2 (3%)</b>	<b>84</b>	<b>5 (6%)</b>

### ***Assessment Reports***

12. Where, after preliminary assessment of a complaint, the ICAC considers that a full investigation is not warranted, the ICAC will submit an assessment report for the Committee's consideration. During 2007, the Committee considered and endorsed one assessment report on a complaint lodged in 2006 and two on complaints lodged in 2007. Preliminary enquiries by the ICAC revealed that there was no substance in two of these three complaints to warrant formal investigation. The remaining complaint was related to ICAC's internal management and staff matters which had been dealt with internally by the ICAC. The Committee agreed with the ICAC's assessment that no further investigative action should be taken and the complainants were so advised by the ICAC in writing.

## **IMPROVEMENTS TO PROCEDURES**

13. 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, with a view to making improvements, these need to be revised.

14. Arising from the investigation reports considered by the Committee during 2007, the ICAC reviewed a number of procedures and made improvements. For example, the ICAC reviewed and revised the arrangement for issuing receipts of seized properties. As an acknowledgement of the seizure made, a full list of property will be issued as soon as practicable and within three working days. When the issue of a full seizure list is not practicable, the immediate issue of a temporary receipt at the time of seizure will be made to the owner who will also be informed that a full receipt will be provided within three working days. In the event that a full receipt cannot be issued in time, the owner will be informed in writing of the reason of the delay and a proposed date for the receipt to be given.

**Independent Commission Against Corruption  
Complaints Committee  
Membership List  
(from 1 January 2007 to 31 December 2007)**

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

Members : Mr Anthony CHAN Kin-keung, SC

The Hon Tommy CHEUNG Yu-yan, SBS, 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 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

## **Summary of an Investigation Report**

### **COMPLAINT**

The complainant, Mr X, complained that on a date in 2004, ICAC officers had, after searching his office, acted unprofessionally in that they failed to accurately itemize in the seizure lists the documents seized from his office.

### **BACKGROUND**

2. In October 2003, the ICAC commenced an investigation into an allegation that Mr X, a director of YY Company, might have corruptly colluded with his subordinates to divert business of YY Company to ZZ Company (ZZ Company), a company owned by Mr X.

3. On a date in 2004, an ICAC operation was conducted to arrest Mr X, four staff members of YY Company, and seven other related persons, and invited 20 persons for interview. A total of 16 premises, including the offices of ZZ Company, were searched under warrants. Senior Investigator A, Assistant Investigator B and another Assistant Investigator were assigned to deal with the investigative work concerning Mr X. Former Investigator C (who left ICAC in 2005), assisted by Assistant Investigator D and other ICAC computer forensic officers, were assigned to search the offices of ZZ Company.

4. After arresting Mr X, Senior Investigator A escorted Mr X to ZZ Company where Mr X's office in ZZ Company was searched by Assistant Investigator B and another Assistant Investigator. After completing the search, Assistant Investigator B, on the instruction of Senior Investigator A, prepared a seizure list in respect of the properties seized from Mr X's office. However, Mr X refused to check against the seized properties or receive a copy of the seizure list served on him as a receipt. After the search, Mr X was escorted to his other company and home for search.

5. The search of the other office area of ZZ Company conducted by former Investigator C and his team resulted in the seizure of a large quantity of documents, which included 453 transaction folders. In view of the large quantity of seized

properties, former Investigator C nominated individual officers, including Assistant Investigator D, to prepare seizure lists and itemize the properties which were seized from various locations of ZZ Company. After the search, copies of the seizure lists were provided to a staff member of ZZ Company who witnessed the search as receipts. The allegation arose from the search of the offices of ZZ Company. All the seized properties after search were handed over to the case officer, Investigator E for safe custody in a locked exhibit room in ICAC offices.

6. Subsequently on two consecutive days in 2004, on the request of Mr X, Investigator E arranged Mr X and his staff members to examine and make photocopies of all the seized properties.

7. After conclusion of the ICAC investigation, the Investigating Section arranged to return the seized properties to Mr X who confirmed receipt of all the properties except nine sets of financial statements of YY Company and the transaction folders from the seizure lists because there were discrepancies between the actual properties and what had been recorded in the seizure lists. What happened was there were only eight sets of financial statements (four of YY Company and four of a third company) and a set of tax return of ZZ Company for which Assistant Investigator B had wrongly recorded as “nine sets of financial statements of YY Company”. There were only 453 transaction folders instead of 488 according to the description of the seized items recorded by Assistant Investigator D in the seizure list, a shortfall of 35 folders. (The discrepancies arose because Assistant Investigator D recorded in the seizure lists a seized batch of transaction folders marked with “X number” to “Y number”, but in fact certain transaction folders within the range of the numbers did not exist.)

