

Part III Provision of information by the Independent Commission Against Corruption to the Finance Committee of the Legislative Council

Chapter 9 The manner in which ICAC provided information related to the official duty visits and bestowing of gifts by Mr Timothy TONG Hin-ming during his tenure as the Commissioner of ICAC to the Finance Committee of the Legislative Council in April 2013

9.1 Prior to the special meetings of FC of LegCo to examine the Estimates of Expenditure 2013-2014, Members had raised some questions about the actual expenditure incurred by ICAC in the past and its estimates of expenditure for the coming year. A Member had requested ICAC to provide information on the number of official duty visits conducted by Mr Timothy TONG Hin-ming during his tenure as the Commissioner of ICAC, and the relevant expenditure on gifts presented by him to government officials of different places and paid out of public funds. At the special FC meeting on 9 April 2013, Members requested ICAC to provide further information regarding the official duty visits and gifts presented to government officials of different places by Mr TONG. After ICAC had given its replies to FC, there were media reports that some items were omitted from the information provided by ICAC to FC regarding the gifts presented by Mr TONG to government officials of different places during his tenure, which aroused wide public concern.

9.2 This chapter gives a detailed account of the sequence and development of events concerning ICAC's provision of information to FC in April 2013 regarding the bestowing of gifts by Mr Timothy TONG Hin-ming during his tenure of former Commissioner of ICAC, the written information provided by ICAC to the Select Committee, and the evidence given by the incumbent Commissioner and two ICAC officers at the hearing of the Select Committee. The relevant findings and recommendations of the Select Committee are also provided in this chapter.

Sequence and development of events

9.3 Prior to the special FC meetings to examine the Estimates of Expenditure 2013-2014, ICAC provided on 3 April 2013 its reply to Hon Dennis KWOK's question: "Please (also) state the number of occasions on which Timothy HM TONG presented government officials of different places with gifts paid out of public funds during his tenure and the actual amount on each occasion" (**Appendix 40**), setting out the number of occasions on which Mr TONG presented government officials of different places with gifts paid out of public funds during his tenure as the Commissioner of ICAC, and the relevant expenditure.

9.4 At the special FC meeting on 9 April 2013, Hon Dennis KWOK requested provision of a list of gifts presented by Mr TONG to government officials of different places and paid out of public funds during his tenure as the Commissioner of ICAC, and the list of such

officials on each occasion. On 22 April 2013, ICAC provided its reply to FC (**Appendix 33**), which set out a list of gifts presented by Mr TONG to government officials of different places during his tenure as the Commissioner of ICAC.

9.5 On 26 April 2013, it was reported by the media that apart from the public funds of \$220,000 spent by Mr TONG on bestowing gifts as stated in ICAC's replies to FC, there were other expenses on gifts bestowed during Mr TONG's tenure which had not come to light. On the same day, ICAC issued a press release (**Appendix 41**), admitting that food items were not included in the aforesaid replies submitted to FC and extending its apology for any misunderstanding caused.

9.6 At the meeting of LegCo Panel on Security on 27 May 2013, Mr Simon PEH Yun-lu, the incumbent Commissioner of ICAC, clarified that the total expenditure on gifts presented by Mr TONG to government officials of different places should be \$282,873. He provided the following information on the omissions (**Appendix 42**):

- (a) food items of \$56,800 in value, including cookies and cakes;
- (b) ICAC pens and pins of a total value of \$3,650 during a duty trip to Bali in November 2007 for attending a conference; and
- (c) ICAC key rings and cufflinks of a total value of \$3,750.

9.7 To look into the authenticity and comprehensiveness of the information provided by ICAC to FC, as well as the process and procedure for preparation and vetting of the relevant information, the Select Committee requested ICAC to provide written information in this regard and invited Mr Simon PEH Yun-lu, the incumbent Commissioner, Ms Julie MU Fee-man, Director of Community Relations, and Mrs Jennie AU YEUNG WONG Mei-fong, Acting Assistant Director of Administration of ICAC to attend a hearing on 1 March 2014 to take evidence from them on this issue.

9.8 In its written reply (**Appendix 42**) to the Select Committee, ICAC confirmed that in the replies it had submitted to FC, the information which was related to gifts presented to guests in official capacity and paid out of public funds by Mr TONG during his tenure was inaccurate. Information on some food items and small gift items was omitted from the replies inadvertently.

