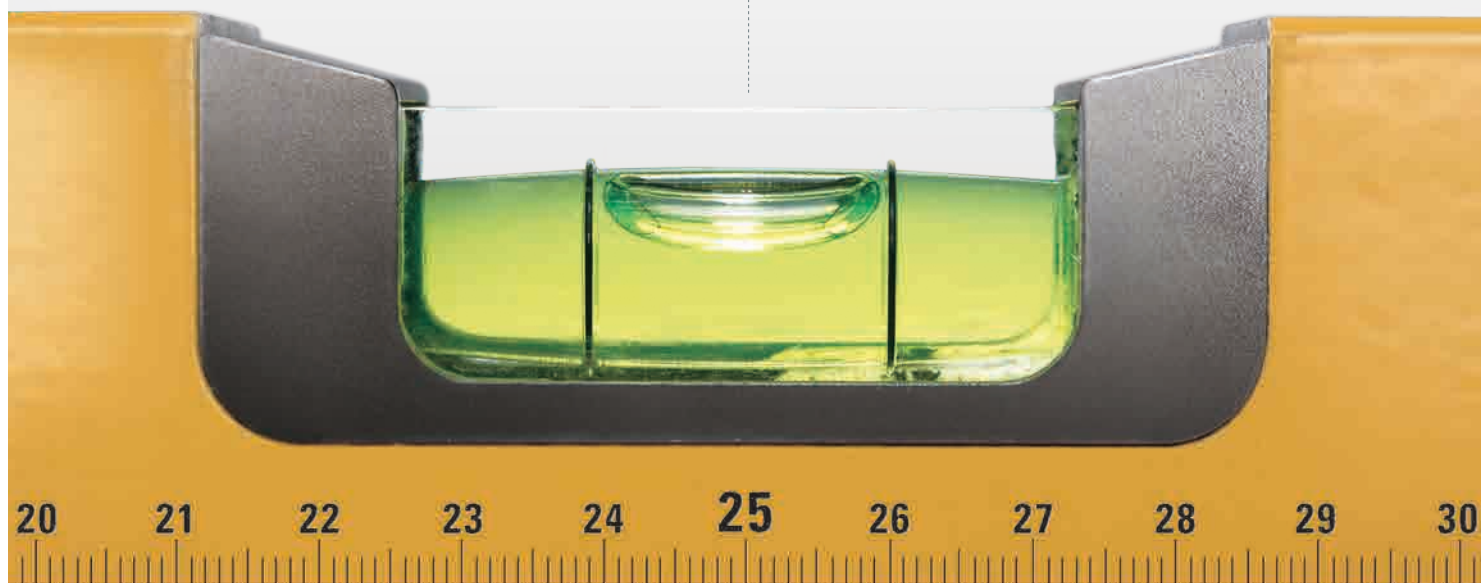


Annual Report of
The Ombudsman

2014



The Ombudsman

Annual Report 2014



The spirit level in this year's design concept highlights a key quality of the Office of The Ombudsman's role as the city's independent watchdog of public administration. We conduct our investigations in an objective and impartial manner to ensure accuracy and fairness. Building on our hard work over the past 25 years, we will go from strength to strength.

Vision

To ensure that Hong Kong is served by a fair and efficient public administration which is committed to accountability, openness and quality of service

Mission

Through independent, objective and impartial investigation, to redress grievances and address issues arising from maladministration in the public sector and bring about improvement in the quality and standard of and promote fairness in public administration

Functions

The Ombudsman should serve as the community's watchdog to ensure that:

- Bureaucratic constraints do not interfere with administrative fairness
- Public authorities are readily accessible to the public
- Abuse of power is prevented
- Wrongs are righted
- Facts are pointed out when public officers are unjustly accused
- Human rights are protected
- The public sector continues to improve quality and efficiency

Values

- Maintaining impartiality and objectivity in our investigations
- Making ourselves accessible and accountable to the public and organisations under our jurisdiction
- According the public and organisations courtesy and respect
- Upholding professionalism in the performance of our functions

Performance Measures

- Speed of case work
- Complainants' level of satisfaction with case handling
- Redress obtained
- Recommended improvement measures committed to and/or implemented
- Non-repetition of complaints

Contents

History in Brief	6
The Ombudsman's Review	10
Chapter 1 Our Role, Jurisdiction and Powers	16
Jurisdiction	16
Actions Not for Investigation	17
Restrictions	17
Powers of Investigation and Recommendation	17
Chapter 2 Our Procedures	18
Complaint Handling	18
• Modes of Complaint	
• Complainants' Representation	
• Topical Complaints	
• Assessment	
• Inquiry	
• Mediation	
• Full Investigation	
• Review	
Direct Investigation	21
• DI Assessment	
• Investigation Methodology	
Implementation of Recommendations	21
Secrecy Requirement and Publication of Reports	22
Access to Information	22

Chapter 3 Performance and Results 24

Enquiries and Complaints Processing	24
• Topical Complaints	
• Mode of Lodging Complaints	
• Complaints Handled	
Major Causes for Complaint	26
Most Popular Targets of Complaint	27
Outcome of Investigations and Inquiries	27
Direct Investigation	27
Recommendations	28
Our Performance	28
Overview	29

Chapter 4 Reward and Challenge 30

Enhancing Quality Administration	30
Mediating Disputes	31
Apology in Complaint Resolution	31
Transparent Government and Access to Information	31
Issues Examined by Direct Investigations	32
Challenges from Parties	34
• Re-assessment of Cases	
• Review of Cases	
• Judicial Review and Litigation	
• Challenging Complainant Behaviors	
• Challenge to Our Jurisdiction	
Overview	36

Contents

Chapter 5 Office Administration 38

Staffing	38
Training	38
Human Resources Management System	39
Policy on Access to Information	40
Complaints against the Office	40

Chapter 6 Publicity and External Relations 42

Public Education and Promotion	42
• RTHK Drama “Ombudsman Special”	
• Publicity Campaign	
• Roving Exhibition	
• Revamp of Website	
• Press Conferences and Media Releases	
• Talks for Departments and Organisations	
• Youth Education	
Working with Professionals, Community Leaders, etc.	45
• Advisers and JPs	
• Legislative and District Councillors	
• The Ombudsman’s Awards	
Overseas and Mainland Liaison	47
Looking Ahead	47

List of Annexes

Annex 1	Glossary of Terms	50
Annex 2	List of Scheduled Organisations	52
Annex 3	Circumstances Where Complaints are not Followed up or Investigated	53
Annex 4	Flow Chart on Handling of a Complaint	54
Annex 5	Index of Direct Investigations and Selected Direct Investigation Assessments Completed	55
Annex 6	Summaries of Direct Investigations Completed	56
Annex 7	Index of Cases Concluded by Full Investigation	69
Annex 8	Summaries of Selected Cases Concluded by Full Investigation	105
Annex 9	Summaries of Selected Cases Concluded by Inquiry	149
Annex 10	Examples of Improvement Measures Introduced by Organisations Following Our Inquiry or Investigation	157
Annex 11	Summaries of Selected Cases on Code on Access to Information	164
Annex 12	Index of Reviews by Full Investigation	167
Annex 13	Summaries of Selected Reviews by Full Investigation	168
Annex 14	Achievement of Performance Pledges	173
Annex 15	Organisation Chart	174
Annex 16	Panel of Advisers	175
Annex 17	Visits to the Office of The Ombudsman	176

List of Tables

Table 1	Caseload	182
Table 2	Enquiries/Complaints Received	183
Table 3	Nature of Complaints Processed	183
Table 4	Distribution of Enquiries/Complaints Received	184
Table 5	Distribution of Complaints Processed	188
Table 6	Complaints Pursued and Concluded: Top Ten Organisations	188
Table 7	Results of Complaints Concluded by Full Investigation	189
Table 8	Forms of Maladministration Substantiated by Full Investigation	189
Table 9	Results of Complaints Concluded by Inquiry	190
Table 10	Complaint Processing Time	193

History in Brief

1988

20 July

The Commissioner for Administrative Complaints ("COMAC") Bill was passed by the Legislative Council ("LegCo")

1993

21 July

Legislative review completed, the COMAC (Amendment) Bill was introduced into LegCo

1989



First Commissioner Mr Arthur Garcia, JP

1 February

The COMAC Ordinance was enacted

First Commissioner Mr Arthur Garcia, JP assumed office

1 March

The Office of COMAC became operational with staff seconded from Government

15 November

COMAC became a member of the International Ombudsman Institute ("IOI")

1994



Second Commissioner Mr Andrew So, SBS, OBE, JP

1 February

Second Commissioner Mr Andrew So, SBS, OBE, JP assumed office

24 June

The COMAC Ordinance was amended:

- to enable the public to lodge complaints directly, instead of by referral from LegCo Members
- to extend the jurisdiction to some major statutory bodies
- to empower the Commissioner to publish anonymised investigation reports
- to empower the Commissioner to initiate direct investigation

30 June

Advisers were appointed to provide expert advice and professional opinion

1 July

Chinese title of the Commissioner was changed to 「申訴專員」 and the Office to 「申訴專員公署」

1995

1 March

Jurisdiction was extended to investigation into alleged breach of Code on Access to Information

23-25, 27 October

The Commissioner hosted the 15th Australasian and Pacific Ombudsman Conference and the International Ombudsman Symposium

1996

1 March

Non-official Justices of the Peace ("JPs") were enlisted in a JPs Assistance Scheme

15-16 April

The Ombudsman's Office participated in the establishment of the Asian Ombudsman Association ("AOA") and became a founding member

24 October

The Ombudsman was elected to the Board of Directors of the IOI

27 December

English titles were changed to "The Ombudsman" and "Office of The Ombudsman"

1997

1 April

Mediation service was launched as an alternative dispute resolution method

25 July

The Ombudsman's Awards were introduced to acknowledge public organisations handling complaints positively

1998

8 May

The Ombudsman was elected Secretary of the AOA

1999



Third Ombudsman Ms Alice Tai, GBS, OBE, JP

1 April

Third Ombudsman Ms Alice Tai, GBS, OBE, JP assumed office

22 July

The Ombudsman's Awards were extended to acknowledge public officers' contribution towards better quality services

2000

27 July

The Ombudsman's Awards were further extended to acknowledge public officers handling complaints professionally

2 November

The Ombudsman was elected to the Board of Directors of the IOI

2001

28 March

Telephone complaint service was introduced

19 December

The Ombudsman (Amendment) Ordinance 2001 came into operation:

- to establish The Ombudsman as a corporation sole with full powers to conduct financial and administrative matters
- to empower The Ombudsman to set terms and conditions of appointment for staff
- to adopt systems and processes separate from Government

2004

1 April

Ms Alice Tai, GBS, OBE, JP started her second term (2004 – 2009) as The Ombudsman

10 September

The Ombudsman was re-elected Secretary of the IOI

13 December

With the departure of the last civil service secondee, this Office was staffed by a workforce entirely appointed by The Ombudsman under The Ombudsman Ordinance

2002

6 September

Office moved to permanent accommodation at Shun Tak Centre in Sheung Wan

16 October

The Ombudsman was elected Secretary of the IOI

2005

24 October

A “Memorandum of Administrative Arrangements” was signed between the Director of Administration and The Ombudsman to set out the general principles and guidelines governing the administrative arrangements for this Office and working relationship with Government

28 November – 1 December

The Ombudsman hosted the 9th AOA Conference

2008

5-8 November

The Ombudsman hosted the Board of Directors Meeting of the IOI



IOI Board Meeting

2009

1 April

Fourth Ombudsman Mr Alan Lai Nin, GBS, JP assumed office



Fourth Ombudsman Mr Alan Lai Nin, GBS, JP

11 June

The Ombudsman was re-elected to the Board of Directors of the IOI

2010

19 October

The Ombudsman was elected Treasurer of the IOI



AOA Conference

2012

5-10 May

The Ombudsman hosted the Mid-term Board of Directors Meeting of the IOI



IOI Mid-term Board Meeting

2011

8 December

The Ombudsman was re-elected Secretary of the AOA

22-24 May

The Ombudsman co-organised the IOI Regional Training of Asia and Australasia & Pacific Regions with the Commission Against Corruption of Macao

2014

17 March

Government announced the appointment of Ms Connie Lau, JP as The Ombudsman for the next five-year term starting 1 April 2014



Fifth Ombudsman Ms Connie Lau, JP

The Ombudsman's Review

In this, my last Review, I would like to highlight some issues and major developments that have been taking place since I became The Ombudsman in 2009.



In my second Review (2011), I emphasised the importance of embracing “change”, I pointed out that there was a tendency among some Government departments to take things for granted. They had failed to change with time, ignoring the advancement of modern technology in the provision of public service and the rise in public expectations.

I do not want to over generalise or give the impression that there is a complete lack of effort. Indeed, I must give some credit to those Government departments and public bodies which have recently taken the initiatives, where warranted, to review their existing ways of doing things. One has, for example, set up an independent body for adjudicating public complaints against institutions within its purview for the sake of impartiality. Another has, on humanitarian grounds, lifted its restrictions on the granting of medical fee waiver to certain categories of people. Yet another has at long last decided to use new technology on a trial basis to increase the effectiveness of its investigations on complaints about environmental nuisance.

However, we continue to come across departments/public bodies that are still either too complacent or conservative to make substantial changes to their legislation, rules or procedures to tackle new but already proliferating problems, or to revise their policies, performance targets or strategies to take enforcement actions efficiently and effectively within their resource constraints. The results, as can be expected, are increasing public dissatisfaction and staff frustrations.

It follows that there has been growing demand for our Office to initiate direct investigations ("DIs") into the systemic or procedural inadequacies of the departments/public bodies concerned. As DIs are usually intensive and extensive, there is a limit to the number of such investigations that our Office can complete in a year (usually around six). Nevertheless, short of doing full blown DIs, we have conducted quite a number of direct investigation assessments ("DI assessments"), i.e. less formal inquiries, in the recent years, to examine issues of public interest and community concern. They numbered 23, 47 and 30 in 2011/12, 2012/13 and 2013/14 respectively. Though smaller in scale compared with DIs, such DI assessments often likewise function as a catalyst for change by making suggestions to the departments/public bodies concerned for improvement/remedy.

Public frustration against poor service or communication by Government departments/public bodies can easily turn into antagonism. But it ought not. Our Office has been promoting the use of mediation in dealing with complaint cases that involve no or only minor maladministration. I am glad that the public as well as Government departments and public bodies are now more receptive to this method of dispute resolution as an alternative to complaint investigation. The number of mediation cases handled by our Office has increased from seven in 2010/11 to 38 in 2013/14. All such cases have been settled amicably and expeditiously between the complainants and the Government departments/public bodies concerned.

In my Review of 2013, I made it a point to recommend that Government departments and public bodies adopt a more open attitude towards tendering apologies or at least expressing sympathy, sorrow or regret for the complainants' sufferings. It is gratifying to note that the Department of Justice has embarked on a study on the feasibility of introducing Apology Legislation so that Government departments could in future be more forthcoming in making apologies without having to worry too much about its implications on their liabilities.

Another subject close to my heart is freedom of information, which is the bedrock for an open and accountable public sector. As The Ombudsman, I have a specific mandate to investigate maladministration by Government departments and certain public bodies in relation to Government's administrative Code on Access to Information. I have, therefore, conducted DIs to probe into the access to information regime in Hong Kong and its inadequacies, as well as the associated topic of public records management since proper keeping of records is essential to the public's access to information. I am delighted to have completed the DIs within my term of office. In order that Hong Kong would not continue to lag behind other jurisdictions in freedom of information, I strongly recommended that the Administration legislate to better protect this fundamental right of citizens. The two DIs mark the finale of my career as The Ombudsman.

On this very last day of my service, I must express my sincere gratitude to: all the Government departments and public bodies that have cooperated to make our investigations smooth and fruitful; my learned Advisers who have given our Office wise counsel and expert views; the Legislative Councillors, District Councillors, Justices of the Peace and other opinion leaders who have staunchly supported the work of our Office; the media who have, on all occasions, duly reported the findings of our investigations and whose commentaries have helped us tremendously in spurring the implementation by Government departments/public bodies of our recommendations; and last but not least, my dedicated and hardworking staff. Many thanks indeed.

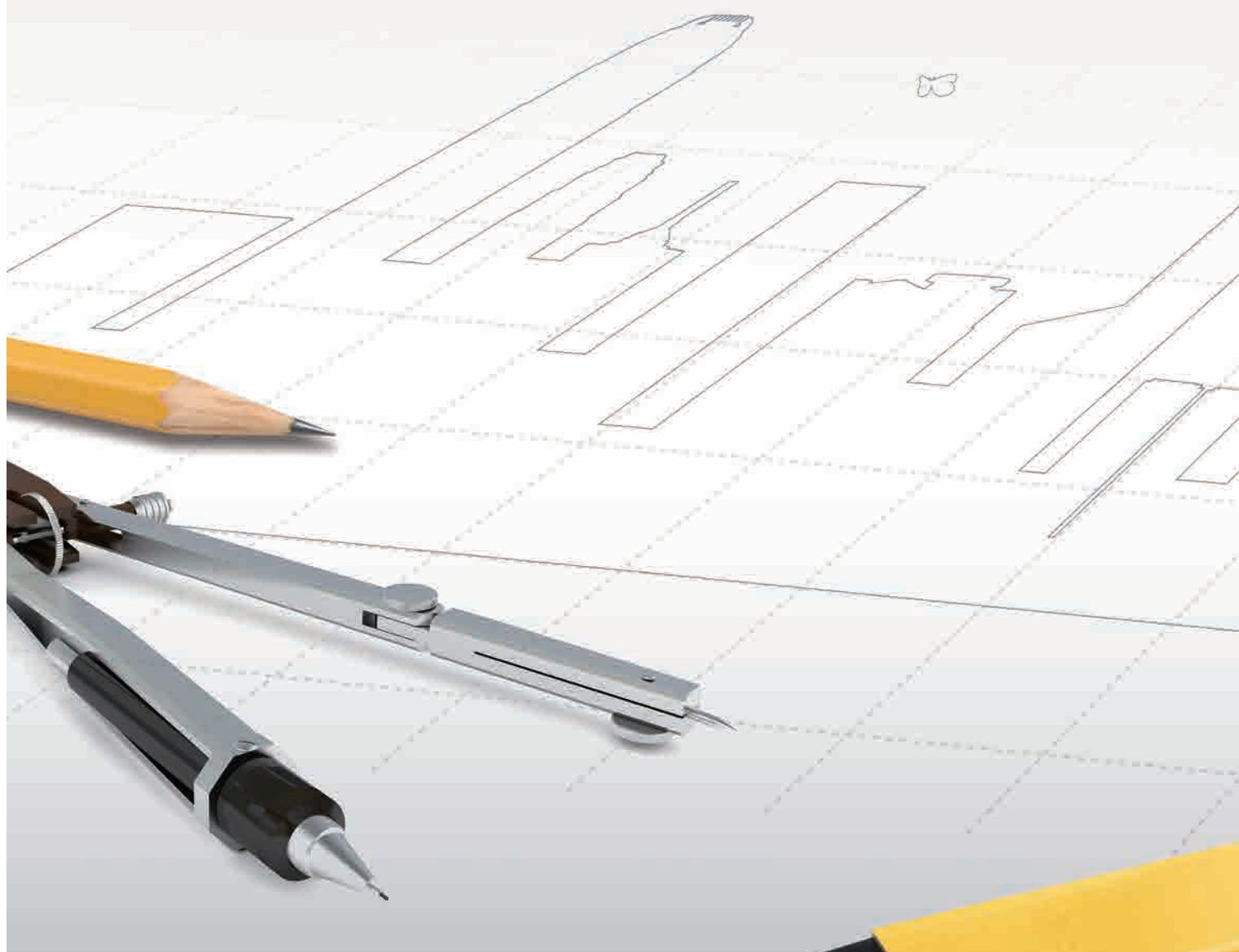
I wish all well.

Alan N Lai

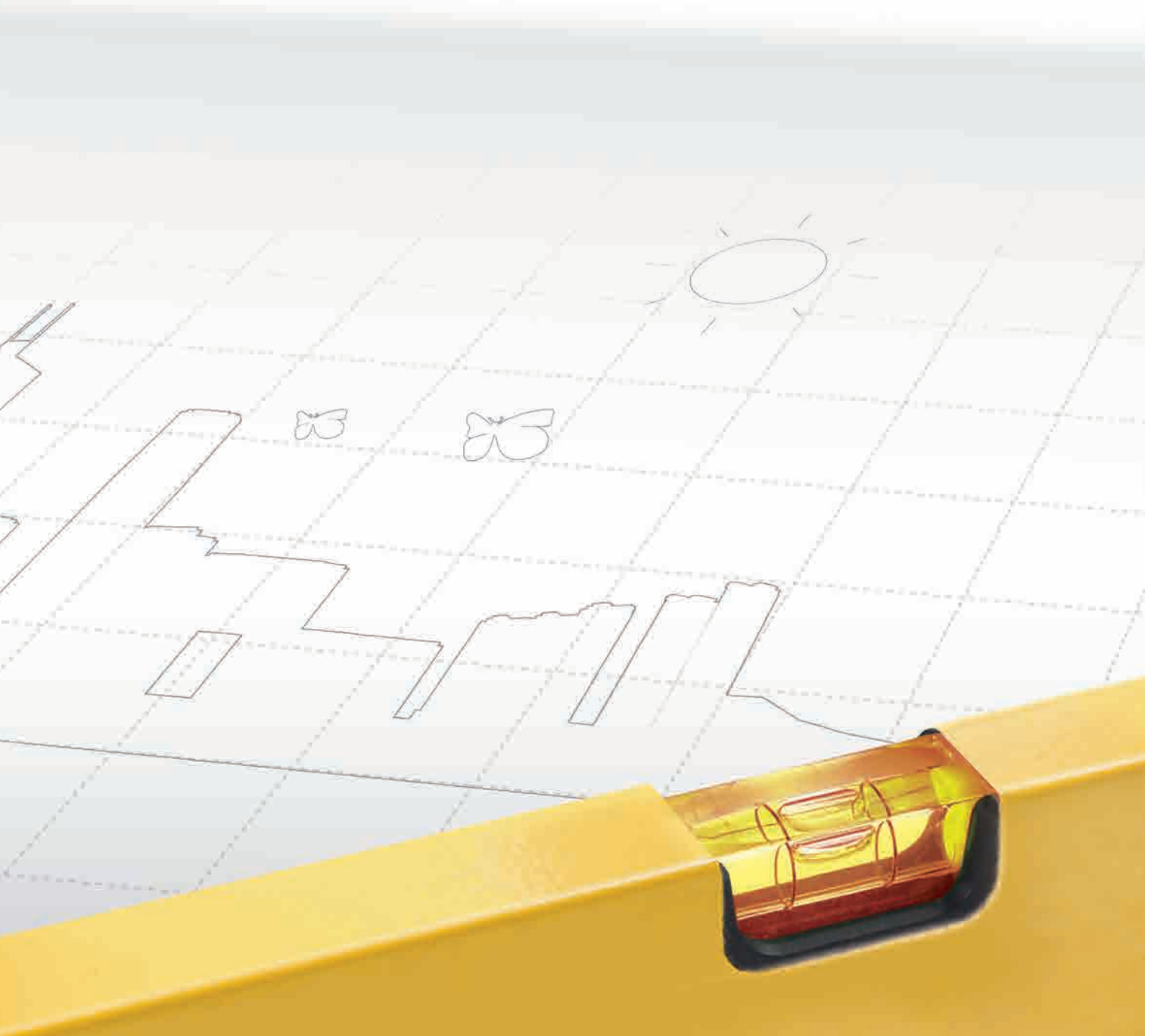
The Ombudsman

31 March 2014





Chapters



Our Role, Jurisdiction and Powers

Chapter 1

1.1 Established under The Ombudsman Ordinance (“the Ordinance”), Cap 397 of the Laws of Hong Kong, our Office functions as the city’s independent watchdog of public administration. We investigate actions by Government departments and public bodies for administrative deficiencies and recommend remedial measures. We promote good public administration for responsive and responsible, fair and open governance.



Jurisdiction

1.2 The Ombudsman has powers to investigate complaints from aggrieved persons about maladministration by the Government departments and public bodies listed in Part I of Schedule 1 to the Ordinance (see **Annex 2**). We are always on the lookout, and maintain close contact with the Administration, for possible additions to the list.

1.3 Besides investigating complaints received, The Ombudsman may, of his own volition, initiate direct investigation into areas of suspected maladministration usually involving systemic problems or issues of significant public interest.

1.4 Section 2 of the Ordinance defines “maladministration” as inefficient, bad or improper administration, including: unreasonable conduct; abuse of power or authority; unreasonable, unjust, oppressive or improperly discriminatory procedures and delay; discourtesy and lack of consideration for others.



1.5 While some organisations such as the Hong Kong Police Force and the Independent Commission Against Corruption are not included in Part I of Schedule 1 to the Ordinance, they are nevertheless subject to our investigation with regard to cases of non-compliance with the Code on Access to Information¹. These organisations are listed in Part II of Schedule 1 to the Ordinance (see **Annex 2**).

Actions Not for Investigation

1.6 The Ombudsman's purview is not without prohibition. Cases related, *inter alia*, to legal proceedings or prosecution decisions, contractual and other commercial transactions, personnel matters and imposition or variation of conditions of land grant are out of bounds. A full list of such prohibitions is at **Annex 3**.

Restrictions

1.7 The Ordinance also prescribes other circumstances under which The Ombudsman shall not conduct an investigation. For example, the complainant has had knowledge of the subject of complaint for over two years, is anonymous, or is not the person aggrieved or a suitable representative of that person. Such restrictions are also detailed at **Annex 3**.

1.8 Nevertheless, in some cases, The Ombudsman has discretion whether or not to conduct, or discontinue, an investigation. A case may be taken

up, for instance, if the complainant is able to explain satisfactorily why the complaint could not have been lodged within two years.

Powers of Investigation and Recommendation

1.9 Under the Ordinance, The Ombudsman has a wide range of investigative powers: conducting inquiries, obtaining information and documents, summoning witnesses and inspecting premises of organisations under complaint.



1.10 While The Ombudsman's investigation shall not affect any action taken by the organisation under complaint or the organisation's power to take further action with respect to any decision which is subject to the investigation, The Ombudsman may report his findings and make recommendations for redress or improvement to the organisation.

1.11 Where an organisation does not adequately act upon his recommendation, The Ombudsman may submit a report to the Chief Executive of the Hong Kong Special Administrative Region. Where a serious irregularity or injustice is found, The Ombudsman may make a further report to the Chief Executive. In such event, the Ordinance requires that a copy of the report be laid before the Legislative Council within one month or such longer period as the Chief Executive may determine.

¹ The Code was introduced in 1995 to make available to the public as much Government-held information as possible, unless there are valid reasons – related to public, private or commercial interests – to withhold it. It applies to all Government departments, the Hong Kong Monetary Authority and the Independent Commission Against Corruption.

Our Procedures

Chapter 2

Complaint Handling

Modes of Complaint

2.1 Complaints may be lodged in person, by email, by fax, or by mail, postage-free if our complaint form is used. Complaints may also be made by telephone for simple cases involving not more than two organisations.



Complainants' Representation

2.2 For a complaint made by an individual, he/she should normally be the person aggrieved unless that person is unable to act for himself/herself (see **para. 1.7**).

2.3 For a complaint made on behalf of a body corporate, the complainant has to satisfy The Ombudsman that the body corporate has authorised him/her as its representative. The Ombudsman will allow legal representation if he considers it justified.

Topical Complaints

2.4 From time to time, we receive complaints from more than one person, more or less concurrently, in respect of a particular current issue or hot topic. We term such cases "topical complaints" to distinguish them from complaint cases on disparate issues or topics, so as to reflect more accurately our caseload and the frequency of complaint against different organisations.

Assessment

2.5 Our Assessment Team usually screens all incoming complaints within a day or two to examine whether they come within the statutory purview of The Ombudsman and whether they have a *prima facie* case to warrant investigation. The focus of assessment is on the substance and merits of the complaint, not quantity or level of persistence. The team will seek further information or clarification from the complainant if necessary.

2.6 We operate a Duty Officer Scheme under which our investigation officers meet new complainants face-to-face to obtain essential information on their cases for assessment and to brief them on our procedures and restrictions.



2.7 Cases “screened in” go to one of our six investigation teams for inquiry, resolution by mediation or full investigation. For the rest, a recommendation will be made to The Ombudsman for not pursuing the case.

2.8 Where The Ombudsman decides not to pursue a case, we aim to notify the complainant of the reason(s) within 15 working days (see **Annex 14** for our performance pledges). Even with complaints “screened out” because the complainants are anonymous, unidentifiable or not personally aggrieved, we do not dismiss them lightly but may examine if any serious or systemic maladministration or significant issue was involved. This may prompt topics for direct

investigation assessment or even direct investigation (see **paras. 2.20 – 2.24**).

2.9 In some cases not pursued, as the complainants may be in need of services from some Government departments or public bodies, we take it upon ourselves to advise them where and how to get such services.

2.10 On appeal by complainants of cases “screened out”, the Assessment Team will “re-assess” such cases and present its recommendation to The Ombudsman for decision as to whether the case should be re-opened for follow-up.



Inquiry

2.11 The Ordinance provides that for the purposes of determining whether to undertake a full investigation (see **paras. 2.15 – 2.18**), The Ombudsman may conduct such “preliminary inquiries” as he considers appropriate. In the interest of complainants, we often use this procedure to resolve complaint cases of a general nature more speedily, without unnecessarily resorting to the more time-consuming action of full investigation. For simplicity, we call this “inquiry”.

2.12 In conducting an inquiry, we ask the organisation under complaint to respond to us and, if we see fit, to the complainant in parallel. We will examine such response, the complainant’s views on it, if applicable, together with any other relevant information or evidence that we may have collected. We will, in

conclusion, present our findings to the complainant and make suggestions to the organisation for remedy or improvement where necessary. Where deeper and fuller probing is needed before we can conclude the case, we will start a full investigation.

Mediation

2.13 With the consent of both the complainant and the organisation complained against, The Ombudsman may try to settle a case by mediation. This alternative method for dispute resolution is suitable for cases involving only minor or no maladministration. The two parties meet voluntarily to explore a mutually acceptable solution. Our investigation officers trained in mediation act as impartial mediators.

2.14 If mediation fails to resolve the matter, or the complainant requests to reactivate his complaint, our Office will assign another investigation officer to conduct an inquiry or a full investigation afresh. This is to ensure objective processing not influenced by prior knowledge from the mediation process.

Full Investigation

2.15 For complex cases which appear to involve issues of principle, serious maladministration, gross injustice, systemic flaws or procedural deficiencies, or simply require deeper and fuller probing, our Office will conduct a full investigation.

2.16 This is an extensive and intensive process of probing to establish the facts. Besides examining documents, we may summon witnesses, counter-check data with the complainant and conduct site inspections. Where necessary, we will consult members of our Panel of Advisers, who are all experts with good standing in professional fields (see **Annex 16**).

2.17 We will also invite comments on our preliminary observations from any organisation or individual

that may be criticised or adversely affected by the investigation report. When finalised, the report will be presented to the complainant for information and to the head of the organisation concerned for implementation of our recommendations.

2.18 In our investigation reports, we usually conclude complaint cases as “substantiated”, “partially substantiated” or “unsubstantiated”. In some other cases, although the specific allegations in the complaint are unsubstantiated, other significant acts or aspects of maladministration are identified. Such cases are concluded as “substantiated other than alleged”.



Review

2.19 Complainants dissatisfied with our findings or conclusions may seek a review of their cases by providing supporting arguments and/or information. Such requests are first assessed by the Assistant Ombudsman concerned, who will consider the complainant’s grounds for review and whether the request should be entertained; if so, he will assign a suitable investigation officer to re-examine the case in detail and seek further information or comments from the organisation under complaint as necessary. A submission will eventually be made to The Ombudsman, via the Deputy Ombudsman, to determine whether our original conclusion should be upheld or varied.

Direct Investigation

2.20 The Ombudsman's power to conduct direct investigations ("DIs") in the absence of complaints enables him to pursue issues raised by people not personally aggrieved (see **para. 2.8**), as well as to look at matters at a macro level as opposed to individual cases. Essentially, the latter means examining systems with systemic or widespread deficiencies. A DI may be prompted by significant topical issues of community concern, implementation of new or revised Government policies or repeated complaints of particular matters.



DI Assessment

2.21 Before deciding whether or not to launch a DI against an organisation, we may conduct an initial assessment ("DI assessment"). For this purpose, we may research public information from annual reports and websites, legislation and media reports, or seek information from the organisation directly. If our assessment points to the need for further study, we will formally notify the head of the organisation and initiate a DI.

2.22 Where our DI assessment finds no significant maladministration or the organisation concerned has made improvement, we will simply conclude our study and offer our findings to the organisation. Where appropriate, we make suggestions for improvement.

Investigation Methodology

2.23 The procedures for DI are akin to those for investigation into individual complaints. Unlike the latter, however, we may declare publicly our initiation of DIs to invite views on the subject from relevant sectors and experts as well as the community at large.

2.24 In the course of our investigation, we often discuss our preliminary findings with senior officers of the organisation under investigation. Such exchanges are useful in clarifying points of doubt and furthering insight into the issues.

Implementation of Recommendations

2.25 In all our reports, whether on complaint investigation or DI, our recommendations to the organisation concerned aim to make for more open and client-oriented service, transparent and accountable administration, more efficient processes and effective practices. These may even include comments on policies or legislation found outdated or inequitable.



2.26 Heads of organisations have an obligation to report at regular intervals their progress of implementation of our recommendations. We certainly also consider it our duty to monitor the same.

Secrecy Requirement and Publication of Reports

2.27 The Ombudsman, staff and Advisers are all bound by law, under penalty of a fine and imprisonment, to maintain secrecy on all matters that come to our knowledge in the exercise and execution of our functions.

2.28 In this connection, it is our general practice not to respond to any question from third parties on individual complaints. However, where it is in the public interest to do so, The Ombudsman may publish at media conferences DI reports and anonymised reports on complaint investigation, or otherwise answer media enquiries on such investigations, again hiding names and other personal data.

2.29 We also place all our DI reports on our webpage for public reference.

Access to Information

2.30 Subject to the secrecy requirement mentioned in para. 2.27, our Office adopts a policy of openness and transparency. We handle requests for access to information of our Office along the lines of Government's Code on Access to Information (see **Note 1** of Chapter 1).

2.31 Any person not satisfied with our Office's decision on his/her request for information may seek a review, which will be personally considered by The Ombudsman.



Press Conference



Performance and Results

Chapter 3

Enquiries and Complaints Processing

3.1 The total number of complaints received this year was 5,624. Discounting 398 secondary cases¹ in *topical complaints* (more details see **para. 3.4**) the number was similar to that of last year. As regards enquiries, the number increased by about 4% compared to last year.



Fig. 3a

Enquiries and Complaints Received |

Year	Enquiries	Complaints	
		Total	Excluding topical complaints
2009/10	13,789	4,803	4,410
2010/11	12,227	5,339	4,712
2011/12	12,545	5,029	4,849
2012/13	12,255	5,501	5,263
2013/14	12,767	5,624	5,226

3.2 Together with 948 cases brought forward from last year, we had a total of 6,572 complaints for processing this year.

3.3 A breakdown on the number of enquiries and complaints received and processed in the past five years is given in **Table 1**.

¹ For counting purposes, each group of topical complaints is recognised by a “leader case” and the rest are taken as “secondary cases”.

Topical Complaints



3.4 We received several groups of topical complaints (meaning see **para. 2.4**) this year, with 398 secondary cases. The largest group of topical complaints (with 148 secondary cases) related to the issuance of domestic free television programme service licences. The second largest group (with 101 secondary cases) stemmed from a learning project for a group of schoolchildren who complained about

the lack of repair of their school playground located in a public housing estate. Another major group of complaints (with 91 secondary cases) concerned the restriction imposed on a public road in the New Territories against entry of cyclists. We did not inquire into these complaints because for the first group of complaints, the organisation under complaint was outside our jurisdiction. For the second group, the school concerned had earlier already lodged a similar complaint which we were handling. For the third group, the complainants had at the same time also written to the Government Department concerned and we considered it more appropriate for them to wait for the reply from the Department first.

Mode of Lodging Complaints

3.5 As in the past years lodging complaints by email was the most popular mode, accounting for 2,455 (43.7%) of all the complaints received. This was followed by letters through post, with 1,066 (19.0%) complaints.

Fig. 3b

Mode of Lodging Complaints					
Mode	2009/10	2010/11	2011/12	2012/13	2013/14
In person	413	634	573	769	633
In writing –					
by complaint form	863	544	518	621	332
by letter through post	870	882	947	752	1,066
by fax	764	766	657	540	467
by email	1,362	1,954	1,783	2,144	2,455
By telephone	531	559	551	675	671
Total	4,803	5,339	5,029	5,501	5,624

Complaints Handled

3.6 We completed processing 5,670 (86.3%) of all cases received during the year and those brought forward from last year. Of these we pursued 2,705 (47.7%) and the rest were non-pursuable (see **Fig. 3c**). While the majority (86.7%) of those pursued were, as in previous years, concluded by way of inquiry, we handled more cases by full investigation (11.9%) and by mediation (1.4%) this year, compared with 7.4% and 1.0% respectively last year.

3.7 The non-pursuable cases included those that we could not investigate due to restrictions by law or jurisdictional limitation (see **Chapter 1**) and those that were *withdrawn* by the complainant or *discontinued* by us after initial inquiry. There were also cases *not undertaken* because further inquiry is considered unnecessary for the following reasons:

- a *prima facie* case of maladministration is not established;
- the complainant is merely expressing opinions or seeking assistance;
- the complainant has refused to consent to disclosure of personal data, necessary for our inquiry into his case;
- the organisation concerned is taking, or has already taken, action on the matter;
- there is another authority for the matter; or
- we are conducting, or have decided to conduct, a direct investigation into the subject matter.

Fig. 3c

Complaints Processed in 2013/14		
	Cases Processed	Percentage
Cases Not Pursuable	2,965	52.3%
Cases Pursued and Concluded	2,705	47.7%
Total	5,670	100.0%

3.8 The relatively high percentage of non-pursuable cases received this year was partly attributable to the major groups of topical complaints which could not be pursued for the reasons mentioned in **para. 3.4**.

Major Causes for Complaint



3.9 Based on the allegations made by the complainants, the top five causes for complaint were:

- error, wrong decision or advice (31.9%);
- ineffective control (16.2%);
- delay/inaction (12.7%);
- lack of response to complainants/enquirers (6.8%); and
- staff attitude (5.4%).

They were the same five as last year, though the ordering was slightly different. More details are given in **Table 3**.

3.10 Based on full investigations into cases, the top five forms of maladministration substantiated or partially substantiated were:

- ineffective control (29.4%);
- delay/inaction (22.7%);
- error, wrong advice or decision (20.9%);
- failure to follow procedures (8.6%); and
- lack of response/reply to complainant or enquirer (7.4%).

They were also the same five as last year, again with some variation in their order. More details are given in **Table 8**.

Most Popular Targets of Complaint

3.11 The league of the “top ten” organisations most frequently complained against based on the number of complaints we received (excluding those not pursuable) are given in **Table 6**. The first nine were also in last year’s league but their ranking changed slightly. The Agricultural, Fisheries and Conservation Department, ranked fifth last year due to a group of 115 topical complaints lodged against it, dropped out from this year’s league, while the Water Supplies Department appeared, ranking the tenth.

Outcome of Investigations and Inquiries

3.12 As noted in **para. 3.6**, we concluded more complaints by full investigation this year, with a total of 321 cases. Among them 135 (42.1%) were *substantiated*, *partially substantiated* or *substantiated other than alleged*. The outcome of our full investigations is summarised in **Fig. 3d**.

Fig. 3d

Substantiation Rates of Complaints Concluded by Full Investigation		
Classification	No. of Complaints	Percentage
Substantiated	39	12.1%
Partially substantiated	87	27.1%
Substantiated other than alleged	9	2.8%
Unsubstantiated	171	53.3%
Inconclusive	6	1.9%
Withdrawn	9	2.8%
Total	321	100.0%

3.13 Among the 2,346 inquiry cases concluded, inadequacies or deficiencies were found in 627 (26.7%).

Direct Investigation



3.14 We completed six direct investigations during the year. The subjects studied covered the regulation of sale of chilled meat, the control of healthcare professions not subject to statutory regulation, the mechanism for monitoring the frequencies of franchised bus services, “special procedures” of the Buildings Department (“BD”) for handling unauthorised building works cases involving celebrities, public records management and the access to information regime in Hong Kong. Two direct investigations were in progress at the end of the year.

3.15 We completed 31 direct investigation assessments this year. The issues studied covered a wide range of subjects, including the regulation of Chinese medicine, the selection criteria for hiring of tutors and rental of cultural facilities by organisations, arrangements for release of hourly voter turnout figures at polling stations, the processing of applications for claims by public rental housing tenants, Fire Services Department’s mechanism of compensation for damage to private property in the performance of its duties, and BD’s monitoring of the safety of operation of tower cranks outside construction sites.

3.16 A list of the direct investigations and selected direct investigation assessments completed is in **Annex 5**.

Recommendations

3.17 On completion of 321 full investigations we made 224 recommendations. We also made 59 recommendations after six direct investigations. Among this total of 283 recommendations, 248 (87.6%) of them have been accepted by the organisations for implementation and 35 (12.4%) were still under consideration as at 31 March 2014.

3.18 For inquiry cases, we would suggest improvement measures where due, whether or not inadequacies or deficiencies were found. In the year, we made a total of 66 suggestions for improvement on conclusion of our inquiries. A breakdown, by target organisations, of the number of suggestions made is in **Table 9**.

Our Performance

3.19 We met our pledges fully in respect of answering enquiries by telephone and in person and in arranging talks, as in previous years. For enquiries in writing, we answered 85.0% of them in five working days and 12.5% in six to ten working days. As regards acknowledging receipt of complaints, we issued acknowledgement within five working days in 99.2% of all complaints received but exceeded the pledged time frame in 0.8% of the cases.

3.20 For processing cases outside jurisdiction or under restriction, 88.9% of the cases were concluded within ten working days, against the service pledge of not less than 70%, but exceeded the target timeframe of 15 working days in 1.4% of the cases (see **Fig. 3e**). We concluded 81.7% of other cases within three months, against the service pledge of not less than 60% but, for reasons such as case complexity or new developments mid-stream of the case, we were unable to conclude 1.1% of the cases within our pledge timeframe of six months (see **Fig. 3f**).

3.21 Our performance pledges and level of achievement are listed in **Annex 14**.

Fig. 3e

Processing Time for Cases Outside Jurisdiction or Under Restriction			
Year	Response Time		
	Within 10 working days (target: >70%)	Within 11-15 working days (target: <30%)	More than 15 working days
2009/10	78.9%	16.3%	4.8%
2010/11	83.4%	14.5%	2.1%
2011/12	89.2%	9.3%	1.5%
2012/13	89.5%	8.7%	1.8%
2013/14	88.9%	9.7%	1.4%

Fig. 3f

Processing Time for Other Cases Concluded			
Year	Response Time		
	Less than 3 months (target: >60%)	Within 3-6 months (target: <40%)	More than 6 months
2009/10	54.7%	43.2%	2.1%
2010/11	74.5%	24.6%	0.9%
2011/12	79.3%	19.8%	0.9%
2012/13	86.3%	12.8%	0.9%
2013/14	81.7%	17.2%	1.1%

Overview

3.22 The number of complaints received remained at a high level this year, partly accountable by the increase in the number of topical complaints. We identified more complaints for full investigation, which found ineffective control, delay or inaction and wrong decision to be the most common forms of maladministration. Meanwhile, we continued to step up our efforts in identifying appropriate cases for mediation, resulting in a record high of cases being successfully resolved by this method.

3.23 Despite the increasing number of complaints received we maintained our ability to fulfill our performance pledge – over 81% of our inquiry and investigation cases were completed within three months, against a pledge of no less than 60%. We will continue to watch out for scope for enhancing our efficiency, especially for cases involving no or only minor maladministration while focusing our resources on significant cases or issues of wide public concerns.



Reward and Challenge

Chapter 4

Enhancing Quality Administration



4.1 On conclusion of our inquiries into complaints we will make recommendations, where due, to the organisations under complaint irrespective of whether the complaint is substantiated or not. Most of our recommendations are accepted by the organisations (see **paras. 3.17** and **3.18**). We monitor their implementation of our recommendations until action is completed. While many of the recommendations are to provide redress to the complainant, a substantial number aim to tackle systemic issues and improve the organisations' administration. On the latter type of recommendations, the measures introduced by organisations during the year came within the following broad categories:

- (a) measures to ensure clarity, consistency or efficiency in operation;
- (b) better arrangements for inter- and intra-departmental coordination;
- (c) measures for better public enquiry/complaint handling;
- (d) measures for better client services;
- (e) measures for more effective regulation or control;
- (f) clearer and more reasonable rules;
- (g) clearer and more timely information to the public; and
- (h) training for staff.

4.2 In **Annex 10** are some examples of the improvement measures, which illustrate the wide range of areas of administration covered.

Mediating Disputes

4.3 We succeeded in helping complainants and organisations under complaint to resolve the complaint and reach an agreement in 38 cases, a 73% increase from last year. These cases involved 11 Government departments and public organisations and covered a wide spectrum of issues, such as booking procedures for sports and cultural facilities, eligibility for Comprehensive Social Security Assistance, cremation procedures, arrangements for driving tests, provision of investigation reports on water seepage complaints, provision of special examination arrangements for public examination candidates, public housing estate management and street lighting.



4.4 The modes of mediation adopted included telephone mediation for simple cases and face-to-face meetings for more complex ones. Most of these cases were completed within a month. All complainants and organisations which had participated in mediation and responded to our opinion survey questionnaire gave very positive feedback on the process and considered it an effective means to resolve complaint. They also welcomed the opportunity of direct dialogue afforded by the process.

4.5 Our attempts in 11 cases were not successful mainly because either the complainants or the Government departments involved declined the

invitation to mediate. Other reasons included the organisation's representative failing to obtain the organisation's endorsement of the agreement term initially reached with the complainant, the complainant's absence from the mediation meeting due to sickness and our failure to contact her subsequently, and new developments of the case making mediation inappropriate.

Apology in Complaint Resolution

4.6 Last year I encouraged public organisations to adopt a more open mind towards making of apologies. We monitored our complaint cases in which apologies were tendered by Government departments and organisations and noted that in over 80% of the cases apologies were tendered in the course of our action on the complaint, which showed that our intervention itself had the effect of prompting organisations to apologise for the faults they had committed or at least for the unpleasant experience the complainants had gone through. For the rest of the cases apologies were rendered either prior to our action or upon our recommendation. There was no case where the organisation refused to apologise despite our recommendation. It was also noted that, among the cases successfully resolved by mediation, apologies were tendered in five.

Transparent Government and Access to Information

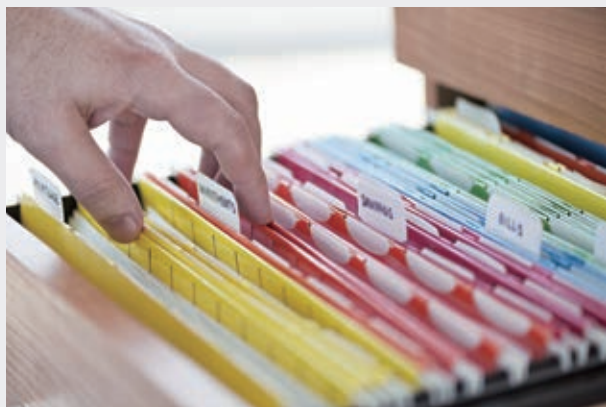
4.7 With raised public awareness of citizens' right to access to information, the number of complaints received this year relating to the Code on Access to Information ("the Code") continued to rise, increasing to 78 from last year's 62. The figures for the past five years are shown in **Fig. 4a**:

Fig. 4a

Number of Code-related Complaints in the Past Five Years	
Year	No. of Complaints Received
2009/10	46*
2010/11	42*
2011/12	39*
2012/13	62*
2013/14	78

* The figures include cases (three each in 2009/10, 2010/11 and 2012/13 and four in 2011/12) not recognised as such complaints in the year when they were received but so classified on conclusion in the subsequent year.

