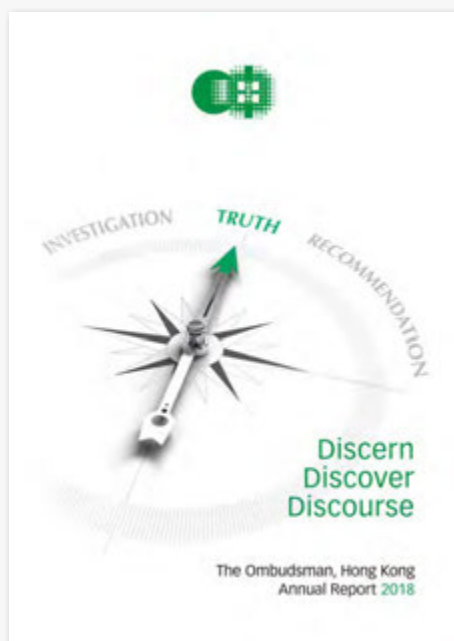


The Ombudsman, Hong Kong
Annual Report 2018



The Ombudsman, Hong Kong Annual Report 2018



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, Powers and Obligations

16

Jurisdiction	16
Matters Not for Investigation	16
Restrictions	17
Powers of Investigation and Recommendation	17
Secrecy Requirement and Transparency	17

Chapter 2 Our Procedures

18

Complaint Handling	18
• Modes of Complaint	
• Assessment	
• Inquiry	
• Mediation	
• Full Investigation	
• Review	
Direct Investigation	20
• Preliminary Inquiry	
• Investigation Methodology	
Publication of Reports	21
Implementation of Recommendations	21

Chapter 3 Performance and Results 22

Enquiries and Complaints Processing	22
• Topical Complaints • Mode of Lodging Complaints • Complaints Handled	
Major Causes for Complaint	23
Most Popular Targets of Complaint	24
Outcome of Investigations and Inquiries	24
Direct Investigation	24
Recommendations	25
Our Performance	25
Overview	25

Chapter 4 Reward and Challenge 26

Enhancing Quality Administration	26
Mediating Disputes	26
Apology in Complaint Resolution	28
Transparent Government and Access to Information	28
• Government Departments/Agencies Covered by the Code • Organisations Not Covered by the Code	
Issues Examined by Direct Investigations	29
• Regulation of Factory Canteens • Procurement and Withdrawal of Public Library Materials • Enforcement Action against a Village House with Irregularities • Safety Control for Imported Fruits and Vegetables • Mechanism for Handling Smoking Offences • Control over Fly-tipping of Construction Waste and Landfilling Activities on Private Land • Maintenance of Government Water Mains and Risk Management	
Challenges from Parties	31
• Re-assessment of Cases • Review of Cases • Judicial Review and Litigation • Challenging Complainant Behaviours • Response Time of Organisations	
Overview	33

Chapter 5	Office Administration	34
	Staffing	34
	Training	34
	Occupational Health and Safety	35
	Complaints against the Office	35
Chapter 6	Publicity and External Relations	36
	Public Education and Promotion	36
	• TV Programme “The Ombudsman Special II”	
	• Advertising Commercials	
	• Press Conferences and Media Events	
	• Talks for Departments and Organisations	
	Working with Professionals, Community Leaders, etc.	38
	• Advisers and JPs	
	• Legislative Councillors	
	• The Ombudsman’s Awards	
	Overseas Liaison	40
	Looking Ahead	40
One Year at a Glance		42

Annexes

Annex 1	List of Scheduled Organisations	48
Annex 2	Circumstances where Complaints are not Followed up or Investigated	52
Annex 3	Statistics	53
Annex 3.1	Caseload	54
Annex 3.2	Enquiries/Complaints Received	55
Annex 3.3	Nature of Complaints Processed	55
Annex 3.4	Distribution of Enquiries/Complaints Received	56
Annex 3.5	Distribution of Complaints Completed	59
Annex 3.6	Complaints Pursued and Concluded: Top Ten Organisations	59
Annex 3.7	Results of Complaints Concluded by Full Investigation	60
Annex 3.8	Forms of Maladministration Substantiated by Full Investigation	60
Annex 3.9	Results of Complaints Concluded by Inquiry	61
Annex 3.10	Achievement of Performance Pledges	64
Annex 4	Flow Chart on Handling of a Complaint	65
Annex 5	Index of Direct Investigations Completed	66
Annex 6	Summaries of Selected Reports of Direct Investigations	67
Annex 7	Index of Cases Concluded by Full Investigation	87
Annex 8	Summaries of Selected Cases Concluded by Full Investigation	103
Annex 9	Summaries of Selected Cases on Code on Access to Information	126
Annex 10	Index of Reviews by Full Investigation	132
Annex 11	Summary of Selected Review by Full Investigation	133
Annex 12	Examples of Improvement Measures Introduced by Organisations Following Our Inquiry or Investigation	135
Annex 13	Organisation Chart	140
Annex 14	Panel of Advisers	141
Annex 15	Visits to the Office of The Ombudsman	142

Financial Statements for the Year Ended 31 March 2018

146

Glossary of Terms

Complainants Charter

History in Brief

1988

20 July

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

1989

1 February

The COMAC Ordinance was enacted

First Commissioner Mr Arthur Garcia, JP assumed office



First Commissioner Mr Arthur Garcia, JP

1993

21 July

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

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

1 February

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



*Second Commissioner
Mr Andrew So, SBS, OBE, JP*

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 Region ("APOR") 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

1 April

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



*Third Ombudsman
Ms Alice Tai, GBS, OBE, JP*

22 July

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

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

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

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



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 as 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

2008

5-8 November

The Ombudsman hosted the Board of Directors Meeting of the IOI

2010

19 October

The Ombudsman was elected Treasurer of the IOI

2011

8 December

The Ombudsman was re-elected Secretary of the AOA

2005

24 October

A "Memorandum of Administrative Arrangements" ("MAA") 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



Signing of MAA

28 November - 1 December

The Ombudsman hosted the 9th AOA Conference

2009

1 April

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

11 June

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

12 June

Ms Alice Tai, GBS, OBE, JP was awarded IOI Honorary Life Membership

2 November

Ms Alice Tai, GBS, OBE, JP was awarded AOA Honorary Life Membership



*Fourth Ombudsman
Mr Alan Lai Nin, GBS, JP*

2012

5-10 May

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

22-24 May

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

2014

1 April

Fifth Ombudsman Ms Connie Lau, JP assumed Office



Fifth Ombudsman Ms Connie Lau, JP

2016

15 November

The Ombudsman was elected Regional President of the IOI (Australasia & Pacific Region)



IOI World Conference

2015

20 January

Mr Alan Lai, GBS, JP was awarded IOI Honorary Life Membership

20 August

The Ombudsman was elected Director of the IOI (Australasia & Pacific Region)

22 September

Mr Alan Lai, GBS, JP was appointed to the Pool of Experts of the IOI

25 November

Mr Alan Lai, GBS, JP was awarded AOA Honorary Life Membership

The Ombudsman was re-elected Secretary of the AOA

2017

28 November

The Ombudsman, as President, chaired the 29th APOR Conference



APOR Conference

1 December

The Apology Ordinance advocated by The Ombudsman came into effect

The Ombudsman's Review



In this reporting year, resulting from our complaint investigations and direct investigations, we made altogether 209 recommendations to the Government departments and public bodies concerned for remedy and improvement, to which we attach great importance as it is the primary role of this Office to promote good public administration for responsive and responsible, fair and open governance.

Since I took office in 2014, I have made it a point to conduct more direct investigations into topics of significant public concern and issues that bear signs of systemic failure. I believe that by going to the root of the problems, we can make long-lasting improvements and help reduce recurring complaints. During the year under report, we have completed 12 direct investigations. The number of direct investigation over the past four years saw a steady increase from 7 in 2015 to 12 in 2018. We have done this through process streamlining and redeployment of our limited resources. Apart from searching media reports for suitable topics, we receive every now and then suggestions from members of the public and of the Legislative Council. We will take on subjects after assessing their extent, gravity and urgency.

While we increased our efforts on direct investigations, we have not taken our foot off the gas pedal for resolving complaints lodged by individuals. My Office completed 4,770 complaint cases, as compared with 4,974 in 2016/17. Our experience showed that many complainants came to our Office only when they found the injustice they suffered unbearable. They felt genuinely aggrieved. While this might not be sufficient proof of maladministration, it evidenced that complainants trusted my Office to find out the truth, right a wrong and prevent recurrence of mishaps. We treasure this trust and will do our utmost without fear or favour. We handle each and every complaint professionally and seriously.

On the other hand, organisations under our investigation expect us to carry out our task fairly, impartially and sensibly. This, too, we are obliged to observe. As statistics in this Report show, we did screen out a sizable number of complaints which we found devoid of substance. Nonetheless, we have to strike the right balance. Government departments and public organisations, entrusted with substantial power, hold vast information and public resources. Where their actions and decisions are called into question, the onus is clearly on them to give a full account of the matter.

Apart from the conventional or more confrontational approach to resolving dispute between citizens and public bodies, we have adopted mediation as a speedy and convenient alternative for settling complaints involving no, or only minor maladministration. In this reporting year, we concluded 237 complaint cases by mediation, which hits a record high since the inception of the Office. Mediation represented a more effective use of resources and enabled my Office to free up manpower for other priorities such as direct investigation. It also led to more amicable and satisfactory outcomes for all parties involved. I strongly encourage Government departments and public organisations to embrace this mode of dispute resolution.

We regularly announce our investigation reports and recommendations through press conferences, our website and our Annual Report. The Government Minute which the Administration presents to the Legislative Council annually also gives a comprehensive account of our investigations and recommendations. However, not every case and every detail are widely publicised.

Hence, although some of our recommendations may have in fact made a great impact, spurring significant changes in the operations of the Government, they may not be fully known to the public. This may sometimes even lead to doubts about the efficacy of our work.

Throughout the years, Government departments and public bodies have consistently accepted over 90% of our recommendations for implementation. For this, I am gratified, and I must commend departments which effect changes right away, or even before our investigations are concluded. Nevertheless, changes may take time – some initiatives require meticulous planning, extensive consultation, redeployment of resources and even legislative amendments. It is possible that by the time the improvements materialise, people may not associate them with our work.



Let me give some examples of recent improvements that could be traced to our recommendations: Information Services Department opened up Government press conferences and media events for coverage by eligible online-only media (2016 investigations); Lands Department tightened its system of regularisation of illegal occupation of government land and breach of lease conditions (2016 direct investigation report); Food and Health Bureau proposed setting a time limit and renewal requirement on the use of public columbarium niches (2016 report); Housing Department and Hong Kong Housing Society tightened their policy on well-off tenants (2015 report); Leisure and Cultural Services Department curbed illicit activities in booking of venues and improved e-booking system (2012 report); Home Affairs Bureau reviewed the policy on private recreational leases (2012 report); Lands Department released rental information of short-term tenancies (2013 investigation); and enactment of the Apology Legislation (2012 and 2013 Annual Reports), just to name a few. We are eagerly waiting for other efforts to come to fruition: I hope that legislation for access to information and public records management (2014 reports) will be next on the list.

This is not me saying that the Office of The Ombudsman should claim credit for these achievements. Far from it. We are only “one voice, a catalyst, a change agent”. To raise the standard of public administration, we need contributions from all stakeholders including the public and the media reporting maladministration, my Office doing our job and the organisations responding to our inquiries and recommendations. I see it as a multipartite effort, a joint venture. When conditions are ripe, success will come.

Before ending, I must thank the public, Government departments and public bodies as well as the media for their staunch support. Coupled with the dedication and diligence of my staff, it has made my work so much easier and satisfying.

Connie Lau

The Ombudsman

31 March 2018



Directorate

Ms Connie Lau, The Ombudsman (Second from left)

Mr K S So, Deputy Ombudsman (Second from right)

Mr Tony Ma, Assistant Ombudsman (Right)

Mr Frederick Tong, Assistant Ombudsman (Left)



Chapters





Our Role, Powers and Obligations

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 of Government departments and public bodies to identify 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 1**). We are always on the lookout, and maintain close contact with the Administration, for possible additions to the Schedule.

1.3 Besides investigating complaints received, The Ombudsman may, of her 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 1**).

Matters Not for Investigation

1.6 The Ombudsman is prohibited by law from investigating certain kinds of matters. For example, cases related 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 2**.



1.7 The Ordinance does not preclude us from investigating **policy** matters, and the way policies are formulated or implemented certainly falls within our ambit; but if a policy is made with proper authority and has gone through a due process with wide public consultation and publicity, we normally will not investigate actions that are taken fully in accordance with such a policy. Nevertheless, if The Ombudsman thinks that grave injustice appears to be involved in a policy, our Office will not hesitate to start an inquiry and ask the organisation concerned for an explanation. Where a policy is found outdated or inequitable, we will urge the organisation to conduct a review.

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.

1.8 Similarly, our Office would normally not investigate an organisation's action or decision based purely on **professional judgement**. However, in real life, such cases are few and far between, as most actions/decisions involve, to some extent, managerial/administrative aspects, which come within The Ombudsman jurisdiction. Where necessary, we may consult members of our Panel of Advisers, which comprises experts with good standing in various fields (see **Annex 14**).

Restrictions

1.9 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, or is anonymous, unidentifiable or not traceable, or is neither the person aggrieved nor a suitable representative of that person. Such restrictions are also detailed at **Annex 2**.

1.10 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

1.11 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.

1.12 While an investigation shall not affect any action or decision taken or to be taken by the organisation under complaint, The Ombudsman may, upon completion of an investigation, report her findings and make recommendations to the organisation for redress or improvement. Where an organisation does not adequately act upon her recommendation, The Ombudsman may submit a report to the Chief Executive of the Hong Kong Special Administrative Region.

1.13 Where a serious irregularity or injustice is found, The Ombudsman may make a 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.



Secrecy Requirement and Transparency

1.14 The Ombudsman, staff and Advisers are all bound by the Ordinance, under penalty of a fine and imprisonment, to maintain secrecy on all matters that arise from any investigation or complaint and come to our knowledge in the exercise and execution of our functions.

1.15 However, the Ordinance allows The Ombudsman to publish a report on any of her investigations in such manner as she thinks fit, if she is of the opinion that it is in the public interest to do so.

1.16 Subject to the statutory requirement mentioned in **para. 1.14**, we consider it our obligation to adopt a policy of openness and transparency. As regards requests for access to information of our Office, we handle them along the lines of the Government's Code on Access to Information¹.

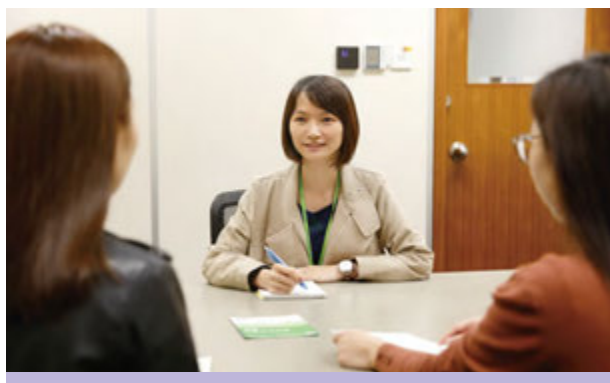


Complaint Handling

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 cases where the facts are simple.

2.2 We can communicate with complainants by email if they so prefer. However, we require complainants to provide us with their postal address for traceability (see **para. 1.9**), because an email address does not provide sufficient information on the whereabouts of the sender.



Assessment

2.3 All incoming complaints are screened, within a day or two, to examine whether they come within the statutory purview of The Ombudsman (see **paras. 1.2–1.9**) 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 the number of persons making the complaint or the complainant's persistence.

2.4 If it is obvious that a person is making a complaint out of misunderstanding of the role, jurisdiction, policy or procedures of an organisation or of the relevant legislation, we will, instead of bothering the organisation concerned, reply to the person straightaway to clear his/her misunderstanding.

2.5 If a person complains to us because he seems to be dissatisfied with the routine operation or frontline service of an organisation, we would, instead of starting an inquiry or investigation right away, normally suggest that the person complain direct to the organisation first if he has not done so. We believe that direct communication between the public and Government departments/public bodies is the most effective way to resolve dispute and instigate improvements or remedies. If the person, after complaining to the organisation concerned, remains dissatisfied, he is welcome to approach us again, and we will consider what action to take on the merits of his complaint.

2.6 The above assessment procedures and criteria explain why every year around 40-50% of the complaints that we receive are not automatically passed to the organisations concerned for response.

2.7 The Ordinance requires that a complaint be made by the person aggrieved (i.e. the person who may have sustained injustice in consequence of the alleged maladministration), unless that person is unable to act for himself/herself and has to be represented (see **para. 1.9**).

2.8 Some people believe that as taxpayers or citizens, they have a right to feel aggrieved and complain about any act of maladministration they have observed, even if they have not personally suffered injustice in consequence of the alleged maladministration (see **para. 2.7**). We understand the sentiments, but we cannot deal with such "complaints" as if they were from the persons aggrieved, since that would be against the clear intention of the law. Moreover, where such "complaints" concern other people's privacy and/or personal data, we are constrained from informing the "complainants" of our findings. Hence, we normally regard such "complaints" not as cases for complaint investigation but as information based on which we may consider initiating a direct investigation (see **para. 1.3**).

2.9 Cases screened in for complaint investigation will, depending on their nature and complexity, be pursued by inquiry, mediation or full investigation.

2.10 For cases screened out, the complainants may appeal to us, stating their grounds, and we will re-assess such cases for decision as to whether they 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. 2.17–2.20**), The Ombudsman may conduct such “preliminary inquiries” as she 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 Sometimes, substantial relevant information comes with the complaint and/or is available in our previous case files or in publications of the organisation under complaint. It may, therefore, suffice for us to study and analyse such information and then give the complainant a concluding reply.

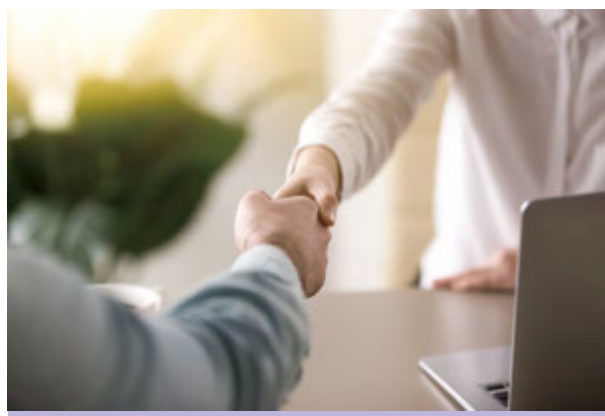
2.13 Where appropriate, we may ask the organisation under complaint to respond to us and, to the complainant in parallel. We will examine such response, the complainant’s views, together with any other relevant information or evidence that we may have collected. We will, in conclusion, present our findings to the complainant and make suggestions to the organisation for redress or improvement where necessary. Where deeper and fuller probing is needed before we can conclude the case, we will start a full investigation.

Mediation

2.14 Alternatively, with the consent of both the complainant and the organisation under complaint, The Ombudsman may try to settle a case by mediation. This dispute resolution method 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.

2.15 For efficiency and convenience to the parties concerned, we also often conduct mediation by telephone and subsequently confirm in writing the agreement reached by the parties.

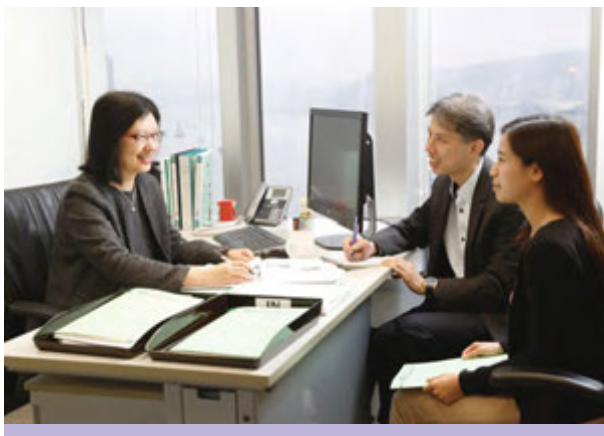
2.16 If mediation fails to resolve the matter, or the complainant asks for reactivation of his complaint, our Office will assign another investigation officer to start an inquiry or a full investigation afresh. This is to ensure objective processing not influenced by prior knowledge from the mediation process.



Full Investigation

2.17 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.

2.18 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 our Advisers.



2.19 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 if any.

2.20 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 “unsubstantiated but other inadequacies found”¹.

Review

2.21 All our concluding letters (in the case of inquiry) and investigation reports (in the case of full investigation) are cleared with a directorate officer of this Office before issue. They represent the stance of this Office on the case.

2.22 Nevertheless complainants disagreeing 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

2.23 The Ombudsman’s power to conduct direct investigations (“DIs”) in the absence of complaints enables her to look at matters at a macro level as opposed to individual cases, and to pursue issues raised by people not personally aggrieved (see **para. 2.8**). Essentially, the former means examining systems with systemic or widespread deficiencies. A DI may be prompted by significant topical issues of community concern or repeated complaints of particular matters.

Preliminary Inquiry

2.24 Before deciding whether or not to launch a DI against an organisation, we may conduct a preliminary inquiry², a means that we also frequently use to handle complaint cases (see **para. 2.11**). In the process, we seek, on a confidential basis as in investigations (see **para. 1.14**), information/explanation from the organisation concerned. If the inquiry points to the need for further study, we will formally notify the head of the organisation concerned and initiate a DI.

¹ Formerly termed “substantiated other than alleged”.

² We used to call such work “DI assessment”.



Investigation Methodology

2.25 The procedures for DI are largely akin to those for complaint investigation (see **paras. 2.18–2.19**). However, unlike the latter, we may, depending on the nature of the subject under study, invite views on the subject from relevant sectors and experts, and sometimes the community at large. If so, we will inform the public of the initiation of our investigation.

2.26 We often discuss our observation and views with senior officers of the organisation under investigation, at the outset as well as before conclusion. Such exchanges are useful in clarifying points of doubt and furthering insight into the issues.

Publication of Reports

2.27 The Ordinance requires us to issue a report upon completion of our investigation.

2.28 As empowered by the Ordinance (see **para. 1.15**), if The Ombudsman considers it to be in the public interest to do so, she may announce at media conferences or place on our website DI reports and anonymised reports on complaint investigation, or where appropriate, summaries of the reports. As far as possible, our Office will also answer related enquiries from the media, withholding names and other personal data.

2.29 Naturally, DIs may not all come to a conclusion that there is serious maladministration on the part of the organisation(s) concerned, and some organisations may have taken remedial/improvement measures in the course of our investigation. Nevertheless, the public would wish to know what we have done and what we have found. Hence, with the exception of those DIs on single incidents of little concern to the public, all our DI reports are published in one way or another.

Implementation of Recommendations

2.30 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. The organisation is expected to act adequately upon our recommendation(s) and inform us should it encounter any difficulty in implementing the recommendation(s). We monitor progress at regular intervals.

2.31 Where an organisation does not adequately act upon a recommendation, we may submit a report to the Chief Executive (see **para. 1.12**) or, if the circumstances warrant it, initiate another investigation for more intensive probing.





Performance and Results

Enquiries and Complaints Processing

3.1 During the year under report we received 4,826 complaints, including 68 secondary cases¹ in *topical complaints*. Together with 758 complaint cases brought forward from last year, we had a total of 5,584 complaints for processing this year. We also received 11,424 enquiries during the year.

Table 3a

Enquiries and Complaints Received			
Year	Enquiries	Complaints	
		Total	Excluding secondary cases
2013/14	12,767	5,624	5,226
2014/15	12,940	5,339	4,911
2015/16	12,159	5,244	5,031
2016/17	11,564	4,862	4,788
2017/18	11,424	4,826	4,758

3.2 A breakdown on the number of enquiries and complaints received and processed in the past five years is given in **Annex 3.1**.

Table 3b

Mode of Lodging Complaints					
Mode	2013/14	2014/15	2015/16	2016/17	2017/18
In person	633	527	545	515	516
In writing –					
by complaint form	332	361	294	244	255
by letter through post	1,066	918	1,069	887	818
by fax	467	485	403	355	283
by email	2,455	2,617	2,507	2,550	2,680
By telephone	671	431	426	311	274
Total	5,624	5,339	5,244	4,862	4,826

Topical Complaints

3.3 The number of topical complaints received this year continued to drop, with 68 secondary cases compared to 74 last year. The two relatively significant group of topical complaints concerned the loss of a computer with personal information of voters by the Registration and Electoral Office (with 25 secondary cases) and a proposed footbridge in a housing estate (with 13 secondary cases).



Mode of Lodging Complaints

3.4 Complaint by email (including by the e-complaint form of our official website) continued to surpass all other modes of complaint lodging, with 2,680 cases (55.5%) being lodged through this channel. Complaint by letter through post remained the second most popular mode, bringing in 818 (16.9%) complaints.

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

Complaints Handled

3.5 We completed processing 4,770 (85.4%) of all cases received during the year or brought forward from last year. Among these, 2,724 (57.1%) were pursued and concluded by way of inquiry, full investigation or mediation. The rest (2,046, 42.9%) were closed after assessment for jurisdictional or legal restriction reasons.

3.6 As in the past, the chief mode of our complaint handling was inquiry, comprising about 84.1% of all cases pursued and concluded. Yet, a significant proportion of the cases were concluded by full investigation (7.2%) and mediation (8.7%) this year (see **Table 3c**). Among those assessed and closed, over half were due to the fact that there was insufficient ground to pursue the complaint (see **Table 3d**).

Table 3c

Complaints Pursued and Concluded in 2017/18		
	No. of cases	Percentage
By inquiry	2,292	84.1%
By full investigation	195	7.2%
By mediation	237	8.7%
Total	2,724	100.0%

Table 3d

Complaints Assessed and Closed in 2017/18		
	No. of cases	Percentage
Insufficient ground to pursue	1,099	53.7%
Legally bound	947	46.3%
Total	2,046	100.0%

Major Causes for Complaint

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

- error, wrong decision/advice (34.6%);
- delay/inaction (12.9%);
- ineffective control (12.8%);
- lack of response/reply to complainant/enquirer (7.2%); and
- failure to follow procedures (4.7%).

The first four were the same as last year but “ineffective control” had slightly less cases this year and came third after “delay/inaction”. “Failure to follow procedures” took the fifth position this year, replacing “faulty procedures”. More details are given in **Annex 3.3**.

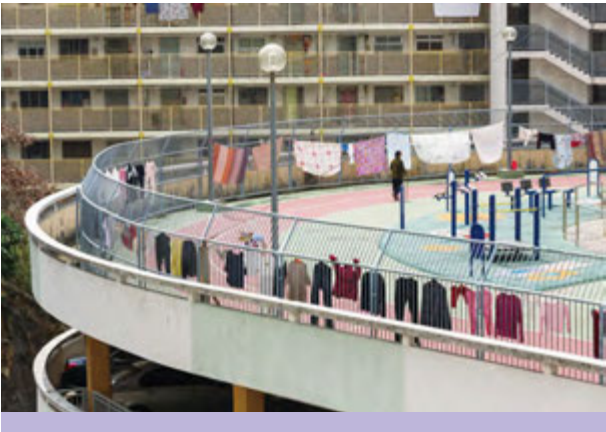


3.8 Based on the outcome of full investigations into cases, the top five forms of maladministration substantiated, partially substantiated or otherwise found were:

- error, wrong advice/decision (38.6%);
- delay/inaction (24.3%);
- ineffective control (18.6%);
- lack of response/reply to complainant/enquirer (5.7%); and
- failure to follow procedures (5.7%).

More details are given in **Annex 3.8**.

Most Popular Targets of Complaint



3.9 The most popular targets of complaint based on the number of complaints pursued and concluded during the year are presented by the league of “Top Ten Organisations” in **Annex 3.6**. The first six were the same as in last year but the orders were changed. The Housing Department swapped positions with the Food and Environmental Hygiene Department as the first and second in the league, followed by the Lands Department and Buildings Department, which also swapped positions to become the third and fourth respectively. The fifth and sixth positions were taken by the Leisure and Cultural Services Department and Transport Department, likewise with positions swapped. The Registration and Electoral Office, with a group of 30 topical complaints concluded during the year, joined the league in the seventh position, followed by the Social Welfare Department. The Correctional Services Department also newly appeared in the league as the ninth, leaving the Water Supplies Department at the tenth position. Two departments, namely the Post Office and the Immigration Department, dropped out from the league this year.

Outcome of Investigations and Inquiries

3.10 Among the 195 complaints we concluded by full investigation this year, including 15 secondary cases from three groups of topical complaints, 59 (30.3%) were *substantiated, partially substantiated or unsubstantiated but other inadequacies found*. The outcome of our full investigations is summarised in **Table 3e**.

Table 3e

Substantiation Rates of Complaints Concluded by Full Investigation		
Classification	No. of complaints	Percentage
Substantiated	19	9.8%
Partially substantiated	32	16.4%
Unsubstantiated but other inadequacies found	8	4.1%
Unsubstantiated	135	69.2%
Withdrawn/discontinued	1	0.5%
Total	195	100.0%

3.11 Among the 2,292 inquiry cases concluded, inadequacies or deficiencies were found in 336 (14.7%). Details are in **Annex 3.9**.



Direct Investigation

3.12 During the year we completed 12 direct investigations, with seven publicly announced at press conferences. The reports of all direct investigations were uploaded on our website. A full list of direct investigations completed is in **Annex 5**.

Recommendations

3.13 We made 146 recommendations on completion of 195 full investigations and 63 recommendations in 12 direct investigations, giving a total of 209 recommendations. Of these, 174 (83.3%) have been accepted by the organisations for implementation and 35 (16.7%) were under consideration as at 31 March 2018.

Our Performance

3.14 This year we continued to be able to fully comply with our pledged timeframes in arranging talks and answering all enquiries. On acknowledging receipt of complaints, we issued acknowledgement within five working days in 99.2% of all complaints received.



3.15 On complaint processing, we concluded 97.3% of the cases falling outside jurisdiction or under restriction within ten working days (not less than 70% under our service pledge). No case exceeded the target timeframe of 15 working days (see **Table 3f**). For other cases, we concluded 88.3% within three months (against our pledge of not less than 60%). We had 0.4% of cases not concluded within our pledge timeframe of six months for reasons such as case complexity, new developments of the case in the mid-stream of the process and delay of organisations under complaint in tendering their replies to us (see **Table 3g**).

3.16 Our performance pledges and record of achievement are listed in **Annex 3.10**.

Table 3f

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
2013/14	88.9%	9.7%	1.4%
2014/15	90.9%	8.6%	0.5%
2015/16	98.4%	1.6%	0%
2016/17	97.3%	2.6%	0.1%
2017/18	97.3%	2.7%	0%

Table 3g

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
2013/14	81.7%	17.2%	1.1%
2014/15	86.3%	13.1%	0.6%
2015/16	84.8%	14.7%	0.5%
2016/17	87.6%	12.2%	0.2%
2017/18	88.3%	11.3%	0.4%

Overview

3.17 The number of complaints received this year was slightly less than last year, with a continued reduction in the number of topical complaints being observed. Meanwhile, we increased our effort in conducting direct investigations, completing a record high of 12 within a year, with another 12 still going on. Our heightened effort to promote mediation as a means to resolve suitable complaints saw big progress during the year: the number of cases concluded by mediation during the year increased by 78% to 237, which is an all time high.



Reward and Challenge

Enhancing Quality Administration

4.1 Making recommendations to public organisations upon conclusion of our inquiries into complaints is an important tool for us to help improve public administration. Through implementing our recommendations, which often include issuing clearer guidelines, devising or improving mechanisms for better response to public enquiries, closer inter-departmental coordination and tighter monitoring, and strengthening staff training, the public organisations were able to achieve enhanced efficiency, improved client service, more effective regulation, more reasonable decisions, and provision of clearer information to the public.



4.2 We monitor the implementation of the more significant recommendations until action is completed. Some of the new measures are easy to take and are quickly introduced. Others may require more in-depth review by the organisation(s) concerned and even a change in policy or legislation. These will usually take longer time to implement. **Annex 12** gives a list of examples of the improvement measures implemented in the year under report in response to our recommendations made upon conclusion of our investigation into complaints.

Mediating Disputes

4.3 The year under report saw a fruitful year of our mediation work. Among the 2,724 cases pursued and concluded, a record 237 cases (8.7%) were concluded by mediation, approximately 1.8 times of last year's 133 cases (4.6%).

4.4 Apart from the big increase in the number of mediation cases, more Government departments and public organisations participated in resolving complaints by mediation, with 28 this year compared with 22 last year (see **Table 4a**). Among these 28, four had not participated in mediation in Ombudsman complaint cases at least for the past ten years, namely the Architectural Services Department, Department of Justice, Hospital Authority and Planning Department. This shows that more organisations have become receptive to this mode of complaint resolution. The top three organisations with the largest numbers of successfully mediated cases were the Housing Department (80 cases, 33.8%), Leisure and Cultural Services Department (29 cases, 12.2%) and Food and Environmental Hygiene Department (24 cases, 10.1%).

4.5 Most of the successfully mediated cases concerned complaints about delay/inaction (82 cases, 29.0%), followed by errors or wrong advice/decision (81 cases, 28.6%) and ineffective control (40 cases, 14.1%) (see **Table 4b**). The subject matters under complaint covered a wide spectrum of livelihood issues, such as public housing estate management, water seepage/dripping, water supply and sewerage problems, road defects and defective vehicle reports, tax matters, postal services, park and tree management, booking and use of recreational and public library facilities and services, noise nuisance, illegal smoking and dog bite complaints.

4.6 The modes of mediation adopted included face-to-face meetings for more complex cases and telephone mediation for simpler ones. The average processing time in handling a mediation case was about 15.7 days, with 86.5% of cases completed within a month. Over 50 cases (21.1%) were resolved within a week.

Table 4a

Successfully Mediated Cases by Organisation (2017/18)	
Organisation(s)	No. of cases
Housing Department	80
Leisure and Cultural Services Department	29
Food and Environmental Hygiene Department	24
Transport Department	21
Buildings Department	13
Highways Department	12
Post Office Water Supplies Department (each with 7 cases)	14
Inland Revenue Department	6
Agriculture, Fisheries and Conservation Department	5
Lands Department	4
Department of Health Environmental Protection Department Home Affairs Department (each with 3 cases)	9
Architectural Services Department Department of Justice Hong Kong Housing Society Judiciary Marine Department Social Welfare Department (each with 2 cases)	12
Drainage Services Department Employees Retraining Board Hospital Authority Immigration Department Legal Aid Department Planning Department Registration and Electoral Office Working Family and Student Financial Assistance Agency (each with 1 case)	8
Total	237

Table 4b

Successfully Mediated Cases by Nature of Complaint (2017/18)	
Nature of complaint	No. of cases*
Delay/inaction	82
Error, wrong advice/decision	81
Ineffective control	40
Lack of response to complaint	22
Faulty procedures	20
Poor staff attitude (rudeness, unhelpfulness)	15
Negligence, omissions	13
Others [#]	10
Total	283

* One complaint case may have more than one nature of complaint.

[#] "Others" include: "Failing to follow procedures", "Disparity in treatment, unfairness" and "Selective enforcement".

4.7 We sent questionnaires to the participating parties on successful conclusion of the cases to obtain their feedback on the process. Among those complainants who had returned the questionnaire, 87.5% considered the process to have achieved what they wanted, and 96.2% were satisfied with the work of our mediators. All organisations which had responded to our survey were positive with the outcome of the mediation and the work of our mediators. The comments given by both sides were mostly encouraging. They appreciated the platform we provided for both parties to facilitate their communication and resolve the disputes in a speedy manner.

