

Information Paper

**for LegCo Members' Meeting with The Ombudsman
on 9 December 2014**

I. Work of The Ombudsman's Office

(i) For the year 2013-2014

In the 2013-2014 reporting year, the Office received a total of 12 767 enquiries and 5 624 complaints; while 5 670 complaints were concluded. Of these, 85.8% were concluded within three months, 13.3% were concluded between three to six months and 0.9% took more than six months to conclude.

2. For easy reference, statistics on complaints and enquiries for the past three years and the first seven months of 2014-2015 (that is, April to October) are tabulated below:

		Reporting year ¹			
		2011-12	2012-13	2013-14	2014-15 (Apr – Oct)
(1)	Enquiries	12 545	12 255	12 767	6 746
(2)	Complaints				
	(a) For processing	6 085	6 349	6 572	3 907
	- Received	5 029[180]	5 501[238]	5 624[398]	3 005[193]
	- Brought forward	1 056	848	948	902
	(b) Processed	5 237[210]	5 401[235]	5 670[367]	2 956[168]
	Non-pursuable²	2 560[127]	3 116[102]	2 965[319]	1 556[99]
	Pursued and concluded	2 677[83]	2 285[133]	2 705[48]	1 400[69]
	- By inquiry ³	2 492[6]	2 094[133]	2 346[36]	1 156[8]
	- By full investigation ⁴	163[61]	169	321[12]	168[61]
	- By mediation ⁵	22[16]	22	38	76
	(c) Percentage processed = (b) / (a)	86.1%	85.1%	86.3%	75.7%
	(d) Carried forward = (a) – (b)	848	948	902	N.A.
(3)	Direct investigations completed	5	6	6	3

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

Note 2. Outside our jurisdiction or restricted by The Ombudsman Ordinance; withdrawn by complainant, discontinued or not undertaken by the Office, e.g. *sub judice* or lack of *prima facie* evidence.

Note 3. Pursued under section 11A of the Ordinance, for general cases.

Note 4. Pursued under section 12 of the Ordinance, for complex cases possibly involving serious maladministration, systemic flaws, etc.

Note 5. Pursued under section 11B of the Ordinance, for cases involving no, or only minor, maladministration.

[] Number of topical cases.

3. As in the past years, lodging complaints by email was the most popular mode. In 2013-2014, 2 455 email complaints (including by online complaint form) were received, accounting for 43.6% of total complaints received. This was followed by letters through post, with 1 066 (18.9%) complaints. Details are shown in the table below:

Mode of lodging complaints	2011-12		2012-13		2013-14		2014-15 (Apr to Oct)	
	No.	%	No.	%	No.	%	No.	%
In person	573	11.4%	769	14.0%	633	11.2%	321	10.7%
In writing:	3 905	77.7%	4 057	73.8%	4 320	76.8%	2 429	80.8%
- by complaint form	518	10.3%	621	11.3%	332	5.9%	188	6.3%
- by letter through post	947	18.8%	752	13.7%	1 066	18.9%	544	18.1%
- by fax	657	13.1%	540	9.8%	467	8.3%	256	8.5%
- by online complaint form	175	3.5%	180	3.3%	366	6.5%	385	12.8%
- by email	1 608	32.0%	1 964	35.7%	2 089	37.1%	1 056	35.1%
By telephone	551	10.9%	675	12.3%	671	11.9%	255	8.5%
Total	5 029		5 501		5 624		3 005	

4. Six direct investigations were completed on the following subjects:

- (1) Regulation of Sale of Chilled Meat
- (2) Control of Healthcare Professions Not Subject to Statutory Regulation
- (3) “Special Procedures” of Buildings Department for Handling Unauthorised Building Works Cases Involving Celebrities
- (4) Mechanism of Transport Department for Monitoring the Frequencies of Franchised Bus Services
- (5) The Access to Information Regime in Hong Kong
- (6) Public Records Management in Hong Kong