4.8 We concluded 81 Code cases during the year, with faults found in 39 of them, including 18 cases of unjustifiable refusal, wholly or partly, or imposing unnecessary conditions for provision of the information requested. The most frequently misquoted reason for refusal to provide information was privacy of personal data or confidentiality of third party information when the information was not or should not be regarded as confidential. Another wrong reason often quoted was that the information requested was internal records, which is not an acceptable reason for non-disclosure provided for in the Code. Apart from refusal or failure to provide information, procedural defects were also identified in many cases, typically late provision of the information requested and failure to inform the requesters of the reason for refusal or appeal channels in the case of refusal.



4.9 The cases showed that some Government departments were still reluctant to disclose information to the public. In some cases the departments might have held a genuine belief that disclosure would cause confusion to the public. We take the view that nowadays the public are very serious about their right to know and Government should provide as full and accurate information as possible to them, rather than pre-judge how this would affect their subsequent action.

Issues Examined by Direct Investigations

4.10 Direct investigation is a major vehicle for us to look into systemic issues in public administration that come to our attention, through media reports, complaints received or other channels. As mentioned in **para. 3.14**, we completed six direct investigations this year.

4.11 From complaint handling it came to our notice that the Food and Environmental Hygiene Department ("FEHD")'s regulation of sale of chilled meat might have some loopholes. Our direction investigation into the subject revealed that although the Department had set strict criteria requiring shops to store and display chilled meat at temperatures between 0°C and 4°C, its inspections were infrequent and its informal verbal warnings not effective. Shops with irregularities were allowed too much time for rectification and FEHD's issue of new licences to offenders was too lenient. As a result, it was common that shops stored and displayed chilled meat without refrigeration, posing a health risk to consumers. We recommended the Department to increase its frequency of inspections, draw up clear operational guidelines and take immediate enforcement action against repeat offenders.

4.12 Our investigation into the Department of Health's control of healthcare professions not subject to statutory regulation aimed to address concerns about the hazards which may be caused by new types of

healthcare treatments and unqualified practitioners. The investigation revealed that the Department had not conducted systematic risk analysis and regular review on the need for putting any healthcare professions under statutory control. Neither did it have any mechanism for monitoring the operation of unregulated healthcare personnel and societies of such personnel. We recommended the Department to perform necessary analyses and reviews, enhance communication with societies of unregulated healthcare personnel and discuss with the policy bureau to map out a long-term review strategy.



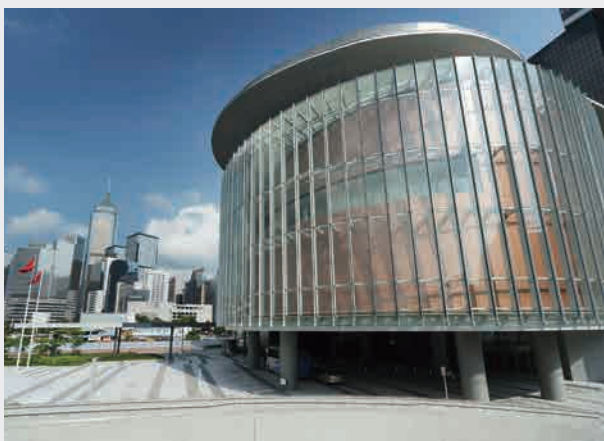
4.13 In response to the numerous complaints received regarding delays and lost trips of franchised bus services, we conducted a direct investigation into the mechanism of the Transport Department (“TD”) for monitoring such services. We noted that TD had in place a monitoring mechanism, but the number of complaints about bus services regarding lost trips, irregular service frequencies and delays had been increasing in recent years. A major problem we observed was that TD’s definition of lost trips and its attitude towards delayed services fell far short of public expectations. TD had taken steps to deal with the problems of shortage of bus drivers and traffic congestion, the two major causes for lost and delayed bus trips. However, it could have made fuller use of the operational records submitted by the bus companies for more active monitoring. We recommended TD to review its definition of lost trips; take the issue of delayed services more seriously; conduct more

relevant data analysis to better understand traffic congestion and other causes for lost or delayed bus trips and introduce improvement measures where necessary.

4.14 We probed into the “special procedures” of the Buildings Department (“BD”) for handling cases of unauthorised building works (“UBW”) involving celebrities. By conducting priority investigations, which the “special procedures” provide for, BD hoped that public queries about such “celebrity cases” could be addressed as soon as possible. Our investigation revealed that BD was too slow and passive in announcing to the public details of the “special procedures”. Neither had it produced any written instructions on those procedures. Although BD’s actions on the “celebrity cases” had generally achieved the objective of the procedures, it often took too long to take enforcement actions against the UBW items after investigation. We recommended BD to make public announcements as soon as possible when introducing new measures in future, to document the “special procedures” and to find a solution to the problem of delays in handling UBW cases in general.

4.15 We investigated into Hong Kong’s access to information (“ATI”) regime as administered through the Code on Access to Information by the Constitutional and Mainland Affairs Bureau. We found that under Hong Kong’s purely administrative ATI regime, key components of the freedom of information (“FOI”) laws as established in other jurisdictions were missing or not adequately manifested. These inadequacies were notably: a lack of coverage of the vast majority of public organisations; a lack of monitoring of information requests not citing the Code; a lack of an adjudicating body having the power to make binding decisions; a lack of penalty for non-compliance with the provisions of the Code; insufficient analysis of request statistics; inadequate understanding of the exemption provisions of the Code by Government departments; insufficient proactive disclosure and regular reporting; and a need for strengthening

public education and promotion. Considering FOI legislation as found in other jurisdictions as signifying the government's reassurance to the people of its commitment to accountability, transparency and openness, we made a number of recommendations to Government for improvement, in particular the introduction of an ATI or FOI law covering information held by both Government departments and public organisations.



4.16 We also examined the public records management and archiving system in Hong Kong. Management and archiving of Government records in Hong Kong are the responsibilities of the Government Records Service ("GRS"), under a purely administrative regime. GRS discharges its responsibilities through issuing circulars and manuals on records management for Government departments and monitoring their compliance. We found a number of inadequacies in the system, including: lack of underpinning by law, in contrast to other jurisdictions; lack of coverage of the vast majority of public organisations; lack of effective measures (including penalty provisions) to ensure compliance with GRS stipulations; GRS' problems in coping with its huge workload; lack of transparency about how records are managed, thereby making it difficult for the public to understand and scrutinise Government's work; a need to review the exemptions of the Code; and backwardness in management of electronic records. We made a number of recommendations to Government for improvement, in particular the introduction of a law on public records and archives.

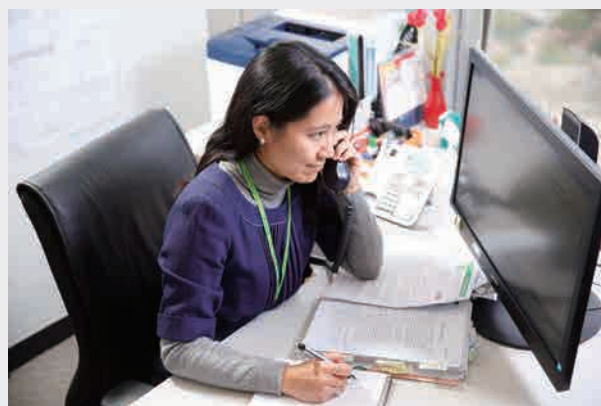
Challenges from Parties

Re-assessment of Cases

4.17 All incoming complaints are first assessed as to whether we can or should take up in accordance with the provision of The Ombudsman Ordinance. If they fall outside our jurisdiction, or are restricted by law or otherwise inappropriate for us to investigate, they will be screened out. Complainants disagreeing with our decision may request to have their cases re-assessed.

4.18 During the year we received 390 requests for re-assessment, with 85 subsequently re-opened for inquiry.

Review of Cases



4.19 For cases concluded after we have examined the issues under complaint, complainants dissatisfied with our findings or conclusions may seek a review. Such requests will be considered according to laid down procedures. If considered justified, a review will be conducted.

4.20 This year we received 76 requests for review. We declined 31 requests and conducted 45 reviews. I varied my decision in four cases after review and upheld my original decision for the remaining 41, as shown in **Fig. 4b**.

Fig. 4b

Outcome of Review Cases						
Reason \ Result	New evidence		New perspective		Outside jurisdiction	Total
	Yes	No	Yes	No		
Decision varied	2	–	2	–	–	4
Decision upheld	–	41	–	–	–	41
						45

Judicial Review and Litigation

4.21 A complainant not satisfied with my decision may, apart from requesting a review by me, seek a judicial review by the court.

4.22 A complainant had applied, in 2010, for leave to apply for judicial review against my decision not to continue our inquiry into his complaint against a Government department because of his failure to give his consent, despite repeated reminders, for us to transfer his personal data to the department for the purpose of the inquiry. Leave was refused by the High Court in October 2010. The complainant applied for leave of the Court of Appeal to appeal against the High Court decision. The application was heard and refused in July 2013.



Challenging Complainant Behaviours

4.23 As in the past, we faced challenging complainant behaviours in the course of our work. Such behaviours

presented themselves in different forms. Some involved verbal abuse and even threats to our officers. Others took the form of unreasonable demands, such as insisting on talking to our officers immediately, requiring only officers above a certain rank or of a particular gender to handle their cases, or trying to dictate how we should conduct our inquiries. A particularly challenging situation we encountered this year was repeated complaints by complainants against a specific organisation, either targeting on its daily operational minutiae or pursuing incessantly its continued action on a particular issue. The complainants would refuse to accept our findings and conclusion and make repeated requests for review of their case, followed by staff complaints when we did not agree to their views. These complaints took up much of our time and energy. However, we understand this to be a common feature of any complaint handling work. We respond to the challenges with professionalism and adequate training to our staff.

Challenge to Our Jurisdiction

4.24 During the year a Government department raised questions on our jurisdiction in the matters under complaint as they involved the department's actions when acting as a party to a sale contract or as an agent of a private party. After having obtained expert advice from one of our Advisors, we maintained our view that we had jurisdiction over the matters under complaint as the contract was not commercial in nature and the department's actions in question were taken in furtherance of public policies.

Overview

4.25 Making recommendations to Government departments and public organisations to help them improve their quality of administration and rectify systemic defects is an important object of our complaint handling work. We were pleased that many positive measures had been introduced by various Government departments and organisations as a result of our recommendations.

4.26 Our heightened effort to resolve suitable complaints by mediation had borne fruit, with more

complaints covering a wider range of subject matters amicably resolved. We paid greater attention to cases involving the Code on Access to Information by analysing the reasons for unjustifiable refusals of requests for disclosure and identifying common faults in compliance with the Code. We continued to use direct investigation as a vehicle to address systemic problems in public administration. The six direct investigations completed during the year attracted wide media coverage and most of our recommendations have been accepted by Government.





Office Administration

Chapter 5

Staffing

5.1 Our three-pronged strategy had worked well in fortifying a healthy contingent of investigation officers. We continued to recruit graduates at the entry rank of Assistant Investigation Officer, offering them a clear career path and early nurturing. This has enabled us to build a solid base of home-grown talents for the long-term development of the grade. Apart from internal promotion, we continued to recruit people with public sector experience directly to senior ranks to broaden the outlook and experience of the grade. To tide us over temporary shortfall in investigative manpower and cope with fluctuation in caseload, we supplemented our regular workforce with temporary investigation officers who had rich experience in public administration. We will continue our efforts in these directions for the development of a stable workforce.

5.2 During the year, we appointed six investigation staff (three at Senior level and the other three at Assistant level) through internal promotion and open recruitment. Our organisation chart is at **Annex 15**.

Fig. 5a

Staff Complement			
Breakdown of Staff	As at 31.3.2012	As at 31.3.2013	As at 31.3.2014
Directorate	4	4	4
Investigation	55	60	61
Administrative & Support	49	47	48
Total regular staff	108	111	113
Temporary investigation staff: equivalence to full-time posts (total man-days)	5.1 (1,356)	3.9 (1,032)	1.9 (507)
Grand Total	113.1	114.9	114.9

Training

5.3 As an ongoing effort to equip our staff with the skills for the efficient and effective discharge of their duties, we continued to enrich our training programme, focusing particularly on enhancing their techniques in coping with the changing social environment and increasingly demanding nature of complaint handling.

5.4 We organised two rounds of induction programmes for new recruits in October 2013 and January 2014 to facilitate their integration into the new working environment and enable them to become fully operational as quickly as practicable.



Induction training

5.5 Building on last year's training, we organised another round of interactive workshops on handling difficult situations in dealings with complainants for investigation officers. The workshop was extended to support staff, emphasising techniques of effective communication with complainants in difficult work situations.



Workshop on handling difficult situations

5.6 To strengthen our capacity in using mediation as a means of conflict resolution in complaint handling, we organised a workshop for our investigation officers to share their experience in handling mediation cases. We also have a sponsorship scheme for investigation staff to attend more elaborate training and attain accreditation as mediators.



Workshop on mediation

5.7 To enhance our understanding about practices in complaint handling in different institutions or jurisdictions, we sent three investigation officers to participate in the international seminar and training course co-organised by the International Ombudsman Institute and Asian Ombudsman Association in Bangkok in April 2013.



International seminar and training

Human Resources Management System

5.8 We have embarked on a project for the computerisation of human resources records, payroll and leave applications, as well as other human resources functions. This would bring about more efficient data management and work flow in the administration of various human resources functions, as well as enhanced accessibility to employment-related data.

Policy on Access to Information

5.9 Our vision is to ensure that Hong Kong is served by a fair and efficient public administration which is committed to accountability, openness and quality of service. To this end, we recognise the need for the community to be well informed about this Office and the services we provide. We have therefore drawn up and published our Policy on Access to Information which defines the scope of information that will be provided to the general public and sets out how the information will be made available in response to a request.

Complaints against the Office

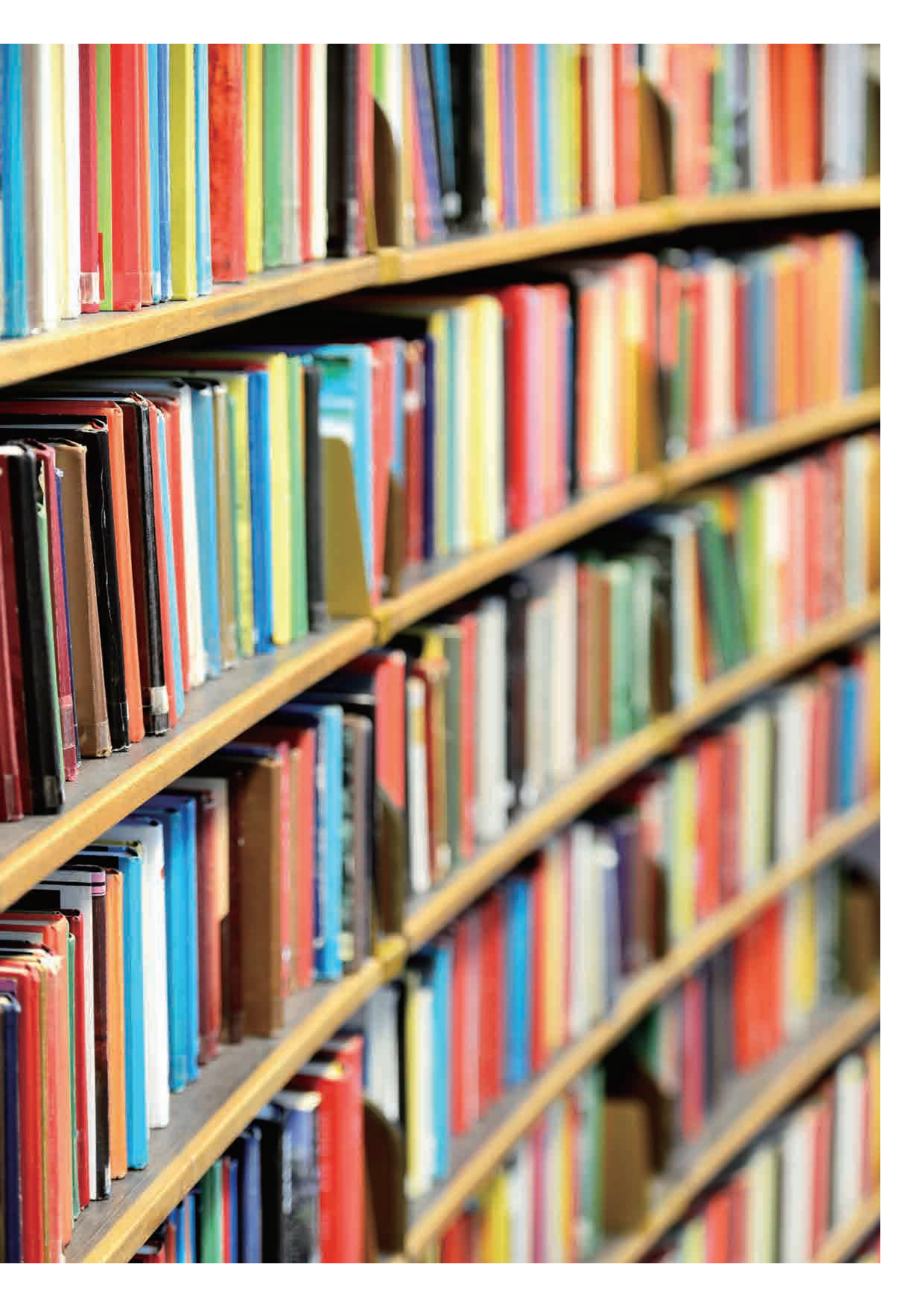
5.10 This year, we concluded a total of 39 complaints lodged against staff: their manners, our work practices

and procedures or both. Of these complaints, two were found substantiated and three, partially substantiated. We treasured the lessons learned, updated our work practices and provided appropriate counselling to the officers concerned.

5.11 There was an increase in complaints against our staff and work practices, mainly arising from dissatisfaction with our conclusions and decisions on their cases against Government departments and public organisations. Nevertheless, we take every critical comment as an opportunity to review our practices afresh. These complaints serve as an important reminder that there is always room for improvement in our performance amidst the growing demand for more efficient and effective services.

Fig. 5b

Complaints against the Office concluded in 2013/14			
Nature	Substantiated	Partially-substantiated	Unsubstantiated
Staff manner (e.g. delay, negligence, abuse of power, unacceptable behaviour)	–	2	11
Work practices and procedures	2	–	4
Both staff manner and work practices and procedures	–	1	19
Total	39		



Publicity and External Relations

Chapter 6

6.1 Publicity is a crucial part of our work. During the year, we carried out a vast array of promotional activities to engage the public and various stakeholders.

Public Education and Promotion

RTHK Drama “Ombudsman Special”



6.2 We collaborated with Radio Television Hong Kong to produce a drama series for the first time. Named “Ombudsman Special” and broadcast in summer 2013, the eight-episode series featured the work of this Office as well as the difficulties and dilemmas faced by both the complainants and public bodies under complaint.



The press conference for the launch of “Ombudsman Special”



Poster of “Ombudsman Special”

6.3 Based on real life stories, the episodes allowed viewers to gain a three-dimensional understanding of our work. “Ombudsman Special” ranked the seventh among the 80 local non-news/financial reporting television programmes being assessed in the 2013 TV Programme Appreciation Index Survey (Third Stage).

Publicity Campaign

6.4 This year, we continued with the campaign of “We identify mistakes and urge for prompt correction”. It used the metaphor of a highlight pen to illustrate the role of The Ombudsman. The campaign covered commercials in local television, public transport, online TV channels, as well as print advertisement on free dailies and bus station shelters.



“We identify mistakes and urge for prompt correction”



New interface of the Office's website

Roving Exhibition

6.5 During the campaign period, we also organised roving exhibitions to reach out to the community. The nine exhibition sites included Government offices, shopping malls and MTR stations in different districts. The public could view “Ombudsman Special” on-site and take away information leaflets and souvenirs.



Roving exhibition

Revamp of Website

6.6 To allow more convenient access to our online information, we have revamped our official website. The new website has a user-friendly interface and conforms to the latest standards of webpage content accessibility.



Press Conferences and Media Releases

6.7 We rely on the mass media to disseminate significant information to the public. This year, we organised four press conferences, announcing the results of three anonymised complaint investigation reports and seven direct investigation reports. We also declared the initiation of two direct investigations to invite public opinions.



Press Conference

Fig. 6a

Press Conferences/Public Announcements	
9 May 2013	<ul style="list-style-type: none"> Announcement of findings of direct investigation on regulatory measures and enforcement actions against illegal extension of business area by restaurants Announcement of findings of anonymised investigation into: <ol style="list-style-type: none"> Complaint against Lands Department for delay in taking lease enforcement actions Complaint against three Government departments for failing to implement properly the restriction on vehicular entry into a country park on general holidays
17 July 2013	<ul style="list-style-type: none"> Declaration of direct investigation into regulatory measures and enforcement actions against street obstruction by shops
22 July 2013	<ul style="list-style-type: none"> Ombudsman calls for study of apology legislation
24 October 2013	<ul style="list-style-type: none"> Announcement of findings of direct investigation on: <ol style="list-style-type: none"> Regulation of sale of chilled meat Control of healthcare professions not subject to statutory regulation Announcement of findings of anonymised investigation into Transport Department about handling of taxi complaints
14 January 2014	<ul style="list-style-type: none"> Declaration of direct investigation into management of permitted burial grounds
23 January 2014	<ul style="list-style-type: none"> Announcement of findings of direct investigation on: <ol style="list-style-type: none"> "Special procedures" of Buildings Department for handling UBW cases involving celebrities Mechanism of Transport Department for monitoring the frequencies of franchised bus services
20 March 2014	<ul style="list-style-type: none"> Announcement of findings of direct investigation on: <ol style="list-style-type: none"> The access to information regime in Hong Kong Public records management in Hong Kong

Talks for Departments and Organisations

6.8 We actively reach out to different departments and organisations. This year, we conducted eight outreach talks to explain our Office's mission, role and procedures.



Talk for Government department

Youth Education

6.9 We staged an exhibition booth in the Education and Careers Expo 2014 organised by the Hong Kong Trade Development Council, where young people could learn more about our work by face-to-face communication with our staff.



Education and Careers Expo

Working with Professionals, Community Leaders, etc.

Advisers and JPs

6.10 Our Advisers and Justices of the Peace ("JPs") under the JPs Assistance Scheme continued to be a source of support to this Office. In October 2013, we organised a seminar for them on problems relating to columbaria. It was a rewarding experience with fruitful interaction between the floor and the speakers from four relevant Government bureaux and departments.



Seminar on problems relating to columbaria

Legislative and District Councillors

6.11 I meet with Members of the Legislative Council annually to keep them abreast of our work. The meeting of this year was held on 3 December 2013, during which we had direct communication and exchange of views on matters of public concern.

Chapter 6

6.12 On 26 April 2013, we organised a seminar for assistants of Legislative and District Council Members. We shared our experience on complaint handling with participants. Topics covered included public housing application and street management.



Seminar for Legislative and District Council Members' Assistants

The Ombudsman's Awards

6.13 I take the occasion of The Ombudsman's Awards presentation ceremony every year to express my appreciation towards public bodies and their officers for their exemplary performance in complaint handling and serving the public. This year, over 200 guests shared the joyful moments with us on 31 October 2013. The Grand Award went to the Drainage Services Department, whereas the Highways Department and the Lands Department were the runners-up. 35 officers got the individual awards.



The Ombudsman's Awards presentation ceremony

Fig. 6b

Winning Organisations for 2013

Drainage Services Department – Grand Award
Highways Department
Lands Department

Fig. 6c

Individual Awards for 2013

Organisation	No. of Awardees
1823 Call Centre, Efficiency Unit	1
Airport Authority	2
Architectural Services Department	1
Buildings Department	1
Civil Engineering and Development Department	1
Companies Registry	1
Correctional Services Department	1
Customs and Excise Department	2
Department of Health	1
Drainage Services Department	2
Food and Environmental Hygiene Department	1
Highways Department	2
Hong Kong Examinations and Assessment Authority	1
Hospital Authority	2
Housing Department	1
Immigration Department	2
Judiciary	1
Land Registry	1
Mandatory Provident Fund Schemes Authority	2
Marine Department	1
Social Welfare Department	2
Student Financial Assistance Agency	2
Urban Renewal Authority	2
Water Supplies Department	2

Overseas and Mainland Liaison

6.14 Through close connection with our overseas and mainland counterparts, we keep ourselves abreast of development and practices in different ombudsman jurisdictions. During the year, I attended two Board Meetings of the International Ombudsman Institute ("IOI") which took place in Vienna and New York respectively. I also attended the Asian Ombudsman Association's Conference and Board Meeting in Tehran, and spoke at the IOI training programme in Bangkok.



IOI Board Meeting in Vienna

6.15 In November 2013, the Deputy Ombudsman led a team of six members to visit the Guangxi Zhuang Autonomous Region. The delegation met the representatives from the Department of Supervision and the Bureau for Letters and Calls in the Autonomous Region and gained a deeper understanding in their public administration and monitoring system.



Visit to Guangxi

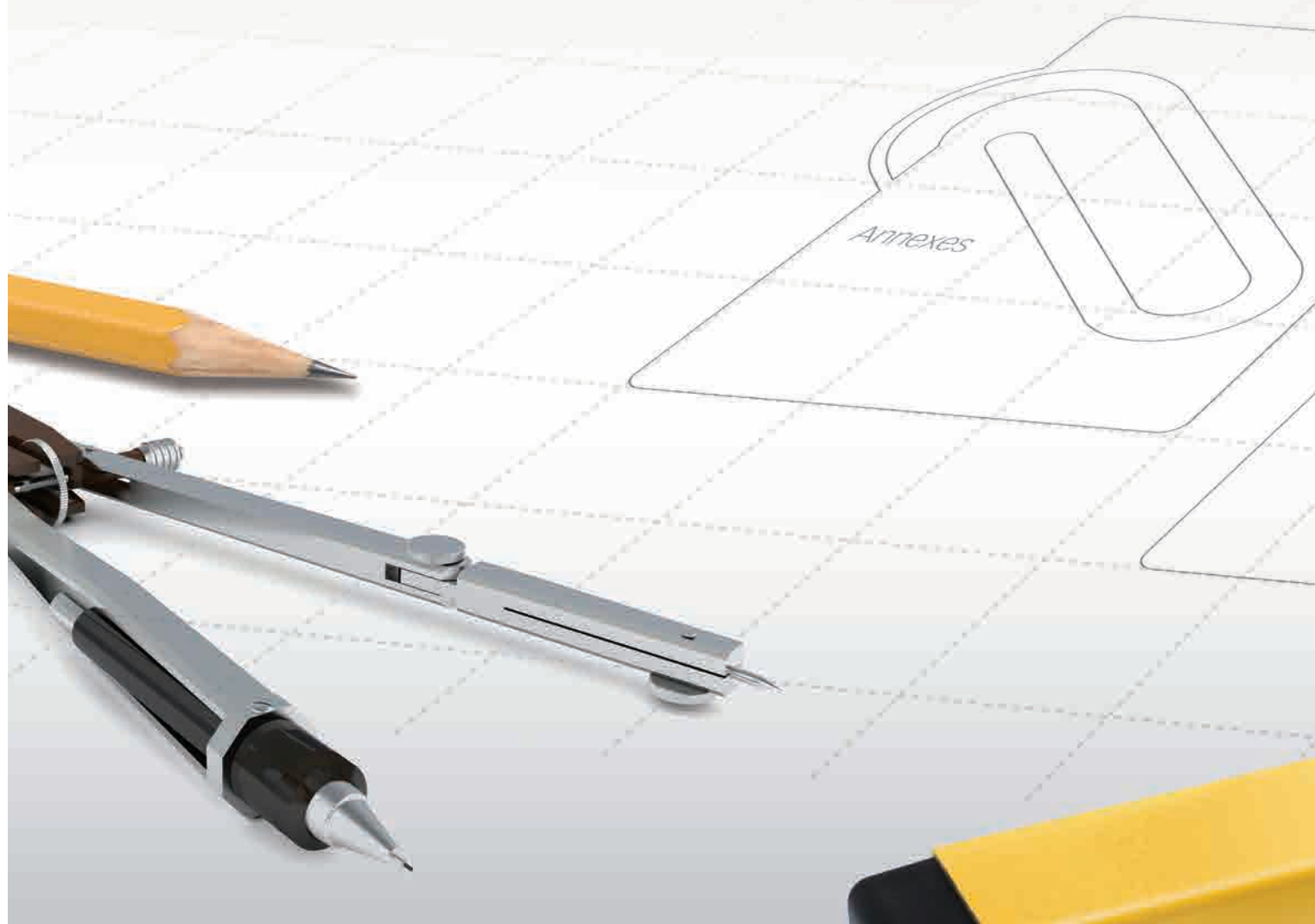
6.16 Throughout the year, this Office received various visiting delegations from overseas and the mainland, including a delegation led by the Chief Ombudsman of Thailand. The list of visitors is at **Annex 17**.



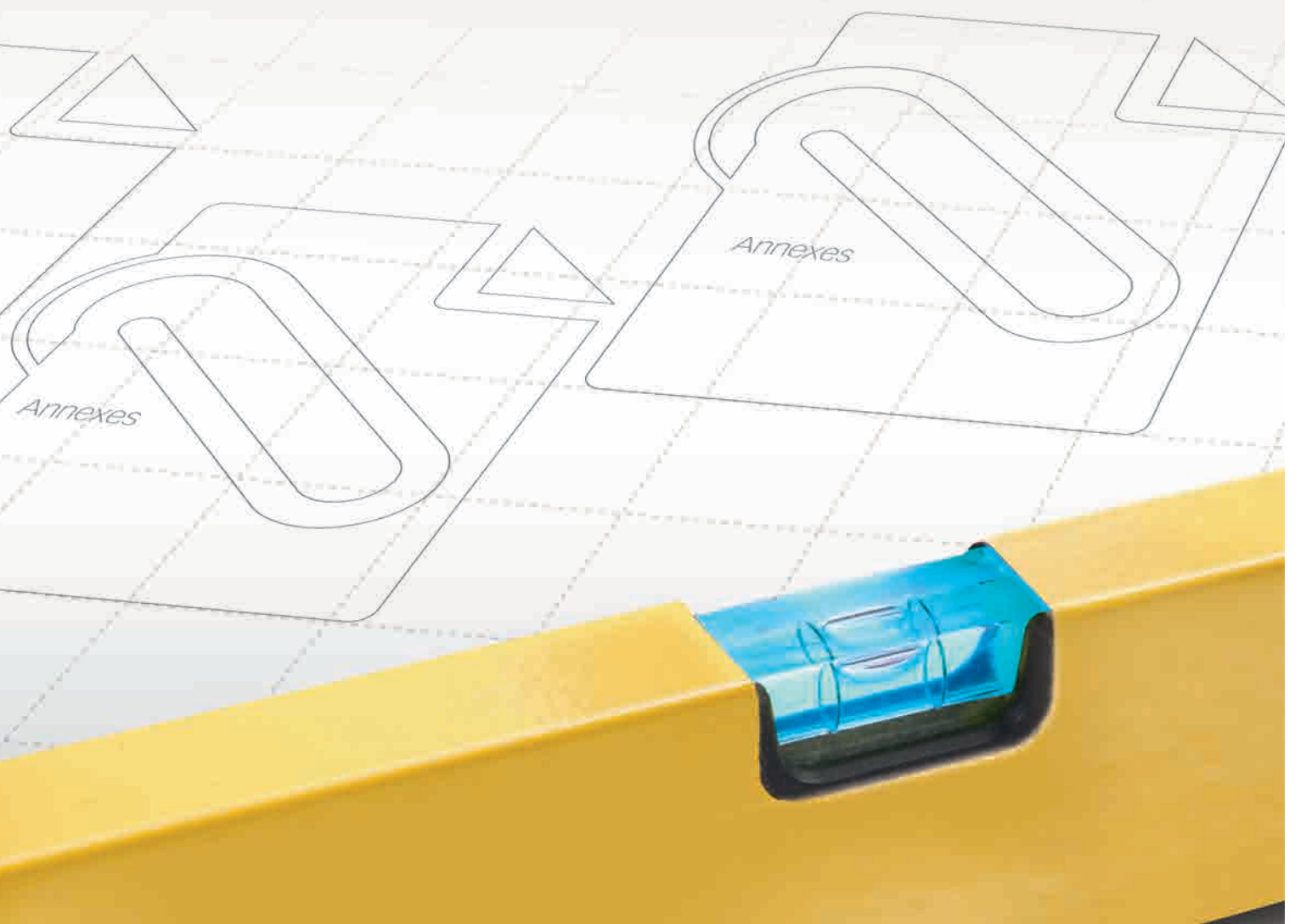
Visit of the Chief Ombudsman of Thailand and her colleagues

Looking Ahead

6.17 We will continue to gauge public knowledge, perception and expectation on our services. Besides, in striving to improve and refine our services, we will continue to draw on the suggestions and experience of various stakeholders and counterparts around the world.



Annexes



Glossary of Terms

Complaint

A complaint is a specific allegation of wrong doing, unreasonable action or defective decision which affects and aggrieves the complainant.

Complaint Not Undertaken

This is a complaint which The Ombudsman has decided not to process further after considering all its circumstances, e.g. whether there is sufficient *prima facie* evidence of maladministration.

Direct Investigation ("DI")

This is an investigation initiated in the public interest even in the absence of complaint and generally on matters of a systemic nature or wide community concern.

Direct Investigation Assessment

This refers to the preliminary examination and assessment on a potential subject for direct investigation. Where our direct investigation assessment finds no significant maladministration or the organisation concerned has made proactive improvement, we will not initiate a direct investigation. We will conclude our study and offer our findings to the organisation. Where appropriate, we make recommendations for improvement.

Discontinuation of Complaint

This is the cessation of inquiries into a complaint for reasons such as insufficient information or evidence from complainants and lack of complainants' consent for access to their personal data.

Enquiry

An enquiry is a request for information or advice.

Full Investigation

This refers to an in-depth inquiry, usually into complex or serious complaints and usually with recommendations for improvement or remedy upon conclusion.

Inconclusive

This is a situation where, at the end of a full investigation, The Ombudsman is not prepared to draw any conclusion on a complaint because the evidence is conflicting, irreconcilable, incomplete or uncorroborated.

Inquiry

For general complaint cases, we may use this procedure to resolve complaints more speedily. We ask the organisation under complaint to respond to us and, if we see fit, the complainant in parallel. We will examine such response, the complainant's view on it, if applicable, together with any other relevant information or evidence we have collected. We will, in conclusion, present our findings to the complainant and make suggestions to the organisation for remedy or improvement where necessary. Where deeper and fuller probing is needed before we can conclude the case, we will start a full investigation.

Investigation

This may be a full investigation into a complaint or a direct investigation without a complaint.

Maladministration

This is defined in The Ombudsman Ordinance. It basically means poor, inefficient or improper administration including unreasonable conduct; abuse of power or authority; unreasonable, unjust, oppressive or improperly discriminatory procedures and delay; discourtesy and lack of consideration for a person.



Mediation

This is a voluntary process carried out where the complainant and the organisation under complaint agree to meet to discuss the complaint and to explore mutually acceptable solutions. Investigation officers from this Office act as impartial facilitators.

Outside Jurisdiction

This refers to the situation where the action or organisation subject to complaint is not within The Ombudsman's jurisdiction under The Ombudsman Ordinance.

Restrictions on Investigation

These are the restrictions on investigation under The Ombudsman Ordinance.

Substantiated other than Alleged

This is where a complainant's allegations are unsubstantiated but The Ombudsman discovers other aspects of significant maladministration and comments on those other deficiencies.

Substantiated, Partially Substantiated and Unsubstantiated

These reflect the varying degrees of culpability of an organisation under complaint on conclusion of a full investigation.

Topical Complaints

These are complaints on a particular social or topical issue. They are essentially against the same action or decision by the organisation under complaint.

Withdrawal of Complaint

This is a complainant's voluntary withdrawal of a complaint. However, depending on the nature or gravity of the allegations, The Ombudsman may still pursue the case.



Organisations Listed in Part I of Schedule 1, Cap. 397

1. All Government departments/agencies except the Hong Kong Auxiliary Police Force, the Hong Kong Police Force, the Independent Commission Against Corruption, and the Secretariat of the Public Service Commission
2. Airport Authority
3. Auxiliary Medical Service
4. Civil Aid Service
5. Competition Commission
6. Consumer Council
7. Employees Retraining Board
8. Equal Opportunities Commission
9. Estate Agents Authority
10. Financial Reporting Council
11. Hong Kong Arts Development Council
12. Hong Kong Examinations and Assessment Authority
13. Hong Kong Housing Authority
14. Hong Kong Housing Society
15. Hong Kong Monetary Authority
16. Hong Kong Sports Institute Limited
17. Hospital Authority
18. Kowloon-Canton Railway Corporation
19. Legislative Council Secretariat
20. Mandatory Provident Fund Schemes Authority
21. Office of the Privacy Commissioner for Personal Data
22. Securities and Futures Commission
23. Urban Renewal Authority
24. Vocational Training Council
25. West Kowloon Cultural District Authority

Organisations Listed in Part II of Schedule 1, Cap. 397

1. Hong Kong Auxiliary Police Force
2. Hong Kong Police Force
3. Independent Commission Against Corruption
4. Secretariat of the Public Service Commission

Circumstances Where Complaints are not Followed up or Investigated

Annex 3



Actions not Subject to Investigation – Schedule 2, Cap. 397

1. Security, defence or international relations
2. Legal proceedings or prosecution decisions
3. Exercise of powers to pardon criminals
4. Contractual or other commercial transactions
5. Personnel matters
6. Grant of honours, awards or privileges by Government
7. Actions by the Chief Executive personally
8. Imposition or variation of conditions of land grant
9. Actions in relation to Hong Kong Codes on Takeovers and Mergers and Share Repurchases
10. Crime prevention and investigation actions by Hong Kong Police Force or Independent Commission Against Corruption

Restrictions on Investigation of Complaints – section 10(1), Cap. 397

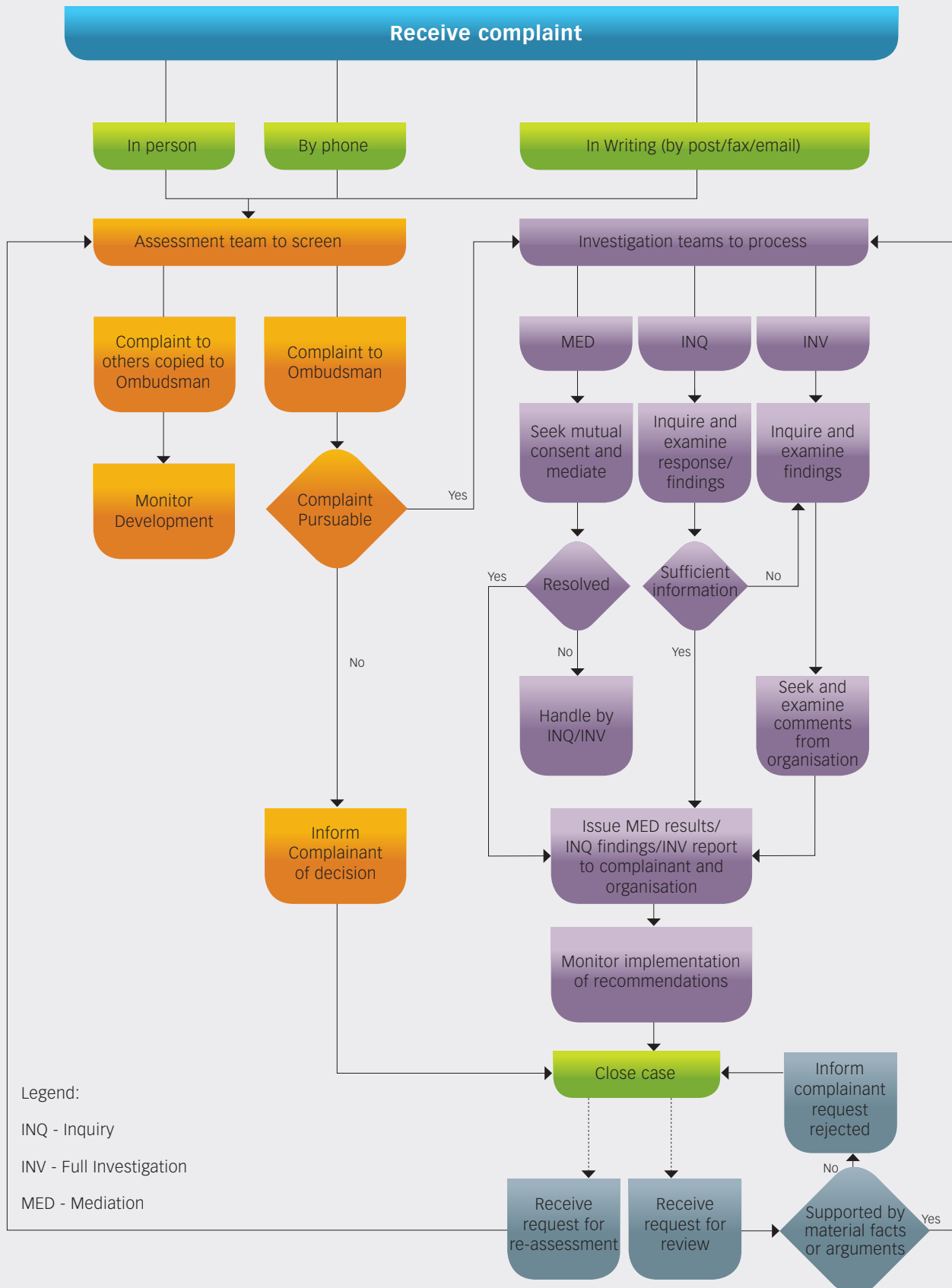
1. Complainant having knowledge of subject of complaint for more than two years
2. Complaint made anonymously
3. Complainant not identifiable or traceable
4. Complaint not made by person aggrieved or suitable representative
5. Subject of complaint and complainant having no connection with Hong Kong
6. Statutory right of appeal or remedy by way of legal proceedings (except judicial review) being available to complainant

Circumstances Where The Ombudsman may Decide not to Investigate – section 10(2), Cap. 397

1. Investigation of similar complaints before revealed no maladministration
2. Subject of complaint is trivial
3. Complaint is frivolous or vexatious or is not made in good faith
4. Investigation is, for any other reason, unnecessary

Flow Chart on Handling of a Complaint

Annex 4



Index of Direct Investigations and Selected Direct Investigation Assessments Completed

Annex 5

Direct Investigations	
OMB/DI/304	Regulation of Sale of Chilled Meat
OMB/DI/278	Control of Healthcare Professions Not Subject to Statutory Regulation
OMB/DI/316	"Special Procedures" of Buildings Department for Handling Unauthorised Building Works Cases Involving Celebrities
OMB/DI/254	Mechanism of Transport Department for Monitoring the Frequencies of Franchised Bus Services
OMB/DI/238	The Access to Information Regime in Hong Kong
OMB/DI/246	Public Records Management in Hong Kong

Direct Investigation Assessments (Selected)	
OMB/DI/222	Regulation of Chinese Medicines
OMB/DI/303	Leisure and Cultural Services Department's Selection Criteria and Points System for Hiring of Tutors and Rental of Cultural Facilities by Organisations
OMB/DI/319	Arrangements for Release of Hourly Voter Turnout Figures at Polling Stations
OMB/DI/315	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
OMB/DI/327	Rating and Valuation Department's Procedures for Collection of Information on Alteration of Property Layout
OMB/DI/336	Actions Taken by Lands Department and Leisure and Cultural Services Department Regarding a Football Pitch Construction Project
OMB/DI/351	Fire Services Department's Procedures for Handling "Fire Hazard Complaints"
OMB/DI/350	Housing Department's Processing of Applications for Claims by Public Rental Housing Tenants
OMB/DI/347	Fire Services Department's Mechanism of Compensation for Damage to Private Property in the Performance of Its Duties
OMB/DI/348	Buildings Department's Monitoring of the Safety of Operation of Tower Cranks Outside Construction Sites
OMB/DI/343	Lands Department's Follow-up Actions on a Report of Breach of Land Lease by Two Shops

* In order of completion date

Summaries of Direct Investigations Completed



Buildings Department ("BD")

Case No. OMB/DI/316

"Special Procedures" of BD for Handling Unauthorised Building Works Cases Involving Celebrities

(Investigation declared on 4 November 2013 and completed on 17 January 2014; full report available at www.ombudsman.hk)

Background

Since mid-2011, BD, which is responsible for dealing with unauthorised building works ("UBW"), had been using a set of special procedures for handling UBW cases involving celebrities ("celebrity cases"). Those procedures ("special procedures") were meant for answering public queries as soon as possible by conducting site inspection and investigation speedily "on the same day of receiving a UBW report", or "within a few days at the latest", to ascertain the existence of the alleged UBW items. On completion of its investigation, BD will take further actions in accordance with its general policy and procedures for handling UBW cases, i.e. it will not be particularly stringent or lenient in its actions just because a celebrity is involved.

2. As the public had expressed concern about the Administration's handling of celebrity cases, The Ombudsman initiated a direct investigation to identify any inadequacies in the "special procedures".

Our Findings and Comments

Too Slow and Passive in Announcing the New Procedures

3. We considered it justified for BD to adopt the "special procedures" so that it could quickly address queries from the public and the media about celebrity cases. Nevertheless, the "special procedures" are, after all, different from the procedures for handling ordinary UBW cases. The Administration should have promptly apprised the public of the details and rationale after deciding to adopt those procedures. It should not have waited over half a year, and until being asked by the media, before disclosing that a set of "special procedures" was already in place for dealing with celebrity cases. The Administration's announcement of the "special procedures" was indeed too slow and passive.

Lacking Written Guidelines on the New Procedures

4. By the date we completed this investigation, BD had already implemented the "special procedures" for more than two years and dozens of cases had been handled with those procedures. However, BD had never produced any written guidelines on them. Without such written guidelines, different officers might have different understanding of the work requirements, thereby prone to discrepancies in their ways of handling matters.

Often Delaying Enforcement Actions

5. In most celebrity cases, BD had managed to conduct a site inspection on the same day of receiving a UBW report, or within a few days at the latest, in accordance with the "special procedures". However, there were often delays in its subsequent enforcement actions. In some cases:

- (1) no advisory letters urging the owners to commence rectification works were issued for more than six months after the UBW items had been confirmed;

- (2) no statutory orders were issued more than one year after the grace period specified in the advisory letters; and
- (3) warning letters preceding prosecutions were only issued to the owners more than six months after the deadlines stated in the statutory orders.

6. The delays observed above were also commonly found in other UBW cases, not just those involving celebrities. Indeed, this has an impact on public safety.

Recommendations

7. The Ombudsman made the following recommendations to BD:

- (1) to take reference from this study and, when implementing new measures in future, announce the details and the reasons as soon as possible;
- (2) to document the “special procedures”, setting out the objective, rationale and working guidelines for staff to follow; and
- (3) to probe into the reasons for frequent delays in handling UBW cases and try to find a solution to the problem.



Constitutional and Mainland Affairs Bureau (“CMAB”)

Case No. OMB/DI/238

The Access to Information Regime in Hong Kong

(Investigation declared on 4 January 2013 and completed on 18 March 2014; full report available at www.ombudsman.hk)

Background

Freedom of information (“FOI”) or access to information (“ATI”) is a fundamental right of citizens. However, instead of having specific laws governing FOI or ATI, Hong Kong only has an administrative code, namely, the Code on Access to Information (“the Code”), introduced in 1995. The Code, which is currently under the charge of CMAB, requires bureaux and departments (“B/Ds”) to make available Government-held information to the public unless there is a reason specified by the Code to withhold it (“exemption provision”).

2. Despite CMAB’s noticeable efforts in recent years to improve the administration of the Code, complaint cases handled by our Office show that some B/Ds still do not fully understand the Code and do not properly apply its provisions. Besides, major developments have been taking place in many other jurisdictions to keep up with the public’s need and expectations for open and accountable government. These include legislation for FOI.