4.8 There were two cases not successfully mediated, which were subsequently handled by way of inquiry.



Apology in Complaint Resolution

4.9 We have for the past few years been encouraging public organisations to adopt a more open mind towards making of apologies. This year we are happy to note that the Government has finally enacted the Apology Ordinance. In the complaint cases we handled during the year, it is noted that in the 190 concluded cases where apologies were tendered by the organisations under complaint, 87.4% (166 cases) were given in the course of or after intervention by our Office. We hope that, with the Apology Ordinance coming into effect, more public organisations will be more willing to offer apologies where due so that fewer people who feel aggrieved by acts of the organisations will find it necessary to translate their grievances into formal complaints.

Transparent Government and Access to Information

4.10 Openness and transparency are fundamental to good governance. The Government has promulgated the Code on Access to Information (“the Code”) to commit itself to this end. We have a mandate to investigate Code-related complaints and point out any unreasonable refusal or handling of public requests for information by the Government. Yet, the Code is merely an administrative regime and our decisions are not statutorily binding. Besides, it binds only Government departments and a few public organisations. Not all public organisations are as committed to transparency, whether by adopting the Government Code or drawing up its own guidelines similar to the Government Code.

4.11 In March 2014, upon completion of a direct investigation on the access to information, we recommended that the Government consider introducing a law to underpin citizens’ right of access to information. At the time of writing this report, we note that the Law Reform Commission plans to publish a consultation paper on the reform of access to information system in 2018. We urge the Government to expedite its progress on the reform of the current regime.

4.12 During the year, we received a total of 91 complaints about access to information, which further exceeded the record figure of 85 last year. This shows that public expectation for an open and accountable Government is on the rise.

Government Departments/Agencies Covered by the Code

4.13 Among the 91 access-to-information complaints we received, 89 were Code complaints against Government departments or agencies, compared to 72 last year. Most of these complaints were made by individual citizens, while some were by journalists or politicians.

4.14 We concluded 71 cases, including 16 carried forward from last year. Non-compliance was found in 30 of them, with 19 having more than one fault found.

4.15 The most common failing was non-compliance with specific provisions of the Code, including failure to consider provision of part of a record, to meet target response time, to provide reasons for refusal or to inform the requester channel of review or complaint.



4.16 Another common failing was unreasonable refusal. In 17 of the cases concluded in the year we found the department/organisation's decision of non-disclosure being based on inadequate grounds. This shows that there was still reluctance among Government departments and agencies to release information, or at least a lack of thorough understanding of the spirit and principles of the Code, as highlighted in the cases in **Annex 9**.

Organisations Not Covered by the Code

4.17 The Code is applicable to Government departments and a few named Government agencies only. Some public organisations have voluntarily adopted the Code, but some have not. For complaints against organisations which have adopted the Code, we will investigate them with reference to the Code. For complaints against organisations that have not adopted the Code, we will examine the allegations along the lines of the major principles of the Code.

4.18 During the year, we received two complaints against organisations not covered by the Code, one against the Hospital Authority and the other against the Hong Kong Housing Society. We concluded four cases against organisations not covered by the Code during the year, with failings found in three of them.

Table 4c

Number of Access-to-Information Complaints Received in the Past Five Years		
Year	No. of complaints received	
	Organisations covered by the Code	Organisations not covered by the Code [#]
2013/14	78	–
2014/15	47*	9
2015/16	60*	6
2016/17	72	13
2017/18	89	2

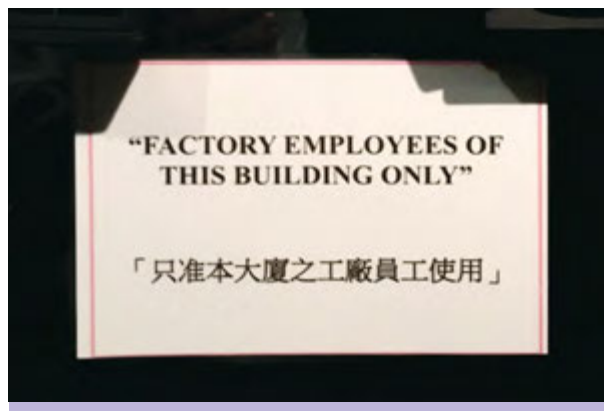
* The figures include cases (two each in 2014/15 and 2015/16) not recognised as such complaints in the year when they were received but so classified on conclusion in subsequent years.

[#] Statistics for this category of cases only started to be kept from the year of 2014/15.

Issues Examined by Direct Investigations

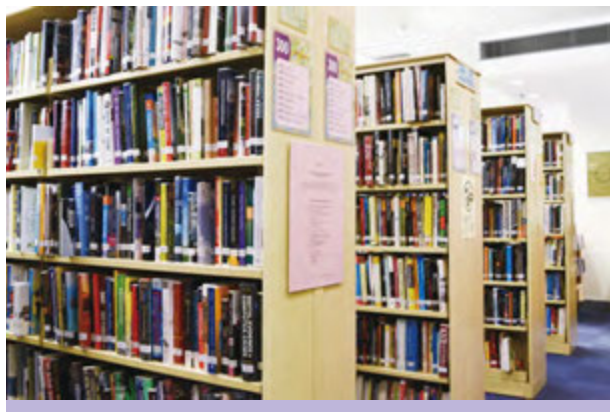
4.19 During the year we completed 12 direct investigations on a wide range of systemic issues in public administration. Their full reports have been uploaded on our website. The findings of seven were publicly announced at press conferences, the summaries of which are given in **Annex 6** and briefly described below. For the remaining five, in lieu of public announcement at press conferences, we issued press releases to inform the public.

Regulation of Factory Canteens



4.20 The Government requires that factory canteens can only serve factory employees working in the industrial building. Nevertheless, for the recent years, many factory canteens have also been serving public customers in a high-profile manner. Our investigation found that the policy towards factory canteens executed and enforced by the Food and Environmental Hygiene Department ("FEHD") and the Lands Department ("LandsD") was seriously outdated and a review of the policy long overdue. The two departments had failed to administer effective control in approving applications for setting up factory canteens. This, coupled with lax enforcement against factory canteens serving public customers, had allowed the operators to continue to engage in such wrongful activity as if it were acceptable. We made five recommendations to FEHD and LandsD for improvement.

Procurement and Withdrawal of Public Library Materials



4.21 The collections of public libraries are precious public resources. Every year, the Leisure and Cultural Services Department (“LCSD”) spends nearly \$100 million of public money on the procurement of library materials. Our investigation found ten major inadequacies on the part of LCSD in the management of library collections, including obscure rationale behind its annual procurement target, lack of records on the compilation of its annual procurement plan, rigid practice in disposing of withdrawn library materials, and weak coordination between the process of procurement and that of withdrawal of library materials. We made eight recommendations to LCSD for improvement.

Enforcement Action against a Village House with Irregularities

4.22 Our investigation found serious delay in enforcement actions by LandsD against irregularities in respect of a New Territories Exempted House (“the House”). Such delay had allowed the House owner to breach the lease conditions of the agricultural land in question and occupy illegally a large part of the adjoining Government land for more than 20 years. The persistence of the irregularities in respect of the House was mainly attributable to LandsD’s inappropriate strategy of “straightforward cases first, thorny cases last” and “last-in-first-out” for handling cases involving irregularities, its lack of timeframe for enforcement actions, and its indecisiveness in re-entering the agricultural land in question. We made two recommendations to LandsD for improvement.

Safety Control for Imported Fruits and Vegetables



4.23 Fruits and vegetables are commonly consumed in Hong Kong and most of them are imported. Given its impact on public health, food safety must not be overlooked. Our investigation revealed inadequacies in Food and Environmental Hygiene Department (“FEHD”)’s sampling checks in fruits and vegetables imported by land and its surveillance on those by sea. Laboratory tests also took a long time when samples were sent to the Government Laboratory. Moreover, no clear regulatory standards had been set for some vegetables commonly consumed in Hong Kong. The statutory limits of metallic contaminants in food were too lenient and seriously outdated. We made eight recommendations to FEHD regarding inspection and statutory standards for more effective regulation of imported fruits and vegetables.

Mechanism for Handling Smoking Offences

4.24 The Ombudsman receives from time to time public complaints against the Government’s ineffectiveness in combating illegal smoking, resulting in some no-smoking areas being existent in name only. Our investigation identified a number of areas of inadequacies in the enforcement mechanism of the Tobacco Control Office under Department of Health (“DH”), including insufficient inspections at night and inadequate manpower, aggravated by a persistently high turnover rate of Tobacco Control Inspectors. Moreover, there is no legislation holding those venue managers legally responsible who condone illegal smoking within their premises. The Food

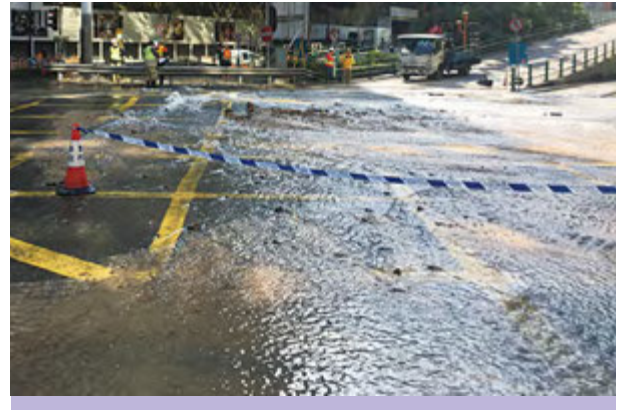
and Health Bureau (“FHB”) and DH also failed to properly coordinate the actions of other Government departments which are empowered to take enforcement actions. Some Government departments even failed to combat illegal smoking in their own workplace. We made 11 recommendations to FHB and DH for improvement.

Control over Fly-tipping of Construction Waste and Landfilling Activities on Private Land



4.25 The frequent occurrences in recent years of fly-tipping of construction waste or landfilling activities on private land in the rural areas of the New Territories have aroused public concerns of environmental hygiene, land use and conservation issues. The activities are subject mainly to regulatory and enforcement actions by the Environmental Protection Department (“EPD”) and the Planning Department (“PlanD”) in accordance with the relevant legislation. Our investigation revealed inadequacies in EPD and PlanD’s actions: EPD’s inspections not comprehensive and proactive enough; delay in implementing the use of Global Positioning System for deterring fly-tipping despite years of study; PlanD’s tardiness in enforcing its Reinstatement Notices and lack of deterrent effect in its prosecution actions. Furthermore, inter-departmental coordination could have been more proactive. We made seven recommendations to EPD and PlanD for improvement.

Maintenance of Government Water Mains and Risk Management



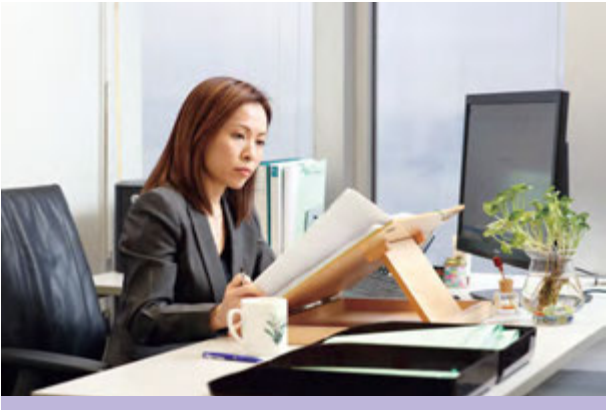
4.26 Frequent incidents of fresh and salt water main bursts have caused not only inconvenience to the public but also huge water wastage. In addition, the leakage rate of water mains in Hong Kong stands at 15.2%, which falls significantly behind cities like Singapore (5%) and Lisbon (8%). Our investigation has identified a number of inadequacies on the part of the Water Supplies Department (“WSD”) with regard to minimising water main bursts, follow-up actions on cases of main bursts, and reducing leakages. In particular, WSD has failed to target recurrent cases of water main bursts for monitoring and follow-up actions; lack of performance targets for reducing water leakage rate; and lack of comprehensive measures to ensure stability of water supply network after completion of the Replacement and Rehabilitation Programme of Water Mains. We made ten recommendations to WSD for improvement.

Challenges from Parties

Re-assessment of Cases

4.27 All incoming complaints are first assessed as to whether we can or should take up in accordance with the provision of The Ombudsman Ordinance. Complaints that are legally out of bounds or otherwise inappropriate for us to investigate will be screened out. Complainants disagreeing with our decision may provide supplementary information and request to have their cases re-assessed.

4.28 During the year we received 325 requests for re-assessment, with 143 subsequently re-opened for inquiry.



Review of Cases

4.29 For cases concluded after we have examined the issues under complaint, complainants dissatisfied with our findings or conclusions may seek a review. If the complainants provide material new facts or arguments, a review will be conducted.

4.30 This year we received 49 requests for review. We declined eight requests and conducted 41 reviews. I varied my decision in two cases after review and upheld my original decision for the remaining 39, as shown in **Table 4d**.

Judicial Review and Litigation

4.31 A complainant not satisfied with my decision may, apart from requesting a review by me, seek a judicial review by the court. We received no notification of application for judicial review this year.

Table 4d

Outcome of Review Cases						
Reason \ Result	New evidence		New perspective		Outside jurisdiction	Total
	Yes	No	Yes	No		
Decision varied	1	–	1	–	–	2
Decision upheld	–	39	–	–	–	39
						41

Challenging Complainant Behaviours

4.32 Complainants with challenging behaviours could take up a disproportionate amount of time and effort of both our investigative and support resources. In the year under report we had complainants, refusing to accept our findings or conclusions, kept pressing us for review of their cases without any fresh evidence or supporting arguments. When this persisted and after we had fully and often repeatedly dealt with all matters needing clarification, for better use of our manpower resource, we would put an end to our communication with the complainants and tell them so. Some complainants would set restrictions on what information in their complaints we could convey to the organisations under complaint and vice versa. Where such restrictions would result in our investigation work being fettered, we had to advise the complainants that we could not take up their complaints unless certain restrictions were removed. There were also complainants who lodged complaints against almost each of our staff who had been in contact with them. We take staff complaints seriously and make improvements where due. Nonetheless, when such staff complaints were intended to pressurise our staff to comply with unreasonable requests or succumb to manipulation, we would stand firm on our proper procedures in complaint handling. The underlying principle is that we will examine all criticisms of our work seriously and spare no effort to improve but at the same time ensure that our staff resources are appropriately used so as to discharge our duties effectively and provide our service to all complainants fairly.

Response Time of Organisations

4.33 While we strive to complete our inquiries as speedily as we can, to some extent this will have to depend also on speedy response from the organisations. Most organisations are very cooperative and provide full and fast responses to our inquiries. At times, unfortunately, we did encounter inadequate and tardy replies, taking months on a few occasions. Apart from impressing upon the senior management of the organisations the importance of timely replies to our inquiries, we would also meet with their operational staff to facilitate a better understanding of the matters at issue and hence a quicker and more pertinent response.

Overview

4.34 We had a big advancement this year in using mediation as a means to resolve disputes. Both the absolute number and the proportion of complaints settled by mediation rose by nearly 80%. Besides, six more organisations participated in resolving complaints through mediation compared with last year.

4.35 The greater use of mediation to resolve complaints has helped free up manpower. With this we have been able to further our emphasis on direct investigation work. We completed 12 investigations in the year, compared with 11 last year. As in the past, public announcement of the results of our direct investigations attracted much media attention. The recommendations we made upon conclusion of our investigations were generally well received by the organisations concerned. Besides, we highly appreciate the positive response by many organisations towards our investigation by initiating improvement measures in the course of our inquiries.

4.36 We also dealt with a record high number of access-to-information complaints, which shows a steady increase in recent years of such cases. We would repeat our urge for the Government to speed up its process to introduce legislation on this subject.





Staffing

5.1 Our strategy of nurturing a solid base of home-grown talents and developing a healthy contingent of investigation officers was working well. During the year, we promoted two investigation staff to the ranks of Investigation Officer and Chief Investigation Officer respectively. At the same time, we would continue to recruit senior staff with requisite experience as necessary to meet operational demands. Our organisation chart is at **Annex 13**.

Training

5.2 As in previous years, we continued to attach great importance to staff training so that our staff would possess the required skills for efficient and effective discharge of their duties.



Mediation workshop

5.3 Building on last year's training, we organised a new round of mediation and complaint handling workshop for investigation staff, with a view to strengthening their knowledge of the latest mediation theories and techniques. We also organised a sharing session for staff to exchange their experience in using mediation as a means of conflict resolution in suitable complaint cases. In addition, a workshop was held to reinforce frontline staff's communication and customer service skills in complaint handling.



Talk on Apology Ordinance

5.4 Upon enactment of the Apology Ordinance, we invited an expert to give a talk to our staff on the implications of this new legislation and its application to our work.

5.5 Three officers participated in the International Conference for Information Commissioners in Manchester in September 2017 to keep abreast of the challenging issues around access to information and open data. After the training, they held a sharing session with colleagues.

Table 5a

Staff Complement			
Staff category	As at 31.3.2016	As at 31.3.2017	As at 31.3.2018
Directorate	4	4	4
Investigation	65	65	65
Administrative & Support	51	51	51
Total establishment	120	120	120



Sharing session on access to information and open data

5.6 To maintain our exposure to best practices in complaint handling in different jurisdictions, one to two officers were nominated on each occasion to attend the conferences organised by the Commonwealth Ombudsman in Canberra in April 2017, the Asian Ombudsman Association in Pyeongchang in May 2017, and the International Ombudsman Institute – Australasia and Pacific Region in Perth in November 2017.

Occupational Health and Safety

5.7 In the year, we continued our enrolment in the Employee Assistance Programme to offer necessary coaching and counselling to our staff. The aim was to help them achieve personal and professional effectiveness as well as work-life balance. Two wellness promotion workshops were held to equip staff with techniques and tips in managing stress and staying healthy.



Wellness promotion workshop

5.8 To ensure a healthy working environment is provided to our staff, we have participated in the Indoor Air Quality Certification Scheme for Offices and Public Places since 2014 and have continued to attain the “Good” class certification.

Complaints against the Office

5.9 This year, we concluded 37 complaints lodged against the manner of our staff and/or our work procedures. Of these, inadequacies on the part of our staff were found in five cases. On each occasion, we provided appropriate counselling to the officers concerned.

5.10 As in previous years, over 60% of the complaints against this Office stemmed from complainants’ dissatisfaction with our conclusions and decisions on their cases against Government departments and public organisations. We explained to the complainants that these were the comments on our findings and did not reflect on the quality of our inquiries/investigations. Where there are reasonable grounds for re-assessment or review, we will do so according to our established procedures. Nevertheless, we take complaints most seriously as each complaint provides us with an opportunity to review our work systems and practices. We are always ready to improve our services to the community.

Table 5b

Complaints against the Office concluded in 2017/18

Classification	No. of complaints	Percentage
Unsubstantiated	32	86.5%
Substantiated	1	2.7%
Partially-substantiated	1	2.7%
Unsubstantiated but other inadequacies found	3	8.1%
Total	37	100.0%



Publicity and External Relations

6.1 To improve public administration and cultivate a positive complaints culture, we actively seek support from different sectors, engage our stakeholders and learn from our counterparts around the world. This year, we continued to promote our work through an array of media and public relations events.

Public Education and Promotion

TV Programme “The Ombudsman Special II”

6.2 TV programme continued to be an important vehicle to get our message across to the general public. This year, we again joined hands with Radio Television Hong Kong to produce a new TV drama series “The Ombudsman Special II”. The programme, comprising eight 30-minute episodes, was premiered on 4 April 2017. This drama series is based on actual complaint cases handled by the Office. Through effective scriptwriting, the cases were re-created in the drama series to give a vivid portrayal of the predicament of people caught in the mire of maladministration. From these episodes, members of the public can see how our work contributes towards a more open and fair administration. Promotional clips were placed on public transport and social platforms to generate public interest and increase viewership. To cater for non-Chinese speaking audience, the Office added English subtitles to one of these episodes and one from “The Ombudsman 5-minuter” produced last year. The full TV programme is now available for easy viewing on our website and online video channel.



The launching ceremony of “The Ombudsman Special II”

Advertising Commercials

6.3 The TV commercial with the theme “Say NO to Maladministration” is in its fourth year of running. Feedback from audience is positive as the “Tai-Chi” metaphor helps drive home our message that maladministration should not be tolerated.



Banner of “Say NO to Maladministration”

Press Conferences and Media Events

6.4 The media render great support to our promotions and events (see **Table 6a**). This year, we hosted four press conferences and issued five press releases to announce a total of 12 direct investigation reports and one complaint investigation report. We also declared the launch of four direct investigations and issued two press statements on matters of public concern. The wide media coverage of our work attracted extensive community attention. We also held a media gathering in July 2017 and attended various media interviews throughout the year to disseminate up-to-date information about our work.



Press conference



Media gathering



Media interview

Table 6a

Press Conferences/Media Events	
3 April 2017	"The Ombudsman Special II" launching ceremony
3 April 2017	Declaration of direct investigation into Government's follow-up mechanism regarding psychological health assessment of school children
24 April 2017	Announcement of findings of direct investigation on Hong Kong Airport Authority's mechanism for issuing Airport Restricted Area Permits
11 May 2017	Announcement of findings of direct investigation on: i) Housing Department's mechanism for taking follow-up action against unauthorised alterations by public housing tenants (investigation completed in March 2017) ii) Government's regulation of factory canteens
8 June 2017	Declaration of direct investigation into Government's regulation of proprietary Chinese medicine
28 June 2017	Announcement of findings of direct investigation on: i) Food and Environmental Hygiene Department's criteria for publicising list of traders involved after issuing Food Safety Order ii) The arrangement between Housing Department and Water Supplies Department regarding payment of water charges for common areas and vacant units in public housing estates
13 July 2017	Press Statement – The Ombudsman welcomed passage of Apology Bill
18 July 2017	The Ombudsman commented on Registration and Electoral Office's loss of two notebook computers containing electors' personal data
18 July 2017	Media gathering: briefing on Annual Report 2017
26 July 2017	Declaration of direct investigation into Housing Department's arrangement for using idle spaces as storerooms in public housing estates
1 August 2017	TV interview on Code on Access to Information
12 September 2017	Announcement of findings of direct investigation on: i) Lands Department's enforcement against a village house with irregularities ii) Leisure and Cultural Services Department's criteria and procedures for procuring and withdrawing library materials

Press Conferences/Media Events (continued)	
28 September 2017	Declaration of direct investigation into Government's planning and arrangements for ancillary facilities for electric private vehicles
31 October 2017	Announcement of findings of direct investigation on Transport Department's handling of a road section enclosed and left idle for prolonged period
13 November 2017	Announcement of findings of: i) Direct investigation on Food and Environmental Hygiene Department's system of safety control for imported fruits and vegetables ii) Full investigation report on "Complaint about the handling of an application for housing transfer by Social Welfare Department and Housing Department"
4 January 2018	Announcement of findings of direct investigation on Social Welfare Department's support services for persons with or suspected to have mental health problems and their families/carers and neighbours
1 February 2018	Announcement of findings of direct investigation on: i) The Mechanism of the Food and Health Bureau and the Department of Health for handling smoking offences ii) Government's control over fly-tipping of construction waste and landfilling activities on private land
18 February 2018	TV interview on Code on Access to Information

Talks for Departments and Organisations

6.5 Our work requires frequent communication with and cooperation from different Government departments and public organisations. To foster mutual understanding, my office conducted seven outreach talks to explain our procedures and share our complaint handling experience with the public officers.



Talk for Government department

Working with Professionals, Community Leaders, etc.

Advisers and JPs

6.6 We may seek expert advice from our advisers if we come across professional issues in our work. I am indebted to our advisers for their unfailing support. I must also thank the many Justices of the Peace ("JPs") who assist in spreading our messages through their connections. In June 2017, we organised a seminar with the Mandatory Provident Fund Schemes Authority ("MPFA"). Speakers from MPFA gave a detailed introduction of the MPF system and its major reforms as well as the MPFA's complaint handling mechanism.



Seminar on Mandatory Provident Fund System

Legislative Councillors

6.7 Every year, we meet Members of the Legislative Council to brief them on our work. This year, the meeting was held in the Legislative Council on 5 December 2017 and we had constructive discussions with Council members on various issues of public concern.

The Ombudsman's Awards

6.8 The Ombudsman's Awards are presented annually to Government departments/public organisations and public officers to recognise their excellent performance in complaint handling and customer service. The presentation ceremony was held on 11 October 2017. The Grand Award went to the Hong Kong Monetary Authority, whereas the Planning Department and the Correctional Services Department were the runners-up. 45 public officers received individual awards. To encourage departments to resolve disputes by way of mediation, we plan to introduce a new award relating to mediation next year.



The Ombudsman's Awards presentation ceremony

Table 6b

Winning Organisations for 2017
Hong Kong Monetary Authority – Grand Award
Planning Department
Correctional Services Department

Table 6c

Individual Awards for 2017	
Organisation	No. of awardees
1823, Efficiency Unit	1
Airport Authority	2
Buildings Department	2
Civil Aviation Department	1
Civil Engineering and Development Department	2
Companies Registry	2
Consumer Council	1
Correctional Services Department	1
Customs and Excise Department	2
Drainage Services Department	2
Electrical and Mechanical Services Department	1
Estate Agents Authority	2
Fire Services Department	2
Food and Environmental Hygiene Department	1
Highways Department	2
Home Affairs Department	1
Hospital Authority	2
Immigration Department	2
Land Registry	1
Legal Aid Department	2
Mandatory Provident Fund Schemes Authority	2
Marine Department	1
Office of the Privacy Commissioner for Personal Data	2
Securities and Futures Commission	1
Social Welfare Department	1
The Hong Kong Examinations and Assessment Authority	2
Water Supplies Department	2
Working Family and Student Financial Assistance Agency	2

Overseas Liaison

6.9 My Office builds good rapport with leading ombudsmen from other parts of the world. We share experience in monitoring public administration and prepare ourselves for new challenges. My Deputy attended the Commonwealth Ombudsman 40th Anniversary Conference in Canberra, Australia in April 2017. Separately, I attended International Ombudsman Institute (“IOI”) Board of Directors Meeting in Vienna, Austria. As Honorary Secretary of Asian Ombudsman Association (“AOA”), I chaired its Board of Directors Meeting, General Assembly and Conference in Pyeongchang, South Korea in May 2017.

6.10 In the capacity of President of the Australasia and Pacific Region (“APOR”) of IOI, I work closely with the other two Directors in the region to strengthen the ties among members and provide training opportunities for them. An APOR Conference was held in November 2017 in Perth and I took the opportunity to convene a business meeting to gauge the needs of APOR members. The meeting agreed on a new initiative of a E-Newsletter for information exchange. At the APOR Conference, I conducted a training session on “Effective and Efficient Investigation” for our overseas counterparts. Another APOR Conference has already been in plan in 2018 which will serve as another opportunity for training and experience sharing.



Commonwealth Ombudsman 40th Anniversary Conference in Australia



APOR Conference, Meeting and Training in Perth

6.11 During the year under report, we received 25 group visits. We welcome delegations from other parts of the world to share our experience, widen our eyesight and enrich our knowledge. The list of visitors is at **Annex 15**.



Visit of Mr Lu Weidong, Director of the Shanghai Municipal Bureau of Justice

Looking Ahead

6.12 With the increased public awareness of our role and mission, we place more concern on public engagement in our promotion. We endeavour to communicate with the public, assess the effectiveness of our activities and adjust our programmes in the light of the changing economic and socio-political scene for objective, independent and impartial investigation.



中新聞 II

2017年4月4日起
逢星期二晚上
6時正 無綫電視翡翠台
8時30分 港台電視31



演 林嘉華 郭政鴻 廖子好 王宗堯 王喜 梁健平 余香凝 鍾淑慧 談善言 何思諺 Sammy@Kolor 曾文威 黃澤鋒 區騰駿 雪梨 陸詩韻 張雷
出 袁潔儀 陳意嵐 吳耀漢 吳浣儀 黎紀君 黃佩芝 郭爾君 方珈悠 湯怡 譚焯文 陳麗雲 樓南光 劉俊謙 陳逸寧 葉景文 余世騰 高翰文 張松枝 何啟華 郭慧



One Year at a Glance



Press Conference on 12 Sep 2017



Press Conference on 13 Nov 2017



Media Gathering on 18 Jul 2017



Launching Ceremony of "The Ombudsman Special II" on 3 Apr 2017



Media Interview on 11 Oct 2017



Media Interview on 3 Apr 2017



In the capacity of the Regional President of the Australasia and Pacific Region of the International Ombudsman Institute ("IOI"), The Ombudsman attended its Board of Directors Meeting in Vienna, Austria on 26-28 Apr 2017



As Honorary Secretary of the Asian Ombudsman Association ("AOA"), The Ombudsman chaired its Board of Directors Meeting, General Assembly and Conference in Pyeongchang, South Korea on 16-19 May 2017



Seminar for Advisers and JPs on 14 Jun 2017



Our investigation officers delivered an outreach talk for Housing Department on 18 Jul 2017



Mr Lin Ziming, Deputy Secretary of the Shenzhen Municipal Committee for Discipline Inspection and his delegation visited the Office on 23 Nov 2017



The Ombudsman was invited to speak at the meeting of the Rotary Club of Central Harbourfront on 21 Jun 2017



Presentation Ceremony of The Ombudsman's Awards on 11 Oct 2017



The Ombudsman attended the Music for Our Young Foundation Winter Festival Concert on 26 Dec 2017



Ms Nahomi Ichimiya, President of the National Personnel Authority, Japan visited the Office on 21 Dec 2017



Hon Hiroe Makiyama, Director-General, International Bureau, The Democratic Party, Japan visited the Office on 15 Sep 2017



As guest speaker, the Deputy Ombudsman delivered a speech on our work at the Y's Men's Club of Hong Kong luncheon on 2 Nov 2017



General Viddhavat Rajatanun, Chief Ombudsman of Thailand and his delegation visited the Office on 6 Sep 2017



Annexes





List of Scheduled Organisations



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

	Organisation	Abbreviation
1.	Agriculture, Fisheries and Conservation Department	AFCD
2.	Airport Authority	AA
3.	All registries and administrative offices of courts and tribunals for which the Judiciary Administrator has responsibility	JA
4.	Architectural Services Department	ArchSD
5.	Audit Commission	Aud
6.	Auxiliary Medical Service	AMS
7.	Auxiliary Medical Service (Government department)	AMS
8.	Buildings Department	BD
9.	Census and Statistics Department	C&SD
10.	Civil Aid Service	CAS
11.	Civil Aid Service (Government department)	CAS
12.	Civil Aviation Department	CAD
13.	Civil Engineering and Development Department	CEDD
14.	Companies Registry	CR
15.	Competition Commission	ComC

	Organisation	Abbreviation
16.	Consumer Council	CC
17.	Correctional Services Department	CSD
18.	Customs and Excise Department	C&ED
19.	Department of Health	DH
20.	Department of Justice	DoJ
21.	Drainage Services Department	DSD
22.	Electrical and Mechanical Services Department	EMSD
23.	Employees Retraining Board	ERB
24.	Environmental Protection Department	EPD
25.	Equal Opportunities Commission	EOC
26.	Estate Agents Authority	EAA
27.	Financial Reporting Council	FRC
28.	Fire Services Department	FSD
29.	Food and Environmental Hygiene Department	FEHD
30.	General Office of the Chief Executive's Office	CEO
31.	Government Flying Service	GFS
32.	Government Laboratory	GovtLab
33.	Government Logistics Department	GLD
34.	Government Property Agency	GPA
	Government Secretariat	GS
35.	– Chief Secretary for Administration's Private Office	CSPO
36.	– Chief Secretary for Administration's Office	CSO
37.	– Civil Service Bureau	CSB
38.	– Commerce and Economic Development Bureau	CEDB
39.	– Constitutional and Mainland Affairs Bureau	CMAB
40.	– Development Bureau	DEVB
41.	– Education Bureau	EDB
42.	– Environment Bureau	ENB
43.	– Financial Secretary's Private Office	FSPO
44.	– Financial Secretary's Office	FSO
45.	– Financial Services and the Treasury Bureau	FSTB
46.	– Food and Health Bureau	FHB
47.	– Home Affairs Bureau	HAB
48.	– Innovation and Technology Bureau	ITB
49.	– Labour and Welfare Bureau	LWB

	Organisation	Abbreviation
50.	– Security Bureau	SB
51.	– Transport and Housing Bureau	THB
52.	Highways Department	HyD
53.	Home Affairs Department	HAD
54.	Hong Kong Arts Development Council	HKADC
55.	Hong Kong Housing Authority	HKHA
56.	Hong Kong Housing Society	HKHS
57.	Hong Kong Monetary Authority	HKMA
58.	Hong Kong Observatory	HKO
59.	Hong Kong Sports Institute Limited	HKSIL
60.	Hospital Authority	HA
61.	Housing Department	HD
62.	Immigration Department	ImmD
63.	Information Services Department	ISD
64.	Inland Revenue Department	IRD
65.	Insurance Authority	IA
66.	Intellectual Property Department	IPD
67.	Invest Hong Kong	InvestHK
68.	Joint Secretariat for the Advisory Bodies on Civil Service and Judicial Salaries and Conditions of Service	JSSCS
69.	Kowloon-Canton Railway Corporation	KCRC
70.	Labour Department	LD
71.	Land Registry	LR
72.	Lands Department	LandsD
73.	Legal Aid Department	LAD
74.	Legislative Council Secretariat	LCS
75.	Leisure and Cultural Services Department	LCSD
76.	Mandatory Provident Fund Schemes Authority	MPFA
77.	Marine Department	MD
78.	Office of the Communications Authority	OFCA
79.	Official Receiver's Office	ORO
80.	Planning Department	PlanD
81.	Post Office	PO
82.	Privacy Commissioner for Personal Data	PCPD
83.	Property Management Services Authority	PMSA

	Organisation	Abbreviation
84.	Radio Television Hong Kong	RTHK
85.	Rating and Valuation Department	RVD
86.	Registration and Electoral Office	REO
87.	Securities and Futures Commission	SFC
88.	Social Welfare Department	SWD
89.	The Hong Kong Examinations and Assessment Authority	HKEAA
90.	Trade and Industry Department	TID
91.	Transport Department	TD
92.	Treasury	Try
93.	University Grants Committee, Secretariat	UGC
94.	Urban Renewal Authority	URA
95.	Vocational Training Council	VTC
96.	Water Supplies Department	WSD
97.	West Kowloon Cultural District Authority	WKCD
98.	Working Family and Student Financial Assistance Agency	WFSFAA

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

	Organisation	Abbreviation
1.	Independent Commission Against Corruption	ICAC
2.	Hong Kong Auxiliary Police Force	HKAPF
3.	Hong Kong Police Force	HKPF
4.	Secretariat of the Public Service Commission	PSC



Circumstances where Complaints are not Followed up or Investigated



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 Buy-backs
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

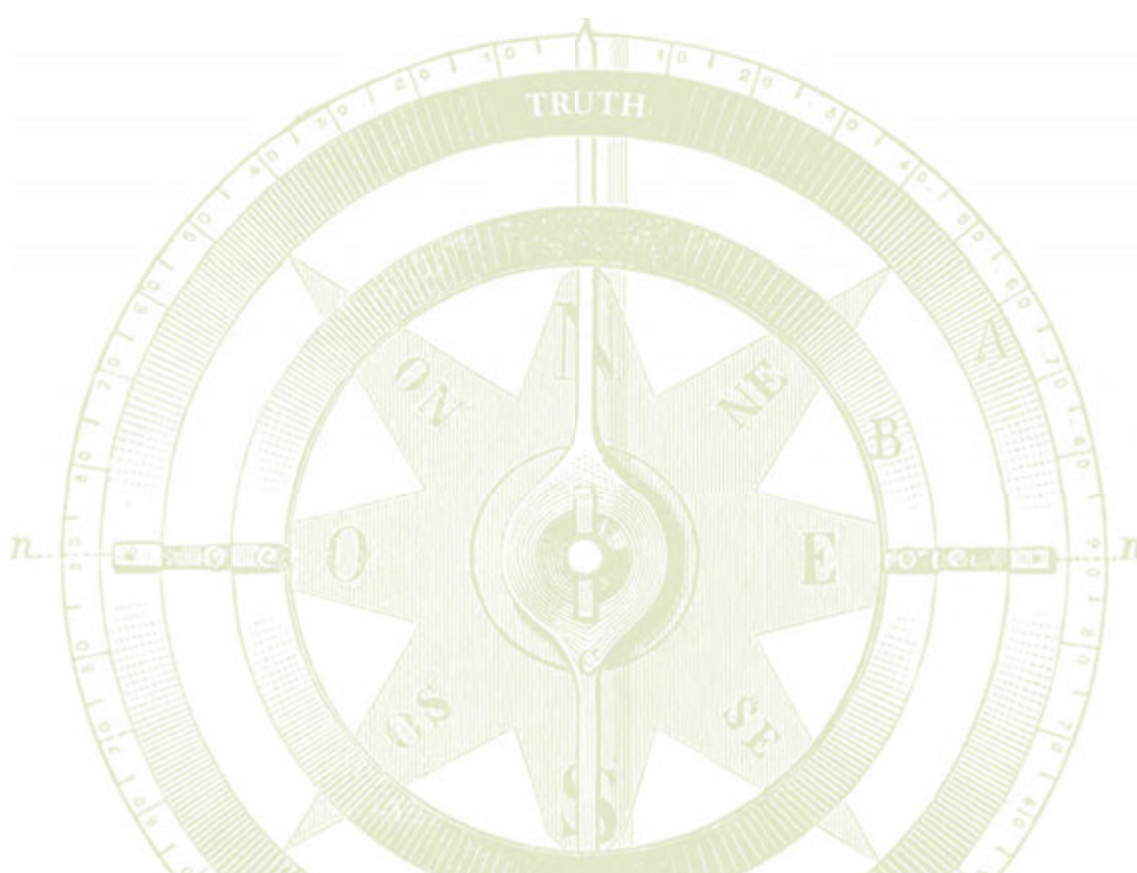
Circumstances where The Ombudsman may Decide not to Investigate – section 10(2), Cap. 397

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

Statistics



Annex 3.1	Caseload
Annex 3.2	Enquiries/Complaints Received
Annex 3.3	Nature of Complaints Processed
Annex 3.4	Distribution of Enquiries/Complaints Received
Annex 3.5	Distribution of Complaints Completed
Annex 3.6	Complaints Pursued and Concluded: Top Ten Organisations
Annex 3.7	Results of Complaints Concluded by Full Investigation
Annex 3.8	Forms of Maladministration Substantiated by Full Investigation
Annex 3.9	Results of Complaints Concluded by Inquiry
Annex 3.10	Achievement of Performance Pledges





Caseload

	Reporting year ¹				
	13/14	14/15	15/16	16/17	17/18
Enquiries	12,767	12,940	12,159	11,564	11,424
Complaints					
(a) For processing	6,572	6,241	6,112	5,732	5,584
– Received	5,624[398]	5,339[428]	5,244[213]	4,862[74]	4,826[68]
– Brought forward	948	902	868	870	758
(b) Completed	5,670[367]	5,373[472]	5,242[224]	4,974[74]	4,770[61]
Pursued and concluded	2,964[48]	3,025[203]	3,100[205]	2,907[40]	2,724[52]
– By inquiry ²	2,605[36]	2,573[78]	2,740[175]	2,556[16]	2,292[37]
– By full investigation ³	321[12]	314[125]	226[30]	218[24]	195[15]
– By mediation ⁴	38	138	134	133	237
Assessed and closed	2,706[319]	2,348[269]	2,142[19]	2,067[34]	2,046[9]
– Insufficient grounds to pursue ⁵	1,432[192]	1,091[1]	1,187[4]	1,102	1,099
– Legally bound ⁶	1,274[127]	1,257[268]	955[15]	965[34]	947[9]
(c) Percentage completed = (b) / (a)	86.3%	86.1%	85.8%	86.8%	85.4%
(d) Carried forward = (a) – (b)	902	868	870	758	814
Direct investigations completed	6	7	8	11	12

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

Note 2. Pursued under section 11A of The Ombudsman Ordinance, for general cases.

