
ICAC COMPLAINTS COMMITTEE

Annual Report 1998

6 July 1999

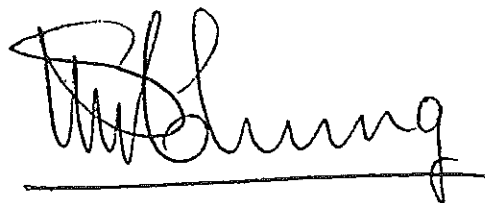
The Honourable Tung Chee Hwa
Chief Executive
Hong Kong Special Administrative Region
5/F, Central Government Offices
Main Wing
Lower Albert Road
Central
Hong Kong

Dear Mr Tung,

**ICAC Complaints Committee
1998 Annual Report**

I have the honour to forward to you the annual report of the ICAC Complaints Committee for the year 1998. This is the fourth 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 read 'Sze-yuen CHUNG', with a horizontal line drawn underneath it.

(Sze-yuen CHUNG)

Chairman

1998 ICAC Complaints Committee

INDEPENDENT COMMISSION AGAINST CORRUPTION COMPLAINTS COMMITTEE

1998 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 1998, the Committee was chaired by the Honourable Sze-yuen CHUNG. 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 ICAC Complaints Committee¹, or complain to the ICAC at any of its offices in person, by telephone or in writing.

5. The ICAC will confirm receipt of the complaint in writing, set out the allegations and forward a copy to the Secretary of the Committee 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 investigating such complaints. When an investigation has been concluded, the Commissioner of the ICAC will forward her conclusion and recommendations 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 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.

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)

Sub-judice Cases

7. Complaints received are investigated 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. 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 will seek legal advice and then decide whether or not to defer the investigation of the complaint.

COMPLAINTS RECEIVED

9. In 1998, 25 complaints against the ICAC and its officers were received. This compared to 30 complaints received in 1997. Of the 25 complaints received in 1998, 14 contained more than one allegation. Of the 54 allegations, a majority (56%) concerned alleged misconduct of ICAC officers. The rest related to abuse of power (20%), neglect of duties (18%) and ICAC procedures (6%). A summary of the statistics is shown in the Table below.

Category of allegation	Number of allegations (%) in 1998	Corresponding number (%) in 1997
1. Misconduct	30 (56%)	36 (47%)
2. Neglect of duties	10 (18%)	25 (33%)
3. Abuse of power		
(a) search	—	1
(b) arrest/detention/bail	5	5
(c) interview	1	1
(d) handling property	1	—
(e) legal access denied	3	4
(f) improper release of identities of witnesses/informants/suspects	<u>1</u>	<u>1</u>
Sub-total	11 (20%)	12 (16%)
4. Inadequacies of ICAC procedures	3 (6%)	3 (4%)
Total	<u>54</u>	<u>76</u>

10. Of the 25 complaints received in 1998, investigations on 10 were concluded and the relevant reports were considered by the Committee during the year. At the end of the year, the investigation of six was continuing, while the remaining nine were regarded as 'sub-judice' and their investigations deferred.

INVESTIGATION REPORTS CONSIDERED

11. The Committee held three meetings during the year. At the meeting held in March 1998, the Committee considered investigation reports from the ICAC on 12 complaints. Of these, one was received during 1996 and 11 complaints were received in 1997. At the meeting in July 1998, the Committee considered investigation reports from the ICAC on nine complaints. Of these, one complaint was received in 1996, three were received in 1997 and five were received in 1998. At another meeting held in November 1998, the Committee received five investigation reports, all of which

were on complaints received during 1998. A summary of an investigation report considered by the Committee is attached as Annex B.

Annex B

12. Of the 26 complaints considered by the Committee in 1998, six contained allegations which were found to be either substantiated or partially substantiated. Out of these six complaints, there were two which were found to be substantiated on matters other than allegations originally made by the complainants. Examples of the substantiated or partially substantiated allegations included officers being impolite and indiscreet when handling dissatisfied members of the public, failing to update an investigation record, causing inconvenience to a complainant and failing to respond satisfactorily to the enquiries raised by a person being interviewed in ICAC offices. Letters of apology from the Commissioner were subsequently sent to the complainants.

IMPROVEMENTS TO PROCEDURES

13. An important and positive effect of an investigation into a complaint is that through examination of a complaint, both the ICAC and the Committee can carefully scrutinise existing ICAC internal procedures, guidelines and practices to see whether these need to be updated, clarified or formalised, or if any improvements are required.

14. As a result of the 26 investigation reports considered by the Committee in 1998, the ICAC reviewed some of its procedures and made a number of improvements. For instance, the ICAC has revised the Chinese version of the caution used in charge sheets from a colloquial to a literal form, so that it is readily understood even by non-Cantonese speakers. The witness statement form has also been revised to ensure that witnesses are aware that they can make any additions, deletions or alterations they wish to their

statements. Improvements have also been made to a standard letter informing the subject of an investigation of the result of the investigation. Furthermore, the visitor registration procedures in ICAC Regional Offices have been revised to ensure all visits are recorded.