5. Apart from direct investigations, the Office also concluded 30 direct investigation assessments to ascertain the need for direct investigation. Topics included:

- (1) Regulation of Chinese Medicines
- (2) Leisure and Cultural Services Department’s Selection Criteria and Points System for Hiring of Tutors and Rental of Cultural Facilities by Organisations

- (3) Arrangements for Release of Hourly Voter Turnout Figures at Polling Stations
- (4) Factors Taken into Consideration by Food and Environmental Hygiene Department in Approving Applications for Changing the Prescribed Types of Commodities on Sale by Stall Licensees
- (5) Rating and Valuation Department's Procedures for Collection of Information on Alteration of Property Layout
- (6) Actions Taken by Lands Department and Leisure and Cultural Services Department Regarding a Football Pitch Construction Project
- (7) Fire Services Department's Procedures for Handling "Fire Hazard Complaints"
- (8) Housing Department's Processing of Applications for Claims by Public Rental Housing Tenants
- (9) Fire Services Department's Mechanism of Compensation for Damage to Private Property in the Performance of its Duties
- (10) Buildings Department's Monitoring of the Safety of Operation of Tower Cranks Outside Construction Sites
- (11) Lands Department's Follow-up Actions on a Report of Breach of Land Lease by Two Shops

6. In the year, a total of 283 recommendations were made to improve various aspects of public administration. Of these, 224 were related to complaints and 59 resulted from direct investigations. As at October 2014, 90% of the recommendations had been accepted for implementation.

(ii) For the first seven months (April to October) of 2014-2015

7. During the period from April 2014 to October 2014, the Office received a total of 6 746 enquiries and 3 005 complaints.

8. Three direct investigations have been completed and seven are in progress.

Completed

- (1) Regulatory Measures and Enforcement Actions against Street Obstruction by Shops
- (2) Management and Release of Patient Records by Hospital Authority
- (3) Government's Regulation of Guesthouses

In progress

- (1) Procedures for Approval of Loan Applications and Recovery of Debts under the Non-means-tested Loan Scheme
- (2) Management of Permitted Burial Grounds
- (3) Regulation of Fire Safety Measures for New Territories Exempted Houses
- (4) Mechanisms used to Review and Monitor Eligibility of Existing Tenants in Subsidised Public Housing
- (5) Rating and Valuation Department's Administration of Building Numbering
- (6) Education Bureau's Non-disclosure of the List of Registered Teachers
- (7) Government's Tree Management Regime and Practices

9. As regards direct investigation assessments, nine have been completed. Some topics are highlighted below:

- (1) Selective Enforcement by Pest Control Section of Food and Environmental Hygiene Department
- (2) Buildings Department's Delay in Following up Demolition Orders
- (3) Fire Services Department's Manpower Deployment and Enforcement Procedures for Handling Complaints about Dangerous Goods

II. Replies to Questions raised by Members

1. Issues relating to the screening of the contents of posters put up by Members' offices in public housing estates of the Housing Department (raised by Hon Cyd HO Sau-lan)

[It is proposed that The Ombudsman should conduct an investigation into the above issues.]

- (1) This Office has occasionally received complaints against the Housing Department (“HD”) relating to the screening of content of publicity materials (including posters and banners) in public housing estates. Since 1 January 2012 this Office has received four complaints of this nature, one against the disapproval of the application because of the content of the proposed poster and three against the content of the posters being displayed.
- (2) HD has set out guidelines for staff in handling applications for display and delivery of publicity materials made by Members of Legislative Council and District Councils / Non-government Organisations / Resident Associations / Mutual Aid Committees in public rental housing and interim housing estates. The guidelines lay down some principles for staff to follow in processing such applications. Routine applications are processed at the estate level. For publicity materials with controversial contents, estate offices should refer them to the respective Housing Manager of the Estate Management Division for consideration and agreement before accepting / rejecting the application. Should the applicant be dissatisfied with the outcome, the estate office should submit the case to the respective Assistant Director for review as appropriate.
- (3) We welcome any information from Members of the Legislative Council relating to HD’s processing of applications for putting up publicity materials in public housing estates and will consider the need to conduct a direct investigation into the subject should information reveal that there are systemic inadequacies in this area of HD’s work.