Summaries of Direct Investigations Completed

3. In light of the above, The Ombudsman initiated this direct investigation to further identify inadequacies/problems in Hong Kong's ATI regime, with reference taken from other jurisdictions. Our findings were as follows.

Findings

Lack of Legal Backing

4. Under Hong Kong's purely administrative regime, some of the key components of FOI legislation as found in other jurisdictions are completely absent, in particular, binding decisions by adjudicating body and sanctions for non-compliance, while other key components are not adequately manifested, for example, coverage of public organisations, proactive disclosure of information, regular reporting of work and advocacy for ATI.

Limited Coverage of the Code

5. The Code covers only two public organisations, with all other public organisations being free to choose whether to adopt the Code. And even if they decide to do so, they will still be outside the formal coverage of the Code and CMAB's oversight.

Restrictive Scope of Monitoring

6. The statistics monitored by CMAB merely cover public requests for information using the specified Code request form or making explicit reference to the Code, whereas the Code in fact stipulates that all requests for information, irrespective of whether they are made in the name of the Code, be dealt with in the spirit of the Code. Hence, there are conceivably a large number of information requests, B/Ds' handling of which is not monitored by CMAB.

Lack of Understanding and Inconsistent/Erroneous Application of the Exemption Provisions

7. Many B/Ds still do not fully understand the spirit and letter of the Code, as a result of which the exemption provisions are applied or not applied by B/Ds according to their own interpretations. There are,

in particular, inconsistencies among B/Ds, and often errors, in applying the exemption provisions "third party information" and "personal data (privacy)". There are insufficient guidelines and B/Ds have no access to authoritative advice in this regard.

Lack of Review

8. Unlike the exemption provisions in the FOI laws in many other jurisdictions, those in the Code do not have a specified term of validity. There is also no built-in mechanism for regular review of the exemption provisions in the Code, while other jurisdictions continually review and refine their categories of exemptions, to the effect of narrowing them down and reducing their term of validity for enhancing the public's ATI. Furthermore, there is a lack of established channel for CMAB to consult other experts and opinion leaders on its work relating to ATI to keep up with the community's expectations.

Inadequacies in Proactive Disclosure and Regular Reporting

9. At present, the information routinely provided by B/Ds to the public is general in nature and does not include administrative manuals, guidelines, instructions and other documents which have a bearing on B/Ds' decisions that affect the public. In other jurisdictions, proactive disclosure of such kinds of documents is required by law. Furthermore, compared with other jurisdictions' comprehensive quarterly/annual reports, the quarterly press releases issued by CMAB merely contain scanty statistical data not useful for the public's understanding of the Code and B/Ds' compliance with the Code.

Inadequate Promotion and Public Education

10. CMAB's designated website on the Code www.access.gov.hk provides meagre information about the Code. The websites of other jurisdictions contain guidance on various aspects of FOI, precedent cases to explain the FOI law and the exemption provisions, and the channels for the public to seek advice. CMAB's Announcements in the Public Interest, though appearing on radio/television not infrequently,

merely give rudimentary messages, without highlighting the underlying principles of the Code such as openness and transparency.

Recommendations

11. The Ombudsman recommended that Government consider introducing a law to underpin citizens' right of ATI, covering information held by both B/Ds and public organisations, to be overseen by an independent body with enforcement powers.

12. Before such a law is passed, Government should, *inter alia*:

- (1) draw up and implement a phased programme of subjecting public organisations to the Code and to CMAB's oversight;
- (2) review its definition of "information request" for the purpose of monitoring B/Ds' compliance with the Code, so as to cover those requests made without citing the Code;
- (3) provide advice and support to B/Ds to help them with interpretation and application of the Code, particularly for the exemption provisions;
- (4) explore ways and means by which B/Ds can have access to authoritative expert advice on difficult cases;
- (5) establish a mechanism for regularly reviewing the Code;
- (6) set up an independent body to advise CMAB on matters relating to ATI; and
- (7) make more information available to the public to facilitate their understanding and scrutiny of B/Ds' performance.



Department of Health ("DH")

Case No. OMB/DI/278

Control of Healthcare Professions Not Subject to Statutory Regulation

(Investigation declared on 21 January 2013 and completed on 18 October 2013; full report available at www.ombudsman.hk)

Background

From time to time there were media reports suggesting that public health might be at risk as a result of emergence of new types of treatments that have healthcare implications or involve substandard service provided by unqualified practitioners. Repeated incidents concerning improper beauty treatments also pointed to the need for tighter monitoring and review of the regulatory regime for healthcare professions. In this connection, The Ombudsman initiated a direct investigation to examine whether the current control mechanism is sufficient and identify areas for improvement.

Our Findings

2. DH all along adopted a risk-based approach to consider which healthcare profession should be statutorily regulated. The major considerations included the nature and scope of work of the professions and the risks associated with their practices. For unregulated healthcare professions, DH emphasised that voluntary society-based registration could be an effective alternative to statutory control.

Summaries of Direct Investigations Completed

3. However, our direct investigation revealed that DH failed to discharge such duties as it had not conducted systematic risk analysis and regular review on the need for putting any healthcare professions under statutory control. Also, DH had no monitoring mechanism on the operation of unregulated healthcare personnel and their societies.

Observations

4. While statutory control will allow DH to closely monitor qualified healthcare personnel and prevent unqualified personnel from practising, we accepted that not all healthcare professions need to be regulated by statutory control. However, DH must be vigilant on any risks and practices of unregulated healthcare personnel may bring to the public. From information provided by DH, no effective mechanism was in place to monitor the service standards of unregulated healthcare personnel and review the need for statutory regulation. We observed the following deficiencies:

- lack of comprehensive complaint information for risk analysis;
- lack of information exchange with relevant parties for collecting complaint information for risk analysis;
- no monitoring of society-based registration systems and service standards of their members;
- no review mechanism on the need to put unregulated healthcare personnel under statutory control; and
- lack of communication with societies of unregulated healthcare personnel.

Recommendations

5. The Ombudsman recommended DH to:
 - (1) collect relevant complaint statistics for regular risk-based analyses;
 - (2) consider providing guidance to societies of unregulated healthcare personnel on monitoring the qualification and service standard of their members;
 - (3) follow up cases related to malpractice of unregulated healthcare personnel;
 - (4) examine complaint statistics periodically for analysing whether more stringent regulation should be introduced;
 - (5) discuss with policy bureau to map out a long-term review strategy; and
 - (6) enhance communication with societies of unregulated healthcare personnel.
6. DH accepted all the recommendations.



Food and Environmental Hygiene Department ("FEHD")

Case No. OMB/DI/304

Regulation of Sale of Chilled Meat

(Investigation declared on 4 June 2013 and completed on 8 October 2013; full report available at www.ombudsman.hk)

Background

Shops selling chilled meat such as chilled pork and chicken must hold a Fresh Provision Shop Licence issued by FEHD. One of the licensing conditions is that chilled meat must be kept in a refrigerator and stored at a temperature between 0°C and 4°C. Violation of this licensing condition was, however, quite common. Some shops even appeared to be selling chilled meat fraudulently as fresh meat.

2. The Ombudsman, therefore, initiated a direct investigation to identify any inadequacies in FEHD's regulation of shops selling chilled meat.

Our Findings

Risks to Consumers Posed by Improper Storage

3. After consulting a microbiologist cum expert in infectious diseases, the Centre for Food Safety and the Department of Health, we came to the conclusion

that as much time has elapsed before chilled meat from slaughterhouses reaches retail shops, chilled meat must be kept at a low temperature at the shops; otherwise, pathogens on the meat surface would grow quickly and might produce heat-resisting toxins, posing a health risk to consumers.

Irregularities in Shops

4. Our investigation officers had inspected 46 shops selling chilled meat and found one or more types of irregularities in over 60% of them (29 shops). Such irregularities included chilled chickens being displayed in plastic boxes with no refrigeration, and chilled chickens being displayed without their wrappings on open shelves with no refrigeration, apparently for sale as fresh chickens. When we inspected those shops again a month later, we still found such irregularities in about half of them (21 shops).

FEHD's Regulatory System

5. FEHD categorised most of the shops selling chilled meat as "low risk" and so inspected those shops only once every 20 weeks. Where irregularities were found, FEHD's health inspector would issue a "verbal warning" to the licensee and advise him/her to rectify the irregularities within two days, after which a review inspection would be conducted. If the licensee failed to do so, FEHD would issue a "warning letter" valid for six months to him/her and allow six days for rectification. Should he/she receive a total of three "warning letters" during the six-month validity period, FEHD might cancel his/her licence. Nevertheless, if the health inspector found only "minor" irregularities, he/she would just issue an "informal verbal warning" instead of the aforesaid "verbal warning" and there would not be any review inspection.

Summaries of Direct Investigations Completed

Our Comments

6. FEHD imposed strict licensing conditions on chilled meat shops, requiring the operators to keep chilled meat at a low temperature. However, FEHD's monitoring of the shops was very lax. As a result, the stringent requirement was there for nothing. The inadequacies of the Department's regulation of sale of chilled meat included:

- infrequent inspections conducted only every five months, rendering the six-month validity period of its verbal warning virtually useless;
- the "informal verbal warnings" being almost totally ineffective as they had no binding effect and there was no follow-up mechanism;
- there being no clear guidelines as to the definition of "minor" irregularities, with enforcement action entirely up to individual officers' judgement;
- excessive grace periods of two days and six days allowed for rectification of irregularities; and
- too much leniency in not setting any restrictions on new licence applications from shop operators whose licences had been cancelled.

Our Recommendations

7. The Ombudsman made a total of eight recommendations to FEHD, which included:

- (1) to suitably raise the risk category of shops selling chilled meat and increase the frequency of inspections;
- (2) to define "minor" irregularities clearly;
- (3) to strictly require prompt action by shop operators to rectify their irregularities;
- (4) to impose restrictions on new applications from any person whose licence has been cancelled (or from his/her representative) for related licences in respect of the same premises;
- (5) to publicise information about shops with persistent irregularities; and
- (6) to enhance publicity and public education.



Government Records Service ("GRS")

Case No. OMB/DI/246

Public Records Management in Hong Kong

(Investigation declared on 4 January 2013 and completed on 17 March 2014; full report available at www.ombudsman.hk)

Background

Government records management and archiving of public records in Hong Kong are the responsibilities of GRS under a purely administrative regime. Elsewhere in the world, many jurisdictions have introduced specific laws to protect their archives, requiring proper creation and management of records, with penalty provisions to ensure compliance.

2. In light of the above, The Ombudsman initiated this direct investigation to determine whether Government's public records management is in keeping with modern standards of open and accountable administration and affords adequate protection of records for public access. Our findings were as follows.

Findings

Lack of Legal Backing

3. GRS' discharge of its responsibilities is not underpinned by law. It relies on compliance by bureaux and departments ("B/Ds") with the administrative manuals and instructions that it issues

from time to time. Despite the issuance of a set of mandatory records management requirements in 2009, GRS has no effective way of ensuring B/Ds' compliance, especially since its stipulations do not carry any legal force.

Lack of Effective Measures to Ensure Compliance

4. GRS monitors B/Ds' compliance mainly through B/Ds' self-assessment surveys and GRS' records management studies. However, the surveys may not accurately reveal B/Ds' real practices, while most studies covered only limited aspects of some records of the B/Ds concerned, and, therefore, hardly help ensure B/Ds' compliance with GRS' stipulations. There is no independent advisory body to enable public engagement and scrutiny.

5. Robust measures are also lacking for ensuring B/Ds' compliance with GRS' stipulations on records creation. GRS' current role in ensuring B/Ds' timely transfer of records for its appraisal is passive, and its monitoring is loose. GRS relies on B/Ds' initiative to report loss or unauthorised destruction of records. As some such incidents are not reported to GRS, the real magnitude of the problem is not known. Among the cases reported to GRS, very few of the wrongdoers were subject to disciplinary or administrative action.

Limited Coverage of Current Regime

6. With the exception of two, GRS' administrative requirements on records management do not cover the hundreds of public organisations, many of which provide important services to the community. In other jurisdictions, their public records laws or archives laws require the records of both government agencies and public organisations to be subject to the same level of scrutiny and accessibility by the public.

Summaries of Direct Investigations Completed

Workload and Staffing

7. There continues to be huge backlogs within GRS in vetting of records disposal schedules, appraisal of records and accessioning of records. Such backlogs affect efficient and effective records management. Yet, GRS has only got 12 Archivists, three Curators and 15 Executive Officers (“EOs”), and the EOs are non-professional officers subject to frequent turnover.

Lack of Transparency

8. Under the current regime, there is no systematic proactive dissemination of information to the public about individual B/Ds’ records management policy and practices.

Need for Review Regarding Records Closure and Disclosure

9. The current closure period of 30 years and the factors for consideration of disclosure have never been reviewed. This stands in stark contrast to the other jurisdictions which have carried out liberalising reforms in recent years to further facilitate public access and minimise obstacles to freedom of information.

Failure to Manage Electronic Records

10. Despite Government’s promotion of the use of electronic means of communication, most B/Ds are still using the print-and-file approach whereby staff are required to convert email records into printed form for management, storage and archive purposes. Government is fully aware that this approach is unreliable and prone to omission and loss, but has spent over ten years without even being able to specify a timetable for full implementation of an electronic recordkeeping system (“ERKS”). Such tardiness and inability to catch up with the times means that more records may fail to be captured and be lost forever.

Recommendations

11. The Ombudsman recommended that Government seriously consider introducing a law on public records and archives, covering not only B/Ds but also public organisations, particularly those providing essential services to the public.

12. Pending legislation, Government should also, *inter alia*:

- (1) make more efforts to urge public organisations to follow its requirements and standards on records management;
- (2) set up an independent body to advise GRS on records management policies, practices and actions;
- (3) review the staffing of GRS;
- (4) conduct regular auditing of the records management practices of each B/D to gauge the magnitude of the problem of loss and unauthorised destruction of records;
- (5) regularly disseminate information about the disposal of records of B/Ds so as to facilitate public understanding and enable public scrutiny of the B/Ds’ disposal (in particular, destruction) of records;
- (6) review its system of closure of records including the closure period; and
- (7) map out as soon as possible a clear and comprehensive implementation plan of ERKS with timelines.



Transport Department ("TD")

Case No. OMB/DI/254

Mechanism for Monitoring the Frequencies of Franchised Bus Services

(Investigation declared on 18 October 2012 and completed on 20 January 2014; full report available at www.ombudsman.hk)

Background

The Office of The Ombudsman received from time to time complaints from members of the public against TD for failing to properly monitor the operations of franchised bus companies. They alleged that certain bus routes were plagued with problems of delayed or even lost trips. In this connection, The Ombudsman initiated a direct investigation to examine the issue.

Laws and Regulations Governing Operations of Franchised Bus Companies

2. According to the Public Bus Services Ordinance (Cap 230), a franchised bus company shall, at all times during the franchise period, maintain to the satisfaction of TD a proper and efficient public bus service. It shall also keep proper records in respect of the operational data of its bus service and regularly

furnish such records to TD. Currently TD has granted six franchises to five franchised bus companies, which now operate different bus routes throughout the territory, delivering a total of around 1.4 billion passenger-trips on average annually.

3. If a franchised bus company fails to comply with the relevant laws or clauses of its franchise, the Chief Executive-in-Council may impose on the bus company a financial penalty or revoke its right to operate any specified routes or its franchise altogether.

Our Findings

Lost and Delayed Bus Trips

4. Between 2008 and 2012, the lost trips rates of one major bus company showed signs of decline in 2012, but those of other bus companies were on a rising trend.

5. Furthermore, our site inspections and scrutiny of the operational records of several bus routes revealed that there were delays in bus frequencies ranging from one to 30 minutes, with one to five minutes being most common (around 80%).

Inadequate Monitoring of Bus Service Frequencies

6. TD monitored the service frequencies of bus companies mainly through the following means:

- requiring the bus companies to conduct "system audits" on their own internal control systems;
- reviewing the operational records furnished by the bus companies; and
- conducting various forms of surveys and site inspections.

Summaries of Direct Investigations Completed

7. All bus companies are required to maintain records in respect of the following matters and furnish the verified records to TD after seven days:

- the time at which each bus is dispatched from the terminus on each route;
- the number of journeys and the total kilometres travelled daily by each bus on each route;
- the number of lost trips daily in relation to each route due to various reasons; and
- the number of bus drivers on duty each day and the number of reserve drivers each month.

8. TD had sufficient channels for gathering the operational data on bus service frequencies, and the data collected were quite substantial and comprehensive. However, TD had not fully utilised these records to make in-depth examination into issues of serious public concerns, such as delayed bus trips and the dispatch of special buses.

Discrepancy between TD's Definition of Lost Trips and Public Expectations

9. A service schedule was issued for each bus route specifying the service level to be maintained by the bus company, including the service hour and frequencies in different time periods. According to the definition currently adopted by TD, lost trips occurred when the number of journeys actually travelled each day was less than the number specified in the service schedule for that bus route.

10. In the event of contingency or when temporary traffic arrangements were implemented due to festivals or special occasions, bus companies would adjust the frequencies of bus services according to actual needs. Special buses might also be dispatched directly to an intermediate bus stop to clear the backlog of passengers there. These special buses

were counted into the frequencies of bus services and so no lost trips would incur as a result.

11. TD considered that delays in bus journeys would not necessarily result in lost trips. While delays were undesirable, it would still be acceptable if the bus companies, in cases where individual buses failed to leave on schedule, could take remedial actions and arrange for the next bus on the schedule to depart as soon as possible to avoid lost trips.

12. We considered delayed bus services as including the following four situations:

- (1) There were lost trips at certain time periods, and the total number of journeys travelled on that route fell short of the required number for that day, resulting in lost trips on that day as a whole;
- (2) There were lost trips at certain time periods, but the frequencies of bus services in other periods were greater than the required number, resulting in no lost trips on that day as a whole;
- (3) Some buses skipped certain bus stops under special arrangements; and
- (4) A bus failed to arrive at a bus stop on time and the delay was roughly equivalent to the scheduled interval between two buses.

13. In TD's view, only situation (1) was regarded as lost trips. However, from the passengers' perspective, situations (1) to (4) should all be regarded as lost trips. There was obviously a significant discrepancy between TD's definition of lost trips and its view on delayed services on the one hand, and public expectations on the other.

14. We considered that for the passengers, serious delays and special bus trip arrangements were no different from lost trips. Hence, TD should quickly review its definition of lost trips and consider dividing a day into different time periods for the purpose of calculating the number of lost trips.

Failure to Solve Traffic Congestion

15. Traffic congestion was one of the two major causes of lost bus trips. Between 2008 and 2012, three major bus companies recorded an increasing trend in their lost trip rates caused by traffic congestion. Increase in the number of vehicles and illegal parking of vehicles might lead to traffic congestion. We considered that TD should closely monitor the situation and assess whether the increasing number of vehicles would affect the travel speed of buses. It should also review the state of illegal parking and its impact on buses jointly with the bus companies and other Government departments concerned from time to time in order to work out improvement measures.

16. In addition, TD should step up its publicity of bus route rationalisation and let the public know about the significance and advantages of such arrangements.

Too Slow in Spotting the Problem of Shortage of Bus Drivers

17. Another major cause of lost bus trips was the shortage of drivers. The problem of lost trips caused by the shortage of bus drivers was particularly serious in 2010 and 2011 and a leading bus company was most seriously affected. Meanwhile, the same problem in another bus company was becoming more serious in 2011 and 2012.

18. Although it is the bus companies' responsibility to employ adequate drivers, TD should note the problem at an early stage and follow up quickly whenever there was any hint of a shortage of bus drivers among the bus companies.

System of Sanctions Ineffective

19. While a system of sanctions was in place in case the bus companies violated the relevant laws or clauses of their franchise, the fines lacked deterrent effect, and the revocation of individual routes or the

franchise altogether would not help to improve bus services in most cases. Moreover, it would take some time before the above statutory penalty could be imposed. In handling the problem of lost bus trips, TD effectively only relied on the issuance of reminders or warning letters, with doubtful efficacy.

Lack of Clear Guidelines on Handling Bus Complaints

20. As regards complaints about bus services relating to irregular service frequencies, lost trips or delays, TD would require the bus companies concerned to give an explanation and submit their relevant operational records for examination. Depending on the situation, TD might also verify the information furnished by the bus companies and conduct surveys on the bus routes.

21. We understood that resource constraints meant that TD officers could not possibly verify all the information provided by the bus companies or arrange for route surveys on each and every complaint. However, if a certain route had already attracted a large number of complaints, or when a complainant had lodged the same complaints repeatedly, TD should consider verifying the information provided by the bus company. Its reply to the complainant should give a full explanation in order to address the complainant's concerns.

22. Currently, TD did not have any guidelines to help its officers to determine in what circumstances verification of information or site investigation would be warranted. We were of the opinion that TD should consider drawing up such guidelines.

23. In replying to complainants, TD should endeavour to provide sufficient and specific information and data. A detailed explanation of its follow-up actions could also help to clear their doubts.

Recommendations

24. The Ombudsman made 14 recommendations to TD, which included:

- (1) to quickly review its definition of lost trips and consider calculating lost trip rates separately for different time periods;
- (2) to examine and conduct relevant data analysis in respect of the problem of delayed bus trips. Where necessary, TD should require the bus companies to include those relevant data as well in their regular submission of operational records;
- (3) to gauge closely the effect of the increase in the number of vehicles on traffic congestion and the travel speed of buses;
- (4) to step up publicity for bus route rationalisation plans to facilitate their implementation and let the public understand the importance and advantages of such plans;
- (5) to continue to monitor the problem of bus drivers shortage in the bus companies. Once there is a hint of such shortage, it should take follow-up actions as soon as possible and urge the bus companies concerned to solve the problem promptly;
- (6) to review the current system of sanctions; and
- (7) to consider drawing up internal guidelines to help its officers to determine in what circumstances verification of information and site investigations should be arranged.

Index of Cases Concluded by Full Investigation

Annex 7

Case No.	Complaint	Overall Conclusion	No. of Recommendations
Agriculture, Fisheries and Conservation Department			
2013/1722A	(1) Failing to prosecute a small house developer for damaging the natural habitat of a protected animal species in a river within Government land (unsubstantiated); (2) Failing to hold the developer responsible for felling trees on Government land along the river (unsubstantiated); (3) Misleading villagers into thinking that the natural habitat of a protected animal species was unaffected by forging photographs (unsubstantiated); and (4) Failing to assess the impact of the construction works and the future household sewage on the river environment (unsubstantiated)	Unsubstantiated	0
Architectural Services Department			
2013/0063A	Delay in re-opening a refuse collection point	Substantiated	2
2013/1327E	Shirking responsibility in handling a request for removal of four concrete pillars on a pavement	Unsubstantiated	0
2013/1848B	Delay in conducting repair works for two public toilets for the disabled	Substantiated	0
Buildings Department			
2012/3568C	Delay and buck-passing in handling a complaint about blocking of a pedestrian crossing	Unsubstantiated	1
2012/3657A	Delay in handling a water seepage complaint	Unsubstantiated	0
2012/3950A	Failing to take enforcement action against unauthorised radio base stations on the rooftops of two village houses	Unsubstantiated	1
2012/4105B	Delay in taking further enforcement action against an unauthorised structure after issuing a demolition order	Partially substantiated	1
2012/5396A	(1) Registration of a Warning Notice without the owner's prior knowledge (unsubstantiated); and (2) Failing to answer queries properly (partially substantiated)	Partially substantiated	0
2012/5694A	Failing to effectively control a food shop's unauthorised building works extending from private land to Government land	Partially substantiated	1

Index of Cases Concluded by Full Investigation

Case No.	Complaint	Overall Conclusion	No. of Recommendations
2013/0089A	(1) Lack of communication and coordination with the Lands Department, thus causing the suspension of redevelopment works of a cinema (unsubstantiated); and (2) Delay in approving building plans, thereby delaying the resumption of redevelopment works of the cinema (unsubstantiated)	Unsubstantiated	0
2013/0406	Failing to take enforcement action against unauthorised building works	Partially substantiated	1
2013/0410B	Failing to take enforcement action against the unauthorised building works in respect of a wall stall	Unsubstantiated	0
2013/0471B	Failing to take proper action on complaints about smoke stop doors and to abate the fire hazard expeditiously	Unsubstantiated	1
2013/0552(I)	(1) Failing to provide the complainant with a copy of one of the building plans (unsubstantiated); and (2) Failing to discharge its duty to enforce the Buildings Ordinance without the lost building plan (unsubstantiated)	Unsubstantiated	0
2013/0620A	Failing to take enforcement action against the unauthorised building works and radio base stations on the rooftop of a building	Unsubstantiated	0
2013/0642A	Impropriety in handling a complaint about the obstruction of a village road caused by unauthorised building works, thus disabling the function of the road as an emergency vehicular access and putting the villagers' safety at risk	Unsubstantiated	0
2013/0667B	Failing to take proper enforcement action against the unauthorised building works items of a restaurant	Unsubstantiated	0
2013/0779B	Shirking responsibility in handling a water seepage complaint	Unsubstantiated	0
2013/0816A	Shirking responsibility in handling a complaint about blockage of access	Unsubstantiated	0
2013/0859B	(1) Shirking responsibility in handling a water seepage complaint (unsubstantiated); and (2) Refusing to confirm in writing the source of water seepage (unsubstantiated)	Unsubstantiated	0

Case No.	Complaint	Overall Conclusion	No. of Recommendations
2013/1263(I)	(1) Failing to have an illegal shopfront extension removed despite an advisory letter issued to the owner of the extension (unsubstantiated); and (2) Failing to answer the complainant's enquiry about whether a removal order had been issued (substantiated)	Partially substantiated	0
2013/1588A	Failing to take enforcement action against an unauthorised building works item and delay in giving a reply	Partially substantiated	0
2013/1596B	(1) Mishandling a water seepage complaint (unsubstantiated); and (2) Delay in handling a complaint about unauthorised building works and subdivided flats (substantiated)	Partially substantiated	0
2013/1732	Improperly issuing an occupation permit for a multi-storey building without noticing that there were unauthorised alterations to the main doors of certain flats in the building	Unsubstantiated	0
2013/1887A	Delay in handling a complaint about unauthorised canopies	Unsubstantiated	0
2013/2036(I)	(1) Failing to discharge the duty to ensure that the repair works carried out by the general registered contractor appointed by the complainant had complied with statutory orders (unsubstantiated); and (2) Delay in replying to the complainant's request for full set of documents kept by the Department in respect of the repair works (unsubstantiated)	Unsubstantiated	0
2013/2050(I)	Refusing to provide certain information about a Notice of Appeal issued by the owner of an unauthorised building works item	Partially substantiated	2
2013/2081A	Failing to take enforcement action against unauthorised building works	Unsubstantiated	0
2013/2103B	Shirking responsibility in handling a complaint about water seepage and blockage of drainage pipes	Unsubstantiated	1
2013/2168A	Delay in taking enforcement action against unauthorised building works items	Substantiated	1
2013/2187C	Mishandling a water seepage complaint	Unsubstantiated	0

Index of Cases Concluded by Full Investigation

Case No.	Complaint	Overall Conclusion	No. of Recommendations
2013/2794A	Failing to take timely and effective enforcement action against an unauthorised columbarium and other unauthorised building works at a temple	Unsubstantiated	2
2013/2836A	Failing to take timely and effective enforcement action against an unauthorised columbarium and other unauthorised building works at a temple	Unsubstantiated	2
2013/2887A	Shirking responsibility in taking enforcement action against unauthorised cabinets built in the public corridors in a building	Unsubstantiated	1
2013/2901	Failing to properly inspect and take action about a suspected overloaded flat	Unsubstantiated	0
2013/2959A	Failing to control the unauthorised building works of a shop on a pavement	Substantiated	1
2013/2989A	Failing to control a stall illegally built on a pavement	Unsubstantiated	0
2013/3266B	Mishandling a water seepage complaint	Partially substantiated	0
2013/3299B	(1) Mishandling a water seepage complaint (unsubstantiated); (2) Failing to inform the complainant of the progress of the water seepage investigation (substantiated other than alleged); and (3) Shirking responsibility in handling a complaint about water dripping at the external wall of a building (partially substantiated)	Partially substantiated	2
2013/3304A	Shirking responsibility in handling a complaint about unauthorised canopies erected by the operators of two fixed-pitch cooked food stalls	Unsubstantiated	0
2013/3317B	Mishandling a water seepage complaint	Unsubstantiated	2

Case No.	Complaint	Overall Conclusion	No. of Recommendations
2013/3335B	(1) Delay in handling a water seepage complaint (unsubstantiated); (2) Failing to conduct a ponding test at the master bathroom of the premises immediate above the complainant's (unsubstantiated); and (3) Unreasonably ending the water seepage investigation (unsubstantiated)	Unsubstantiated	1
2013/3820B	(1) Mishandling a water seepage complaint (partially substantiated); (2) Failing to monitor the outsourced consultant company in conducting water seepage tests (unsubstantiated); and (3) Failing to reply to the complainant regarding his water seepage complaint (inconclusive)	Partially substantiated	1
2013/3858B(I)	Delaying to process request for internal guidelines on handling water seepage complaints, and refusing the request	Inconclusive	1
2013/3955A	(1) Delay in handling complaints (unsubstantiated); and (2) Shirking responsibility in taking enforcement action (unsubstantiated)	Unsubstantiated	1
2013/3986A	Delay and shirking responsibility in taking enforcement action against the illegal enclosure of a balcony of a New Territories Exempted House	Unsubstantiated	0
Civil Engineering and Development Department 			
2013/1327D	Shirking responsibility in handling a request for removal of four concrete pillars on a pavement	Partially substantiated	0
Companies Registry 			
2013/1132	(1) Allowing a company to submit bogus information for filing in the registry (unsubstantiated); and (2) Not following up the complainant's complaints against the company's breach of the Companies Ordinance (partially substantiated)	Partially substantiated	2

Index of Cases Concluded by Full Investigation

Case No.	Complaint	Overall Conclusion	No. of Recommendations
Correctional Services Department 			
2012/1265	Making haircut announcement in Chinese only, thereby depriving expatriate inmates of the opportunity for a haircut	Inconclusive	0
2012/1300	(1) Losing the complainant's denture (inconclusive); and (2) Delay in arranging for the complainant to attend a dental appointment after the incident (unsubstantiated)	Unsubstantiated	0
2012/5407	(1) Unreasonably declining the complainant's request for reporting to the Police that he had been assaulted by another inmate (unsubstantiated); (2) Failing to properly follow up his report that he had been the victim of a frame-up (unsubstantiated); (3) Unreasonably demanding him to withdraw the aforementioned report in exchange for allowing him to transfer to another group of inmates (unsubstantiated); and (4) Failing to fairly handle another frame-up in which he was the victim (unsubstantiated)	Unsubstantiated	0
2013/0697	Improperly opening, reading and stopping an expatriate inmate's letters to his consulate and a non-government organisation, and coercing him into destroying the letters afterwards	Partially substantiated	1
2013/0698	Denying an inmate's request to complain to a visiting Justice of the Peace	Unsubstantiated	0
2013/2776	Unreasonably refusing the complainant's request that an assault on him by a fellow inmate be reported to the Police	Unsubstantiated	1
Customs and Excise Department 			
2013/2131	Failing to follow up a complaint about the composition/ quality of petrol supplied by a petrol filling station	Substantiated	2
2013/3135	Unreasonably conducting personal search on the complainant and poor staff attitude	Inconclusive	0

Case No.	Complaint	Overall Conclusion	No. of Recommendations
Department of Health 			
2013/2888	(1) Lack of clear guidelines and direct enquiry hotlines to health workers on the Health Care Voucher Scheme (unsubstantiated); (2) Inability to detect the potential problem of the Scheme at an early stage (unsubstantiated); (3) Lack of clear objectives when conducting investigation upon discovery of problematic reimbursements, which had led to nuisance to the clinic's patients and wastage of time and resources of the clinic (unsubstantiated); (4) Unreasonably demanding a clinic to refund the money already reimbursed (unsubstantiated); and (5) Withholding other reimbursements that were in order without prior notification to the clinic (partially substantiated)	Partially substantiated	0
Drainage Services Department 			
2013/0183A	(1) Unreasonably deciding to carry out drainage works on a narrow village access road in front of the complainant's house and failing to resolve the obstruction problem caused by the drainage works (unsubstantiated); and (2) Failing to widen the narrow village access road in the drainage works project (unsubstantiated)	Unsubstantiated	0
2013/0577A	Shirking responsibility in handling a request for covering a drainage channel and a complaint about flooding	Unsubstantiated	0
2013/2253(I)	Refusing to provide a copy of an investigation report on the collapsed section of a road	Substantiated	0
2013/2747A	Mishandling a complaint about street obstruction and discharge of waste water by shops	Unsubstantiated	0

Index of Cases Concluded by Full Investigation

Case No.	Complaint	Overall Conclusion	No. of Recommendations
Environmental Protection Department			
2012/2300	(1) Failing to review/update the Practice Note in respect of the requirements and standards for septic tank/soakaway systems (unsubstantiated); (2) Wrongly quoting the Practice Note as the authoritative document in assessing the statutory minimum distance between septic tank/soakaway systems and a water body in the New Territories (unsubstantiated); and (3) Providing improper advice to the Town Planning Board with regard to a planning application in the New Territories (unsubstantiated)	Unsubstantiated	0
2012/5026B	(1) Failing to tackle air pollution problem caused by construction materials shops (unsubstantiated); and (2) Failing to attend the relevant District Council meetings (unsubstantiated)	Unsubstantiated	0
2013/0158A	Failing to take effective action to tackle the environmental nuisance caused by sewage discharge from some squatter huts	Substantiated	1
2013/0366	Delay in following up the complainant's report on an idling motor vehicle	Partially substantiated	1
2013/0463B	Improperly processing an application for building a New Territories Exempted House with a proposed septic tank system in close proximity to a beach	Partially substantiated	1
2013/0931A	Failing to control the noise nuisance caused by an illegal barbecue establishment	Unsubstantiated	1
2013/0934(I)	Unreasonably refusing to provide information about the emission of fumes by some restaurants	Partially substantiated	3
2013/1576A	Failing to fully respond to the complainant's queries about the environmental nuisance caused by an illegal barbecue establishment and lax site inspections	Partially substantiated	1

Case No.	Complaint	Overall Conclusion	No. of Recommendations
2013/1722B	<ul style="list-style-type: none"> (1) Failing to prosecute a small house developer for damaging the natural habitat of a protected animal species in a river within Government land (unsubstantiated); (2) Misleading villagers into thinking that the natural habitat of the protected animal species was unaffected by forging photographs (unsubstantiated); and (3) Failing to assess the impact of the construction works and the future household sewage on the river environment (unsubstantiated) 	Unsubstantiated	0
2013/1735A	Improperly handling a complaint about disposal of garbage and construction waste	Unsubstantiated	0
2013/1809B	Failing to properly handle complaints about disposal of construction waste	Unsubstantiated	0
2013/2747B	Mishandling a complaint about street obstruction and discharge of waste water by shops	Unsubstantiated	0
2013/3519	<ul style="list-style-type: none"> (1) Failing to require the proponent of a development project to provide an Environmental Impact Assessment ("EIA") Report in Chinese (unsubstantiated); (2) Failing to provide adequate time to consult affected parties on the EIA Report (unsubstantiated); and (3) Failing to provide simultaneous interpretation for observers at an Advisory Council on the Environment meeting (unsubstantiated) 	Unsubstantiated	0
2013/3520	<ul style="list-style-type: none"> (1) Failing to require the proponent of a development project to provide an EIA Report in Chinese (unsubstantiated); (2) Failing to provide adequate time to consult affected parties on the EIA Report (unsubstantiated); and (3) Failing to provide simultaneous interpretation for observers at an Advisory Council on the Environment meeting (unsubstantiated) 	Unsubstantiated	0

Index of Cases Concluded by Full Investigation

Case No.	Complaint	Overall Conclusion	No. of Recommendations
2013/3558A	Failing to accept the representations submitted by the complainants and to inform them of the details of a meeting	Unsubstantiated	0
2013/3559A	Failing to accept the representations submitted by the complainants and to inform them of the details of a meeting	Unsubstantiated	0
Equal Opportunities Commission			
2012/5806A	Being perfunctory in investigating a complaint, obstructing the complaint intentionally and unreasonably asking the complainant to provide a photograph of him in a wheelchair	Unsubstantiated	2
Estate Agents Authority			
2012/5437	(1) Delay and impropriety in handling a complaint about the misconduct of two property agents (substantiated); and (2) Refusing to disclose investigation progress (substantiated)	Substantiated	5
2013/1899A	Improperly handling the complainant's application for renewal of his salesperson's licence and delay in revoking his existing licence	Partially substantiated	2
Fire Services Department			
2012/4620A	Conniving with the parking of vehicles loaded with cylinders containing dangerous gases in an open area	Unsubstantiated	1
2013/0471A	Failing to take proper action on complaints about smoke stop doors and to abate the fire hazard expeditiously	Unsubstantiated	2
2013/0642B	Impropriety in handling a complaint about the obstruction of a village road caused by unauthorised building works, thus disabling the function of the road as an emergency vehicular access and putting the villagers' safety at risk	Unsubstantiated	0
2013/0816B	Shirking responsibility in handling a complaint about blockage of access	Unsubstantiated	0
2013/1476A	(1) Failing to follow up on complaints about repeated false fire alarms in the complainant's public housing building (unsubstantiated); and (2) Failing to reply promptly to the complainant (unsubstantiated)	Unsubstantiated	0

Case No.	Complaint	Overall Conclusion	No. of Recommendations
2013/1904C	Mishandling a complaint about obstruction of an emergency vehicular access caused by illegal extension of business area by food premises	Unsubstantiated	0
2013/2081B	Failing to take enforcement action against unauthorised building works which might affect fire safety	Unsubstantiated	0
2013/2408(I)	Refusing to provide the complainant with the number of elderly people being sent to hospital by ambulance from an elderly home	Unsubstantiated	0
2013/2689B	Failing to take enforcement action against obstruction of an emergency vehicular access	Unsubstantiated	0
2013/2887B	Shirking responsibility in taking enforcement action against obstruction to operation of fire service installation by unauthorised cabinets built in the public corridors in a building	Unsubstantiated	1
2013/3336	(1) Delay of an ambulance in taking the complainant's wife to hospital (partially substantiated); and (2) An ambulanceman's poor attitude towards the complainant (inconclusive)	Partially substantiated	1
Food and Environmental Hygiene Department 			
2012/3657B	(1) Delay in handling a water seepage complaint (substantiated); (2) Being inconsistent in informing the complainant where the humidity test should be conducted (unsubstantiated); (3) Denying that the source of seepage was polluted water from the illegal/defective structures at the restaurant above the complainant's premises and insisting that it was only rainwater which would not cause an environmental nuisance (inconclusive); and (4) Failing to inform the complainant of the progress of investigation (substantiated)	Partially substantiated	1
2012/4136	Failing to take enforcement action against the obstruction of passages in a market	Substantiated	1

Index of Cases Concluded by Full Investigation

Case No.	Complaint	Overall Conclusion	No. of Recommendations
2012/4603	Failing to take enforcement action against extensive display of unauthorised banners by two organisations	Partially substantiated	0
2012/4700	(1) Failing to take effective enforcement action against illegal extension of a restaurant and two cooked food stalls (substantiated); and (2) Failing to keep the complainant informed of the progress of his complaint case (substantiated)	Substantiated	1
2012/4729A	Failing to take enforcement action against some shops which illegally extended their business areas	Partially substantiated	1
2012/4897A	Shirking responsibility in handling a complaint about obstruction caused by illegal hawkers	Unsubstantiated	1
2012/5024	Failing to take effective enforcement action against pavement obstruction caused by a fruit shop	Partially substantiated	2
2012/5026A	Failing to tackle pavement obstruction and environmental hygiene problems caused by construction materials shops	Partially substantiated	1
2012/5104	Failing to take enforcement action against extensive display of unauthorised banners by two organisations	Partially substantiated	0
2012/5680(I)	(1) Delay in following up a food complaint and staff failing to wear uniform when performing duties (partially substantiated); (2) Failing to collect evidence relevant to a food complaint (unsubstantiated); (3) Failing to prosecute the food premises concerned (unsubstantiated); (4) Unreasonably refusing to provide the complainant with the investigation report (substantiated other than alleged); and (5) Providing inconsistent replies to the complainant (partially substantiated)	Partially substantiated	3
2012/5694B	Failing to effectively control an unlicensed food shop	Partially substantiated	2

Case No.	Complaint	Overall Conclusion	No. of Recommendations
2013/0024(I)	(1) Delay in providing the laboratory test result of a food complaint (unsubstantiated); (2) Bias in handling the food complaint (unsubstantiated); (3) Failing to notify the public of the latest information regarding food safety in its website (inconclusive); (4) Unreasonably refusing to provide the guidelines in handling food complaints (substantiated); (5) Failing to respond to the complainant's enquiries about its handling of food complaints (substantiated); and (6) Failing to collect food specimens for examination when handling a subsequent food complaint involving the same type of food (unsubstantiated)	Partially substantiated	3
2013/0063B	(1) Delay in re-opening a refuse collection point (substantiated); and (2) Failing to tackle the environmental nuisance caused by refuse dumped outside the refuse collection point (partially substantiated)	Substantiated	1
2013/0158B	Failing to take effective action to tackle the environmental nuisance caused by sewage discharge from some squatter huts	Unsubstantiated	1
2013/0246	Failing to promptly collect food specimens for laboratory test when handling a food complaint	Substantiated	2
2013/0390	Failing to take enforcement action against extensive display of unauthorised banners by two organisations	Partially substantiated	0
2013/0410A	Failing to properly follow up a complaint about the environmental nuisance caused by a licensed wall stall	Unsubstantiated	0
2013/0443	Ineffective control of illegal extension of business area by a fixed-pitch cooked food stall	Substantiated	2
2013/0450A	Failing to take enforcement action against extensive display of unauthorised banners by two organisations	Partially substantiated	0
2013/0508	Failing to take action against illegal subletting of market stalls	Substantiated	1

Index of Cases Concluded by Full Investigation

Case No.	Complaint	Overall Conclusion	No. of Recommendations
2013/0540A	Failing to resolve the littering problem at the View Point Car Park of Tsing Ma Control Area	Unsubstantiated	0
2013/0576	Failing to take enforcement action against extensive display of unauthorised banners by two organisations	Partially substantiated	0
2013/0624(I)	(1) Wrong issuance of a nuisance notice to the complainant (unsubstantiated); (2) Refusing to provide the photographs taken inside the premises below the complainant's during the investigation of a water seepage complaint (substantiated); and (3) Repeatedly requesting to conduct water seepage tests in the complainant's premises (unsubstantiated)	Partially substantiated	2
2013/0667A	Lax enforcement action against the illegal operation of a restaurant without licence	Unsubstantiated	0
2013/0727	Failing to take enforcement action against extensive display of unauthorised banners by two organisations	Partially substantiated	0
2013/0760A	(1) Failing to take effective enforcement actions against illegal extension of business areas by some restaurants (partially substantiated); (2) Failing to issue press releases about the breach of laws by restaurants with a provisional licence/without a licence (partially substantiated); and (3) Issuing licences to restaurants of which their former licences had been cancelled due to repeated breaches of laws (unsubstantiated)	Partially substantiated	0
2013/0779A	(1) Shirking responsibility in handling a water seepage complaint (unsubstantiated); (2) Delay in handling a water seepage complaint (substantiated other than alleged); and (3) Poor staff attitude (inconclusive)	Substantiated other than alleged	1
2013/0859A	(1) Shirking responsibility in handling a water seepage complaint (unsubstantiated); and (2) Refusing to confirm in writing the source of water seepage (unsubstantiated)	Unsubstantiated	0

Case No.	Complaint	Overall Conclusion	No. of Recommendations
2013/0879B	Failing to properly follow up and shirking responsibility in respect of illegal parking and rental of bicycles at a certain place	Unsubstantiated	1
2013/0894	Failing to take enforcement action against extensive display of unauthorised banners by two organisations	Partially substantiated	0
2013/0915	Failing to take enforcement action against extensive display of unauthorised banners by two organisations	Partially substantiated	0
2013/0931B	Failing to control the illegal operation of food premises at a barbecue establishment	Unsubstantiated	2
2013/1036A	Failing to take enforcement action and shirking responsibility in respect of obstruction caused by a curtain shop	Partially substantiated	1
2013/1085	Failing to take effective enforcement action against illegal extension and obstruction of public places by two grocery stores	Partially substantiated	1
2013/1304	Failing to take enforcement action against obstruction of passages by stall tenants in a market	Substantiated	1
2013/1360	Failing to resolve the problem of water dripping from air-conditioners	Substantiated other than alleged	0
2013/1472	Unreasonably requiring the complainant to relocate her newspaper stall	Unsubstantiated	0
2013/1504B	Failing to resolve the problem of illegal parking of bicycles	Unsubstantiated	0
2013/1576B	Delay in fully responding to the complainant's queries about the environmental nuisance caused by an illegal barbecue establishment	Unsubstantiated	1
2013/1596A	Mishandling a water seepage complaint	Unsubstantiated	0
2013/1735B	Improperly handling a complaint about disposal of garbage and construction waste	Unsubstantiated	0
2013/1809A	Failing to properly handle complaints about disposal of domestic refuse and construction waste	Unsubstantiated	1
2013/1848A	Delay in conducting repair works for two public toilets for the disabled	Unsubstantiated	0

Index of Cases Concluded by Full Investigation

Case No.	Complaint	Overall Conclusion	No. of Recommendations
2013/1861B	(1) Improperly issuing Public Subscription Permits to organisations for carrying out charitable fund-raising activities in public places at the same time and at the same or nearby locations (unsubstantiated); and (2) Improperly issuing Public Subscription Permits with a prolonged period of validity (unsubstantiated)	Unsubstantiated	0
2013/1887B	Failing to tackle the obstruction of walkways by shops and restaurants	Partially substantiated	1
2013/1890	(1) Asking the complainant's 12-year-old son ("the Boy") for consent to enter the flat in the absence of any adult household member for inspection of air-conditioners (unsubstantiated); (2) Entering the flat with shoes on, thus making the floor dirty (unsubstantiated); (3) Asking the Boy to produce his identity card for record purpose (unsubstantiated); (4) Requesting the Boy to switch on the air-conditioners, knowing that he could not do so without climbing up and down (unsubstantiated); and (5) Treading on the complainant's bed (unsubstantiated)	Unsubstantiated	3
2013/1904A	Mishandling a complaint about obstruction of an emergency vehicular access caused by illegal extension of business area by food premises	Partially substantiated	0
2013/2082	Failing to properly handle a complaint of water dripping from air-conditioners	Partially substantiated	1
2013/2103A	Shirking responsibility in handling a complaint about water seepage and blockage of drainage pipes	Partially substantiated	2
2013/2153	(1) Lax monitoring of a public market management contractor (unsubstantiated); (2) Disclosing the identity of the complainant to other market stall tenants (substantiated); (3) Unreasonably issuing a warning letter to a market stall tenant (unsubstantiated); and (4) Failing to reply to the complainant's enquiries (unsubstantiated)	Partially substantiated	0
2013/2187A	Mishandling a water seepage complaint	Unsubstantiated	0

Case No.	Complaint	Overall Conclusion	No. of Recommendations
2013/2307	Failing to take effective enforcement action to tackle the problem of water dripping from air-conditioners in a multi-storey building	Partially substantiated	1
2013/2419	Failing to properly investigate a water dripping case	Substantiated	1
2013/2680A	Failing to take enforcement action to tackle the problem of illegal extension of business area and obstruction of pedestrian passageway caused by the stall operators of a cooked food market	Substantiated	3
2013/2689A	Failing to take effective enforcement action against illegal hawking activities on an emergency vehicular access	Partially substantiated	1
2013/2747C	Mishandling a complaint about street obstruction and discharge of waste water by shops	Partially substantiated	2
2013/2812A	(1) Failing to seriously and promptly follow up a complaint about illegally displayed banners (unsubstantiated); and (2) Condoning the illegal display of banners by a District Councillor by leaking information on a removal operation to her (unsubstantiated)	Unsubstantiated	2
2013/2959B	Failing to control a shop operator's illegal hawking activity on a pavement	Partially substantiated	1
2013/2989B	Failing to control a stall illegally built on a pavement	Unsubstantiated	1
2013/3223A	(1) Failing to clear the rubbish on a flyover resulting in blocked drains and flooding (unsubstantiated); (2) Lying about not having received a complaint about the rubbish problem (substantiated other than alleged); (3) Lying about having conducted a joint cleansing operation with the Police on the flyover (unsubstantiated); (4) Failing to resolve the rubbish problem earlier, thus causing flooding on the flyover (unsubstantiated); (5) Shirking responsibility in resolving the flooding problem on the flyover (unsubstantiated); and (6) Unreasonably asking the complainant to inspect the site or to provide photographs of the locations of the drainage blockage or the rubbish (inconclusive)	Unsubstantiated	0