**INDEPENDENT COMMISSION AGAINST CORRUPTION
COMPLAINTS COMMITTEE**

***Membership (as from 1 January 1998 to
31 December 1998)***

Dr the Hon CHUNG Sze-yuen, GBM, JP	Chairman
Mr Denis CHANG Khen-lee, SC, JP	
Dr HUANG Chen-ya	
The Hon Howard YOUNG How-wah, JP	
The Hon TAM Yiu-chung, GBS, JP	
Professor the Hon NG Ching-fai	
Mr IP Sik-on, Simon, JP	
The Ombudsman or his representative	(ex-officio)

SUMMARY OF AN INVESTIGATION REPORT

COMPLAINT

Mr A complained that during an interview in August 1997, Investigator B and Assistant Investigator C -

- (a) were impolite and impatient in obtaining details of a corruption report which he would like to make to the ICAC; and
- (b) unreasonably disallowed him to telephone Mr D, a District Board member, to complain of the officers' misconduct.

BACKGROUND

2. At 5:30 pm on Saturday, 16 August 1997, Mr A, a resident in XX Estate, telephoned the ICAC Report Centre alleging that carpark attendants of the Estate might have accepted bribes for allowing unauthorised parking. The Report Centre officer who received Mr A's call asked him if any urgent action was required. Mr A replied in the negative, but if possible, he wanted ICAC officers to see him at his home immediately for detailed information and to witness the unauthorised parking.

3. At the time when Mr A's complaint was received, Investigator B and an Assistant Investigator were on Reserve Duty which required them to stand by in ICAC offices to handle any complaints received by the Report Centre which needed immediate attention. The two officers were interviewing another complainant when they received notification from the Report Centre that Mr A would like to

be interviewed at home. As the interview with that complainant had not been concluded, Investigator B contacted Assistant Investigator C who was then off duty at home in the vicinity of Mr A's premises and asked him to accompany him to see Mr A, leaving the Assistant Investigator behind to record a statement from the other complainant. At 9:40 pm, Investigator B and Assistant Investigator C saw Mr A at his home. Mr A was in the company of his 18-year-old daughter, Miss E, and a friend, Madam F.

4. Mr A complained that Investigator B and Assistant Investigator C had been impolite and impatient when they saw him and that Investigator B had begun the interview by challenging his request for an immediate meeting. He claimed Assistant Investigator C had made acrid remarks throughout the interview. Investigator B had also warned him to be careful in making any allegation as the ICAC could be misled into making a wrongful arrest. When Investigator B asked him to describe one of the suspects, he replied that the suspect's hair style was similar to that of Investigator B. On hearing this, Investigator B reacted strongly by telling Mr A not to use him as a comparison.

5. Mr A said by then, he could no longer tolerate the two officers' unprofessional attitude and asked them to leave. The officers then apologised to him but he would not accept their apologies. Investigator B then asked Madam F to persuade Mr A to change his mind, but Madam F declined.

6. Mr A then told the officers that he wanted to telephone a District Board member to complain about their conduct. They stopped him from doing so by saying that he could not telephone a third party as he might divulge details of his corruption complaint. Mr A was most upset with the officers' demeanour, and demanded them to leave after noting their full names.

7. After the officers left, Mr A telephoned the Report Centre to air his complaint.

8. In view of Mr A's complaint, his report of corruption was allocated to another section for investigation. He was interviewed by another investigating officer.

INVESTIGATION OF THE COMPLAINTS

Interviews with Miss E and Madam F

9. When interviewed, both Miss E and Madam F corroborated Mr A's version of the event. They stated that both Investigator B and Assistant Investigator C had been impolite and adopted a hostile attitude towards Mr A. They also supported Mr A's allegation that the officers had disallowed Mr A to telephone a District Board member with a view to making a complaint against them.

Interview with Investigator B

10. Investigator B was interviewed and stated that at 9:40 pm on 16 August 1997, together with Assistant Investigator C, he saw Mr A at his home. Since Mr A had requested an immediate interview, he had asked him whether there was anything taking place which required immediate attention. Mr A had answered in the negative, saying that he had not requested an immediate interview, and would not mind if the officers interviewed him after Monday which was a public holiday. Investigator B replied that he had a duty to see Mr A as soon as possible. Mr A then began to tell Investigator B the details of his complaint. He said the carpark attendants had failed to take action against lorries which were parked overnight in the carpark, which was reserved for monthly ticket users, without payment, and he suspected that the attendants had been bribed. At Investigator B's request, Mr A accompanied the officers to

see the carpark where he pointed out to them the suspect lorries.