2. Issues relating to The Ombudsman's direct investigation into the Government's tree management regime and practices (raised by Dr Hon Kenneth CHAN Ka-lok)

[As The Ombudsman has decided to conduct a direct investigation into the Government's tree management regime and practices, The Ombudsman is requested to brief Members on the specific scope, specific items to be investigated and the latest progress of the investigation.]

- (1) The Ombudsman declared on 23 September 2014 her initiation of a direct investigation into the tree management regime and practices of the Tree Management Office (“TMO”) of the Development Bureau and other relevant departments.
- (2) This direct investigation focuses on examining:
 - (a) Government’s tree management regime and the relevant legal framework, and their effectiveness in ensuring public safety;
 - (b) TMO’s practices in overseeing and coordinating departments in their management of trees, and the effectiveness of such practices; and
 - (c) whether there is any room for improvement in respect of the above regime, the legal framework and practices.
- (3) We note the Audit Commission’s report “Government’s efforts in enhancing tree safety” released on 20 November 2014. Our investigation will be steered towards complementing and supplementing the Audit Commission’s findings, looking into specific aspects affecting the effectiveness of tree management, such as:
 - (a) selection of suitable tree species;
 - (b) supervision of staff and contractors;
 - (c) training and qualifications; and
 - (d) the need for legislation.
- (4) We have been seeking views and information from the public, as well as consulting experts in related fields, practitioners, frontline staff and other stakeholders. We will continue to inquire of TMO and other relevant departments. We will also further study the tree laws and practices in other jurisdictions. We expect to complete the investigation in 2015-2016.

3. **Issues relating to the operation of the EcoPark**
(raised by Dr Hon Kenneth CHAN Ka-lok)

[It is noted that, at present, a lot of land in the EcoPark in Tuen Mun is still left vacant and the utilization rate of the facilities therein is on the low side. On the other hand, quite a number of organizations have encountered various difficulties in applying for use of the land and the facilities in the EcoPark. The Ombudsman should consider conducting a direct investigation into the operation of the EcoPark and the measures adopted by the Ecopark to increase its utilization rate.]

- (1) According to the latest webpage information of the Environmental Protection Department (“EPD”) and the information provided by the EcoPark in Tuen Mun upon our enquiry, all 14 available sites in the EcoPark, developed in two phases, have been leased out for the recycling of waste cooking oil, waste metals, waste wood, waste electrical and electronic equipment, waste plastics, waste construction materials, waste glass, waste rubber tyres and food waste. Because of some leasing issues, however, the EcoPark has terminated the lease with the tenant of one site, hence the tenant’s relevant information has been deleted from the EcoPark’s webpage. So only 13 tenants are now listed. EPD is now handling the leasing issues with the tenant concerned. Subject to the outcome, it will decide whether to put out the site to tender again.
- (2) Regarding the issue raised by Dr Hon Kenneth CHAN, we would like to seek further information. He is welcome to provide more details, including those of relevant cases, for us to follow up.

4. **Issues relating to the supply of kindergarten places and allocation of kindergarten premises**
(raised by Dr Hon Kenneth CHAN Ka-lok)

[In recent years, many kindergartens have to close down due to the expiry of the tenancy agreements of their school premises, and many students have to change schools halfway. The Ombudsman should consider conducting a direct investigation into the Government's planning for the supply of kindergarten places and allocation of kindergarten premises, so as to avoid kindergartens having to close down in the middle of a school term.]