Note 3. Pursued under section 12 of The Ombudsman Ordinance, for complex cases possibly involving serious maladministration, systemic flaws, etc.

Note 4. Pursued under section 11B of The Ombudsman Ordinance, for cases involving no, or only minor, maladministration.

Note 5. Not pursued but closed for reasons such as lack of *prima facie* evidence, organisation concerned is taking action, mere expression of opinion.

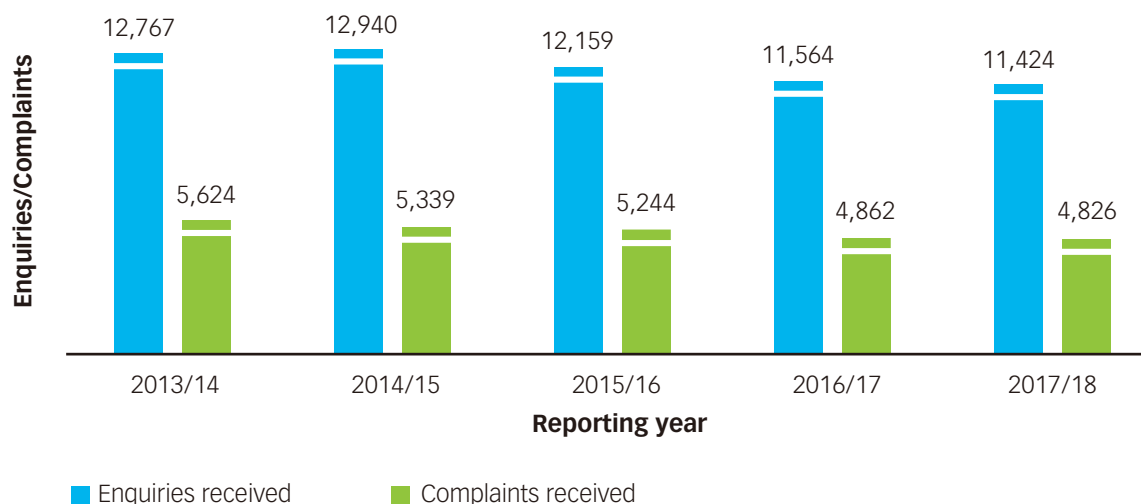
Note 6. Outside the Office's jurisdiction or restricted by The Ombudsman Ordinance.

[] Number of topical complaints.

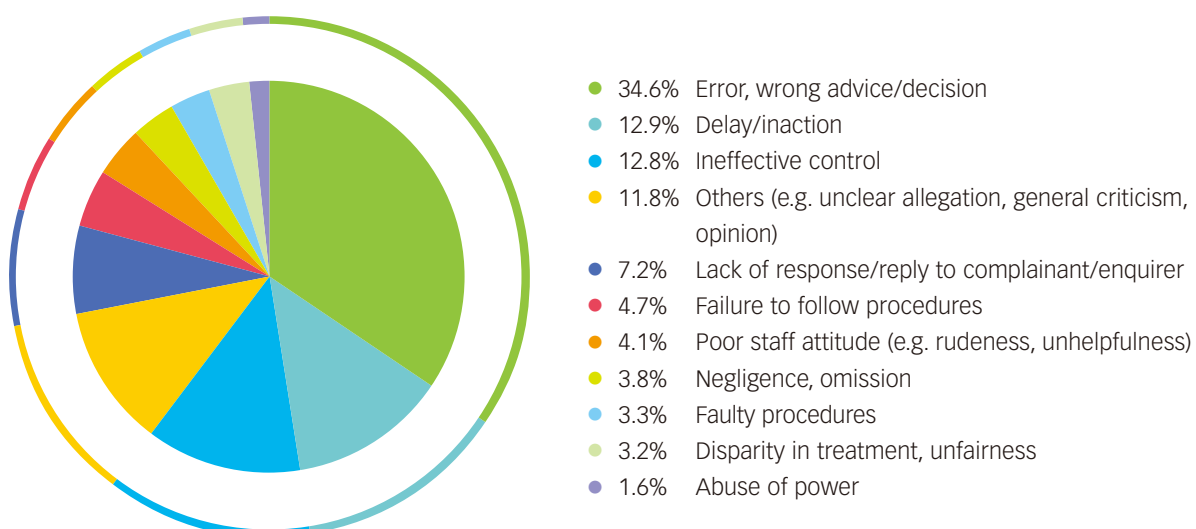
– See "Glossary of Terms" for detailed definitions of the above terms



Enquiries/Complaints Received



Nature of Complaints Processed





Distribution of Enquiries/Complaints Received

Organisation	Enquiries	Complaints
Agriculture, Fisheries and Conservation Department	41	48
Airport Authority	7	9
Architectural Services Department	21	10
Audit Commission	1	2
Auxiliary Medical Service	8	3
Buildings Department	416	285[1]
Census and Statistics Department	3	2
Civil Aid Service	0	4
Civil Aviation Department	4	9
Civil Engineering and Development Department	8	9
Companies Registry	22	6
Competition Commission	3	0
Consumer Council	40	15
Correctional Services Department	44	119
Customs and Excise Department	71	51
Department of Health	80	47
Department of Justice	31	36[6]
Drainage Services Department	21	13
Electrical and Mechanical Services Department	32	25
Employees Retraining Board	23	9
Environmental Protection Department	71	52
Equal Opportunities Commission	25	21
Estate Agents Authority	16	9
Financial Reporting Council	1	2
Fire Services Department	66	45
Food and Environmental Hygiene Department	738	476[3]
General Office of the Chief Executive's Office	5	11
Government Laboratory	0	1
Government Logistics Department	4	6
Government Property Agency	7	8
Government Secretariat		
– Chief Secretary for Administration's Office	69	41
– Chief Secretary for Administration's Private Office	2	0
– Civil Service Bureau	6	19
– Commerce and Economic Development Bureau	3	5
– Constitutional and Mainland Affairs Bureau	2	7

Organisation	Enquiries	Complaints
– Development Bureau	5	10
– Education Bureau	103	75
– Financial Secretary's Office	5	3
– Financial Services and the Treasury Bureau	11	4
– Food and Health Bureau	2	5
– Home Affairs Bureau	3	8
– Innovation and Technology Bureau	2	4
– Labour and Welfare Bureau	7	11
– Security Bureau	7	7
– Transport and Housing Bureau	23	16
Highways Department	50	83[17]
Home Affairs Department	94	101
Hong Kong Arts Development Council	4	0
Hong Kong Housing Authority	46	5
Hong Kong Housing Society	22	36
Hong Kong Monetary Authority	29	27
Hong Kong Observatory	7	5
Hong Kong Police Force	344	138
Hospital Authority	475	178
Housing Department	974	624
Immigration Department	137	94
Independent Commission Against Corruption	25	19
Information Services Department	0	5
Inland Revenue Department	94	75
Insurance Authority	20	14
Intellectual Property Department	8	1
Invest Hong Kong	2	0
Judiciary Administrator	102	52
Labour Department	96	62
Land Registry	12	10
Lands Department	281	306[7]
Legal Aid Department	100	67
Legislative Council Secretariat	1	0
Leisure and Cultural Services Department	190	211[4]
Mandatory Provident Fund Schemes Authority	20	10
Marine Department	10	11

Organisation	Enquiries	Complaints
Office of the Communications Authority	23	28
Official Receiver's Office	41	11
Planning Department	17	24
Post Office	93	92
Privacy Commissioner for Personal Data	30	23
Radio Television Hong Kong	9	15
Rating and Valuation Department	22	13
Registration and Electoral Office	26	107[25]
Securities and Futures Commission	12	17
Social Welfare Department	361	167
The Hong Kong Examinations and Assessment Authority	19	10
Trade and Industry Department	3	4
Transport Department	165	177[1]
Treasury	6	1
Urban Renewal Authority	22	9
Vocational Training Council	13	8
Water Supplies Department	124	87
West Kowloon Cultural District Authority	1	0
Working Family and Student Financial Assistance Agency	67	39[4]
Total	6,256	4,514

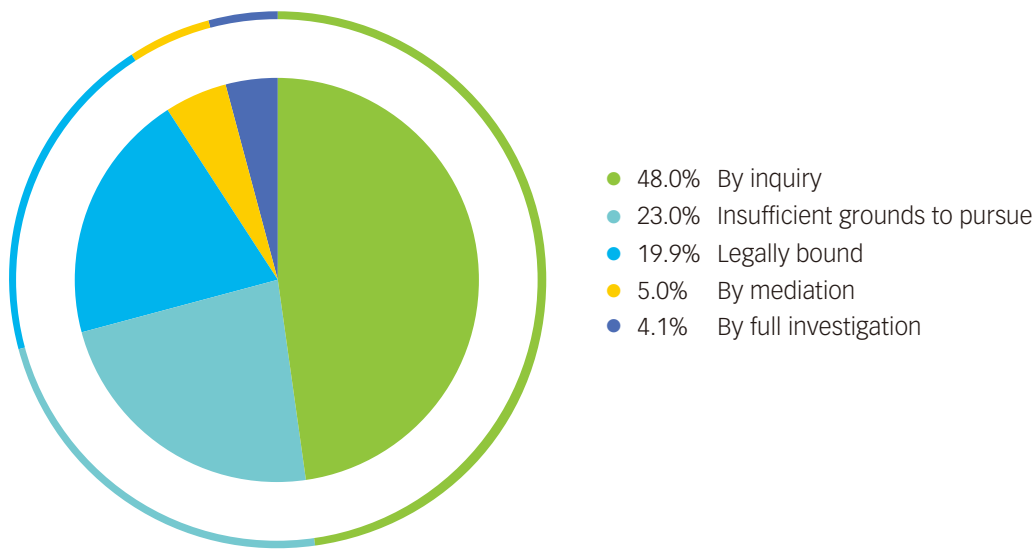
Note 1. The total number of enquiries and complaints shown above are different from the figures shown in Annex 3.1 (enquiries: 11,424, complaints: 4,826) because enquiries/complaints involving organisations not falling within Schedule 1 to The Ombudsman Ordinance are not shown in the above table.

Note 2. Organisations under Schedule 1 to The Ombudsman Ordinance with no enquiries/complaints received in the reporting year are not shown.

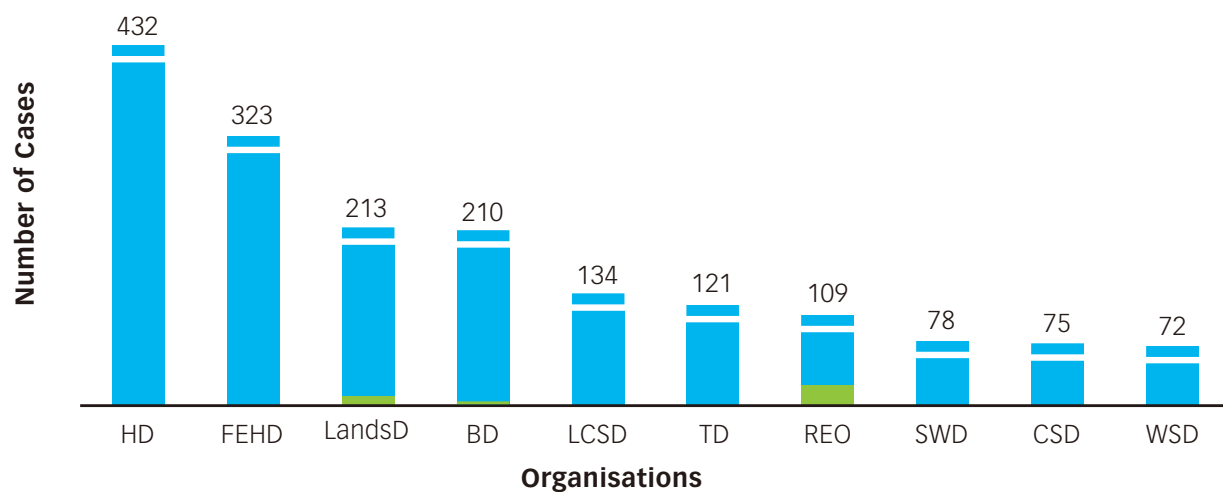
[] Number of topical complaints



Distribution of Complaints Completed: 4,770 Cases



Complaints Pursued and Concluded: Top Ten Organisations



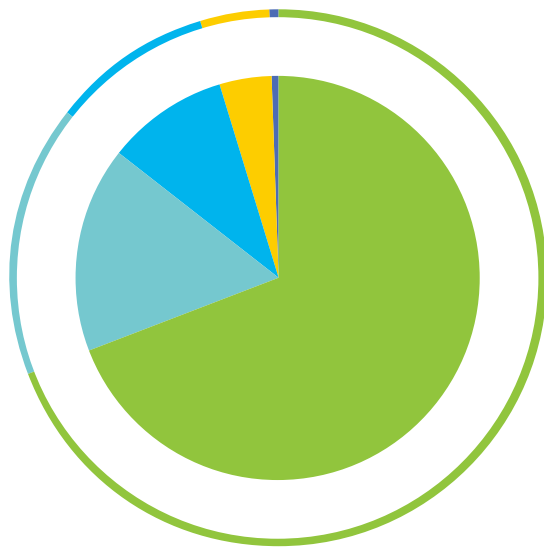
Note 1. "Complaints Pursued and Concluded" are cases handled by way of inquiry, full investigation or mediation.

Note 2. These top ten organisations accounted for 64.9% of the 2,724 complaints pursued and concluded.

Note 3. ■ signifies topical complaints.



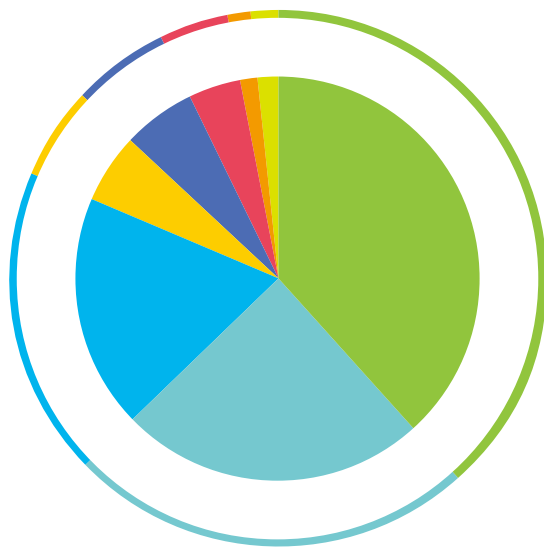
Results of Complaints Concluded by Full Investigation: 195 Cases



- 69.2% Unsubstantiated
- 16.4% Partially substantiated
- 9.8% Substantiated
- 4.1% Unsubstantiated but other inadequacies found
- 0.5% Withdrawn/Discontinued



Forms of Maladministration Substantiated by Full Investigation



- 38.6% Error, wrong advice/decision
- 24.3% Delay/inaction
- 18.6% Ineffective control
- 5.7% Lack of response/reply to complainant/enquirer
- 5.7% Failure to follow procedures
- 4.3% Faulty procedures
- 1.4% Poor staff attitude (e.g. rudeness, unhelpfulness)
- 1.4% Negligence, omission



Results of Complaints Concluded by Inquiry

Organisation	No. of complaints	Cases with inadequacies/ deficiencies found
Agriculture, Fisheries and Conservation Department	28	5
Airport Authority	4	0
Architectural Services Department	3	0
Audit Commission	1	0
Buildings Department	181	53
Civil Aid Service	2	0
Civil Aviation Department	3	0
Civil Engineering and Development Department	6	2
Companies Registry	3	0
Consumer Council	9	5
Correctional Services Department	74	2
Customs and Excise Department	24	0
Department of Health	26	2
Department of Justice	5	1
Drainage Services Department	4	0
Electrical and Mechanical Services Department	11	0
Employees Retraining Board	3	0
Environmental Protection Department	32	1
Equal Opportunities Commission	14	1
Estate Agents Authority	4	0
Financial Reporting Council	2	0
Fire Services Department	19	0
Food and Environmental Hygiene Department	264	63
General Office of the Chief Executive's Office	4	0
Government Logistics Department	1	0
Government Property Agency	3	0
Government Secretariat		
– Chief Secretary for Administration's Office	15	5
– Civil Service Bureau	3	1
– Commerce and Economic Development Bureau	2	0
– Constitutional and Mainland Affairs Bureau	4	0
– Development Bureau	4	1

Organisation	No. of complaints	Cases with inadequacies/ deficiencies found
– Education Bureau	40	3
– Financial Secretary's Office	1	0
– Financial Services and the Treasury Bureau	2	0
– Food and Health Bureau	3	0
– Home Affairs Bureau	5	1
– Innovation and Technology Bureau	2	1
– Labour and Welfare Bureau	9	1
– Security Bureau	5	1
– Transport and Housing Bureau	6	1
Highways Department	31	2
Home Affairs Department	49	12
Hong Kong Housing Authority	10	1
Hong Kong Housing Society	28	1
Hong Kong Monetary Authority	19	1
Hong Kong Police Force	19	5
Hospital Authority	43	12
Housing Department	345	25
Immigration Department	50	5
Information Services Department	1	0
Inland Revenue Department	29	8
Insurance Authority	6	0
Judiciary Administrator	17	4
Labour Department	18	2
Land Registry	3	0
Lands Department	173	31
Legal Aid Department	38	12
Legislative Council Secretariat	1	0
Leisure and Cultural Services Department	98	16
Mandatory Provident Fund Schemes Authority	4	0
Marine Department	7	0
Office of the Communications Authority	9	2
Official Receiver's Office	4	2

Organisation	No. of complaints	Cases with inadequacies/ deficiencies found
Other Organisations	7	0
Planning Department	16	0
Post Office	46	9
Privacy Commissioner for Personal Data	5	1
Radio Television Hong Kong	4	1
Rating and Valuation Department	4	1
Registration and Electoral Office	106	0
Securities and Futures Commission	13	0
Social Welfare Department	71	7
The Hong Kong Examinations and Assessment Authority	3	0
Trade and Industry Department	3	2
Transport Department	94	11
University Grants Committee Secretariat	2	0
Urban Renewal Authority	3	0
Vocational Training Council	3	0
Water Supplies Department	65	12
Working Family and Student Financial Assistance Agency	14	1
Total	2,292	336

Note 1. "Other Organisations" are organisations falling outside Schedule 1 to The Ombudsman Ordinance.

Note 2. Organisations under Schedule 1 to The Ombudsman Ordinance with no complaints concluded by inquiry are not shown.



Achievement of Performance Pledges

(A) Enquiries

	Response time		
	Immediate	Within 30 minutes	More than 30 minutes
By telephone or in person	11,268 (100.0%)	0	0
In writing	Within 5 working days	Within 6-10 working days	More than 10 working days
	154 (98.7%)	2 (1.3%)	0

(B) Complaints*

	Response time	
	Within 5 working days	More than 5 working days
Acknowledgement	4,238 (99.2%)	34 (0.8%)

* Excluding cases where acknowledgement is not necessary or practicable.

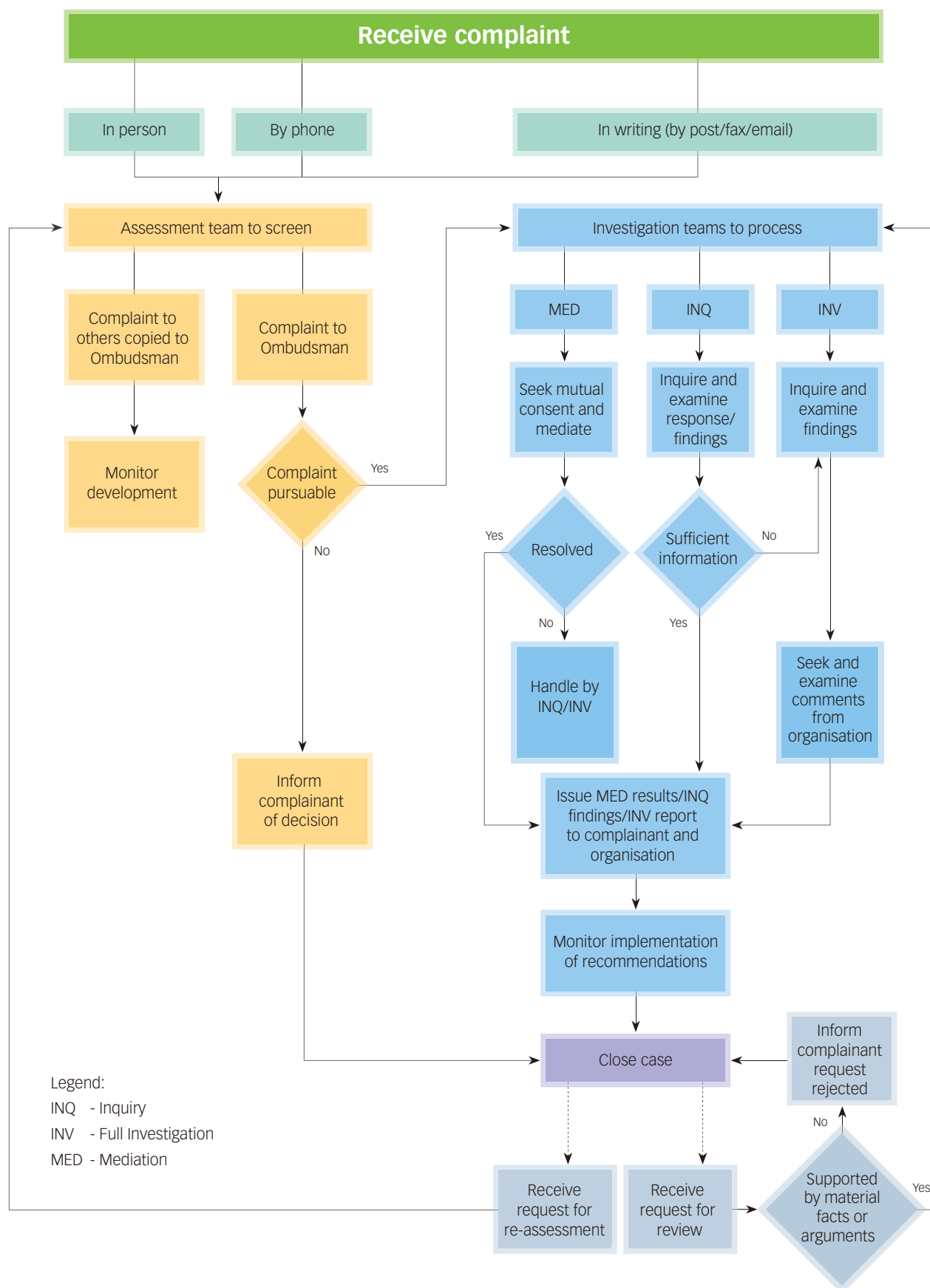
	Cases outside jurisdiction or under restriction			Other cases		
	Within 10 working days	Within 11-15 working days	More than 15 working days	Less than 3 months	Within 3-6 months	More than 6 months
Cases concluded	921 (97.3%)	26 (2.7%)	0	3,374 (88.3%)	432 (11.3%)	17 (0.4%)
Target	Not less than 70%	Not more than 30%	–	Not less than 60%	Not more than 40%	–

(C) Outreach Talks

	Response time	
	Within 10 working days	More than 10 working days
Requests for outreach talks	7 (100.0%)	0



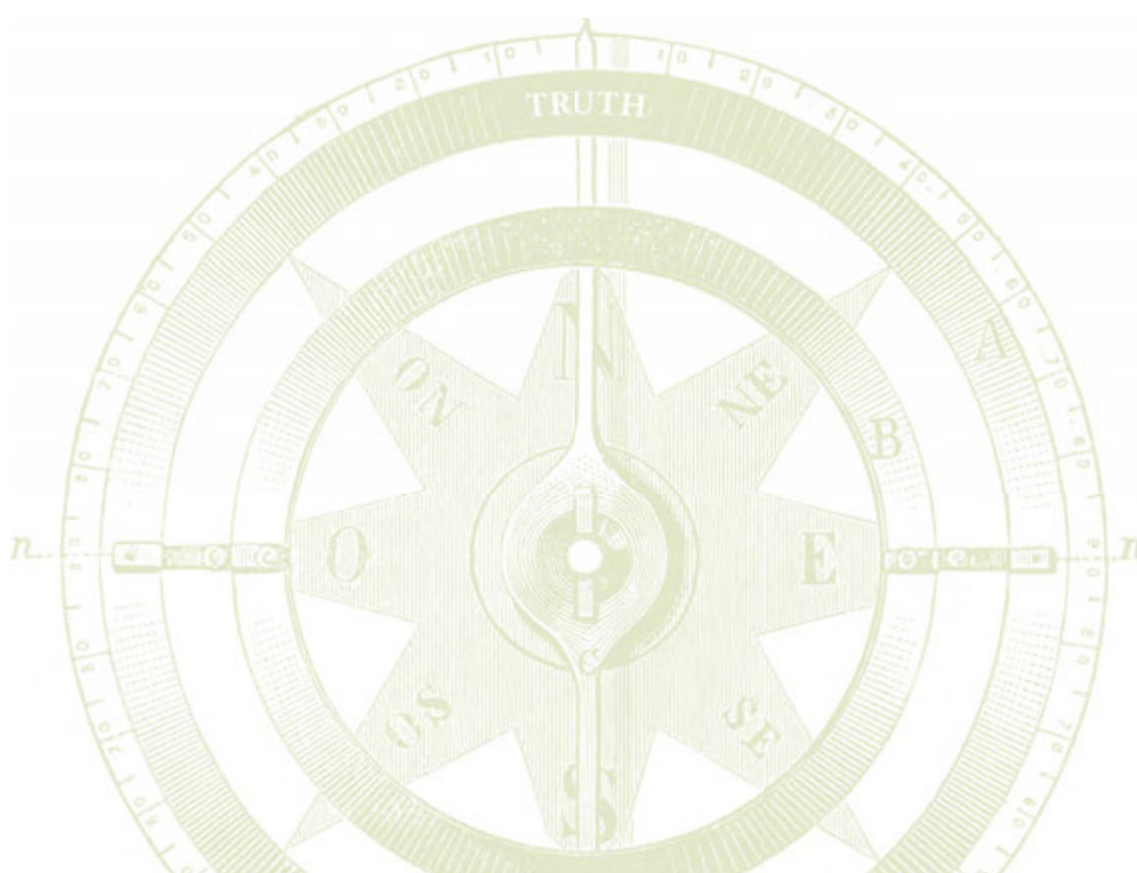
Flow Chart on Handling of a Complaint





Index of Direct Investigations Completed

Direct Investigations	
OMB/DI/357	Leisure and Cultural Services Department's Criteria and Procedures for Procuring and Withdrawing Library Materials
OMB/DI/369	The Mechanism of Food and Health Bureau and Department of Health for Handling Smoking Offences
OMB/DI/381	Food and Environmental Hygiene Department's Criteria for Publicising List of Traders Involved after Issuing Food Safety Order
OMB/DI/386	Social Welfare Department's Support Services for Persons with or Suspected to Have Mental Health Problems and Their Families/Carers and Neighbours
OMB/DI/390	Water Supplies Department's Maintenance of Government Water Mains and Risk Management
OMB/DI/393	Food and Environmental Hygiene Department's System of Safety Control for Imported Fruits and Vegetables
OMB/DI/405	Government's Regulation of Factory Canteens
OMB/DI/406	Lands Department's Enforcement against a Village House with Irregularities
OMB/DI/408	The Arrangement Between Housing Department and Water Supplies Department Regarding Payment of Water Charges for Common Areas and Vacant Units in Public Housing Estates
OMB/DI/409	Hong Kong Airport Authority's Mechanism for Issuing Airport Restricted Area Permits
OMB/DI/410	Government's Control over Fly-tipping of Construction Waste and Landfilling Activities on Private Land
OMB/DI/412	Transport Department's Handling of a Road Section Enclosed and Left Idle for Prolonged Period





Summaries of Selected Reports of Direct Investigations



Environmental Protection Department (“EPD”) and Planning Department (“PlanD”)

Case No. OMB/DI/410 Government’s Control over Fly-tipping of Construction Waste and Landfilling Activities on Private Land

(Investigation declared on 11 November 2016 and completed on 30 January 2018; full report [Chinese version only] available at www.ombudsman.hk)

Background

In recent years, there have been frequent occurrences of fly-tipping of construction waste (i.e. dumping of any substance, matter or thing generated as a result of construction work) or landfilling activities on private land in the rural areas of the New Territories. These activities have aroused public concerns about issues such as environmental hygiene, land use and conservation.

2. We consider that disposal of construction waste and landfilling activities, while being inevitable in city development, should meet the requirements in the relevant legislation and must not have an adverse impact on the environment. Strict control by the Government departments concerned over these activities is, therefore, of paramount importance.

Our Findings

3. Fly-tipping of construction waste and landfilling activities on private land are subject mainly to regulatory and enforcement actions by EPD and PlanD in accordance with the relevant legislation. Our investigation reveals the following inadequacies in the control by EPD and PlanD over such activities.

EPD Should Have Conducted More Comprehensive and Proactive Inspections

4. Pursuant to the Waste Disposal Ordinance, it is an offence to deposit construction waste without the consent of the landowners.

5. EPD’s inspections were mostly conducted during office hours on weekdays. In the 22 months between January 2016 and October 2017, inspections during weekends, holidays and non-office hours accounted for only about 6% of the total number of inspections. Furthermore, the number of prosecution cases was small (only 18 cases or less than one case per month on average).

6. Some members of the public have pointed out that those engaged in fly-tipping of construction waste can easily evade EPD’s inspections by simply carrying out their activities during weekends, holidays or non-office hours. We consider that EPD should take into account this view and conduct more inspections during weekends, holidays and non-office hours to increase its chance of successful enforcement.

7. In its Circular Memorandum of 2009, the Environment Bureau (“ENB”) asked Government departments to proactively conduct regular inspections in the rural areas of the New Territories and on various black spots so as to detect illegal or unauthorised dumping of construction waste or landfilling. However, EPD has yet to work out an action plan for such proactive inspections. EPD usually acts only on reports from the public, referrals from other departments or media reports.

EPD Has Yet to Implement the Use of Global Positioning System Despite Years of Study

8. In October 2015, the Government launched a trial scheme of mandatory use of Global Positioning System (“GPS”) technology on vehicles collecting construction waste. It showed that GPS technology was already well developed. We consider that EPD should make more efforts to push forward with the necessary legislative amendments for implementing the scheme, thereby facilitating the prevention of illegal disposal of construction waste.

PlanD Takes Too Long to Enforce Reinstatement Notices

9. Where landfilling activities on private land constitute unauthorised development under the Town Planning Ordinance, PlanD may issue a Reinstatement Notice (“RN”) requiring the RN recipient to reinstate the land, by the date specified, to its original state, or to such other condition more favourable to the RN recipient, as the Department considers satisfactory.

10. Of those cases in which PlanD had issued the RNs in the past 12 years, less than 10% were able to complete reinstatement of the land within the three-month period specified in the RNs. When following up those cases, PlanD often did not manage to confirm that the RN requirements had been complied with until nine months or longer after expiry of the three-month period. In some cases, the RN requirements were only complied with after three years or longer. For those outstanding cases, PlanD had to use substantial resources to conduct repeat inspections and take follow-up actions over a prolonged period. The overall effectiveness of its enforcement actions thus suffered.

PlanD’s Prosecution Actions Have Little Deterrent Effect

11. In the past 12 years, the average number of successful prosecution cases brought by PlanD against non-compliance with the RNs was only 11 per year, with the average fine per case being \$45,000. Although both figures were on the rise in recent two years, non-compliance cases still occurred from time to time. The deterrent effect of PlanD’s prosecution actions remains questionable.