8. Repeated efforts were made by the officers of the investigating section to explain to Mr X that the discrepancies were possibly caused by human errors in recording the seized properties. However, Mr X did not accept the explanation but demanded ICAC to carry out an internal investigation.

9. Mr X was interviewed by an officer of the Internal Investigation and Monitoring Group and outlined his complaint in a statement. He claimed that he could not find the “missing folders” from his company, which had been listed in the seizure list but allegedly were not seized by the ICAC. He agreed that there was no theft involved but requested the Internal Investigation and Monitoring Group to find out whether the “missing folders” had not actually been seized by the ICAC or had been misplaced by ICAC officers.

## **INVESTIGATION OF THE COMPLAINT**

10. Senior Investigator A denied the allegation. He stated that he was escorting Mr X at the time and engaged in examining the seized properties. He was not aware of the mistake made by Assistant Investigator B in recording the respective documents in the seizure list. He further explained that given the volume of the documents seized and the time constraint that he needed to continue with the search of Mr X's other company and home, it was not practicable for him to check the properties against the seizure list as it was the duty of Assistant Investigator B to make an accurate record.

11. Assistant Investigator B corroborated the version of Senior Investigator A. He admitted his mistake of only recording the financial statements of YY Company in the seizure list as the documents of the other company were placed together with the YY Company documents.

12. Former Investigator C denied the allegation. He explained that when the transaction folders were located and seized, they had been wrapped in 25 batches and each batch was stuck by ZZ Company staff with a label listing the reference of the transaction folders contained in that batch, from X number to Y number. However, some of the folders which were listed on the labels did not actually exist in the batches at the time when they were seized, of which he and other ICAC officers were unaware. In recording the transaction folders in the seizure list, Assistant Investigator D, according to the instruction of former Investigator C, copied the descriptions of the transaction folder reference directly from the labels which resulted in discrepancies between the number of actual folders seized and the record of the seizure list. As a result, folders which had not actually been seized by the ICAC, were listed as seized properties. Former Investigator C stated that given the large quantity of seized properties and the large number of transaction folders, it was not expedient for him to check whether all the folders as listed on the labels did exist. Therefore, he had to rely on the descriptions made on the labels of each batch of the transaction folders by ZZ Company staff and instructed Assistant Investigator D to follow the descriptions when recording the transaction folders in the seizure list.

13. Assistant Investigator D corroborated the version of former Investigator C and denied that he had failed to accurately itemize the documents in the seizure list.

14. Investigator E confirmed that at the time when she was in charge of the investigation, the transaction folders had never left her custody. She stated that on the days when she had arranged Mr X to examine and photocopy all the seized properties, she had checked the transaction folders with Mr X against the seizure list and explained to him the cause for the discrepancies, as outlined in paragraph 12, between the record made in the seizure list and the actual folders seized. Mr X accepted Investigator E's explanation and was aware that some of the folders on the seizure list had not actually been seized by the ICAC. He raised no query at that time. Investigator E, however, did not ask Mr X to acknowledge the discrepancies in writing.

15. The officers of the Internal Investigation and Monitoring Group have conducted searches in the offices of the Investigating Section and the exhibit room where the seized properties were kept but did not locate any of the 35 "missing folders".

#### **ASSESSMENT OF THE COMPLAINT**

16. A genuine mistake was found in the seizure list prepared by Assistant Investigator B. Senior Investigator A had denied the allegation and offered a reasonable explanation. There is no evidence that he has acted as alleged. Assistant Investigator B admitted the mistake which was made merely due to human error.

17. Genuine mistakes were also found in the descriptions of the transaction folders in the seizure list prepared by Assistant Investigator D. Assistant Investigator D, under the instruction of former Investigator C, prepared the seizure list and properly itemized in it the seized documents except the transaction folders. The explanation offered by former Investigator C regarding how he gave instruction to Assistant Investigator D in recording the transaction folders in the seizure list could not be regarded as unreasonable having regard to the circumstances. However, they should have been more prudent to physically check if the folders against the labels and the seizure list were accurate before the folders were taken to ICAC offices.

18. Taking all the circumstances into consideration, the allegation is substantiated. In regard to the seizure list prepared by Assistant Investigator B, Assistant Investigator B is responsible for the error and should be given advice by his

senior officer regarding proper preparation of a seizure list. In regard to the seizure list prepared by Assistant Investigator D, former Investigator C should be held responsible for the mistake since Assistant Investigator D only prepared the list according to the instruction of former Investigator C. However, no advice will be given to former Investigator C as he has already left the Commission.

## **CONCLUSION AND RECOMMENDATION**

19. It is recommended that the allegation is substantiated. Mr X will be informed of the outcome by letter. Senior Investigator A, Assistant Investigator B, Assistant Investigator D and former Investigator C will be advised of the result of the investigation. Assistant Investigator B will be given appropriate advice regarding preparation of a seizure list.