Workflow of the preparation of ICAC's replies

9.9 Regarding the workflow of the preparation and vetting of ICAC's replies, according to the written information provided by ICAC (**Appendices 43 and 44**), ICAC's Senior Staff Officer/Management and Administration forwarded the question of Hon Dennis KWOK, which reads, "Please state the number of occasions on which Timothy HM TONG presented government officials of different places with gifts paid out of public funds during his tenure and the actual amount on each

occasion" to the relevant Heads of Departments for their preparation of draft replies after receiving it from the Financial Services and the Treasury Bureau. At that time, Director of Community Relations and Acting Assistant Director of Administration of ICAC had discussed the information that was needed for preparing the reply. After discussion, they decided to only include the information in relation to "souvenirs" given out to officials on the understanding that food items like cakes and cookies, though presented to government officials, were meant for their staff's consumption. After the Commissioner's Weekly Meeting⁶⁴ discussed⁶⁵ the relevant reply, Executive Officer/Finance co-ordinated the answers of the departments concerned and drafted the reply based on the comments received during ICAC's Commissioner's Weekly Meeting. After the revision and vetting by the Administration Branch, the draft reply was submitted to the Commissioner of ICAC for approval and signature before it was forwarded to LegCo via the Financial Services and the Treasury Bureau.

⁶⁴ According to the information provided by ICAC to the Select Committee (**Appendix 21**), members of ICAC's Commissioner's Weekly Meeting include: Commissioner of ICAC, Head of Operations, Director of Community Relations, Director of Corruption Prevention, Assistant Director of Administration and Chief Staff Officer/Management & Administration. In addition, Assistant Director/Community Relations 1 and Principal Press Information Officer also attend the meeting in relation to the public relations items.

⁶⁵ Mr Simon PEH Yun-lu, the incumbent Commissioner of ICAC, and Ms Julie MU Fee-man, Director of Community Relations, have testified before the Select Committee on the relevant discussion at ICAC's Commissioner's Weekly Meeting (paragraphs 9.13 to 9.14 below).

Reasons for the inaccuracies in the replies to FC

Exclusion of food items from the replies to FC

9.10 Regarding the inaccuracies in the information provided by ICAC to FC in April 2013 on the gifts presented by Mr TONG to government officials of different places during his tenure, Mr Simon PEH Yun-lu, the incumbent Commission, ICAC, stressed in his response at the hearing of the Select Committee that ICAC had not deliberately concealed information on this matter.

9.11 Regarding the exclusion from its replies to FC of the food items presented by Mr TONG to officials of different places during his tenure, according to the written information provided by ICAC (**Appendix 44**), the Director of Community Relations and the Acting Assistant Director of Administration of ICAC had decided after discussion to exclude food items from ICAC's replies to FC on the understanding that food items, though presented to officials, were meant for their staff's consumption.

9.12 In order to understand the discussion process of the ICAC officers concerned in determining how to provide the relevant information to FC, the Select Committee has requested ICAC to provide the internal communications between the officers involved and the relevant extracts of the minutes of ICAC's Commissioner's Weekly Meeting. However, ICAC has refused to provide the relevant records on the grounds that such records fell within the scope of its criminal investigation against Mr TONG.

9.13 Mr Simon PEH Yun-lu, the incumbent Commissioner of ICAC, pointed out in his evidence that all the questions concerning the special FC meetings as well as ICAC's replies were discussed at the ICAC's Commissioner's Weekly Meeting. As far as he knew, the ICAC officers' understanding at that time was that souvenirs presented to officials should form the basis of the replies and there was such reference in ICAC's reply submitted to FC (**Appendix 40**)⁶⁶. As regards the details of the discussion between the Director of Community Relations and the Acting Assistant Director of Administration of ICAC, he had no such knowledge as such details were not discussed at the relevant ICAC's Commissioner's Weekly Meeting.

9.14 Ms Julie MU Fee-man, Director of Community Relations, ICAC, said in her evidence that she had informed the attendees at the ICAC's Commissioner's Weekly Meeting that after her discussion with the Acting Assistant Director of Administration, both of them considered that the "gifts" referred to in Hon Dennis KWOK's question should mean "souvenirs". Moreover, as the question touched on the number of occasions on which the Commissioner presented gifts to government officials of different places and the amount of such gifts, and the Commissioner might visit more than one organization in each duty visit, she and the Acting Assistant Director of Administration decided after discussion that the number of duty visits should be taken as the basis for calculation of the total value of the souvenirs presented to various organizations in each duty visit.