- (1) We understand that kindergartens are not covered in the 12-year free education currently provided by Government. Kindergartens in Hong Kong are all privately run by voluntary agencies or private bodies. They can either apply for the kindergarten premises in public housing estates (which are spaces earmarked for kindergartens by Government when planning for public housing estates, and based on the number of households in those estates), or they will have to rent or purchase private properties for their operations. As a matter of fact, there are not too many kindergarten premises in public housing estates available for application, and the Education Bureau (“EDB”) has yet to formulate any policy on the provision of kindergarten places and school premises. Since the relevant policy is not yet in place, it will be premature for this Office to probe whether there is any maladministration on the part of EDB in the above area (i.e. any deficiency in EDB’s implementation of policy) at this moment.
- (2) We note that Government is now considering to extend the free education to 15 years to include kindergarten education. In 2013, EDB set up the Committee on Free Kindergarten Education (“the Committee”). The Committee is expected to submit a final report to EDB in mid-2015 with specific recommendations on practicable ways to provide free kindergarten education, so that Government can formulate its long-term policy. According to a press release issued by the Committee in December 2013, it would continue to study various issues in detail, including “how to stabilise the supply of kindergarten premises and subsidise the related expenses”. As such, we will be closely watching the development.

5. Issues relating to The Ombudsman's direct investigation into the Government's regulation of the fire safety measures for New Territories Exempted Houses

(raised by Dr Hon KWOK Ka-ki)

[As The Ombudsman is conducting a direct investigation into the Government's regulation of the fire safety measures for New Territories Exempted Houses, The Ombudsman is requested to brief Members on the latest progress of the investigation and the timing for announcing the investigation results.]

- (1) We initiated this direct investigation concerning the Lands Department (“Lands D”) and the Fire Services Department (“FSD”) in May 2014. The ambit of the investigation includes:

- (a) Government's assessment of the fire risk of New Territories Exempted Houses ("NTEHs");
 - (b) the current system and procedures for regulating the fire safety measures for NTEHs, i.e. the *New Territories Exempted Houses – A Guide to Fire Safety Requirements*, introduced in 2006;
 - (c) Lands D and FSD's enforcement of the regulatory system and procedures in actual situations.
- (2) This Office has sought relevant information from Lands D and FSD and held meetings with them with a view to understanding the assessment of fire risk of NTEHs by the departments concerned, as well as the origin, rationale and other details of the current regulatory system. We have also examined the views and information provided by members of the public and conducted site inspections. We will continue to study the cases of the relevant departments and their action records in order to get a better idea of their enforcement of the regulatory system in actual situations and its effectiveness.
- (3) We expect to complete the investigation by mid-2015.

**6. Issues relating to the enforcement of the Fire Safety (Buildings) Ordinance (Cap. 572)
(raised by Hon CHAN Han-pan)**

[In enforcing the Fire Safety (Buildings) Ordinance ("the Ordinance"), the relevant Government departments require some tenement buildings to install additional fire service facilities, such as roof water tanks. However, owners find it difficult to comply with the statutory requirements under the Ordinance due to various practical problems, such as those relating to building structures and the setting up of owners' corporations. As such, some owners have suggested that fire hoses should be connected directly to street hydrants in order to avoid problems caused by the installation of fire service water tanks and pumps. The Fire Services Department ("FSD") has agreed to consider this suggestion. However, the Water Supplies Department ("WSD") has disregarded the practical needs of the general public and refused to revise the relevant standards relating to the fire service water supply system, thereby giving rise to an allegation that WSD has shirked its responsibility and committed dereliction of duty. Hon CHAN Han-pan considers that FSD and WSD are evading the problem. They have

not strengthened their communication in respect of the enforcement of the Ordinance, disregarding the public interest and leaving the owners with no alternative but to bear the legal consequences of breaching the law. In view of the above, Mr CHAN calls on the Office of The Ombudsman to initiate an independent investigation into the matter to allay public worries.]