11. In an attempt to establish if there was a personality conflict between Mr A and the carpark attendants, Investigator B then asked Mr A if his car had been impounded by the carpark attendants before. Mr A replied in the negative. Investigator B further asked Mr A if he could identify any suspect carpark user, and how often he had seen that user. Mr A initially said that he often saw the suspect in the Estate, but later changed his mind by saying that he had only seen the suspect once or twice. When Investigator B queried him on the inconsistency, Mr A took offence at Investigator B's questions and accused Investigator B of interrogating him like a suspect.

12. Investigator B denied that he was upset when Mr A said the hair style of the suspect was like his. He had asked Mr A to describe the hair style in his own words so that it could be recorded in detail in a statement. Mr A became agitated and again accused the officers of treating him like a suspect. Mr A told Investigator B not to regard him as a suspect as he was a member of the District Fight Crime Committee and an assistant to a District Board member. Mr A indicated that he declined to make a statement and walked away to pick up the telephone saying that he was going to telephone the District Board member, without stating the purpose of the call. Investigator B replied by saying to Mr A that he had to take a statement from him. On hearing this, Mr A hung up the phone, walked back to him and repeated that he declined to make a statement. At this point, Mr A complained against the officers' manner and asked for their full names, which were readily given. Mr A then asked them to leave.

13. In order to pacify Mr A, Investigator B apologised and invited Madam F to persuade Mr A to co-operate. When this failed, the officers left Mr A's home.

14. Investigator B denied that either he or Assistant Investigator C had been impatient or impolite in the interview. He said that he was polite but firm throughout the interview. He also denied that he and Assistant Investigator C had stopped Mr A from calling a District Board member to complain against them. Investigator B said he had made entries in the official notebook which, when examined, were found to contain entries recording Investigator B's version of the events.

Interview with Assistant Investigator C

15. Assistant Investigator C, when interviewed, supported Investigator B's assertion of the matter and denied the allegations. He had countersigned Investigator B's notebook entries.

Examination of audio record of Mr A's complaints

16. The audio tapes which recorded the two telephone calls made by Mr A to the Report Centre on 16 August 1997, firstly to report his corruption complaint and secondly to complain against Investigator B and Assistant Investigator C, were examined. The contents indicated that Mr A had spoken politely and reasonably.

ASSESSMENT OF THE COMPLAINTS

Complaint (a)

17. Investigator B and Assistant Investigator C denied that they had been impolite or impatient in the interview with Mr A. What they said was supported by Investigator B's notebook entries.

18. On the other hand, in Mr A's contacts with officers of the Report Centre and the Internal Investigation and Monitoring Group (L Group), he presented himself as a polite and reasonable person. He has provided full assistance to the officers of the other section assigned to investigate his corruption complaint, and to officers of L Group.

19. Mr A took the initiative to lodge a corruption complaint, indicating that he had considerable trust in the ICAC. The complaint, which appeared to contain some substance and was not made by Mr A out of personal grudge, was still under investigation when the Committee considered Mr A's complaint against ICAC officers. Furthermore, Mr A telephoned the Report Centre to lodge his complaint against the officers immediately after they left his premises. Having decided to approach the ICAC with a corruption complaint, there was no reason why he would make a false allegation against the officers concerned. Furthermore, the fact that Investigator B apologised to Mr A tended to support the complaint of rudeness. The ICAC concluded that complaint (a) was substantiated.

20. The Investigation officers of L Group re-interviewed the two officers and offered them an opportunity to add anything they might wish. Both officers maintained their denial of the allegations with nothing to add in regard to the explanations they offered.

Complaint (b)

21. Investigator B denied that he had any intention to forbid Mr A telephoning a District Board member. He said Mr A had not told him the purpose of making the call and he simply repeated to Mr A that he had to take a statement from him. It appeared that whatever Investigator B said to Mr A was intended to resolve the conflict which he had caused rather than an attempt to stop Mr A from complaining to the

District Board member. Little purpose could be served by disallowing Mr A from making the telephone call because Mr A could complain anytime after the officers left and he did. The officers readily gave Mr A their full names when he expressed his grievance and indicated that he would complain against them. For these reasons, the ICAC regarded complaint (b) as not substantiated.

CONCLUSION & RECOMMENDATION

22. The Commissioner of ICAC agreed that complaint (a) was substantiated while complaint (b) was not substantiated against either officer. The ICAC Complaints Committee endorsed the conclusions of the investigation by the ICAC. Since Mr A obviously believed that the two officers had intended to disallow him to telephone the District Board member, the ICAC explained their findings to Mr A in the letter informing him of the result of the investigation.

23. Investigator B and Assistant Investigator C were informed of the result of this investigation, and verbal warnings were given to both officers.