⁶⁶ It was specified in ICAC's reply to FC that "in each activity or duty visit, the Commissioner may present souvenirs to more than one organization and/or more than one person".

9.15 Ms Julie MU Fee-man, Director of Community Relations, ICAC, admitted that with hindsight, the way in which she and the Acting Assistant Director of Administration had handled or interpreted the matter was flawed. However, she stressed that they had absolutely no intention to conceal any information. At that time they thought the food items were only presented to organizations rather than any specific officials, they therefore did not include the food items in the replies and prepared the replies based on souvenirs.

9.16 The Select Committee asked Mr Simon PEH Yun-lu, the incumbent Commissioner, ICAC, whether the ICAC officers were negligent in failing to include food items in the replies to FC. Mr PEH told the Select Committee that ICAC's criminal investigation against Mr TONG involved all the ICAC officers concerned. Although the preparation of replies for submission to FC in April 2013 was not the work handled during Mr TONG's tenure, ICAC would consider the matter from a holistic perspective and see if there was any wrongdoing of ICAC officers after deciding whether criminal prosecution should be instituted.

Other reasons for the inaccuracies in the replies to FC

9.17 ICAC has explained in its written reply (**Appendix 44**) that like many other government departments using the Treasury's Government Financial Management Information System ("GFMIS"), ICAC did not keep a separate accounting and payment record or a central register of gifts bestowed. The GFMIS only kept transaction records

chronologically based on the transactions processed in a day by the Administration Branch's Finance Office. Besides, it did not keep details of individual items and was not meant for the retrieval of transactions by the type of items. Given the time pressure when answering FC's questions, ICAC had based on the records readily available and kept by user departments. However, it was learnt afterwards that such records were incomplete and there were inadvertent human errors during the compilation of the required information. If ICAC had to go through the 25 000 odd transaction records stored in the GFMIS, it would have to dig out manually the relevant payment records and vouchers from some 600 paper files, which was a nearly impossible task to provide replies to FC's questions on or before the deadline.

9.18 Mr Simon PEH Yun-lu, the incumbent Commissioner of ICAC, further pointed out in his evidence that at that time, apart from making entries in the financial accounts for the souvenirs and gifts presented, ICAC did not keep a full register of separate items. During Mr TONG's five-year tenure as the Commissioner of ICAC, while souvenirs and gifts presented in the name of ICAC were mainly procured by CRD, other departments such as the Administration Branch had also involved in the procurement of such souvenirs and gifts. Given the staff changes in both the Administration Branch and CRD during those five years, individual incumbent officers in the two departments did not have full access to the information on all the gifts and souvenirs presented by the former Commissioner during the period. For these reasons, the replies to the questions for the special FC meetings were based on the information on souvenirs presented to officials recorded and kept by

respective units under CRD and the Administration Branch. It was found subsequently that such record was not the full record of souvenirs presented to officials.

9.19 Mr PEH further said that he had apologized to LegCo and the public for this incident, and ICAC had proceeded to enhance its record system. Apart from accounting vouchers, ICAC would keep separate records and computerize its records so that it would be able to provide accurate and timely replies to questions of LegCo after checking manual or computer records in future.

Findings and recommendations

9.20 Regarding the submission of replies to the initial and supplementary questions raised by members of FC in respect of the Estimates of Expenditure for 2013-2014, the Select Committee is mainly concerned about the reasons why ICAC, in response to Hon Dennis KWOK's request for information on "gifts" presented by Mr TONG to officials of different places and paid out of public funds, provided information only on the "souvenirs" presented by Mr TONG while omitting information on the food items given by Mr TONG to officials of different places .

9.21 As seen from the sequence of events, ICAC issued a press release on 26 April 2013 subsequent to media reports on the same day to admit that food items were not included in the replies to FC. ICAC

further clarified the details of the items omitted at the meeting of the Panel on Security on 27 May 2013.