PlanD Requires Pond Filling Offenders to Merely Grass the Land

12. In some pond filling cases, PlanD accepted the RN recipients to merely grass the land as a means of reinstatement. While PlanD has provided justifications for those cases, we must point out that grassing the land is not the same as reinstating the fish ponds. Given the distinctive ecological value of fish ponds, merely grassing the land without reinstating the fish ponds will lead to diminution in their number, and thus the associated ecological habitats will gradually vanish. We consider that in drawing up the RNs, PlanD should attach more weight to conservation of natural habitats and avoid creating an impression of slanting in favour of the RN recipients.

Inter-departmental Coordination Could Have Been More Proactive

13. According to ENB’s 2009 Circular Memorandum, EPD will convene inter-departmental meetings with the relevant Government departments as and when necessary; special urgent meetings will also be called to discuss those cases that have aroused wide public concern, with a view to arranging the necessary joint operations. We notice, however, that in the past, inter-departmental meetings were convened only about once a year. The saving grace is that, in response to mounting public concern about illegal dumping/landfilling activities, EPD has started to convene two such meetings a year since 2017.

Our Recommendations

14. The Ombudsman makes the following recommendations for improvement:

EPD

- (1) to reallocate or augment resources to step up inspections and enforcement action outside office hours and on weekends and holidays as necessary;
- (2) to draw up proactive inspection plans for stronger actions against fly-tipping activities;
- (3) to take greater initiative to coordinate with other Government departments, enhance communication through inter-departmental meetings and arrange joint enforcement operations as and when necessary;
- (4) to expedite the study on the operational details of the mandatory use of GPS technology on construction waste collection vehicles, and push forward with the necessary amendments to the relevant legislation without delay;

PlanD

- (5) to review the enforcement procedures to avoid unnecessary repeat inspections, and to take resolute further enforcement actions against offenders who delay their compliance with RNs;
- (6) to alert the court to the seriousness of the problem in cases of a serious nature, and seek more severe penalties through heavier fines for a stronger deterrent effect; and
- (7) to review the factors to be considered in drawing up RNs; where sites of ecological/conservation value are involved, to require the RN recipients as far as possible to fully reinstate the sites to their original state in order to achieve the purpose of conservation.



Food and Environmental Hygiene Department ("FEHD")

Case No. OMB/DI/393 Food and Environmental Hygiene Department's System of Safety Control for Imported Fruits and Vegetables

(Investigation declared on 12 October 2016 and completed on 7 November 2017; full report [Chinese version only] available at www.ombudsman.hk)

Purpose of Investigation

This direct investigation aims to identify inadequacies in FEHD's system of safety control for imported fruits and vegetables, particularly its gatekeeping efforts at the point of arrival of imported fruits and vegetables in Hong Kong.

Our Findings

The System

Safety Control for Imported Fruits and Vegetables

2. According to FEHD's risk assessments, fruits and vegetables are not considered high-risk foods. Hence, its prior permission is not required for importing them into the territory.

3. FEHD's Centre for Food Safety ("CFS") adopts a risk-based principle in determining the types of food samples to be collected for checking, the frequency of sampling, the number of samples, and the types of laboratory analysis to be conducted. Sampling checks on fruits and vegetables upon arrival in Hong Kong are conducted by CFS at Kwai Chung Food Control Checkpoint ("Kwai Chung Checkpoint", for those imported by sea), Man Kam To Food Control Office ("Man Kam To Office", for those imported by land), and the Airport Office (for those imported by air). Samples taken by CFS officers at the above locations are sent to the Government Laboratory ("GovtLab") or CFS's own Man Kam To Food Laboratory (exclusively for samples taken at Man Kam To Office) for laboratory tests.

Relevant Legislation

4. Regarding food safety standards, Schedule 1 to the Pesticide Residues in Food Regulation specifies the "maximum residue limits" ("MRLs") for over 7,000 pesticide-food pairs. A supplier of food that contains pesticide residue exceeding the MRL specified in Schedule 1 commits an offence and may be prosecuted by FEHD.

5. The Government also has in place the Food Adulteration (Metallic Contamination) Regulations to regulate the levels of metals present in food.

Our Observations and Comments

6. This Office has found the following inadequacies with regard to FEHD's regulation and surveillance of imported fruits and vegetables.

I. Inspection and Enforcement Management

Inspection of fruits at Man Kam To Office too lax; and sampling checks on vegetables ineffective

7. There is a heavy flow of lorries driving through Man Kam To Office, importing vegetables by land. To minimise the duration of stay of the lorries at the Office for inspection, FEHD's outsourced workers would just take vegetables from close to the door of each lorry's storage compartment for inspection. Worse still, few lorries importing fruits would enter Man Kam To Office to allow the fruits to be inspected.

No routine checks on fruits and vegetables imported by sea and surveillance inadequate

8. FEHD does not conduct any routine checks at Kwai Chung Checkpoint on the grounds that fruits and vegetables are not considered high-risk foods, and that most imported fruits and vegetables must be kept refrigerated. Rather, FEHD chiefly takes samples at wholesale and retail outlets for testing. However, such samples actually cover fruits and vegetables imported by sea, land and air. In other words, there is no surveillance targeted at fruits and vegetables imported by sea. Most of such fruits and vegetables simply enter the market without any inspection.

9. After our commencement of investigation, FEHD has started a trial scheme to conduct more sampling checks of fruits and vegetables imported by sea at the importers' warehouses/cold storages. We hope that FEHD will develop the trial scheme into a regular mechanism in order to strengthen its surveillance of such fruits and vegetables at the point of their arrival in the territory.

10. Moreover, many of the fruits and vegetables imported by sea are actually not difficult to distinguish, for example, those that are cheaper, bulkier and imported from Southeast Asian countries. When collecting samples at wholesale outlets, FEHD may try to focus on such fruits and vegetables to further remedy the lack of routine checks at Kwai Chung Checkpoint.

Lengthy process from sending samples to GovtLab to completion of laboratory tests

11. Test results of samples taken by CFS at Man Kam To or those collected in case of emergencies or food incidents at other locations can be made available within two working days. However, for samples not taken at Man Kam To or not for emergency cases, it generally takes 19 working days from sending samples to GovtLab to the release of test results. Meanwhile, many fruits and vegetables from the same batch may have been sold in the market.

II. Statutory Standards

Absence of clear regulatory standards for some vegetables commonly consumed in Hong Kong

12. We also find that lotus roots and bean sprouts, two commonly consumed vegetables in Hong Kong, are not listed in the relevant regulation with specified MRLs of pesticides. They are instead regulated by means of risk assessments based on some safety reference values, such as “acceptable daily intake” or “acute reference dose”. Nevertheless, compared with the statutory MRLs, the results of risk assessments carry more uncertainties because various factors, such as the public’s consumption habits, have to be considered in the assessment process. It is difficult for the public and the industry to discern from the assessment results the legally permitted limits and the levels of pesticides that are safe for consumption.

Lax and seriously outdated statutory standards for food safety

13. The regulation on metallic contamination in food was enacted in 1997, and for 20 years has not been updated to keep up with the times. In particular, the regulation has set the maximum limit of “lead” in leafy vegetables at 6 mg per kg, which is 20 times more lenient than the international standards.

14. The saving grace is that the Government has recently proposed legislative amendments in accordance with the international standards. Hopefully, there will be more stringent regulation of the content of “lead” in leafy vegetables.

Recommendations

15. In the light of the above inadequacies, The Ombudsman has made a number of recommendations to FEHD, including:

- (1) on the inspection front, to conduct more stringent checks of imported fruits and vegetables at their point of arrival, namely, to collect more samples of fruits for testing, to strengthen surveillance of fruits and vegetables imported by sea, and to discuss with GovtLab the possibility of putting more resources to speed up laboratory tests on food samples; and
- (2) on the legislation front, to amend the relevant regulation as soon as possible to include lotus roots and bean sprouts and specify their applicable MRLs of pesticides, and to adopt the existing international standards for the content of “lead” in leafy vegetables, for better safeguard of public health in Hong Kong.



Food and Health Bureau (“FHB”) and Department of Health (“DH”)

Case No. OMB/DI/369

The Mechanism of the Food and Health Bureau and the Department of Health for Handling Smoking Offences

(Investigation declared on 10 March 2016 and completed on 26 January 2018; full report [Chinese version only] available at www.ombudsman.hk)

Background

This direct investigation aims to examine the effectiveness of the enforcement mechanism of FHB and the Tobacco Control Office (“TCO”) under DH for handling smoking offences, and whether their coordination with other statutory authorities in tobacco control has been adequate, as well as to identify areas for improvement.

Our Findings

2. This Office considers that FHB and the TCO have nine inadequacies in three areas.

I. Inadequacies in Enforcement Mechanism

(A) Insufficient Inspections at Night

3. In each of the past four years, the number of fixed penalty tickets issued by the TCO during night shifts was only one-fourth to one-third of those issued during daytime. This suggested that the TCO had not deployed any officers to conduct surprise inspections during certain peak hours of smoking offences at places such as bars and restaurants, thus missing the opportune time for enforcement.

(B) Insufficient Manpower and High Turnover Rate

4. The TCO has an actual headcount of only 79 officers, and the turnover rate of Tobacco Control Inspectors (“TCIs”) has remained high (at 16.3% in 2015/16). If DH could not find ways to reduce the turnover rate, the effectiveness of its enforcement actions would suffer in the long run.

(C) Antiquated Guidelines on Complaints Follow-up

5. The TCO’s internal guidelines stipulate that TCIs should conduct the first inspection within 21 days upon receipt of complaint. The TCO should actively seek to shorten the time needed to conduct the first inspection and consider setting priorities for different spots.

6. In addition, the TCO should enhance communication with complainants and arrange inspection times with reference to the information collected, so as to avoid wasting its already strained manpower resources.

(D) Cooperation with Prime Witnesses (Other than TCIs) Should Be Strengthened

7. Smoking is a momentary behaviour, making it difficult to catch offenders red-handed. Nevertheless, if members of the public are willing to provide statements and testify in court, the chance of successful prosecution will greatly increase. DH can step up publicity so that more people are willing to come forward and testify against smoking offenders.

(E) Enhance Enforcement Actions by Plain-clothes Officers

8. The TCO can enhance the role of plain-clothes officers in enforcement, especially in the provision of evidence. For instance, they can act as eye-witnesses, survey the site, or even take video footage of the smoking offences on the scene. Their efforts can complement those of uniformed officers to achieve more effective enforcement.

II. Inadequacies in Coordination Mechanism

(F) FHB and DH Failing to Properly Coordinate Enforcement of Tobacco Control

9. The Food and Environmental Hygiene Department (“FEHD”), the Leisure and Cultural Services Department (“LCSD”), and the Housing Department are empowered to institute prosecutions against smoking offenders in venues under their management. Nevertheless, in the past four years, about a fifth of TCO’s list of “locations requiring intensive inspections” were venues under the management of FEHD and LCSD, while these two departments merely brought several dozen prosecutions every year.

10. We consider that FHB should proactively coordinate and support the tobacco control measures of all enforcement departments, instead of passively relying on individual departments to take enforcement actions within their own ambit.

(G) Government Departments Failing to Set Examples in Performing Duties of Venue Managers

11. Some Government departments could not even properly handle the illegal smoking problems in their own offices. We consider that Government departments and public bodies should set a good example and diligently perform their duties as venue managers.

III. Inadequacies in Legislation

(H) No Penalty for Venue Managers Who Fail to Comply with Tobacco Control Provisions

12. The laws of many developed countries (including the UK, Canada, Australia, New Zealand and Singapore) contain relevant provisions imposing penalties on venue managers who condone illegal smoking. However, there is no such provision in the current legislation in Hong Kong.

13. In many illegal smoking cases, the smokers are employees of the organisation concerned. Being their employers or supervisors, the venue managers surely have the ability and responsibility to prevent illegal smoking of their own employees.

(I) Imposing Anti-smoking Licensing Conditions on Places of Entertainment

14. Many places of entertainment, including billiard saloons, mahjong-tin kau premises and amusement game centres, are prone to serious problems of illegal smoking. The Government should study whether the licensing authorities and departments concerned can be authorised to introduce tobacco control requirements in the licensing conditions of such premises.

Recommendations

15. In the light of the above, The Ombudsman makes 11 improvement recommendations to the Government:

Improving Enforcement Efficiency

- (1) to step up night-time enforcement actions (especially before, after and during public holidays);
- (2) to review any need to beef up the existing manpower of the TCO, and examine the reasons behind the high turnover rate;
- (3) to strengthen communication with complainants to obtain more details about the smoking offences, so as to avoid wasting manpower resources;
- (4) to review and tighten up the timeframe for the first inspection;
- (5) to set inspection priorities for different locations;
- (6) to strengthen publicity and encourage eye-witnesses to come forward and testify against smoking offenders;
- (7) to enhance the role of plain-clothes officers in taking enforcement actions;

Establishing an Effective Coordination Mechanism

- (8) to establish an effective mechanism for coordinating at a higher level tobacco control measures of different departments and policy bureaux;
- (9) to formulate strategies for monitoring and encouraging venue managers (especially for those “locations requiring intensive inspections”) to perform their tobacco control duties;

Remedying Inadequate Legislation

- (10) to take reference from overseas experience and consider reviewing the existing legislation, thereby imposing criminal liabilities on those venue managers who acquiesce to or condone illegal smoking on their premises (especially regarding cases of illegal smoking by employees); and
- (11) to discuss with various licensing authorities and the Department of Justice how to introduce licensing conditions under different legislation to mandate performance of tobacco control duties by venue managers.



Lands Department (“LandsD”)

Case No. OMB/DI/406 Lands Department’s Enforcement against a Village House with Irregularities

(Investigation declared on 4 May 2016 and completed on 4 September 2017; full report [Chinese version only] available at www.ombudsman.hk)

Background

The owner of a piece of agricultural land (“the Agricultural Land”) in the New Territories had engaged in a number of irregularities for more than 20 years. The irregularities included:

- (1) breach of the conditions of the Short Term Waiver (“Waiver”) granted to New Territories Exempted Houses (“NTEHs”);
- (2) erection of unauthorised structures on private agricultural land; and
- (3) illegal occupation of Government land.

Despite having known the situation for a long time, LandsD had not taken any effective enforcement action.

2. In this light, The Ombudsman initiated a direct investigation to probe into the underlying causes and identify any problem in LandsD’s enforcement regime.

Relevant Legislation and Enforcement Policy

3. A Waiver carries restrictive conditions on the height, area and use of the NTEH. Any breach of those conditions may lead to cancellation of the Waiver. An NTEH having had its Waiver cancelled would be regarded as being in breach of the land lease conditions ("lease conditions").

4. Erecting unauthorised structures on private agricultural land also constitutes breach of the lease conditions. LandsD may take lease enforcement actions against the land owner, including issuance of a warning letter and registration of the warning letter at the Land Registry if the irregularity persists. Under the new policy established in April 2014, if irregularities are not rectified despite registration of the warning letter, LandsD will proceed to re-enter the agricultural land pursuant to section 7 of the Government Rights (Re-entry and Vesting Remedies) Ordinance ("the Re-entry Provision").

5. Where illegal occupation of Government land is found, LandsD may post a notice under section 6 of the Land (Miscellaneous Provisions) Ordinance ("the Occupation of Government Land Provision"), ordering the occupier to cease occupation of the land by a specified date. If the notice is not complied with, LandsD may take possession of the property or structure(s) on the land and institute prosecution against the occupier. If convicted, the occupier may be subject to a fine. LandsD may also remove the structure(s) and recover the costs incurred from the convicted occupier.

Our Findings and Comments

6. Our investigation reveals the following improprieties in LandsD's enforcement actions against the Village House with irregularities.

Laxity and Delay in Cancelling the Waiver

7. When the local District Lands Office ("DLO") of LandsD conducted its first inspection of the NTEH concerned ("the House") in 1995, it failed to notice that a significant part of the House had encroached on Government land. It was not until 2002 that LandsD noticed various irregularities. This shows that its inspections were far from thorough. LandsD had taken more than eight years before deciding to cancel the Waiver in 2004, and the nine inspections conducted were totally ineffective. LandsD simply turned a blind eye to the continual unauthorised extensions of the House and tolerated the irregularities, resulting in a waste of manpower, resources and time.

Inappropriate Strategy for Prioritising Cases and Delay in Tackling Problem

8. The New Territories Action Team ("Action Team") of LandsD took over the case from DLO in 2007. At first, the Action Team adopted a strategy of "straightforward cases first, thorny cases last" (i.e. to handle simple cases first) and "last-in-first-out" (i.e. to handle the most recent cases first) for outstanding cases that did not pose a threat to public safety or require urgent action, so that more outstanding cases could be completed quickly. Since the House did not pose any threat to public safety or require urgent action, and the problem was "difficult" and long standing, the Action Team withheld action for more than six years – a serious delay indeed.

9. It would not have been a big problem if the strategy of "straightforward cases first, thorny cases last" and "last-in-first-out" had merely been a temporary measure as to clear outstanding cases. However, LandsD had never reviewed the strategy. As a result, a number of serious and complicated cases (including this one) had remained outstanding for years, thus allowing offenders to continue to enjoy benefits that they did not deserve and encouraging others to do the same.

10. The saving grace was that after our intervention, the Action Team finally revised its strategy to give priority to long standing cases.

Indecisiveness in Enforcement Actions

11. The Action Team initiated enforcement actions against the House in 2014. Nevertheless, during the subsequent three years, it did not demolish, or compel the owner to demolish, the unauthorised structures on the Agricultural Land and the Government land concerned. This shows the indecisiveness of the Action Team in taking enforcement actions. Moreover, after a registration of warning letter had been executed, the irregularities on the Agricultural Land persisted, and yet the Action Team did not proceed to activate the procedures to re-enter the Agricultural Land. Besides, the Action Team repeatedly prosecuted the owner without exercising its statutory power under “the Occupation of Government Land Provision” to take possession of the Government land concerned and demolish the unauthorised structures on it, and that was not cost-effective at all.

“Order of Priority” to account for “Inaction”

12. In defending the failure of DLO and the Action Team to take concrete enforcement actions against the irregularities of the House, LandsD gave the following reasons: breach of conditions of a Waiver was not accorded “high priority” under the then prevailing guidelines; a case of an NTEH having had its Waiver cancelled was of “medium priority”; and this case “posed no hazard” and was “not urgent”. We find those reasons hardly acceptable. Furthermore, under LandsD’s guidelines, there is no timeframe for enforcement actions against cases accorded “high”, “medium” and “low” priorities. That is tantamount to connivance at persistent offence.

Recommendations

13. The Ombudsman recommends that LandsD:

- (1) set a target completion date for processing each case for enforcement staff to follow; and
- (2) step up its enforcement efforts on this case; should the irregularities persist, LandsD should demolish the unauthorised structures and re-enter the land so as to eradicate the problem once and for all.



Lands Department (“LandsD”) and Food and Environmental Hygiene Department (“FEHD”)

Case No. OMB/DI/405

Government’s Regulation of Factory Canteens

(Investigation declared on 25 April 2016 and completed on 9 May 2017; full report [Chinese version only] available at www.ombudsman.hk)

Background

The rapid development of industries in Hong Kong during the 1950s and 1960s had fostered the emergence of factory canteens that provided meals for factory workers in industrial buildings. It has been the Government’s requirement since 1 August 1980 that all factory canteens must obtain a factory canteen licence before opening for business. If operating a factory canteen is against the land lease conditions of the industrial building, the land owner must also apply to the Government for a waiver/modification of the lease conditions.

2. FEHD is responsible for approving and issuing factory canteen licences. The licence requires that a factory canteen can only serve factory employees who work in that same building, and such employees must hold an employee card signed and issued by their employer. Besides, the standards specified in a factory canteen licence for food room and lavatory are lower compared with those of a general restaurant licence.

3. LandsD is responsible for processing applications by factory canteen operators for lifting the land use restrictions in the land lease. It would issue a “waiver letter to permit a canteen within an industrial building” (“Waiver”) to the owner of the industrial unit. Having obtained a Waiver, the factory canteen operator need not pay an additional premium to the Government to make up for the difference in rateable value of the premises resulting from waiving the land lease conditions (“waiver of additional premium”). Nevertheless, the factory canteen must observe the following conditions:

- (1) It can only serve factory employees working in the same building.
- (2) It should not have a separate entrance/exit, or one (except fire escape) that directly leads to a public road, street or land.
- (3) It should not display promotional materials such as signs, notices or posters, or use transparent or semi-transparent materials for its external walls, such that passers-by would be aware of its existence.

4. In recent years, however, many factory canteens, in blatant violation of the licensing requirements and lease conditions, serve public customers in a high-profile manner. This begs concern whether the facilities for fire safety and food hygiene of those canteens are suitable for serving public customers. In this light, The Ombudsman conducted this direct investigation to examine the Government’s regulation of factory canteens.

Our Findings and Comments

Wrongful Activities of Factory Canteens Very Common

5. FEHD’s records showed that as at July 2016, there were 471 licensed factory canteens in Hong Kong. The number of factory canteens has risen instead of fallen, despite dwindling factory jobs over the years.

6. Evidence suggesting that factory canteens are apparently serving public customers includes:

- (1) newspaper columns and food magazines from time to time recommending certain factory canteens to the general readers;

- (2) websites and dedicated pages in social media networks set up by factory canteens for promotion; and
- (3) the personal experience of our investigation officers patronising factory canteens many times and not having been asked whether they were factory employees.

7. Activities of factory canteens that violate the lease conditions include:

- (1) factory canteens located on the ground level using the means of escape leading to the public streets as an entrance/exit for customers; and
- (2) factory canteens enjoying a Waiver but using transparent materials for external walls, putting up signs and displaying menus and other promotional materials to attract customers.

Adverse Consequences and Impact of Factory Canteens’ Breach of Licence/Lease Conditions

8. Where factory canteens breach the licence and lease conditions by serving public customers, the following adverse consequences and impact may arise:

- (1) The Fire Services Department has reminded factory canteens that members of the public may not be familiar with the internal setting of the industrial building, and so public customers would have to face higher risks in case of a fire outbreak.
- (2) The standards of food room and lavatory in a factory canteen may not be able to cope with a heavy flow of public customers. Food safety and hygiene may thus be compromised, posing hazards to the customers.
- (3) Factory canteens can operate at lower costs compared with general restaurants. This will constitute an unfair competitive advantage if they are open to public customers.

- (4) Factory canteens in violation of the Waiver should not be granted a “waiver of additional premium”. Allowing them to serve public customers would mean a loss of revenue to the Government.

Out-dated Licensing Policy on Factory Canteens

9. The policy relating to licensing of factory canteens continues to allow the total area of factory canteens (irrespective of their number) in an industrial building to be as much as 10% of the gross floor area of the building, even though the real demand for factory canteens has greatly dropped over the years with factory jobs dwindling. For the past 40 years, the Government has not conducted any comprehensive review of the licensing policy, nor plugged the loopholes in the system. Consequently, many operators have exploited the loopholes, obtained factory canteen licences, and are able to enjoy the lower costs of operating food establishments in industrial buildings that serve public customers.

Lack of Rigorous Control by Both Departments in Approving Applications

10. FEHD adopts a lax attitude towards the kind of cuisines and food that factory canteens can serve. It fails to consider whether the standard of food room in factory canteens can cope with the sumptuous cuisines and banquets that are being offered. On the pretext of “business competition”, the Department has instead allowed factory canteens to provide a wide variety of services or even sell alcoholic drinks, offer children’s meals and organise cooking classes. This has deviated significantly from the original purpose of setting up a factory canteen, i.e. to serve factory employees working in the same industrial building.

11. Similarly, LandsD fails to consider and assess prudently whether each application is fully justified before granting a Waiver. Information shows that around 60% of factory canteens are on the ground level of industrial buildings, with quite a number of them located in the now commercialised districts, such as Kwun Tong. Given the large number of Waivers granted, the amounts of additional premiums thus waived are obviously rather substantial.

FEHD Turning a Blind Eye in Routine Inspections

12. FEHD in the past seldom took enforcement action against factory canteens which served public customers in breach of the licence conditions. Between 2012 and 2015, FEHD issued only one verbal warning against one such canteen. We found that FEHD officers did not ask the canteen operators to check the employee cards of customers, nor did they conduct any decoy operations during routine inspections of factory canteens.

LandsD’s Inadequate Enforcement Actions against Violation of Lease Conditions

13. LandsD’s enforcement actions against violation of lease conditions by factory canteens are extremely inadequate. In one case, LandsD was only concerned about the interests of the owners of a certain industrial building and failed to take lease enforcement action against a factory canteen in breach of the lease conditions for some 30 years. Some other cases showed that the Department only took enforcement action against violation of the lease conditions by the factory canteens concerned in a superficial manner. Consequently, the canteens only covered up their shop signs and put up directional signs for entrance/exit. They continued to serve public customers and use the means of escape for access by customers.

Lack of Coordination Weakening Enforcement Efforts

14. One case showed that FEHD and LandsD had shirked their enforcement responsibilities to each other. As a result, the factory canteen continued to operate in breach of the lease conditions. FEHD also failed to refer some cases of violation of the lease conditions by factory canteens in a timely manner to LandsD for follow-up. The above reflects deficiencies in the referral and coordination mechanism between the two departments.

Recommendations

15. The Ombudsman recommends that:

LandsD

- (1) tighten up the system for granting the Waiver, so as to ensure that in all cases there is a genuine need to set up a factory canteen in the industrial building concerned;
- (2) take rigorous lease enforcement actions against those factory canteens violating the lease conditions;

FEHD

- (3) conduct a comprehensive and in-depth review of the policy on licensing factory canteens, jointly with relevant policy bureaux and Government departments, so as to ensure that a factory canteen licence will only be issued where the industrial building/factory concerned really needs a canteen;
- (4) draw up clear and specific inspection guidelines, enhance training and supervision of frontline officers, and conduct more decoy operations; and

LandsD and FEHD

- (5) set up a coordination and mutual referral mechanism for effective regulation of factory canteens, and clearly set out the powers and responsibilities of the two departments.



Leisure and Cultural Services Department ("LCSD")

Case No. OMB/DI/357

**Leisure and Cultural Services Department's
Criteria and Procedures for Procuring and
Withdrawing Library Materials**

(Investigation declared on 12 January 2016 and completed on 31 August 2017; full report [Chinese version only] available at www.ombudsman.hk)

Our Findings

Our investigation reveals ten inadequacies on the part of LCSD in the procurement and withdrawal of library materials, as well as coordination between these two processes.

Procurement of Materials

Obscure Rationale behind Procurement Target

2. Taking reference from the relevant policy formulated by the former Urban Council, LCSD has adopted for years an annual procurement target of acquiring "at least 700,000 items" for its library collections. However, LCSD has so far failed to explain the specific rationale for this target. In fact, for many years actual acquisition has exceeded the target, which shows that the target has failed to keep up with the times and the public could hardly monitor whether the quantity of library materials acquired was appropriate.

Continued Increase in Library Stock Despite Drop in Number of Loans

3. LCSD statistics show that the total stock of its public libraries has increased by 16.8% in the past eight years, but the number of items lent by public libraries each year has dropped by 18.2% over the same period. While LCSD contended that fluctuation in the number of loans was caused by multiple factors and not directly comparable with new acquisition, we consider it necessary for LCSD to conduct more robust analysis into the reasons behind the decline in loans. This will provide useful parameters for LCSD to review whether the quantity and types of library materials to be acquired every year need to be adjusted.

Lack of Records on Consolidation and Compilation Procedures and Justification of Master Procurement Plan for Verification

4. According to current procedures, librarians are required to prepare a Collection Development Plan (“the Plan”) every year for the libraries they are in charge of for submission to the Technical Processing Unit (“TPU”) for consolidation and compilation of an annual Master Procurement Plan (“the Master Plan”). However, our investigation has revealed that the librarians are only required to suggest in the Plan the total number of Chinese/English materials to be acquired but need not provide the categories and titles of materials or the reasons for “strengthening” certain subjects and the quantity to be acquired. Moreover, when compiling the Master Plan, the TPU will only follow certain general principles and take into account the available resources. There are no clear procedural guidelines on how the TPU would compile the Master Plan based on the Plans from individual libraries, nor are there any records documenting the justification for the procurement decisions made in the Master Plan.

No Means to Ascertain Whether the Plans Suggested by Individual Libraries are Implemented

5. On receipt of the newly acquired library materials allocated to them each year, individual libraries are not required to check against their original procurement suggestions in the Plans to ascertain whether they have been implemented. Therefore, it is difficult for the libraries to evaluate whether the books and quantity of materials allocated by the TPU do meet their needs.

Withdrawal of Materials

Reasons for Withdrawing Individual Library Materials Unknown Prior to Mid-2015

6. According to LCSD’s procedural guidelines on withdrawal of library materials, those withdrawn must be worn out/damaged or outdated materials. Nevertheless, LCSD has all along maintained only lists of withdrawn materials without requiring its staff to record the reasons for withdrawal of individual items. It was not until mid-2015 that LCSD revised its guidelines, instructing its staff to record also the reasons for withdrawing individual library materials. The reasons for withdrawal of individual materials prior to that are, however, unknown and no statistics could be compiled for management analysis.

Management Information Regarding Withdrawal of Materials Still Inadequate After Mid-2015

7. Despite LCSD’s revision of the internal guidelines in mid-2015 to require its staff to record the reasons for withdrawal of library materials, the data collected did not help much in enhancing the standards of management of library collections.

Disposal of Withdrawn Library Materials by Means of Paper Recycling Should be Reviewed

8. Each year, LCSD withdraws hundreds of thousands of library materials and disposes of them as waste paper for recycling or as refuse in accordance with the Government's relevant regulations. Library materials are sources of knowledge and cultural information. It is a great pity that they are disposed of as waste paper for recycling.

Indecisiveness in Handling Publications of Listed Companies

9. Under the Books Registration Ordinance, all listed companies have to submit to LCSD's Books Registration Office five copies/sets of their publication for registration. After registration, three sets of those publications will be sent to university libraries and the Hong Kong Central Library. For the remaining two sets, LCSD, considering that the CD-ROMs containing information on listed companies donated monthly by the Hong Kong Exchanges and Clearing Limited ("HKEx") are sufficient for readers' use, decided in 2009 to dispose of them by means of paper recycling. In 2014, some newspaper commentaries criticised such practice. LCSD then considered there to be still public demand for printed copies of listed companies' publications in the Hong Kong Exchanges Collection¹, finally retracted its previous decision and resumed the practice of placing the two copies in the Reference Libraries of two public libraries for public use.

10. The incident above reflected LCSD's indecisiveness on whether to include the remaining two sets of publications of listed companies into its library collections. LCSD has failed to consider thoroughly the check-out rates of such materials and had to retract its decision in the face of public criticism. Nevertheless, the cost-effectiveness of the current practice is still open to question.

Coordination between Procurement and Withdrawal of Materials

Procurement and Withdrawal Should Complement Each Other

11. LCSD indicated that procurement and withdrawal of library materials are based on different objectives and visions. It also stated that while the two processes are not directly related, they could naturally adjust themselves to achieve a balanced mix in library collections. However, under the current mechanism, acquiring library materials is the sole responsibility of the Collection Development Meeting while withdrawing materials, the Departmental Disposal Committee. There is no arrangement for communication whatsoever between the two.

Information System on Library Materials Should be Enhanced

12. There are tremendous amounts of data on library materials kept in the computer information systems of public libraries. However, such data have not been integrated to become a useful management database for understanding the public's utilisation of library materials for adjustment of management strategies and measures. Upon our commencement of this direct investigation, LCSD set up a working group in 2016 on the enhancement of its library information systems to step up analysis and management of its library collections.

Our Recommendations

13. In view of the above inadequacies, The Ombudsman makes the following eight improvement recommendations to LCSD:

- (1) review the annual target of "procuring not less than 700,000 library items" and consider setting a clearer procurement target with good justification;
- (2) continue to examine the effectiveness of the revised Plan submitted by the libraries and make timely review and revision;

¹ The Hong Kong Exchanges Collection accommodates annual reports of and information on listed companies, which are donated by HKEx each month for public reference.

- (3) maintain records of the workflow of consolidating, adjusting and devising the Master Plan, as well as the justification for procurement decisions. LCSD should also consider setting up a mechanism for the libraries in all districts to give feedbacks upon receipt of their allocation of newly acquired materials;
- (4) record and make good use of the data on withdrawal of materials by conducting analysis for more effective monitoring of the withdrawal process and timely revision of management principles;
- (5) study with the policy bureaux/departments concerned to review and consider revising the current practice of disposing of withdrawn library materials as waste paper and refuse;
- (6) gather and analyse the check-out records of printed copies of publications of listed companies and related data for careful review of the disposal method of such publications;
- (7) consider setting up a mechanism for assessing whether library collections are in line with existing policies, coordinate procurement and withdrawal of library materials to achieve a balanced mix in the library collections; and
- (8) expedite the enhancement of computer information systems of public libraries for more effective management of library collections.



Social Welfare Department (“SWD”)

Case No. OMB/DI/386

Social Welfare Department’s Support Services for Persons with or Suspected to Have Mental Health Problems and Their Families/Carers and Neighbours

(Investigation declared on 1 August 2016 and completed on 29 December 2017; full report [Chinese version only] available at www.ombudsman.hk)

Background

The Social Welfare Department (“SWD”) is responsible for providing community support services for mental patients and persons suspected to have mental health problems, their families, carers and local residents. SWD has engaged non-governmental organisations (“NGOs”) by way of “Lump Sum Grant” service agreements to set up Integrated Community Centres for Mental Wellness (“Wellness Centres”) in various districts, offering one-stop and community-based support services ranging from early prevention to crisis management for the aforementioned target groups.

2. This direct investigation aims to explore whether SWD has been providing adequate community services for persons with or suspected to have mental health problems, their families, carers and people living in the neighbourhood (generally referred to as “neighbours”).

Our Findings

3. We have found the following problems in the support services provided by SWD.

Problem (1): Different Parties Have Different Interpretations Regarding Target Groups of Wellness Centres

4. Regarding the question of target groups of the Wellness Centres, especially whether the neighbours of persons with or suspected to have mental health problems are included, there are different interpretations among SWD as the subventor of the Wellness Centres, the social services and rehabilitation sectors as the service operators and the Hospital Authority (“HA”), which has frequent contacts with mental patients.

5. Since the relevant documents and publicity materials have not stated clearly whether the target groups of the Wellness Centres include the neighbours of persons with or suspected to have mental health problems, there may be misunderstanding among the staff of the Wellness Centres and members of the public who need help from the Centres.

Problem (2): Good Use Should be Made of Neighbours’ Observations in Pursuing Cases of Persons Suspected to Have Mental Health Problems

6. Neighbours may have some degree of knowledge and understanding about the condition of persons with or suspected to have mental health problems. It is our view that SWD and the Wellness Centres should consider paying more heed to the neighbours’ observations and actively approach those persons suspected to have mental health problems. The Wellness Centres can notify community nurses or medical social workers of the condition of those persons for suitable follow-up action.

Problem (3): SWD Does Not Adequately Monitor Wellness Centres’ Service Quality

7. All the Wellness Centres are subject to SWD’s monitoring and are required to submit regular statistical reports and self-assessment reports to the Department.

The performance standards stipulated by SWD for all the Wellness Centres cover a wide range of output indicators, including the number of new cases, new members and outreaching visits.

8. In the past few years, all the Wellness Centres have been able to achieve the stipulated levels in respect of all the above performance standards. Yet, what SWD mainly examines are the quantitative data submitted by the Wellness Centres and the Centres’ levels of outputs with reference to the output standards. SWD should more proactively monitor how all the target groups of the Wellness Centres (including family members, carers and neighbours of persons with or suspected to have mental health problems) are utilising the services in order to strengthen its regulation of service quality.

