

廉政公署事宜投訴委員會

ICAC COMPLAINTS COMMITTEE

二零一二年年報

Annual Report 2012

3 June 2013

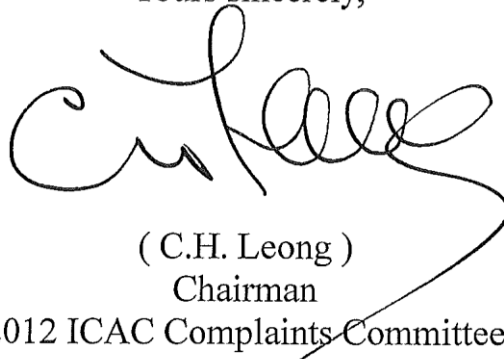
The Honourable C Y Leung, GBM, GBS, JP
The Chief Executive
Hong Kong Special Administrative Region
People's Republic of China
Chief Executive's Office
Tamar
Hong Kong

Dear Sir,

**ICAC Complaints Committee
2012 Annual Report**

I have the honour to forward to you the annual report of the ICAC Complaints Committee for the year 2012. This is the eighteenth annual report of the Committee, which gives a summary of the work carried out by the Committee in the past year.

Yours sincerely,



(C.H. Leong)
Chairman
2012 ICAC Complaints Committee

INDEPENDENT COMMISSION AGAINST CORRUPTION COMPLAINTS COMMITTEE

2012 Annual Report

INTRODUCTION

Established on 1 December 1977, the Independent Commission Against Corruption Complaints Committee (“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. Since 1996, each year the Committee submits an annual report to the Chief Executive to provide an account of its work in the preceding year. With a view to enhancing the transparency and accountability of the Committee, the report will also be tabled at the Legislative Council and made available to the public.

MEMBERSHIP

2. The Chairman and members of the Committee are appointed by the Chief Executive. In 2012, the Committee was chaired by Dr LEONG Che-hung. A membership list of the Committee from 1 January 2012 to 31 December 2012 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 (“the 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/she may write to the Secretary¹ 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. When the complaint is received by the Secretary, he/she 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 to the ICAC direct, 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 the complaints, and the Commissioner will forward his conclusions and recommendations in respect of each complaint to the Committee via 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/or clarifications from the ICAC concerning the 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 Committee’s conclusions in writing.

HANDLING OF SUB-JUDICE CASES

6. The ICAC investigates each complaint as soon as practicable. Where the allegations in a complaint are directly or closely associated with ongoing criminal enquiries or proceedings (“*sub-judice* cases”), the investigation will usually be deferred until the conclusion of such criminal enquiries or proceedings. Investigation of complaints generally involves in-depth interviews with the complainants, and these may touch upon the circumstances surrounding the criminal proceedings and could possibly prejudice the complainants’ position in *sub-judice* cases. The complainants will be informed in writing that the investigation into their complaints will be deferred, pending the conclusion of relevant criminal enquiries or proceedings. If a complainant still wishes to seek immediate investigation of his/her complaint but the subject matter of the complaint appears to be closely related to issues on which the court may have to decide, the Commissioner will seek legal advice and then decide

¹ The address of the Secretary of the ICAC Complaints Committee is as follows -
Administration Wing of the Chief Secretary for Administration’s Office,
25/F, Central Government Offices, 2 Tim Mei Avenue, Tamar, Hong Kong
(Telephone number: 3655 5503; fax number: 2524 7103)

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 2012, 19 complaints containing 57 allegations against the ICAC or its officers were received, as compared with 14 complaints containing 44 allegations received in 2011. Allegations registered in the year were related to misconduct of ICAC officers (53%); neglect of duties (28%); abuse of power (14%); and inadequacies of ICAC procedures (5%). A summary of the statistics is at Table 1 below.

