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. Ombudsman and staff to maintain secrecy

(1) The Ombudsman and every person appointed under section 6 shall, subject to sub-sections (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.

(2) Sub-section (1) shall not apply so as to prevent the Ombudsman or any person appointed under section 6 from—
(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.

(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.

(4) Any person who fails to comply with subsection (1) commits an offence and is liable to a fine of $30,000 and to imprisonment for 2 years.
Appendix II

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
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.