Problem (4): Publicity and Information about Wellness Centres Are Still Inadequate

9. The services of the Wellness Centres are published mainly through SWD’s website and hotlines, together with the Centres’ own pamphlets and various promotional, educational and community linkage activities. SWD has not made adequate efforts to publicise and promote the services of the Wellness Centres, and hence many people still know very little about the services. SWD should step up its publicity about the role, target groups and scope of services of the Wellness Centres together with the relevant complaint channels, so as to enhance the effectiveness of the Wellness Centres.

Problem (5): Complaint Handling Mechanism Needs Enhancement

10. SWD refers all complaints that it receives about the services of the Wellness Centres to the Lump Sum Grant Independent Complaints Handling Committee (“ICHC”) for handling. Nevertheless, the ICHC mainly handles complaints relating to “lump sum grants” and it normally does not handle anonymous complaints or complaints about staff attitude of the Wellness Centres. For complaints involving the professional judgement of individual officers of the NGOs concerned, the ICHC will not take any action either, because they are regarded to be outside the Committee’s ambit. Consequently, SWD itself rarely takes action on public complaints about the services of the Wellness Centres.

11. We consider that SWD has a responsibility to better understand the operations of the Wellness Centres and to identify room for improvement, through complaints lodged by the service users. That would make its monitoring of the Centres' services more effective.

12. Furthermore, SWD should not lightly dismiss anonymous complaints and complaints about staff attitude. Even if not all the facts can be determined in the end, SWD should at least remind the NGOs concerned to rectify any errors found and to aspire to higher standards. Besides, we find it unacceptable that SWD should have given such reasons as "professional judgement is outside the ICHC's ambit" for not pursuing complaints involving professional judgement.

Recommendations

13. The Ombudsman recommends that SWD:

- (1) clarify the target groups of the Wellness Centres so as to include also the neighbours who need their services, and give such information clearly in relevant documents;
- (2) instruct the Wellness Centres to enhance communication with the neighbours, conduct more outreach projects and make more joint efforts with other service agencies in the community, so that better assistance can be provided to persons with or suspected to have mental health problems;
- (3) strengthen its monitoring of the quality of services provided by the Wellness Centres, including also the utilisation of services by all the target groups (such as the family members, carers and neighbours), rather than relying predominantly on quantitative data;
- (4) step up publicity of and disseminate more information about the Wellness Centres; and
- (5) review its guiding principles and mechanism of handling complaints against the Wellness Centres, so as to reinforce its role in overseeing those Centres.



Water Supplies Department ("WSD")

Case No. OMB/DI/390
**Water Supplies Department's Maintenance
of Government Water Mains and Risk
Management**

(Investigation declared on 2 October 2015 and completed on 29 March 2018; full report [Chinese version only] available at www.ombudsman.hk)

Background

Water is a very precious resource in Hong Kong. In recent years, however, there have been frequent incidents of water main bursts (both fresh and salt water mains). Those incidents have not only caused inconvenience to the public, but also resulted in huge waste of fresh or salt water.

2. The leakage rate of water mains in Hong Kong (15.2%) compares unfavourably with other countries and cities (e.g. 5% in Singapore and 8% in Lisbon). If WSD can manage to reduce the leakage rate in Hong Kong to 5%, it would mean an annual reduction of fresh and salt water loss equivalent to 38,429 and 10,883 standard-size swimming pools respectively. The amount of fresh water thus saved could meet the demand of some 2 million people in Hong Kong for a year. At the average cost of Dongjiang water over the past three years, the expenditure saved would amount to HK\$530 million.

Our Findings

3. This direct investigation reveals inadequacies on the part of WSD in three aspects, namely, minimising water main bursts, follow-up actions on cases of water main bursts, and reducing leakages.

I. Minimising Water Main Bursts

(A) Failure to Target Hot Spots of Water Main Bursts for Monitoring and Follow-up Actions

4. At certain locations, incidents of water main bursts occurred several times within a few years. Shortly after WSD's repair works, the water mains burst again. Nevertheless, it was not until December 2016 (i.e. more than one year after the commencement of this direct investigation) that WSD listed those locations with recurrent bursts as "hot spots" and started analysing the reasons behind. We consider that WSD should closely monitor those "hot spots" and prioritise them for prompt follow-up actions.

(B) Lack of Deterring Penalty against Public Works Contractors for Damaging Water Mains

5. In the past five years, the amount of compensation recovered by WSD from public works contractors for damaging water mains was just \$31,000 per case on average, reflecting a lack of deterrent effect. WSD should remind all works departments concerned that such poor performance (for damaging water mains) should be properly reflected under their existing evaluation systems for contractors.

(C) Ambiguous Assessment Criteria Regarding Risk of Damage of Water Mains

6. WSD has not drawn up clear and objective criteria for its special inspection team to assess the risk of damage of water mains. As a result, inconsistencies may arise and some of the water mains that require inspection may be left out inadvertently.

II. Following up on Cases of Main Bursts

(A) Lack of Performance Targets on Resumption of Salt Water Supply

7. WSD has not set performance targets on the time required for resuming salt water supply after a main burst, and the time required to resume salt water supply tended to be much longer than that for fresh water supply. We opine that WSD should consider setting specific performance targets on the resumption of salt water supply, and examine the reasons behind the longer time required for resuming salt water supply, with a view to initiating and implementing improvement measures.

(B) Performance Targets Too Complicated

8. WSD's performance targets on handling cases of main bursts, and its performance in meeting those targets as presented on its website, are unclear. We consider that Government departments should set and present clear performance targets for easy understanding to facilitate monitoring by the public.

III. Reducing Leakages in Water Mains

(A) WSD Should Actively Examine and Introduce the Latest Leak Detection Technologies

9. We consider that WSD should take reference from other cities' experience and double its efforts in survey, leak detection technologies and water pressure management, so as to further reduce the leakage rate of our water mains.

(B) WSD Should Set Performance Targets on Reducing Leakage Rate and Regularly Publish the Latest Data

10. WSD should set targets on further reducing the leakage rate of water mains and publish regularly the latest leakage rate and its target leakage rate to facilitate public monitoring.

(C) No Comprehensive Measures Following the Replacement and Rehabilitation Programme of Water Mains to Ensure Stability of Water Supply Network

11. WSD completed the Replacement and Rehabilitation Programme of Water Mains in 2015. Thereafter, WSD monitors water main leakages through the Water Intelligent Network (“WIN”), which, however, will not be fully established until 2023.

12. We consider that WSD should make ongoing assessment regarding risk of bursts and leakages of water mains and, where necessary, replace those mains with high risk or repeated bursts and leakages. Moreover, it should expedite the establishment of WIN.

Recommendations

13. In the light of the above, The Ombudsman makes ten improvement recommendations to WSD:

Minimising Water Main Bursts

- (1) to monitor closely the main bursts “hot spots”, prioritise its follow up works, and actively carry out improvement works;
- (2) to remind other Government departments of the need to reflect the poor performance of any contractors who have damaged water mains in their evaluation reports in order to exert a greater deterrent effect;
- (3) to revise the guidelines for inspection of road works and set out objective criteria for planning inspections;

Following up Water Main Bursts

- (4) to examine the reasons for the longer time required for resuming salt water supply than for resuming fresh water supply, and initiate and implement improvement measures;
- (5) to consider setting performance targets on the time required for resuming salt water supply after main bursts;
- (6) to review and simplify the performance targets for follow-up actions on cases of water main bursts;

Further Reducing Leakage Rate of Water Mains

- (7) to further reduce the leakage rate of water mains in Hong Kong;
- (8) to set targets on reducing the leakage rate and publish regularly the latest leakage rate;
- (9) during the establishment of WIN, to implement asset management measures to maintain the stability of the water supply network; and
- (10) to expedite the full implementation of WIN.



Index of Cases Concluded by Full Investigation

(An asterisk (*) at the end of a case number indicates that a relevant case summary is available in Annex 8 or 9)

Case no.	Complaint	Overall conclusion	No. of recommendations
Agriculture, Fisheries and Conservation Department			
2017/1437A	Shirking responsibility in following up a complaint about river odour	Unsubstantiated	1
Architectural Services Department			
2016/4435B	Shirking responsibility in handling a complaint about the drainage system of a cooked food centre	Unsubstantiated	0
Buildings Department			
2016/4460B	Failing to take due enforcement actions against unauthorised building works associated with radio base stations on the rooftop of a village house	Unsubstantiated	0
2017/0064A	Unreasonably permitting a change of use from a unit designated for commercial purposes to a residential care home for the elderly, and failing to notify other residents of the building of the decision	Unsubstantiated	0
2017/0264	(1) Delay in issuing removal orders (unsubstantiated but other inadequacies found); and (2) Unreasonably issuing a removal order against a rooftop fresh water tank already in use for years (unsubstantiated)	Unsubstantiated but other inadequacies found	1
2017/0411B	Delay in taking substantive actions in investigating the cause of a seepage nuisance	Partially substantiated	2
2017/0827B	(1) Unreasonably using moisture content readings as the only factor in deciding whether or not to take up a seepage complaint (unsubstantiated); and (2) Failing to ensure that its order for proper repair of a defective drainage pipe was complied with (unsubstantiated)	Unsubstantiated	0
2017/1112	Wrongly ordering the complainant to repair his premises, disregarding the fact that the damage was caused by seepage from a flat roof that did not belong to the complainant	Unsubstantiated	0
2017/1529	(1) Delay in enforcing the statutory orders against two unauthorised doorways (unsubstantiated); and (2) Unreasonably accepting the owner's alteration of one of the doorways by installing a wooden door (unsubstantiated)	Unsubstantiated	1

Case no.	Complaint	Overall conclusion	No. of recommendations
2017/1531A	Failing to take enforcement action against a person who created seepage nuisance	Unsubstantiated	0
2017/2085	Delay in including an estate under the Mandatory Window Inspection Scheme, thereby ignoring the safety of its residents and passers-by	Unsubstantiated	0
2017/2633	(1) Ineffective action in following up the problems of ceiling concrete spalling and water seepage in a flat (unsubstantiated); and (2) Delay in removing an unauthorised rooftop structure (substantiated)	Partially substantiated	1
2017/3072*	Unreasonable delay in recovering the cost for removal works from the complainant	Substantiated	1
2017/3308*	Failing to take effective enforcement action against an unauthorised building works item on the rooftop of a building	Partially substantiated	2
2017/3325	Wrongly sending letters addressed to someone else to the complainant's residential address	Unsubstantiated	1
2017/3618A	Delay in taking enforcement action against the unauthorised building works on the rooftop of a village house	Unsubstantiated	0
2017/3734*	Delay in taking enforcement action against an unauthorised building works item on the rooftop of a building	Partially substantiated	2
2017/3984	Failing to take enforcement action against alleged extension of business area by two restaurants in contravention of approved plans	Unsubstantiated	0
Civil Aviation Department			
2017/4552(I)	Refusing to provide the list of stakeholders involved in the consultancy study on the regulation of unmanned aircraft systems	Unsubstantiated	0
Civil Engineering and Development Department			
2017/3278(I)	Unreasonably refusing to release the feasibility study report on a development project	Unsubstantiated	0
2017/3496B	Providing inaccurate information when responding to an enquiry from another Government department	Unsubstantiated	0
Correctional Services Department			
2017/3336(I)	Refusing to provide information on complaints about excessive use of force by staff of correctional institutions	Unsubstantiated	0

Case no.	Complaint	Overall conclusion	No. of recommendations
Department of Health			
2016/4669B 2016/4670B 2016/4671B 2016/4688B 2016/4714B	(1) Adopting the unfair principle of “one profession, one professional body, one register” and failing to properly implement the “Accredited Registers Scheme for Healthcare Professions” (unsubstantiated); (2) Failing to include a certain healthcare profession in the Scheme (unsubstantiated); (3) Refusing to investigate the complaints against a healthcare professional body (unsubstantiated); and (4) Failing to conduct proper consultation (unsubstantiated)	Unsubstantiated	0
2017/4170	(1) Mishandling a case about an outbreak of norovirus gastroenteritis involving the complainant’s shop (unsubstantiated); and (2) Disclosing the name of the shop to the media (unsubstantiated)	Unsubstantiated	0
Drainage Services Department			
2016/4435C	Shirking responsibility in handling a complaint about the drainage system of a cooked food centre	Unsubstantiated	0
2017/0920	Failing to actively look for a long-term solution to the problem of blockage in a public sewer	Unsubstantiated	0
2017/1437B	Shirking responsibility in following up a complaint about river odour	Unsubstantiated	1
2017/4030A	Unreasonable delay in carrying out a village sewerage project, thereby affecting the environmental hygiene of a village	Unsubstantiated	1
2017/4287A	(1) Unreasonably carrying out sewerage works on the complainant’s land (unsubstantiated); and (2) Failing to notify the complainant before commencing the works (unsubstantiated)	Unsubstantiated	0
Electrical and Mechanical Services Department			
2016/3937*	Failing to make a fair assessment of the complainant’s products and giving misleading technical comments	Partially substantiated	1
Environmental Protection Department			
2016/4178B	Failing to take effective measures to thoroughly resolve the problem of accumulation of refuse at a location	Unsubstantiated	1
2017/1321A	Mishandling the problem of construction waste dumping in the back alley of a building	Unsubstantiated	0
2017/1437C	Shirking responsibility in following up a complaint about river odour	Unsubstantiated	1

Case no.	Complaint	Overall conclusion	No. of recommendations
2017/2136	Unnecessarily photographing the complainant's identity card and keeping the photograph as record while taking enforcement action	Substantiated	1
2017/3013	Failing to properly handle the noise nuisance caused by a shop in loading/unloading goods in the small hours of the morning and using loudspeakers to attract customers	Unsubstantiated	1
2017/3496A	Failing to properly follow up the nuisance caused by gas and odour emitted from the chimney of a factory	Unsubstantiated	1
2017/4150	(1) Unreasonably relying on roadside remote sensing equipment to assess that a vehicle had emitted excessive exhaust, and requiring the owner to arrange for a vehicle emission test (unsubstantiated); and (2) Refusing to refund the vehicle emission test fees despite proof that the vehicle was not emitting excessive exhaust (unsubstantiated)	Unsubstantiated	1
Fire Services Department			
2017/2868	Wrongly sending letters addressed to someone else to the complainant's residential address	Unsubstantiated	1
2017/5147	Failing to take enforcement action against alleged illegal extension of business area and obstruction of fire escape route by two restaurants	Unsubstantiated	0
Food and Environmental Hygiene Department			
2016/3796	Failing to take effective enforcement action against illegal hawking activities	Substantiated	2
2016/3985	Judging that a Nuisance Notice had been complied with before entering the unit suspected to be the source of water dripping and turning on its air-conditioner for water dripping test	Substantiated	1
2016/4178A	Failing to take effective measures to thoroughly resolve the problem of accumulation of refuse at a location	Unsubstantiated	1
2016/4191	Unreasonably exercising discretion to allow a licensed hawker stall to extend its shopfront beyond the designated area into part of a walkway	Unsubstantiated	0

Case no.	Complaint	Overall conclusion	No. of recommendations
2016/4435A	Shirking responsibility in handling a complaint about the drainage system of a cooked food centre	Unsubstantiated	0
2016/4625	Failing to stop some market stalls from being used for storage or subletting	Partially substantiated	1
2017/0109C	Failing to properly follow up the obstruction problem caused by a shop-front platform encroaching on the pavement	Unsubstantiated	0
2017/0391	(1) Unreasonably issuing a court summons without having first re-issued a fixed penalty notice after amending the place of offence (unsubstantiated); and (2) Delaying the issuance of a letter amending the place of offence (unsubstantiated)	Unsubstantiated	1
2017/0411A	Delay in taking substantive actions in investigating the cause of a seepage nuisance	Partially substantiated	2
2017/0635C	Ineffective action in handling street sleeper problems	Unsubstantiated	0
2017/0657	Failing to take action against a man seen littering on a street	Unsubstantiated	0
2017/0827A	(1) Unreasonably using moisture content readings as the only factor in deciding whether or not to take up a seepage complaint (unsubstantiated); and (2) Failing to ensure that its order for proper repair of a defective drainage pipe was complied with (unsubstantiated)	Unsubstantiated	0
2017/1224	Ineffective enforcement action against the problem of garbage and objects dumped on a vehicular access	Partially substantiated	2
2017/1321B	Mishandling the problem of rubbish dumping in the back alley of a building	Unsubstantiated	0
2017/1531B	Failing to take enforcement action against a person who created seepage nuisance	Unsubstantiated	0
2017/1842	Ineffective enforcement action against on-street photographers	Unsubstantiated	0
2017/2390	Failing to properly resolve the problem of unlicensed hawkers outside a market	Unsubstantiated	2
2017/2443A*	Failing to properly resolve a problem of dumping of large amounts of waste at a public place	Partially substantiated	2
2017/2550A*	Failing to properly resolve the environmental hygiene nuisance caused by the obsolete facilities of a public toilet	Unsubstantiated	0

Case no.	Complaint	Overall conclusion	No. of recommendations
2017/2614A	Failing to properly follow up the problem caused by on-street barbers at a site	Unsubstantiated	1
2017/2753*	Failing to tackle effectively illegal extension of business areas by cooked food stalls	Partially substantiated	1
2017/2782	Wrongly alleging that the premises used by the complainant for application of Fresh Provision Shop Licence was not for commercial use and rejecting the application	Unsubstantiated	0
2017/3084A	Failing to take effective enforcement action against street obstruction by shops and illegal occupation of an alley by restaurants	Substantiated	3
2017/3134(I)	(1) Failing to take enforcement action against a newspaper stall for breaching licensing conditions (unsubstantiated); (2) Failing to properly handle the complainant's request for relocating the stall (substantiated); and (3) Failing to provide the complainant with the information requested (partially substantiated)	Partially substantiated	1
2017/3283	Impropriety in dealing with the complainant's query about why he should be held responsible for a mistake in urn grave number not made by him	Unsubstantiated	1
2017/3397	Unreasonably requiring the complainant to pay the fee again for changing the date of cremation due to typhoon	Partially substantiated	0
2017/3508A	Failing to effectively tackle the problem of garbage dumping in an open space	Partially substantiated	3
2017/3512*	Failing to properly resolve the problem of unlicensed hawkers	Substantiated	0
2017/3527	Failing to take effective enforcement action against street obstruction by a newspaper stall	Partially substantiated	2
2017/3572(I)	Refusing to provide the minutes and audio records of two meetings of the Liquor Licensing Board	Unsubstantiated	1
2017/3797	Failing to provide preliminary replies to the complainant's two complaints according to its performance pledge	Partially substantiated	0
2017/3833	Failing to prosecute two provisional restaurants for their alleged illegal extension of business area	Unsubstantiated	2
2017/4223	Unreasonable procedures for handling applications for scattering of cremated human ashes into sea	Unsubstantiated	0

Case no.	Complaint	Overall conclusion	No. of recommendations
2017/4570	Failing to properly handle the environmental hygiene problems caused by the Yu Lan Festival activities held by an organisation	Unsubstantiated	0
2017/4576	Failing to take enforcement action against illegal extension of business area by shops along a street	Partially substantiated	1
Government Property Agency			
2016/2666A(I)	Refusing to provide the complainant with the information requested concerning the assessment mechanism for determining the renewal licence fee of a Government leased site, and rejecting any opportunity of communication	Substantiated	3
Government Secretariat – Education Bureau			
2017/1414	Providing misleading information, resulting in termination of the complainant's provident fund account	Unsubstantiated	0
2017/1539	Unreasonably refusing to transfer the copyright and intellectual property rights of the project materials created by the complainant in a project	Unsubstantiated	1
2017/1890	Failing to properly handle the issue of score deduction mechanism adopted by a primary school regarding its students' internal assessments	Unsubstantiated	0
2017/2687	Wrongly allocating a Band 2 school place to a Band 1 student in the Central Allocation stage of secondary school places	Unsubstantiated	0
2017/3116	Unreasonably rejecting the complainant's non-means-tested subsidy application for attending first-year courses of a self-financing undergraduate programme	Unsubstantiated	0
Government Secretariat – Food and Health Bureau			
2016/4669A 2016/4670A 2016/4671A 2016/4688A 2016/4714A	(1) Adopting the unfair principle of "one profession, one professional body, one register" and failing to properly implement the "Accredited Registers Scheme for Healthcare Professions" (unsubstantiated); (2) Failing to include a certain healthcare profession in the Scheme (unsubstantiated); (3) Refusing to investigate the complaints against a healthcare professional body (unsubstantiated); and (4) Failing to conduct proper consultation (unsubstantiated)	Unsubstantiated	0

Case no.	Complaint	Overall conclusion	No. of recommendations
Government Secretariat – Transport and Housing Bureau			
2017/1838	(1) Delay in responding to the complainant's enquiry (substantiated); (2) Failing to fully address the complainant's concern in its delayed reply (partially substantiated); and (3) Contacting the complainant via telephone, contrary to her wish (unsubstantiated)	Partially substantiated	2
2017/4339	Failing to properly supervise the Sales of First-hand Residential Properties Authority to investigate suspected violation of the Residential Properties (First-hand Sales) Ordinance by a vendor	Unsubstantiated	0
Highways Department			
2016/4178C	Failing to take effective measures to thoroughly resolve the problem of accumulation of refuse at a location	Unsubstantiated	0
2016/4917B	Failing to take proper action against illegal occupation of Government land by some structures	Unsubstantiated	0
2016/5045A*	Mishandling a complaint about inadequate safety measures for lifting operations in a Government infrastructure construction site	Substantiated	2
2017/0586(l)*	Failing to provide the price of fish fry and other information related to the Trial Fish Fry Release in 2014 under the Hong Kong-Zhuhai-Macao Bridge Project	Substantiated	2
2017/1054A	(1) Failing to explain to the Lands Department that regarding the complainant's allegedly illegal occupation of Government land with water pipes, the Government had assisted the complainant in replacing the water pipes (unsubstantiated); and (2) Trying to stay uninvolved in the allegation against the complainant for illegal occupation of Government land with water pipes and a contractor's proposed arrangement to replace the water pipes for the complainant (unsubstantiated)	Unsubstantiated	0
2017/1220B	Failing to solve the problem of insufficient heat insulation of bus stop shelters at a public transport interchange	Partially substantiated	3
2017/2623C	Failing to properly resolve the problem of illegal occupation of roadside metered parking spaces by bamboo poles for construction	Unsubstantiated	0

Case no.	Complaint	Overall conclusion	No. of recommendations
Home Affairs Department			
2016/4345B	Delay in repairing a vehicular and emergency escape route in a village	Unsubstantiated	0
2017/0109A	Failing to properly follow up the obstruction problem caused by a shop-front platform encroaching on the pavement	Unsubstantiated	0
2017/1084(I)	Refusing to provide the full version of a letter signed by some owners of the complainant's building	Unsubstantiated	0
2017/1783	(1) Unreasonably arranging two community halls to undergo maintenance works simultaneously during a festival period (unsubstantiated); (2) Failing to notify the complainant that the hall it intended to book would undergo maintenance works (unsubstantiated); and (3) Failing to let the complainant book the hall after cancellation of its maintenance works (unsubstantiated)	Unsubstantiated	1
2017/1855B	Failing to properly follow up the leakage problem of a drainage pipe in a village	Unsubstantiated	0
2017/2281	Unreasonably refusing to use a form stipulated by the Inland Revenue Department when processing a statutory declaration	Unsubstantiated	0
2017/3669A	(1) Attaching importance solely to opinions in support of an access road works project, without seriously considering the residents' concerns about the narrowed carriageway (unsubstantiated); (2) Failing to conduct adequate consultation for the residents of all buildings in the area to learn about the project and give their views (unsubstantiated); and (3) Failing to provide the results of local consultation (unsubstantiated)	Unsubstantiated	1
2017/3701	Failing to properly handle the environmental hygiene problems caused by the Yu Lan Festival activities held by an organisation	Unsubstantiated	0
Hong Kong Housing Society			
2017/1480(R)*	Refusing to disclose to the complainant the amount of grant deducted from each repair item of a residential building	Unsubstantiated but other inadequacies found	2

Case no.	Complaint	Overall conclusion	No. of recommendations
Hospital Authority			
2016/4173A	Delay in handling a request for assessment under the Standardised Care Need Assessment Mechanism for Elderly Services	Partially substantiated	1
2017/0852A	Unreasonably assessing the complainant's son as not eligible for Disability Allowance	Unsubstantiated	0
2017/1128A	Wrongly concluding that the complainant was not eligible for Higher Disability Allowance	Unsubstantiated	0
2017/1444*	Failing to properly handle the complainant's complaint against a male volunteer who had allegedly sexually assaulted her daughter while they were performing volunteer duties at a hospital	Partially substantiated	5
2017/1643	Failing to properly handle a complaint about poor staff attitude	Partially substantiated	0
Housing Department			
2016/3516A*	Delay in handling the complainant's application for flat transfer	Unsubstantiated	3
2016/3952*	(1) Failing to honour its verbal promise not to approve the share use of a District Council Member's ward office in a public housing estate (inconclusive); and (2) Inappropriately approving a Legislative Council Member to share the ward office as a joint tenant, thereby allowing an "inheritance" of the office (unsubstantiated but other inadequacies found)	Unsubstantiated but other inadequacies found	2
2016/5017	Failing to tackle the complainant's noise nuisance complaints against a neighbour	Unsubstantiated	1
2017/0047	Failing to properly handle a seepage complaint	Unsubstantiated but other inadequacies found	2
2017/1564	Failing to properly handle the problem of illegal parking in a public housing estate	Unsubstantiated	3
2017/2337	Mishandling a complaint about noise nuisance caused by pumping facilities	Unsubstantiated but other inadequacies found	2
2017/3359*	Failing to take enforcement action against a person smoking in a public estate's no-smoking area	Partially substantiated	5

Case no.	Complaint	Overall conclusion	No. of recommendations
Immigration Department			
2017/2476	Failing to respond to the complainant's query and to specify the information needed to support his non-refoulement claim	Unsubstantiated	0
Independent Commission Against Corruption			
2017/1709(I)	Refusing to provide a copy of certain section(s) of Independent Commission Against Corruption ("ICAC")'s standing orders	Unsubstantiated	0
2017/1732(I)	Refusing to provide the name of the contractor which provided transportation service to ICAC on a certain date, and the quotation from the contractor	Unsubstantiated	0
2017/1733(I)	Refusing to provide the rank, title and Investigation Branch/ Section of the ICAC officer who approved the payment to the contractor which rendered transportation service, and the expenditure sub-head/item number in relation to that transaction	Unsubstantiated	0
Inland Revenue Department			
2017/1439	Failing to make prior request to the Home Affairs Department for accepting a form stipulated by the Inland Revenue Department in processing a statutory declaration	Unsubstantiated	0
Judiciary Administrator			
2017/1315	Repeatedly sending letters addressed to someone else to the complainant's residential address	Partially substantiated	0
Labour Department			
2016/5045B*	Mishandling a complaint about inadequate safety measures for lifting operations in a Government infrastructure construction site	Unsubstantiated but other inadequacies found	1
2017/2912	Failing to provide the complainant with proper advice or reminders regarding his claim against his employer	Unsubstantiated	0
Lands Department			
2016/4345A	Delay in repairing a vehicular and emergency escape route in a village	Unsubstantiated	0
2016/4460C	Failing to take due enforcement actions against the violation of land lease by the owner of the rooftop of a village house installed with radio base stations	Unsubstantiated	0
2016/4917A	Failing to take proper action against illegal occupation of Government land by some structures	Substantiated	1

Case no.	Complaint	Overall conclusion	No. of recommendations
2017/0109B	Failing to properly follow up the obstruction problem caused by a shop-front platform encroaching on the pavement	Unsubstantiated	0
2017/0546	Unreasonably confiscating a motor vehicle which illegally occupied Government land	Unsubstantiated	0
2017/0818	(1) Wrongly approving an application for waiver of lease conditions (unsubstantiated); (2) Referring the complainant's report to the Police for follow-up action only without conducting its own investigation, which smacked of shirking responsibility (unsubstantiated); and (3) Failing to respond in its reply to the allegation against a staff member (unsubstantiated)	Unsubstantiated	0
2017/0846	(1) Wrongly approving an application for waiver of lease conditions (unsubstantiated); and (2) Referring the complainant's report to the Police for follow-up action only without conducting its own investigation, which smacked of shirking responsibility (unsubstantiated)	Unsubstantiated	0
2017/1054B	(1) Alleging that the complainant's water pipes illegally occupied Government land and taking enforcement action, without first verifying the matter with the Highways Department and checking the records that the complainant had replaced those water pipes with Government assistance (unsubstantiated); (2) Posting statutory notices on the water pipes which were far away from the complainant's residence, without first trying to locate and contact the complainant (partially substantiated); and (3) Failing to give any explanation directly to the complainant on details of the incident (unsubstantiated)	Unsubstantiated	0
2017/1192	Failing to follow established procedures in handling a small house application	Unsubstantiated	0
2017/1193	Failing to follow established procedures in handling a small house application	Unsubstantiated	0
2017/1295	Failing to follow established procedures in handling a small house application	Unsubstantiated	0
2017/1296 2017/1297 2017/1361	Failing to follow established procedures in handling a small house application	Unsubstantiated	0

Case no.	Complaint	Overall conclusion	No. of recommendations
2017/1366	Failing to take enforcement action against illegal occupation of Government land	Substantiated	1
2017/1432	Failing to follow established procedures in handling a small house application	Unsubstantiated	0
2017/1499	Failing to follow established procedures in handling a small house application	Unsubstantiated	0
2017/1855A	Failing to properly follow up the leakage problem of a drainage pipe in a village	Unsubstantiated	0
2017/2351A	(1) Failing to properly protect and preserve some trees near a redevelopment site (unsubstantiated); and (2) Failing to respond to the complainant's request (substantiated)	Partially substantiated	1
2017/2443B	Failing to properly tackle the problem of waste dumping on Government land	Unsubstantiated	1
2017/2550B*	Failing to properly resolve the environmental hygiene nuisance caused by the obsolete facilities of a public toilet	Substantiated	1
2017/2572	Ineffective enforcement action against street obstruction caused by a recycling shop	Unsubstantiated but other inadequacies found	1
2017/2614B	Failing to properly follow up the problem caused by on-street barbers at a site	Unsubstantiated	0
2017/2623A	Failing to properly resolve the problem of illegal occupation of roadside metered parking spaces by bamboo poles for construction	Substantiated	1
2017/2792	(1) Failing to take enforcement action against an estate for not making available the recreational facilities on its podium for public use, which was allegedly a breach of the lease conditions (unsubstantiated); and (2) Delay in replying to the complainant (unsubstantiated)	Unsubstantiated	0
2017/2909	(1) Loosely stating that the premises used by the complainant for application of Fresh Provision Shop Licence was not a village house, resulting in the application being rejected by the Food and Environmental Hygiene Department ("FEHD") (substantiated); and (2) Failing to give timely reply to FEHD's enquiry, thereby causing delay in the issuance of a Fresh Provision Shop Licence to the complainant (substantiated)	Substantiated	3

Case no.	Complaint	Overall conclusion	No. of recommendations
2017/3084B	Failing to take effective enforcement action against street obstruction by shops and illegal occupation of an alley by restaurants	Unsubstantiated	0
2017/3508B	Failing to effectively tackle the problem of garbage dumping in an open space	Unsubstantiated	0
2017/3618B	Delay in taking enforcement action against the unauthorised building works on the rooftop of a village house	Unsubstantiated	0
2017/3656A	Delay in removing a collapsed tree	Substantiated	1
2017/3985	Failing to take enforcement action against illegal extension of business area by two restaurants	Unsubstantiated	0
2017/4030B	Failing to fully assist the Drainage Services Department in carrying out a village sewerage project	Unsubstantiated	0
2017/4287B	Publishing in the Gazette a notice of resumption of the complainant's land without giving him any prior notification, nor informing him afterwards	Unsubstantiated	0
2017/4332	Failing to take enforcement action against an unauthorised platform of a shop	Unsubstantiated	1
2017/4436	Ineffective action in following through the alleged breach of short-term waiver conditions by a riding school and the problem of horse fouling along its visitor access	Unsubstantiated	2
2017/4569	Failing to properly handle the environmental hygiene problems caused by the Yu Lan Festival activities held by an organisation	Unsubstantiated	0
Leisure and Cultural Services Department			
2017/0079	Delay in handling the Kwai Chung Park development project	Unsubstantiated but other inadequacies found	1
2017/0635A	Ineffective action in handling street sleeper problems	Unsubstantiated	1
2017/2064(l)*	(1) Delay in handling the request for CCTV footage recorded in a public library (partially substantiated); and (2) Unreasonably refusing to provide the CCTV footage (unsubstantiated but other inadequacies found)	Partially substantiated	2
2017/2351B*	Failing to properly protect and preserve some trees near a redevelopment site	Partially substantiated	1

Case no.	Complaint	Overall conclusion	No. of recommendations
2017/2481(I)	Unreasonably refusing the complainant's request under the Code on Access to Information for obtaining a copy of all documents relating to his complaint case	Partially substantiated	1
2017/2675*	(1) Selective enforcement regarding unauthorised entry with a dog to a beach (unsubstantiated); and (2) Abrasive staff attitude (substantiated)	Partially substantiated	1
2017/3656B	Delay in removing a collapsed tree	Unsubstantiated	0
Office of the Communications Authority			
2016/4460A	Unreasonably stating that it could not revoke the approval granted to some mobile network operators to install radio base stations on the rooftop of a village house	Partially substantiated	1
Official Receiver's Office			
2017/3708	Wrongly issuing to the complainant's solicitor a search report on a bankrupt bearing the same name in English as the complainant	Unsubstantiated	0
Planning Department			
2017/0282 2017/0321 2017/0715 2017/0716 and others	Unreasonably rezoning a piece of land	Unsubstantiated	0
2017/2958(I)	Refusing to provide reports on traffic impact assessment of the land use conversion of a piece of land	Unsubstantiated	0
Rating and Valuation Department			
2016/2666B(I)	Refusing to provide the complainant with the information requested concerning the assessment mechanism for determining the renewal licence fee of a Government leased site, and rejecting any opportunity of communication	Substantiated	3
Registration and Electoral Office			
2016/3878(I)*	Refusing to provide the complainant with certain statistics in relation to the 2016 Legislative Council Election	Partially substantiated	2
2016/4977(I)	Refusing to provide the complainant with the names of subscribers of the candidates for certain subsectors in the 2016 Election Committee Subsector Ordinary Elections	Substantiated	2

Case no.	Complaint	Overall conclusion	No. of recommendations
Social Welfare Department			
2016/3516B*	Failure to provide proper assistance in relation to the complainant's application for flat transfer	Partially substantiated	4
2016/4173B	Delay in handling a request for assessment under the Standardised Care Need Assessment Mechanism for Elderly Services	Unsubstantiated	0
2017/0635B	Ineffective action in handling street sleeper problems	Unsubstantiated	1
2017/0852B	Unreasonably assessing the complainant's son as not eligible for Disability Allowance	Unsubstantiated	0
2017/1128B	Wrongly concluding that the complainant was not eligible for Higher Disability Allowance	Unsubstantiated	0
Transport Department			
2016/2304*	Delay in re-opening the metered parking spaces when the road construction work was completed ahead of schedule	Substantiated	6
2016/2982A*	Delay in re-opening the metered parking spaces when there was no construction work in progress	Substantiated	9
2016/4917C	Failing to take proper action against illegal occupation of Government land by some structures	Unsubstantiated	0
2017/1220A	Failing to solve the problem of insufficient heat insulation of bus stop shelters at a public transport interchange	Partially substantiated	3
2017/2623B	Failing to properly resolve the problem of illegal occupation of roadside metered parking spaces by bamboo poles for construction	Unsubstantiated	0
2017/3669B	(1) Attaching importance solely to opinions in support of an access road works project, without seriously considering the residents' concerns about the narrowed carriageway (unsubstantiated); (2) Failing to conduct adequate consultation for local residents to fully understand the project's background and give their views (unsubstantiated); and (3) Failing to consult the Fire Services Department before commencing the road works on whether the narrowed carriageway would affect rescue operations (unsubstantiated)	Unsubstantiated	0



Summaries of Selected Cases Concluded by Full Investigation

(The summaries of selected cases in this Annex cover the main allegations and related conclusion of those complaints. For details of the overall conclusion and number of recommendations, please refer to Annex 7)

(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 2017/3072 –
Recovery of removal cost**

Allegation: unreasonable delay in seeking recovery of the cost of removing a fallen window frame section – substantiated

Details of Complaint

The complainant was dissatisfied that until after more than a year, BD has not notified her of the Department's removal of a section of a window frame allegedly fallen from her flat onto a tree and sought recovery from her of the cost incurred. Such unreasonable delay had deprived her of the chance to prove her innocence regarding the fallen window frame section, as she no longer had the evidence.