Table 1 – Number and category of allegations registered in 2011 and 2012

Category of allegation	Number of allegations (%) in 2012	Number of allegations (%) in 2011
1. Misconduct	30 (53%)	26 (59%)
2. Neglect of duties	16 (28%)	11 (25%)
3. Abuse of power		
(a) search	2	0
(b) arrest/detention/bail	2	2
(c) interview	0	2
(d) handling property	2	0
(e) legal access	2	0
(f) improper release of identity of witnesses/informants/suspects	0	0
(g) provision of information/documents	0	0
<i>Sub-total :</i>	8 (14%)	4 (9%)
4. Inadequacies of ICAC procedures	3 (5%)	3 (7%)
Total :	57	44

8. Of the 19 complaints received in 2012, investigations into 17 complaints covering 37 allegations were concluded with the relevant reports considered by the Committee during the year. Investigation into a complaint covering 15 allegations was deferred pending conclusion of the on-going court proceedings, and another complaint covering five allegations was still under investigation as at the end of the year.

REPORTS CONSIDERED

9. The Committee held three meetings during the year to consider a total of 36 cases, comprising 22 investigation reports and 14 assessment reports.

Investigation Reports

10. At the first meeting held in April 2012, the Committee considered investigation reports from the ICAC on four complaints received in 2011 and three received in 2012. At the second meeting held in June 2012, the Committee considered investigation reports on four complaints received in 2012. At the third meeting held in November 2012, the Committee considered investigation reports on one complaint received in 2009 and ten received in 2012. A sample of an investigation report considered by the Committee is at *Annex C*.

11. Of the 22 complaints covering 66 allegations considered by the Committee in 2012, two allegations (3%) in two complaints (9%) were found to be substantiated. A summary of the statistics is at Table 2 below.

Table 2 – Number and category of allegations found substantiated or partially substantiated by the Committee in 2011 and 2012

Category of allegation	2012		2011	
	Number of allegations considered	Number of allegations (%) found substantiated / partially substantiated	Number of allegations considered	Number of allegations (%) found substantiated/ partially substantiated
1. Misconduct	31	0	40	3
2. Neglect of duties	20	2	26	0
3. Abuse of power				
(a) search	1	0	1	0
(b) arrest/detention/bail	4	0	0	0
(c) interview	2	0	0	0
(d) handling property	0	0	0	0
(e) legal access	2	0	0	0

(f) improper release of identity of witnesses/ informants/ suspects	0	0	2	0
(g) provision of information/ documents	0	0	0	0
<i>Sub-total:</i>	9	0	3	0
4. Inadequacies of ICAC procedures	6	0	1	0
Total :	66	2 (3%)	70	3 (4%)

12. Of the two allegations found substantiated, the findings were as follows:

- The first case: An ICAC officer had not verified the complainant's identity before telling her the allegation against her in an ICAC investigation and asking her to go to the ICAC office for an interview; and
- The second case: An ICAC officer had not properly discharged his duties in taking a statement from the complainant in respect of her report.

13. The above substantiated allegations concerned two ICAC officers who were given appropriate advice by their seniors.

14. In addition, six ICAC officers were each given advice by a senior officer whilst the allegations made against them were found not substantiated. The advice was given as part of ICAC's continuing review of ways on how the officers can improve their performance in discharging their duties. Amongst the six officers, one was advised to avoid speaking bilingually with interviewees; and another was advised on the importance of maintaining contacts with prosecution witnesses to ensure that they were kept updated on the need to attend court. Of the remaining four officers, two were advised on the ways of handling items brought by visitors when visiting detainees and two on dealing with records of search.

Assessment Reports

15. After preliminary assessment of a complaint, if the ICAC considered that a full investigation is not warranted, the ICAC would state the reason(s) and submit an

assessment report for the Committee's consideration. During 2012, the Committee considered and endorsed 14 assessment reports. Preliminary enquiries showed that there were no grounds or justifications in these complaints that would warrant formal investigations, and the Committee agreed that no further investigative actions be taken. The complainants were so advised in writing.

