

Information Paper

for LegCo Members' Meeting with The Ombudsman on 21 December 2016

I. Work of The Ombudsman's Office

(i) For the year 2015-2016

In the 2015-2016 reporting year, the Office received a total of 12 159 enquiries and 5 244 complaints, while 5 242 complaints were concluded.

2. Statistics on complaints and enquiries for the past three years and the first eight months of 2016-2017 (that is, April to November) are tabulated below:

		Reporting year ¹			
		2013-14	2014-15	2015-16	2016-17 (Apr – Nov)
(1)	Enquiries	12 767	12 940	12 159	7 949
(2)	Complaints				
	(a) For processing	6 572	6 241	6 112	4 248
	- Received	5 624[398]	5 339[428]	5 244[213]	3 378[26]
	- Brought forward	948	902	868	870
	(b) Completed	5 670[367]	5 373[472]	5 242[224]	3 218[15]
	Pursued and concluded	2 964[48]	3 025[203]	3 100[205]	1 822[15]
	- By inquiry ²	2 605[36]	2 573[78]	2 740[175]	1 623[13]
	- By full investigation ³	321[12]	314[125]	226[30]	116[2]
	- By mediation ⁴	38	138	134	83
	Assessed and closed ⁵	2 706[319]	2 348[269]	2 142[19]	1 396
	(c) Percentage completed = (b) / (a)	86.3%	86.1%	85.8%	75.8%
	(d) Carried forward = (a) – (b)	902	868	870	1 030
(3)	Direct investigations completed and announced	6	7	8	6

Note 1. From 1 April to 31 March of the next year.

Note 2. Pursued under section 11A of The Ombudsman's Ordinance, for general cases.

Note 3. Pursued under section 12 of The Ombudsman's Ordinance, for complex cases possibly involving serious maladministration, systemic flaws, etc.

Note 4. Pursued under section 11B of The Ombudsman's Ordinance, for cases involving no, or only minor, maladministration.

Note 5. Outside the Office's jurisdiction, restricted by The Ombudsman's Ordinance or mere expression of opinion, etc.

[] Number of topical cases, i.e. complaints on a particular social or topical issue.

3. In 2015-2016, of those 3 100 cases pursued and concluded, 88.4% were concluded by inquiry (85.0% in 2014-2015), 7.3% by full investigation (10.4% in 2014-2015) and 4.3% by mediation (4.6% in 2014-2015). There was a significant increase in 2014-15 in the number of complaints handled by mediation. The number of cases resolved by mediation was largely maintained in 2015-16.

4. Based on the allegations made by the complainants, the top three causes for complaint in 2015-16 were:

- error, wrong decision or advice (32.1%)
- ineffective control (15.3%)
- delay/inaction (15.1%)

These causes were the same as in 2014-15 in terms of order.

5. Among the 226 complaints concluded by full investigation in the 2015-16, 81 (35.8%) were substantiated, partially substantiated or unsubstantiated but other inadequacies found. Of the 2,740 inquiry cases concluded, inadequacies or deficiencies were found in 475 (17.3%).

6. Of the cases completed in the year, nearly 90% (87.5%) were concluded within three months, 12.1% were concluded in three to six months, while 0.4% took more than six months.

7. As in the past years, lodging complaints by email was the most popular mode. In 2015-2016, 2 507 email complaints (including by online complaint form) were received, accounting for 47.8% of the total complaints received. This was followed by letters through post, with 1 069 (20.4%) complaints.

8. In 2015-2016, eight direct investigations were completed and announced on the following subjects:

- (1) Rating and Valuation Department's Regulation of Display of Building Numbers

- (2) Regulation of Fire Safety Measures for New Territories Exempted Houses
- (3) Water Supplies Department's Mechanism for Handling Leaks of Private Water Pipes
- (4) Management of Permitted Burial Grounds
- (5) Method of Calculation of Waiting Time for Public Rental Housing and Release of Information
- (6) Government's Implementation of Strengthened Control of Exhaust Emissions from Petrol and LPG Vehicles
- (7) Problems Relating to Enforcement of Fire Safety (Buildings) Ordinance
- (8) Home Affairs Department's Management of Booking and Use of Facilities of Community Halls and Community Centres

9. During the year, a total of 277 recommendations were made to improve various aspects of public administration. Of these, 227 were related to individual complaint cases and 50 resulted from direct investigations. As at November 2016, 98.6% of the recommendations had been accepted for implementation.