Index of Cases Concluded by Full Investigation

Case No.	Complaint	Overall Conclusion	No. of Recommendations
2013/3266A	Mishandling a water seepage complaint	Partially substantiated	0
2013/3299A	(1) Mishandling a water seepage complaint (unsubstantiated) (2) Failing to inform the complainant of the progress of the water seepage investigation (unsubstantiated); and (3) Shirking responsibility in handling a complaint about water dripping at the external wall of a building (unsubstantiated)	Unsubstantiated	0
2013/3304B	(1) Shirking responsibility in handling a complaint about unauthorised canopies erected by the operators of two fixed-pitch cooked food stalls (partially substantiated); and (2) Failing to reply to the complainant's complaint (substantiated)	Partially substantiated	2
2013/3317A	Mishandling a water seepage complaint	Unsubstantiated	0
2013/3335A	(1) Delay in handling a water seepage complaint (unsubstantiated); and (2) Failing to accede to the complainant's requests in the course of the water seepage investigation (unsubstantiated)	Unsubstantiated	0
2013/3820A	Mishandling a water seepage complaint	Unsubstantiated	1
2013/3851A	Shirking responsibility in controlling the problem of illegal occupation of bicycle parking spaces by restaurants	Substantiated	1
2013/3858A(I)	Staff being unhelpful to complainant enquiring about case progress	Inconclusive	0
2013/4139	Mishandling a complaint about street obstruction caused by a newsstand	Partially substantiated	0
Government Property Agency 			
2013/0436A	Failing to provide proper maintenance and management of a slope and the access road to a staff quarters	Partially substantiated	0

Case No.	Complaint	Overall Conclusion	No. of Recommendations
Government Secretariat – Chief Secretary for Administration's Office 			
2012/3568A	Delay and buck-passing in handling a complaint about blocking of a pedestrian crossing	Substantiated	1
2013/2125A	Failing to properly handle a complaint about water dripping from air-conditioners in a Home Ownership Scheme estate	Unsubstantiated	1
2013/2964A	Failing to coordinate with the Lands Department and the Food and Environmental Hygiene Department on removing weeds and litter on a piece of Government land, and requesting the complainant to coordinate with the departments instead	Partially substantiated	1
Government Secretariat – Commerce and Economic Development Bureau 			
2013/0248	Inappropriately renewing/revoking the licence of a travel agency	Unsubstantiated	0
Government Secretariat – Development Bureau 			
2013/0089B	Failing to notify the complainant of the result of an application for redevelopment of a cinema and allowing the Buildings Department and the Lands Department to delay processing the application	Unsubstantiated	0
2013/1829A	Failing to properly handle a report on an unhealthy tree	Substantiated	1
Government Secretariat – Education Bureau 			
2013/0989	(1) Failing to provide a school for mentally handicapped students with school facilities in accordance with the current standards (unsubstantiated); and (2) Unreasonably refusing to relocate the school to another vacant school premises (unsubstantiated)	Unsubstantiated	1
2013/2751(I)	Refusing to provide the complainant with the number of students with special educational needs and the number of teachers with relevant qualifications of each school in Hong Kong	Partially substantiated	2
Government Secretariat – Food and Health Bureau 			
2013/0760B	Failing to reply to the complainant's complaint of extension of business areas by some restaurants	Unsubstantiated	0

Index of Cases Concluded by Full Investigation

Case No.	Complaint	Overall Conclusion	No. of Recommendations
Government Secretariat – Home Affairs Bureau 			
2013/1403	Unreasonably refusing to provide policy support to an application for short-term tenancy of Government land	Partially substantiated	1
Government Secretariat – Transport and Housing Bureau 			
2012/4018A	Mishandling the complainant's application for the importation of an electric vehicle through parallel import	Unsubstantiated	2
2013/1899B	Improperly handling the complainant's appeal against a licensing decision of the Estate Agents Authority	Unsubstantiated	0
Highways Department 			
2013/0535A	Delay in handling a request for the installation of a street light in a village	Partially substantiated	1
2013/1327C	Shirking responsibility in handling a request for removal of four concrete pillars on a pavement	Unsubstantiated	0
2013/3223B	(1) Failing to resolve the rubbish problem earlier, thus causing flooding on a flyover (unsubstantiated); (2) Shirking responsibility in resolving the flooding problem on the flyover (unsubstantiated); and (3) Unreasonably asking the complainant to inspect the site or to provide photographs of the locations of the drainage blockage or the rubbish (inconclusive)	Unsubstantiated	0
Home Affairs Department 			
2011/2847(I)	Unreasonably deleting the personal particulars of the Chairman and Secretary of a Rural Committee who prepared the accounts of the Committee from the copy of accounts provided to the Committee	Substantiated	1
2012/2577	(1) Providing a wrong contact telephone number on a notice issued about an election of floor representative (partially substantiated); (2) Failing to provide the telephone number of the subject case officer (inconclusive); (3) Delay in returning a telephone call (unsubstantiated); and (4) Unreasonably refusing to handle a complaint about the result of a floor representative election (inconclusive)	Partially substantiated	1

Case No.	Complaint	Overall Conclusion	No. of Recommendations
2012/5819A	Failing to provide the public with sufficient copies of application forms for the sale of a subsidised housing project	Unsubstantiated	0
2013/0080(I)	Refusing to disclose information on approved Enhancing Self-Reliance Through District Partnership Programme projects that had failed to remain sustainable after the funding period in the past six years	Unsubstantiated	1
2013/0088	(1) Failing to adopt uniform procedures for applications to use community halls/community centres in all districts (unsubstantiated); (2) Delay in issuing approval letters (unsubstantiated); (3) Unreasonably refusing to state on the approval letters the name of the person responsible for making such an application (inconclusive)	Unsubstantiated	0
2013/0535B	Delay in handling a request for the installation of a street light in a village	Partially substantiated	2
2013/0879C	Failing to properly follow up and shirking responsibility in respect of illegal parking and rental of bicycles at a certain place	Unsubstantiated	0
2013/1104(I)	Refusing to assist the complainant in obtaining a copy of an application for the post of a Tso manager by a person and certain information submitted by another person who alleged that the complainant was not a descendant of the Tso	Substantiated other than alleged	0
2013/1229A	(1) Failing to consult all the villagers of a village during the first local consultation exercise about the improvement works for the re-opening of a beach ("the project") (unsubstantiated); (2) Failing to make known the amended proposal of the project to all the villagers (unsubstantiated); and (3) Wrongly stating that no objections had been received during the second local consultation exercise about the project (unsubstantiated)	Unsubstantiated	0

Index of Cases Concluded by Full Investigation

Case No.	Complaint	Overall Conclusion	No. of Recommendations
2013/1307A	(1) Failing to consult all the villagers of a village during the first local consultation exercise about the improvement works for the re-opening of a beach ("the project") (unsubstantiated); (2) Failing to make known the amended proposal of the project to all the villagers (unsubstantiated); and (3) Wrongly stating that no objections had been received during the second local consultation exercise about the project (unsubstantiated)	Unsubstantiated	0
2013/1327A	Shirking responsibility in handling a request for removal of four concrete pillars on a pavement	Unsubstantiated	0
2013/1504A	Failing to resolve the problem of illegal parking of bicycles	Unsubstantiated	1
2013/1904B	Mishandling a complaint about obstruction of an emergency vehicular access caused by illegal extension of business area by food premises	Unsubstantiated	0
2013/1995	Failing to take enforcement action against unlicensed guesthouses	Unsubstantiated	0
2013/2127	Unreasonably permitting the burial of a non-indigenous villager in a permitted burial ground for indigenous villagers	Unsubstantiated	0
2013/2884(I)	Failing to properly handle a request for information	Substantiated	1
2013/3558B	(1) Failing to provide the complainants with assistance to ensure that they could participate in or attend a meeting (unsubstantiated); (2) Unreasonably locking the entrance of the Sai Kung Tseung Kwan O Government Complex (unsubstantiated); and (3) Failing to provide assistance to the residents who were feeling ill at the time (inconclusive)	Unsubstantiated	0

Case No.	Complaint	Overall Conclusion	No. of Recommendations
2013/3559B	(1) Failing to provide the complainants with assistance to ensure that they could participate in or attend a meeting (unsubstantiated); (2) Unreasonably locking the entrance of the Sai Kung Tseung Kwan O Government Complex (unsubstantiated); and (3) Failing to provide assistance to the residents who were feeling ill at the time (inconclusive)	Unsubstantiated	0
2013/5133A	Shirking responsibility in handling the problem of a subsided footpath	Unsubstantiated	0
Hong Kong Housing Society 			
2012/5819B	Failing to provide the public with sufficient copies of application forms for the sale of a subsidised housing project	Substantiated	1
Hospital Authority 			
2012/5806B	Unfairness of a public hospital in refusing to allow vehicles transferring patients in wheelchair to enter via a side entrance for picking up/dropping off patients, while allowing vehicles of privileged persons to do so	Unsubstantiated	3
2013/0042	Refusing to meet with the complainant to discuss her case	Substantiated	1
2013/0778	(1) Unreasonably rejecting the complainant's booking of antenatal checkup service on the ground that she could not produce address proof on the spot (substantiated); and (2) Failing to publicise on the website the requirement of producing address proof for booking of antenatal checkup service (substantiated)	Substantiated	3
2013/1392	Refusing to release an official guideline on the determination of case complexity and failing to answer the complainant's query	Partially substantiated	3

Index of Cases Concluded by Full Investigation

Case No.	Complaint	Overall Conclusion	No. of Recommendations
Housing Department 			
2012/3069	Failing to handle properly the complainant's reports about defects in his Home Ownership Scheme flat	Unsubstantiated	0
2012/4344	Impropriety in handling the complainant's request, upon divorcing her husband, for splitting their application for public rental housing	Partially substantiated	1
2013/0364	(1) Misleading the complainant into accepting a public housing unit by playing down debt collection harassments targeting the former tenant (unsubstantiated); (2) Failing to keep record of the information provided by the complainant concerning the harassments and failing to provide any assistance to him (unsubstantiated); and (3) Allocating dilapidated units to the complainant after approving his application for transfer and unreasonably classifying his rejection of the units because of lack of means for reconditioning and moving as "unreasonable refusal" (unsubstantiated)	Unsubstantiated	0
2013/0779C	(1) Shirking responsibility in handling a water seepage complaint (unsubstantiated); and (2) Delay in handling a water seepage complaint (partially substantiated)	Partially substantiated	0
2013/1118	Improper handling of a complaint about banner erection in a public housing estate	Substantiated	3
2013/1476B	Failing to follow up complaints about repeated false fire alarms in the complainant's public housing building	Unsubstantiated	0
2013/1578	Deviation from the current policy on banner erection in a public housing estate	Partially substantiated	3
2013/2125B	Failing to handle a complaint about water dripping from air-conditioners in a Home Ownership Scheme estate	Inconclusive	1
2013/2187B	Mishandling a water seepage complaint	Unsubstantiated	0
2013/3266C	Mishandling a water seepage complaint	Unsubstantiated	0

Case No.	Complaint	Overall Conclusion	No. of Recommendations
2013/3820C	Failing to reply to the complainant regarding his water seepage complaint	Unsubstantiated	0
2013/3822	Unreasonably refusing to re-schedule an eligibility vetting interview with the complainant in respect of his application for public rental housing and thereby turning down his application	Substantiated other than alleged	1
Inland Revenue Department 			
2013/0547B	Delay in informing the complainant of the amount of stamp duty chargeable	Unsubstantiated	3
Labour Department 			
2013/1035	Disparity in handling applications for <i>ex-gratia</i> payment from the Protection of Wages on Insolvency Fund	Unsubstantiated	0
2013/1335	Failing to properly monitor the implementation of safety procedures by the complainant's employer for a project involving repair works in tunnels	Unsubstantiated	0
2013/3506	(1) Failing to take actions about an alleged contravention of the Trade Unions Ordinance (unsubstantiated); (2) Failing to monitor a trade union (unsubstantiated); and (3) Lack of reply to the complainant (unsubstantiated)	Unsubstantiated	0
Land Registry 			
2012/5396B	Wrongly registering a Warning Notice	Unsubstantiated	0
2013/1989(I)	Unreasonably refusing a request for information about the identities of the searchers and the time of on-line land searches made in respect of a flat and a car parking space	Substantiated other than alleged	0
Lands Department 			
2012/3950B	(1) Failing to follow up properly on the unauthorised radio base stations on the rooftops of two village houses (partially substantiated); and (2) Unreasonably approving the excavation works of a power supply company to supply electricity to one of the unauthorised radio base stations, and failing to conduct local consultation on the excavation works (unsubstantiated)	Partially substantiated	1

Index of Cases Concluded by Full Investigation

Case No.	Complaint	Overall Conclusion	No. of Recommendations
2012/4105A	Failing to take further enforcement action against an unauthorised structure that was in breach of the land lease	Unsubstantiated	0
2012/4620B	Shirking responsibility in handling complaints about the parking of vehicles loaded with cylinders of dangerous gases in an open area	Unsubstantiated	0
2012/4729B	Failing to take enforcement action against some shops which illegally occupied Government land	Partially substantiated	1
2012/4897B	Delay in handling a complaint about obstruction caused by illegal hawkers	Substantiated other than alleged	2
2012/5026C	Failing to tackle pavement obstruction problem caused by construction materials shops	Partially substantiated	1
2012/5694C	Failing to effectively control the illegal occupation of Government land by a food shop with unauthorised building works and platform	Partially substantiated	1
2013/0089C	Lack of communication and coordination with the Buildings Department, thus causing the suspension of redevelopment works of a cinema	Unsubstantiated	0
2013/0158C	Failing to take effective action to tackle the environmental nuisance caused by sewage discharge from some squatter huts	Unsubstantiated	0
2013/0183B	(1) Being inconsiderate to the villagers affected by a drainage works project and failing to address their concerns about inconvenience and nuisance caused by the project and the lack of an emergency access (unsubstantiated); and (2) Failing to widen a narrow village access road in the drainage works project (unsubstantiated)	Unsubstantiated	0
2013/0410C	Failing to take control action against illegal occupation of Government land by a wall stall	Unsubstantiated	0
2013/0436B	Failing to provide proper maintenance and management to a slope and the access road to a staff quarters	Partially substantiated	0

Case No.	Complaint	Overall Conclusion	No. of Recommendations
2013/0463A	Improperly processing and approving an application for building a New Territories Exempted House with a proposed septic tank system in close proximity to a beach	Partially substantiated	1
2013/0577B	Shirking responsibility in handling a request for covering a drainage channel and a complaint about flooding	Partially substantiated	0
2013/0620C	Failing to take lease enforcement action against the radio base stations on the rooftop of a building	Unsubstantiated	0
2013/0642C	Failing to enforce the requirement in respect of the function of a village road as an emergency vehicular access	Unsubstantiated	0
2013/0745(I)	(1) Refusing to disclose the current rental amount of the short-term tenancy for a piece of Government land to the complainant, who intended to bid for renting the Government land in an upcoming open invitation for tenders (unsubstantiated); and (2) Continuously renewing the short-term tenancy for the Government land with the same tenant in the past years, thus obstructing open competition (partially substantiated)	Partially substantiated	2
2013/0879A	Failing to properly follow up and shirking responsibility in respect of illegal parking and rental of bicycles on a piece of Government land	Partially substantiated	1
2013/0931C	Failing to take enforcement action against the breach of lease conditions by a barbecue establishment	Unsubstantiated	1
2013/1036B	Failing to take enforcement action and shirking responsibility in respect of illegal occupation of Government land by a curtain shop	Unsubstantiated	1
2013/1327B	Shirking responsibility in handling a request for removal of four concrete pillars on a pavement	Unsubstantiated	0
2013/1342(I)	Refusing to provide documentary proof that the complainant and his family members were registered occupants of a squatter hut	Substantiated	1

Index of Cases Concluded by Full Investigation

Case No.	Complaint	Overall Conclusion	No. of Recommendations
2013/1457(I)	(1) Negligence in processing a small house application (unsubstantiated); and (2) Unreasonably refusing to provide the complainant with the original map on his land lot (inconclusive)	Substantiated other than alleged	0
2013/1504C	Failing to resolve the problem of illegal parking of bicycles	Unsubstantiated	1
2013/1588B	Failing to properly follow up a complaint about an unlawful change of use of land and unreasonably amending survey plans	Partially substantiated	1
2013/1722C	(1) Failing to prosecute a small house developer for damaging the natural habitat of a protected animal species in a river within Government land (unsubstantiated); (2) Failing to take land control action against illegal occupation of Government land resulting from development of the small houses (unsubstantiated); and (3) Failing to assess the impact of the construction works and the future household sewage on the river environment (unsubstantiated)	Unsubstantiated	0
2013/1829B	Failing to properly handle a report on an unhealthy tree	Substantiated	1
2013/1861C	(1) Improperly issuing Public Subscription Permits to organisations for carrying out charitable fund-raising activities in public places at the same time and at the same or nearby locations (partially substantiated); and (2) Improperly issuing Public Subscription Permits with a prolonged period of validity (unsubstantiated)	Partially substantiated	0
2013/2064(I)	(1) Wrongly approving a short-term tenancy near the complainant's lot, thereby blocking access to the complainant's lot (unsubstantiated); (2) Failing to resolve the problem of blockage of access (unsubstantiated); (3) Failing to respond to one of the many letters of the complainant (partially substantiated); and (4) Refusing to provide a copy of the tenancy agreement (unsubstantiated)	Unsubstantiated	0

Case No.	Complaint	Overall Conclusion	No. of Recommendations
2013/2067A	(1) Failing to inform the complainant before the commencement of re-piping works on his land (unsubstantiated); and (2) Failing to respond to the complainant's subsequent queries (unsubstantiated)	Unsubstantiated	0
2013/2168B	Delay in handling a complaint about illegal occupation of Government land	Substantiated	1
2013/2528	Unreasonably demanding the complainant to pay \$0.24 Government rent which became due over ten years ago	Partially substantiated	0
2013/2680B	Failing to take effective enforcement action against illegal occupation of Government land by the stall operators of a cooked food market	Unsubstantiated	1
2013/2689C	Failing to take enforcement action against illegal occupation of an Emergency Vehicular Access on unleased Government land	Unsubstantiated	0
2013/2794B	Delay in taking effective enforcement action against illegal occupation of Government land, erection of illegal structures and breach of lease conditions by a temple	Unsubstantiated	2
2013/2812B	(1) Failing to seriously and promptly follow up a complaint about illegally displayed banners (unsubstantiated); and (2) Condoning the illegal display of banners by a District Councillor by leaking information on a removal operation to her (unsubstantiated)	Unsubstantiated	1
2013/2836B	Delay in taking effective enforcement action against illegal occupation of Government land, erection of illegal structures and breach of lease conditions by a temple	Unsubstantiated	2
2013/2959C	Failing to control the illegal occupation of a pavement by a shop operator with a concrete platform	Substantiated	1
2013/2964B	(1) Refusing to answer the complainant's enquiry about progress of removing weeds (unsubstantiated); (2) Delay in removing weeds on a piece of Government land (unsubstantiated); and (3) Misquoting the complainant in an email to her that she once said she would complain to the Office of The Ombudsman (inconclusive)	Unsubstantiated	1

Index of Cases Concluded by Full Investigation

Case No.	Complaint	Overall Conclusion	No. of Recommendations
2013/2989C	Failing to control the illegal occupation of a pavement by a stall	Unsubstantiated	0
2013/3282B	Failing to take land enforcement action against an illegal funeral parlour	Unsubstantiated	0
2013/3301(I)	Failing to provide precise, consistent and complete information on the relevant requirement for the complainant to prove his intention to return to and reside in Hong Kong in respect of his Small House application	Partially substantiated	1
2013/3316	(1) Illegitimate confiscation of the complainant's bicycles in a legal parking place (unsubstantiated); and (2) Insufficient notice before confiscation of the bicycles (unsubstantiated)	Unsubstantiated	0
2013/3851B	Shirking responsibility in controlling the problem of illegal occupation of bicycle parking spaces by restaurants	Partially substantiated	1
2013/3955B	Shirking responsibility in taking enforcement action	Unsubstantiated	0
2013/3986B	Delay and shirking responsibility in taking enforcement action against the illegal enclosure of a balcony of a New Territories Exempted House	Substantiated	1
2013/5133B	(1) Shirking responsibility in handling the problem of a subsided footpath (unsubstantiated); and (2) Unavailability of staff for contacts (unsubstantiated)	Unsubstantiated	0
Legal Aid Department			
2013/1824	Ignoring the complainant's request to conduct his lawsuit in Chinese	Unsubstantiated	1
Leisure and Cultural Services Department			
2013/0314	Impropriety in handling the block bookings of a public swimming pool	Unsubstantiated	0
2013/0496	Failing to take proper follow-up action against an organisation having priority booking rights when it repeatedly failed to use an artificial turf pitch it had booked	Substantiated	3
2013/0736	Lacking in transparency in allocating performance venues	Substantiated	2
2013/1099	Mismanagement of a swimming pool in the New Territories	Partially substantiated	3

Case No.	Complaint	Overall Conclusion	No. of Recommendations
2013/1229B	(1) Failing to consult all villagers of a village during the first local consultation exercise about the improvement works for the re-opening of a beach ("the project") (unsubstantiated); (2) Failing to make known the amended proposal of the project to all the villagers (unsubstantiated); and (3) Wrongly stating that no objections had been received during the second local consultation exercise about the project (unsubstantiated)	Unsubstantiated	0
2013/1307B	(1) Failing to consult all villagers of a village during the first local consultation exercise about the improvement works for the re-opening of a beach ("the project") (unsubstantiated); (2) Failing to make known the amended proposal of the project to all the villagers (unsubstantiated); and (3) Wrongly stating that no objections had been received during the second local consultation exercise about the project (unsubstantiated)	Unsubstantiated	0
2013/1933B	Faulty procedures for handling applications for refund of hire charge for unused sessions of recreation and sports facilities	Unsubstantiated	2
Marine Department 			
2013/0584	(1) Unreasonably requiring the submission of certain documents for the application of Operating Licences for fishing vessels (substantiated); and (2) Issuing Operating Licences to fishing vessels without the necessary documents (partially substantiated)	Partially substantiated	1
Office of the Communications Authority 			
2012/3950C	Failing to regulate unlicensed radio base stations on the rooftops of two village houses	Unsubstantiated	0
2013/0620B	(1) Failing to regulate the radio base stations on the rooftop of a building that breached the land lease (unsubstantiated); and (2) Wrongly renewing the licences of the illegal radio base stations (unsubstantiated)	Unsubstantiated	0

Index of Cases Concluded by Full Investigation

Case No.	Complaint	Overall Conclusion	No. of Recommendations
Planning Department 			
2012/4105C	(1) Failing to take control action against an illegal development on private land (unsubstantiated); and (2) Failing to inform the Town Planning Board of the illegalities of the development before the Board processed a planning approval application in respect of the development (unsubstantiated)	Unsubstantiated	0
2013/0950	Unreasonably classifying the complainant's workshop and warehouse operating since 1984 as unauthorised development	Unsubstantiated	0
Post Office 			
2013/0156	Improper handling of a complaint about the loss of a mail item and inadequate compensation	Partially substantiated	0
2013/4308	Delay in handling outbound air mail items and failing to show delivery status online	Partially substantiated	0
Privacy Commissioner for Personal Data 			
2013/2497	(1) Unreasonably classifying the complainant's complaint against a property management company for making video and audio recording of visitors as unsubstantiated (substantiated other than alleged); (2) Having inconvenient channels of complaint for the public (unsubstantiated); (3) Disclosing the complainant's personal particulars to the property management company under complaint (partially substantiated); and (4) Delay in handling the complainant's complaint (unsubstantiated)	Partially substantiated	3

Case No.	Complaint	Overall Conclusion	No. of Recommendations
Radio Television Hong Kong 			
2013/0094(I)	(1) Refusing to provide the complainant with the records the station made for his complaints (substantiated); and (2) Delay in responding to the complainant's request for information (unsubstantiated)	Partially substantiated	2
2013/0587	Delay in delivering cash prize to the winner of a game programme	Substantiated	1
Rating and Valuation Department 			
2012/5867	(1) Sending the complainant wrong demand notes for rates and Government rent in respect of his property (substantiated other than alleged); and (2) Failing to answer his queries about splitting of account (substantiated)	Substantiated	1
2013/0547A	Delay in valuing the complainant's former property	Unsubstantiated	0
Social Welfare Department 			
2012/4374	(1) Mishandling a complaint against a home for the elderly (unsubstantiated); and (2) Failing to properly monitor the home for the elderly and take follow-up action against its inadequacies (unsubstantiated)	Unsubstantiated	0
2013/0076	(1) Improper handling of complaints against charitable fund-raising activities in public places (partially substantiated); (2) Refusing to issue a confirmation letter to the complainant upon approval of its application for carrying out charitable fund-raising activities in public places (unsubstantiated); and (3) Unhelpfulness of staff (inconclusive)	Partially substantiated	1

Index of Cases Concluded by Full Investigation

Case No.	Complaint	Overall Conclusion	No. of Recommendations
2013/0365	(1) Improper mechanism for processing applications for and handling appeals regarding hostel services (unsubstantiated); (2) Wrongly allocating the complainant's daughter to a hostel for the disabled, which did not have adequate caring facilities (unsubstantiated); and (3) Insufficient monitoring of hostel services (unsubstantiated)	Unsubstantiated	0
2013/0602	(1) Making up false information regarding a suspected child abuse case (inconclusive); and (2) Bias in handling a staff complaint (unsubstantiated)	Substantiated other than alleged	2
2013/1349	Mishandling the complainant's claim for the Old Age Living Allowance	Substantiated	1
2013/1629	Unreasonably refusing to grant the complainant, purportedly a torture claimant and an asylum seeker, a waiver of medical fees for public health care	Unsubstantiated	0
2013/1803	(1) Unreasonably deducting the amount of Comprehensive Social Security Assistance ("CSSA") granted to the complainant's deceased relative (unsubstantiated); and (2) Unreasonably deducting the burial grant for the complainant's deceased relative to offset the overpaid amount of CSSA (unsubstantiated)	Unsubstantiated	0
2013/1861A	(1) Improperly issuing Public Subscription Permits to organisations for carrying out charitable fund-raising activities in public places at the same time and at the same or nearby locations (substantiated other than alleged); and (2) Improperly issuing Public Subscription Permits with a prolonged period of validity (unsubstantiated)	Substantiated other than alleged	1
2013/2250	Mishandling an application by the complainant's mother for Disability Allowance	Substantiated	1

Case No.	Complaint	Overall Conclusion	No. of Recommendations
Student Financial Assistance Agency 			
2012/4349	(1) Unreasonably requiring the complainant to submit irrelevant information and documents (unsubstantiated); (2) Using threatening wordings in letters (unsubstantiated); and (3) Delay in recovering financial assistance awarded (substantiated)	Partially substantiated	0
2013/0425	Failing to obtain the complainant's consent before returning a Deed of Indemnity to the applicant of Non-means-tested Loan Scheme	Inconclusive	0
Transport Department 			
2012/3275	Refusing to take traffic management measures to curb illegal parking at a bus stop	Partially substantiated	2
2012/3568B	Delay and buck-passing in handling a complaint about blocking of a pedestrian crossing	Substantiated	1
2012/3834	Mishandling the complainant's application for the importation of an electric vehicle through parallel import	Unsubstantiated	3
2012/4018B	Mishandling the complainant's application for the importation of an electric vehicle through parallel import	Unsubstantiated	2
2012/5338	Impropriety in allowing a ferry operator to terminate a local ferry service, resulting in non-compliance with the relevant guidelines on transport and traffic arrangements	Unsubstantiated	0
2012/5388	Refusing to take up a complaint against a taxi driver because the complainant could not provide the taxi vehicle registration number	Unsubstantiated	8
2013/0540B	Failing to resolve the littering problem at the View Point Car Park of Tsing Ma Control Area	Partially substantiated	0
2013/2241	Failing to support the installation of a bollard on a pedestrian pathway	Unsubstantiated	0

Index of Cases Concluded by Full Investigation

Annex 7

Case No.	Complaint	Overall Conclusion	No. of Recommendations
2013/2265	Unreasonably requiring first-time applicants for Private Service (Limousine) Hire Car Permit to provide hiring records as supporting document	Unsubstantiated	1
2013/2535	Lack of regulation and control on the use of electric wheelchairs	Unsubstantiated	0
Treasury 			
2013/1933A	Faulty procedures for handling applications for refund of hire charge for unused sessions of recreation and sports facilities	Unsubstantiated	0
Vocational Training Council 			
2013/3142	Providing false information in the prospectus, thereby misleading the students that they would be awarded a recognised professional qualification upon completion of the programme	Substantiated	2
Water Supplies Department 			
2013/0636	Unreasonably rejecting the request for replacement of defective water mains laid on Government land near the complainant's residence	Unsubstantiated	0
2013/2067B	(1) Failing to inform the complainant before the commencement of re-piping works on his land (unsubstantiated); and (2) Failing to respond to the complainant's subsequent queries (unsubstantiated)	Unsubstantiated	0
2013/2985	Failure to take action to fix the problem of repeated bursts of a water main, resulting in water flowing into the complainant's premises	Unsubstantiated	0

Summaries of Selected Cases Concluded by Full Investigation

Annex 8

(Where applicable, the specific aspect of maladministration established is highlighted for clearer focus at the end of the case summary)



Architectural Services Department ("Arch SD") and Food and Environmental Hygiene Department ("FEHD")

Case No. OMB 2013/0063 A&B – Refuse collection point

Allegations:

Arch SD – delaying to re-open a refuse collection point – substantiated

FEHD – (1) delaying to re-open a refuse collection point – substantiated; and (2) failing to tackle the environmental nuisance caused by refuse dumped outside the refuse collection point – partially substantiated

Details of Complaint

A refuse collection point ("RCP") had been closed for two to three years, though the works there had long been completed. In late 2012, the complainant enquired about the matter and FEHD replied that Arch SD had not responded to its repeated requests to have the RCP re-opened.

2. The complainant was dissatisfied that the two departments had delayed re-opening the RCP and that FEHD had failed to tackle the environmental nuisance caused by refuse dumped outside the RCP.

The Event

3. In late 2004, FEHD requested Arch SD to carry out upgrading works, including drainage connection, at the RCP. Arch SD appointed a consultant ("the Consultant") in July 2006 for coordinating the works and awarded the works contract to Contractor A in June 2009.

4. However, Contractor A was not on the List of Approved Contractors for Road and Drainage Category ("the List") of the Highways Department ("Hy D"). Its application for an excavation permit to carry out the drainage connection works was thus rejected.

5. The Consultant requested Contractor A to nominate a company on the List to carry out the works, but Contractor A refused to take on the additional responsibility on the grounds that it had no such obligation under the contract. In July 2011, Arch SD decided to appoint Contractor B instead to carry out the drainage connection works.

6. However, Contractor B's application for an excavation permit was rejected time and again by Hy D due to its inexperience in making such applications. After the permit was eventually granted in June 2012, commencement of the excavation works was further held up as a result of some technical problems.

Subsequent Developments

7. In January 2013, after this Office started investigating the complaint, Arch SD discussed with FEHD the possibility of re-opening the RCP dry (i.e. without the drainage) as an interim measure. Meanwhile, Arch SD explored the feasibility of alternative drainage connection and later discovered a private sewer collecting sewage from a nearby village, to which the drainage of the RCP could be connected.

8. The RCP was re-opened in February and the drainage connection works completed in May 2013.

Allegation (1)

Response from Arch SD

9. Arch SD attributed the delay in re-opening the RCP to the slow progress of the drainage connection works caused both by Contractor A's refusal to take on additional responsibility and Contractor B's incompetence. The Department had since taken remedial and improvement measures, including closer

Summaries of Selected Cases Concluded by Full Investigation

monitoring of the performance of consultants and contractors.

Response from FEHD

10. Since handing over the RCP to Arch SD in June 2009, FEHD had issued it three written reminders about the works in 2011 and 2012. Nevertheless, FEHD admitted that it had failed to monitor the project closely and had not taken steps between June 2009 and February 2011 to urge Arch SD to expedite action.

Our Comments

11. Despite the minor nature of the works, the RCP had been closed from mid-2009 to early 2013. The delay was primarily due to prolonged inattention on the part of Arch SD, the project coordinator, aggravated by its appointment of the inexperienced and incompetent Contractor B.

12. As user department, FEHD should also have shown greater concern and put more pressure on Arch SD.

13. In the light of the above, The Ombudsman considered allegation (1) against Arch SD and FEHD substantiated.

Allegation (2)

Response from FEHD

14. FEHD indicated that it had taken some temporary measures to maintain the hygienic condition of the surroundings, such as placing refuse containers outside the RCP and daily sweeping and refuse collection. After our intervention, the Department also increased its frequency of junk collection service from once every other day to once a day.

Our Comments

15. As dumping of construction waste and bulky furniture outside the RCP persisted, we considered that FEHD should have enhanced its measures much earlier to tackle the problem.

16. The Ombudsman, therefore, found allegation (2) against FEHD partially substantiated.

Conclusion and Recommendations

17. Overall, the complaint was substantiated.

18. The Ombudsman recommended that:

Arch SD

- (1) select consultants and contractors more carefully to ensure their competence;
- (2) remind staff of the need to step in quickly for solutions to problems; and

FEHD

- (3) monitor more closely the progress of works projects relating to its facilities.

A case of delay and inadequate monitoring



Customs and Excise Department ("C&ED")

Case No. OMB 2013/2131 – Enforcement of Trade Descriptions Ordinance

Allegation: Refusing to act on a complaint about the composition/quality of petrol – substantiated

Details of Complaint

After a fill-up at a petrol station, the complainant's vehicle started to have problems and breakdowns. He sent it to a repair shop and the technician found a large amount of water in the oil tank. The complainant believed that the petrol supplied by the petrol station had been mixed with a great deal of water. He lodged a complaint with C&ED, but the latter refused to handle his complaint on the grounds that the quality of petrol is outside the Department's jurisdiction.

Our Findings

Relevant Legislation

2. Under section 2 of the Trade Descriptions Ordinance ("the Ordinance"), "trade description" in relation to goods means an indication, direct or indirect, and by whatever means given, *inter alia*, of the "composition" and "fitness for purpose, strength, performance, behaviour or accuracy" of the goods concerned. Section 7(1) of the Ordinance stipulates that any person who, in the course of any trade or

business, "supplies or offers to supply any goods to which a false trade description is applied", or "has in his possession for sale or for any purpose of trade or manufacture any goods to which a false trade description is applied" commits an offence.

Response from C&ED

3. C&ED explained that as the complainant's main concerns were about the quality of petrol and safety, the Department had referred his case to the Environment Bureau, the policy bureau responsible for regulation of petrol quality, and let the Environmental Protection Department ("EPD") investigate the matter.

4. According to C&ED, the Ordinance has broad coverage while no standards are set for individual goods. As some goods and behaviours are already subject to specific legislation for more effective regulation, C&ED would normally refer such cases to the responsible Government departments accordingly.

Our Comments

5. The crux of this complaint was the complainant's suspicion that the petrol contained a large amount of water. Should his suspicion be true, the supplier/retailer might have contravened section 7(1) of the Ordinance, the provision about false trade description, since the "composition" of the petrol had been changed and no longer fitted the usual interpretation of "petrol". Moreover, the quality of petrol might affect "the fitness for purpose or performance" of petrol, thereby causing such problems as those of the complainant's vehicle.

6. We considered C&ED to have jumped to a conclusion, without careful consideration, that his complaint was outside its jurisdiction. Furthermore, any investigation by EPD would not absolve C&ED of its duties to protect consumers under the Ordinance. C&ED should have performed its duties and followed up the matter itself after referring the case to EPD.

Summaries of Selected Cases Concluded by Full Investigation

Conclusion and Recommendations

7. In view of the above, The Ombudsman considered the complaint substantiated.
8. The Ombudsman recommended that C&ED:
 - (1) monitor the results of EPD's laboratory tests, ascertain whether there was any contravention of the Ordinance and then notify the complainant of its findings; and
 - (2) remind staff to examine complaints carefully and start investigation should there be *prima facie* evidence of contravention of the Ordinance.

A case of shirking of responsibility



Efficiency Unit ("EU"), Transport Department ("TD") and Buildings Department ("BD")

Case No. OMB 2012/3568 A, B & C – Blocking of pedestrian crossing

Allegation:

EU and TD – delay and buck-passing in handling a complaint about blocking of a pedestrian crossing – substantiated

BD – same – unsubstantiated

Details of Complaint

In mid-June 2012, the complainant called the 1823 Call Centre ("Call Centre") under EU to complain that a pedestrian crossing at a road junction had been blocked without any alternative traffic arrangement. The Call Centre, unable to tell which department should be responsible, referred the case to the Highways Department ("Hy D"), the Hong Kong Police Force ("HKPF"), TD and BD, but none of them assumed responsibility.

2. The complainant was dissatisfied that the Call Centre had failed to identify the responsible departments early enough and that the departments involved had shifted the responsibility among one another, resulting in delay in re-opening the pedestrian crossing.

Background

3. A private developer was required under the land lease to install traffic signs and traffic signals on a public road under construction on a certain plot of land it had leased. In May 2012, its contractor was instructed by HKPF to implement some temporary traffic arrangements (“TTA”) to fence off the pedestrian crossing in question with water-filled barriers. Meanwhile, pedestrians had to use another crossing point farther away.

Sequence of Events

4. The Call Centre received the complainant’s call in mid-June 2012 and referred the case to Hy D, which advised that it be referred to HKPF as the TTA was implemented on its instructions. The complainant subsequently learned from HKPF that the pedestrian crossing would be re-opened on 31 July. She was dissatisfied and again requested the Call Centre to follow up the matter.

5. In late June, the Call Centre referred the case to TD, which replied that it should instead be the responsibility of BD since the private developer was under the latter’s purview. In response, BD indicated that traffic arrangement and traffic signals were not within its jurisdiction. Since then, BD had time and again disputed responsibility upon repeated referral of the case by the Call Centre, clarifying that it was only authorised to control private developments.

6. Meanwhile, the complainant alleged that the pedestrian crossing remained blocked. She repeatedly enquired of the Call Centre about case progress and requested prompt and proper referral of the case. The Call Centre replied that it was liaising with the departments concerned.

7. As no party was willing to take up the responsibility, the Call Centre took the complaint to the departmental coordinators of Hy D, HKPF, TD and BD on 31 August 2012. It informed the complainant of this two days later.

8. Hy D noted that the site at issue was a private development under BD’s management and that TTA was outside its jurisdiction. HKPF maintained that the case should be taken up by TD and BD as they were the project departments. TD finally agreed to follow up the matter on 18 September. The water-filled barriers were removed and the pedestrian crossing was re-opened towards the end of September 2012.

Responses from the Three Departments

EU

9. For complaints where responsibility among relevant departments is unclear and cannot be resolved, the Call Centre will activate its four-level complaint handling mechanism under which a complaint identified as a “buck-passing” case will first be taken to the departmental subject officers, then the departmental coordinators, the departmental complaint officers and finally the relevant policy bureaux for a decision. The level of escalation depends on whether and when a resolution is available.

10. EU explained that the Call Centre had handled this complaint in accordance with established procedures and had escalated it to the departmental coordinators in late August 2012 (paragraph 7) for resolution. While admitting that it could have done so earlier, EU argued that the complaint was lodged when a typhoon struck the territory and the Call Centre was busy handling some 5,000 tree complaints.

11. EU apologised for the delay in escalation. To better cope with similar situations in future, EU subsequently set out a clear definition for “buck-passing” cases to facilitate early identification of such cases, and drew up a target timeframe for case escalation within two weeks at each level.

Summaries of Selected Cases Concluded by Full Investigation

TD

12. TD suggested that the case be referred to BD because the latter assumed an overall coordinating role in the development project and was in constant contact with the authorised person (“AP”) appointed to monitor the project. TD only realised BD’s non-acceptance of responsibility and the difficulty of the Call Centre in identifying a leading department when the case was taken to the departmental coordinators on 31 August 2012.

13. Since then, TD had followed up the progress of the traffic signal works, sought assistance from relevant works agents and confirmed completion of the essential works pending TD’s inspection and approval. TD subsequently took over the case in mid-September and replied to the complainant. Commissioning of the traffic signal was also advanced from mid-October to late September 2012.

14. TD undertook to reply to the complainant for any future complaints arising from TTA and traffic signal construction works on public roads.

BD

15. BD denied responsibility because the subject matters of this complaint, i.e. traffic management and traffic signals, were not within BD’s jurisdiction. The AP was not required to submit the TTA to BD, or report and update BD on the implementation of the TTA and progress of the traffic lights installation.

16. BD would consider proactively liaising with the AP in similar cases in future to look for any useful information for the complainant.

Our Observations and Comments

EU

17. This case revealed that the Call Centre had failed to serve effectively as a “one-stop” centre to answer enquiries and receive complaints for the participating Government departments, and to ensure that complaints involving several departments are acted on properly.

18. After referring the case to HKPF in mid-June 2012, for instance, the Call Centre did not actively follow it up until the complainant repeatedly asked about its progress in July. By early August, it was already very clear that no department was willing to take up the case, but the Call Centre waited until late August to escalate it to the departmental coordinator level. EU attributed the delay to the heavy workload after a typhoon (paragraph 10). However, we did not see how a common seasonal phenomenon could have had such a serious impact on the Call Centre’s operation.

19. Besides, staff resources were wasted on relaying the complainant’s messages time and again to BD despite its repeated denial of responsibility. The Call Centre also failed to chase HKPF for a prompt reply and did not identify this case as a “buck-passing” case when both TD and BD refused to take it up. Instead, it merely kept passing the complainant’s messages around. Such incompetence had greatly affected its ability in helping to resolve cross-departmental complaints.

TD

20. TTA and installation of traffic signals are matters under TD's purview and the AP had contacted TD direct in late June to report progress of the traffic signal construction. Nevertheless, TD denied responsibility right away and advised the Call Centre to re-assign the case to another department. While the Call Centre had once indicated that TD was not required to take further action on the case, we believed that TD being the authority of traffic management should exercise judgement as to whether a matter falls within its purview or not.

21. Moreover, TD failed to realise that the complaint had not been resolved when HKPF urged it to take up the case on 1 August 2012. It finally agreed to follow up the matter in mid-September. We considered this a vivid example of a department shirking its responsibility.

BD

22. The subject matters of this complaint did not fall within BD's jurisdiction and BD had no obligation to act as the coordinator on all matters arising from the private development project in question (of which BD was the approving authority). Nevertheless, BD had referred the building plans submitted by the AP to relevant Government departments for comments, which meant that the Department could have referred other matters arising from the project to these departments for their attention and action as well. In addition, the Call Centre had taken the case to BD on several occasions. If BD had been more sensitive and liaised with the AP to see whether there was any useful information for the Call Centre, the complaint could have been resolved earlier.

Conclusion and Recommendations

23. In the light of the above, The Ombudsman considered the complaint against EU and TD substantiated, and the complaint against BD unsubstantiated.

24. We recommended that:

EU

- (1) review the effectiveness of the remedial measures and case monitoring system of the complaint handling team in six months and thereafter periodically, and re-evaluate the escalation mechanism for "buck-passing" cases;

TD

- (2) provide guidelines for staff to take up complaints involving matters under TD's purview; and

BD

- (3) remind staff to be more sensitive to repeated complaints concerning projects supervised by the Department.

A case of delay and shirking of responsibility

Summaries of Selected Cases Concluded by Full Investigation



Environmental Protection Department ("EPD")

Case No. OMB 2013/0366 – Vehicle idling

Allegation: delay in following up reports on vehicle idling – partially substantiated

Details of Complaint

One afternoon in late January 2013, the complainant noticed that a truck driver had left his vehicle idling (i.e. leaving the engine on while the vehicle was stationary) for more than 10 minutes. He called EPD thrice within an hour to report the incident, but the Department did not take immediate follow-up action and its staff did not give him a reply until the following afternoon.

2. The complainant was dissatisfied that EPD had delayed following up his reports such that the unlawful behaviour of vehicle idling could not be effectively curbed.

Prohibition of Vehicle Idling

3. The law stipulates that "the driver of a motor vehicle must not cause or permit the vehicle to be idling on a road for more than three minutes in any 60-minute period" unless an exemption applies. EPD's Environmental Protection Inspectors ("EPIs") as well as Traffic Wardens ("TWs") of the Hong Kong Police Force are authorised to take enforcement action against offenders.

Response from EPD

Enforcement Action and Report Handling Procedures

4. TWs are the main enforcement personnel for vehicle idling. While EPIs do participate in enforcement operations at black spots of vehicle idling, EPD's focus is on publicising the relevant legislation and fostering drivers' good habit of switching off the engines when their vehicles are stationary. The Department also follows up reports made by the public on vehicle idling offences.

5. However, as offenders may drive off any minute, enforcement personnel often have difficulty in taking timely enforcement action after receiving such reports. Therefore, instead of dispatching enforcement personnel to the scene at once, EPD will simply designate those sites with multiple reports as black spots, and notify the Police for more frequent patrols. Publicity-cum-enforcement will be stepped up at such black spots as well.

6. EPD staff have a duty to explain the above arrangements to people who report vehicle idling offences, and contact them within three working days for cross-checking relevant information.

The Events

7. Immediately after receiving the complainant's calls on that day in late January 2013, EPD staff recorded the information provided, set up a case file for the report and emailed the information to the Mobile Source Group ("MSG") of the Department, which is responsible for handling complaints about vehicle idling. MSG staff called the complainant the following afternoon to ascertain the location of the incident and explain how EPD would deal with vehicle idling offences found at that location.

8. In February 2013, EPD conducted three publicity-cum-enforcement operations in the vicinity and designated the location as a black spot. EPD did not institute any prosecution during those operations, as

all the drivers there switched off their engines within three minutes.

Our Comments

9. We appreciated that for the reasons in paragraph 5 above and because of manpower constraints, EPD could not have staff immediately deployed to the scene for enforcement action after receiving the complainant's reports.

10. Nevertheless, as TWs are the main enforcement personnel for vehicle idling and they are constantly on patrol, there is no reason why EPD cannot ask them to take immediate enforcement action after its staff have received reports on such offences. Clearly, the Department had not been making the best use of the available resources for law enforcement. The effectiveness of the legislation was thus undermined. The Department had also failed to live up to the expectation of those civic-minded citizens who cared to report offences.

Conclusion and Recommendation

11. Overall, The Ombudsman considered this complaint partially substantiated.

12. The Ombudsman urged EPD to quickly work out with the Police a mechanism such that once a report on vehicle idling offence is received, TWs on patrol in the area can be notified to take enforcement action. EPD agreed to follow up.

_____ *A case of inefficient use of resources*



Estate Agents Authority ("EAA")

Case No. OMB 2012/5437 – Misconduct of estate agents

Allegation: delay and failing to follow up properly on a complaint about misconduct of two estate agents, and refusing to disclose investigation progress – substantiated

Details of Complaint

The complainant had a residential flat leased out. In October 2010, an estate agent ("Agent A") persuaded her to sell the flat, saying that an old couple was willing to purchase it subject to existing tenancy.

2. Agent A then prepared a provisional agreement for sale and purchase ("the first PASP") and a "supplementary agreement". The complainant, however, noticed that the latter agreement stated that the vendor would deliver "vacant possession" of the flat upon completion of the transaction. She, therefore, demanded to add in a clause stipulating that: "the buyer must allow the tenant to stay in the flat until the fixed-term tenancy expires". Agent A complied and the complainant signed the two agreements.