Our Findings

2. BD usually issues such notification letters within two months of the removal works. The Department explained that the delay in this case was due to staff turnover. BD apologised to the complainant and subsequently enhanced its Building Condition Information System to facilitate regular monitoring of cost recovery action and timely issuance of notification letters.

Our Comments and Recommendation

3. We found it unsatisfactory that BD had taken much longer time than usual to notify the complainant of the Department's removal of the window frame section and of her liability to pay for the cost of the removal. Worse still, BD did not bother to apologise to the complainant until after she had lodged a complaint.

4. The Ombudsman considered this complaint substantiated, and recommended that BD take reference from this case and impress upon its staff the need for timely apology to people who have suffered from its action, delay or inaction.

A case of delay





Buildings Department (“BD”)

**Case Nos. OMB 2017/3308; OMB 2017/3734 –
Unauthorised building works (“UBW”) on
rooftop**

Allegation: delay in taking enforcement action against
a UBW item on the rooftop of a building – partially
substantiated

Details of Complaint

Mr A, a resident of a building, and the Owners’ Corporation of the building (“OC”) had complained separately to this Office against BD for its delay in taking enforcement action against a UBW item on the rooftop of the building, which had been included as a target of the large-scale operation against UBW items in 2007. As a result of BD’s prosecution against the owners of five UBW items on the rooftop of the building, four of them had been removed. The owner of the remaining UBW item (“Owner X”), though convicted and fined by the court, refused to remove it.

2. Mr A and the OC considered that BD should have promptly removed the remaining UBW item for Owner X and then recovered the cost from her, to enable the OC to carry out waterproofing works on the roof and to resolve a seepage problem affecting Mr A’s flat.

BD’s Explanation

3. BD explained that in the court hearing, Owner X had indicated her willingness to remove the UBW item, but afterwards, she claimed that she had financial difficulties and emotional problems. As the UBW item posed no obvious danger, BD considered it inappropriate to remove the UBW item for Owner X then. The Department suspended enforcement action and instead arranged a social worker to follow up on the case, with a view to helping Owner X to comply with the removal order. In May 2017, BD resumed prosecution action against Owner X. In November 2017, BD issued a letter to warn Owner X that if she still failed to comply with the removal order, BD would engage a contractor to carry out the removal works and recover the cost from her afterwards.

Our Comments and Conclusion

4. Our investigation revealed that an arrest warrant had in fact been issued against Owner X for her failure to attend a court hearing. As Owner X had also claimed to have financial difficulties, there were clear signs that the UBW problem could hardly be resolved just by means of prosecution. BD was being much too conservative in not considering the engagement of a contractor to remove the UBW item on Owner X’s behalf when it resumed the prosecution process.

5. More than ten years had elapsed since the large-scale operation in 2007 and BD had still failed to remove all the UBW items on the rooftop of the building. As repeated advice and prosecutions had been ineffective, BD should have taken decisive action to remove the UBW item, otherwise its resources would just be further wasted. In sum, The Ombudsman considered this complaint partially substantiated.

Recommendations

6. The Ombudsman recommended that BD:
- (1) keep a close watch on progress of the court case against Owner X and its result, and actively proceed to remove the UBW item; and
 - (2) take reference from this case and seriously consider engaging a contractor to remove UBW items on behalf of any owner who adamantly refuses to comply with removal orders and recovering the cost from the owner.

**A case of indecisiveness
in enforcement**



Electrical and Mechanical Services Department (“EMSD”)

**Case No. OMB 2016/3937 –
Professional advice on products**

Allegation: failing to make a fair assessment of the complainant’s products and giving wrong advice – partially substantiated

Details of Complaint

The complainant had responded to an invitation to tender and submitted to the Hospital Authority (“HA”) two separate proposals about the use of hydrocarbon refrigerant freezers in two hospitals (“Hospital A” and “Hospital B”) respectively. The complainant alleged that EMSD made some misleading comments when it was requested by HA to give technical advice on the products.

Our Findings

The Case of Two Hospitals

2. As HA’s engineering consultant, EMSD provides professional advice on specifications. In this case, EMSD did not recommend the use of the freezer in the complainant’s proposal for Hospital A after vetting the specification because the freezer was using highly flammable refrigerant. Although the complainant had submitted supplementary information, EMSD maintained its stance on the grounds that the population in public hospitals was high and alternatives using non-flammable refrigerant were available in the market.

3. Regarding the complainant's proposal for Hospital B, EMSD also recommended against the use of the freezer that was using as refrigerant a purportedly non-flammable mixture of two substances. In its reply to HA, EMSD indicated that one of the substances in the mixture was flammable and only allowed to be used in household appliances. Later, having reviewed a laboratory test report from the complainant which showed that the mixture was non-flammable, EMSD informed HA that it had no objection to the use of the freezer proposed.

EMSD's Response

4. EMSD considered its assessments fair and unbiased as all the technical information received from HA had been evaluated and the relevant international standard checked against. The Department, however, admitted that the use of flammable refrigerants was not forbidden in hospitals and should be considered on a case-by-case basis. Hence, its remarks that such refrigerants are only allowed in household appliances might not adequately reflect the exact situation.

Our Comments

5. In our view, it is EMSD's duty to properly and adequately advise HA on *inter alia* the refrigerants, in particular their flammability. As the complainant's proposal for Hospital A involved the use of a highly flammable refrigerant, we considered EMSD to have taken due consideration to relevant factors in giving advice and hence, we found no inadequacy on the part of the Department.

6. Nevertheless, in Hospital B's case, what HA wanted to know was whether the mixture was, as purported, non-flammable. It was, therefore, pointless to advise HA that one of the substances in the mixture was flammable. Beside, EMSD's remarks that flammable refrigerants were restricted to use in household appliances was inaccurate. While we accepted that it would be difficult for EMSD to confirm the flammability without further information, we considered that the Department should have advised HA accordingly (namely, that the flammability of the mixture could not be confirmed based on the information in hand) and let the latter decide whether to seek further information. Hence, we found that EMSD had been inadequate in its advice to HA regarding Hospital B's case.

Conclusion and Recommendations

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

8. The Ombudsman recommended that EMSD consider providing suitable guidance to staff in providing professional advice on freezers in the light of this case.

A case of inadequate advice





Food and Environmental Hygiene Department ("FEHD")

Case No. OMB 2017/2443A – Problem of waste dumping at public place

Allegation: failing to properly resolve a problem of dumping of large amounts of waste at a public place – partially substantiated

Details of Complaint

In the village where the complainant lived, an elderly woman ("Ms A") habitually deposited piles of waste at a public place ("the Site"), causing a serious environmental hygiene problem ("the Problem"). The situation has persisted for ten years. Despite repeated complaints from the complainant and other villagers, FEHD had not resolved the Problem properly.

Our Findings

2. Ms A often gathered and deposited garbage and miscellaneous stuff at the Site. Whenever FEHD took action to clear the Site, she would strongly protest and fiercely resist the clearance action, claiming that those garbage and miscellaneous stuff were her valuable possessions. Ms A would also threaten to hurt herself, or even attack FEHD staff and the police officers providing assistance at the scene. To tackle the Problem, FEHD had carried out a dozen joint operations with the local

District Lands Office and District Office, the Social Welfare Department and the Police. In each joint operation, more than ten tonnes of garbage and miscellaneous stuff were removed from the Site. Thinking that Ms A was a waste picker, and taking into account her old age and emotional problems, FEHD had never taken any enforcement action against her.

Our Comments and Recommendations

3. In fact, most of the objects placed at the Site by Ms A were waste neither fit for personal use nor having any resale value. We do not think that Ms A was making a living as a waste picker. By gathering and dumping large amounts of waste at a public place, Ms A had indeed committed littering offences. FEHD should have enforced the laws on public cleansing and prevention of hygiene nuisances.

4. Although FEHD had carried out joint operations with other Government departments, it had merely removed the garbage, but had never instituted any prosecution for imposition of a fine on Ms A. FEHD's actions could not tackle the core of the Problem, which was unfair to the other villagers because the persistent nuisances that they suffered over the past ten years had not been addressed. The Ombudsman, therefore, considered the complaint against FEHD partially substantiated.

5. The Ombudsman recommended that FEHD should not only step up clearance of the garbage at the Site, but also enhance monitoring of Ms A's illegal acts and take decisive enforcement actions, including issuance to her of fixed penalty notices. Hopefully, this would induce the cooperation of her family members to restrict her odd behaviour.

**A case of failure to take
decisive enforcement action**





Food and Environmental Hygiene Department (“FEHD”)

**Case No. OMB 2017/2753 –
Illegal extension of business area by
cooked food stalls**

Allegation: failing to tackle effectively illegal extension of business area by cooked food stalls – partially substantiated

4. We also noted that FEHD’s surprise inspections had been rather infrequent. Some of its inspections were conducted at intervals of two to three months or even six months, and it seldom conducted surprise inspections at night.

5. The Ombudsman found that FEHD had failed to conduct its inspections rigorously, and such inadequate inspections hardly had any deterrent effect. This complaint was partially substantiated. The Ombudsman urged FEHD to step up its inspections of the cooked food stalls concerned and exercise stricter control.

**A case of lack of rigorous
enforcement actions**



Details of Complaint

The complainant had complained many times to FEHD against some stalls in a cooked food market for causing obstruction by placing tables, chairs and commodities on pedestrian passageways. Yet, the situation had not improved. He doubted whether FEHD had conducted inspections or instituted prosecutions to curb the irregularities.

Our Findings and Recommendations

2. FEHD stated that within two years, its staff had conducted a total of 30 surprise inspections, with verbal warnings and warning letters issued to the cooked food stalls concerned. The Department had also taken back two of the stalls in the past.

3. Our site visits, nevertheless, revealed that the irregularities of the cooked food stalls had persisted and the problem was particularly serious during night time.



Food and Environmental Hygiene Department ("FEHD")

Case No. OMB 2017/3512 – Problem of unlicensed hawkers

Allegation: failing to properly resolve a problem of unlicensed hawkers – substantiated

Details of Complaint

The complainant alleged that there were unlicensed hawkers persistently operating along the pavements and alleys ("the Site") near his shop. They caused serious obstruction to pedestrians and adversely affected environmental hygiene ("the Problem"). The complainant was dissatisfied that FEHD had only issued verbal warnings to those hawkers without instituting prosecutions, thus allowing the Problem to continue.

Our Findings

Response from FEHD

2. FEHD explained that since the unlicensed hawkers at the Site were mostly elderly people and they merely sold dry goods rather than any restricted food or cooked food, the Department had adopted a lenient strategy of "warning first, followed by prosecution" to tackle the Problem. FEHD officers would take prosecution action against those elderly hawkers only if they took no heed of the Department's verbal warnings.

Our Comments

3. We found that FEHD's strategy of "warning first, followed by prosecution" was in itself not unreasonable. However, as FEHD had not maintained any record of verbal warnings issued to the hawkers, even if the hawkers resumed their hawking activities afterwards, FEHD officers would treat them as first offenders and just issue verbal warnings again according to this strategy. This could end up having no prosecution ever being instituted against the unlicensed hawkers. In fact, between October 2016 and September 2017, FEHD prosecuted only one hawker for his offences of unlicensed hawking and street obstruction at the Site. This showed that FEHD's verbal warnings had no deterrent effect at all. The Ombudsman, therefore, considered this complaint substantiated.

FEHD's Improvement Measures

4. After our intervention, FEHD started in December 2017 to deploy officers to patrol the Site every day. It also stepped up joint operations with the Police, and conspicuously displayed banners warning against unlicensed hawking and advising the public not to patronise unlicensed hawkers. Furthermore, FEHD revised its operational guidelines and required officers to record the details (including features of the hawker's appearance and any personal information for identification, the type of commodity sold, as well as the time and location) when issuing verbal warnings to hawkers. If an unlicensed hawker is found in operation again during a subsequent inspection, FEHD officers can refer to the records to verify whether the same hawker has been warned on a previous occasion. Where sufficient evidence is available, they can institute prosecution right away without further warning.

5. After implementation of the above improvement measures, the number of prosecution cases at the Site increased, and the Problem showed improvement.

A case of ineffective enforcement





Highways Department (“HyD”) and Labour Department (“LD”)

Case No. OMB 2016/5045A&B – Safety measures at construction site

Allegations:

HyD – failing to properly handle a complaint about inadequate safety measures in a construction site – substantiated

LD – same – unsubstantiated but other inadequacies found

Details of Complaint

The complainant was an electrician in a construction site (“the Site”) of a government infrastructure project. In late 2016, he complained about inadequate safety measures at the Site, alleging that the lifting zones there had not been fenced off and no safety officer was assigned to supervise lifting operations. Both HyD and LD found no irregularities after investigation. The complainant criticised that their investigations were perfunctory and that both departments had not tackled the safety problem at the Site seriously.

2. Our preliminary inquiry revealed that LD considered that the Site might have contravened the legislation it enforced relating to lifting operations at construction sites. However, HyD found the related safety measures at the Site acceptable. In the light of their vastly different views on the safety issue regarding the same construction site, this Office decided to conduct a full investigation.

Our Findings

3. LD enforces labour legislation regarding employers’ responsibility to provide a safe work environment in order to protect the occupational safety and health of workers. The Department has also issued various guidelines and publications on the safe use of mobile cranes, stating clearly that lifting zones must be demarcated and fenced off, with clear notices displayed on site. Occupational Safety Officers (“OSOs”) conduct inspections at construction sites and would urge offenders to adopt improvement measures, or even institute prosecutions.

4. HyD must set up a liaison mechanism with LD at the commencement of every public works project and invite the latter to attend the first Site Safety and Environmental Management Committee (“SSEMC”) meeting. Regular SSEMC meetings would be held to keep track of the contractor’s performance in terms of site safety. Besides, HyD site staff should accompany LD’s OSOs during safety inspections and take note of the Construction Site Inspection Report (“Inspection Report”) and improvement/suspension notices issued by the OSOs afterwards to ensure prompt rectification of unsafe practices by the contractor involved. HyD’s works contracts also specify contractors’ duty to ensure safety during lifting operations.

HyD’s Response

5. HyD opined that neither the current legislation nor LD’s Code of Practice for Safe Use of Mobile Cranes (“the Code for Mobile Cranes”) stipulate that lifting zones must be fenced off during lifting operations. Furthermore, LD did not mention in the Inspection Report issued after the site inspection in December 2016 that the contractor had broken the law, but merely made a remark that “the lifting zone must be fenced off properly at the site”. That was the first time LD had ever demanded any contractor of this government infrastructure project since its commencement in 2012 to fence off lifting zones.

6. As a matter of fact, it was not until September 2017 when the Code for Mobile Cranes was updated that LD added the requirement to fence off all lifting zones at construction sites as far as reasonably practicable, while stating that in case of space constraints, other effective measures could be taken to prevent unauthorised entry into the zones. The contractor involved in this case had already drawn up safety rules of lifting operations, and deployed signallers and lifting supervisors to provide assistance to guard against unauthorised entry. Such measures were deemed as effective as setting up fences and complied with current legal requirements.

LD's Response

7. LD conducted two surprise inspections at the Site immediately upon receipt of the complainant's complaint and found three mobile cranes there. While no lifting operation was going on, the contractor had not observed construction site safety requirements in the Factories and Industrial Undertakings Ordinance. LD, therefore, issued an Improvement Notice in addition to an Inspection Report, clearly demanding proper safety measures be taken promptly, especially fencing off lifting zones, posting warning notices and separating the cranes and the workers. Two subsequent inspections by LD confirmed that the contractor had complied with these demands.

8. LD explained that space constraints precluding the setting up of fences for lifting zones, as mentioned in the updated Code for Mobile Cranes, mainly applies to temporary lifting operations on roadside where fencing off a large area of road surface is not feasible. The OSOs confirmed during inspections that there was enough space to set up fences to fence off lifting zones at the Site and the contractor had subsequently done so, indicating that fencing off the zones was feasible and practicable. Furthermore, to ask signallers or lifting supervisors to keep watch on work in the lifting zones would incur the risk of human error and was, therefore, unacceptable. In fact, a copy of both the Inspection Report and the Improvement Notice had been sent to HyD, which came up with a different view about the situation because it might have failed to fully grasp LD's safety requirements for lifting zones at construction sites.

Our Comments

9. Various publications of LD and the Inspection Report issued to the contractor stated clearly that lifting zones must be fenced off. HyD, however, considered the safety measures at the Site acceptable because LD did not spell out that the Site had broken the law. This indicated that HyD had not taken seriously the opinions of LD as an enforcement authority. Given HyD's duty to oversee all large-scale road works in Hong Kong, it should have close liaison with LD regarding safety at construction sites. We were perplexed by its unfamiliarity with the safety requirements for lifting operations.

10. Furthermore, both HyD's site staff and the contractor had participated in the OSOs' safety inspections and should have adequately understood the safety concerns raised by the OSOs. Actually, they had enough time and opportunities to clarify queries and enquire of LD via the existing liaison mechanism. That HyD failed to fully understand LD's Inspection Report reflected a serious lack of communication between the two departments. Despite immediate site inspections upon receipt of the complaint, LD's OSOs failed to convey their concern about the safety problems at the Site during inspections, such that HyD was confused whether the Site had broken the law.

11. Records showed that prior to this incident, LD had demanded other sites of this government project to fence off lifting zones. HyD's argument (see para.5) was hence groundless.

Conclusion and Recommendations

12. In the light of the above, The Ombudsman considered the complaint against HyD substantiated, and the complaint against LD was unsubstantiated, but there were other inadequacies found.

13. We urged HyD to proactively communicate with other enforcement departments in future to prevent misjudging again complaints about safety issues at construction sites. It should also step up training for its management and site staff on legislation about safety of lifting operations. LD and HyD should review together the SSMC operation and the current mechanism for monitoring safety at construction sites, examine why the two departments' interpretations of the content of the Inspection Report were so different, and improve the existing communication mechanism to avoid recurrence of similar incidents.

A case of unfamiliarity with relevant requirements and inadequate communication



Hospital Authority ("HA")

Case No. OMB 2017/1444 – Volunteer services of hospitals and incidents reporting system

Allegations: a hospital (1) failing to follow HA guidelines on volunteer services to arrange supervision of volunteers – substantiated; (2) failing to report an indecent assault case ("the incident") as soon as possible as the HA internal guidelines required – substantiated; (3) attempting to prevent the complainant from reporting the incident – partially substantiated; and (4) failing to report to the Police at once upon learning of the incident, with the intention to procrastinate and cover up – unsubstantiated

Details of Complaint

The complainant worked at a department ("Department X") in a hospital ("Hospital") under HA. Allegedly, her daughter ("the victim") was indecently assaulted by a male volunteer on 4 July 2016 while she was on volunteer duty at Department X. Two days later, the complainant lodged a complaint with the department's manager ("Mr A"), but was arranged to meet with the male volunteer and his mother ("the Meeting"). The complainant then took the matter to the Volunteer Service Department ("VS Department") of Hospital and reported to the Police on 14 July. She was informed by the Police on 21 July that Hospital had also reported the incident.

2. The complainant was dissatisfied that:

- (1) Hospital had failed to follow HA's Guidelines on Volunteer Services ("VS Guidelines") to assign an officer to supervise volunteers, and arranged for her daughter to work with the male volunteer alone inside an enclosed room without supervision;
- (2) Hospital had failed to comply with HA's internal guidelines to make urgent report to hospital management when incidents (including indecent assault cases) happened, and its own policy and procedures, which required reporting of serious incidents to hospital management and HA via the Advanced Incident Reporting System ("AIRS") within 24 hours of occurrence;
- (3) she felt pressured by Mr A, who, in an attempt to prevent her from reporting the incident, had asked her not to disclose it or details of the Meeting to outsiders and to give advance notice before taking any action; and
- (4) Hospital only reported the incident to the Police two weeks after learning of it. The complainant believed that since the mother of the male volunteer was a senior staff member of the Hospital, some staff members had intentionally procrastinated in order to cover up the incident.

HA's Response

Allegation (1)

3. The supervisor of the volunteers in Hospital had neither received any complaint from the victim, nor found anything unusual with her. On learning about the incident on 7 July, the VS Department quickly took follow-up actions.

4. HA asserted that instructing or supervising volunteer service did not mean monitoring every single move of volunteers on site. Regarding this case, Department X had assigned an officer to instruct and supervise the work progress of the volunteers involved and reminded them

not to close the door while working. Closing the door was entirely the male volunteer's personal behaviour and out of HA's prediction, and HA therefore would not comment on this incident.

Allegation (2)

5. Depending on the nature of an incident, HA staff could use faster and more effective reporting channels (such as by telephone or face-to-face meeting) other than the AIRS to contact HA headquarters ("Headquarters") direct. A chief administration manager of the cluster which Hospital belongs ("Mr C") received a report on the incident on 11 July and verbally reported it to the hospital management the next day. Hospital management met Headquarters staff on 20 July to discuss the way forward.

6. As the victim had not been available and the account of the incident given by the male volunteer differed from the complainant's, Hospital was unable to judge the nature of the incident. Consequently, it decided to seek the Headquarters' advice first instead of making a report via the AIRS. The staff had reported the incident in an appropriate and timely manner.

Allegation (3)

7. Mr A suggested that the complainant ask the victim for details of the incident first. He asked her to keep the incident secret and notify the hospital before taking any further action lest the incident be distorted. Hospital deemed it reasonable for Mr A, as head of Department X to take action to learn more about the incident. There was no evidence of him trying to cover up for the male volunteer and put pressure on the complainant, or attempting to prevent her from reporting the incident.

Allegation (4)

8. The management of Hospital had repeatedly advised the complainant to report to the Police but she invariably refused. The Hospital stressed that it could not contact the victim to ascertain the nature of the incident. As such, they consulted the Headquarters and eventually decided to report to the Police on 21 July.

Our Comments

Allegation (1)

9. The VS Guidelines stated clearly that “volunteer service must be carried out under supervision”. Hospital arranged for the victim, a minor, to work with an adult male (the male volunteer) unsupervised, in a room that could be locked but was not fitted with CCTV. These showed that Hospital’s awareness of and sensitivity in protecting volunteers, especially under-aged volunteers, were inadequate. The incident should not be viewed as the male volunteer’s personal behaviour or an isolated incident, or completely unforeseeable.

10. Therefore, The Ombudsman considered Allegation (1) substantiated.

Allegation (2)

11. The AIRS is set up by HA to ensure that incidents are reported in a timely manner by its hospitals. Such information is very important to subsequent investigation. Other reporting channels are but supplementary. Actually, Hospital has also formulated clear guidelines on incidents reporting. There was no reason for non-compliance.

12. We considered indecent assault a very serious accusation. Guidelines issued by both HA and Hospital stipulate that criminal offences or serious incidents (such as sexual assault) should be reported as soon as possible within 24 hours. Hospital repeatedly advised the complainant to report to the Police, reflecting that they were aware of the nature and seriousness of the incident, and therefore, should have promptly reported it via the AIRS. The hospital management reported to the Headquarters only eight days after learning of it, far exceeding the 24-hour timeframe. Furthermore, there was no written record of Mr C’s verbal report, rendering verification of the content impossible. The importance of entering details of incidents into the AIRS could not be more obvious.

13. In sum, this Office did not accept that Hospital had properly reported the incident or had reported it in a timely manner. The Ombudsman considered Allegation (2) substantiated.

Allegation (3)

14. Mr A, as head of Department X and the complainant’s supervisor, should be extra careful in handling the incident due to a conflict of roles.

15. Hospital claimed that the complainant had agreed to the Meeting arranged by Mr A. Mr A also explained that he had asked the complainant to keep silent and notify him before taking any action lest the incident be distorted. The complainant, however, asserted that Mr A, as her supervisor, had pressured her into accepting the arrangement, which was tantamount to an attempt to silence her and prevent her from reporting the incident. We appreciated that Mr A had a duty to handle the incident and find out the truth. Nevertheless, it was improper of him to arrange the Meeting and ask the complainant to keep silent about the incident.

16. Given that the mother of the male volunteer was a senior staff member of Hospital, the lack of response from Mr A and others to the complainant’s request and the delay in reporting the incident to the hospital management and HA would naturally lead the complainant to think that they intended to cover up the incident to protect the male volunteer. Though we found no evidence of such intention, their lack of consideration for the complainant’s feelings and worries showed a degree of insensitivity.

17. The Ombudsman considered Allegation (3) partially substantiated.

Allegation (4)

18. After examining the relevant records, we believed that Hospital had indeed advised the complainant to report the incident to the Police. However, the complainant wished to protect the victim and refused to do so. We considered it proper of Hospital to have respected the complainant’s wish on the matter. No delay was intended. As a matter of fact, the complainant, as the mother of the victim, could have reported to the Police herself instead of asking the Hospital to do it for her.

19. Allegation (4) was, therefore, unsubstantiated.

Conclusion and Recommendations

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

21. The Ombudsman recommended that HA:

- (1) review the current VS Guidelines and consider drawing up more detailed guidelines regarding the supervision of volunteers, especially under-aged volunteers;
- (2) review the reporting procedures for sudden/serious incidents and step up training to ensure that staff follow guidelines and report incidents to hospital management and HA via the AIRS in a timely manner;
- (3) remind staff to keep proper records of all complaints and discussions (including verbal reports);
- (4) avoid conflict of roles of staff handling incidents by designating an independent department in the hospital or a staff member of a higher rank to take over and follow up where necessary; and
- (5) provide adequate training to heighten the sensitivity of staff in handling serious incidents and strengthen communication with parties involved/reporters of incidents.

A case of failure to follow work procedures and wrong decision



Housing Department (“HD”)

Case No. OMB 2016/3952 – Leasing of ward offices

Allegations: (1) breaking a verbal promise by granting approval to a councillor to add another councillor as joint tenant to the tenancy of his ward office – inconclusive; and (2) granting of such approval has resulted in *de facto* inheritance of right to tenancy and unfairness to other councillors – unsubstantiated but other inadequacies found

Details of Complaint

The complainant, an incumbent District Council member, alleged that HD had broken its verbal promise by granting approval to a Legislative Council (“LegCo”) Member to add another LegCo Member to the tenancy of his ward office. That amounted to *de facto* “inheritance” of right to tenancy, which was unfair to him.

Our Findings

Prevailing Guidelines

2. Applications for leasing ward offices in public housing estates are categorised into four groups according to an order of priority with the elected District Council member having the housing estate within his/her constituency being given the first priority. Where there are more than one applicant from the same group, HD will allocate the premises by ballot.

3. The Hong Kong Housing Authority (“HKHA”) allows Council members to share tenancy of a ward office for better utilisation of resources. If one of the joint tenants resigns from office or decides to terminate the tenancy, the remaining tenant may continue leasing the ward office until his/her tenure expires if he/she so wishes, provided that the area of the premises does not exceed the prescribed limit. In case the area exceeds the limit, HD may grant approval to the Council member to lease the entire office, or he/she may share the tenancy with another Council member.

The Case in Question

4. HD staff had explained to the complainant that the only ward office within the constituency was already leased out to a LegCo Member. If this LegCo Member failed to be re-elected in the upcoming LegCo election, he would have to surrender the ward office. Then, the complainant would be given the first priority to lease the premises because he was the only elected District Council member in that constituency.

5. Several months before the election, HD approved the aforesaid LegCo Member’s application for sharing the ward office with another LegCo Member in accordance with the current policy. While the former failed in his attempt to be re-elected, the latter succeeded and stayed in the ward office with the approval of HD, which subsequently also approved his application for adding yet another LegCo Member to the tenancy.

HD’s Response

6. HD noted that the staff concerned had denied making the aforementioned verbal promise to the complainant and they would not have made any promise incompatible with the relevant HKHA policy which they were conversant with. As regards the complainant’s allegation that HD’s current practice would cause unfair treatment, a review was in progress and HD would consult stakeholders on this issue shortly. Before any new guidelines would be implemented, however, HD had to follow the prevailing guidelines in processing applications.

Our Comments

7. In mid-2015, we commented on HD’s current practice in handling applications for leasing ward offices and made our recommendations. We had pointed out at that time that if a tenant was allowed to add any other joint tenants and then withdraw himself from the tenancy, it might result in *de facto* “inheritance of tenancy”, thus creating an impression of underhand transfer of benefits. Therefore, we had recommended that HD review the relevant guidelines and code of practice and place restrictions on such behaviour.

8. As to whether HD staff had allegedly made a verbal promise, we could not verify what actually happened in the absence of independent corroboration. This allegation was, therefore, inconclusive.

9. We considered it not unreasonable that HD continued to follow the prevailing guidelines on handling of applications for leasing ward offices before the completion of its review and implementation of new guidelines. Hence, this allegation was unsubstantiated. However, subsequent to our recommendations made in 2015, HD had already spent nearly a year on internal discussions and preliminary proposals. The progress had been very slow and HD had dawdled over the review for nearly two years. Meanwhile, HD formulated no suitable measures during the transition period to end the persistent problem of “inheritance of tenancy”. As such, we considered that there were other inadequacies on the part of HD.

Recommendations

10. The Ombudsman urged HD to expedite the review of guidelines on handling of joint tenancy of ward offices. HD should also quickly formulate appropriate transitional measures so that the problem of “inheritance of tenancy” created by the loopholes in the prevailing guidelines would not persist.

A case of slow action and inadequate thought





Housing Department ("HD")

Case No. OMB 2017/3359 – Problem of illegal smoking

Allegation: failing to take enforcement action against a person smoking in a public estate's no-smoking area – partially substantiated

Details of Complaint

The complainant made a complaint to HD alleging that someone had been smoking in the no-smoking area of a public estate ("the Estate") but was dissatisfied with HD's reply that it could not take any action because the smoker was not a resident of the Estate.

Our Findings

2. Under the relevant legislation, all indoor public areas of residential buildings and outdoor escalators leading to the shopping centres of the Estate are designated as statutory no-smoking areas. HD's authorised officers can issue fixed penalty tickets to smokers in statutory no-smoking areas. If the offender is a tenant of the Estate, he will also be allotted penalty points under HD's Marking Scheme for Estate Management Enforcement ("the Marking Scheme").

3. Since April 2007, the Hong Kong Housing Authority ("HKHA") has implemented smoking ban in all outdoor common areas ("HKHA no-smoking areas") of public estates, except those areas specially designated for smoking. As smoking within the HKHA no-smoking areas is not illegal, HD cannot issue fixed penalty tickets to smokers in those areas. In the circumstances, HD can only take action under the Marking Scheme, which is only applicable to tenants of the concerned estate. If the smoker is not a tenant of the estate, HD staff will ask him to leave.

4. HD explained that since the person as reported by the complainant was smoking within the HKHA no-smoking area and since he was not a tenant of the Estate, HD could not take enforcement action, nor allot any points under the Marking Scheme. In any event, on that day a security guard verbally advised that person not to smoke within no-smoking areas.

Our Comments and Conclusion

5. We considered HD to have handled the complainant's complaint within its ambit, but there were inadequacies in its anti-smoking measures. HD's internal guidelines did not provide clear enforcement strategy or procedures on how to regulate the HKHA no-smoking area, such as the number of patrols to be conducted by the estate offices and the complaint handling procedures. As a result, it was difficult for HD to monitor the effectiveness of its regulatory actions.

6. Our investigation officers conducted a site inspection in the Estate in September 2017. It was found that within just an hour, there were a number of smokers in the HKHA no-smoking areas. Yet, the Estate management office did not have any case of tenants being allotted penalty point for smoking misdeed between January 2016 and September 2017. We also noticed that, on receipt of complaints, the Estate management office would often deploy security guards, who were not empowered to allot points under the Marking Scheme, to give verbal advice only, which would have little deterrent effect on the smokers. The Ombudsman, therefore, considered this complaint partially substantiated.

Recommendations

7. The Ombudsman recommended that HD:

- (1) review and consider revising its internal guidelines to stipulate clearer procedures for regulating the HKHA no-smoking areas; and
- (2) instruct the Estate management office to continue strengthening its anti-smoking actions and monitor their effectiveness.

A case of ineffective control





Housing Department (“HD”) and Social Welfare Department (“SWD”)

Case No. OMB 2016/3516A&B – Referral and assessment of application for flat transfer

Allegations:

HD – delay in processing the complainant’s application for flat transfer – unsubstantiated

SWD – failing to provide the complainant with proper assistance in respect of her application for flat transfer – partially substantiated

Details of Complaint

The complainant’s family applied for transfer to a public housing flat with layout different from their current flat on the grounds of family situation. Their case was referred by HD to an integrated family service centre (“IFSC”) subvented by SWD for assessment. Although the IFSC concluded that the transfer application was justified on social grounds and recommended it, no suitable flat was allocated to them after a long period. The complainant, therefore, complained to this Office.

Our Findings

Response from HD

2. HD indicated that the complainant had refused two housing offers, both involving a flat with direction and floor level different from their current flat. To utilise housing resources in a prudent and fair manner, HD would not easily allocate a flat of different type and larger size unless there were exceptional justifications. As such, HD referred the case to the IFSC again, including a request that it assign a social worker to accompany the complainant’s family to visit the proposed flat. The social worker should assess whether the flat could meet the need of the family and then make further recommendations. However, the IFSC did not respond positively to its request.

Response from SWD/IFSC

3. SWD and the IFSC stated that according to the cooperation agreement among SWD, HD and the relevant non-governmental organisations, when referring a case HD needed to state clearly the purpose of referral and obtain the clients’ written consent, lest the tenants/applicants would have unrealistic expectations.

4. SWD explained that the IFSC had closed the complainant’s case after completing the initial assessment and making recommendations. When HD subsequently referred the case again, it had neither obtained the clients’ written consent again, nor stated the purpose of referral. Moreover, the complainant’s family did not agree to the arrangement of flat visit. Therefore, before clarifying what kind of service was required by HD, the IFSC would not contact the family and take follow-up action.

Our Comments

5. We considered that HD had handled this application for transfer according to established housing policy and found no delay in its follow-up action. As regards SWD, its responsibility was to monitor and ensure that the IFSC under its subvention had followed up properly the complainant’s case. Judging from HD’s referral memorandum, the IFSC should understand that its purpose of referral was to seek the social worker’s assistance in providing a more comprehensive assessment, so that HD could decide whether there were sufficient grounds warranting its exercise of discretion to allocate a flat of different type to the complainant’s family. In fact, the cooperation agreement has not stipulated that “for the same client on the same subject”, HD must still obtain the clients’ written consent and state the reason of referral again. SWD should not have insisted that each referral must rigidly follow all the procedural requirements and thereby disregarded the clients’ well-being.

6. Moreover, regarding the telephone communication in the course of handling this case, HD and SWD/the IFSC gave different accounts of the event, which bordered on pointing the finger at each other. It was worrying whether the two sides could maintain mutual trust and cooperation in future. We urged all three parties to review this case with candour and rebuild their cooperative relations.