(ii) For the first eight months (April to November) of 2016-2017

10. During the period from April to November 2016, the Office received a total of 7 949 enquiries and 3 378 complaints.

11. Six direct investigations have been completed and announced, while 10 have been announced publicly and are in progress.

Direct Investigations completed and announced

- (1) Government's Handling of Four Stonewall Trees along Bonham Road
- (2) Government's Tree Management Regime and Practices
- (3) Marine Department's Follow-up Mechanism on Recommendations Made in Marine Incident Investigation Reports
- (4) Government's Follow-up Actions regarding Insufficient Provision of Public Columbarium Niches
- (5) Temporary Closure of Public Swimming Pools / Beaches under Leisure and Cultural Services Department Due to Shortage of Lifeguards
- (6) Lands Department's System of Regularisation of Illegal Occupation of Government Land and Breach of Lease Conditions

Direct Investigations announced publicly and in progress

- (1) Government Regulation of Rehabilitation Transport Services to Persons with Mobility Difficulties
- (2) Immigration Department's Mechanism for Following up on Unregistered Birth Cases
- (3) Management of Markets by Food and Environmental Hygiene Department
- (4) Leisure and Cultural Services Department's Criteria and Procedures for Procuring and Withdrawing Library Materials
- (5) Arrangements on Display of Publicity Materials in Public Housing Estates

- (6) Mechanism for Handling Smoking Offences
- (7) Education Bureau's Regulation of Application Fees Collected by Kindergartens
- (8) Housing Department's Mechanism for Taking Follow-up Action against Unauthorised Alterations by Public Housing Tenants
- (9) Social Welfare Department's Support Services for Persons with Mental Health Problems and their Families, Carers and Neighbours
- (10) Government's Control over Landfilling and Fly-tipping Activities on Private Land

12. It is expected that there will be an increase in the number of direct investigations completed in 2016-17. To enhance public understanding of our direct investigation work and the transparency of our work, we have developed appropriate preliminary inquiries into direct investigations as far as practicable, which will then allow our Office to exercise our statutory power to publish the reports, upon completion of the direct investigations. As before, we will publish all our direct investigation reports on the Office's website, and select those reports of wide community concerns for announcement at press conferences.

13. We are mandated by The Ombudsman's Ordinance to investigate matters concerning the Code on Access to Information ("the Code"). To help the public understand better their right to information kept by government departments/public organisations, we created in 2015-16 a new section on Code cases on the Office's website. At the same time, departments and organisations could take the cases as reference in handling future requests for information from the public. Hopefully, with the publication of more case summaries, the new section would become in time a repository of useful reference materials on the subject of access to information.

14. The Code is only applicable to Government departments and some listed public organisations. For other public organisations, if we receive any complaints against them for refusing requests for access to information, we will refer to the Code and examine as a matter of principle whether maladministration is involved in their refusal to provide information.

15. We see a rise in the number of complaints relating to access to information. In the first eight months of 2016-17, we received 63 cases, the number is close to the 64 cases in the whole year of 2015-16. Members of the public are more aware of their right in information access.

16. In the complaints relating to access to information we handled, take the year 2015-16 as an example, maladministration on the part of the organisations under complaint was found in over half of the cases (53.4%) concluded. There is indeed room for improvement in the handling of data access requests from members of the public by government departments/public organisations.

17. To promote the functions and jurisdiction of The Ombudsman, we collaborated with RTHK and produced a TV mini-series of five episodes called “The Ombudsman 5-minuter” in April 2016. Apart from broadcasting in three television channels, the programme was further promoted via digital media on buses and online social platform. To further promote to the public on how our work would help redress grievances and raise the standard of public administration, we shall produce a further TV series of eight episodes named “Ombudsman Special II” to be aired in April 2017. The stories are mostly adapted from real life scenarios of past cases handled by the Office.