3. The complainant also noticed that the buyer was not the old couple and that the deposit was paid by a cheque issued by Agent A's colleague ("Agent B"). Agent A explained that the old couple did not have a cheque book. So, they paid the deposit in cash to Agent B and asked him to write a cheque to the

Summaries of Selected Cases Concluded by Full Investigation

complainant. Moreover, the buyer was actually the couple's grandson, according to Agent A.

4. Later on, the complainant discovered that the first PASP also contained the "vacant possession" clause but Agent A never explained that to her. Suspecting a fraud, she refused to execute the agreement. Agent A subsequently prepared another provisional agreement for sale and purchase which, while stating that the flat would be sold "subject to existing tenancy", was signed by a different buyer. Dissatisfied that Agent A had taken the liberty to find a new buyer, the complainant refused to sign this agreement. The two estate agents then abused her on the telephone. Eventually, the flat was sold to the first buyer "subject to existing tenancy".

5. In December 2010, the complainant lodged a complaint with EAA and made a written statement. She enquired of the case progress several times afterwards, but was denied the information. EAA only notified her in mid-October 2012 that Agent A had admitted to wrong-doing and that EAA would reprimand him and require him to attend professional development courses.

6. The complainant was aggrieved that EAA had delayed the processing of her complaint, refused to notify her of case progress and failed to conduct a thorough investigation into the misconduct of the two estate agents which she considered as amounting to criminal offences.

EAA's Procedures of Complaint Handling

7. EAA is responsible for regulating the practice of estate agents and ensuring their integrity. Estate agents must comply with the Code of Ethics drawn up by EAA. Upon receipt of complaints against estate agents, the Complaints Section ("CS") and Disciplinary Proceedings Section ("DPS") of EAA would respectively collect evidence and assess if the evidence is adequate. Assessment of cases by DPS is on a "first-in-first-out" basis. When the evidence is considered adequate, the case would be brought to the

Disciplinary Committee ("DC") for disciplinary hearing. Should anyone be suspected of having committed a criminal offence in the course of investigation, the case would be referred to law enforcement agencies for follow-up actions.

8. According to EAA's internal guidelines, investigation and evidence collection for simple complaint cases should take about four months, and for complicated cases, about seven to nine months. The first disciplinary hearing should take place within 90 working days upon completion of investigation. Besides, CS case officers should inform complainants of investigation progress every three months and, upon completion of investigation and disciplinary hearing, notify them of the results within ten working days.

EAA's Response to the Complaint

9. EAA opened a case file for the complaint in December 2010 and CS referred the case to DPS when evidence collection was first completed in September 2011. However, DPS sent the case back to CS twice for further evidence collection and investigation. The case was eventually brought before DC for examination in October 2012. Agent A was found to have breached the code of professional ethics and the complainant's complaint was substantiated.

10. EAA considered it reasonable for CS to have taken nine months to collect evidence and complete its investigation. However, despite that the case had been taken to DPS time and again, DPS stuck to the "first-in-first-out" principle in handling it. With a huge backlog and a shortage of officers, this eventually led to delay in processing. That was indeed undesirable.

11. Since opening of the case file until the completion of disciplinary hearing, the case officer had followed established procedures (paragraph 8) and telephoned or written to the complainant a number of times to explain case progress and investigation results. There was no impropriety.

12. Regarding the complainant's allegation that the estate agents concerned had committed criminal offences, EAA found no *prima facie* evidence and decided not to refer the case to law enforcement agencies. Nor was there negligence, as the case officer had advised the complainant to report the matter herself.

Our Comments

13. EAA had taken 22 months to complete its investigation of this case. Initially, EAA denied any delay or impropriety. It admitted to deficiencies and introduced improvement measures only after a review. Laxity in its attitude was obvious. That the case had been referred back to CS twice by DPS and the consequential delay also revealed inefficiency and a lack of communication between CS and DPS.

14. Furthermore, EAA never publicised its performance pledge on complaint handling or informed the complainants specifically of the time needed for case processing. That was not in keeping with public expectations. Taking this case as an example, although the case officer had contacted the complainant a number of times, the delay of nearly two years would inevitably give her an impression that there was little progress.

15. Besides, EAA did not get to the bottom of the matter and find out the whole truth. The complainant's allegation against the two estate agents was quite serious, and her description of the events (paragraph 1 to 4) would certainly invite doubts over their professionalism and integrity, and whether they had protected the interests of their clients. EAA, however, had obviously failed to conduct a thorough investigation. It only punished Agent A for impropriety in asking the complainant to sign the first PASP and the supplementary agreement but never asked whether the two estate agents admitted to the allegation. Moreover, when Agent B did not respond to its invitation to a meeting, EAA did not pursue further or take any action regarding his uncooperative

attitude. All in all, while Agent B's performance was far from professional, EAA simply did not try its best to dig out the truth. Whether it had exercised due diligence in discharging its duties was questionable.

Conclusion and Recommendations

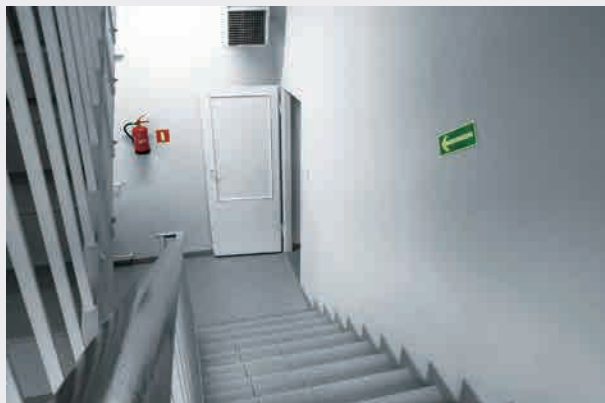
16. Overall, The Ombudsman considered this complaint substantiated.

17. EAA subsequently reviewed its complaint handling procedures and immediately implemented a number of measures to strengthen case monitoring, as well as to increase case processing efficiency and procedural transparency. The Ombudsman made further recommendations to EAA, including:

- (1) to examine the inclusion of case investigation time as a factor in measuring service performance so as to facilitate public scrutiny;
- (2) to review its operational guidelines on complaint investigation, identify inadequacies and tighten its evidence collection procedures; and
- (3) to consider, when handling complaints, not only to investigate whether the estate agents concerned had violated relevant regulations, but also to look into whether they had breached the code of professional ethics, so that EAA may determine whether they would still be fit and proper to hold a licence under the Estate Agents Ordinance when they apply for licence renewal.

*A case of delay and improper procedures
for complaint investigation*

Summaries of Selected Cases Concluded by Full Investigation



Fire Services Department ("FSD") and Buildings Department ("BD")

Case No. OMB 2013/0471 A & B – Smoke stop doors

Allegations:

FSD and BD – failing to take proper action on complaints about smoke stop doors and to abate the fire hazard expeditiously – unsubstantiated

Details of Complaint

The complainant, the Owners' Corporation of a building, alleged that at each of the two smoke lobbies on one floor of the building, one of the two smoke stop doors had been removed ("Irregularity 1") and the other one was held open ("Irregularity 2"). The complainant lodged a complaint with FSD and requested immediate enforcement action. FSD, however, just referred the case to BD and the problem persisted.

2. The complainant considered FSD and BD to have failed to take proper action on its complaints and to abate the fire hazard expeditiously.

Our Findings

Division of Responsibilities between FSD and BD

3. With regard to fire safety in buildings, FSD is responsible for handling cases of interference with means of escape, while BD will take action on unauthorised building works ("UBW") that affect fire safety. In this complaint case, Irregularity 1 was

within BD's jurisdiction and Irregularity 2 was the responsibility of FSD.

Procedures and Performance Pledges

Irregularity 1

4. Although it was BD's responsibility to deal with complaints about problems such as Irregularity 1, FSD would still conduct an investigation within 10 working days into such "non-imminent cases" to see if any other issues within its jurisdiction were involved before referring the cases to BD. The complainants would be informed of its investigation results within 27 working days.

5. BD regarded problems like Irregularity 1 as "imminent cases" to be screened and inspected within 50 days. The complainants would be informed of the outcome within 30 days after screening/inspection.

Irregularity 2

6. FSD classified Irregularity 2 as an "imminent case" that called for investigation within 24 hours. The complainants would be informed of the outcome within 12 working days.

The Events

7. On 24 January 2013, the complainant reported the irregularities to FSD. A site inspection by FSD on Irregularity 2 later that day confirmed that one smoke stop door was held open. The responsible person could not be located at the scene. Subsequent inspections on 28 and 31 January found that both smoke stop doors in question were closed. The complainant was informed of the result the following day.

8. Meanwhile, FSD conducted two inspections regarding Irregularity 1 on 30 January and 5 February and confirmed the irregularity on both occasions. The case was referred to BD and the complainant was informed of the situation by telephone on 6 February.

9. On 8 February, the complainant wrote to BD regarding some UBW items (including Irregularity 1) in the building. BD carried out two site inspections about 10 days later and found that two smoke stop doors had been removed. BD confirmed them to be UBW subject to enforcement action. The Department telephoned the complainant thrice in February and March to explain its investigation results and case progress.

Further Developments

10. On 20 March, BD issued an advisory letter to the owner of the floor in question and requested reinstatement works regarding Irregularity 1 before 26 April. The owner asked for an extension to start the works in early July. BD found the irregularity rectified during an inspection on 20 August.

Our Observations

Complaint against FSD

11. We noted that FSD had conducted an investigation on Irregularity 1 within five working days, and referred the case to BD and notified the complainant of its referral within 11 working days, in accordance with its procedures and well within its time pledges.

12. The Department had also conducted an investigation on Irregularity 2 within 24 hours and notified the complainant of the result within six working days, again as pledged. Irregularity 2 had subsequently been rectified (the smoke stop doors were closed), so no further enforcement action by FSD was necessary.

13. In the light of the above, The Ombudsman considered the complaint against FSD unsubstantiated. Nevertheless, we found that:

- (1) Irregularity 1 and Irregularity 2 actually posed similar fire risks, but they were classified respectively as “non-imminent” and “imminent” cases by FSD simply because the former did not fall within its jurisdiction and the latter did, which was somewhat misleading; and

- (2) Irregularity 1 might have been resolved earlier if FSD had referred such cases to BD for action in parallel with its investigation.

Complaint against BD

14. We noted that owing to its heavy workload of UBW cases, BD had to prioritise its actions on different cases. Therefore, it could not have attended to Irregularity 1 sooner. Anyhow, BD had carried out inspections within two weeks of the complainant’s report, well within its time pledge. It had also notified the complainant of the result of its investigation within its 30-day pledge.

15. The complaint against BD was, therefore, unsubstantiated. However, we noticed that BD had not issued an advisory letter to the owner until 20 March, although inspections had been conducted in mid-February. The Department should have drawn the attention of the owner to the UBW items earlier.

Recommendations

16. Based on our observations above, The Ombudsman recommended that:

- (1) FSD revise its terminology and work procedures; and
- (2) BD remind its staff to issue an advisory letter to the owner as soon as possible after a UBW item has been identified.

A case of need for procedural enhancements

Summaries of Selected Cases Concluded by Full Investigation



Food and Environmental Hygiene Department ("FEHD")

Case No. OMB 2012/4136 – Market management

Allegation: failing to take effective regulatory action against obstruction of passages in a market – substantiated

Details of Complaint

The complainant alleged that some stall operators had persistently occupied the passages in a market ("the Market") managed by FEHD, causing serious obstruction. She had complained many times to FEHD between January and September 2012, but there had been no improvement.

Relevant Stipulations and Regulatory Procedures

2. According to FEHD's Code of Practice for Market Management ("Code of Practice"), stall operators are not allowed to place any commodities beyond the yellow lines or display platforms in the front of or alongside their market stalls. Otherwise, FEHD will take enforcement action.

3. Any stall operator convicted of obstruction offences for four times within 12 months is liable to have his/her tenancy terminated.

4. The Market was managed by a contractor appointed by FEHD. If commodities were found to be obstructing passages, staff of the contractor would first advise the stall operators concerned to remove them. A verbal warning would be issued after 20 minutes if that was not rectified. If the warning proved ineffective, the contractor would report the problem to FEHD's District Environmental Hygiene Office ("DEHO").

5. On receipt of such reports, DEHO would deploy officers to conduct a site inspection. A verbal warning would be issued if the obstruction remained. Any stall operator who failed to rectify the problem afterwards would be prosecuted.

FEHD's Response

6. Since the complainant's first report of the problem to FEHD in January 2012, DEHO had, up to October 2012, conducted 38 inspections, including 14 surprise inspections, and instituted eight prosecutions. Between October 2012 and April 2013, DEHO instituted a further 13 prosecutions against stall operators for obstruction offences. The two worst offenders were prosecuted for three and four times respectively within a 12-month period.

7. FEHD indicated that it had adopted improvement measures, such as directing the contractor to tighten up control over obstruction of passages and to closely monitor the black spots. DEHO also pledged to continue taking enforcement action assiduously by conducting inspections every day and surprise inspections frequently.

Our Observations and Comments

8. Our investigators conducted three site visits in February and March 2013 and noted that the passages in the Market, which should have been 2.5 metres wide, were very congested because most stall operators placed their commodities outside their display platforms. At some sections, the width of the passage was just 0.8 metre, causing inconvenience if not danger to customers.

9. Under the Code of Practice, stall operators who occupy spaces beyond their display platforms are liable to prosecution. However, DEHO had instituted very few prosecutions after receiving the contractor's reports of irregularities (paragraph 6). That had greatly compromised the deterrent effect of the legal sanctions.

Conclusion and Recommendation

10. FEHD's enforcement action against the obstruction problem had all along been weak. It had become a customary practice for many stall operators to extensively encroach on the common areas. That was indeed improper.

11. In this light, The Ombudsman considered the complaint substantiated.

12. FEHD had enhanced its enforcement efforts since our intervention. There was an increase in the number of prosecutions and one stall operator might face termination of tenancy. In order to increase the deterrent effect of its enforcement action, The Ombudsman urged FEHD to institute prosecutions more decisively against those stall operators who were heedless of its warnings.

A case of lax enforcement



Food and Environmental Hygiene Department ("FEHD")

Case No. OMB 2012/4603 – Roadside publicity banners

Allegation: failing to resolve the problem of extensive display of unauthorised roadside publicity banners by two organisations – partially substantiated

Details of Complaint

Since 2012, two organisations ("Organisation A" and "Organisation B") had been displaying a large number of banners, sometimes totalling more than 100, along the pavement and on roadside railing at a certain location ("the Location"), causing obstruction and even danger to pedestrians and motorists. Despite numerous complaints to FEHD from residents nearby, the situation had not improved.

Management Scheme

2. Under the Management Scheme for the Display of Roadside Non-commercial Publicity Materials ("the Management Scheme"), display of publicity materials on Government land without permission from the Lands Department ("Lands D") is an offence. For road safety reasons, all areas within 30 metres on the traffic upstream side of pedestrian crossings and road junctions, as well as the central dividers of roads, are designated as no banner zones. FEHD is empowered to remove any unauthorised or illegal publicity materials on display.

Summaries of Selected Cases Concluded by Full Investigation

Follow-up Action by FEHD

3. Between August and December 2012, FEHD received a total of 108 complaints about the extensive display of banners by Organisation A and Organisation B at the Location. Lands D indicated that neither organisation had obtained permission for display of publicity materials in that area.

4. FEHD had conducted numerous inspections. On each occasion, FEHD staff reminded the persons-in-charge at the scene to take note of the provisions under the Management Scheme and the relevant laws. As some banners were in the no banner zones or blocking sightlines, they might put road users at risk. Hence, FEHD issued verbal warnings to the two organisations and also referred the cases to the Police for action. The organisations subsequently removed those banners.

5. Meanwhile, FEHD also found that some of the banners were occupying spots designated for use by Legislative Council and District Council members. After warning, those banners were removed in early December 2012.

FEHD's Explanation

6. According to FEHD, the Department had refrained from exercising its power to remove the unauthorised banners at the Location, because Organisation A had contended that display of publicity materials was part of peaceful demonstration and the organisation's constitutional right to engage in such activities is protected by the Basic Law as well as being upheld by the Court of Final Appeal in a criminal appeal case. By removing the publicity materials, FEHD might be seen to be infringing upon the organisation's freedom of expression. Hence, rather than taking enforcement action promptly, the Department decided to just continue monitoring the situation closely.

7. In mid-2012, Organisation B started to conduct similar demonstration activities at the Location. Since FEHD had already decided to withhold enforcement

action against Organisation A, it did not remove the banners of Organisation B either. Furthermore, in addition to displaying publicity materials, some members of the two organisations were also there to stage a sit-in or distribute handbills. FEHD considered that such activities were akin to demonstrations and so should be handled with prudence.

Our Observations and Comments

8. While acknowledging that Government should safeguard the rights of all citizens and organisations to freedom of expression, we found it equally important to ensure that their activities would not unreasonably cause nuisance or even pose any danger to other people and the general public.

9. Regarding the extensive display of unauthorised publicity materials in public places by Organisation A and Organisation B, this Office had received similar complaints involving other districts. From the information received and our site visits, we noted that:

- (1) the publicity materials displayed by Organisation A and Organisation B at various locations, given the huge quantities, extensive areas occupied and long periods involved, had indeed caused nuisance, inconvenience or even danger to the public; and
- (2) members of the two organisations usually did not remove their publicity materials before departure, i.e. the publicity materials continued to occupy public places after their demonstration activities.

10. We considered that FEHD should strike a proper balance between the rights of organisations to express their views and the interests of the public at large. In this case, for more than six months, FEHD had adopted an approach of withholding enforcement action against the above irregularities. The Department just kept on reminding the two organisations of the provisions under the Management Scheme, naturally to no avail.

11. FEHD had taken actions in accordance with the Management Scheme, though, and urged the two organisations to remove some of the banners that had become a potential danger to road users and those occupying the designated spots.

Conclusion and Subsequent Development

12. Summing up, The Ombudsman considered this complaint partially substantiated.

13. In early April 2013, the Administration declared that it would step up enforcement action, including clearance operations, against unauthorised publicity materials displayed by the two organisations, and would also consider criminal prosecution. Between 2 and 6 April, FEHD carried out enforcement action at different locations where the two organisations conducted their activities. Subsequently, we found all publicity materials (including banners) of the two organisations removed.

| _____ *A case of loose enforcement*



Food and Environmental Hygiene Department ("FEHD")

Case No. OMB 2013/0246 – Food complaint

Allegation: failing to promptly collect food specimens for laboratory test when handling a food complaint – substantiated

Details of Complaint

The complainant fell sick after consuming ice-cream at a fast food shop. Suspecting the ice-cream to be the cause of his sickness, he lodged a complaint with FEHD. FEHD later informed him that its staff had inspected the shop, but no specimen of ice-cream had been collected.

2. It was not until 19 days later that FEHD staff took from the shop some specimens of ice-cream for laboratory test. The complainant alleged that FEHD had delayed collecting specimens of the ice-cream and had thus given the shop time to destroy the evidence.

Summaries of Selected Cases Concluded by Full Investigation

Procedures for Handling Food Complaints

3. According to FEHD guidelines, food complaints must be attended to promptly and staff of the District Environmental Hygiene Offices or the Duty Room under FEHD should immediately approach the complainant for details, obtain a food complaint statement and also visit the premises for investigation and collection of evidence.

4. In case similar food is still on sale in the shop under complaint and if abnormality is detected of the batch of food or if the food is perishable, FEHD staff should obtain specimens for laboratory test and submit a preliminary investigation report to the Centre for Food Safety ("CFS") within four working days. Based on the investigation report, CFS will decide whether follow-up action is needed. Where there is sufficient evidence, CFS will issue warning letters or institute prosecutions. On receipt of the investigation report, CFS should give an interim reply to the complainant within ten days. It should also inform him/her regularly of the progress of the case and finally of the result when follow-up action is completed.

Response from FEHD

5. FEHD explained to us that during the site inspection, the officer concerned had not collected any specimen of the ice-cream because he had been told that the ice-cream machine in question was cleaned and sterilised every two hours. In other words, the ice-cream being served at the time of inspection was not of the same batch that the complainant had bought from.

6. Nevertheless, FEHD admitted that its staff had failed to fully comply with the guidelines. They had neither collected any food specimen during inspection nor issued an interim reply to the complainant within 10 days after receiving the preliminary investigation report. Accordingly, FEHD had reminded staff to follow the guidelines when handling food complaints.

Our Comments

7. Shops selling unhygienic food could lead to dire consequences. We considered it improper of FEHD staff not to have collected food specimens from the shop until 19 days after the incident.

Conclusion and Recommendations

8. In this light, The Ombudsman considered the complaint substantiated.

9. The Ombudsman urged FEHD to provide training to staff to ensure that they understand the guidelines and the procedures for handling food complaints and that they handle food complaints promptly and carefully in accordance with the guidelines.

A case of failure to follow procedures



Home Affairs Department (“HAD”) and Hong Kong Housing Society (“HKHS”)

Case No. OMB 2012/5819 A & B – Application form for subsidised housing

Allegations:

HAD – failing to make available for public collection enough copies of an application form for subsidised housing – unsubstantiated

HKHS – failing to supply HAD with enough copies of the application form for public collection – substantiated

Details of Complaint

HKHS had requested HAD to distribute copies of its application form (“the Form”) for new subsidised housing flats at the latter’s District Offices (“DOs”) from 21 December 2012 to 18 January 2013.

2. On 24 December 2012, the complainant went to the Tsuen Wan District Office (“TWDO”) for a copy of the Form, but the staff there said that all copies had already been given out. He was advised to obtain a copy from another collection point, or to download the Form from the HKHS website. The complainant was dissatisfied with arrangements for distribution of the Form.

The Event

3. On 21 December, HAD Headquarters learned from various DOs (including TWDO) that they needed more copies of the Form because public demand was overwhelming. HAD notified HKHS immediately, but was told that HKHS would not supply additional copies. HKHS further stated that if the Form ran out of stock, DOs should advise members of the public to try the other collection points designated by HKHS or download one from the HKHS website (“out-of-stock arrangement”).

4. On 24 December, all copies of the Form at TWDO were given out. The staff there explained to the complainant the “out-of-stock arrangement” and notified HKHS by telephone that TWDO had no more copy of the Form. HKHS then indicated that additional copies would be sent to DOs on 27 December.

Our Comments on HAD

5. DOs are tasked with the distribution of information brochures and application forms for Government departments and other organisations. Regarding the arrangements for distributing the Form, DOs had to follow the instructions of HKHS. Before the complainant turned up at TWDO for a copy of the Form, HKHS had indicated that it would not supply DOs with additional copies. TWDO staff, therefore, advised the complainant to try other methods, as set out in the “out-of-stock arrangement”.

6. We found that HAD had asked HKHS for more copies of the Form in a timely manner on 21 December, and yet HKHS did not supply additional copies to DOs until 27 December. That the Form ran out of stock at TWDO on 24 December and the complainant could not obtain a copy there was no fault of TWDO.

7. In this light, The Ombudsman considered the complaint against HAD unsubstantiated.

Summaries of Selected Cases Concluded by Full Investigation

Our Comments on HKHS

8. We noted that HKHS had decided on the quantity of the Form to be printed based on experience. Copies had been supplied to nearly 300 collection points (including TWDO) in the territory. As it was expected that public demand for the Form might exceed supply, HKHS formulated the “out-of-stock arrangement” and informed HAD of that arrangement at the end of November 2012. The Form had also been uploaded on the HKHS website for public use.

9. When notified by TWDO on 24 December that the Form was out of stock, HKHS immediately arranged additional printing. The additional copies were delivered to various DOs on 27 December. HKHS argued that the complainant could have tried another collection point nearby. Furthermore, there were still some days before the opening of application on 28 December. Even if the Form was out of stock temporarily, people wishing to make an application could obtain a copy in time by other means.

10. Understandably, HKHS had to decide on a certain quantity of the Form to be printed based on experience in order to avoid waste of resources. Nonetheless, HAD had, on the first day of distribution (i.e. 21 December) notified HKHS that public demand for the Form was overwhelming and asked for additional copies. Yet HKHS did not arrange additional printing immediately and refused to supply additional copies. It only decided to print more copies three days later. HKHS was slow in responding to the changing situation.

11. The application deadline was 18 January 2013, but the Form had already run out of stock at TWDO by 24 December 2012. HKHS argued that the complainant could have tried another collection point. However, there was no telling if any copy was available there. HKHS’s “out-of-stock arrangement” had taken no account of the feelings of those who could not get a copy of the Form from designated collection points.

12. In the light of the above, The Ombudsman considered the complaint against HKHS substantiated.

Recommendations

13. The Ombudsman urged HKHS to gauge closely public demand for its printed materials and to arrange additional printing in a timely manner. HKHS should also enhance its cooperation with those departments or organisations asked to distribute its materials.

A case of unsound arrangements



Hospital Authority ("HA")

Case No. OMB 2013/0778 – Antenatal checkup service

Allegation: mishandling the complainant's booking of antenatal checkup service – substantiated

Details of Complaint

The complainant, a permanent resident of Hong Kong, went to a public hospital ("Hospital A") under HA to book her first appointment of antenatal checkup. Failing to provide her address proof on the spot, she proposed to submit the address proof by fax or post later that day but the hospital staff refused her booking.

2. She found this unreasonable as she believed that the staff there were able to check her records in the computer system because she had received regular medical treatment in other public hospitals. She also alleged that HA had failed to publicise the requirement of address proof on its website.

Response from HA

3. The mode of obstetric service is unique as timely follow-up visits and examinations should be arranged for expectant mothers according to their gestations and medical indications. When expectant mothers make appointment for routine antenatal checkup, they will also be offered prenatal screening of Down Syndrome. As this screening service is time-frame restricted and the demand for it is huge in Hospital

A, HA has imposed a restriction on obstetric service booking based on the expectant mother's residential address. Cross-cluster referral will only be made if it is in the best interests of the expectant mother and/or her baby.

4. Expectant mothers are advised to bring along all the necessary documents and make the booking in person as assessment of or clarification from them may be needed to ensure timely appointments. The registration and booking process can also be completed on the spot. If the obstetrics and gynaecology ("O&G") clinic accepts booking first and allows the expectant mother to submit the address proof afterwards, the clinic's workload and the risk of data entry error may be increased. Besides, O&G staff cannot verify the expectant mother's address through her medical records in other public hospitals as they are not allowed to access information of patients not under their care.

5. Nevertheless, if the expectant mother expresses grievances or difficulties, the O&G Department may exercise discretion to arrange the booking and request her to produce address proof at the first appointment.

6. In this case, the complainant had expressed difficulty in making her booking in person again and that none of her relatives could help her make the booking. Yet, the counter staff still would not make a booking for her. Hospital A admitted that the counter staff concerned could have been more flexible and offered the necessary assistance to the complainant. The hospital apologised to the complainant for her unpleasant experience and the inconvenience caused. It also undertook to strengthen the training and communication skills of its frontline staff.

Our Comments

7. On the understanding that Hospital A had to limit its antenatal checkup services to residents within its cluster, we agreed that it was necessary to require an address proof from the patient. However, if Hospital A could ascertain that the patient was a permanent

Summaries of Selected Cases Concluded by Full Investigation

resident in Hong Kong eligible for O&G services at public hospitals, we did not see why Hospital A must reject the booking simply because she could not provide an address proof on the spot. Even if it was later found that she should be attending another public hospital, Hospital A would at most be just taking up the first appointment and then refer her case to the right hospital.

8. Moreover, if a patient, though not encouraged, could make a booking by fax or mail, then Hospital A should also allow her to submit address proof by fax or mail afterwards. When the complainant complained to the Patient Relations Office, the latter still advised her to make another trip to the hospital with her address proof or arrange a relative to help her make the booking. We considered it unreasonable for the hospital to turn away a pregnant patient, who had already taken a day off from work to make her booking in person, just because of such administrative hurdles relating to HA's requirement of address proof.

9. HA should consider allowing patients who have forgotten to bring along their address proof to submit it later by fax or mail or even during the first appointment, rather than leaving it to the discretion of senior staff of the O&G Department. Otherwise, it would create unnecessary pressure on the frontline staff.

10. During our investigation, we perused the relevant pamphlet and other related information on HA's website on antenatal checkup. We found that the pamphlet contained no information about the booking procedures. Moreover, different hospitals had different requirements of address proof in their booking procedures. As the general information on HA's website and the information on individual hospitals'

websites could be different, it was difficult for the public to know precisely the booking procedures and documents required for a particular hospital. In our view, HA should seriously consider explaining clearly the booking procedures in the relevant pamphlet and standardising its requirement of address proof.

Conclusion and Recommendations

11. In view of the above, The Ombudsman considered the complaint substantiated.

12. The Ombudsman recommended that HA should:

- (1) review hospitals' compliance with the current booking procedures for O&G service and consider allowing the expectant mothers to provide their address proof by fax or mail after an in-person booking is made or during the first appointment;
- (2) improve the dissemination of information on its websites to ensure that the information about booking procedures for O&G service is easily accessible, accurate, clear and consistent; and
- (3) consider standardising hospitals' requirement of address proof.

13. HA admitted that there was discrepancy in hospitals' requirement for obstetric booking and the information should be better disseminated. It accepted all our recommendations.

*A case of lack of flexibility
in standardised requirements*



Hospital Authority ("HA") and Equal Opportunities Commission ("EOC")

Case No. OMB 2012/5806A & B – Drop-off point for patients in wheelchair

Allegations:

HA – unfairness of a public hospital in refusing to allow vehicles transferring patients in wheelchair to enter via a side entrance for picking up/dropping off patients, while allowing vehicles of privileged persons to do so – unsubstantiated

EOC – being perfunctory in investigating a complaint, obstructing the complaint intentionally and unreasonably asking the complainant to provide a photograph of him in a wheelchair – unsubstantiated

Details of Complaint

The complainant was a wheelchair user and had to attend medical consultations regularly at a medical centre ("the MC") at a public hospital ("the Hospital") under HA. He alleged that the Accessible Hire Car ("AHC") that transferred him was not allowed to enter via the side entrance ("the Entrance") near the MC so that it could drop him off right there. As a result, he had to put up with the inconvenience of getting off somewhere on the road outside the Hospital and be pushed a long way by his family member every time he went to the MC. However, non-emergency ambulances and other vehicles of privileged persons could use the Entrance and drop off and pick up passengers outside the MC. He had requested the Hospital to open the Entrance to AHCs, but was refused.

2. Considering such arrangements unfair, he lodged a complaint with EOC. Nonetheless, EOC allegedly handled his case perfunctorily. It did not explain clearly to him its case handling methods and procedures, and asked him to provide proof of disability ("PoD", such as medical reports) with the intent to obstruct his complaint. Later on, EOC decided that a photograph showing him in a wheelchair should suffice. The complainant felt offended and humiliated. He deemed it ridiculous and loose that photographs could be accepted as PoD.

Response from HA

3. The Entrance was at the junction between the pavement and an access area ("the Access") inside the Hospital. As out-patients had to come and go via the Entrance, daily pedestrian traffic there was heavy. While the Access was wide enough for vehicles to drive through, it was too narrow for making U-turns. Consequently, all vehicles had to reverse to enter. To protect the safety of passers-by, only a few types of vehicles which must use the Access on a regular basis (such as non-emergency ambulances, hearses and dangerous goods vehicles) were allowed to use the Entrance, where there was a security guard on duty. Prior permission by the Hospital was required, and the vehicle registration marks and time of use would be recorded.

4. In the light of the above, the Hospital considered it not suitable to allow vehicles unfamiliar with the environment to enter via the Entrance lest there should be safety concerns. No favouritism was involved in the arrangement.

5. In fact, patients in need have a priority to use the covered loading/unloading area at the other side of the Hospital. There was a "barrier-free" access leading to the lift lobby where patients could take the lift and proceed to other medical units, including the MC where the complainant needed to go. The Hospital stated that while that route might not be the quickest and most convenient one, it could not accede to the

Summaries of Selected Cases Concluded by Full Investigation

complainant's request and open the Entrance and the Access to unauthorised vehicles (such as AHCs) because of the physical restrictions of the location.

Response from EOC

6. If a complaint lodged with EOC under the Disability Discrimination Ordinance ("DDO") did not include sufficient information to suggest any possible unlawful act, it would first be dealt with as an "enquiry". Only when the complainant provided adequate information to establish a case would EOC follow it up as a "complaint".

7. The EOC case officers already explained to the complainant the above procedures for handling his case upon receipt of his complaint. It was only after he had provided further information that EOC decided to establish a case, deal with it as a "complaint" and ask him for PoD.

8. EOC added that since the complaint was made under DDO, the complainant must provide PoD to confirm his identity as a person protected by DDO. Besides, the onus of proof was on the side of the complainant. As the crux of this complaint was the complainant's reliance on the wheelchair to travel, EOC had to verify his status as a disabled person. Normally, medical certificates or medical reports and the like are PoDs acceptable to EOC.

9. The complainant could not produce any PoD and yet he urged EOC to process his case quickly. In order that the complaint could satisfy the requirements for establishing a case as soon as possible, the subject officer suggested that a photograph showing the complainant in a wheelchair be used as PoD. Although the complainant had indicated that he could authorise EOC to get a copy of his medical report from the Hospital, it would take at least two to three weeks from authorisation to obtaining the copy. A photograph, while hardly completely reliable, should be a quicker and more convenient alternative. The complainant did not raise any objections and provided

his photograph afterwards. EOC stressed that it exercised discretion to accept a photograph as PoD only after weighing all factors. It did not consider such handling method ridiculous or loose. Neither did it intend to make things difficult for the complainant.

10. As regards the complainant's allegation that EOC's handling of his case was perfunctory, EOC clarified that its staff had actually telephoned and written to the complainant a number of times to notify him of case progress and explain the reasons for requesting PoD. Furthermore, they had conducted two site inspections at the Hospital in October and November 2012. The complaint was found lacking in substantial evidence and EOC decided not to investigate. It wrote to the complainant in late November to explain its decision. Upon receipt of his response, EOC sent another written explanation to him in late December.

Our Observations and Comments

HA

11. Our investigation officers conducted a site inspection at the Hospital in late August 2013 to better understand the environment of the locations in question. Pushing a wheelchair along the way, the officers also tried the two routes leading to the MC: from the Entrance through the Access (Route 1) and the route suggested by the Hospital as mentioned in paragraph 5 (Route 2). The purpose was to test the time needed to arrive at the MC and to make observations along the way. Our findings were as follows.

12. For Route 1:

- (1) There were three large gates at the Entrance but only one gate door on the left was open. It was barely wide enough for two people to walk abreast;
- (2) During the inspection, pedestrian traffic was heavy with a lot of the passers-by being elderly and mobility-impaired patients;

- (3) Vehicular and pedestrian traffics were not segregated; and
- (4) The Access was too narrow to allow vehicles to make a U-turn.

We agreed that safety concerns would indeed arise if the Entrance was open to unauthorised vehicles (including AHCs) and so it was not unreasonable for the Hospital to refuse the complainant's request. Actually, information provided by the Hospital showed that vehicles were authorised to enter via the Entrance strictly on a need basis (e.g. hearses were granted access via the Entrance in order to avoid taking bodies of deceased patients out to the pavement and causing uneasiness among pedestrians).

13. For Route 2:

- (1) It would take a longer time to go to the MC via this route than Route 1;
- (2) Near the entrance of the MC, there was a pair of smoke stop doors which were quite heavy and always stayed closed. To push open the doors while pushing a wheelchair through would prove quite a difficult task (the complainant alleged that his family members had sustained injuries as a result); and
- (3) For unaccompanied and helpless wheelchair users, the above would pose an obstacle.

We found Route 2 acceptable on the whole, though the Hospital should make improvements with regard to the smoke stop doors.

14. In the light of the above, The Ombudsman considered the complaint against HA unsubstantiated.

EOC

15. Having examined EOC's handling of the complainant's case, we found that EOC did seriously

follow it up and investigate, but it finally concluded that the Hospital's arrangements did not constitute disability discrimination.

16. Nevertheless, EOC initially handled the complainant's case by way of an "enquiry". It then decided "not to investigate" a month or so after establishing his case as a "complaint". That could give the complainant an impression that EOC was unwilling to establish his case and conduct investigations. Furthermore, neither EOC's "Complaints Handling Procedures" nor its website explained the differences between "enquiries" and "complaints". EOC should step up publicity in this area and consider improving wordings used in concluding complaints.

17. On the other hand, we found nothing improper in EOC's request for PoD from the complainant in accordance with established procedures. EOC exercised discretion to accept a photograph as such proof so that a case could be established as soon as possible for follow-up actions. Insisting on the complainant providing absolute PoD would only make things difficult for him. If the complainant felt offended, he could refuse the request for a photograph, but then he would have to provide proof by other means.

18. There was no evidence that EOC intentionally obstructed the complaint. EOC had to ask the complainant for PoD. The complainant's dissatisfaction mainly stemmed from EOC's decision "not to investigate" his case.

19. The Ombudsman, therefore, considered the complaint against EOC unsubstantiated.

Conclusion and Recommendations

20. Overall, we considered the complaint unsubstantiated.

Summaries of Selected Cases Concluded by Full Investigation

21. The Ombudsman made a number of recommendations to HA/the Hospital and EOC, including:

HA/the Hospital

- (1) to link the smoke stop doors mentioned in paragraph 13(2) with the central fire fighting system such that they could always stay open for the convenience of wheelchair users; and
- (2) to open the two gates at the Entrance at the same time for the ease of wheelchair users;

EOC

- (3) to consider stepping up publicity on the differences between handling cases by way of “enquiry” and “complaint”, as well as complainants’ rights and obligations; and
- (4) to consider enhancing publicity that complainants must provide proofs of identity, and to advise complainants of this responsibility upon receipt of their cases and the ways of providing such proofs.



Legal Aid Department (“LAD”)

Case No. OMB 2013/1824 – Choice of language in proceedings

Allegation: ignoring the complainant’s request to conduct his lawsuit in Chinese – unsubstantiated

Details of Complaint

In January 2010, the complainant was granted legal aid by LAD to file for a divorce. As he did not understand English, he told the panel lawyer appointed by LAD that all documents should be provided in Chinese. To his dismay, most documents he received subsequently in relation to his case were in English. The legal costs increased as a result, as he needed translation or the lawyer to explain to him over the telephone the content of the documents.

2. The complainant lodged a complaint with LAD. LAD replied that it was inevitable that lawyers would have to provide translation or interpretation of documents for him during the course of legal proceedings. Subsequently, he also received from LAD an English bill of assessed legal costs. He, therefore, complained to this Office, alleging that LAD had been unfair in handling the matter, ignored his request to conduct the lawsuit in Chinese and discriminated against the Chinese language.

LAD's Explanation

3. According to LAD, the assigned lawyer presented to the court a petition for divorce in English on behalf of the complainant to start the proceedings. The complainant had never given any instruction to his lawyer to prepare the petition in Chinese. As such, all the legal documents subsequently filed in the court were prepared in English.

4. LAD also pointed out that the complainant had not expressed any dissatisfaction about the mode of communication with the assigned lawyer. It was not until he received the bill of costs that he disputed the lawyer's fees and requested all translation costs be excluded.

Our Observations and Comments

5. Article 26 of the International Covenant on Civil and Political Rights stipulates that all persons are entitled to the equal protection of the law without any discrimination on language or any other ground. We, therefore, considered it necessary to ensure that the aided persons are well informed of their rights at the earliest opportunity and thereby able to make the appropriate choice of language.

6. In our view, the crux of this complaint was whether the complainant had been informed at the proper time of the available choice of language in proceedings and the implications of such choice. We noted that, in response to The Ombudsman's comments in an inquiry in 2009, LAD advised the Law Society of Hong Kong ("HKLS") to urge its members to enhance transparency for the aided persons in legal aid cases by informing them of the available language choice in proceedings. In August 2009, HKLS issued a circular to its members on this. Nevertheless, after assigning cases to panel lawyers, LAD normally would not ask them to report whether there were any discussions on language choice with the aided persons in accordance with the circular.

7. In this case, the complainant should have instructed his lawyer to prepare the petition for divorce in Chinese before the commencement of proceedings. We believe that many aided persons who would want their cases to be conducted in Chinese were not fully aware that they could and must give instructions in this regard before the proceedings started. They might only realise the actual implications of language choice after learning about the legal costs and then express dissatisfaction at that stage.

8. LAD's function is to assign lawyers to represent the aided persons in taking legal action. The Department is not a party to the litigation, nor will it play the role of a lawyer in giving legal advice to the aided persons, such as which language should be used in conducting their cases. Hence, LAD's reply to the complainant explaining the general practices and chargeable fees of lawyers was in line with its established function and procedures. There was no maladministration on its part. However, this case revealed the need for further improvement in the current system.

Conclusion and Recommendation

9. In the light of the above, The Ombudsman considered the complaint unsubstantiated. However, there was room for improvement in LAD's current practices.

10. The Ombudsman recommended that LAD should review its current procedures and consider allowing the aided persons to indicate in writing their language preference when applying for legal aid. LAD should then pass such information to the assigned lawyers.

Summaries of Selected Cases Concluded by Full Investigation

Response from LAD

11. LAD indicated that a number of factors, in addition to the preference of the aided persons, were involved in determining the language to be used in a proceeding, which is subject to the final decision of the judge. In view of this Office's concern about the choice of language in legal proceedings, LAD would revise the documents to be completed by legal aid applicants concerning the details of their cases. It would include a reminder to applicants of the need to discuss language choice and its implications with their lawyers once their applications were approved. The applicants would also be asked to indicate in the relevant documents their language preference. LAD could then pass the relevant documents to the lawyers, such that they would be aware of the aided person's language preference when considering whether to accept an assignment.

A case of need for improvement in procedures



Leisure and Cultural Services Department ("LCSD")

Case No. OMB 2013/0496 – Booking of artificial turf pitch

Allegation: failing to take proper follow-up action against an organisation having priority booking rights when it repeatedly failed to use an artificial turf pitch it had booked – substantiated

Details of Complaint

The complainant alleged that a national sports association ("the NSA") failed on several occasions to use an artificial turf pitch it had booked, resulting in a waste of resources. LCSD, however, did not take any punitive action against it. This might encourage abuse of priority booking rights by eligible organisations.

2. The complainant also noted that the NSA had conducted activities unrelated to its own sport at the artificial turf pitch in early April 2013. He considered LCSD to have failed to monitor the NSA to ensure proper use of its facilities.

LCSD Guidelines

3. According to LCSD guidelines, organisations such as national sports associations can enjoy priority booking rights for land-based facilities and make bookings three to 12 months in advance of the date of use. Should they decide not to use a booked venue, they have to notify LCSD 40 days prior to the date of use, so that the relevant session can be re-allocated for booking by other users.

4. Organisations failing to observe the 40-day notice requirement would be issued an advisory letter. If, having received two advisory letters within 12 months regarding the same venue, an organisation violated the rules again, LCSD would issue a “first warning letter”. A “second warning letter” would be issued in case of repeated violation within the ensuing 12 months and the organisation’s priority booking rights would then be suspended for a year.

Sequence of Events

5. LCSD’s records showed that on 8 January 2012, the NSA did not use the artificial turf pitch which it had booked. LCSD received the NSA’s written explanation on 20 January but did not find the non-compliance justified. It therefore issued a “first advisory letter” in mid-February. In fact, the NSA had also failed to sign in at the venue on 23 December 2011 and 1 January 2012 but LCSD only received its written explanation on 10 February 2012. The Department treated the two incidents as one, issuing a “second advisory letter” in early March 2012.

6. Then on 23 and 30 December 2012, the NSA twice failed to use the booked venue. LCSD again treated the two incidents as one. However, instead of issuing a “first warning letter” to the NSA according to its guidelines, LCSD mistakenly issued a “second advisory letter” in late January 2013. It was not until we commenced our investigation into the case that LCSD discovered and rectified the mistake by issuing its “first warning letter” in mid-July.

Response from LCSD

7. The NSA had violated the rules four times during the Christmas/New Year periods in both 2011 and 2012. However, LCSD treated them as two incidents and issued only one advisory letter and one warning letter respectively (paragraphs 5 and 6). LCSD saw nothing improper in such combined treatment, since there were no hard and fast rules on how to count the number of violations and hence the penalties to be imposed. For instance, incidents of non-compliance that took place within a short period of time (say a few days) due to similar reasons would normally be combined and regarded as a single violation. The Department would issue only one advisory letter or one warning letter in such circumstances.

8. LCSD explained that as the venue manager for the artificial turf pitch had changed three times, confusion and errors regarding venue management arose, resulting in the issuance of the “second advisory letter” in late January 2013. The Department apologised for the mistake and reprimanded the staff members concerned.

9. As for the allegation that the NSA had conducted activities unrelated to its own sport at the venue, the NSA explained that it was probably a misunderstanding as its players were undergoing training through other kinds of exercises. Actually, neither the site inspections nor observations through surveillance cameras by LCSD staff that day supported this allegation.

Our Observations

10. When imposing penalties on organisations which had abused their priority booking rights and thus wasted venue resources, LCSD would mainly look at the number of violations involved. Therefore, proper records of non-compliance are essential. This case revealed that LCSD had failed to keep proper records in this respect. As a result, a “second advisory letter” (instead of a “first warning letter”) was issued to the NSA in late January 2013.

Summaries of Selected Cases Concluded by Full Investigation

11. Moreover, LCSD guidelines did not mention that separate incidents of non-compliance could be combined and treated as one. The guidelines only stated that organisations would be spared the penalty if they could provide satisfactory explanations and justifications for non-compliance. Regarding the two incidents of non-compliance at the end of 2012, the NSA cited “players on vacation” as the reason. We doubted if that was acceptable. Had LCSD treated each incident of non-compliance separately, the NSA would have already violated the rules four times and had its priority booking rights suspended for a year. To combine and treat separate incidents of non-compliance as one could easily lead to misunderstanding of favouritism towards the NSA and undermine the deterrent effects of the guidelines.

12. On the allegation that the NSA had misused the venue in early April 2013, the footage captured on the surveillance cameras at the pitch should have been useful in establishing the truth. Nevertheless, the venue manager did not follow departmental guidelines and arrange to retain for a longer time the video footage relating to complaints. The complainant lodged a complaint with LCSD in mid-April, while this Office asked LCSD for further information pertaining to this case on 22 April. Nevertheless, LCSD replied that the video footage (normally kept for not more than a month) had already been deleted. In other words, the truth could never be established because of a procedural oversight by LCSD staff.

Conclusion and Recommendations

13. Overall, the complaint against LCSD was substantiated.

14. The Ombudsman recommended that LCSD:

- (1) impose penalties properly in all cases of non-compliance by organisations having priority booking rights, and ensure proper maintenance and management of such records;
- (2) review the current guidelines and consider using the date of non-compliance as the criterion in counting incidents of violations, include provisions to require scrutiny of each incident of violation; and maintain detailed records of the rationale behind any exercise of discretion in all cases of non-compliance; and
- (3) step up staff supervision and training to ensure that video footage captured on surveillance cameras are properly kept to facilitate complaint handling.

15. In response to our findings in a direct investigation in 2012 regarding the booking and use of LCSD sports facilities, LCSD had, since mid-June 2013, shortened the notice period of cancellation of bookings by organisations from 40 days to 20 days. Meanwhile, a review on the penalties for non-compliance was being considered by the Department.

*A case of ineffective control
and faulty procedures*



Leisure and Cultural Services Department ("LCSD")

Case No. OMB 2013/0736 – Allocation of performance venues

Allegation: lacking in transparency in allocating performance venues – substantiated

Details of Complaint

In early 2013, the complainant applied twice to book one of the LCSD performance venues ("Venue A") but both applications were rejected as Venue A was fully booked from May to September 2013. When he checked the programme schedule on LCSD's website, however, he found many vacant time slots during the said period. He called LCSD to enquire but was told that the programme schedule should not be used as the means of checking the availability of venues. He considered LCSD to be lacking in transparency in allocating its venues.

Our Findings

Booking Arrangements and Application Processing

2. Under LCSD's policy, booking applications are classified into three categories: special, ordinary and late bookings. Special bookings are for events requiring a longer planning and preparation lead-time and applications should be submitted within eight to 24 months in advance of the month of hire. Other

bookings are essentially ordinary bookings, which are accepted not less than three months but not more than seven months in advance, while late bookings are those received less than three months in advance.