IMPROVEMENTS TO PROCEDURES

16. An important and positive outcome of investigating into complaints is that through examination of relevant issues, both the ICAC and the Committee may scrutinise existing ICAC internal procedures, guidelines and practices to see whether they need to be revised, with a view to making improvements.

17. Arising from an investigation report considered during 2012, the ICAC has now displayed notices in the ICAC Detention Centre ("DC") informing visitors about the requirements to store away mobile phones and other personal belongings before visiting detainees in the DC.

* * * * *

**Independent Commission Against Corruption
Complaints Committee
Membership List
(from 1 January 2012 to 31 December 2012)**

Chairman : Dr LEONG Che-hung, GBM, GBS, JP

Members : Mr CHAN Chi-hung, SC

The Hon Albert HO Chun-yan

Mrs Stella LAU KUN Lai-kuen, JP

Ms Angela LEE Wai-yin, BBS, JP

Mrs Sophie LEUNG LAU Yau-fun, GBS, JP

Mr YEH V-nee, JP

(from 1 January 2012 to 30 June 2012)

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	Shop B1, G/F, Tsuen Kam Centre, 300-350 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, G/F, Shatin Government Offices 1 Sheung Wo Che Road Shatin Tel: 2606 1144

A sample of an Investigation Report

COMPLAINT

Madam X, who had made a report on a specified date in July 2011 to the ICAC concerning an offence under section 30 of the Prevention of Bribery Ordinance (“POBO”), complained that -

- (a) Assistant Investigator A had not taken a statement from her in respect of her report;
- (b) Assistant Investigator A had misunderstood the nature of her report; and
- (c) during a telephone conversation on a specified date in September 2011, Acting Chief Investigator B had not explained to her the outcome of the investigation into her report but asked her whether she had made a phone call to a Directorate Officer of the ICAC (“the Directorate Officer”).

BACKGROUND

2. On a specified date in July 2011, Madam X made a report to the ICAC alleging that a person might have disclosed the identity of a subject person of an ICAC investigation, contrary to section 30 of POBO. The case was assigned to Assistant Investigator A for investigation under the supervision of Acting Chief Investigator B.

3. On a specified date in July 2011, Assistant Investigator A contacted Madam X over the phone and fixed an interview appointment with her in relation to her report two days later (“the arranged day”). On the morning of the arranged day, Madam X received a call from Assistant Investigator A asking her for the details of her report. When asked by Madam X whether she needed to provide a statement, Assistant Investigator A was alleged to have indicated that it was not necessary. Eventually, no statement was taken from Madam X in relation to her report [Allegation (a)].

4. The investigation into Madam X’s report revealed no evidence to substantiate her allegation that a person might have committed the offence under POBO. On a specified date in September 2011, the Operations Review Committee (Sub-Committee) (“ORC(SC)”) endorsed the recommendation of no further investigative action be taken by the ICAC.

5. On a later date in September 2011, Assistant Investigator A informed Madam X of the investigation outcome. Assistant Investigator A told her that “no element of corruption” was revealed. Based on what he said, Madam X considered that Assistant Investigator A had misunderstood the nature of her report [Allegation (b)].

6. Later on the same day, Madam X called the ICAC Report Centre (“RC”), expressing her dissatisfaction with Assistant Investigator A and requested to be contacted by his supervisor. In the same evening, Madam X telephoned the

Directorate Officer to express her dissatisfaction with the outcome of the investigation.

7. In the following morning, Madam X received a call from Acting Chief Investigator B, who asked her whether she had telephoned the Directorate Officer. She expressed to Acting Chief Investigator B her dissatisfaction with Assistant Investigator A and enquired about the investigation outcome of her report. Acting Chief Investigator B was alleged for not explaining to her the outcome [Allegation (c)].

8. On a specified date in October 2011, Madam X telephoned the RC to lodge a complaint against Assistant Investigator A and Acting Chief Investigator B. On a later date in October 2011, Madam X was interviewed by officers of the ICAC Internal Investigation and Monitoring Group (“L Group”) and provided a witness statement elaborating on her allegations .