II. Replies to Questions to be Raised by Members

1. Issues relating to the Investigation Report on Complaints against Food and Environmental Hygiene Department for Improper Handling of Food Safety Complaints issued by the Office of The Ombudsman
(to be raised by Dr Hon Helena WONG Pik-wan)

[In the Investigation Report on Complaints against Food and Environmental Hygiene Department for Improper Handling of Food Safety Complaints issued by the Office of The Ombudsman in January 2016, it is

recommended that the Food and Environmental Hygiene Department should review its enforcement system for excessive pesticide residues in food to achieve better protection for people's health and issue clearer instructions for the trade to follow. In this connection, how can The Ombudsman ensure that the above recommendations will be implemented accordingly?]

- (1) This Office made the above recommendations upon completion of the investigation of a complaint case. Our investigation results showed that where a food is found to contain excessive pesticide residues, the Food and Environmental Hygiene Department (“FEHD”) would, in accordance with the Pesticide Residues in Food Regulation (“the Regulation”) under the Public Health and Municipal Services Ordinance or following a risk assessment by the Department, decide whether to prosecute the food vendor concerned. Since the prosecution standards of the Regulation and risk assessment were inconsistent, we found that unsatisfactory and recommended that FEHD conduct a review.
- (2) We are now conducting a direct investigation into FEHD’s monitoring of food safety. The ambit of the investigation includes how the Department would resolve the inconsistent prosecution standards mentioned above.

2. Issues relating to the regulation of wall-mounted dispensers
(to be raised by Dr Hon Helena WONG Pik-wan)

[Due to the Administration's prolonged delay in legislating for the regulation of wall-mounted dispensers to ensure the safety of drinking water, will The Ombudsman consider initiating a direct investigation into the matter?]

- (1) This Office has conducted inquiries with the relevant policy bureaux/departments (including the Development Bureau (“DEVB”), the Food and Health Bureau (“FHB”) and the Water Supplies Department (“WSD”)) and learned that in March 2016, the Government already set up an inter-bureaux/departamental working group (“WG”) led by DEVB, with FHB, the Environment Bureau, the Transport and Housing Bureau, the Department of Health and WSD as participants. The WG would conduct in-depth studies and make recommendations on issues relating to the safety of potable water, including a study on the regulation of “products in contact with potable water”, such as wall-mounted dispensers.

- (2) On the regulation of “products in contact with potable water”, the WG has explored different proposals (e.g. introducing a products certification system from overseas) for regulating such products, but has not yet reached a final decision. The WG would continue its studies on the issue and make recommendations later.
- (3) The Office has kept a close watch on the progress of the WG. At present, we believe that the WG should be given more time for an in-depth exploration on the issue. Therefore, we have no plans at the moment to initiate a direct investigation into the subject. However, we will watch closely any latest developments and may consider initiating a direct investigation if necessary.
3. Issues relating to the recommendation on testing the drinking water of all public rental housing estates again by using stagnant water samples
(to be raised by Dr Hon Helena WONG Pik-wan)

[As the Administration has intentionally used flushed samples in its water tests for public rental housing ("PRH") estates and schools, and procrastinated on testing drinking water of all PRH estates again by using stagnant water samples as recommended by the Commission of Inquiry into Excess Lead Found in Drinking Water, will The Ombudsman consider initiating a direct investigation into the matter?]

- (1) This Office learned that upon recommendation by the Commission of Inquiry into Excess Lead Found in Drinking Water to test drinking water of all PRH estates again, the Water Supplies Department (“WSD”) has engaged an expert consultant, the Water Research Centre from the United Kingdom (“UK”), to review the drinking water standards and water sampling protocols of the World Health Organisation, the European Union, Australia, Singapore, the UK, Canada, the United States and other developed countries. The expert consultant will also make recommendations regarding the situation in Hong Kong. The Development Bureau (“DEVB”), WSD, the International Expert Panel and the UK expert consultant are now deliberating on the relevant issues, including the considerations taken by various countries in establishing a guideline value of lead content in drinking water, the purposes and limitations of their sampling protocols, and their applicability in Hong Kong's situation. An investigation into the sampling protocol used in checking if there was lead contamination in inside service of PRH estates will also be included. WSD aims to complete the studies on

the sampling protocol and put forward a specific proposal by the end of March 2017.