3. LCSD processes bookings collectively and in batches. In assessing applications, LCSD has an internal marking scheme which takes into consideration such factors as the nature and artistic merit of the proposed function and its value on the promotion of arts and culture in the community.

4. Without prior knowledge of the availability of venues, applicants are required to indicate in their applications three preferred time slots in order of priority for LCSD's consideration. Whether less competitive and late applications can succeed greatly depends on the availability of the time slots selected.

5. Where more than one applicant applies for the same time slot at a performance venue, LCSD will further consider the following factors: the interval between the proposed date of hire and the last successful booking of the same venue; the number of days booked at the same venue within the 12 months preceding the proposed date of hire; and the attendance at the last function held at the same venue. Should two or more applicants still have the same score, the time slot under application will be allocated by ballot through the computerised booking system.

Programme Schedule in LCSD's Website

6. The programme schedule aims to provide information on the events/activities to be held at a particular venue in the current and coming months to facilitate purchase of tickets. Hirers of the venues can also make use of the schedule to publicise their events. However, the schedule does not include events which are not open for public viewing and sessions which are reserved for set-up/move-out, rehearsals and venue maintenance. In other words, it does not reflect the availability of venues.

Summaries of Selected Cases Concluded by Full Investigation

This Complaint

7. Apart from being open for public booking, Venue A is also used for cultural performances, joint presentations and sponsored cultural events organised by LCSD in collaboration with non-profit making and/or district cultural organisations. Under LCSD's Venue Partnership Scheme, Venue A is the regular performance venue for an educational arts body aiming at promoting arts in the local community. Priority will be given to this partner to use the performing facilities of Venue A for a maximum of 56 days per year for organising arts events.

8. According to the booking statistics and detailed records of use of Venue A during the said period, the demand was high and competition very keen. However, there were vacant sessions in all of the months except August 2013. In other words, the venue was not fully booked from May to September 2013 as the LCSD staff had allegedly told the complainant.

Our Observations and Comments

9. We understood that LCSD had established procedures for processing applications and an assessment system for dealing with cases where there were more than one applicant trying to book the same time slot at a performance venue. Nevertheless, LCSD was not transparent enough in releasing sufficient information to the public on its marking and weighing of applications under the assessment criteria.

10. During our investigation, we noticed that despite a very high rate of unsuccessful booking, some time slots of Venue A were left vacant for no apparent reasons. LCSD argued that it was due to keen competition rather than applicants' lack of knowledge of the venue availability. As less competitive applicants might be willing to accept any vacant time slots, we believed that letting potential applicants know the availability would not only allow new and less competitive groups to have more performing opportunities to gain experience, but also help enhance the utilisation rate of the venue.

11. Moreover, we were not convinced that there might be practical difficulties for LCSD to disclose the available sessions. While we did not doubt that LCSD had to consider a wide range of factors such as the nature of the proposed function, duration of the booking, operational feasibility of accepting the booking, stage set-up, logistics and contingency requirements, we trusted that LCSD had the expertise to make, and should have made an educated estimation on the days and sessions available before opening booking every month for ordinary bookings.

Conclusion and Recommendations

12. The present case revealed LCSD's lack of transparency in processing applications for booking performing venues in that it failed to inform applicants of the availability of venues in advance. As a result, valuable public resources were under-utilised while applicants who could have chosen other feasible vacant time slots could not book the venue.

13. In the light of the above, The Ombudsman considered the complaint substantiated.

14. The Ombudsman recommended that LCSD:

- (1) review the existing practice of processing booking applications of performing venues with a view to enhancing the transparency of processing procedures; and
- (2) specifically, consider updating periodically the booking status of the venues and releasing such information to the public through its website and other channels.

A case of lack of transparency and failure to fully utilise public resources



Post Office ("PO")

Case No. OMB 2013/0156 – Loss of mail item

Allegation: improper handling of a complaint about the loss of a mail item and inadequate compensation – partially substantiated

Details of Complaint

In mid-August 2012, the complainant sent a sample of costume jewellery to the United States ("the US") by registered mail, but it was returned to Hong Kong due to non-delivery. Unfortunately, PO wrongly delivered the returned packet to another company ("Company A"). It was not until the complainant made an enquiry in early September that PO became aware of the mistake and asked Company A for the whereabouts of the packet. Company A confirmed that its staff had indeed signed for the packet but had discarded it subsequently.

2. PO apologised to the complainant and the US addressee for the loss of the postal packet. It also cautioned the postman who made the mistake and offered to pay compensation. The complainant considered that PO's mail return system was faulty and its compensation inadequate, and was also dissatisfied with PO's failure to properly handle and explain the matter. It, therefore, lodged a complaint with The Ombudsman.

Response from PO

Loss of Mail Items and Compensation

3. PO's internal guidelines stipulate that postmen should report any loss of registered mail items to their district managers and the Police on the same day or within the next working day.

4. According to the Post Office Ordinance, neither PO nor its officers shall incur any liability by reason of the loss or misdelivery of any postal packet, whether registered or not. Nevertheless, in keeping with the regulations of the Universal Postal Union, PO has set the maximum compensation for a lost or damaged registered mail item at \$320 plus all postage paid (with the exception of the registration fee).

Sequence of Events

5. On 27 August 2012, the postal packet returned to the complainant was wrongly delivered to Company A. After receiving the complainant's enquiry on 1 September, PO followed up the matter and discovered the mistake on 6 September. On the same day, the postman responsible for the delivery approached Company A to trace the packet, but the staff there told him that it had already been discarded. He then proceeded to the complainant's office to apologise in person and reported the matter to his supervisor. On 12 September, the postman reported the loss to the Police.

6. PO admitted that the postman concerned had failed to follow the internal guidelines and report the case to the Police immediately. Furthermore, he had failed to provide the Police with the full details. Giving only a brief account of the loss, he did not mention that the postal packet had been wrongly delivered to Company A and that its staff had signed for it. After we had started our inquiry, PO directed the postman, accompanied by his supervisor, to file a police report again in February 2013. The Police conducted an investigation in Company A and decided that no further action would be taken regarding this case.

Summaries of Selected Cases Concluded by Full Investigation

PO's Comments

7. PO believed that the complainant's dissatisfaction was mainly attributable to the fact that, being bound by its policy, PO was unable to fully meet the compensation demand of some \$1,830, comprising the postage paid with the registration fee, the replacement cost of the jewellery sample in the postal packet and the charges for its re-delivery by another courier. However, PO conceded that there was room for improvement in its complaint handling procedures in the light of the following faults:

- (1) In response to the complainant's request, a PO officer issued an apology letter to the US addressee in October 2012, but she neglected to copy the letter to the complainant. PO re-issued a copy to the complainant in May 2013.
- (2) While the US Post replied in November 2012 that it was unable to trace the reason for non-delivery, PO failed to inform the complainant of the result.

8. PO subsequently issued an internal reminder to all supervisors on how to handle the misdelivery and loss of mail items, including the timeframe for filing a police report and other issues requiring attention. Besides, to establish a more effective mechanism of complaint handling, PO would review and beef up its existing internal guidelines. In particular, it would provide staff with more specific and practical instructions for dealing with certain difficult situations.

Our Observations and Comments

9. After examining this case, we found no evidence of flaws in the current mail return and delivery system. The complainant's case was a result of staff negligence and it was an isolated incident. The postman had apologised personally to the complainant

for the misdelivery. PO had also apologised in writing on several occasions, taken disciplinary action against the staff concerned and pledged to step up its field inspections in future.

10. There were inadequacies on the part of the postman and his supervisor in the subsequent handling procedures. Unlike general lost mail cases, the complainant's packet was received by Company A and not missing. As the postman failed to file a police report as soon as possible and to give full details when doing so, the golden opportunity to recover the packet was lost. A second police report filed several months later did not help in recovering the packet.

11. Moreover, PO's complaint handling was not entirely satisfactory (paragraph 7). Those slips, though not serious, could certainly give an impression of sloppiness.

12. On the issue of compensation, PO was exempted by law from liabilities in respect of such risks as loss or damage inherently associated with mail delivery. In accordance with universal postal regulations, PO set the upper limit of compensation at \$320, which was also applicable to the complainant's case. We considered that there was no impropriety in this regard.

Conclusion and Recommendation

13. Overall, The Ombudsman considered the complaint partially substantiated.

14. The Ombudsman welcomed the improvement measures introduced by PO (paragraph 8) and urged PO to review regularly the implementation of such measures to ensure their efficacy.

A case of failure to take prompt remedial action



Post Office ("PO")

Case No. OMB 2013/4308 – Security screening of mail

Allegation: delay in handling outbound air mail items on the excuse of security screening – partially substantiated

Details of Complaint

In September 2013, the complainant used PO's air mail registration service to send a number of parcels to the United States ("the US"). However, one of his parcels ("Parcel A") was held up by the security screening procedures for over one week before it was despatched to the air carrier. The delay of another parcel ("Parcel B") was even more serious, as it was returned for being suspected of containing dangerous goods. The complainant had to go to a post office personally and open the parcel in the presence of PO staff for examination. Although confirmed to be safe and re-sent, it took a total of four weeks when the parcel was finally delivered to the addressee.

2. According to PO's performance pledge, registered air mail would be despatched to the designated outbound air carrier within five working days. The complainant was dissatisfied with the repeated delays of PO in handling his mail parcels on the excuse of security screening. He, therefore, lodged a complaint with this Office. More or less concurrently, this Office also received two other complaints similar to the complainant's.

Our Findings

Mail Screening

3. To implement the Hong Kong Aviation Security Programme established by the Security Bureau in 1998, PO has since then arranged for all outbound air mail items to undergo security screening procedures at the Air Mail Centre ("AMC") located near the airport to ensure that no dangerous goods would be sent in the post. In September 2013, PO detected a sudden surge of air mail items suspected of containing dangerous goods, particularly lithium batteries. In this connection, PO issued a notice on 10 September alerting the public that its air mail services might be subject to delay.

4. The security procedures involved screening of mail items with X-ray facilities. However, X-ray images could only show the shapes of objects and the types of materials (such as high density substance, metal or liquid) they were composed of. It was not possible to ascertain whether a parcel contained dangerous goods relying solely on X-ray images. Therefore, suspicious mail items would usually be returned to the original post office, and the senders would be asked to go there to open the parcels before a PO staff for examination. A mail item confirmed to be safe would be despatched to the AMC again for speedy handling, but the sender may opt to withdraw the mail and get a refund of the postage. If dangerous goods were found in a parcel, it would be returned to the sender without any refund.

The Complainant's Case

5. On 9 September 2013, the complainant sent Parcel A to the US. At the AMC, the mail bag containing Parcel A was rejected at the initial screening stage. As such, the mail bag concerned had to be opened and all parcels inside screened individually through the X-ray machines to identify any suspicious mail items. On 20 September, Parcel A passed the security check and was despatched to the air carrier. It was delivered on 27 September.

Summaries of Selected Cases Concluded by Full Investigation

6. As for Parcel B, it was sent on 21 September and returned to the complainant on 4 October after being denied security clearance. Nonetheless, PO mistakenly returned it to another post office with a code similar to the one where the complainant had sent his parcel. While Parcel B was eventually confirmed to have contained no dangerous goods and despatched for transportation, it was further delayed by the large mail backlog at that time and was delivered on 18 October.

Response from PO

7. PO explained that lithium batteries had been listed as dangerous goods since 2009. In early 2012, two parcels containing lithium batteries sent via Hong Kong AMC had caught fire on arrival at their overseas destinations. PO, therefore, must perform its duties and strictly enforce the screening of mail items to ensure aviation safety. The situation in September 2013 was exceptional where the number of suspicious mail items in the first two weeks of September 2013 was three times over that in the last two weeks of August 2013. PO apologised to the complainant for the delay in handling his mail.

8. In order to clear the mail backlog, PO adopted a number of contingency measures, including:

- (1) stepping up publicity, with photographs and textual descriptions of typical products containing lithium batteries, so as to remind the public not to send dangerous goods by air mail;
- (2) deploying more manpower and X-ray machines at the AMC and extending its operation hours;

- (3) exercising the power under the Post Office Ordinance from early November 2013 to open and examine suspicious parcels at the AMC, thereby shortening the processing time by obviating the need to return the parcels to the original post office for the senders to open them personally for examination; and
- (4) issuing internal guidelines to give staff clear instructions on the security screening and mail returning arrangements.

Our Comments

9. We agreed that dangerous goods in the post would seriously jeopardise aviation safety. Should a mail item burst into flames on board an aeroplane, the result could be catastrophic. PO is duty-bound to implement mail screening procedures in accordance with the relevant security programme. It was not an excuse to evade responsibilities.

10. Nonetheless, there was indeed delay in the handling of the two parcels. Moreover, Parcel B was wrongly returned to another post office due to PO's negligence, despite that it might have been caused by an oversight due to heavy workload.

Conclusion

11. While there were deficiencies on the part of PO, it had promptly taken contingency and improvement measures and apologised for the delay.

12. In the light of the above, The Ombudsman considered the complaint partially substantiated.

A case of delay



Student Financial Assistance Agency ("SFAA")

Case No. OMB 2013/0425 – Deed of indemnity

Allegation: failing to obtain the complainant's consent before returning a deed of indemnity signed by him to the loan applicant – inconclusive

Details of Complaint

In April 2010, the complainant undertook to act as indemnifier for his friend Mr A in respect of the latter's application for a loan under SFAA's Non-means-tested Loan Scheme for Post-Secondary Students. When an SFAA officer called him in May to confirm whether the signature on the deed of indemnity was his, he learned that according to the deed, the loan amount he should repay in case Mr A defaulted was \$80,000, instead of \$30,000, the amount that he and Mr A had agreed on. He, therefore, told the officer that he no longer wished to act as indemnifier.

2. In October 2011, when SFAA tried to recover from him the amount covered by the indemnity, he found that the amount of indemnity had been amended to \$55,000. He considered it wrong of SFAA to return the deed to Mr A, as a result of which the amount of indemnity had been altered without his consent.

SFAA's Explanation

3. SFAA's standard procedures require staff to randomly check 5% of the loan applications received

to confirm that the indemnifiers have actually signed the deeds of indemnity and to verify the amounts they have undertaken to repay in case of default by the loan applicants. If an indemnifier does not confirm the amount of indemnity, SFAA will return the whole set of loan application documents to the loan applicant.

4. According to SFAA, during the complainant's telephone conversation with the SFAA officer, he told the officer that he was not sure about the loan amount and needed to check with Mr A. He did not indicate that he had never signed the deed of indemnity or that he would stop acting as indemnifier. SFAA, therefore, returned the whole set of documents to Mr A according to the standard procedures. Afterwards, Mr A re-submitted to SFAA the deed of indemnity with the loan amount altered. The signature beside the alteration was the same as the one that the indemnifier had previously put on the deed.

5. As to why a witness's signature was not required for alteration made, SFAA explained to us that a witness's signature was only required for proving that the indemnifier had signed the deed itself. There was no such need for confirming details such as alteration of the loan amount guaranteed by the indemnifier. Nevertheless, SFAA would improve its procedures to avoid occurrence of similar incidents. For any deed of indemnity re-submitted by the applicant, SFAA staff would, apart from checking the indemnifier's signature beside any alteration, also seek the indemnifier's confirmation by telephone.

Our Comments

6. In this incident, it was not inappropriate of SFAA, *per se*, to follow established procedures and return to the applicant the whole set of loan application documents including the deed of indemnity. The key issue was whether the complainant had indicated that he no longer wished to act as indemnifier. If he had indeed made such an indication, SFAA should have requested him to confirm his decision in writing and invalidated the loan application.

Summaries of Selected Cases Concluded by Full Investigation

7. However, the complainant and SFAA gave different accounts of what had happened. In the absence of corroborative evidence such as telephone recording, we could not ascertain the details of the conversation between the two parties. It followed that we could not determine whether SFAA should return to Mr A the deed of indemnity for his later re-submission.

Conclusion

8. In the light of the above, this case was inconclusive.

9. Nevertheless, The Ombudsman considered it an unsound practice for SFAA not to require both the witness and the indemnifier to sign beside alterations on the deed. We, therefore, decided to further examine SFAA's procedures for approving loan applications in a separate exercise.

A case of unsound procedures



Transport Department ("TD")

Case No. OMB 2012/3834 – Electric vehicle importation

Allegation: mishandling the complainant's application for parallel importation of an electric vehicle – unsubstantiated

Details of Complaint

The complainant applied to TD for approval to import an electric vehicle ("EV") from the United Kingdom. Allegedly, TD had failed to inform him of the safety and charging requirements of his EV and unreasonably imposed the "type approval" standard, which was applicable to authorised agents, on an individual importer like him.

2. He queried TD's request for a confirmation letter from the manufacturer that the vehicle's electric system was safe to use in Hong Kong because this requirement was not set out in TD's guidelines on vehicle importation procedure. He also complained against TD for refusing to disclose the details of its communication with the manufacturer regarding his EV.

3. Between September 2012 and May 2013, he had provided a number of supplementary information to and chased TD for the progress of his application. However, a definite answer was yet to receive from TD.

Response from TD

4. In November 2010, TD made public the approval requirements for EVs, including the requirements to safeguard the electrical safety aspects of an EV arising from the onboard electrical system and batteries.

5. When the complainant first contacted TD in September 2012, he was aware of the promulgated Vehicle Construction Approval Requirements for EVs ("the Guidelines"). TD requested information on the model of the EV he intended to import for assessment of its overall safety. TD explained that it would look at the information the complainant submitted, and then advise him on the suitability of the EV for use in Hong Kong and whether any further information would be required. In case TD considered the information insufficient, it would request confirmation from the vehicle manufacturer to ensure that the EV was safe to use in Hong Kong and compatible with the local electricity supply.

6. According to TD, the Guidelines on its webpage would be updated regularly but the actual approval process and requirements, including the need to provide relevant documentary proof, remained unchanged. The basic information required to assess a privately imported EV and an EV model imported by authorised agents of the manufacturer were essentially the same. The manufacturer needed to confirm the compatibility of the charging system with the local electricity supply system.

7. Where there were safety issues that required verification, TD might make further technical enquiries. In the case of the manufacturer's type approval, additional information on the manufacturer's quality control and conformity arrangements would also be required. A vehicle with a different model code would be treated as a new model and TD would carry out a new type approval assessment process to ensure its safety and suitability for use in Hong Kong.

8. In the complainant's case, although it was the applicant's responsibility to provide adequate information to satisfy the stipulated requirements for import, TD had assisted the complainant by proactively contacting the vehicle manufacturer to confirm the technical issues. Upon receipt of the requisite information, TD would examine the information and consider the case accordingly.

Our Comments

9. We considered TD to have duly informed the complainant of the basic requirements for the importation of EVs, particularly its major concern on the safety of the charging system because the Guidelines have already set out the requirement of such documentary proof. In fact, TD had also explained to him in detail the technical requirements for both the type approval and individual approval procedures.

10. Whether the type and configuration of the complainant's EV matched with that of the EVs imported by the authorised dealer in Hong Kong was a matter of professional judgement for TD. TD had explained that the basic information required for assessment was essentially the same for EVs imported privately and by authorised dealers. Given the paramount importance of safety, we considered it reasonable to impose the same safety standard upon all EVs, regardless of its importation mode.

11. Regarding the complainant's allegations about the "authorisation letter" and TD's refusal to disclose the details of its communication with the manufacturer, we noted that TD had taken the initiative to contact the manufacturer direct and obtained the relevant information. TD had also repeatedly sought the manufacturer's consent for releasing the information to the complainant, but received no reply.

12. The exchanges between TD and the complainant showed that TD had responded to the complainant's enquiries without delay. As there were some serious concerns raised by the manufacturer, it

Summaries of Selected Cases Concluded by Full Investigation

was understandable that TD needed to seek further confirmation and wait for the manufacturer's reply before making a final decision on the complainant's application. However, as it was already more than eight months since the complainant had submitted his application, TD should try to make a decision as soon as possible based on the information available so far.

Conclusion and Recommendations

13. In view of the above, The Ombudsman considered this complaint unsubstantiated.

14. Nevertheless, we found that there was room for improvement. According to TD's webpage on the importation of vehicles, an individual importer had to go through certain procedures, which were applicable to both EVs and petrol vehicles. As the two types of vehicles had very different areas of concern, we considered that it might not be appropriate for TD to adopt the same application procedures for them.

15. The Ombudsman recommended that TD:

- (1) closely liaise with the complainant on the progress of his application, so that he could make an informed decision regarding the arrangement for the EV he intended to import;
- (2) conduct a comprehensive review on the application procedure for parallel importation of EVs to Hong Kong, and consider whether it should set up a separate and different set of procedures for EVs; and
- (3) consider setting up a dedicated webpage for the importation of EVs, highlighting the special requirements and technical concerns applicable only to EVs.

A case of need for better dissemination of information



Transport Department ("TD")

Case No. OMB 2012/5388 – Taxi complaint

Allegation: refusing to take up a complaint against a taxi driver because the complainant could not provide the taxi vehicle registration number – unsubstantiated

Details of Complaint

The complainant lodged a complaint to the Transport Complaints Unit ("TCU") about the poor attitude of a taxi driver. However, TCU did not take up his complaint because he could only provide the driver's name and taxi driver identity plate ("TDIP") number but not the taxi vehicle registration number ("VRN"). He believed that TCU should be able to obtain the driver's information from TD but TCU maintained that TD would not provide such information. He was dissatisfied with TD's refusal to provide the relevant information for TCU to follow up his complaint.

Background

2. Currently, TD and the Police are the major Government departments that monitor and regulate taxi services while TCU is the principal agent to receive transport complaints. Complaints amounting to suspected criminal offences such as overcharging and touting will be referred to the Police for investigation, while those about general misbehaviour of taxi drivers will be referred to TD for follow-up actions, normally by way of liaison with the taxi trade and issuance of advisory letters.

Response from TD

3. According to TD, most complainants are unwilling to be involved in the subsequent investigation/prosecution proceedings or to testify in court. Their complaints, therefore, cannot be referred to the Police for investigation or prosecution. As the complaints usually involve only two parties, namely the driver and the passengers, in the absence of other independent evidence, TD is unlikely to be able to judge whether the complaint is substantiated or not. Against this background, TD can only ride on those complaints to educate and urge the taxi trade to enhance their service standard.

Mechanism for Handling Taxi Complaints

4. In handling taxi complaints, TD would issue advisory letters to the taxi owners instead of the drivers under complaint. It believed that the most cost-effective way to exert pressure on and prompt misbehaving taxi drivers to improve their service would be for the taxi owners to reason with or warn the drivers direct.

5. Complainants are required to provide the taxi VRN when lodging complaints to TCU, so that the relevant taxi owner could be identified by TD for issuance of the advisory letter. At present, all taxi drivers are required to display inside the taxi an identity plate which contains the driver's name and photograph, his/her identity plate number and the taxi VRN. Government has also constantly educated the public to note down the taxi VRN when lodging complaints.

6. TCU has established a system to monitor complaints on a vehicle basis. It would refer repeated complaints on the same taxi to TD or the Police as appropriate for follow-up.

Rationales for Issuing Advisory Letters to Taxi Owners

7. Since there are over 210,000 taxi driving licence holders in Hong Kong and information on the driver of each taxi is not always available, TD will have practical difficulty issuing warning letters to the drivers direct. Also, considering that TD has no enforcement power under the law, taxi drivers will likely ignore the advisory letters without the involvement of the taxi owners.

8. If a taxi driver is prosecuted for breaching traffic regulations because of his/her malpractices and misbehaviours, the taxi owner will be involved in the investigation and subsequent legal proceedings. In case the taxi is damaged or impounded by the Police, the taxi owner may suffer huge time and financial loss. Hence, it is in the interest of taxi owners to promote proper driver behaviour.

9. Taxi drivers with improper behaviour would find it difficult to rent a taxi because big taxi companies keep proper records of drivers who rent their vehicles, while small companies and individual taxi owners prefer renting their taxis to people whom they know and trust. Besides, the current practice of issuing advisory letters to the taxi owners is supported by the taxi trade.

Our Comments

10. This complaint arose from TD's refusal to provide the driver's information for TCU to follow up his complaint. However, under the current system, the complainant must provide the taxi VRN before TD can issue an advisory letter to the taxi owner. The question is whether TD's current practice of issuing advisory letters to taxi owners is reasonable and effective in deterring the poor performance and behaviour of taxi drivers.

Summaries of Selected Cases Concluded by Full Investigation

11. While we did not dispute that TD's current practice could help monitor the performance of taxi drivers and deter misbehaving drivers and that the system was largely reasonable and effective, we considered there to be room for improvement. Issuing advisory letters to the taxi drivers direct might only have limited effect, yet it could at least provide the useful feedback to them that their behaviour is attracting complaints. In this case, even though the complainant could not provide the taxi VRN, TCU should still take up the complaint.

12. We considered that TD/TCU could set up a system to monitor complaints on a driver basis as a supplement to TCU's existing monitoring system on a vehicle basis. It should be more effective in deterring poor performing drivers. To ensure its effectiveness, TD should educate and facilitate the public to mark down the TDIP number of the driver concerned when lodging a complaint. TD might need to consider ways to make it easier for the public to obtain the information such as including it in the taxi receipt.

13. Furthermore, TD might consider discussing with TCU to remind the public of the need to provide the taxi VRN on its Taxi Complaint Form available on TCU's website. Moreover, TD might consider spelling out this message clearly inside the taxi. As getting a taxi fare receipt could serve as useful evidence for the complaint, TD should step up publicity and advise the passengers to obtain a receipt from the driver in case they want to lodge a complaint.

14. Finally, we considered that TD should step up action against repeated offenders. If the number of complaints against a particular taxi or driver reaches a certain level, TD should consider stepping up its actions such as requiring the taxi owner to report back on the follow-up actions taken.

Conclusion and Recommendations

15. Overall, The Ombudsman considered the complaint unsubstantiated.

16. TD's current system, however, showed areas for improvement. The Ombudsman recommended that TD discuss with TCU ways to improve the taxi complaint handling system, which included:

- (1) taking up a complaint even where only the taxi driver but not the owner could be identified, by issuing an advisory letter to the driver;
- (2) setting up a system to monitor complaints on a driver basis to supplement the existing system, which was on a vehicle basis;
- (3) enhancing public education on the procedure of and required information for lodging complaints against taxis; and
- (4) stepping up follow-up actions with the taxi owner upon repeated complaints against a particular taxi or driver, such as requiring the owner to explain or report the rectification measures.

A case of inadequacies in complaint handling mechanism



Vocational Training Council ("VTC")

Case No. OMB 2013/3142 – Recognition of professional qualification

Allegation: providing false information in the prospectus, thereby misleading the students that they would be awarded a recognised professional qualification upon completion of the programme – substantiated

Details of Complaint

The complainant had attended a three-year higher diploma programme in energy management ("the Programme") at one of the schools of the Hong Kong Institute of Vocational Education ("School A") under VTC from 2004 to 2007. According to the prospectus, the diploma was recognised by the Electrical and Mechanical Services Department ("E & MSD") for registration as an Electrical Worker. However, the complainant subsequently learned that E & MSD did not recognise that qualification. He, therefore, complained to us that VTC had provided false information, thereby misleading the students.

VTC's Explanation

2. VTC gave us the following explanation.
3. In mid-2004, the vetting process for the Programme was completed. In November, the Course Board applied to E & MSD for recognition of the academic qualification. Between August 2009 and July 2010, the Board provided supplementary information to the Department.
4. However, all along, VTC did not realise that the application for recognition of the academic qualification had not been approved by E & MSD. VTC only came to know about the situation when approached by four graduates in January 2012. VTC admitted that School A had wrongly stated in the prospectus that graduates would be awarded a recognised academic qualification. There was indeed negligence on the part of School A.

5. As remedy, VTC had contacted the graduates concerned and arranged for some of them to join the third year of another course so that they could obtain the expected recognised qualification. VTC had also instructed School A to contact E & MSD promptly on recognition of the academic qualification that the Programme led to, and conduct a comprehensive review on other courses to identify any similar problems.

Our Comments and Recommendations

6. Clearly, School A had released incorrect information to students when it opened the Programme. We found VTC's error in such crucial information unacceptable. Furthermore, the problem did not come to VTC's notice during the vetting process. This showed that not only were the staff members concerned negligent, but VTC's vetting procedures for new courses were themselves faulty.

7. Moreover, VTC should have acted immediately after being notified by the graduates concerned in January 2012, contacted E & MSD to discuss the possibility of retrospective recognition of academic qualification, and informed other graduates, arranging for them to take supplementary classes, so as to minimise the impact of the problem on them. In this incident, VTC took remedial action only after our intervention. Its response was much too slow, showing its lack of accountability.

8. In view of the above, The Ombudsman considered this complaint substantiated.

9. The Ombudsman recommended that VTC:

- (1) revise the vetting procedures for new courses to require its schools to confirm the recognition of professional qualification, so that similar problems would not occur; and
- (2) where there are issues significantly affecting graduates, inform all those affected and take due remedial action promptly.

*A case of negligence and
faulty vetting procedures*

Summaries of Selected Cases Concluded by Inquiry

Annex 9

(Where applicable, the specific aspect of maladministration established is highlighted for clearer focus at the end of the case summary)



Food and Environmental Hygiene Department ("FEHD")

Case No. OMB 2013/2124 – Refuse container

Allegation: failing to resolve the environmental nuisance problems associated with a refuse container

Details of Complaint

There was a large refuse container placed outside the complainant's village house. The spot was in poor hygiene condition and was frequented by scavengers, causing a nuisance to the residents nearby. In response to complaints from the complainant, an officer of the local District Environmental Hygiene Office ("DEHO") of FEHD promised her that the refuse container would be removed. In the event, nothing was done and the problems remained unresolved.

Response from FEHD

2. According to FEHD, after receiving the complainant's first complaint in November 2012, DEHO staff conducted many site inspections and found the hygiene condition at the spot acceptable. Nevertheless, DEHO time and again instructed its contractor to pay more attention to the situation and posted notices in the area reminding the public to keep the environment clean.

3. FEHD clarified that the DEHO officer concerned had only told the complainant that her complaint would be referred to the staff concerned for follow-up action as soon as possible. He had not promised her that the refuse container would be removed. As both the village representative and the other villagers opined that there was no other location suitable for placing the refuse container, FEHD would not consider relocation for the time being.

4. After our intervention, DEHO increased the frequency of refuse collection service as from the end of July 2013: its contractor would collect garbage once every morning and a second time in the afternoon.

Our Comments

5. In the absence of independent corroborative evidence, we could not ascertain whether the DEHO officer had promised to remove the refuse container.

6. However, the hygiene condition at the spot was indeed unsatisfactory, especially in the evening. Despite DEHO's follow-up action on the complaints, it had failed to effectively resolve the problem.

7. We urged FEHD to adopt the following improvement measures:

- (1) arrange emptying the refuse container every evening;
- (2) provide an additional refuse container; and
- (3) step up inspections and prosecutions against anyone dumping garbage around the refuse container.

8. We were pleased to note that FEHD had eventually rescheduled the second round of refuse collection each day to 8 pm. This would help reduce the accumulation of garbage.

A case of failure to explore ways to resolve problems

Summaries of Selected Cases Concluded by Inquiry



Food and Environmental Hygiene Department ("FEHD") and Buildings Department ("BD")

Case No. OMB 2013/2994A & B – Seepage problem

Allegation: delay in following up a seepage case

Details of Complaint

The complainant owned a flat in a building. In early August 2013, she complained to this Office against the Joint Office for Investigation of Water Seepage Complaints ("JO"), made up of staff from FEHD and BD, for delay in following up the seepage problem in her flat.

2. In fact, the complainant had lodged a complaint previously with us in May 2012. Our inquiry then found that JO's serious and repeated delays in processing her case had resulted in little progress made, if any, between March 2010 and April 2012. We considered that unacceptable and urged JO to closely monitor the case to avoid further delays.

3. In early September 2012, JO notified the complainant that its investigation had confirmed the bathroom floor of the flat above as the source of seepage. The owner of the flat concerned received JO's Nuisance Notice ("NN") in late October. The flat subsequently underwent renovation, but the seepage in the complainant's flat persisted. JO staff indicated that they would follow up the case and arrange a review test. However, since then, the complainant had not heard further from JO. She, therefore, lodged another complaint with us against JO.

Response from JO

4. JO admitted that its staff had failed to follow up the case properly and inform the complainant of progress in a timely manner. It was more than three months (not until late January 2013) after the NN had been successfully served on the owner of the flat above that they conducted an investigation at the complainant's flat, and they did not inform the complainant of progress afterwards. Besides, after conducting a review test at the flat above in mid-April 2013, JO staff only cross-checked the results in early July, i.e. almost three months later. JO apologised to the complainant and instructed the staff concerned to follow departmental guidelines strictly when handling complaints.

5. Subsequent to our intervention, as seepage persisted in the complainant's flat, JO conducted a number of tests at her flat and the flat above. However, the source of seepage had yet to be found. JO promised to continue its follow-up actions and contact the flat on one more floor above for further investigation.

Our Comments

6. We considered it totally unacceptable that JO should have repeated its mistake, causing so much delay in processing the complainant's case. We strongly urged JO to follow up the complainant's case closely and notify her of the progress and results of investigation in a timely way.

A case of delay in handling complaints



Housing Department ("HD")

Case No. OMB 2013/5139 – Refund of public housing rent

Allegation: delay in refunding overcharged public housing rent

Details of Complaint

In April 2012, the complainant surrendered the public housing unit on behalf of his deceased relative ("Ms A") and collected the refund of rent deposit. However, in May 2012, HD continued to debit the month's rent from Ms A's bank account.

2. The complainant requested HD to refund the overcharged rent to Ms A's account, but HD staff told him that he had to visit the estate management office personally to complete an application form for such refund. The complainant considered HD irresponsible and it was a waste of his time.

HD's Explanation

3. HD admitted that the management office staff had failed to promptly cancel the autopay arrangements in respect of Ms A on the day of recovering the unit. It was only after a few days that HD's computer system was updated to reflect the termination of Ms A's tenancy. As it was done after the cut-off date for bank transactions, an extra month's rent was debited from her account.

4. As HD had not set up any refund mechanism with the banks, it was unable to deposit the refund directly into Ms A's account as requested by the complainant.

Apology Offered and Problem Resolved

5. HD apologised to the complainant for the misunderstanding and grievance caused by its staff's refusal of his request for refund. The Department also reminded its frontline staff to listen to the public and address their concerns with patience and to be more flexible in handling their requests.

6. In the end, the complainant accepted the explanation and arrangements made by HD. He received the refund cheque after submitting the application form.

A case of delay in action

Summaries of Selected Cases Concluded by Inquiry



Immigration Department ("Imm D")

Case No. OMB 2013/3507 – Immigration clearance arrangement

Allegation: stamping of Exit/Entry Permit to and from Hong Kong and Macau for immigration clearance causes inconvenience to frequent visitors

Details of Complaint

The complainant was a Mainland student and holder of Exit/Entry Permit to and from Hong Kong and Macau. She frequently visited Hong Kong to attend classes and Imm D officers would stamp her permit every time on her arrival. As the permit contained only 20 pages, it would be filled up quickly and she would have to apply for renewal of her permit. She considered the stamping of travel documents very inconvenient to people like her who needed to travel to and from Hong Kong frequently.

Response from Imm D

2. Imm D had reviewed its clearance procedure for non-permanent residents and decided to start a new non-stamping immigration clearance arrangement.

3. Starting from 19 December 2013, non-permanent Hong Kong residents including non-local students, foreign domestic helpers and imported workers admitted under the Supplementary Labour Scheme would be issued a landing slip upon each arrival instead of having their travel documents stamped. The landing slip would bear information including the holder's English name, travel document number, date of arrival and conditions and limit of stay. Upon their departure, Imm D would not stamp their travel documents.

4. According to Imm D, the new arrangement aimed to provide more efficient services to non-permanent residents and simplify the immigration clearance procedure, thereby facilitating the smooth flow of passengers at immigration control points.

Our Comments

5. The Ombudsman considered this new arrangement by Imm D able to help resolve the complainant's problem and more convenient to non-permanent residents in immigration clearance. We contacted the complainant, who expressed satisfaction with the new arrangement.



Inland Revenue Department ("IRD")

Case No. OMB 2013/4621 – Change of postal address

Allegation: failing to properly update the complainant's postal address, and unreasonably levying a surcharge on her outstanding property tax

Details of Complaint

The complainant was the co-owner of a property. After she had notified IRD of the change of her postal address ("the new address") in January 2012, she received no demand note of property tax thereafter. It was not until August 2013 that IRD sent a letter to the new address, demanding payment of the overdue property tax plus a surcharge.

2. The complainant wrote to IRD to explain her situation and requested IRD to re-assess the property tax and waive the surcharge. However, IRD staff denied any responsibility and indicated that the Department would only handle her request after she settled the tax in full and lodged an objection.

Response from IRD

3. IRD explained that it had received the complainant's notification of her new address in January 2012 and updated its records accordingly. In April 2012, IRD learned that there was a minor change in the property's ownership. (Note: The complainant revealed that the number of co-owners had been reduced by one person.) Hence, a new file was created for the property and a new file number was assigned to it. Due to staff negligence, however, the new address input earlier into the original file was not adopted. Instead, the computer system automatically set the address of the property itself as the postal address for the new file.

4. IRD then sent the relevant tax returns and demand notes to the property's address. Consequently, the complainant was not notified and she did not pay the tax by the due date. In August 2013, IRD sent a reminder for overdue property tax to the complainant at the correspondence address registered in her personal assessment file (i.e. the correct new address).

5. IRD eventually waived the surcharge and apologised to the complainant for its staff's failure to use the correct postal address and handle her enquiry properly.

Our Comments

6. We considered it indeed improper for IRD staff not to transfer all the relevant information from the old file to the new one when creating a new file.

7. The Ombudsman urged IRD to review its existing procedures for creating new files and make any necessary revision and clarification for compliance by the staff. It should also strengthen supervision to prevent recurrence of similar incidents.

_____ *A case of staff negligence*

Summaries of Selected Cases Concluded by Inquiry



Lands Department ("Lands D")

Case No. OMB 2013/1634 – Bicycle parking place

Allegation: unreasonably treating use of a bicycle parking place as illegal occupation of Government land and removing bicycles before the deadline

Details of Complaint

Allegedly, a District Lands Office under Lands D had posted a notice at a bicycle parking place ("the place"), requiring the public to cease occupying Government land "before 10 April 2013". On 10 April, the complainant found that his bicycle at the parking place had been removed.

2. He contended that if the place had not been intended for parking bicycles, Lands D should have enclosed it, instead of accusing the public of occupation of Government land. Besides, it should not have removed the bicycles before the stipulated deadline.

Response from Lands D

3. Lands D confirmed that the place was for bicycle parking but was meant for temporary use only. To discourage prolonged occupation of parking spaces and to dispose of abandoned bicycles, Government carried out inter-departmental joint operations regularly to remove bicycles.

4. To prepare for the joint clearance operation, the departments concerned first imposed parking restrictions from 3 to 10 April. They posted their respective notices beforehand to notify the public of the specified period of temporary suspension of use of the place. During that period, the place was not enclosed so that owners could collect their bicycles before the clearance operation on 10 April.

Our Comments and Conclusion

5. We considered the departments' arrangements reasonable.

6. Moreover, Lands D had clearly stated in its notice to the public that occupation of the place must cease "before 10 April". Therefore, the removal of the bicycles on 10 April was not before the deadline and Lands D was merely acting according to the announced schedule.

Our Suggestion

7. The crucial point in this complaint was that ordinary citizens may not be aware that bicycle parking places are for temporary use only.

8. We suggested that Lands D post permanent notices at all bicycle parking places to state clearly that the parking spaces are for temporary use only and abuse of such facilities may result in confiscation of the bicycles. This should help to dissipate any doubts about Government's enforcement actions.

9. The departments concerned accepted our suggestion.



Lands Department ("Lands D")

Case No. OMB 2013/3228 – Land control action

Allegation: a contractor of a District Lands Office ("DLO") improperly sealing off a property after demolishing an unauthorised structure; and DLO denying the fact and its responsibility

Details of Complaint

The complainant owned a village house. It had undergone some alteration works, including the opening up of the external wall on the first floor to form an entrance, and the construction of a metal bridge to connect the entrance with a footpath on the slope behind the house. In early April 2013, Lands D's DLO posted a notice on the bridge, notifying the owner that the bridge was occupying Government land and demanding its demolition by the end of the month.

2. The complainant told DLO in late April that he would be out of town and would demolish the bridge upon his return. In early August, he found that the bridge was already gone and the entrance on the first floor barred with a metal rod. Having lost the only access to the first floor of the house, the complainant called the Police.

3. DLO admitted that it had arranged for a contractor to demolish the metal bridge but denied any responsibility in barring the entrance. The contractor later confessed to having fixed the metal rod at the entrance on the day of the demolition. DLO, however, still denied having anything to do with that.

4. The complainant was dissatisfied that the contractor had improperly sealed off his property and DLO had unreasonably denied the fact and its responsibility in the incident.

Response from Lands D

5. Lands D's explanation was as follows.

6. DLO posted the notice in early April 2013. Since the complainant had promised to demolish the bridge upon his return from overseas, DLO suspended its land control action. However, the complainant never contacted DLO again and did not comply with the notice to demolish the bridge. DLO, therefore, took land control action in late July and arranged for its contractor to carry out the demolition works.

7. Nevertheless, DLO emphasised that it had never instructed the contractor to bar the entrance. The contractor submitted photographs to DLO after the works were completed, but DLO staff did not notice from the photographs what had been done to the entrance. The contractor explained that its workers had tried to notify the residents of the first floor of the demolition works being carried out, but nobody answered the door. Out of safety concern, they barred the entrance with a metal rod afterwards, lest the residents might unknowingly fall down the gap between the entrance and the slope. The contractor removed the metal rod two days after the complainant called the Police.

8. Lands D agreed that the Department should take responsibility for the actions of its contractors and considered that the contractor should have left its contact details on site for the complainant's enquiry. The contractor apologised for the incident.

Our Observations and Comments

9. We found that though well-intentioned, barring the entrance was indeed inappropriate as it amounted to illegally sealing off a private property and would give rise to other problems (for example, the residents would not be able to escape in case of fire). In fact, the contractor could have contacted the owner in advance or posted a notice on the metal gate of the entrance to give him forewarning of the demolition works. DLO should also remind its contractors to seek its instructions as soon as possible when they encountered difficulties in carrying out their duties.

10. DLO officers' premature denial of responsibility without having conducted a thorough investigation showed how perfunctory they were. Furthermore, in its letter to the complainant after the metal rod was subsequently removed by the contractor, DLO only reiterated that it had never instructed the contractor to fix a metal rod at the entrance. The Office failed to explain why the contractor had done that. No wonder the complainant felt that DLO was shirking its responsibility.

11. We urged DLO to give complainants timely explanations when handling complaints relating to its contractors in future, such that misunderstandings could be avoided.