Conclusion and Recommendations

7. In the light of the above analysis, The Ombudsman considered the complaint against HD unsubstantiated, and the complaint against SWD partially substantiated.

8. The Ombudsman made the following recommendations:

HD and SWD

- (1) to review the communication problems revealed in this case with candour and mend their cooperative relations;
- (2) to jointly review the cooperation agreement to clarify in what circumstances, when making repeated referrals for the same case, HD needs to obtain written consent from the clients and state the purpose of referral again. The basic premise is to minimise any duplicate administrative procedures;
- (3) to consider holding face-to-face discussions promptly in future to clarify issues regarding how to handle those cases on which no consensus can be reached between the two departments; and

SWD

- (4) before completion of the abovementioned review, to remind all the IFSCs to actively assist their clients and properly handle the procedural requirements under the referral system according to actual circumstances, so as to prevent delay in providing them with the necessary services.

A case of overly rigid adherence to procedural requirements



Lands Department ("LandsD") and Food and Environmental Hygiene Department ("FEHD")

Case No. OMB 2017/2550A&B – Hygiene problem of public toilet

Allegations:

LandsD – failing to properly resolve the hygiene problem of a public toilet – substantiated

FEHD – failing to properly resolve the aforesaid problem and having no intention to build a new toilet as replacement – unsubstantiated

Details of Complaint

The facilities of a public toilet ("Toilet A") were outdated and often out of order and in a poor hygiene condition. Toilet A caused not only inconvenience to users but also serious environmental hygiene nuisance to nearby residents ("Hygiene Problem"). Despite repeated complaints from nearby residents, LandsD and FEHD had not made a vigorous effort to find a solution.

Our Findings

Response from LandsD

2. Toilet A was built by the Housing Department in the 1980s to cater to the needs of residents of the nearby squatter areas. In April 2009, LandsD took over the responsibility for essential repairs and maintenance of the basic facilities of squatter areas (including Toilet A) in accordance with the squatter control policy. As squatter huts are merely “tolerated temporary structures”, LandsD considered itself having no obligation to redevelop or upgrade Toilet A to today’s standards.

3. LandsD and FEHD had contemplated the feasibility of FEHD taking over Toilet A. However, FEHD indicated that it did not intend to take over the toilet and it was already managing another public toilet with modern facilities in the vicinity (“Toilet B”). Hence, LandsD decided to continue managing Toilet A within the confines of its jurisdiction.

Response from FEHD

4. FEHD is responsible for routine sanitation and cleaning of Toilet A. Accordingly, it had timely sent staff to follow up any complaints about Toilet A and it had also referred to LandsD any cases involving damaged facilities. FEHD pointed out that the average utilisation of Toilet A was only 5 users per day compared with that of Toilet B – 140 users per day, which showed that the latter could already meet local demand. For effective use of resources, FEHD would not replace Toilet A with a new one.

Our Comments and Recommendation

5. Our site inspection confirmed the Hygiene Problem. In our view, although squatter huts are only “tolerated temporary structures” under the prevailing policy, LandsD has an obligation to ensure that the facilities and hygiene condition of Toilet A are in line with today’s public expectation and that the toilet would not cause environmental hygiene nuisance to nearby residents. Even if Toilet A would not be rebuilt as a modern toilet, LandsD should make efforts to upgrade its basic facilities so as to resolve the Hygiene Problem.

6. As for FEHD, it has explained that it would not build a new public toilet because Toilet B could already satisfy the local needs. We found that not unreasonable.

7. The Ombudsman considered the complaint against LandsD substantiated, and the complaint against FEHD unsubstantiated. The Ombudsman urged LandsD to resolve the Hygiene Problem as soon as possible.

**A case of lack of initiative to
resolve problem for the public**





Leisure and Cultural Services Department ("LCSD")

Case No. OMB 2017/2351B – Protection and preservation of trees

Allegation: failing to properly protect and preserve some trees near a redevelopment site – partially substantiated

Details of Complaint

In the summer of 2014, the complainant reported that some fully-grown trees ("the Trees") might be affected by redevelopment works nearby ("the Works"), LCSD took up the case. However, in 2016, the complainant found some of the Trees pruned. He also noticed further pruning in April 2017. Meanwhile, the Works continued, and some of the Trees were felled and apparently replaced by young trees. The complainant considered LCSD to have failed to properly protect and preserve the Trees.

Our Findings

2. The Agriculture, Fisheries and Conservation Department ("AFCD") is responsible for the enforcement of the Forests and Countryside Ordinance ("the Ordinance"), which prohibits unauthorised tree felling.

3. LCSD is responsible for maintaining trees grown along non-expressway public roads other than in country parks. The Department should report to AFCD any unauthorised tree felling or illegal activities affecting trees under LCSD's maintenance.

4. After receiving the complainant's first report in 2014, LCSD conducted an investigation and found that nine trees under its maintenance were being affected by the hoarding of the Works. LCSD noticed that the Buildings Department ("BD") had issued a hoarding permit for the Works. It, therefore, made an enquiry. BD replied that while the holder of a hoarding permit has a duty to ensure that trees would not be affected by the hoarding, it is not a breach of the hoarding permit conditions if any tree is felled or pruned without prior approval from the relevant departments.

5. In October 2014, LCSD discussed with the contractor for the Works with a view to finding remedies. In December 2014, LCSD notified AFCD of the problem, by copy of a letter addressed to BD.

6. In late 2014, the contractor submitted an application to the Lands Department ("Lands D") for felling three trees and transplanting one tree ("the Application"). Lands D sought LCSD's comments on the Application. LCSD considered it and gave no objection. Accordingly, Lands D approved the Application.

7. LCSD conducted an inspection in May 2017 and found that three of the nine trees had been felled, one transplanted and five retained. Meanwhile, there were three newly planted trees as approved by Lands D. LCSD undertook to ensure that the three compensatory trees satisfied the requirements in terms of species, size and condition when the Works were completed.

Our Comments and Recommendation

8. Instead of informing AFCD according to the usual procedures when it found the affected trees in 2014, LCSD wasted time on enquiring of BD just because the latter had issued the hoarding permit. After learning that BD could not take enforcement action, LCSD still did not contact AFCD direct. It just copied to AFCD its letter to BD. We believed that had LCSD alerted AFCD promptly to the problem of the Trees, the latter would have conducted an investigation and might even have instituted prosecution.

9. However, it was not unreasonable of LCSD to give no objection to the Application, as it had duly considered the transplant and compensatory replanting of the Trees. In sum, The Ombudsman considered this complaint partially substantiated.

10. The Ombudsman urged LCSD to ensure that in future, suspected illegal activities concerning trees under its maintenance would be promptly referred to AFCD for investigation.

A case of failure to take prompt and appropriate action



Leisure and Cultural Services Department ("LCSD")

Case No. OMB 2017/2675 – Enforcement action at bathing beaches

Allegations: (1) selective enforcement regarding unauthorised entry with a dog to a beach – unsubstantiated; and (2) abrasive staff attitude – substantiated

Details of Complaint

The complainant and her husband took their dog to the refreshment kiosk of a beach managed by LCSD on a certain day. An LCSD staff ("Staff A") told them that dogs were not allowed in beaches and that they should leave. Staff A, however, did not take enforcement action against an expatriate woman who was also entering the beach with her dog. That gave an impression of biased enforcement. Afterwards, the complainant encountered Staff A again when the latter was driving away. Allegedly, Staff A lowered his side window and said something rude in a threatening manner.

Response from LCSD

2. LCSD indicated that according to Staff A, the complainant's husband had queried why he did not take enforcement action against the expatriate woman, but later he did advise the woman to leave with her dog. LCSD had enquired of those lifeguards and the kiosk operator who were present at the scene on that day and they all confirmed what Staff A said was true. LCSD explained that part of the beach in question was not within its purview and so its staff had no authority to take enforcement action. Besides, Staff A's view might have been blocked such that he was not aware of the said unauthorised entry. That could explain why the complainant found Staff A failing to properly perform his duties earlier on. LCSD apologised for the complainant's bad experience.

3. Moreover, Staff A denied having said anything rude to the complainant and her husband. He also asserted that he was already off duty and away from the beach area and that it was then his personal time. If the complainant felt she had been threatened, she should have called the Police. While LCSD could not verify what actually happened, it had reminded its staff to maintain a proper attitude expected of good civil servants.

Our Comments and Recommendation

4. Staff A claimed that he had advised the expatriate woman to leave the beach area and his account was supported by the lifeguards and kiosk operator. However, we considered that their statements were not entirely independent or objective as they all knew Staff A. On the other hand, Staff A did advise the complainant to leave the beach with her dog. It showed that Staff A did take enforcement action in this aspect. Overall, we found it more likely that Staff A did advise that expatriate woman to leave before he was off duty. Nevertheless, had Staff A told the complainant's husband that he would follow it up, misunderstanding could have been avoided. The Ombudsman considered the allegation about biased enforcement unsubstantiated.

5. As to whether Staff A's manner was abrasive, Staff A only denied having said anything rude without providing further information or giving any details of the conversation between him and the other party. On the other hand, the complainant had provided a clearer and more specific version which we considered more reliable. Moreover, Staff A had questioned our authority to investigate what happened during his personal time when he was off duty. This is more reason for us to believe that Staff A had been abrasive after work because Staff A thought his action after work was beyond LCSD's supervision. Therefore, The Ombudsman considered the allegation about abrasive staff attitude substantiated.

6. Overall, The Ombudsman considered the case partially substantiated.

7. Staff A had just had a confrontation with the complainant when he was on duty that day. If he had really said something rude after work, such behaviour would be gravely at odds with what the community would reasonably expect from public officers and it might damage the Government's reputation and cause embarrassment to LCSD.

8. The Ombudsman urged LCSD to instruct the staff in question to proactively take enforcement action, respond to complainant and maintain the proper manner expected of good civil servants at all times.

A case of poor staff attitude





Transport Department (“TD”)

Case Nos. OMB 2016/2304; OMB 2016/2982 – Temporary closure of metered parking spaces

Main allegation: failing to ensure timely re-opening of metered parking spaces temporarily closed for road works – substantiated

Details of Complaint

Two complainants lodged their complaints separately with this Office against TD. They alleged that some metered parking spaces at different locations were temporarily closed by utility companies (“UCs”) with TD’s approval for carrying out road works, but then the road works were not commenced as scheduled, or the parking spaces were not re-opened promptly despite early completion of the road works. The complainants criticised TD for allowing unnecessary closure of parking spaces, causing inconvenience to drivers and wastage of public resources.

Our Findings

TD’s Monitoring Measures

2. TD will issue approval letters to UCs with specified Approval Conditions for temporary closure of parking spaces. The approval letter, copied also to its contractor for managing metered parking spaces, stipulates the start and end dates of suspension. The Approval Conditions require UCs to submit site photos regularly to TD when the road works are in progress. Meanwhile, the contractor will inspect the affected parking spaces at intervals of not more than four days to monitor the work progress and report to TD’s Traffic Engineering Division of any irregularities. UCs are required to seek TD’s approval at least three working days in advance if they need to extend the suspension period due to delay in road works. Where early completion of road works is expected, UCs should notify TD at least five working days in advance, so that TD can instruct the contractor to effect the re-opening of parking spaces as soon as possible.

Response from TD

3. TD admitted that the two complaint cases reflected its deficiencies in monitoring the contractor. TD explained that the cases cited by the two complainants involved non-compliance with the Approval Conditions by UCs, including failure to notify TD in a timely manner after rescheduling or early completion of the road works, and failure to submit site photos. In some cases, the UCs continued to occupy the parking spaces with trucks and construction materials even though they had notified TD of completion of the road works. As a result, the contractor could not re-open the parking spaces earlier.

4. TD also found that in some cases the contractor had made unauthorised alteration to the dates specified in the suspension notices when it discovered that construction materials had been left at the closed parking spaces despite expiry of the suspension period. TD already reminded the contractor to contact the UC direct in case the site was not properly vacated, and not to alter any information in the suspension notices without first confirming with TD. TD pledged to step up monitoring of the contractor’s performance, including random checking of the notices and the re-opening of parking spaces.

Our Comments

5. This Office had published in 2012 a direct investigation report on the administrative arrangements for temporary closure of metered parking spaces, and TD had implemented the improvement measures recommended in the report. However, from the complaints lodged by the two complainants, it appeared that UCs' non-compliance with the Approval Conditions still occurred from time to time and TD failed to urge the UCs to submit the site photos or make enquiries about their work progress. TD explained that its Traffic Engineering Division had other matters of higher priority to handle. We considered that if the problems revealed in the cases were not single incidents and concerned resource constraints, it was all the more important that TD should explore feasible solutions, such as delegating to the contractor such tasks of liaising and issuing reminders.

6. The above cases also revealed that the contractor had failed to follow proper procedures, leading to prolonged suspension of parking spaces without the knowledge of TD. It was necessary for TD to monitor more rigorously the contractor's performance. Meanwhile, TD's guidelines on re-opening of parking spaces had only set the timeframes for UCs and the contractor to comply regarding their duties but not any timeframes for TD staff regarding their follow-up action to be taken. In one case involving delay, after receiving the contractor's report on early completion of the road works, TD took 12 working days to follow up and arrange for re-opening of the parking spaces. The Department obviously failed to take the urgency to meet the public's needs seriously.

7. While TD stated that its statistics showed effectiveness in the current administration of temporary closure of parking spaces, the above cases revealed that UCs or the contractor might not have truthfully reported the completion dates. As a result, TD might not be aware of any delay in re-opening of the parking spaces. We, therefore, questioned the accuracy of TD's statistics.

Conclusion and Recommendations

8. In the light of the above, The Ombudsman considered the two complaints substantiated.

9. The Ombudsman made a number of recommendations to TD, including:

- (1) to adopt more effective measures against UCs' non-compliance with the Approval Conditions, particularly any failure to report work progress and submit site photos in a timely manner, and to be more proactive in issuing reminders to UCs;
- (2) to consider including in the Approval Conditions a new requirement that UCs should properly clear all items from the parking spaces upon completion of road works;
- (3) to monitor more rigorously the contractor's performance, review and consider revising the contractor's service agreement to delegate some of the work currently handled by the Traffic Engineering Division to the contractor;
- (4) to require the contractor to contact the UCs direct to check work progress if no activities are found at the closed parking spaces during inspections and report to TD in parallel;
- (5) to draw up detailed guidelines and specify the timeframes for follow-up actions to be taken by TD staff;
- (6) to review the classification of relevant cases so that TD's statistics can accurately reflect whether parking spaces are re-opened in a timely manner; and
- (7) to consider requiring the contractor to take photos for records in every inspection.

A case calling for more rigorous monitoring





Summaries of Selected Cases on Code on Access to Information

(The summaries of selected cases in this Annex cover the main allegations and related conclusion of those complaints. For details of the overall conclusion and number of recommendations, please refer to Annex 7)

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



Highways Department ("HyD")

Case No. OMB 2017/0586(I) – Refusal to release information relating to a trial scheme

Main allegations: (1) delay in replying to the complainant's enquiries about a trial scheme and giving different answers or incomplete information on each occasion – substantiated; and (2) wrongly invoking the Code on Access to Information as the reason for refusing the complainant's requests for information – substantiated

The complainant made several enquiries to HyD about conservation measures involving fish fry releasing in the Hong Kong-Zhuhai-Macao Bridge Related Hong Kong Projects, which included the dates, locations, types and prices of fish fry, information on a fish fry releasing trial scheme in 2014 ("the Trial Scheme") and the preparation underway for tender invitation. However, HyD delayed its replies and provided either different answers to the same questions or incomplete information. He considered that HyD had also wrongly invoked paragraph 2.9(a) of the Code on Access to Information ("the Code") when refusing to disclose the prices of fish fry without giving any justification.

Our Findings and Comments

Response from HyD

2. While HyD had at different times provided to the complainant some of the information requested, for the rest of the information requested, HyD expressed that, as the preparation work for fish fry releasing was still underway and the details pending, HyD did not have such information to provide. Besides, since the Trial Scheme was just a small-scale pilot project, disclosing the prices of fish fry and the public money involved might mean releasing inaccurate and misleading data, such that the future tender exercise would be affected and the Government's interests jeopardised. Therefore, HyD considered that its refusal to disclose such information was in line with paragraph 2.9(a) of the Code, i.e. "the disclosure of which would harm or prejudice negotiations, commercial or contractual activities, or the awarding of discretionary grants and ex-gratia payments by a department".

Our Comments

3. Although HyD had not delayed in replying to the complainant's enquiries, it provided information only bit by bit or even ignored his request for information. It had also failed to explain its refusal to disclose information in accordance with the Code. Even though HyD had later invoked paragraph 2.9(a) of the Code as the reason to refuse disclosure of the prices of fish fry, it did not inform the complainant at the same time of the channels to review its decision or file complaints. Nor had it cited any related paragraph from Part 2 of the Code to account for its refusal to disclose the other information requested. This reflected that HyD staff were unfamiliar with the rules and requirements of the Code.

4. In fact, HyD had provided a Legislative Council Member and this Office with the date of the Trial Scheme and the name and rank of the directorate officer approving the scheme. It showed that such information was not difficult to obtain. Furthermore, that HyD's preparation for tender invitation was underway did not constitute a valid reason under the Code for withholding information. HyD had not explained to the complainant how disclosure of the fish fry prices in the Trial Scheme would harm "negotiations, commercial or contractual activities... by a department". Considering that the fish fry prices in the Trial Scheme would only be one of the reference information that Government would take into account when estimating the expenses of future fish fry releasing project, we did not accept that disclosing such information would affect the tender price in future.

Conclusion and Recommendations

5. Overall, The Ombudsman considered the complaint substantiated and recommended HyD to step up staff training.

A case of inadequate understanding of the Code



Hong Kong Housing Society ("HKHS")

**Case No. OMB 2017/1480(R) –
Refusal to disclose the amount of grant
deducted from each repair item under
Operation Building Bright**

Allegation: refusing to disclose to the complainant the amount of grant deducted from each repair item of its residential building – unsubstantiated but other inadequacies found

Details of Complaint

The Owners' Corporation of a tenement building ("the complainant") claimed that HKHS had approved grant to the building for carrying out repairs and maintenance under the Operation Building Bright ("the Operation"). Nevertheless, when the project completed, the grant was partially deducted by HKHS because the complainant failed to produce all the necessary documents to prove completion of the works. The complainant then asked HKHS for information about the amount of grant deducted from each repair item ("the Information"), but was refused on the grounds that the information "may lead to legal proceedings" and was "third-party information".

Our Findings

Response from HKHS

2. HKHS had engaged an independent consultant to assess the project plans submitted by the works consultant and contractor appointed by the complainant, and made an estimate on the project's total cost. In this case, the contractor failed to submit all the necessary documents such that the grant was partially deducted. The works consultant already made it clear that it would chase the contractor for the shortfall. The complainant might also sue the contractor. Citing Section 5(b) of its own Code on Access to Information ("HKHS Code"), HKHS indicated that releasing the Information might lead to legal proceedings and therefore refused the complainant's request for the Information, which would also help keep the consultancy report independent.

3. HKHS also took the view that, disclosing the Information would mean divulging the calculation logic of its independent consultant to the owners' works consultant and contractor, who could then deduce from the information the rules of grant deduction and apply the knowledge to works tenders for other buildings. In a bid to maximise profits, unscrupulous contractors might even intentionally omit some contractual requirements to save time and manpower, despite a possible deduction of grant by HKHS. To ensure the smooth and efficient execution of the Operation, HKHS refused to disclose the Information pursuant to Section 5(e) of the HKHS Code.

4. Besides, the Information might lead to misunderstanding or even disputes, given the complainant's lack of expert knowledge. Furthermore, while HKHS was the owner of the consultancy report, the independent consultant had stated specifically that the report be used only as reference for the Operation and calculation of grant. It was, therefore, "third party information", which HKHS could refuse to disclose under Section 5(g) of the HKHS Code.

Our Comments

5. We believed the HKHS Code has the Government's Code on Access to Information ("the Code") as its blueprint, and the principles of the latter could reasonably be used as the basis in examining how the HKHS Code has been applied. Section 2.6 of the Code was relevant to this case.

6. HKHS failed to elaborate further the rationale behind Section 5(b) of the HKHS Code, or how disclosure of the Information would harm or prejudice the administration of justice, or the conduct or impartial adjudication of legal proceedings (Section 2.6 of the Code). We could not see HKHS's refusal to provide the Information well justified by this Section of the HKHS Code.

7. We considered that HKHS's worry about disclosing the Information was understandable as the execution of the Operation might be affected. This Office accepted HKHS citing Section 5(e) of its Code in refusing the information request.

8. Nevertheless, it was neither correct nor proper of HKHS to invoke Section 5(g) of the HKHS Code as a reason for non-disclosure. First of all, HKHS admitted itself being the owner of the consultancy report. Besides, its assertion that disclosing the Information might lead to misunderstanding or disputes actually had nothing to do with that provision. Obviously, its staff lacked a good understanding of the HKHS Code and the spirit behind disclosure of information.

Conclusion and Recommendations

9. Overall, The Ombudsman considered the complaint unsubstantiated, but other inadequacies were found on the part of HKHS.

10. The Ombudsman recommended that HKHS step up staff training on the HKHS Code and the concept and principles behind disclosure of information by public organisations. It should remind its staff members that when handling requests for information by the public, they should consider the requests prudently and conscientiously in accordance with those concept and principles.

A case of insufficient understanding of the spirit of information disclosure





Leisure and Cultural Services Department ("LCSD")

Case No. OMB 2017/2064(I) – CCTV footage of public libraries

Allegation: refusal to provide the video footage recorded by CCTV of a public library – unsubstantiated but other inadequacies found

Details of Complaint

While using the computer facilities at a public library under LCSD, the complainant slung onto the ground the bag of another reader, Mr A, who then made a report to the Police. A quarrel broke out between the complainant and Mr A, with the two parties using their mobile phones to take pictures of each other. Several library staff came over and tried to talk them out of it. Subsequently, police officers arrived at the library. They told Mr A that the Police would not press charges against the complainant because no damage was done to the contents of his bag, but he could decide whether to file a civil lawsuit against the complainant for compensation.

2. About two weeks later, the complainant complained to LCSD against one of the library staff for unnecessary use of force on her that day. In its reply to the complainant, LCSD explained the situation of that day, but the complainant disagreed and requested the library to provide the closed circuit television ("CCTV") video footage recording the incident.

3. LCSD refused the complainant's information request by invoking paragraph 2.6(c) of the Code on Access to Information ("the Code"). The paragraph stipulates that a department may refuse to disclose information if the information requested "relates to proceedings which have been completed, terminated or stayed, or which relates to investigations which resulted in or may have resulted in proceedings, whether any such proceedings are criminal or civil". The complainant considered LCSD's refusal unreasonable.

Our Findings and Comments

Response from LCSD

4. LCSD explained that the complainant might have committed an offence for damaging the property of others and taking pictures and quarrelling in the library, and Mr A might file a civil lawsuit against her. Therefore, even though the Police decided not to press charges after investigation or Mr A would not file any civil lawsuit for compensation, paragraph 2.6(c) would still apply.

5. Moreover, the CCTV system was installed for venue management and security purposes and the video images recorded should be kept confidential in all circumstances. In case of investigation of any incident, the video footage should only be retrieved and viewed with proper authorisation given.

Our Comments

Information Relating to Legal Proceedings – paragraph 2.6(c) of the Code

6. The Code stipulates that a department may refuse to disclose information that falls into the categories set out in Part 2 of the Code. Nevertheless, the Guidelines on Interpretation and Application of the Code clearly state that even the information requested falls within the areas listed in Part 2 of the Code, it does not necessarily imply that access to it should be refused. Hence, it is not a must for the Government to refuse access to all information falling within the areas of paragraph 2.6(c) of the Code. Rather, it should take into account whether disclosure of such information will prejudice any person or investigation, as well as the possibility and magnitude of such prejudice.

7. In this case, LCSD had not mentioned whether disclosure of the information requested would prejudice any person or investigation, or provided the reason why such information should be kept confidential. Therefore, we considered that LCSD had not given sufficient reasons for its refusal to provide the video footage concerned under paragraph 2.6(c) of the Code.

Information Relating to Privacy of the Individual – paragraph 2.15 of the Code

8. On the other hand, we noticed that Mr A and a number of library staff were recorded in the video footage concerned and their appearances were their personal data. According to paragraph 2.15 of the Code, if the information requested is about personal data of others, the request may be refused unless disclosure of the information is consistent with the purposes for which the information was collected, the subject of the information has given consent, disclosure is authorised by law, or the public interest in disclosure outweighs any harm or prejudice that would result.

9. In this case, it is hardly justifiable to say that providing the information to the complainant was in line with the purpose of management and security of the library. There was also no information to indicate that consent of the subjects had been obtained. If LCSD had provided the video footage in question to others, it might have somewhat infringed the privacy of those subjects. Besides, we did not see any public interest in disclosure outweighing any harm or prejudice that would result. Furthermore, disclosing the information could violate the provisions of the Personal Data (Privacy) Ordinance.

10. In view of the above, we considered that paragraph 2.15 of the Code could be a ground for LCSD to refuse to provide the said video footage.

Conclusion and Recommendation

11. Overall, The Ombudsman considered the complaint unsubstantiated, but found other inadequacies in LCSD's application of the Code. The Ombudsman, therefore, recommended that LCSD enhance its staff training.

A case of inadequate understanding of the Code



Registration and Electoral Office ("REO")

Case No. OMB 2016/3878(I) – Statistics of an election

Allegation: refusing to provide statistics of the 2016 Legislative Council Election – partially substantiated

Details of Complaint

The complainant requested REO to provide statistics of the 2016 Legislative Council Election ("the Election"), including "the number of invalid ballot papers and the reason for their being regarded as invalid", "the number of complaints about voter impersonation", "the cumulative voter turnout at polling stations each hour" and "the number of votes and invalid ballot papers that election agents were notified of at the venues". REO told the complainant that the requested information could not be provided for the time being.

Our Findings

2. As required by the law, REO would investigate matters relating to the Election. The Electoral Affairs Commission ("the Commission") would then make a report ("the Report") to the Chief Executive and then publish it. Some of the information that the complainant requested would be included in the Report.

3. According to REO, the statistics that the complainant requested related to the data of around a thousand election documents and of nearly 600 polling stations. Since REO had not yet finished collating and verifying the information, it would have to deploy a lot of manpower and other resources for such compilation just to provide some scattered statistics to the complainant before completion of the Report. Besides, disclosure of incomplete statistics and piecemeal information before publishing the Report would not show a full picture and could be misleading. Premature disclosure of information would also deprive the Commission of its priority to make a report and recommendations to the Chief Executive. Therefore, REO invoked paragraphs 2.9(d) (“unreasonable diversion of a department’s resources”) and 2.13(a) (“information relating to incomplete analysis, research or statistics, where disclosure could be misleading or deprive the department or any other person of priority of publication”) of the Code on Access to Information (“the Code”) and refused to provide the statistics requested by the complainant before the Report was published.

Our Comments

Re: “the number of invalid ballot papers and the reason for their being regarded as invalid” and “the number of complaints about voter impersonation”

4. REO stated that disclosure of such information could be misleading. We found its statement not adequately grounded. REO had failed to explain how such disclosure would cause misunderstanding and what kind of misunderstanding might be caused. We did not see how disclosure of such information could be misleading in any way. Hence, we did not agree that REO could refuse to provide the information on the grounds that “disclosure could be misleading” citing paragraph 2.13(a) of the Code.

5. Nevertheless, we found it not unreasonable of REO to estimate that it would have to deploy a lot of manpower to provide the information as that would involve statistical analysis and classification of a large number of ballot papers and complaints. Given that such information had not yet been made public, it would deprive the Commission of its priority to provide information to the Chief Executive if REO were to provide the complainant with such information first. In our view, REO’s decision

to refuse disclosure of such information on the grounds of “unreasonable diversion of a department’s resources” citing paragraph 2.9(d) and that disclosure would “deprive the department or any other person of priority of publication” citing paragraph 2.13(a) of the Code was not unjustified.

Re: “the cumulative voter turnout at polling stations each hour” and “the number of votes and invalid ballot papers that election agents were notified of at the venues”

6. We considered that disclosure of such information would not cause any misunderstanding. Moreover, any possibility of misunderstanding could be eliminated by way of adding an explanatory note. Therefore, we did not accept REO’s invoking paragraph 2.13(a) of the Code (“disclosure could be misleading”) as a reason for withholding information.

7. Furthermore, those data had already been released on the day of the Election. Hence, it would not cost REO much manpower to provide the information to the complainant. Besides, when the Commission subsequently submitted the Report to the Chief Executive, there was no longer a question of priority of publication as far as those data were concerned, as they had already been released on the day of the Election. In this regard, we considered that both paragraphs 2.9(d) (“unreasonable diversion of a department’s resources”) and 2.13(a) (disclosure could “deprive the department or any other person of priority of publication”) of the Code were not applicable.

Conclusion and Recommendation

8. Based on the above analysis, The Ombudsman considered the complaint partially substantiated.

9. In the course of our investigation, REO provided the requested information to the complainant. The Ombudsman urged REO to carefully consider each item of information request and in future provide as much information as possible.

A case of unreasonable withholding of information





Index of Reviews by Full Investigation

(An asterisk (*) at the end of a case number indicates that a case summary is available in Annex 11)

Case no.	Complaint	Original overall conclusion	Decision varied/ upheld after review	Overall conclusion after review	No. of recommendations
Food and Environmental Hygiene Department					
2016/4365	Giving a false reply to the complainant that the air-conditioner dripping had stopped	Inquiry – Unsubstantiated but other inadequacies found	Upheld	Unsubstantiated but other inadequacies found	2
Government Secretariat – Education Bureau					
2017/2702*	Unfairly discontinuing the education subsidy granted to a kindergarten student upon his transfer to another kindergarten	Inquiry – Unsubstantiated	Upheld	Unsubstantiated	0
Lands Department					
2016/4974	Failing to take action against an unauthorised structure and to consider criminal prosecution against the occupier	Inquiry – Unsubstantiated	Upheld	Unsubstantiated	1

Summary of Selected Review by Full Investigation



Education Bureau (“EDB”)

**Case No. OMB 2017/2702 –
Kindergarten education subsidy**

Allegation: Unfairly discontinuing the education subsidy granted to a kindergarten student upon his transfer to another kindergarten – unsubstantiated

Details of Complaint

After completing K2 at Kindergarten A, the complainant’s son (“the Child”), who had been receiving subsidy under the Pre-primary Education Voucher Scheme (“PEVS”), changed to join K3 at Kindergarten B in the 2017/18 school year. Afterwards, the complainant found that the Child, unlike all other K3 students in Kindergarten B, was no longer entitled to PEVS subsidy. The complainant considered the Child to have been unfairly treated by EDB.

Transitional Arrangements for Replacing PEVS

2. Since the 2017/18 school year, PEVS had been replaced by the Free Quality Kindergarten Education Scheme (“FQKES”). To facilitate the implementation of FQKES, EDB formulated some transitional arrangements, one of which was that existing students of a PEVS kindergarten which had not opted to join FQKES (and thus became a non-FQKES kindergarten) would continue to receive subsidy under PEVS until they left school (“grandfathering practice”). However, students transferred from a PEVS kindergarten to a non-FQKES kindergarten would no longer be entitled to PEVS subsidy.

EDB’s Explanation in Response to Our Inquiry

3. EDB explained to us that Kindergarten B, previously a PEVS kindergarten, did not opt to join FQKES in the 2017/18 school year. Existing students of Kindergarten B would continue to receive subsidy under PEVS, but the Child, being a “transfer student”, could no longer enjoy it.

4. We found EDB’s explanation reasonable.

Request for Review

5. Dissatisfied, the complainant requested a review of his case, stating the following grounds:

- (1) FQKES should have been applied to K1 first, so that the Child, a K3 student, could continue to enjoy PEVS subsidy.
- (2) It was unreasonable of EDB not to extend the “grandfathering practice” to “transfer students” or exercise discretion to allow the Child to continue to receive PEVS subsidy.

Outcome of Review

EDB’s Response

6. EDB’s response was as follows.

Re: Point (1)

7. It is EDB’s policy decision, which had the Legislative Council’s support, that FQKES should be implemented throughout K1, K2 and K3 at once for the following reasons:

- (1) Under PEVS, parents are given a direct, fixed-amount subsidy in the form of vouchers. Under FQKES, Government subsidies of greater amounts are instead given to kindergartens to cover different kinds of expenses such as salaries for teaching and supporting staff and school-specific grants (e.g. rental subsidy and grant for a cook, etc).

- (2) Government subsidy under FQKES, in principle, should be sufficient for kindergartens to provide services either free or at a low school fee level. The quality of education services would also be enhanced through various means such as a better teacher-student ratio.
- (3) Implementation of FQKES throughout K1 to K3 in the 2017/18 school year at once would immediately benefit all eligible students. If the scheme were to start with K1 first and extended to K2 and K3 later, it would take three years to benefit all students of FQKES kindergartens.

Re: Point (2)

8. It was also not justified to extend the “grandfathering practice” to “transfer students” because:

- (1) in the 2017/18 school year, there were over 740 FQKES kindergartens and it was entirely parents’ choice to transfer their children from a PEVS kindergarten to a non-FQKES kindergarten; and
- (2) the transitional arrangements had already taken care of the interests of students who had been studying in a PEVS kindergarten, so that they would not lose their subsidy if the kindergarten chose not to join FQKES.

9. EDB neither saw any justification for exercising discretion to let the Child continue receiving subsidy under PEVS. The Bureau pointed out the following:

- (1) The list of FQKES kindergartens was available on EDB’s website and kindergartens in general would inform parents about fee arrangements and what subsidies they might be eligible for. The Child’s transfer to Kindergarten B was undoubtedly an informed choice made by the complainant.
- (2) The complainant had not mentioned any special circumstances warranting EDB’s discretion.

Our Comments and Conclusion

10. Regarding Point (1), we found EDB’s explanation sound and reasonable. We did not see why the Government should implement FQKES year by year starting with K1 and thereby cause delay to the provision of more and possibly better subsidy to kindergarten students. What the complainant suggested would mean that kindergartens would be running at the same time both PEVS and FQKES, which were different and incompatible. That was clearly not feasible.

11. As for Point (2), we considered that the complainant could have transferred the Child to a FQKES kindergarten in order to continue to enjoy Government subsidy, in which case there would be no “unfair treatment” as alleged.