- (2) This Office considers that since DEVB is now conducting studies with the expert panels on water sampling protocols and water standards as well as how to implement its proposal, at this stage, we do not intend to conduct a direct investigation into the subject. Nonetheless, we will keep a close watch on related developments before considering whether an investigation is warranted.

4. Issues relating to excessive lead content in drinking water
(to be raised by Dr Hon Helena WONG Pik-wan)

[The Task Force on Investigation of Excessive Lead Content in Drinking Water noted that some valves and taps dismantled from the three water supply chains in Kai Ching Estate and Kwai Luen Estate Phase 2 were found to be not those brands and models submitted to the Water Authority by contractors before commencement of the construction. Some of the copper alloy valves and taps even did not comply with the British Standard requirement in respect of the lead contents. Yet, the authorities do not have any plan to replace them with those in compliance with the British Standard and refuse to conduct a comprehensive investigation to hold the contractors responsible. In view of this, will The Ombudsman consider initiating a direct investigation into the matter?]

- (1) This Office learned that since the plumber concerned had installed in the two housing estates mentioned above plumbing installations different from those submitted, and had used welding materials containing excess lead in connecting the pipes, thereby violating the Waterworks Ordinance, his plumber's licence had been cancelled by the licensing authority. Regarding the question that the valves and taps installed in Kai Ching Estate and Kwai Luen Estate Phase 2 were found to be not those brands and models submitted to the Water Authority before commencement of construction, the person concerned had subsequently provided information on the actual brands and models of installations used, and the Water Supplies Department ("WSD") confirmed that those were approved installations.
- (2) Regarding the question of whether WSD should hold the contractor responsible, we learned that the Hong Kong Housing Authority, upon finding excess lead in drinking water of some public rental housing

estates, had already taken measures under the contract to hold the main contractor responsible.

- (3) In the light of the above, this Office has no plans to conduct a direct investigation into the matter.

5. Issues relating to the reprovisioning of Yau Ma Tei Fruit Market and Cheung Sha Wan Wholesale Vegetable Market and the relocation of Cheung Sha Wan Temporary Wholesale Poultry Market
(to be raised by Dr Hon Helena WONG Pik-wan)

[As the reprovisioning of Yau Ma Tei Fruit Market and Cheung Sha Wan Wholesale Vegetable Market has been delayed for 47 years and 22 years respectively, and the relocation of Cheung Sha Wan Temporary Wholesale Poultry Market has also been delayed for 42 years, will The Ombudsman consider initiating a direct investigation into the matter?]

- (1) This Office learned that:

- The Government searched earlier for possible sites to relocate the Yau Ma Tei Fruit Market and the Cheung Sha Wan Temporary Wholesale Poultry Market, but the relocation plans have yet to be implemented due to lack of support from the trades and the need to take into consideration such factors as the ancillary transport network as well as response of residents in the vicinity.
- In June 2014, the Government advised the Legislative Council (“LegCo”) Panel on Food Safety and Environmental Hygiene that it had commissioned a consultant to study the current functions and purposes of the wholesale business in the sale of fresh food produce, and to analyse the geographical spread of the existing five wholesale markets. The Government has promised to revert to the LegCo Panel when results of the consultancy study are available.

- (2) This Office considers that relocation of the wholesale markets involves land use and planning, and so it is necessary to take into account various factors, especially when planning decisions are involved. This would probably take a very long time. Since the Government has already commissioned a consultant to study the subject, this Office will continue to watch closely the developments. In case there are any signs of delay on the part of the departments

concerned in handling the matter, we would not rule out the possibility of initiating a direct investigation.

6. Issues relating to the Lifelong College
(to be raised by Dr Hon Helena WONG Pik-wan)

[As the incident of the Lifelong College reveals not only the Administration's lack of regulation of non-local higher and professional education courses but also its condonation of the "trading of academic qualifications", will The Ombudsman consider initiating a direct investigation into the matter?]