A case of perfunctoriness

Examples of Improvement Measures Introduced by Organisations Following Our Inquiry or Investigation

Annex 10

(a) Measures to ensure clarity, consistency or efficiency in operation	
Organisation* (Case reference)	Administrative Enhancement
AFCD (2012/5453 and others) – topical complaint	Guidelines re-circulated to staff reminding them of the need to keep proper records of all decisions made
BD (2012/2234A)	Procedures revised to strengthen monitoring of compliance with removal orders
BD (2013/0471B)	Departmental manual revised to remind staff to issue advisory letters to the property owners as soon as possible after unauthorised building works have been identified
CC (2011/1339)	Guidelines revised to ensure enquiry cases are properly followed up during the absence of the case officer
CSD (2013/0189)	Guidelines revised to require staff to make proper records of inmates' items kept by the prison management
HA (2011/4424)	The criteria for assessing patient's acceptance of physical restraint reviewed and the Physical Restraint Assessment Record form revised accordingly to avoid misunderstanding
HD (2011/2863)	Guidelines drawn up in relation to handling of ex-tenant's property, including the need to keep proper record of communications between its staff and tenants/ex-tenants
LCSD (2011/3918)	Terms of cleaning service contract for leisure/sports centres revised to include checking of identity of the users as one of the duties of the contractors; new guidelines on handling of personal data of the users issued to the contractors' staff
LCSD (2011/4956)	Circular issued to staff reminding them of the need to check documentary proof carefully and thoroughly in processing tender applications and refrain from situations giving the impression of conflict of interests such as accepting free service from tenderers
ORO (2011/4916)	<ul style="list-style-type: none"> Guidelines on handling realisation of a bankrupt's property reviewed and revised to give clearer instructions to staff on valuation of property; and Circular issued to staff reminding them of the need to make proper file records and consult supervisors as appropriate
TD (2012/1403)	Internal departmental instructions beefed up on the vetting procedure for Residents' Services applications, in particular on how "walking distance" should be assessed
TD (2012/3275)	Relevant guidelines revised to instruct officers to properly document and file records of site inspections
WSD (2011/3361)	Working guidelines revised to enhance internal communication on cancellation of meter replacement orders and handling of cases with abnormal water consumption pattern

Examples of Improvement Measures Introduced by Organisations Following Our Inquiry or Investigation

(b) Better arrangements for inter- and intra-departmental coordination |

Organisation* (Case reference)	Administrative Enhancement
AFCD (2011/3426) TD (2012/0123B)	Meeting convened among departments concerned to delineate duties and responsibilities in controlling vehicular access to a country park
FEHD (2012/1764A)	To strengthen communication with the department after referring a complaint to another department to ensure follow up action is promptly taken
FEHD (2013/0046B)	Mechanism set up to share information with EPD about restaurants emitting excessive greasy fume
FEHD (2013/0246)	Communication and coordination between District Environmental Hygiene Offices and Centre for Food Safety strengthened in handling food complaints
HA (2012/1168)	Strengthen the communications between the Hospital Pharmacy and other departments to avoid prescription of out-of-stock medicines
HD (2013/2125B)	Procedures for notifying "1823" of referrals drawn up
IRD (2012/0077)	Guidelines and work procedures revised to enhance communication among sections and with tax payers especially on records of tax payers' correspondence address and tax recovery actions taken
Lands D (2013/1504C)	Working group with D of J formed to study the enhancement of enforcement action on repeated illegal occupation of Government land
TD (2012/3618)	Inter-departmental efforts made to discuss with interested parties to come up with short-term and long-term proposals to resolve the problem of vehicles entering a pedestrian walkway between two buildings
TD, HAD and Lands D (2011/3089)	Inter-departmental actions taken to terminate the unlawful occupation of a Government land lasting for 30 years

(c) Measures for better public enquiry/complaint handling	
Organisation* (Case reference)	Administrative Enhancement
AFCD (2010/2175)	Complaint handling mechanism under the Cat Colony Care Programme reviewed and revised to ensure public complaints relating to the Programme are properly addressed
CAD (2012/2862)	Working guidelines revised to give clearer instruction to frontline staff on the handling of helicopter noise complaints
CR (2013/1132)	Guidelines revised to ensure timely handling of complaints and issue of interim replies to complainants if the handling time is long
FEHD (2012/3657B)	To carefully evaluate the circumstances of and plan follow-up action for each water seepage case, including seepage caused by rainwater
FEHD (2013/1809A)	Procedures revised to ensure timely clarification of ownership of land under complaint of hygiene nuisance
Imm D (2011/5200)	Recording function of hotline improved with a backup system added
Lands D (2013/3301(I))	Staff reminded to provide complete, precise and consistent information to Small House applicants when handling their requests for information
PCPD (2013/2497)	To ensure that complainants whose complaints are not taken up for investigation pursuant to section 37 of Personal Data (Privacy) Ordinance are duly informed of the decision and the relevant justifications
WKCD (2012/0680)	Complaint handling guidelines made available for compliance by frontline staff

Examples of Improvement Measures Introduced by Organisations Following Our Inquiry or Investigation

(d) Measures for better client services |

Organisation* (Case reference)	Administrative Enhancement
EAA (2013/1899A)	Additional manpower deployed to enhance efficiency in handling disciplinary cases and procedures introduced to avoid delay in hearing of such cases due to the transition of office terms of the Authority
FSD (2013/3336)	<ul style="list-style-type: none"> Internal instructions introduced to specify that completion of standard procedures by Ambulancemen at the scene cannot be an excuse for delay in taking patients to hospital; and Monitoring enhanced to probe into suspected cases of such delay
HA (2012/1168)	New guidelines and procedures introduced to ensure that the Hospital Pharmacy staff will inform patients of the reason for amendment to his/her prescription, and that records for the reason of prescription amendment will be kept for a period of two years for monitoring purposes
LAD (2013/1824)	Litigation questionnaires revised to allow aided persons to indicate their preferred language for legal proceedings
Lands D (2013/0093)	New measures introduced to expedite the handling of complaints about fallen trees, including improving the flexibility in commissioning contractors and strengthening clerical support
LCSD (2008/4222)	A new "Library Card for Guarantor's Use" introduced to cater for the needs of the young, the elderly and the mobility-handicapped for borrowing of library items
LCSD (2012/0232)	Notices informing library users of the arrangement of putting overdue fines into designated deposit box and issuing receipts for overdue fines were posted in conspicuous locations in the library
PO (2011/2841)	Communication channels with an overseas post office established to address the issue of high loss rate of mail items to that country
TD (2012/1488)	Engaging an independent organisation to conduct a customer survey with a view to gauging the passengers' feedback on the Multi-media On-board service
TD (2012/3966)	Assistance of the Government Chief Information Officer obtained to enhance the "Change of Address Service" under the GovHK website to ensure that licence holders would update both their residential and postal addresses correctly
WSD (2010/2756)	Working guidelines revised to screen meter test applications to avoid unnecessary meter replacement and test
WSD (2011/0098)	Computer system enhanced to facilitate more accurate estimation of water charges, especially in cases where negative readings had been recorded

WSD (2011/3361)	Computer system enhanced to allow consumers to provide reasons for abnormal water consumption before issuing meter replacement orders
WSD (2011/4309)	Computer system enhanced to facilitate issuing of water bills to consumers who do not need to pay water charges due to decrease in water consumption, and to alert them to report the reasons for decrease in water consumption to WSD

(e) Measures for more effective regulation or control 	
Organisation* (Case reference)	Administrative Enhancement
AFCD (2010/2175)	Criteria for evaluation of the Cat Colony Care Programme clearly spelt out to the non-government organisation administering the Programme for better monitoring
AFCD (2011/3426)	Works contractors reminded to lock the gate after entry into a Country Park to prevent subsequent unauthorised vehicular entry
DEVB (2013/1829A)	A system set up to monitor the progress of follow-up on dangerous tree cases referred by Government departments for timely response
IRD (2013/0547B)	Internal monitoring system enhanced (including shortening the interval of review; introducing bring-up mechanism; and reminding staff to accord priority to urgent cases) to ensure timely adjudication of the amount of stamp duty chargeable
LCSD (2010/1790)	Guidelines revised to prohibit swimming lessons conducted in designated circular lane in public swimming pools
LCSD (2010/4719)	Announcement to beach goers revised to convey clearer message to the public on beach regulations; working guidelines revised to give clearer instructions to the frontline staff on taking enforcement action in beaches; department's website updated to reflect the revised announcement and guidelines
LCSD (2011/4479)	Enforcement action against illegal feeding of stray cats in public parks stepped up, including enlisting the assistance of members of the public (such as complainants reporting the illegal act) as witnesses for initiating prosecution
LCSD (2012/3665)	New measures implemented to prevent abuse of block bookings of sports facilities by community sports clubs under the National Sports Associations, including reviewing the status of the community sports clubs annually
LCSD (2012/3856)	Measures including prohibition of use of loudspeakers and placing huge flower pots on open grounds implemented to prevent noise nuisance in a public park

Examples of Improvement Measures Introduced by Organisations Following Our Inquiry or Investigation

(f) Clearer and more reasonable rules and charges |

Organisation* (Case reference)	Administrative Enhancement
CSD (2011/2957)	Rules on the use of phone by persons in custody ("PICs") revised so that, apart from requesting for phone calls under special circumstances, if a PIC has received no visit from and made no phone call to his/her family in two months, he/she may make a 10-minute phone call to his/her family outside the territory, without the need for prior approval
HD (2012/5445)	Rules for allocation of parking space in a Home Ownership Scheme estate revised such that priority is considered on household basis instead of flat owner basis, to achieve greater fairness
HD (2013/0217)	Arrangement on allotting car parking spaces managed by the Housing Authority revised to accord a higher priority to holders of "Parking Certificate for Drivers Who Carry People with Mobility Disabilities"
TD & THB (2012/4018 & 2012/3834)	A comprehensive review conducted on the application procedure for importing Electric Vehicles to Hong Kong, and a new set of procedures drawn up specifically to address the concerns unique to Electric Vehicles

(g) Clearer and more timely information to the public |

Organisation* (Case reference)	Administrative Enhancement
AFCD (2010/2175)	Public education strengthened on "Trap, Neuter, Return" approach in handling stray animals
FEHD (2012/2704(I))	Guidelines revised requiring staff to release information about the location of the seepage-affected area to the owner/occupant of the premises suspected to be the source of seepage upon the latter's request
GRS (2012/2621)	New guidelines on how to use the services of GRS made available to the public
Imm D (2011/5200)	Information on assistance offered to Hong Kong residents in the Mainland more widely published
Lands D (2012/5261)	Internal guidelines amended to ensure that notice on Small House applications would be posted at conspicuous spots near the sites under application
Lands D (2013/1634)	Permanent notices posted in all bicycle parking places to warn cyclists against prolonged parking
LCSD (2013/0651(I))	A clause added to the "Hiring Agreement for Use of Leisure Venues for Major Non-designated Use" to facilitate disclosure of information concerning the hirer and the terms of the Agreement upon request by any third party

SWD (2012/1418)	A Chinese version of the Funding and Service Agreements made with non-government organisations provided on the Department's website for public information
TD (2013/2265)	Application form for Private Service (Limousine) Hire Car Permit revised to inform first-time applicants that if they cannot provide any hiring records, they may submit other supporting documents or information for consideration
WSD (2013/3026)	"WSD Mobile App" launched in January 2014 to facilitate the general public to access information on and better prepare for water suspension incidents

(h) Training for staff 	
Organisation* (Case reference)	Administrative Enhancement
CAD (2012/2862)	Training for frontline staff handling helicopter noise complaints conducted to strengthen their knowledge on air traffic operations and complaint handling
EDB (2012/2183(I))	Staff training strengthened to ensure efficient handling of request for information
E & MSD (2013/0408A)	Staff training conducted to instill positive attitude in handling public complaints
EPD (2013/0934(I)) & FEHD (2013/0624(I))	Staff training conducted to enhance staff's knowledge of the Code on Access to Information and the Guidelines on Interpretation and Application
FEHD (2013/0246 & 2012/5680(I))	Staff reminded to comply with departmental guidelines to collect food specimen for laboratory test, wear uniform, maintain proper record and act flexibly in case of unexpected events when investigating food complaints
HA (2011/4424)	Training to impress upon frontline staff the importance of making timely and accurate records on patient care and essential verbal communications with patients and their relatives
WSD (2010/2756)	Staff training conducted to enhance accuracy of meter reading
WSD (2011/0098)	Induction training for frontline staff enhanced by adding a new topic on computer estimation of water charge

* see Table 4 for the full name of the organisation against the acronym.

Summaries of Selected Cases on Code on Access to Information

(Where applicable, the specific aspect of maladministration established is highlighted for clearer focus at the end of the case summary)



Food and Environmental Hygiene Department ("FEHD")

Case No. OMB/2013/1376(I) – Release of recruitment information

Allegation: unreasonably refusing to release information about a recruitment exercise

complainant's request. Instead, FEHD should have cited paragraph 2.11 of the Code, i.e. the disclosure of such information "would harm or prejudice the management of the public service". That covers information related to the employment or recruitment of civil servants.

4. Moreover, FEHD should have pointed out to the complainant at the outset that there was in fact no pre-determined "minimum score" for shortlisting candidates.

A case of wrong application/interpretation of the Code

Details of Complaint

The complainant applied for the position of Health Inspector in FEHD and was invited to participate in a written examination. However, he was not shortlisted for the recruitment interview. He requested FEHD to release the minimum score of the examination qualifying candidates for the interview, but his request was rejected.

Response from FEHD

2. FEHD had relied on paragraph 2.9(c) of the Code on Access to Information ("the Code") in refusing to release the information to the complainant. It considered that disclosure of the minimum score "would harm or prejudice the proper and efficient conduct of the operations of the Department". In response to our inquiry, FEHD clarified that there was in fact no pre-determined "minimum score" as such.

Our Comments

3. The Ombudsman found that FEHD had mistakenly invoked paragraph 2.9(c) of the Code, which concerns "the operations of a department", in refusing the



Hong Kong Police Force ("HKPF")

Case No. OMB 2013/0898(I) – Reporting record

Allegation: unreasonable refusal of the complainant's request for his reporting record

Details of Complaint

The complainant called a divisional police station to report nuisance calls. On the following day, he visited the police station and requested the record of his telephone report. His request was, however, rejected by a police officer on duty on the grounds that the reporting record was restricted information. He considered that in refusing to provide the record, HKPF had violated the Code on Access to Information ("the Code").

Response from HKPF

2. On the day the complainant went to the police station, he wanted his reporting record at once. The police officer on duty told him that as the record was for investigation purpose and it took time to process the information requested, the record could not be provided immediately. The complainant did not make any further request at that time.

3. The complainant later called the police station again to complain against the police officer concerned for unreasonably refusing to provide the record. He also made the same request again. The police officer who answered his call then explained to him the procedures for requesting the record and the reason why it could not be provided immediately. However, the complainant was not satisfied with such explanation.

4. In response to our inquiry, HKPF considered that the record contained the complainant's personal data and, therefore, he should make the request under the Personal Data (Privacy) Ordinance, not the Code. Regarding the police officer's explanation that the record was for investigation purpose, HKPF admitted that there should be a better way to handle this and it had so instructed the officer concerned.

Our Comments

5. Nothing in the Code indicates that it does not apply to information relating to personal data. We, therefore, did not agree with HKPF's viewpoint and urged HKPF to act in compliance with the Code in handling the complainant's request.

A case of misunderstanding of the scope of the Code



Lands Department ("Lands D")

Case No. OMB 2013/1342(I) – Squatter registration records

Allegation: unreasonably refusing to provide information on the registered squatters – substantiated

Details of Complaint

The complainant alleged that someone had taken possession of the squatter hut which used to be the residence of his family ("the Hut"). In March 2013, he wrote to the Squatter Control Office ("SCO") of Lands D to request documents that could prove that they were the registered inhabitants of the Hut. However, SCO refused his request. He, therefore, lodged a complaint with this Office.

Lands D's Explanation

2. According to Lands D, in the 1980s, Government conducted a territory-wide survey on squatter huts for planning purposes. According to SCO's records, the Hut was then assigned a squatter registration number and allowed to remain in existence on a temporary basis, while carrying the status of an unauthorised structure on Government land. Neither the squatter registration number nor the registration of the inhabitants conferred on any person or recognised his/her right to occupy the land.

3. Hence, SCO in March 2013 refused to confirm the complainant's right to occupy the Hut.

4. In May 2013, the complainant applied to Lands D under the Code on Access to Information (“the Code”) for details of the registered inhabitants of the Hut. Subsequently, SCO met part of his request by confirming in writing that his name was on the list of registered inhabitants. However, on the grounds that the list contained the personal data of some third parties, SCO refused to provide him with a copy of the full list.

Our Comments

5. The Code and its Guidelines stipulate that all requests for information, whether made with specific reference to the Code or not, should be handled in accordance with the provisions of the Code. The Guidelines also recommend that, if possible, a copy of the original record containing the requested information be provided. The Government department concerned should by no means withhold information on account of the purpose of the request.

6. In our investigation, we found that although in his letter of March 2013 to SCO, the complainant had gone into some details to explain why he wanted the information, what he requested was clear and specific, i.e. SCO’s records about him and his family members as registered inhabitants of the Hut. He had not asked SCO to confirm their right to occupy the Hut or the land concerned.

7. It is true that the requested records cannot prove the complainant’s right of occupancy of the Hut. However, under the Code, it was not necessary or appropriate for SCO to consider the purpose of his request at all. It was, therefore, improper of SCO to reject his request on the grounds that such information would not serve his purpose.

8. In our view, SCO should have simply confirmed to the complainant that his name was on the list of registered inhabitants of the Hut, with a rider that such information cannot prove his right to occupy the land. Unfortunately, it was not until the complainant made a further request under the Code towards the end of May that SCO confirmed that his name was on the list. That was indeed an undue delay.

9. Moreover, SCO cited third party information as its reason for refusing to release to him the full list. While that was a legitimate reason under the Code, the so-called “third parties” in this case were none other than the complainant’s own family members. SCO could have advised the complainant to obtain consent from his family members or submit a joint request with them for the list. That would not only relieve SCO’s concern about disclosing third party information, but also be in line with the approach recommended by the Guidelines of the Code, i.e. to provide the requestor with a copy of the original record containing the requested information.

Conclusion and Recommendation

10. In the light of the above, The Ombudsman considered the complaint substantiated.

11. The Ombudsman recommended that Lands D provide the complainant with a copy of the full list of registered inhabitants of the Hut, if the complainant managed to obtain his family members’ consent.

*A case of unreasonable withholding
of information*

Index of Reviews by Full Investigation

Annex 12

Case No.	Complaint	Original Overall Conclusion	Decision Varied/ Upheld after Review	Overall Conclusion after Review	No. of Recommendations
Housing Department 					
2011/2863	Failing to keep its promise to take care of an ex-tenant's property	Inquiry – No evidence of maladministration	Varied	Substantiated other than alleged	2
Buildings Department 					
2012/2630	Failing to take enforcement action against two unauthorised door openings and the change of use of a building	Full investigation – Unsubstantiated	Upheld	Unsubstantiated	0
2012/5427	(1) Unreasonably refusing to order the property management agent to immediately demolish illegal canopies; and (2) Using an unsound method of inspecting the structure safety of a building	Inquiry – No evidence of maladministration	Upheld	Unsubstantiated	0

Summaries of Selected Reviews by Full Investigation

(Where applicable, the specific aspect of maladministration established is highlighted for clearer focus at the end of the case summary)



Buildings Department ("BD")

Case No. OMB 2012/2630 – Unauthorised building works and change of use of premises

Allegation: failing to take enforcement action against unauthorised building works items and change of use of premises in a building – unsubstantiated

Details of Complaint

The complainant first complained to us in August 2012. He alleged that there were some unauthorised building works ("UBW") items in a building at Nos.174-176 of a certain road. The UBW items comprised two door openings on the walls at the front and rear staircases on the Mezzanine Floor of No.174 ("M/F(174)") ("Door Openings"). Furthermore, a domestic unit on 1st Floor of No.174 ("1/F(174)") had been unlawfully converted into a tutorial centre and a kindergarten ("Change of Use"). He had reported the above irregularities to BD, but the Department failed to take any enforcement action against them.

Outcome of Our First Investigation

2. In January 2013, we completed our investigation on the complaint. We found that BD had refrained from taking enforcement action on the Door Openings on account of the low risk they posed and in accordance with its enforcement policy, which we understood had been established after wide public consultation.

We accepted BD's explanation that, without the Door Openings, M/F(174) would become an inaccessible property since the Ground Floor of No.174 ("G/F(174)") and M/F(174) were owned by different persons. We also considered it proper of BD to regard the Change of Use as being not material, since it did not pose any fire, structural, health or environment hazard. In sum, The Ombudsman found the complaint unsubstantiated.

Complainant's Request for Review

3. In April 2013, the complainant sought a review of the case. He alleged, among other things, that G/F(174) and M/F(174) actually belonged to the same owner, which contradicted the information given by BD (paragraph 2).

4. Besides, the complainant also alleged that both M/F(174) and the Mezzanine Floor of No.176 ("M/F(176)") had unauthorised door openings on the walls at the front and rear staircases. BD had issued warnings to their owners, requiring reinstatement of the walls. The owner of M/F(176) complied with BD's requirement, but not the owner of M/F(174).

5. Moreover, four domestic units in adjacent buildings had, like 1/F(174), been unlawfully converted into commercial establishments, and BD had issued warning letters to their owners. The Department should have done the same regarding the Change of Use.

Our Findings

6. We reviewed the case, again by full investigation. Our findings were as follows.

The Internal Staircase

7. G/F(174) and M/F(174) were indeed owned by the same company. There used to be an internal staircase linking the two levels, enabling access to M/F(174).

However, that internal staircase had been removed and the slab opening sealed up with concrete without BD's prior approval. Those UBW items did not pose any obvious structural danger and, therefore, did not warrant priority enforcement action according to the established policy.

The Door Openings

8. BD had indeed issued a warning letter to the owners of M/F(174) asking for reinstatement of the walls. The owner subsequently provided protected lobbies with fire-resistant glass doors at the wall openings. BD later found the width and fire resistance rating of the glass doors not in full compliance with safety requirements. An order to reinstate the walls was, therefore, issued to the owner in March 2013. However, if the width and fire resistance rating of the glass doors were modified to fully comply with the safety requirements, BD would withdraw the reinstatement order.

The Change of Use

9. Three units in adjacent buildings had been found to have their uses changed. BD issued advisory letters to their owners in November 2012, as such changes appeared to overload their floors. Upon review, however, their floor loading capacity was found to be sufficient. No further action would, therefore, be taken against them.

10. Regarding the Change of Use, BD found no extra load on the floor of 1/F(174). Hence, it did not issue any advisory or warning letter.

Our Observations and Conclusion

11. This Office was satisfied that BD's action/inaction on each of the instances cited by the complainant was in line with its established policy, enforcement guidelines as well as safety assessments.

12. The Ombudsman, therefore, maintained his decision on this complaint case.



Buildings Department ("BD")

Case No. OMB 2012/5427 – Unauthorised building works and building inspection method

Allegations: (1) unreasonably refusing to order the property management agent to immediately demolish illegal canopies – unsubstantiated; and (2) using an unsound method of inspecting the structural safety of the buildings – unsubstantiated

Details of Complaint

The complaint was first made to this Office in December 2012. The complainant alleged that there were illegal canopies at the ground floor entrances of all the buildings in the estate where he lived. BD had issued advisory letters to the owners and the property management agent ("PMA") of the estate, urging them to demolish the canopies within 30 days. Worried by the possible danger of the canopies, the complainant requested BD to issue an order requiring the PMA to immediately remove the canopies, but to no avail. BD officers merely conducted a visual inspection of the buildings and indicated that there was no imminent danger. However, a few days later, chunks of the ceiling fell off. The complainant queried whether BD's inspection method was proper.

Outcome of Our First Inquiry

2. BD explained that as the canopies in question did not pose any immediate danger and the PMA had

Summaries of Selected Reviews by Full Investigation

been actively coordinating with the owners to arrange demolition of the canopies, there was no need for the Department to issue an order for immediate removal of the canopies. It is BD's usual practice to first conduct visual inspection, and then make a professional assessment, based on the building design standards and approved building plans, on any imminent danger posed. After conducting a visual inspection of the exterior and common areas of the estate in this case, BD officers noticed concrete spalling at a beam at the entrance of a building and hence asked the PMA to take follow-up actions. A few days later, BD officers noted that the loose concrete had been removed and the area properly fenced off.

3. We considered BD's explanation reasonable.

Complainant's Request for Review

4. In mid-2013, the complainant raised the following issues and sought a review of the case:

- (1) The fact that concrete subsequently fell off from the ceiling was a clear indication that BD's visual inspection method was "unscientific" and "unprofessional".
- (2) As the canopies were a safety hazard to residents, it was unreasonable of BD to allow the PMA to delay removal of the illegal canopies.

Outcome of Review

5. We reviewed the case by full investigation. Apart from obtaining further information from BD and the PMA, we consulted an independent expert on building surveying.

6. Regarding Issue (1), we were advised by the independent expert that visual inspection is indeed a basic method most widely used in the industry for

inspection of the structure of buildings. Generally, a professionally trained person who carries out a visual inspection with reference to the approved building plans can accurately assess the structural safety of buildings.

7. The PMA told us that the concrete pieces found by the complainant on the ground had not actually fallen off from the ceiling, but had been removed from the ceiling as part of the maintenance process.

8. In fact, the complainant had not seen the concrete falling off from the ceiling, and the PMA had explained why there were concrete pieces on the ground. Hence, the complainant's allegation that concrete pieces had fallen off from the ceiling shortly after BD officers' visual inspection was not substantiated by evidence. Moreover, as advised by the independent expert, there was nothing amiss with qualified BD officers' visual inspection of the buildings.

9. Regarding Issue (2), BD explained that the demolition of the illegal canopies could not have commenced immediately since the owners wanted to install new, legally permitted canopies for pedestrian safety immediately after removal of the illegal canopies and the building plans for the installation of new canopies had to be submitted to BD for approval first. BD received the building plans in September 2013 and it was estimated that after BD's approval the whole project could commence in early 2014. Since the existing canopies did not pose any imminent danger, BD considered it unnecessary to require the PMA to remove them immediately. We found BD's explanation reasonable.

Conclusion

10. Based on the above outcome of review, The Ombudsman maintained his decision on this case.



Housing Department ("HD")

Case No. OMB 2011/2863 – Handling ex-tenant's belongings

Allegation: failing to keep its promise of storing the personal belongings for a former public housing tenant – substantiated other than alleged

Details of Complaint

The complainant was formerly a public housing tenant. She alleged that HD, when recovering her unit in 2007, had promised to keep for her the furniture and other articles left in the premises until she was allocated another public housing unit. However, HD disposed of all her belongings by public auction or as refuse after nearly four years without giving her any prior notice.

Outcome of First Inquiry

2. In our first inquiry completed in September 2011, we found no evidence that HD staff had made the above promise to the complainant. According to the Housing Ordinance and HD's internal guidelines, after taking possession of any property during its flat recovery action, HD will allow the ex-tenant 14 days to submit a claim for its return. Any property not claimed after the specified period will become the property of the Hong Kong Housing Authority. HD, its executive arm, can then arrange to sell any items that have a market value by auction and use the proceeds to offset any outstanding arrears of the ex-tenant. There was no impropriety on the part of HD in handling the complainant's property according to established procedures.

Complainant's Request for Review

3. At the complainant's request for review, we further examined her case and sought supplementary information from HD. In HD's case files, we noted that HD had never disclosed to this Office or the complainant that before the disposal of her property, a soil pipe inside the storeroom had burst, resulting in flooding and damage to most of her property. Immediate clearance by HD became necessary after the incident.

4. Considering that there might have been maladministration on the part of HD between the expiry of the 14-day period and the disposal of the complainant's property, we started a full investigation.

Our Findings

5. In early 2007, HD recovered the complainant's public housing unit. Claiming poor health, she asked HD staff to store her personal belongings left in the unit. After considering her situation and the available storage space, HD staff exercised discretion and kept her belongings in the public housing estate's storeroom.

6. In August and September 2007, HD staff made two visits to the residential address registered by the complainant at that time, trying to recover the arrears owed by her. Failing to get in touch with her, HD subsequently wrote off her outstanding arrears.

7. In mid-2008, an HD officer ("Officer A") accompanied the complainant to visit the storeroom at her request. She was allowed to take away a few items. At that time, Officer A also urged the complainant to take back all her belongings as soon as possible, but he did not ask for her latest correspondence address and telephone number. HD explained that Officer A had received telephone calls from the complainant occasionally. Communication between them was always initiated by the complainant because she refused to provide him with her contact information.

8. After the bursting of the soil pipe in December 2010, HD auctioned off seven electrical appliances which were of certain value and discarded the remaining articles. The proceeds from the sale (around \$50) were used to offset the complainant's outstanding debts. There was no way for HD to contact the complainant. It was not until July 2011, when the complainant telephoned HD to enquire, that she learned that all her belongings had been disposed of.

Our Observations and Comments

9. We decided to uphold our original conclusion and maintained that there was no evidence of any promise by HD to keep the complainant's personal belongings until she was allocated another public housing unit. Nevertheless, HD had allowed the complainant to use the storeroom for nearly four years and this actually meant giving her a free storage service. She could even retrieve some of the articles when necessary. While exercising discretion on compassionate and caring grounds, HD did not specify any deadline, nor did it explain clearly to the complainant that such property no longer belonged to her under the law and could be sold or discarded at any time. We considered that HD's action would indeed give her unrealistic expectations and so indirectly encourage her to procrastinate, notwithstanding the verbal reminder from Officer A that she should take back all her belongings as soon as possible.

10. Although HD was legally entitled to sell or discard the complainant's articles, it should have been more proper for HD to give her prior notice because of the false expectations it had created. HD argued that it was unable to do so as she had refused to provide her contact information. Nevertheless, the complainant insisted that she had given her latest address and telephone number to Officer A. In HD's case files, we could not find any record showing that HD had ever requested the complainant to provide her contact information. If the complainant had refused to do so, the staff member concerned should have made a proper record for future reference.

11. We could not accept HD's view that the bursting of the soil pipe was irrelevant to the subject of this complaint and it was unnecessary to mention the incident to this Office or the complainant. In particular, when the complainant queried why so many of her belongings were sold for only \$50, a clear account of the whole sequence of events would have allayed her doubts. Moreover, HD's termination of the storage arrangement was directly triggered by the incident. This revealed that HD had not formulated any clear review mechanism or time limits to regularly follow up on the articles kept for ex-tenants on a discretionary basis. We believed that HD staff had no plan at all to deal with the complainant's articles before the incident occurred.

Conclusion and Recommendations

12. In the light of the above, The Ombudsman considered the complaint substantiated other than alleged.

13. The Ombudsman recommended that HD:

- (1) draw up clear guidelines on the procedures for handling articles left in public housing units by ex-tenants, including the approval and review procedures for keeping unclaimed articles on discretionary/compassionate grounds after the specified period, the time limits, and HD's legal liabilities for any damage to such articles; and
- (2) remind its staff to maintain proper records of all communication with tenants/ex-tenants.

A case of inadequate procedures for handling articles of ex-tenants

(A) Enquiries*

	Response Time		
	Immediate	Within 30 minutes	More than 30 minutes
By telephone or in person	12,647 (100%)	0	0
In writing	Within 5 working days	Within 6-10 working days	More than 10 working days
	102 (85%)	15 (12.5%)	3 (2.5%)

* Excluding enquiries on existing complaints.

(B) Complaints**

	Response Time	
	Within 5 working days	More than 5 working days
Acknowledgement	4,999 (99.2%)	39 (0.8%)

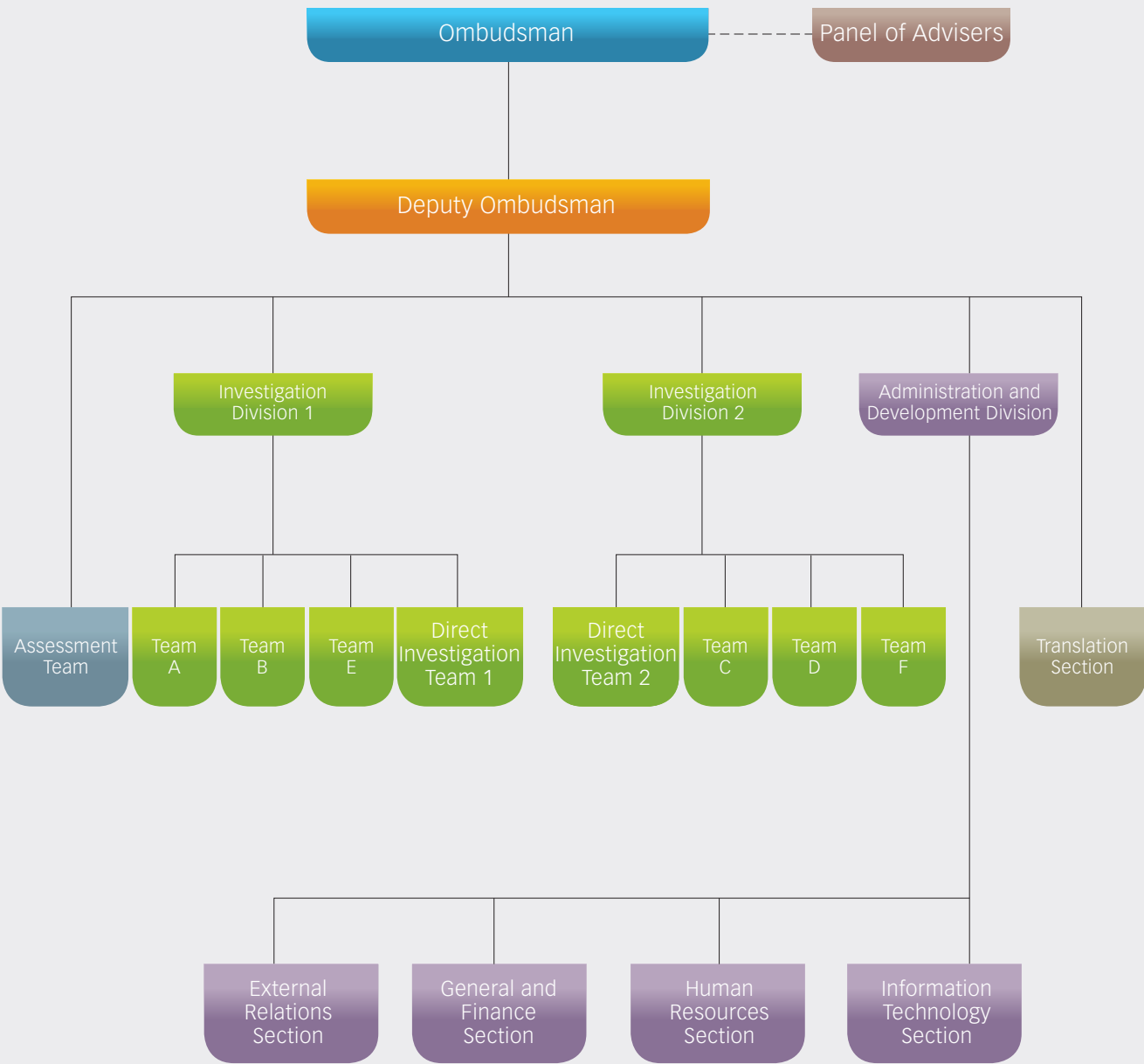
** Excluding cases where acknowledgement is not necessary or practicable.

	Cases outside jurisdiction or under restriction			Other cases		
	Within 10 working days (target: not less than 70%)	Within 11-15 working days (target: not more than 30%)	More than 15 working days	Less than 3 months (target: not less than 60%)	Within 3-6 months (target: not more than 40%)	More than 6 months
Cases concluded	1,133 (88.9%)	123 (9.7%)	18 (1.4%)	3,592 (81.7%)	755 (17.2%)	49 (1.1%)

(C) Outreach talks

	Response Time	
	Within 10 working days	More than 10 working days
Requests for outreach talks	10 (100%)	0

Office of The Ombudsman



Accountancy

Mr Tsai Wing Chung, Philip, JP

Engineering and Surveying

Ir Dr Chan Ka Ching, Andrew, BBS, JP
Mr Chan Yuk Ming, Raymond
Dr Hung Wing Tat, MH
Mr Leung Kwong Ho, Edmund, SBS, OBE, JP

Legal

Professor Johannes M M Chan, SC
Professor M J A Cooray
Mr Robert G Kotewall, SBS, SC, JP
Professor Anne Scully-Hill
Dr Tai Yiu Ting, Benny, MH
Professor Wang Gui Guo

Medical and Nursing

Professor Chien Wai Tong
Professor Lo Chung Mau, JP
Professor Grace Tang, SBS, JP
Dr Wong Chung Kwong, JP

Social Work and Rehabilitation Services

Professor Chan Lai Wan, Cecilia, JP
Ms Fang Meng Sang, Christine, BBS, JP
Professor Ma Lai Chong, Joyce, JP
Mr Ng Wang Tsang, Andy

* In alphabetical order

Visits to the Office of The Ombudsman

Date	Visitors
17 April 2013 & 23 April 2013	Participants of the "Training Course on Anti-corruption" for officials from Dongguan Municipal Disciplinary Committee, Guangdong Province, arranged by the China Business Centre, the Hong Kong Polytechnic University
2 May 2013	Participants of the "Training Course on Civil Service Management" for officials from Guizhou Province, arranged by the Hong Kong Financial Services Institute
13 May 2013	Participants of the "Advanced Programme for Chinese Senior Judges", arranged by the City University of Hong Kong
21 May 2013	Participants of the "Training Course on Management of Public Finance" for officials from Qinghai Provincial Government, arranged by the Hong Kong Financial Services Institute
22 May 2013	Participants of the "Training Course for Municipal and District Officials of Party and Government Departments and Units" from Foshan, Guangdong Province, arranged by the China Business Centre, the Hong Kong Polytechnic University
28 May 2013	Delegates from the Organisation Department of Shunde District Committee, Foshan, Guangdong Province, arranged by the China Business Centre, the Hong Kong Polytechnic University
30 May 2013	Participants of the "Training Course on Auditing" for officials from Qinghai Province, arranged by the Hong Kong Financial Services Institute
31 May 2013	Delegates from the Financial Services Branch of the China Supervision Institute, arranged by the Hong Kong Monetary Authority
26 June 2013	Participants of the "Training Course on Anti-corruption and Construction" for officials from Xinjiang Uygur Autonomous Region, arranged by the Hong Kong Financial Services Institute
27 June 2013	Participants of the "Training Course on Leadership Enhancement for Cadres" for officials from Sanshui District, Foshan, Guangdong Province, arranged by the Hong Kong Institute of Asia-Pacific Studies, the Chinese University of Hong Kong
28 June 2013	Delegates from the Defense Acquisition Program Administration, the Republic of Korea
3 July 2013	Participants of the "Training Course on Anti-corruption and Construction" for officials from the Organisation Department of Chancheng District, Foshan, Guangdong Province, arranged by the Hong Kong Financial Services Institute
5 July 2013	Mainland law students, arranged by the Asian Legal Resource Centre
10 July 2013	Delegates from the Changzhou Municipal Disciplinary Committee, Jiangsu Province, arranged by the China Business Centre, the Hong Kong Polytechnic University
11 July 2013 & 17 July 2013	Delegates from the Office of Duty Crime Prevention, Dongguan, Guangdong Province, arranged by the China Business Centre, the Hong Kong Polytechnic University

Date	Visitors
12 July 2013	Common Law Scholarship awardees from Peking University, arranged by the Hong Kong Bar Association
16 July 2013	Delegates from the Human Resources and Social Security Administration of Shenzhen Municipality, Guangdong Province, arranged by the Vocational Training Council
18 July 2013	Delegates from the Organisation Department of Wenzhou Municipal Committee, Zhejiang Province, arranged by the School of Professional and Continuing Education, the University of Hong Kong
23 July 2013	Delegates from the Organisation and Discipline Inspection Cadres, Yangzhou Municipal Disciplinary Committee, Jiangsu Province, arranged by the Hong Kong Council for Technology & Creation
29 July 2013	Delegates from the Office of the Ombudsman, Thailand
7 August 2013	Participants of the "Training Course on Administrative Approval System" for officials from Foshan, Guangdong Province, arranged by the Institute of Asia-Pacific Studies, the Chinese University of Hong Kong
15 August 2013	Participants of the "Training Course on Anti-corruption and Construction" for officials from Baotou, Neimengu, arranged by the Baotou Municipal Supervision Bureau, Neimengu Autonomous Region
23 August 2013	Delegates from the Organisation Department of Changsha Municipal Committee, Hunan Province, arranged by the China Business Centre, the Hong Kong Polytechnic University
29 August 2013	Delegates from the Mainland Justice Departments/Bureaux, arranged by the Department of Justice
3 September 2013	Participants of the "Seminar on Economic Management for Senior Civil Servants", arranged by the Hong Kong Productivity Council
5 September 2013	Trainers from Disciplinary Committees of Colleges and Universities under the Department of Education, Jilin Province, arranged by the China Education Exchange (Hong Kong) Centre
17 September 2013	Mr Xiao Zhiheng, Deputy Director of the Standing Committee of the Guangdong Provincial People's Congress, arranged by the Hong Kong Economic and Trade Office in Guangdong
3 October 2013	Legal academics from mainland China, arranged by the Asian Legal Resource Centre
22 October 2013	Delegates from the Organisation Department of Meizhou Municipal Committee, Guangdong Province, arranged by the China Business Centre, the Hong Kong Polytechnic University
29 October 2013	Participants of the "Training Course on Human Resources Development and Management" for officials from Guizhou Province, arranged by the Hong Kong Financial Services Institute

Date	Visitors
30 October 2013	Participants of the “Exchange Programme for Mainland Civil Servants”, arranged by the Hong Kong Institute for Public Administration
1 November 2013	Delegates from officials under the system of Jilin Provincial Committee on Discipline Inspection, arranged by the China Education Exchange (Hong Kong) Centre
13 November 2013	Delegates from the Department of Supervision, Shandong Province, arranged by the China Business Centre, the Hong Kong Polytechnic University
18 November 2013	Participants of the “Postgraduate Certificate Course in Corruption Studies”, arranged by the School of Professional and Continuing Education, the University of Hong Kong
19 November 2013	Delegates from the Organisation Department of Chongqing Municipal Committee, Sichuan Province, arranged by the China Business Centre, the Hong Kong Polytechnic University
21 November 2013	Participants of the “Training Course on Anti-corruption and Construction” for Mainland officials, arranged by the Hong Kong Financial Services Institute
29 November 2013	Delegates from the United Nations Office On Drugs and Crime, arranged by the Liaison Bureau, Hong Kong Police Force
4 December 2013	Participants of the “Training Course on Building an Incorruptible Civil Service” for officials from Chengdu Municipal Supervision Bureau, Sichuan Province, arranged by the Hong Kong Financial Services Institute
11 December 2013	Delegates from the Human Resources and Social Security Administration of Shenzhen Municipality, Guangdong Province, arranged by the Vocational Training Council
12 December 2013	Ms Qu Shuhui, Head of the Discipline Inspection Group, Ministry of Civil Affairs, arranged by the Information Services Department
14 January 2014	Participants of the “Advanced Training on Strategic Economy Development for Mainland Red Delta Area”, arranged by the Hong Kong Productivity Council
17 January 2014	Participants of the “Advanced Programme for Chinese Senior Judges”, arranged by the City University of Hong Kong
20 January 2014	Participants of the “Training Course on Public Policy and Management for Civil Servants” for officials from the Borders of Yunnan Province, arranged by the Hong Kong Financial Services Institute
22 January 2014	Mr Wang Shengming, Vice-chairperson of the Internal and Judicial Affairs Committee of the National People’s Congress, arranged by the Information Service Department
28 March 2014	Students from Shun Tak Fraternal Association Leung Kau Kui College





Tables

$$b^2 - 4ac$$

25%

Table 1 | Caseload

	Reporting year ¹				
	09/10	10/11	11/12	12/13	13/14
Enquiries	13,789	12,227	12,545	12,255	12,767
Complaints					
(a) For processing	5,869	6,467	6,085	6,349	6,572
– Received	4,803[393]	5,339[627]	5,029[180]	5,501[238]	5,624[398]
– Brought forward ²	1,066	1,128	1,056	848	948
(b) Processed	4,775[402]	5,437[611]	5,237[210]	5,401[235]	5,670[367]
Non-pursuable³	2,560[100]	2,381[11]	2,560[127]	3,116[102]	2,965[319]
Pursued and concluded	2,215[302]	3,056[600]	2,677[83]	2,285[133]	2,705[48]
– By inquiry ⁴	2,086[302]	2,894[524]	2,492[6]	2,094[133]	2,346[36]
– By full investigation ⁵	126	155[76]	163[61]	169	321[12]
– By mediation ⁶	3	7	22[16]	22	38
(c) Percentage processed = (b) / (a)	81.4%	84.1%	86.1%	85.1%	86.3%
(d) Carried forward = (a) – (b)	1,094	1,030	848	948	902
Direct investigations completed	7	6	5	6	6

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

Note 2. Including 96, 34 and 26 re-opened cases in 2009/10, 2010/11 and 2011/12 respectively.

Note 3. Outside our jurisdiction or restricted by The Ombudsman Ordinance; withdrawn by complainant, discontinued or not undertaken by the Office, e.g. *subjudice* or lack of *prima facie* evidence.

Note 4. Pursued under section 11A of the Ordinance, for general cases.

Note 5. Pursued under section 12 of the Ordinance, for complex cases possibly involving serious maladministration, systemic flaws, etc.

Note 6. Pursued under section 11B of the Ordinance, for cases involving no, or only minor, maladministration.

[] Number of topical cases.

– See “Glossary of Terms” at Annex 1 for detailed definitions of the above terms.

Table 2
Enquiries/Complaints Received

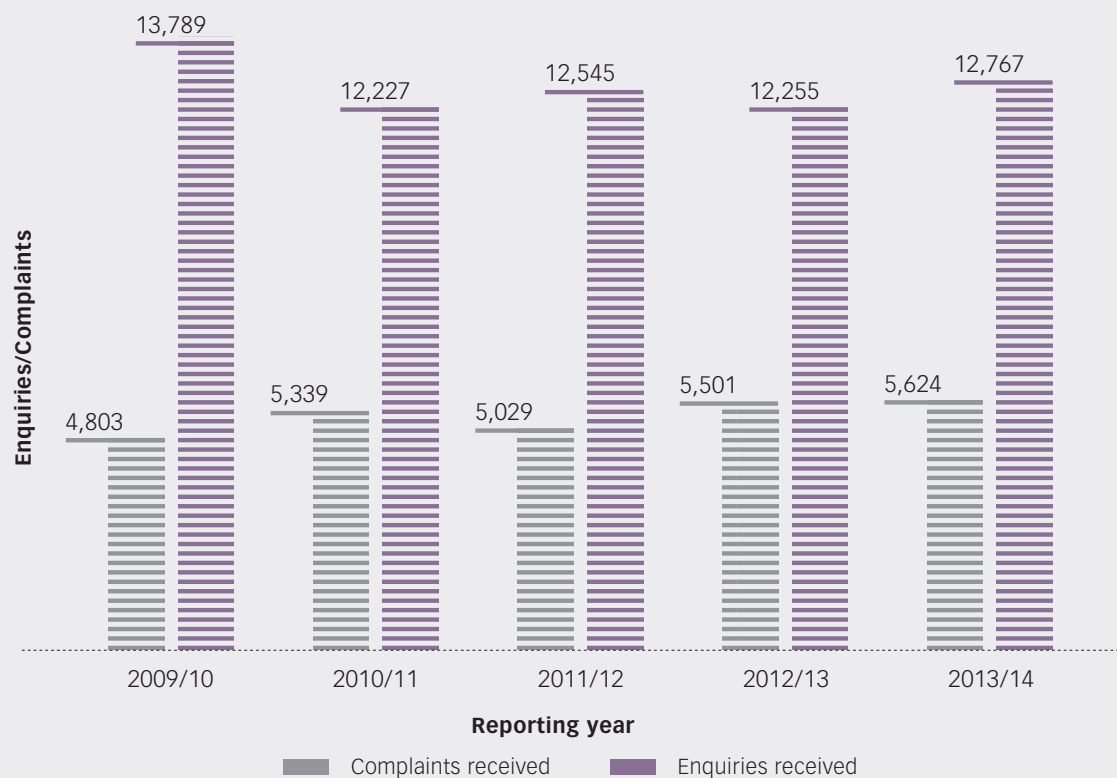


Table 3
Nature of Complaints Processed

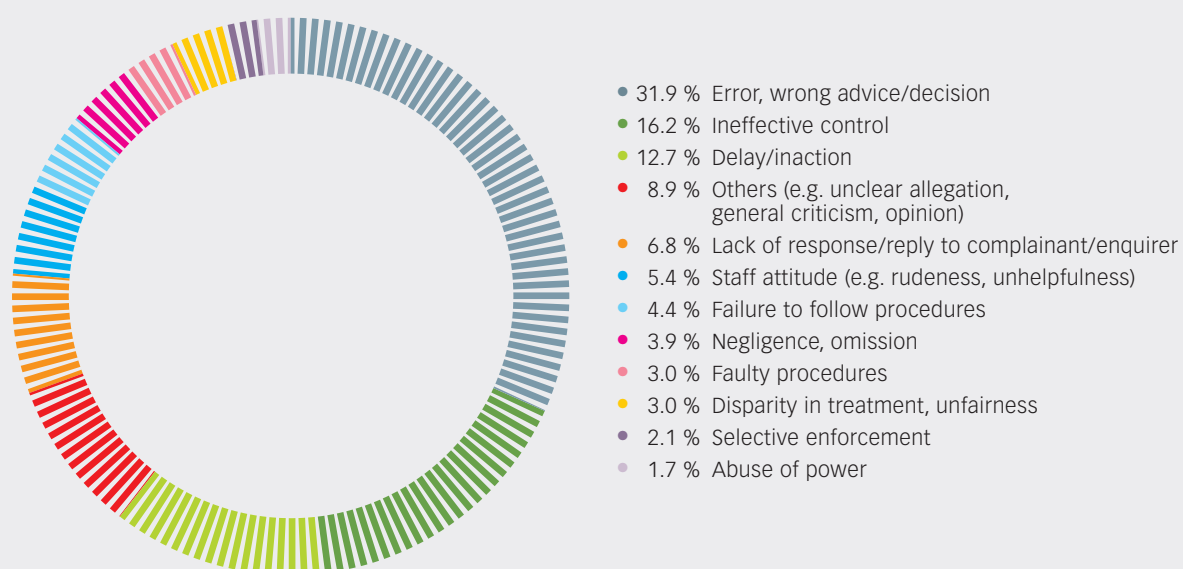


Table 4 | Distribution of Enquiries/Complaints Received

Organisation		Enquiries	Complaints
Agriculture, Fisheries and Conservation Department	(AFCD)	42	47
Airport Authority	(AA)	6	7
Architectural Services Department	(Arch SD)	14	16
Audit Commission	(Aud)	2	2
Auxiliary Medical Service	(AMS)	2	4
Buildings Department	(BD)	343	301
Census and Statistics Department	(C & SD)	4	3
Civil Aid Service	(CAS)	5	1
Civil Aviation Department	(CAD)	6	4
Civil Engineering and Development Department	(CEDD)	8	15
Companies Registry	(CR)	18	9
Consumer Council	(CC)	57	29
Correctional Services Department	(CSD)	36	103
Customs and Excise Department	(C&ED)	63	40
Department of Health	(DH)	75	58
Department of Justice	(D of J)	23	15
Drainage Services Department	(DSD)	15	18
Electrical and Mechanical Services Department	(E & MSD)	24	19
Employees Retraining Board	(ERB)	17	5
Environmental Protection Department	(EPD)	68	63
Equal Opportunities Commission	(EOC)	36	30
Estate Agents Authority	(EAA)	22	8
Fire Services Department	(FSD)	48	79
Food and Environmental Hygiene Department	(FEHD)	802	594
General Office of the Chief Executive's Office	(GOCEO)	4	6
Government Flying Service	(GFS)	1	1
Government Laboratory	(Govt Lab)	1	0
Government Logistics Department	(GLD)	8	2
Government Property Agency	(GPA)	3	4

Table 4

Organisation		Enquiries	Complaints
Government Secretariat			
– Chief Secretary for Administration's Office	(GS-CS)	134	85
– Chief Secretary for Administration's Private Office	(GS-CSAPO)	0	1
– Civil Service Bureau	(GS-CSB)	13	21
– Commerce and Economic Development Bureau	(GS-CEDB)	12	23
– Commerce, Industry and Technology Bureau	(GS-CITB)	1	0
– Constitutional and Mainland Affairs Bureau	(GS-CMAB)	9	6
– Development Bureau	(GS-DEVB)	9	16
– Education Bureau	(GS-EDB)	95	71
– Environment Bureau	(GS-ENB)	3	4
– Financial Secretary's Office	(GS-FS OFF)	1	0
– Financial Services and the Treasury Bureau	(GS-FSTB)	6	11
– Food and Health Bureau	(GS-FHB)	5	7
– Home Affairs Bureau	(GS-HAB)	6	12
– Housing, Planning and Lands Bureau	(GS-HPLB)	1	0
– Labour and Welfare Bureau	(GS-LWB)	8	6
– Security Bureau	(GS-SB)	5	5
– Transport and Housing Bureau	(GS-THB)	11	9
Highways Department	(Hy D)	45	56
Home Affairs Department	(HAD)	111	132
Hong Kong Arts Development Council	(HKADC)	1	1
Hong Kong Examinations and Assessment Authority	(HKEAA)	17	14
Hong Kong Housing Authority	(HKHA)	23	6
Hong Kong Housing Society	(HKHS)	37	37
Hong Kong Monetary Authority	(HKMA)	33	26
Hong Kong Observatory	(HKO)	9	7
Hong Kong Police Force	(HKPF)	347	166
Hong Kong Sports Institute Limited	(HKSIL)	3	3
Hospital Authority	(HA)	442	229
Housing Department	(HD)	868	674
Immigration Department	(Imm D)	221	120
Independent Commission Against Corruption	(ICAC)	32	8
Information Services Department	(ISD)	0	1
Inland Revenue Department	(IRD)	65	50

Table 4 Distribution of Enquiries/Complaints Received

Organisation		Enquiries	Complaints
Intellectual Property Department	(IPD)	7	3
Judiciary Administrator	(JA)	110	49
Labour Department	(LD)	225	112
Land Registry	(LR)	11	6
Lands Department	(Lands D)	288	342
Legal Aid Department	(LAD)	121	72
Legislative Council Secretariat	(LCS)	2	5
Leisure and Cultural Services Department	(LCSD)	207	249
Mandatory Provident Fund Schemes Authority	(MPFA)	33	10
Marine Department	(MD)	21	19
Office of the Communications Authority	(OFCA)	54	41
Office of the Telecommunications Authority	(OFTA)	1	0
Official Receiver's Office	(ORO)	38	19
Planning Department	(Plan D)	16	19
Post Office	(PO)	126	83
Privacy Commissioner for Personal Data	(PCPD)	69	24
Radio Television Hong Kong	(RTHK)	11	7
Rating and Valuation Department	(RVD)	31	20
Registration and Electoral Office	(REO)	5	2
Securities and Futures Commission	(SFC)	13	11
Social Welfare Department	(SWD)	365	205
Standing Commission on Civil Service Salaries and Conditions of Service, Secretariat	(SCCS)	0	1
Student Financial Assistance Agency	(SFAA)	48	26
Trade and Industry Department	(TID)	4	2
Transport Department	(TD)	317	369
Treasury	(Try)	13	6
University Grants Committee, Secretariat	(UGC)	1	1
Urban Council	(UC)	1	0
Urban Renewal Authority	(URA)	31	20
Vocational Training Council	(VTC)	14	19
Water Supplies Department	(WSD)	128	88
West Kowloon Cultural District Authority	(WKCDA)	3	3
Total		6,640	5,123

- Note 1. The total number of enquiries and complaints received in Table 1 are 12,767 and 5,624 respectively. They are different from the figures shown in Table 4 because -
- (i) enquiries/complaints involving bodies outside The Ombudsman's jurisdiction; and
 - (ii) complaints involving organisations under Part II of Schedule 1 to The Ombudsman Ordinance but unrelated to The Code on Access to Information
- are not shown in Table 4.
- Note 2. Organisations under Schedule 1 to The Ombudsman Ordinance with no enquiries/complaints received in the reporting year are not shown.