9.22 According to ICAC's written reply to the Select Committee, the failure to include the information on food items in the replies to FC was attributable to the wrong judgment of the ICAC officers concerned, i.e. Director of Community Relations and Acting Assistant Director of Administration, in determining the information to be provided to FC. Both of them considered that "gifts" presented by Mr TONG to government officials of different places and paid out of public funds during his tenure referred to "souvenirs" presented by Mr TONG to officials of different places, and that food items presented to officials were meant for their staff's consumption. Hence, food items presented by Mr TONG to officials of different places were not included in the replies.

9.23 According to the responses of Mr Simon PEH Yun-lu, the incumbent Commissioner, and Ms Julie MU Fee-man, Director of Community Relations of ICAC at the hearing of the Select Committee, although the Director of Community Relations had informed the other attendees at the Commissioner's Weekly Meeting that she and the Acting Assistant Director of Administration understood the term "gifts" to mean "souvenirs", Mr PEH's evidence indicated that they did not bring up the details of their discussion at the meeting, including their decision of excluding the food items from the replies based on such understanding. Therefore, this issue was not discussed at the meeting, and Mr PEH did not know the details of their discussion.

9.24 The Select Committee finds that there is nothing ambiguous in Hon Dennis KWOK's questions to seek relevant details of the gifts which were presented by Mr TONG to officials of different places and paid out of public funds. Generally speaking, the term "gifts" has a broader meaning than "souvenirs". Food items presented to other people are obviously "gifts" and whether they are for other staff's consumption or not is immaterial.

9.25 Given its on-going criminal investigation, ICAC has declined to provide the Select Committee with information on the relevant internal communications between ICAC officers and the minutes of the discussion at the relevant ICAC's Commissioner's Weekly Meeting. Based on the information and evidence obtained, the Select Committee considers that the Director of Community Relations and the Acting Assistant Director of Administration had made a wrong judgment to treat "gifts" as "souvenirs" and finds their decision not to include food items presented by Mr TONG to officials of different places during his tenure in the replies inexplicable.

9.26 ICAC has explained that under time pressure and in the absence of systematic file records, it had difficulties in retrieving the complete information. The Select Committee finds it understandable for ICAC's inadvertent human errors during the collation of information and the resultant omission of information on some small gift items (such as ICAC key rings and pins) apart from food items. The Select Committee notes that ICAC has proceeded to enhance the record system such as by computerization of the records.

9.27 FC of LegCo holds special meetings every year to examine the Estimates of Expenditure of the Government, including those of ICAC. Members may seek detailed information before or during the meetings regarding the actual expenditure incurred by the respective departments in the past and the estimates of expenditure for the coming year, and may request the relevant authorities to explain the increase or decrease in expenditure. This is an important channel for LegCo to monitor the use of public funds by government departments, including ICAC. Hence, individual departments are obliged to make their utmost efforts to provide FC with the information and explanations sought by Members.

9.28 The Select Committee considers that in providing information to LegCo and its committees, the Administration should not fastidiously weigh every word in Members' questions, selectively withhold certain information which is not directly mentioned in the wording or circumvent the requirement for provision of information to LegCo and its committees by tricky means. Article 64 of the Basic Law requires that "The Government of the Hong Kong Special Administrative Region must abide by the law and be accountable to the Legislative Council of the Region: ...it shall answer questions raised by members of the Council..." It is, therefore, the constitutional duty of ICAC and other government departments to provide accurate, complete and comprehensive information to LegCo and its committees. With regard to the examination of the Estimates of Expenditure, Members are particularly concerned about non-standard approaches and expenditure items. Members expect the Administration to consider the main points of concern behind Members' questions and make the best efforts to provide

complete and detailed information. The Select Committee hopes that ICAC and the other government departments will draw reference from this incident and answer LegCo Members' questions in a co-operative and earnest manner in future. The Select Committee expresses deep regret at the failure of ICAC to provide complete and detailed replies to FC for the aforesaid questions of Members⁶⁷.

9.29 The Select Committee also wishes to take this opportunity to recommend the various other government departments currently using the Treasury's GFMIS to expeditiously maintain a complete and systematic financial record on separate expenditure items and computerize such records to enable these departments to provide timely and accurate replies in response to LegCo Members' questions on expenditure.

⁶⁷ Members voted on Mr Dennis KWOK's proposal to substitute "初期" for "這次" and to substitute "提供不盡不實的答覆" for "未能提供完整詳盡的答覆" in this sentence. The proposal was negatived (please refer to paragraph 103 of the Minutes of Proceedings of the meeting in the morning of 23 June 2014 in this Report).