- (1) From some relevant public complaints received from time to time by this Office, we learned that the Education Bureau (“EDB”) might have failed to properly monitor non-local higher and professional education programmes. The problems included failure to ensure that the programmes met the registration criteria under the Non-local Higher and Professional Education (Regulation) Ordinance, and the lack of effective control over the advertisements published by programme operators. As such, this Office has already initiated a direct investigation into EDB’s mechanism for regulating the aforesaid study programmes.
- (2) During our investigation, and in response to media reports revealing that an education institution had allegedly falsified the admission dates of students such that they could obtain their academic qualifications earlier, this Office has decided to extend the ambit of our investigation to include how EDB monitors the programme operators’ daily operations to prevent similar cases of falsification from happening.
- (3) Our investigation is still under way. Upon its completion, we will announce our findings to the public.

7. Issues relating to the detection of dioxins in hairy crabs
(to be raised by Dr Hon Helena WONG Pik-wan)

[The incident of hairy crabs detected with dioxins reveals that the food tracing mechanism is ineffective, and the lack of effective control has given rise to problems and even fraudulent practices along the food supply chain (including places of origin, transit farms, importers, distributors and retailers, etc.). Yet, the Administration is negligent in monitoring as it

has neither enacted legislation to regulate dioxins in food nor asked the Mainland authorities to conduct dioxin tests on food, especially hairy crabs. In view of this, will The Ombudsman consider initiating a direct investigation into the matter?]

- (1) This Office has always attached great importance to food safety incidents. As far as we understand, the Food and Health Bureau (“FHB”) and the Food and Environmental Hygiene Department (“FEHD”) are still pursuing the matter. We will continue to pay close attention to the developments. In case there are situations indicating that FHB or/and FEHD are lax in their follow-up actions and fail to properly handle the matter, we would not rule out the possibility of initiating a direct investigation.

8. Issues relating to the regulation of Chinese herbal medicines
(to be raised by Dr Hon Helena WONG Pik-wan)

[As the Administration has not legislated for the regulation of pesticide residues, heavy metals and sulphur dioxide in Chinese herbal medicines, deliberately adopted testing methods which are not internationally accepted for testing pesticide residues in Chinese herbal medicines, and failed to draw a clear distinction between some Chinese herbal medicines and food, will The Ombudsman consider initiating a direct investigation into the matter?]

- (1) As far as we understand, the Chinese Medicine Council of Hong Kong, established under the Chinese Medicine Ordinance, is responsible for formulating and implementing regulatory measures on Chinese medicines through its Chinese Medicine Division, while the Department of Health (“DH”) is responsible for executing those measures. Earlier, a concerned group commissioned a laboratory to test pesticide residues in red meddard berry, chrysanthemum and honeysuckle on sale in the market, and it was found that their pesticide residues exceeded the standards. In response to the incident, DH stated that every month it would select around 30 specimens of Chinese herbal medicines and send them to the Government Laboratory for testing of pesticide residues, heavy metals, etc. Nevertheless, the herbal materials tested by the concerned group above are not listed Chinese herbal medicines under Schedules 1 and 2 of the Chinese Medicine Ordinance. After studying the details of the above test results, DH would conduct risk assessments and take appropriate follow-up actions. This Office

will watch closely the developments, and may consider initiating a direct investigation where necessary.

9. Issues relating to the problems occurred in the polling stations for the 2016 Legislative Council Election
(to be raised by Dr Hon CHENG Chung-tai)

[In the 2016 Legislative Council Election, the Registration and Electoral Office failed to handle properly problems occurred in the following polling stations which might constitute maladministration:

- (a) in the polling station at Hong Kong Teachers' Association Lee Heng Kwei Secondary School, Tai Po, there was discrepancy between the voter turnout figure and the number of actual ballot papers counted; and*
- (b) in the polling station at Luen Wo Hui Community Hall, some voters were allowed to vote even if they wore masks and only produced the photocopy of their Hong Kong identity cards.*

In view of this, will The Ombudsman consider initiating a direct investigation into the matter?]