Table 5

Distribution of Complaints Processed
5,670 Cases

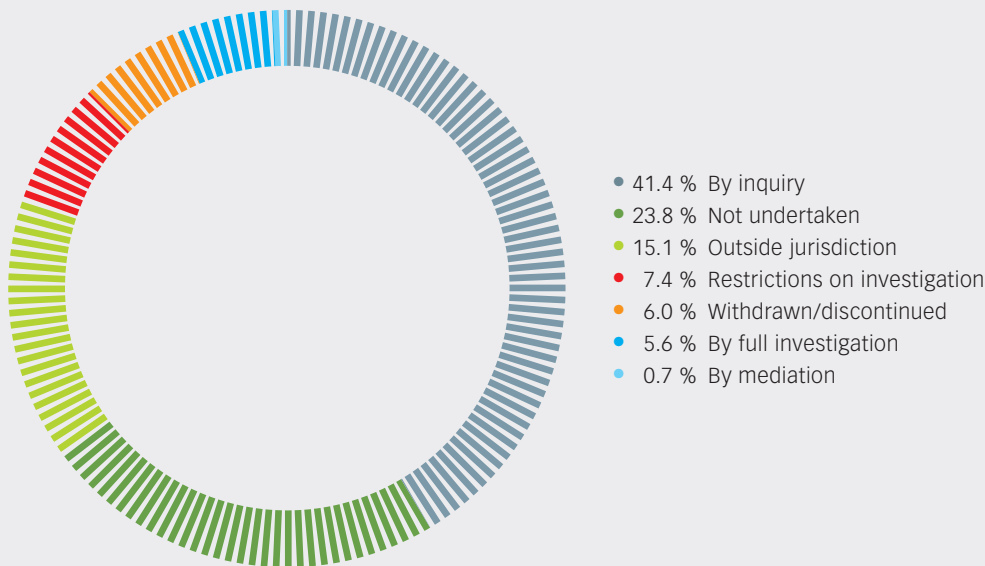
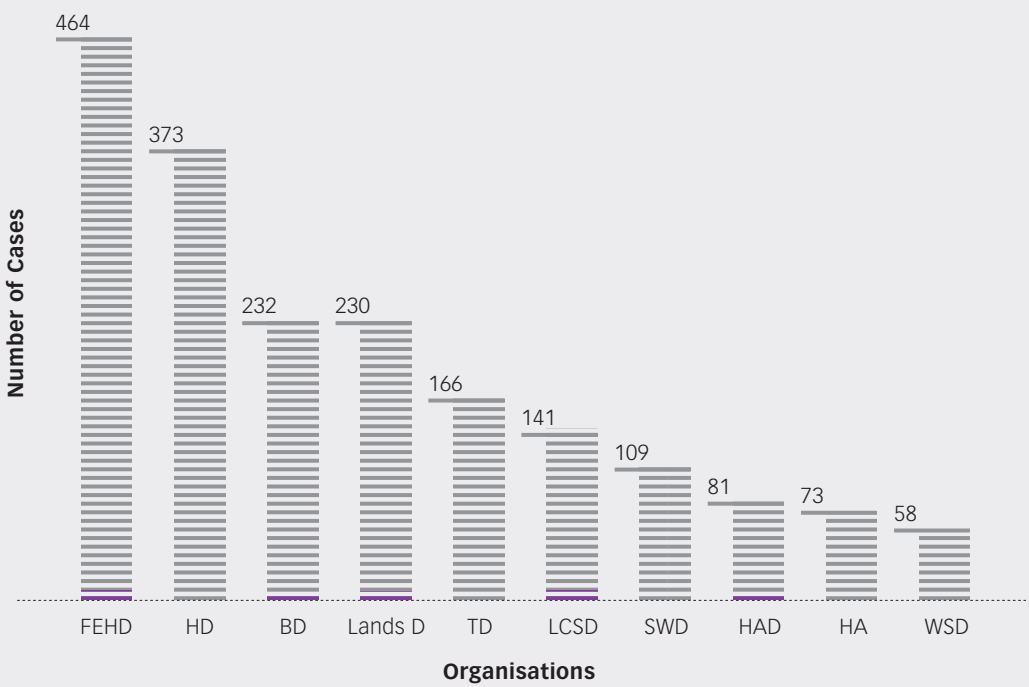


Table 6

Complaints Pursued and Concluded:
Top Ten Organisations



Notes

Note 1. "Complaints Pursued and Concluded" are cases handled by way of inquiry, full investigation or mediation.

Note 2. These top ten organisations accounted for 71.2% of the 2,705 complaints pursued and concluded.


Note 3.  signifies topical complaints (arising from the same social topics)

Table 7

Results of Complaints Concluded by Full Investigation: 321 Cases

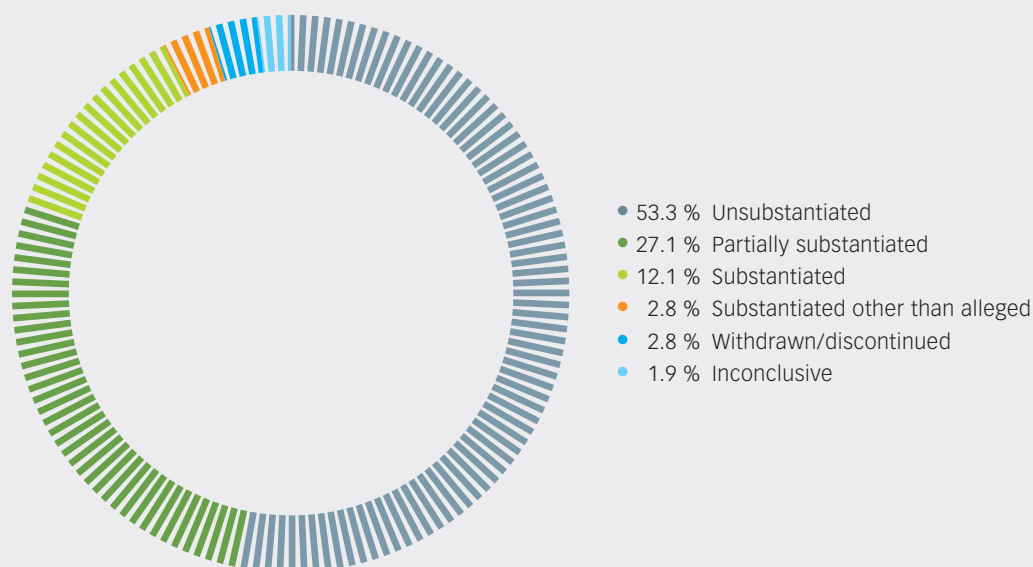


Table 8

Forms of Maladministration Substantiated by Full Investigation

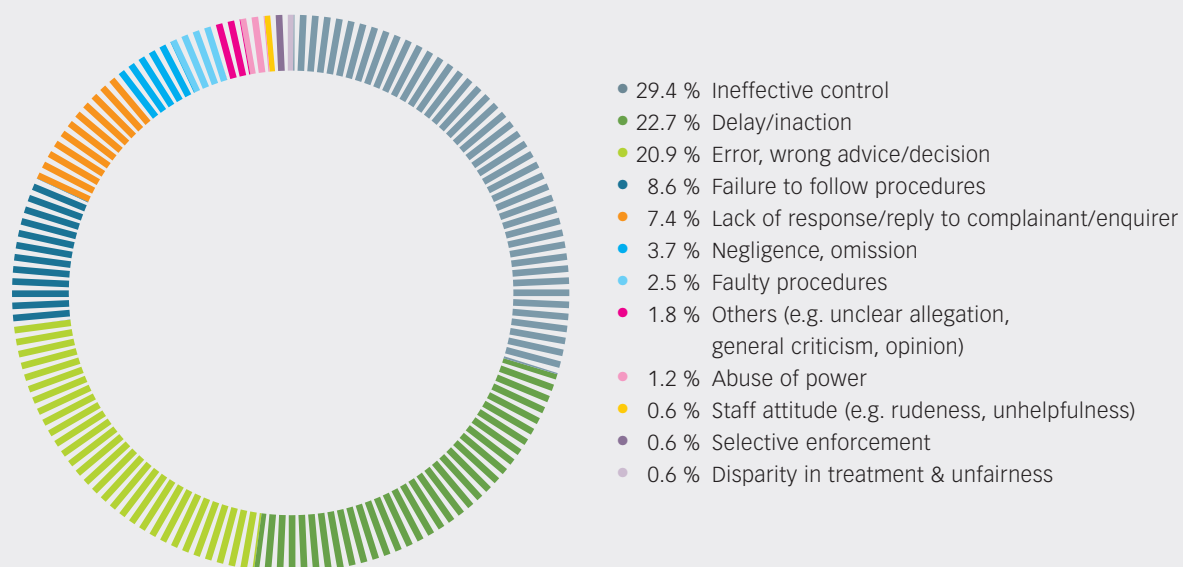


Table 9 Results of Complaints Concluded by Inquiry

Organisation	No. of complaints	Cases with inadequacies/ deficiencies found	No. of Ombudsman's suggestions for improvement
Agriculture, Fisheries and Conservation Department	28	3	0
Airport Authority	3	0	0
Architectural Services Department	1	0	0
Buildings Department	183	68	8
Census and Statistics Department	2	0	0
Civil Aviation Department	1	0	0
Civil Engineering and Development Department	5	0	0
Companies Registry	4	1	0
Consumer Council	16	5	0
Correctional Services Department	32	1	2
Customs and Excise Department	15	4	0
Department of Health	22	2	0
Department of Justice	6	2	0
Drainage Services Department	10	0	0
Electrical and Mechanical Services Department	13	2	3
Employees Retraining Board	2	1	0
Environmental Protection Department	33	4	0
Equal Opportunities Commission	8	0	0
Estate Agents Authority	3	1	0
Fire Services Department	11	1	0
Food and Environmental Hygiene Department	388	215	21
General Office of the Chief Executive's Office	4	2	0
Government Property Agency	1	1	0
Government Secretariat			
– Chief Secretary for Administration's Office	21	9	2
– Chief Secretary for Administration's Private Office	1	0	0
– Civil Service Bureau	1	1	0
– Commerce and Economic Development Bureau	8	2	0
– Constitutional and Mainland Affairs Bureau	2	1	0
– Development Bureau	8	1	1

Table 9

Organisation	No. of complaints	Cases with inadequacies/ deficiencies found	No. of Ombudsman's suggestions for improvement
– Education Bureau	19	3	0
– Environment Bureau	2	1	0
– Financial Services and the Treasury Bureau	5	1	0
– Food and Health Bureau	3	0	0
– Home Affairs Bureau	3	1	0
– Labour and Welfare Bureau	1	0	0
– Security Bureau	2	1	0
– Transport and Housing Bureau	3	0	0
Highways Department	32	0	0
Home Affairs Department	61	8	2
Hong Kong Art Development Council	1	0	0
Hong Kong Examinations and Assessment Authority	4	1	0
Hong Kong Housing Authority	3	1	0
Hong Kong Housing Society	21	3	0
Hong Kong Monetary Authority	13	1	0
Hong Kong Police Force	9	7	0
Hospital Authority	69	15	0
Housing Department	354	34	1
Immigration Department	45	9	0
Independent Commission Against Corruption	1	0	0
Inland Revenue Department	16	11	0
Intellectual Property Department	1	0	0
Judiciary Administrator	16	5	0
Labour Department	36	3	0
Land Registry	4	1	0
Lands Department	183	53	6
Legal Aid Department	36	2	0
Legislative Council	1	1	0
Legislative Council Secretariat	1	0	0
Leisure and Cultural Services Department	128	42	9
Mandatory Provident Fund Schemes Authority	2	2	0
Marine Department	10	3	0

Table 9 Results of Complaints Concluded by Inquiry

Organisation	No. of complaints	Cases with inadequacies/ deficiencies found	No. of Ombudsman's suggestions for improvement
Office of the Communications Authority	12	1	0
Official Receiver's Office	7	0	0
Planning Department	11	1	0
Post Office	39	16	0
Privacy Commissioner for Personal Data	13	7	0
Radio Television Hong Kong	2	0	0
Rating and Valuation Department	9	5	2
Registration and Electoral Office	1	0	0
Securities and Futures Commission	6	0	0
Social Welfare Department	94	21	3
Student Financial Assistance Agency	14	7	0
Trade and Industry Department	1	1	0
Transport Department	155	19	2
University Grants Committee, Secretariat	1	1	0
Urban Renewal Authority	7	0	0
Vocational Training Council	4	1	0
West Kowloon Culture District Authority	1	0	0
Water Supplies Department	52	11	4
Total	2,346	627	66

Note 1. Organisations under Schedule 1 to The Ombudsman Ordinance with no complaints concluded by inquiry are not shown.

Note 2. The Ombudsman may suggest any number of improvement measures in a case, irrespective of whether inadequacies or deficiencies are found after inquiry.

Table 10

Complaint Processing Time

Overall

TIME \ YEAR	09/10	10/11	11/12	12/13	13/14
Less than 3 months	65.3%	80.1%	83.9%	88.6%	85.8%
3 – 6 months	33.1%	19.3%	15.4%	10.7%	13.3%
More than 6 months	1.6%	0.6%	0.7%	0.7%	0.9%
Total	4,775	5,437	5,237	5,401	5,670

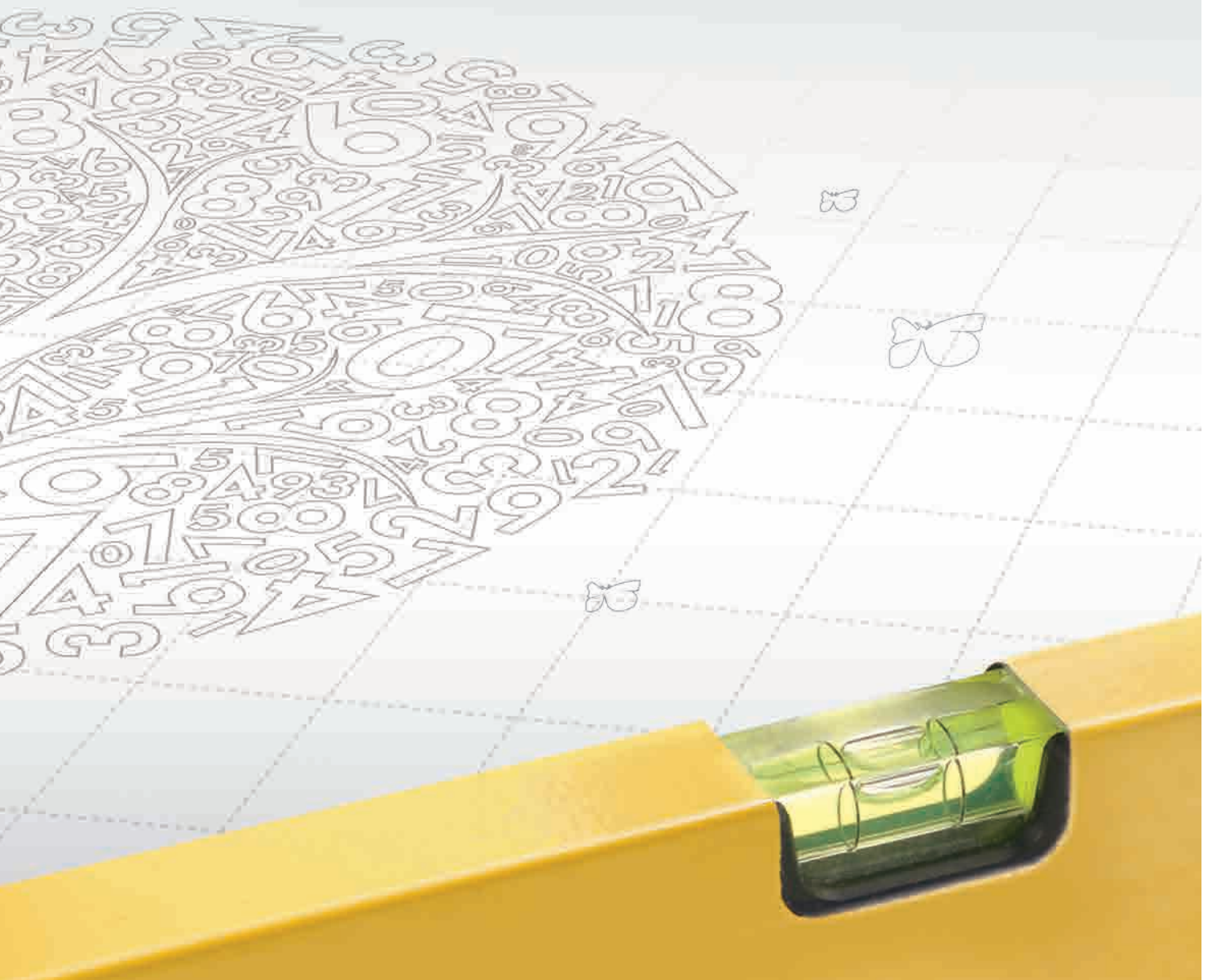
By Full Investigation and Other Modes

TIME \ YEAR	09/10	10/11	11/12	12/13	13/14
Full investigation					
Less than 3 months	0.8%	50.3%	4.9%	2.4%	4.4%
3 – 6 months	54.0%	29.0%	77.9%	78.7%	81.3%
More than 6 months	45.2%	20.7%	17.2%	18.9%	14.3%
Number of complaints	126	155	163	169	321
Other modes					
Less than 3 months	67.0%	80.9%	86.4%	91.4%	90.7%
3 – 6 months	32.6%	19.0%	13.4%	8.5%	9.2%
More than 6 months	0.4%	0.1%	0.2%	0.1%	0.1%
Number of complaints	4,649	5,282	5,074	5,232	5,349



Financial Statements

for the year ended 31 March 2014



Independent auditor's report to The Ombudsman

(Established in Hong Kong pursuant to the Ombudsman Ordinance)

We have audited the financial statements of The Ombudsman set out on pages 3 to 22, which comprise the balance sheet as at 31 March 2014, the statement of income and expenditure, statement of comprehensive income, statement of changes in funds and cash flow statement for the year then ended and a summary of significant accounting policies and other explanatory information.

The Ombudsman's responsibility for the financial statements

The Ombudsman is responsible for the preparation of financial statements that give a true and fair view in accordance with Hong Kong Financial Reporting Standards issued by the Hong Kong Institute of Certified Public Accountants and for such internal control as The Ombudsman determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. This report is made solely to you, in accordance with our agreed terms of engagement, and for no other purpose. We do not assume responsibility towards or accept liability to any other person for the contents of this report.

We conducted our audit in accordance with Hong Kong Standards on Auditing issued by the Hong Kong Institute of Certified Public Accountants. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation of the financial statements that give a true and fair view in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by The Ombudsman, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Independent auditor's report to The Ombudsman (continued)

(Established in Hong Kong pursuant to the Ombudsman Ordinance)

Opinion

In our opinion, the financial statements give a true and fair view of the state of affairs of The Ombudsman as at 31 March 2014 and of its surplus and cash flows for the year then ended in accordance with Hong Kong Financial Reporting Standards.

KPMG

Certified Public Accountants

8th Floor, Prince's Building

10 Chater Road

Central, Hong Kong

19 May 2014

Statement of income and expenditure for the year ended 31 March 2014

(Expressed in Hong Kong dollars)

	Note	2014	2013
Income			
Government subventions	3	\$ 102,386,000	\$ 98,985,000
Amortisation of deferred Government subventions	3	1,814,220	2,312,382
Interest income on bank deposits		4,946,993	6,294,324
Other income		19,650	45,905
		\$ 109,166,863	\$ 107,637,611
Expenditure			
Operating expenses	4	(95,981,147)	(92,999,795)
Surplus for the year		\$ 13,185,716	\$ 14,637,816

Statement of comprehensive income for the year ended 31 March 2014

The Ombudsman had no components of comprehensive income other than “surplus for the year” in either of the years presented. Accordingly, no separate statement of comprehensive income is presented as The Ombudsman’s “total comprehensive income” was the same as the “surplus for the year” in both years.

The notes on pages 9 to 22 form part of these financial statements.

Balance sheet at 31 March 2014

(Expressed in Hong Kong dollars)

	Note	2014	2013
ASSETS			
Non-current asset			
Property, plant and equipment	7	\$ 76,804,523	\$ 74,197,078
Current assets			
Deposits and prepayments		\$ 671,389	\$ 2,647,194
Interest receivable		2,426,817	1,987,288
Time deposits with original maturity over three months		331,497,500	320,712,000
Cash and cash equivalents	8	9,155,928	9,327,656
		\$ 343,751,634	\$ 334,674,138
Total assets		\$ 420,556,157	\$ 408,871,216
LIABILITIES			
Non-current liabilities			
Contract gratuity payable – non-current	9	\$ 1,619,656	\$ 4,616,944
Deferred Government subventions – non-current	3	67,971,538	69,785,758
		\$ 69,591,194	\$ 74,402,702
Current liabilities			
Other payables and accruals		\$ 3,330,345	\$ 2,154,195
Contract gratuity payable – current	9	6,774,831	4,640,248
Deferred Government subventions – current	3	1,814,220	1,814,220
		\$ 11,919,396	\$ 8,608,663
Total liabilities		\$ 81,510,590	\$ 83,011,365

Balance sheet at 31 March 2014 (continued)

(Expressed in Hong Kong dollars)

	Note	2014	2013
FUNDS			
Accumulated funds		\$ 339,045,567	\$ 325,859,851
Total funds		\$ 339,045,567	\$ 325,859,851
Total funds and liabilities		\$ 420,556,157	\$ 408,871,216

Approved and authorised for issue by

Ms Connie Lau
The Ombudsman

19 May 2014

The notes on pages 9 to 22 form part of these financial statements.

Statement of changes in funds for the year ended 31 March 2014

(Expressed in Hong Kong dollars)

	Accumulated funds
Balance at 1 April 2012	\$ 311,222,035
Change in funds for 2012/2013:	
Surplus and total comprehensive income for the year	14,637,816
Balance at 31 March 2013 and 1 April 2013	\$ 325,859,851
Change in funds for 2013/2014:	
Surplus and total comprehensive income for the year	13,185,716
Balance at 31 March 2014	\$ 339,045,567

The notes on pages 9 to 22 form part of these financial statements.

Cash flow statement for the year ended 31 March 2014

(Expressed in Hong Kong dollars)

	Note	2014	2013
Operating activities			
Surplus for the year		\$ 13,185,716	\$ 14,637,816
Adjustments for:			
Interest income		(4,946,993)	(6,294,324)
Depreciation		2,628,578	3,158,273
Amortisation of deferred Government subventions		(1,814,220)	(2,312,382)
Gain on disposal of property, plant and equipment		(958)	(4,679)
Operating surplus before changes in working capital		\$ 9,052,123	\$ 9,184,704
Decrease/(increase) in deposits and prepayments		1,975,805	(1,979,265)
Increase in other payables and accruals		140,796	70,178
(Decrease)/increase in contract gratuity payable		(862,705)	997,960
Net cash generated from operating activities		\$ 10,306,019	\$ 8,273,577
Investing activities			
Interest received		\$ 4,507,464	\$ 7,206,530
Payments for purchase of property, plant and equipment		(4,201,640)	(306,426)
Proceeds from disposal of property, plant and equipment		1,929	6,138
Increase of time deposits with original maturity over three months		(331,497,500)	(320,712,000)
Time deposits with original maturity over three months matured		320,712,000	305,327,000
Net cash used in investing activities		\$ (10,477,747)	\$ (8,478,758)

Cash flow statement for the year ended 31 March 2014 (continued)

(Expressed in Hong Kong dollars)

	Note	2014	2013
Net decrease in cash and cash equivalents		\$ (171,728)	\$ (205,181)
Cash and cash equivalents at beginning of the year	8	9,327,656	9,532,837
Cash and cash equivalents at end of the year	8	\$ 9,155,928	\$ 9,327,656

The notes on pages 9 to 22 form part of these financial statements.

Notes to the financial statements

(Expressed in Hong Kong dollars unless otherwise indicated)

1 Status of The Ombudsman

The Ombudsman was established as a corporation by statute on 19 December 2001. The functions of The Ombudsman are prescribed by the Ombudsman Ordinance.

The address of its registered office is 30/F, China Merchants Tower, Shun Tak Centre, 168-200 Connaught Road Central, Hong Kong.

2 Significant accounting policies

(a) Statement of compliance

These financial statements have been prepared in accordance with all applicable Hong Kong Financial Reporting Standards ("HKFRSs"), which collective term includes all applicable individual Hong Kong Financial Reporting Standards, Hong Kong Accounting Standards ("HKASs") and Interpretations issued by the Hong Kong Institute of Certified Public Accountants ("HKICPA") and accounting principles generally accepted in Hong Kong. A summary of the significant accounting policies adopted by The Ombudsman is set out below.

The HKICPA has issued several amendments to HKFRSs that are first effective for the current accounting period of The Ombudsman. The adoption of these new and revised HKFRSs did not have material impact on The Ombudsman's financial statements and The Ombudsman has not applied any new standard or interpretation that is not yet effective for the current accounting period (see note 14).

(b) Basis of preparation of the financial statements

The measurement basis used in the preparation of the financial statements is the historical cost basis.

The preparation of financial statements in conformity with HKFRSs requires management to make judgements, estimates and assumptions that affect the application of policies and reported amounts of assets, liabilities, income and expenses. The estimates and associated assumptions are based on historical experience and various other factors that are believed to be reasonable under the circumstances, the results of which form the basis of making the judgements about carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates.

The estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognised in the period in which the estimate is revised if the revision affects only that period, or in the period of the revision and future periods if the revision affects both current and future periods.

2 Significant accounting policies (continued)

(c) Property, plant and equipment

Property, plant and equipment are stated at cost less accumulated depreciation and impairment losses.

Depreciation is calculated to write off the cost of items of property, plant and equipment, less their estimated residual value, if any, using the straight line method over their estimated useful lives as follows:

– Interest in leasehold land held for own use under finance leases	Over unexpired term of lease
– Building	40 years
– Leasehold improvements	10 years
– Office furniture	5 years
– Office equipment	5 years
– Computer equipment	4 years
– Motor vehicles	5 years

No provision for depreciation is made for construction in progress until such time when the assets are substantially completed and ready for use.

Both the useful life of an asset and its residual value, if any, are reviewed annually.

The carrying amounts of property, plant and equipment are reviewed for indications of impairment at each balance sheet date. An impairment loss is recognised in the statement of income and expenditure if the carrying amount of an asset, or the cash-generating unit to which it belongs, exceeds its recoverable amount. The recoverable amount of an asset, or of the cash-generating unit to which it belongs, is the greater of its fair value less costs of disposal and value in use. In assessing value in use, the estimated future cash flows are discounted to their present values using a pre-tax discount rate that reflects current market assessments of the time value of money and the risks specific to the assets. An impairment loss is reversed if there has been a favourable change in the estimates used to determine the recoverable amount.

Gains or losses arising from the retirement or disposal of an item of property, plant and equipment are determined as the difference between the net disposal proceeds and the carrying amount of the item and are recognised in the statement of income and expenditure on the date of retirement or disposal.

2 Significant accounting policies (continued)

(d) Leased assets

An arrangement, comprising a transaction or a series of transactions, is or contains a lease if The Ombudsman determines that the arrangement conveys a right to use a specific asset or assets for an agreed period of time in return for a payment or a series of payments. Such a determination is made based on an evaluation of the substance of the arrangement and is regardless of whether the arrangement takes the legal form of a lease.

(i) *Classification of assets leased to The Ombudsman*

Assets that are held by The Ombudsman under leases which transfer to The Ombudsman substantially all the risks and rewards of ownership are classified as being held under finance leases. Leases which do not transfer substantially all the risks and rewards of ownership to The Ombudsman are classified as operating leases.

(ii) *Assets acquired under finance leases*

Where The Ombudsman acquires the use of assets under finance leases, the amounts representing the fair value of the leased asset, or, if lower, the present value of the minimum lease payments, of such assets are included in property, plant and equipment and the corresponding liabilities, net of finance charges, are recorded as obligations under finance leases. Depreciation is provided at rates which write off the cost of the assets over the term of the relevant lease or, where it is likely The Ombudsman will obtain ownership of the asset, the life of the asset, as set out in note 2(c). Impairment losses are accounted for in accordance with the accounting policy as set out in note 2(c).

(iii) *Operating lease charges*

Where The Ombudsman has the use of other assets under operating leases, payments made under the leases are charged to profit or loss in equal instalments over the accounting periods covered by the lease term, except where an alternative basis is more representative of the pattern of benefits to be derived from the leased asset. Lease incentives received are recognised in the statement of income and expenditure as an integral part of the aggregate net lease payments made.

(e) Receivables

Receivables are initially recognised at fair value and thereafter stated at amortised cost using the effective interest method, less allowance for impairment of doubtful debts, except where the effect of discounting would be immaterial. In such cases, the receivables are stated at cost less allowance for impairment of doubtful debts.

2 Significant accounting policies (continued)

(e) Receivables (continued)

Impairment losses for bad and doubtful debts are recognised when there is objective evidence of impairment and are measured as the difference between the carrying amount of the financial asset and the estimated future cash flows, discounted at the asset's original effective interest rate where the effect of discounting is material. Objective evidence of impairment includes observable data that come to the attention of The Ombudsman about events that have an impact on the asset's estimated future cash flows such as significant financial difficulty of the debtor.

Impairment losses for receivables whose recovery is considered doubtful but not remote are recorded using an allowance account. When The Ombudsman is satisfied that recovery is remote, the amount considered irrecoverable is written off against the receivable directly and any amounts held in the allowance account relating to that debt are reversed. Subsequent recoveries of amounts previously charged to the allowance account are reversed against the allowance account. Other changes in the allowance account and subsequent recoveries of amounts previously written off directly are recognised in the statement of income and expenditure.

(f) Other payables and accruals

Other payables and accruals are initially recognised at fair value and thereafter stated at amortised cost unless the effect of discounting would be immaterial, in which case they are stated at cost.

(g) Cash and cash equivalents

Cash and cash equivalents comprise cash at bank and in hand, demand deposits with banks and other financial institutions, and short-term, highly liquid investments that are readily convertible into known amounts of cash and which are subject to an insignificant risk of changes in value, having been within three months of maturity at acquisition.

(h) Employee benefits

Salaries, gratuities, paid annual leave, leave passage and the cost to The Ombudsman of non-monetary employee benefits are accrued in the year in which the associated services are rendered by employees of The Ombudsman. Where payment or settlement is deferred and the effect would be material, these amounts are stated at their present values.

Contributions to Mandatory Provident Fund ("MPF") as required under the Hong Kong Mandatory Provident Fund Schemes Ordinance are recognised as an expenditure in the statement of income and expenditure as incurred.

2 Significant accounting policies (continued)

(i) Provisions and contingent liabilities

Provisions are recognised for liabilities of uncertain timing or amount when The Ombudsman has a legal or constructive obligation arising as a result of a past event, it is probable that an outflow of economic benefits will be required to settle the obligation and a reliable estimate can be made. Where the time value of money is material, provisions are stated at the present value of the expenditure expected to settle the obligation.

Where it is not probable that an outflow of economic benefits will be required, or the amount cannot be estimated reliably, the obligation is disclosed as a contingent liability, unless the probability of outflow of economic benefits is remote. Possible obligations, whose existence will only be confirmed by the occurrence or non-occurrence of one or more future events are also disclosed as contingent liabilities unless the probability of outflow of economic benefits is remote.

(j) Income recognition

Income is measured at the fair value of the consideration received or receivable. Provided it is probable that the economic benefits will flow to The Ombudsman and the income and expenditure, if applicable, can be measured reliably, income is recognised in the statement of income and expenditure as follows:

(i) *Government subventions*

An unconditional Government subvention is recognised as income in the statement of income and expenditure when the grant becomes receivable. Other Government subventions are recognised in the balance sheet initially when there is reasonable assurance that they will be received and that The Ombudsman will comply with the conditions attaching to them. Subventions that compensate The Ombudsman for expenses incurred are recognised as income in the statement of income and expenditure on a systematic basis in the same periods in which the expenses are incurred. Subventions that compensate The Ombudsman for the cost of an asset are included in the balance sheet as deferred Government subventions and recognised in the statement of income and expenditure over the period of the lease term or useful life of the related asset on a basis consistent with the depreciation policy as set out in note 2(c).

(ii) *Interest income*

Interest income is recognised as it accrues using the effective interest method.

(iii) *Other income*

Other income is recognised on an accrual basis.

2 Significant accounting policies (continued)

(k) Related parties

- (a) A person, or a close member of that person's family, is related to The Ombudsman if that person:
 - (i) has control or joint control over The Ombudsman;
 - (ii) has significant influence over The Ombudsman; or
 - (iii) is a member of the key management personnel of The Ombudsman.
- (b) An entity is related to The Ombudsman if any of the following conditions applies:
 - (i) The entity and The Ombudsman are members of the same group (which means that each parent, subsidiary and fellow subsidiary is related to the others).
 - (ii) One entity is an associate or joint venture of the other entity (or an associate or joint venture of a member of a group of which the other entity is a member).
 - (iii) Both entities are joint ventures of the same third party.
 - (iv) One entity is a joint venture of a third entity and the other entity is an associate of the third entity.
 - (v) The entity is a post-employment benefit plan for the benefit of employees of either The Ombudsman or an entity related to The Ombudsman.
 - (vi) The entity is controlled or jointly controlled by a person identified in (k)(a).
 - (vii) A person identified in (k)(a)(i) has significant influence over the entity or is a member of the key management personnel of the entity (or of a parent of the entity).

Close members of the family of a person are those family members who may be expected to influence, or be influenced by, that person in their dealings with the entity.

3 Government subventions and deferred Government subventions

Government subventions represent the funds granted by the Government for daily operations of The Ombudsman.

Deferred Government subventions represent the funds granted by the Government for prepaid lease payments, the purchase of building and certain leasehold improvements. Amortisation of deferred Government subventions is recognised on a straight line basis over the period of the lease term of 54 years of interest in leasehold land held for own use under finance lease for prepaid lease payments, and the useful lives of 40 years and 10 years of building and leasehold improvements respectively in accordance with the accounting policies set out in notes 2(c) and (j)(i).

At 31 March 2014, the deferred Government subventions are expected to be amortised as follows:

	2014	2013
Within one year and included in current liabilities	\$ 1,814,220	\$ 1,814,220
After one year and included in non-current liabilities	67,971,538	69,785,758
	\$ 69,785,758	\$ 71,599,978

4 Operating expenses

	2014	2013
Employee benefit expenses (note 5)	\$ 79,345,319	\$ 76,564,593
Depreciation of property, plant and equipment	2,628,578	3,158,273
Rates and management fee	2,721,491	2,511,309
Operating lease rentals in respect of parking spaces	91,200	91,200
Auditor's remuneration	73,600	66,600
Announcement of public interest expense	6,071,549	6,412,140
Other expenses	5,049,410	4,195,680
	\$ 95,981,147	\$ 92,999,795

5 Employee benefit expenses

	2014	2013
Salaries and allowances	\$ 69,314,571	\$ 67,110,767
Contract gratuity	7,184,005	6,614,740
Pension costs – MPF scheme	1,504,641	1,489,791
Unutilised annual leave	36,137	126,494
Other employee benefit expenses	1,305,965	1,222,801
	\$ 79,345,319	\$ 76,564,593

6 Key management compensation

	2014	2013
Short-term employee benefits	\$ 13,034,145	\$ 12,765,359
Post-employment benefits	1,990,452	1,909,387
	\$ 15,024,597	\$ 14,674,746

7 Property, plant and equipment

	Interest in leasehold land held for own use under finance leases	Building	Leasehold improvements	Office furniture	Office equipment	Computer equipment	Motor vehicles	Total
Cost:								
At 1 April 2012	\$ 74,900,000	\$16,800,000	\$ 13,913,445	\$ 567,934	\$ 829,285	\$ 2,945,512	\$ 179,801	\$ 110,135,977
Additions	–	–	65,728	21,055	117,927	101,716	–	306,426
Disposals	–	–	–	(660)	(59,006)	(34,455)	–	(94,121)
At 31 March 2013	\$ 74,900,000	\$16,800,000	\$ 13,979,173	\$ 588,329	\$ 888,206	\$ 3,012,773	\$ 179,801	\$ 110,348,282
Accumulated depreciation:								
At 1 April 2012	\$ 14,063,364	\$ 4,222,438	\$ 11,330,248	\$ 347,245	\$ 553,910	\$ 2,463,956	\$ 104,432	\$ 33,085,593
Charge for the year	1,394,220	420,000	742,329	110,349	144,368	311,047	35,960	3,158,273
Written back on disposals	–	–	–	(528)	(58,760)	(33,374)	–	(92,662)
At 31 March 2013	\$ 15,457,584	\$ 4,642,438	\$ 12,072,577	\$ 457,066	\$ 639,518	\$ 2,741,629	\$ 140,392	\$ 36,151,204
Net book value:								
At 31 March 2013	\$ 59,442,416	\$12,157,562	\$ 1,906,596	\$ 131,263	\$ 248,688	\$ 271,144	\$ 39,409	\$ 74,197,078

7 Property, plant and equipment (continued)

	Interest in leasehold land held for own use under finance leases	Building	Leasehold improvements	Office furniture	Office equipment	Computer equipment	Motor vehicles	Construction in progress	Total
Cost:									
At 1 April 2013	\$ 74,900,000	\$16,800,000	\$ 13,979,173	\$ 588,329	\$ 888,206	\$ 3,012,773	\$ 179,801	\$ –	\$ 110,348,282
Additions	–	–	1,227,923	98,594	656,833	911,579	884,970	1,457,095	5,236,994
Disposals	–	–	–	–	(3,181)	(219,875)	–	–	(223,056)
At 31 March 2014	\$ 74,900,000	\$16,800,000	\$ 15,207,096	\$ 686,923	\$ 1,541,858	\$ 3,704,477	\$ 1,064,771	\$ 1,457,095	\$ 115,362,220
Accumulated depreciation:									
At 1 April 2013	\$ 15,457,584	\$ 4,642,438	\$ 12,072,577	\$ 457,066	\$ 639,518	\$ 2,741,629	\$ 140,392	\$ –	\$ 36,151,204
Charge for the year	1,394,220	420,000	311,398	77,074	122,908	219,496	83,482	–	2,628,578
Written back on disposals	–	–	–	–	(2,210)	(219,875)	–	–	(222,085)
At 31 March 2014	\$ 16,851,804	\$ 5,062,438	\$ 12,383,975	\$ 534,140	\$ 760,216	\$ 2,741,250	\$ 223,874	\$ –	\$ 38,557,697
Net book value:									
At 31 March 2014	\$ 58,048,196	\$11,737,562	\$ 2,823,121	\$ 152,783	\$ 781,642	\$ 963,227	\$ 840,897	\$ 1,457,095	\$ 76,804,523

The Ombudsman's interest in leasehold land is held under long lease.

8 Cash and cash equivalents

	2014	2013
Cash at bank	\$ 9,150,656	\$ 9,322,656
Cash in hand	5,272	5,000
	\$ 9,155,928	\$ 9,327,656

9 Contract gratuity payable

The amount represents the gratuity payable to staff on expiry of their employment contracts. The amount of gratuity ranges from 10% to 25% (2013: 10% to 25%) of the basic salary less employer's contributions to MPF.

10 Taxation

The Ombudsman is exempt from taxation in respect of the Inland Revenue Ordinance in accordance with Schedule 1A Section 5(1) of the Ombudsman Ordinance.

11 Commitments

- (a) Capital commitments outstanding at 31 March 2014 not provided for in the financial statements were as follows:

	2014	2013
Contracted for	\$ 1,005,837	\$ 372,243

- (b) At 31 March 2014, the total future aggregate minimum lease payments under non-cancellable operating leases in respect of parking spaces are payable as follows:

	2014	2013
Within 1 year	\$ 7,600	\$ 7,600

12 Management of accumulated funds

The Ombudsman's primary objective when managing its accumulated funds is to safeguard The Ombudsman's ability to continue as a going concern. The Ombudsman is not subject to externally imposed requirements relating to its accumulated funds.

13 Financial risk management and fair values of financial instruments

Risk management is carried out by the accounting department under policies approved by The Ombudsman. The accounting department identifies and evaluates financial risks in close co-operation with the operating units. The Ombudsman provides written principles for overall risk management such as interest-rate risk, use of financial instruments and investing excess liquidity.

The Ombudsman's exposure to credit, liquidity, interest rate and currency risks are described below:

(a) Credit risk

The Ombudsman's credit risk is primarily attributable to time deposits and cash and cash equivalents. Management has a credit policy in place and the exposure to this credit risk is monitored on an ongoing basis.

Cash is deposited with financial institutions with sound credit ratings to minimise credit exposure.

The maximum exposure to credit risk is represented by the carrying amount of each financial asset in the balance sheet. The Ombudsman does not provide any guarantees which would expose The Ombudsman to credit risk.

(b) Liquidity risk

The Ombudsman's policy is to regularly monitor its current and expected liquidity requirements and to ensure that it maintains sufficient reserves of cash to meet its liquidity requirements in the short and longer term.

The following table shows the remaining contractual maturities at the balance sheet date of The Ombudsman's financial liabilities, which are based on contractual undiscounted cash flows and the earliest date The Ombudsman can be required to pay:

	2014				
	Contractual undiscounted cash outflow				Carrying amount
	Within 1 year or on demand	More than 1 year but less than 2 years	More than 2 years but less than 5 years	Total contractual undiscounted cash flows	
Contract gratuity payable	\$ (6,774,831)	\$ (649,770)	\$ (969,886)	\$ (8,394,487)	\$ (8,394,487)
Other payables and accruals	(3,330,345)	–	–	(3,330,345)	(3,330,345)
	\$ (10,105,176)	\$ (649,770)	\$ (969,886)	\$ (11,724,832)	\$ (11,724,832)

13 Financial risk management and fair values of financial instruments (continued)

(b) Liquidity risk (continued)

	2013				
	Contractual undiscounted cash outflow				Carrying amount
	Within 1 year or on demand	More than 1 year but less than 2 years	More than 2 years but less than 5 years	Total contractual undiscounted cash flows	
Contract gratuity payable	\$ (4,640,248)	\$ (2,338,424)	\$ (2,278,520)	\$ (9,257,192)	\$ (9,257,192)
Other payables and accruals	(2,154,195)	–	–	(2,154,195)	(2,154,195)
	\$ (6,794,443)	\$ (2,338,424)	\$ (2,278,520)	\$ (11,411,387)	\$ (11,411,387)

(c) Interest rate risk

Interest rate risk is the risk that the value of a financial instrument will fluctuate due to changes in market interest rates. The Ombudsman's only exposure to interest rate risk is via its bank balances which bear interest at market rates.

Sensitivity analysis

At 31 March 2014, it is estimated that a general increase/decrease of 100 (2013: 100) basis points in interest rates, with all other variables held constant, would have increased/decreased The Ombudsman's surplus and accumulated funds by approximately \$3,406,000 (2013: \$3,300,000).

The sensitivity analysis above has been determined assuming that the change in interest rates had occurred at the balance sheet date and had been applied to the financial instruments which expose The Ombudsman to interest rate risk at that date. The 100 basis points increase or decrease represents management's assessment of a reasonably possible change in interest rates over the period until the next annual balance sheet date. The analysis is performed on the same basis for 2013.

(d) Currency risk

The Ombudsman has no exposure to currency risk as all of The Ombudsman's transactions are denominated in Hong Kong dollars.

(e) Fair value measurement

The carrying amounts of The Ombudsman's financial instruments carried at cost or amortised cost are not materially different from their fair values as at 31 March 2014 and 2013.

14 Possible impact of amendments, new standards and interpretations issued but not yet effective for the year ended 31 March 2014

Up to the date of issue of these financial statements, the HKICPA has issued a number of amendments and new standards which are not yet effective for the year ended 31 March 2014 and which have not been adopted in these financial statements.

The Ombudsman is in the process of making an assessment of what the impact of these amendments is expected to be in the period of initial application. So far it has concluded that the adoption of them is unlikely to have a significant impact on The Ombudsman's results of operations and financial position.

Complainants Charter

We endeavour to provide a high standard of service to the public. In fully discharging our duties, this Office has drawn up the following Charter:

Our Commitment

- Handle complaints in a professional, impartial and efficient manner
- Keep complainants informed of the progress and outcome of our inquiries
- Explain our decisions clearly
- Protect complainants' privacy
- Treat the public with courtesy and respect

Complainants not satisfied with our findings may write to this Office and state the grounds for a review of their cases. Any views on individual staff or our services may be directed to the Chief Manager of this Office. We will take follow-up action with professionalism and fairness.

Complainants' Responsibilities

- State clearly the issues of complaint
- Provide true and accurate information in a timely way
- Cooperate in our inquiries
- Lodge complaints in a reasonable manner
- Treat the staff with courtesy and respect

If complainants are not cooperative, the progress and/or outcome of our inquiries may be affected. In such circumstances, we will take proper actions as appropriate, such as making our decision on the basis of available evidence or terminating the inquiry.



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