- (1) The Fire Safety (Buildings) Ordinance stipulates that the fire safety of composite and domestic buildings constructed on or before 1 March 1987 should be enhanced to better meet modern requirements. The Fire Services Department (“FSD”) and the Buildings Department (“BD”) are conducting joint inspections on target buildings in the territory in two phases. They will issue Fire Safety Directions to owners and/or occupiers with regard to fire service installations and fire safety constructions in those buildings, with a view to enhancing their basic fire protection measures. BD is the enforcement department for fire safety measures relating to the planning, design and construction of buildings, while fire service installations and equipment (such as automatic sprinkler systems, emergency lighting installations, etc) fall under the purview of FSD.
- (2) FSD explained that if the owners cannot install the fire safety equipment as directed by FSD due to the structural problems of their buildings or other practical difficulties (e.g. where the building cannot bear the loading of another water tank of required standard to supply water for an automatic sprinkler system), they can apply to FSD for an exemption. The Department will then advise the owners to install other kinds of fire service equipment, taking into account the circumstances in each case. However, the owners have to submit supporting documents signed and issued by a qualified and authorised person who, for instance, certifies after an inspection and assessment that the building cannot have an additional water tank.
- (3) FSD also indicated that it had consulted the Water Supplies Department and was told that the suggestion to directly connect fire hoses to street hydrants was not feasible, because such method is only technically feasible for automatic sprinkler systems on the lower floors of a building. Fire hoses cannot be directly connected to street hydrants.
- (4) We will continue to take note of relevant complaints and media reports relating to the installation of fire service equipment by owners of tenement buildings, and consider initiating an investigation if necessary.

7. Issues relating to enforcement actions against street obstruction caused by food premises
(raised by Hon CHAN Han-pan)

[With the efforts of a special task force deployed by the Food and Environmental Hygiene Department (“FEHD”) to combat the problem of street obstruction caused by food premises in some districts, the situation has improved. However, the problem of illegal extension of business area by food premises still exists in many districts. In this regard, the view of The Ombudsman is sought on whether FEHD has made its best efforts to address the problem of illegal extension of business area by food premises, or whether FEHD is only procrastinating the matter and disregards the needs of residents.]

- (1) This Office completed a direct investigation into the regulatory measures and enforcement actions against illegal extension of business area by restaurants in March 2013 and made a number of recommendations to FEHD, including:
 - (a) to actively explore the best use of existing resources and relevant legislation, and consider setting up a task force and using diverse strategies to deal with the problem;
 - (b) to conduct targeted raids on recalcitrant offenders, taking more frequent enforcement actions against those restaurants, making arrests and seizures of articles, bringing more prosecutions as well as applying for closure orders from the Court;
 - (c) to consider amending the relevant legislation to simplify the mechanism for appeal against suspension or cancellation of restaurant licences from three-tier to two-tier; and
 - (d) in respect of an applicant whose restaurant licence has previously been cancelled due to repeated offences, to refuse to process, for a specified period of time, his/her application for any restaurant or related licence regarding the same premises.
- (2) The progress of FEHD’s implementation of our recommendations is as follows:
 - (a) FEHD has set up a task force and selected Tsuen Wan and Kwai Chung for a pilot project to step up enforcement actions against

illegal extension of business area by restaurants. The situation in those two districts has improved. FEHD will shortly set up another two task forces to target on other districts where street obstruction by illegal extension of restaurants is serious.

- (b) FEHD will apply for closure orders from the Court against unlicensed restaurants which persistently extend their business area outside their premises. As at May 2014, FEHD had applied for closure orders against five offenders.
 - (c) FEHD has sought advice from the LegCo Panel on Food Safety and Environment Hygiene on simplifying the mechanism for appeal against suspension or cancellation of restaurant licences. Later, it will consult operators in the food business.
 - (d) FEHD has issued a guideline that the Department will not process applications from those whose restaurant licence has previously been cancelled due to repeated offences, or applications from their representative, for any restaurant or related licence regarding the same premises for a period of 12 months after the cancellation of licence takes effect.
- (3) We will continue to closely monitor FEHD's implementation of our recommendations and its effectiveness.