12. The Ombudsman maintained her view that EDB’s arrangements were fair overall.



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

(1) Guidelines for Clarity, Consistency or Efficiency in Operation

Organisation (Case reference)	Administrative enhancement
Buildings Department (2014/5636)	Guidelines revised and monitoring information system updated to expedite enforcement actions against unauthorised building works
Electrical and Mechanical Services Department (2016/3937)	Procedures refined to enhance the guidance to staff in providing clear professional advice on freezers to other public bodies in procuring freezers
Inland Revenue Department (2012/0051)	Time for Inland Revenue Department's staff to input receipt of form IR76C (Election for Personal Assessment and Claim for Deductions and Allowances) added in internal guideline, so that staff of other sections would be alerted and take timely follow-up action
Lands Department (2017/2909)	Staff reminded to provide comprehensive information about the status of a village house, in particular whether the house is a New Territories Exempted House, when answering other Government departments' enquiries
Post Office (2016/4154)	Staff reminded to study relevant sections of the Post Office Guide before liaising with overseas postal administrations on compensation cases to avoid delay in handling claims
Transport Department (2016/2304, 2016/2982A)	• New guidelines issued to frontline staff regarding the workflow and time-frame for re-opening temporarily suspended parking meters; and • New clauses to be included in new contracts of Transport Department's term contractor requiring the latter to contact the relevant road work owners/contractors for work progress when carrying out orders of re-opening of temporarily suspended parking meters
Transport Department (2016/2794, 2016/2842, 2016/2916)	Guidelines revised on processing new applications for housing estate residents' transport service to take into account the residents' services already approved for nearby residential developments

(2) Better Arrangements for Inter-departmental Co-ordination

Organisation (Case reference)	Administrative enhancement
Customs and Excise Department (2014/4004(I))	Procedures set out for seeking consent before referring complaints about advertisements of non-local education courses on Internet to other appropriate departments or non-government authorities for handling
Office of the Communications Authority (2016/4460A)	Arrangements made for Office of the Communications Authority to check, upon receipt of complaints, with Buildings Department and Lands Department for any non-compliance with statutory requirements by radio base stations, in considering whether to revoke approval granted to mobile network operators
Transport Department & Transport and Housing Bureau (2015/2325A&B)	Strengthened liaison with the Police on enforcement actions against illegal hire car services provided by smartphone apps

(3) Measures for Better Public Enquiry/Complaint Handling

Organisation (Case reference)	Administrative enhancement
Customs and Excise Department (2014/4004(I))	Guidelines revised on the assignment of case reference number for public enquiries/reports to avoid confusion
Chief Secretary for Administration's Office (1823) (2016/1771C(I))	New guidelines introduced whereby all public enquiries, except complaints, suggestions, compliments and seeking of opinion/comments, would be referred to bureaux/departments as non-Code requests to be handled within the time frame specified in the Code on Access to Information
Transport and Housing Bureau (2017/1838)	Design and content of "Request/Enquiry/Record Form" revised to avoid future misunderstanding by staff of the nature of the matter stated in the form and consequential mishandling by staff
Hospital Authority (2017/1444)	Guidelines on staff complaint and appeal procedures issued to promote better handling of complaints/incidents to avoid conflicts of interests
Leisure and Cultural Services Department (2013/3429)	In consulting relevant Government departments and public bodies for processing applications of organisations for holding activities (e.g. Yu Lan Festival) in playgrounds, information on complaints received against similar activities in the past would be incorporated and passed to the departments and bodies for information, to ensure that past complaints would be duly considered in future applications
Radio Television Hong Kong (2016/2199)	Guidelines drawn up on the setting of call transfer and voice mail functions for better handling of telephone calls

(4) Measures for Better Client Services

Organisation (Case reference)	Administrative enhancement
Education Bureau (2016/1833)	Procedures set out for following up undelivered notices for allocation of Primary One places
Inland Revenue Department (2012/0051)	Inland Revenue Department's computer system upgraded for better handling of refund of overpayment and offset arrangements
Labour Department (2016/3528)	Procedures reviewed to pay the Work Incentive Transport Subsidy to applicants upon receipt of requisite information, regardless of whether the applications are randomly selected for investigation
Post Office (2016/4154)	Computer system enhanced to strengthen monitoring of progress in handling of compensation claims
Transport Department (2016/2794, 2016/2842, 2016/2916)	Plan of rationalising housing estate residents' transport services in a district reviewed and revised to better address the different treatments given to estates already granted and those applying for such services
Transport Department (2016/2982A)	New Parking Meter System Trial Scheme introduced to explore the function allowing the suspension of single parking spaces for adjacent spaces sharing a common meter pole

(5) Measures for More Effective Regulation or Control

Organisation (Case reference)	Administrative enhancement
Buildings Department (2016/1360)	Guidelines revised on the handling of outstanding removal orders to ensure prompt follow-up actions
Buildings Department (2017/1529)	- Monitoring tightened of progress of rectification works after issue of a statutory order; and - Enforcement action stepped up as and when problem persisted
Environmental Protection Department (2016/4178B)	CCTV cameras installed at the subject location against dumping of bulk refuses at a lay-by area in Yuen Long
Food and Environmental Hygiene Department (2016/3777)	Monitoring of performance of contractors enhanced for better management of two refuse collection points
Food and Environmental Hygiene Department (2016/3796)	More manpower deployed for street patrol to tackle illegal hawking problem
Food and Environmental Hygiene Department (2017/2614A)	Staff in plain clothes deployed for surveillance and catching offenders providing hair-cutting service in a street
Housing Department (2015/4242)	Terms of tenancy agreement revised stating clearly the prohibition of display and storage of products unrelated to the business of stalls
Lands Department (2017/2572)	Reviewing departmental land control policy for more effective allocation of resources on land control and enforcement actions
Leisure and Cultural Services Department (2013/3429)	New measures introduced for more effective monitoring of compliance with noise control conditions by hirers of leisure grounds
Social Welfare Department (2016/0971)	Number of inspections increased for monitoring services of subvented residential care homes for the elderly
Transport Department (2015/1037, 2015/2581)	- Management company of a housing estate requested to rectify substandard road humps; and - Action in hand to amend the relevant ordinance and code of practice for road humps in private roads to enhance road safety
Transport Department (2016/2304, 2016/2982A)	- Public utilities companies required to submit photos showing site condition as part of the conditions of compliance for re-opening of temporarily closed parking meters; - New compliance Guideline issued; and - Reminders given to staff to step up surprise inspections
Transport Department & Transport and Housing Bureau (2015/2325A&B)	To combat the problem of illegal hire car services provided by smartphone apps: - proposal developed for public consultation on “franchised taxi” which would provide personalised and point-to-point transport services; - new measures adopted to facilitate applications for hire car permits and enhance service quality; and - closer collaboration with the trade effected to improve taxi services

(6) Clearer and Fairer Rules and Requirements

Organisation (Case reference)	Administrative enhancement
Marine Department (2014/4448)	New guidelines issued to make the conduct of disciplinary hearings more transparent and fair

(7) Clearer and More Timely Information to the Public

Organisation (Case reference)	Administrative enhancement
Consumer Council (2016/1489)	Consumer Legal Action Fund rejection letters revised to include brief reasons for refusal of applications for greater transparency of the decisions made
Housing Department (2016/0117(I))	Information about the rent of factory units managed by Housing Department and rental increments upon tenancy renewal released upon request
Buildings Department (2016/1360)	Clearer information provided on the departmental website about the registration of removal orders
Highways Department (2017/0586(I))	Information about a fish fry release trial in 2014 relating to a bridge project released to the public upon request
Leisure and Cultural Services Department (2015/4140(I))	To provide the full text, suitably redacted, of the management deed signed between Leisure and Cultural Services Department and a private organisation in accordance with the Code on Access to Information
Transport Department (2015/1037, 2015/2581)	Clearer stance on the regulation of road humps in a private housing estate conveyed to its management company
Transport Department (2016/2794, 2016/2842, 2016/2916)	- Internal policy made committing to conducting proper consultation with the residents and giving adequate notice to all stakeholders before deciding on and effecting reduction of residents' service; and - Relevant District Council informed and consulted on the traffic planning (including residents' services and public transport) for the district

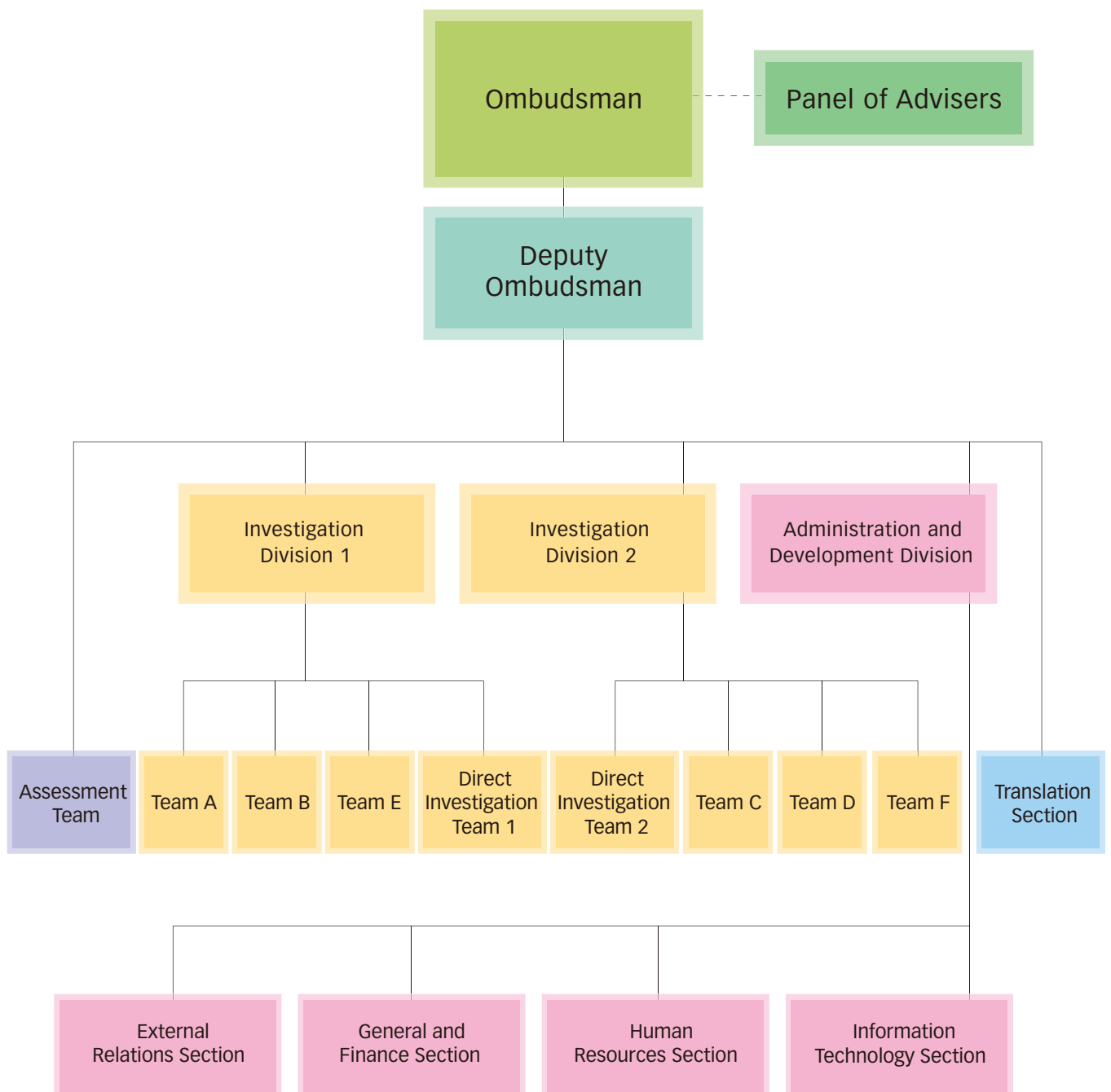
(8) Training for Staff

Organisation (Case reference)	Administrative enhancement
Buildings Department (2016/3949)	• Staff sharing sessions conducted regularly to enhance staff knowledge in handling cases of minor works involving coordination; and • Gist and experience learnt from relevant cases be uploaded to the Department's intranet for sharing among staff
Electrical and Mechanical Services Department (2016/3937)	Staff briefing on new procedures for provision of professional advice on freezers and sharing of the relevant Ombudsman case conducted
Housing Department (2016/0117(I))	• Staff training/sharing sessions on Code on Access to Information conducted to enhance staff awareness and understanding of the requirements of the Code; and • Internal guidelines on the Code promulgated among staff regularly
Hong Kong Housing Society (2017/1480(R))	Staff training stepped up to enhance staff understanding of the principles of the Code on Access to Information
Highways Department (2017/0586(I))	Staff training/sharing sessions on Code on Access to Information conducted to enhance staff awareness and understanding of the requirements of the Code
Leisure and Cultural Services Department (2015/4140(I))	Staff training stepped up to ensure that they adhere strictly to the Code on Access to Information and the related Guidelines when handling information requests from the public



Organisation Chart

Office of The Ombudsman





Panel of Advisers

Accountancy

Mr Tsai Wing Chung, Philip, BBS, JP

Architecture, Engineering and Surveying

Ir Chan Chi Chiu, SBS, JP

Sr Chan Yuk Ming, Raymond

Ir Dr Ho Chung Tai, Raymond, SBS, MBE, SB St J, JP

Dr Hung Wing Tat, MH

Ir Leung Kwong Ho, Edmund, SBS, OBE, JP

Professor Lim Wan Fung, Bernard Vincent, JP

Legal

Mr Cheung Tat Ming, Eric

Mr Leung Wai Man, Raymond, SC

Dr Lo Pui Yin

Professor Anne Scully-Hill

Professor Stephen Thomson

Mr Wong Man Kit, Anson, SC

Ms Wong Pui Sze, Priscilla, BBS, JP

Medical and Nursing

Professor Chien Wai Tong

Professor Lai Kam Yuk, Claudia

Professor Lo Chung Mau, BBS, JP

Dr Shum Ping Shiu, BBS, JP

Professor Grace Tang, SBS, JP

Dr Tsang Fan Kwong

Social Work and Rehabilitation Services

Professor Chan Lai Wan, Cecilia, JP

Professor Fang Meng Sang, Christine, BBS, JP

Professor Ma Lai Chong, Joyce, JP

Mr Ng Wang Tsang, Andy



Visits to the Office of The Ombudsman

Date	Visitors
13 June 2017	Participants of the "Training Scheme in Common Law 2016-2017" (arranged by the Department of Justice)
29 June 2017	Delegates from the Petitions Support Centre of the National Assembly of Korea (arranged by the Consulate General of Korea)
21 July 2017	Ms Christina Tay, a postgraduate student from the University of Strathclyde, UK
27 July 2017	Delegates from the Shenzhen Municipal Government (arranged by the Vocational Training Council)
1 August 2017	2017 Xinjiang Uygur Autonomous Region Delegation of Township Mayors (arranged by the Hong Kong Financial Services Institute)
29 August 2017	Delegates from National Human Resources Institute, Government of the Republic of Korea
6 September 2017	Participants of "Capacity Building Programme for Primary Level Officers" (arranged by the Office of the Ombudsman, Thailand)
8 September 2017	Participants of the "Guizhou Province Specialised Training Courses on Improvement of Administrative Capacity by Law in Hong Kong" (arranged by the Hong Kong Wen Wei Management College, Ta Kung Wen Wei Media Group)
13 September 2017	Participants of the "86th Seminar on Economic Management for Middle and Senior Civil Servants" (arranged by the Institute for Entrepreneurship, the Hong Kong Polytechnic University)
15 September 2017	Delegates from the Shenzhen Municipal Legislative Affairs Office (arranged by the Hong Kong Financial Services Institute)
15 September 2017	Hon Hiroe Makiyama, Director-General of the International Bureau, the Democratic Party, Japan (arranged by the Information Services Department)
19 October 2017	Participants of the "11th Advanced Programme for Chinese Senior Judges" (arranged by the Centre for Judicial Education and Research, the City University of Hong Kong)
16 November 2017	Delegates from the Shenzhen Municipal Government (arranged by the Vocational Training Council)
17 November 2017	Participants of the "15th Postgraduate Certificate in Corruption Studies" (arranged by the School of Professional and Continuing Education, the University of Hong Kong)
23 November 2017	Participants of the "Shenzhen Discipline Inspection Commission Study Group on Building a Corruption-free and Honest Administration in Hong Kong" (arranged by the Ta Kung International Media College, Ta Kung Wen Wei Media Group)
27 November 2017	Visiting scholars of the Legal Education Fund (arranged by Legal Education Fund Limited)

Date	Visitors
28 November 2017	Participants of the “Yunnan Provincial Government Advanced Workshop on Management and Evaluation of Effectiveness and Performance in Hong Kong” (arranged by the Hong Kong Wen Wei Management College, Ta Kung Wen Wei Media Group)
4 December 2017	Participants of the “55th Training Course for Middle-aged and Young Leading Cadres in Qinghai Province” (arranged by Eternal Chance Investment Limited)
13 December 2017	Guizhou Delegation on Improving the Management Capabilities of Civil Servants (arranged by the Hong Kong Financial Services Institute)
21 December 2017	Ms Nahomi Ichimiya, President of the National Personnel Authority, Japan (arranged by the Information Services Department)
5 January 2018	Participants of the “10th Development Course for Government Officials from Chenzhou, Shaoguan and Ganzhou Municipalities” (arranged by the Hong Kong Productivity Council)
24 January 2018	Participants of the “Guizhou Province Specialised Training Courses on Comprehensive Improvement of Government Services” (arranged by the Hong Kong Wen Wei Management College, Ta Kung Wen Wei Media Group)
26 January 2018	Guizhou Delegation on Administrative Reform and Building of Government by Law (arranged by the Hong Kong Financial Services Institute)
7 February 2018	Participants of the “Guizhou Province Study Group on Building a Corruption-free Government and Administrative Supervision in Hong Kong” (arranged by the Ta Kung International Media College, Ta Kung Wen Wei Media Group)
19 March 2018	Mr Lu Weidong, Director of the Shanghai Municipal Bureau of Justice (arranged by the Information Services Department)



Financial Statements

For the year ended 31 March 2018

OBJECTIVITY





Independent auditor's report to The Ombudsman

(Established in Hong Kong pursuant to the Ombudsman Ordinance)

Opinion

We have audited the financial statements of The Ombudsman set out on pages 148 to 162, which comprise the statement of financial position as at 31 March 2018, the statement of income and expenditure and other comprehensive income, the statement of changes in funds and the cash flow statement for the year then ended and notes to the financial statements, including a summary of significant accounting policies.

In our opinion, the financial statements give a true and fair view of the financial position of The Ombudsman as at 31 March 2018 and of its financial performance and its cash flows for the year then ended in accordance with Hong Kong Financial Reporting Standards ("HKFRSs") issued by the Hong Kong Institute of Certified Public Accountants ("HKICPA").

Basis for opinion

We conducted our audit in accordance with Hong Kong Standards on Auditing ("HKSAs") issued by the HKICPA. Our responsibilities under those standards are further described in the *Auditor's responsibilities for the audit of the financial statements* section of our report. We are independent of The Ombudsman in accordance with the HKICPA's *Code of Ethics for Professional Accountants* ("the Code") and we have fulfilled our other ethical responsibilities in accordance with the Code. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Information other than the financial statements and auditor's report thereon

The Ombudsman is responsible for the other information. The other information comprises all the information included in the annual report, other than the financial statements and our auditor's report thereon.

Our opinion on the financial statements does not cover the other information and we do not express any form of assurance conclusion thereon.

In connection with our audit of the financial statements, our responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements or our knowledge obtained in the audit or otherwise appears to be materially misstated.

If, based on the work we have performed, we conclude that there is a material misstatement of this other information, we are required to report that fact. We have nothing to report in this regard.

Responsibilities of The Ombudsman for the financial statements

The Ombudsman is responsible for the preparation of the financial statements that give a true and fair view in accordance with HKFRSs issued by the HKICPA 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.

In preparing the financial statements, The Ombudsman is responsible for assessing The Ombudsman's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless The Ombudsman either intend to liquidate The Ombudsman or to cease operations, or have no realistic alternative but to do so.

Auditor's responsibilities for the audit of the financial statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. 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.

Auditor's responsibilities for the audit of the financial statements (continued)

Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with HKSAs will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

As part of an audit in accordance with HKSAs, we exercise professional judgement and maintain professional scepticism throughout the audit. We also:

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations or the override of internal control.
- Obtain an understanding of internal control relevant to the audit 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 Ombudsman's internal control.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by The Ombudsman.
- Conclude on the appropriateness of The Ombudsman's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on The Ombudsman's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause The Ombudsman to cease to continue as a going concern.
- Evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

We communicate with The Ombudsman regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during our audit.

KPMG

Certified Public Accountants

8th Floor, Prince's Building
10 Chater Road
Central, Hong Kong

18 May 2018



Statement of income and expenditure for the year ended 31 March 2018

(Expressed in Hong Kong dollars)

	Note	2018	2017
Income			
Government subventions	4	\$ 116,644,000	\$ 115,095,000
Amortisation of deferred Government subventions	4	1,814,220	1,814,220
Interest income on bank deposits		4,624,743	4,382,224
Other income		429,362	125,696
		\$ 123,512,325	\$ 121,417,140
Expenditure			
Operating expenses	5	(121,181,809)	(121,637,354)
Surplus/(deficit) for the year		\$ 2,330,516	\$ (220,214)



Statement of comprehensive income for the year ended 31 March 2018

The Ombudsman had no components of comprehensive income other than "surplus/(deficit) 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/(deficit)" in both years.

The notes on pages 152 to 162 form part of these financial statements.



Statement of financial position at 31 March 2018

(Expressed in Hong Kong dollars)

	Note	2018	2017
ASSETS			
Non-current asset			
Property, plant and equipment	8	\$ 65,461,285	\$ 68,658,384
Current assets			
Deposits and prepayments		\$ 992,324	\$ 4,225,701
Interest receivable		1,799,020	2,364,767
Time deposits with original maturity over three months		326,054,000	333,389,000
Cash and cash equivalents	9	38,538,473	20,009,430
		\$ 367,383,817	\$ 359,988,898
Total assets		\$ 432,845,102	\$ 428,647,282
LIABILITIES			
Non-current liabilities			
Contract gratuity payable – non-current	10	\$ 5,233,475	\$ 5,180,964
Deferred Government subventions – non-current	4	60,714,658	62,528,878
		\$ 65,948,133	\$ 67,709,842
Current liabilities			
Other payables and accruals		\$ 2,668,375	\$ 2,663,073
Contract gratuity payable – current	10	7,583,902	3,960,191
Deferred Government subventions – current	4	1,814,220	1,814,220
		\$ 12,066,497	\$ 8,437,484
Total liabilities		\$ 78,014,630	\$ 76,147,326
FUNDS			
Accumulated funds		\$ 354,830,472	\$ 352,499,956
Total funds		\$ 354,830,472	\$ 352,499,956
Total funds and liabilities		\$ 432,845,102	\$ 428,647,282

Approved and authorised for issue by The Ombudsman on 18 May 2018.

Ms Connie Lau
The Ombudsman

The notes on pages 152 to 162 form part of these financial statements.



Statement of changes in funds for the year ended 31 March 2018

(Expressed in Hong Kong dollars)

	Accumulated funds
Balance at 1 April 2016	\$ 352,720,170
Change in funds for 2016/2017:	
Deficit and total comprehensive income for the year	(220,214)
Balance at 31 March 2017 and 1 April 2017	\$ 352,499,956
Change in funds for 2017/2018:	
Surplus and total comprehensive income for the year	2,330,516
Balance at 31 March 2018	\$ 354,830,472

The notes on pages 152 to 162 form part of these financial statements.



Cash flow statement for the year ended 31 March 2018

(Expressed in Hong Kong dollars)

	Note	2018	2017
Operating activities			
Surplus/(deficit) for the year		\$ 2,330,516	\$ (220,214)
Adjustments for:			
Interest income		(4,624,743)	(4,382,224)
Depreciation	5	3,438,469	3,570,148
Amortisation of deferred Government subventions		(1,814,220)	(1,814,220)
Loss on disposal of property, plant and equipment		2,754	4,836
Operating deficit before changes in working capital		\$ (667,224)	\$ (2,841,674)
Decrease in deposits and prepayments		3,233,377	6,816,299
Increase in other payables and accruals		5,302	190,070
Increase/(decrease) in contract gratuity payable		3,676,222	(1,811,754)
Net cash generated from operating activities		\$ 6,247,677	\$ 2,352,941
Investing activities			
Interest received		\$ 5,190,490	\$ 2,963,642
Payments for purchase of property, plant and equipment		(244,124)	(256,426)
Increase of time deposits with original maturity over three months		(326,054,000)	(333,389,000)
Proceeds from time deposits with original maturity over three months matured		333,389,000	319,133,000
Net cash generated from/(used in) investing activities		\$ 12,281,366	\$ (11,548,784)
Net increase/(decrease) in cash and cash equivalents		\$ 18,529,043	\$ (9,195,843)
Cash and cash equivalents at beginning of the year	9	20,009,430	29,205,273
Cash and cash equivalents at end of the year	9	\$ 38,538,473	\$ 20,009,430

The notes on pages 152 to 162 form part of these financial statements.



Notes to the financial statements

(Expressed in Hong Kong dollars)

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. Significant accounting policies adopted by The Ombudsman are disclosed below.

The HKICPA has issued certain new and revised HKFRSs that are first effective or available for early adoption for the current accounting period of The Ombudsman. None of these developments have had a material effect on The Ombudsman's results and financial position for the current or prior periods have been prepared or presented. The Ombudsman has not applied any new standard or interpretation that is not yet effective for the current accounting period (see note 16).

(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.

Judgement made by The Ombudsman in the application of HKFRSs that has significant effect on the financial statements and major source of estimation uncertainty is discussed in note 3.

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

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 the end of each reporting period. 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.

(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.

2 Significant accounting policies (continued)

(d) Leased assets (continued)

(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 recognised as 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 statement of income and expenditure 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 receivables are interest-free loans made to related parties without any fixed repayment terms or the effect of discounting would be immaterial. In such cases, the receivables are stated at cost less allowance for impairment of doubtful debts.

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 receivables 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) Payables

Payables are initially recognised at fair value and subsequently 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 on 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.

2 Significant accounting policies (continued)

(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.

(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 statement of financial position 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 statement of financial position 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

Income of wages in lieu of notice from contract staff, employee insurance compensation and other miscellaneous income are 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 note 2(k)(a).
 - (vii) A person identified in note 2(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).
 - (viii) The entity, or any member of a group of which it is a part, provides key management personnel services to The Ombudsman.

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 Accounting judgement and estimate

In the process of apply The Ombudsman's accounting policies, The Ombudsman has made the following significant accounting judgement:

Depreciation

Property, plant and equipment is depreciated on a straight line basis over their estimated useful lives. The Ombudsman reviews annually the estimated useful life in order to determine the amount of depreciation expense to be recorded during any reporting period. The useful lives are based on The Ombudsman's historical experience with similar assets taking into account anticipated technological changes. The depreciation expense for future periods is adjusted if there are significant changes from previous estimations.

Notes to the financial statements (continued)
(Expressed in Hong Kong dollars)

4 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 and the purchase of building. 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 leases for prepaid lease payments and the useful life of 40 years of building in accordance with the accounting policies set out in notes 2(c) and 2(j)(i).

At 31 March 2018, the deferred Government subventions are expected to be amortised as follows:

	2018	2017
Within one year and included in current liabilities	\$ 1,814,220	\$ 1,814,220
After one year and included in non-current liabilities	60,714,658	62,528,878
	\$ 62,528,878	\$ 64,343,098

5 Operating expenses

	2018	2017
Employee benefit expenses (note 6)	\$ 106,598,747	\$ 101,013,307
Depreciation of property, plant and equipment (note 8)	3,438,469	3,570,148
Rates and management fee	3,143,184	3,143,164
Operating lease rentals in respect of parking spaces	91,200	91,200
Auditor's remuneration	85,500	82,000
Announcement of public interest expense	585,091	5,923,500
Loss on disposal of property, plant and equipment	2,754	4,836
Other expenses	7,236,864	7,809,199
	\$ 121,181,809	\$ 121,637,354

6 Employee benefit expenses

	2018	2017
Salaries and allowances	\$ 91,717,144	\$ 87,385,422
Contract gratuity	9,890,695	8,988,127
Pension costs – MPF scheme	2,577,137	2,446,021
Unutilised annual leave	221,841	166,492
Other employee benefit expenses	2,191,930	2,027,245
	\$ 106,598,747	\$ 101,013,307

Notes to the financial statements (continued)

(Expressed in Hong Kong dollars)

7 Key management compensation

	2018	2017
Short-term employee benefits	\$ 16,373,847	\$ 15,597,428
Post-employment benefits	2,264,622	2,074,349
	\$ 18,638,469	\$ 17,671,777

8 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 2016	\$ 74,900,000	\$ 16,800,000	\$ 15,725,730	\$ 818,877	\$ 1,611,547	\$ 6,158,213	\$ 874,801	\$ 116,889,168
Additions	–	–	128,820	9,709	84,022	33,875	–	256,426
Disposals	–	–	–	(3,134)	(51,088)	(47,704)	–	(101,926)
At 31 March 2017	\$ 74,900,000	\$ 16,800,000	\$ 15,854,550	\$ 825,452	\$ 1,644,481	\$ 6,144,384	\$ 874,801	\$ 117,043,668
Accumulated depreciation:								
At 1 April 2016	\$ 19,640,244	\$ 5,902,438	\$ 13,168,324	\$ 650,552	\$ 1,125,831	\$ 4,233,454	\$ 191,383	\$ 44,912,226
Charge for the year	1,394,220	420,000	423,488	57,073	189,570	946,797	139,000	3,570,148
Written back on disposals	–	–	–	(3,134)	(48,183)	(45,773)	–	(97,090)
At 31 March 2017	\$ 21,034,464	\$ 6,322,438	\$ 13,591,812	\$ 704,491	\$ 1,267,218	\$ 5,134,478	\$ 330,383	\$ 48,385,284
Net book value:								
At 31 March 2017	\$ 53,865,536	\$ 10,477,562	\$ 2,262,738	\$ 120,961	\$ 377,263	\$ 1,009,906	\$ 544,418	\$ 68,658,384

Notes to the financial statements (continued)
(Expressed in Hong Kong dollars)

8 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	Total
Cost:								
At 1 April 2017	\$74,900,000	\$16,800,000	\$15,854,550	\$ 825,452	\$ 1,644,481	\$ 6,144,384	\$ 874,801	\$ 117,043,668
Additions	–	–	–	39,454	147,710	56,960	–	244,124
Disposals	–	–	–	(36,067)	(82,969)	(51,937)	–	(170,973)
At 31 March 2018	\$74,900,000	\$16,800,000	\$15,854,550	\$ 828,839	\$ 1,709,222	\$ 6,149,407	\$ 874,801	\$ 117,116,819
Accumulated depreciation:								
At 1 April 2017	\$21,034,464	\$ 6,322,438	\$13,591,812	\$ 704,491	\$ 1,267,218	\$ 5,134,478	\$ 330,383	\$ 48,385,284
Charge for the year	1,394,220	420,000	423,488	54,718	188,425	818,618	139,000	3,438,469
Written back on disposals	–	–	–	(36,067)	(80,274)	(51,878)	–	(168,219)
At 31 March 2018	\$22,428,684	\$ 6,742,438	\$14,015,300	\$ 723,142	\$ 1,375,369	\$ 5,901,218	\$ 469,383	\$ 51,655,534
Net book value:								
At 31 March 2018	\$52,471,316	\$10,057,562	\$ 1,839,250	\$ 105,697	\$ 333,853	\$ 248,189	\$ 405,418	\$ 65,461,285

The Ombudsman's interest in leasehold land is held under long lease.

9 Cash and cash equivalents

	2018	2017
Time deposit with original maturity within three months	\$ 24,231,000	\$ 9,000,000
Cash at bank	14,302,473	11,004,430
Cash in hand	5,000	5,000
	\$ 38,538,473	\$ 20,009,430

10 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% (2017: 10% to 25%) of the basic salary less employer's contributions to MPF.

11 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.

12 Commitments

At 31 March 2018, the total future aggregate minimum lease payments under non-cancellable operating leases in respect of parking spaces are payable as follows:

	2018	2017
Within 1 year	\$ 7,600	\$ 7,600

The leases remain in force unless terminated by giving notice in writing of not less than one calendar month.

13 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.

14 Financial risk management and fair values of financial instruments

Risk management is carried out by the General and Finance Department under policies approved by The Ombudsman. The General and Finance Department identifies and evaluates financial risks in close co-operation with the operating units. 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. The Ombudsman 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 statement of financial position. 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.

14 Financial risk management and fair values of financial instruments (continued)

(b) Liquidity risk (continued)

The following table shows the remaining contractual maturities at the end of the reporting period 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:

	2018				
	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	\$ 7,583,902	\$ 4,162,688	\$ 1,070,787	\$12,817,377	\$12,817,377
Other payables and accruals	2,668,375	–	–	2,668,375	2,668,375
	\$10,252,277	\$ 4,162,688	\$ 1,070,787	\$15,485,752	\$15,485,752

	2017				
	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	\$ 3,960,191	\$ 3,769,426	\$ 1,411,538	\$ 9,141,155	\$ 9,141,155
Other payables and accruals	2,663,073	–	–	2,663,073	2,663,073
	\$ 6,623,264	\$ 3,769,426	\$ 1,411,538	\$ 11,804,228	\$ 11,804,228

14 Financial risk management and fair values of financial instruments (continued)

(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 2018, it is estimated that a general increase/decrease of 100 (2017: 100) basis points in interest rates, with all other variables held constant, would have increased/decreased The Ombudsman's surplus/(deficit) and accumulated funds by approximately \$3,645,125 (2017: \$3,533,000).

The sensitivity analysis above has been determined assuming that the change in interest rates had occurred at the end of the reporting period 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 The Ombudsman's assessment of a reasonably possible change in interest rates over the period until the next annual reporting period. The analysis is performed on the same basis for 2017.

(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 were not materially different from their fair values at 31 March 2018 and 2017.

15 Material related party transactions

Transactions with key management personnel

Remuneration of all members of key management personnel is disclosed in note 7.

16 Possible impact of amendments, new standards and interpretations issued but not yet effective for the year ended 31 March 2018

Up to the date of issue of these financial statements, the HKICPA has issued a number of amendments, new standards and interpretations which are not yet effective for the year ended 31 March 2018 and which have not been adopted in these financial statements. These include the following which may be relevant to the company.

	Effective for accounting periods beginning on or after
HKFRS 16, <i>Leases</i>	1 January 2019

The Ombudsman is in the process of making an assessment of what the impact of these amendments, new standards and interpretations is expected to be in the period of initial application. So far The Ombudsman has not identified any aspect of the new standards which may have a significant impact on the financial statements.





Glossary of Terms

Complaint

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

Consent from Complainant

To facilitate The Ombudsman's processing of a complaint, the complainant is required to give consent for: The Ombudsman to copy his/her complaint and any other information, including his/her personal data, to any party concerned; and any party concerned to provide the complainant's personal and other relevant information to The Ombudsman. The complainant may, by stating his/her wish clearly, withhold consent to the disclosure of his/her identity to the party under complaint. However, in this circumstance, The Ombudsman may not be able to process the complaint fully or at all.

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 issues of community concern.

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, with recommendations for improvement or remedy, where warranted, upon conclusion.

Inconclusive

We classify the outcome of our full investigation into a complaint or allegation as inconclusive where, on completion of the investigation, The Ombudsman is not prepared to determine whether the complaint or allegation is substantiated or not, because the evidence is conflicting, irreconcilable, incomplete or uncorroborated.

Inquiry

This is the procedure we use to handle general complaint cases, with the aim 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, and the complainant's view on it where 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 discuss the complaint at a meeting or through the telephone, 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, Partially Substantiated and Unsubstantiated

These are classifications of the outcome of our full investigations reflecting the varying degrees of culpability of an organisation under complaint.

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.

Unsubstantiated but other Inadequacies Found

This is the classification of the outcome of our full investigation where a complainant's allegations are unsubstantiated but The Ombudsman discovers other aspects of significant maladministration.

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.



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

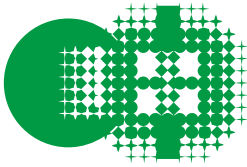
- Handle complaints in a professional, impartial and efficient manner
- Keep complainants informed of the progress and outcome of our inquiries
- Explain our decisions clearly
- Protect complainants' privacy
- Treat the public with courtesy and respect

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.



Office of The Ombudsman, Hong Kong

Address	30/F, China Merchants Tower Shun Tak Centre 168-200 Connaught Road Central Hong Kong
Post Box	G.P.O. Box No. 3300, Hong Kong
Enquiry and Complaint Hotline	(852) 2629 0555
Fax	(852) 2882 8149
Website	http://www.ombudsman.hk
Enquiry email address	enquiry@ombudsman.hk
Complaint email address	complaints@ombudsman.hk



This annual report is printed on environmentally friendly paper