- (1) The Electoral Affairs Commission (“EAC”) is an independent statutory body tasked with overseeing the process of elections, in order to ensure that elections are conducted openly, fairly and honestly. This Office considers it more appropriate for EAC to handle the matter and make improvements than for us to conduct an investigation.

10. Issues relating to the mechanism for follow-up on complaints about soil fills and illegal land filling
(to be raised by Hon KWONG Chun-yu)

[As the Planning Department, the Lands Department and the Environmental Protection Department fail to put in place a proper mechanism to follow up on complaints about soil fills and illegal land filling, will The Ombudsman consider initiating a direct investigation into this matter?]

- (1) In recent years, there have been frequent occurrences of illegal landfilling and fly-tipping activities. Although actions were taken

by the Government departments concerned, those actions were often ineffective. The Ombudsman has, therefore, initiated a direct investigation against those departments. The ambit of the investigation covers the powers, responsibilities, mechanisms and procedures of those departments regarding the control of landfilling and fly-tipping activities on private land, as well as those departments' enforcement actions and outcomes.

- (2) This Office issued a press release on 16 November 2016, inviting information and views from members of the public about this direct investigation.
- (3) We will announce the findings on completion of our investigation.

11. Issues relating to the mechanism for handling unauthorized rural developments
(to be raised by Hon KWONG Chun-yu)

[As the Planning Department and the Lands Department fail to put in place an effective monitoring mechanism for handling unauthorized developments in rural areas, will The Ombudsman consider initiating a direct investigation into the matter?]

- (1) Unauthorised developments in rural areas include a wide range of activities involving different situations, such as illegal occupation of Government land, breach of lease conditions, illegal fly-tipping activities, unauthorised building works (“UBW”), etc.
- (2) This Office has completed direct investigations into some of those unauthorised activities and made recommendations to the Government. Examples are:
 - UBW regarding New Territories Exempted Houses (*Completed in March 2011 – Enforcement against Unauthorised Building Works in New Territories Exempted Houses*);
 - Unauthorised developments in country parks or in the villages and agricultural land adjacent to the country parks (*Completed in September 2011 – Government Measures to Protect Country Park Enclaves*);
 - Illegal occupation of Government land and breach of lease conditions (*Completed in September 2016 – Lands*

Department's System of Regularisation of Illegal Occupation of Government Land and Breach of Lease Conditions).

Some direct investigations are still in progress. For example:

- The direct investigation declared in November 2016 – Government's Control over Landfilling and Fly-tipping Activities on Private Land.

We will conduct in-depth exploration to identify the crux of the problem.

- (3) For those direct investigations completed, we will closely follow up on implementation of the recommendations by the departments concerned.
- (4) Meanwhile, we will continue to pay attention to complaints and media reports about unauthorised developments in rural areas. Where necessary, we will consider initiating a direct investigation to examine the issues.

12. Issues relating to the mechanism for follow-up on complaints about unauthorized building works
(to be raised by Hon KWONG Chun-yu)

[As the Buildings Department fails to put in place an effective monitoring mechanism to follow up on complaints about unauthorized building works, will The Ombudsman consider initiating a direct investigation into the matter?]

- (1) This Office has previously conducted direct investigations into the Buildings Department's ("BD") handling of Unauthorised Building Works ("UBW") in New Territories Exempted Houses (in August 2004 and March 2011) and those UBW cases involving celebrities (in January 2014). The three direct investigations revealed that the main problem in BD's handling of UBW cases has continued to be delays in taking enforcement actions.
- (2) We understand that BD has taken enforcement actions against UBW items according to established priorities. Under such policy, BD has implemented different measures in recent years to resolve step by step the problem of delays. For examples: planning enforcement actions that cover an entire building in order to enhance efficiency, and

allocating more manpower to clear outstanding cases (including cases of non-compliance of removal orders).

- (3) We note that the Audit Commission (“Aud”) published in April 2015 a report on BD’s actions on UBW. In its report, Aud made a number of recommendations to address the inadequacies in BD’s handling of UBW cases, including the problem of delays.
- (4) In this light, we have no plans at the moment to initiate a direct investigation into the same subject. However, we will continue to pay close attention to BD’s work in this area, rigorously handle related public complaints, and urge BD to make improvements.