INVESTIGATION OF THE COMPLAINT

9. When interviewed by an L Group officer, Assistant Investigator A gave his explanations. In respect of allegation (a), Assistant Investigator A said that on a specified date in July 2011, he called Madam X with a view to inviting her for an interview. However, no appointment was arranged as Madam X said she needed to check her schedule. On the following day, Madam X called him and declined to attend an interview as she was busy with taking care of her family after work. As such, Assistant Investigator A asked her to provide details of her report over the phone and she did so accordingly. After obtaining the details, he told her that he would prepare a statement for her signature when she was available to attend an interview with him later. He also told her that an investigation would commence based on the information she provided.

10. Assistant Investigator A stated that he had prepared a draft statement for Madam X based on the information provided by her. As he believed that Madam X would contact him when she was available, he did not contact her again to arrange for the signing of the statement.

11. In respect of allegation (b), Assistant Investigator A denied the allegation and stated that the investigation into Madam X’s report revealed no evidence to substantiate her allegation. On a specified date in September 2011, he informed her of the investigation outcome over the phone. Among other things, he told her that as no element of corruption was found in the investigation, her allegation was not substantiated. He stressed that he had not misunderstood the nature of her report. He explained that he had mentioned “no element of corruption” for simplicity because the alleged offence is under POBO which deals with corruption offences.

12. In respect of allegation (c), Acting Chief Investigator B explained that on the following day after Assistant Investigator A informed Madam X of the investigation outcome, in response to the calls made by her to the RC and the Directorate Officer, he called Madam X. Acting Chief Investigator B stated that Madam X was dissatisfied with the outcome of the investigation on her report and requested to know more details about it. He then explained to her that he could not tell her the details because of the principle of confidentiality. Nonetheless, he told her that the ICAC had interviewed the persons concerned and examined the relevant documents but found no evidence to

substantiate her allegation. He also informed her that the ORC(SC) had endorsed the recommendation of no further investigative action be taken by the ICAC in respect of her report. Despite his explanation, Madam X was still not satisfied.

13. The relevant investigation file was examined. The available records corroborated the versions of Assistant Investigator A and Acting Chief Investigator B in respect of the events set out in paragraphs 9, 10 and 12. The investigation focused on the alleged offence under section 30 of POBO. An unsigned statement of Madam X prepared by Assistant Investigator A was also found in the investigation file.

ASSESSMENT OF THE COMPLAINT

14. Regarding allegation (a), it is undesirable for Assistant Investigator A not to take the initiative to contact Madam X to get her statement signed. The signing of the statement is an important process to ensure that the information provided by Madam X was accurately recorded and that she was given an opportunity to read it and make amendments if necessary. It is considered that Assistant Investigator A had not properly discharged his duties in this regard. Hence, allegation (a) is substantiated.

15. In respect of allegation (b), Assistant Investigator A denied the allegation and examination of the relevant investigation file revealed that he had not misunderstood the nature of Madam X's report. Hence, allegation (b) is not substantiated. However, the manner in which Assistant Investigator A informed Madam X was considered undesirable as he should not have said "no element of corruption", which had caused the misunderstanding in the present case. In light of this, he should be advised by a senior ICAC officer so as to improve his communication skills.

16. In respect of allegation (c), it appears that Acting Chief Investigator B had properly advised Madam X in relation to the investigation outcome of her report. There is nothing improper for him to ask Madam X questions concerning the call she made to the Directorate Officer. There is no evidence supporting Madam X's allegation. In the circumstances, allegation (c) is not substantiated.

CONCLUSION

17. The Commissioner of the ICAC agreed that allegation (a) is substantiated whereas allegations (b) and (c) are not substantiated. The ICAC Complaints Committee endorsed the conclusion of the investigation by the ICAC. Madam X was informed of the result of the investigation in writing. Assistant Investigator A and Acting Chief Investigator B were notified of the result of the investigation; whilst Assistant Investigator A was advised by a senior officer concerning allegations (a) and (b).