

Ref : CP/G06/4(IV)

**Paper for Members' meeting with The Ombudsman
on 13 June 2000**

Notification Mechanism on Complaint Cases

At a meeting between Members and The Ombudsman in December 1999, Members expressed concern with some clients lodging the same complaints to different redress channels. Members requested The Ombudsman's Office and the Complaints Division of the LegCo Secretariat to work out a notification system on complaint cases handled by Members' Offices, The Ombudsman's Office and the Complaints Division so as to avoid any possible duplication of efforts in redressing grievances. The following sets out the joint recommendations of The Ombudsman's Office and the Complaints Division.

Secrecy provision in The Ombudsman Ordinance (Cap. 397)

2. The Ombudsman has advised that she and her staff are strictly bound by section 15(1) of The Ombudsman Ordinance (Cap. 397) to maintain secrecy in respect of all matters relating to any complaint made to her. As such, The Ombudsman is precluded from divulging any information concerning complaints lodged with her Office, including whether or not a complaint has been lodged with her Office by a particular person. An extract of section 15 (Ombudsman and staff to maintain secrecy) of The Ombudsman's Ordinance is at **Appendix I**.

3. In view of such a restriction, it is necessary to find alternative solutions to address Members' concern.

Proposed solutions

4. The following solutions may be considered in place of the proposed notification mechanism:

(a) To obtain information from clients

Staff of the Complaints Division and Members' Offices may ascertain from clients whether or not they have lodged their complaints with other redress channels, in particular, The Ombudsman's Office. Members' attention will be drawn to cases where the complaints have been lodged with other redress channels to enable Members to decide on the appropriate follow-up action.

(b) To obtain information from Government departments

As Government departments are not subject to the secrecy provision of The Ombudsman Ordinance, the Complaints Division and Members' Offices may also approach the complainee departments to find out whether The Ombudsman's Office is taking action on the complaints. The information thus obtained will also facilitate Members' decision on whether the Complaints Division or Members' Offices should continue to follow up on the complaints.

(c) Referral to The Ombudsman's Office

If the complaints are related to maladministration within the purview of The Ombudsman's Office but have not been lodged with the Office, Members may consider referring such cases to The Ombudsman's Office and the clients' consent will be sought for the referral. A standard referral letter to The Ombudsman's Office together with an undertaking containing the clients' consent for referral is at **Appendix II**. Upon receipt of the referral, The Ombudsman's Office will contact the clients and decide whether investigation into the complaints should be conducted.

5. If there is a need for Members' Offices to check whether a particular complaint has been lodged with the Complaints Division, The Ombudsman's Office or other redress channels, they can contact the Complaints Division whereupon the requisite information will be provided if available. The Complaints Division maintains a register to facilitate the handling of such enquiries.

Advice sought

6. Subject to any views which Members may have, the proposed solutions set out in paragraphs 4 and 5 above will be put into place with immediate effect.

Complaints Division

Legislative Council Secretariat

9 June 2000

15. 專員及職員須保密

- (1) 除第(2)及(3)款另有規定外，專員及每名根據第6條獲委任的人，均須將符合以下說明的一切事項保密——
- (a) 由任何調查或向專員作出的申訴所引起的；及
 - (b) 是專員或每名根據第6條獲委任的人在行使其職能時所實際知悉的。
(由1996年第74號第7條代替)
- (2) 第(1)款不得用於阻止專員或根據第6條獲委任的人——
- (a) 在本條例所訂罪行的法律程序過程中，披露與該法律程序有關的任何事項；
 - (b) 向他認為適當的權力機構舉報任何刑事罪的證據；
 - (c) 在認為第(1)款所提述的事項——
 - (i) 是可作為任何人提出申訴的理由時；或
 - (ii) 是為調查一項申訴或決定是否展開、繼續或中止一項調查而有需要向任何人披露時，
向該人披露該事項。(由1996年第74號第7條代替)
- (3) 專員在根據本條例提交的報告中，可披露他認為應予披露以支持其結論和建議的事項，但如行政長官證明披露該事項可能有損香港的保安、防衛或國際關係(包括與任何國際組織的關係)，或會在其他方面有違公眾利益，則不得披露該事項。
(由1998年第25號第2條修訂)
- (4) 任何人不遵守第(1)款的規定，即屬犯罪，可處罰款\$50,000及監禁2年。

15. Ombudsman and staff to maintain secrecy

- (1) The Ombudsman and every person appointed under section 6 shall, subject to subsections (2) and (3), maintain secrecy in respect of all matters that—
- (a) arise from any investigation or complaint made to the Ombudsman; and
 - (b) come to their actual knowledge in the exercise of their functions.
(Replaced 74 of 1996 s. 7)
- (2) Subsection (1) shall not apply so as to prevent the Ombudsman or any person appointed under section 6 from— (Amended 74 of 1996 s. 11)
- (a) disclosing in the course of proceedings for an offence under the Ordinance, any matter relevant to those proceedings;
 - (b) reporting evidence of any crime to such authority as he considers appropriate;
 - (c) disclosing to a person any matter referred to in subsection (1) which, in the opinion of the Ombudsman or person so appointed—
 - (i) may be ground for a complaint by that person; or
 - (ii) is necessary to be disclosed to that person for the purposes of investigating a complaint or deciding whether an investigation should be undertaken, continued or discontinued. (Replaced 74 of 1996 s. 7)
- (3) The Ombudsman may disclose in any report made by him under this Ordinance any matter that in his opinion ought to be disclosed in order to establish grounds for his conclusions and recommendations, other than a matter in respect of which the Chief Executive certifies that its disclosure might prejudice security, defence, or international relations (including relations with any international organization) in respect of Hong Kong or would otherwise be contrary to the public interest. (Amended 74 of 1996 s. 11; 25 of 1998 s. 2)
- (4) Any person who fails to comply with subsection (1) commits an offence and is liable to a fine of \$50,000 and to imprisonment for 2 years.

The Ombudsman
Office of The Ombudsman
31/F, Gateway Tower 1
25 Canton Road
Tsim Sha Tsui
Kowloon
(Fax No.: 2956 0555)

Dear Madam,

Complaint on maladministration

A client (name) called at this Secretariat/Office on (date) and lodged a complaint on (subject) against (name of department).

Since the complaint involves an allegation of maladministration of the organization(s) under the purview of The Ombudsman, this Secretariat/Office seeks to refer the case to The Ombudsman with the consent of the client and on the instruction of Hon _____. Details of the case are set out in the **Annex**. The Ombudsman is invited to provide assistance to the client and consider the need for conducting an investigation on the complaint.

With best regards,

Yours sincerely,

for Secretary General of
the Legislative Council Secretariat/
Office of Hon _____

Encl.
(Day)(Month)2000

Annex

To: The Ombudsman

I, _____ (I.D. No: _____),

daytime contact telephone no. _____ ,

of (address) _____ ,

hereby authorize the Legislative Council Secretariat/Office of Hon _____ to refer my complaint on maladministration* stated below to The Ombudsman for action.

A letter from the complainant is attached (where applicable).

Date: _____ Signature: _____

* Complaints on alleged maladministration may include, *inter alia*, inefficient administration, unreasonable or improper actions or procedures, abuse of power and contravention of the Code on Access to Information.