

Report of the IPCC 2006

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Vision, Mission and Values of the IPCC

Our Vision

- That Hong Kong has a fair, effective and transparent police complaints system which ensures that the investigation of each and every public complaint against the Police is conducted justly, promptly, thoroughly and without prejudice.

Our Mission

- Independent, impartial and thorough monitoring of the results of investigation conducted by the Complaints Against Police Office into public complaints against the Police.
- Identification of and making recommendations on ways and means of improving the thoroughness, transparency, fairness and speed of the police complaint investigation process.

Our Values

- Unbiased and persistent pursuit of truth
- Thorough and attentive examination of investigation results
- Reasonable, fair and prompt in making judgements
- Promotion of good procedures, practices, and values which would minimize police complaints
- Efficient and effective use of resources
- Strict observance of the code of confidentiality

Biographies of IPCC Members

Mr Ronny WONG Fook-hum, SC, JP
Chairman, IPCC

Education and Professional Qualifications
Senior Counsel

Occupation
Barrister

Major Public Service

- Former Chairman, Air Transport Licensing Authority (2004–2006)
- Former Chairman, Town Planning Appeal Board (2000–2006)
- Former Member, Administrative Appeals Board (2003–2006)

Hon Alan LEONG Kah-kit, SC
Vice-Chairman, IPCC

Education and Professional Qualifications
LLB (University of Hong Kong)
LLM (University of Cambridge, UK)
Barrister (Senior Counsel)

Occupation
Senior Counsel

Major Public Service

- Member, Legislative Council
- Non-executive Director, Board of Urban Renewal Authority
- Chairman, Water Pollution Control Appeal Board Panel
- Former Director, Board of Directors of the Applied Research Council (2000–2006)
- Former Member, Criminal and Law Enforcement Injuries Compensation Boards (2000–2006)

Hon Daniel LAM Wai-keung, SBS, JP
Vice-Chairman, IPCC

Education and Professional Qualifications

Bachelor of Business Administration, Saint Olav's Academy, New Jersey, USA

Occupation

Company Director

Major Public Service

- Member, Legislative Council
- Chairman, Islands District Council
- Vice-Chairman, Heung Yee Kuk, New Territories
- Member, Fisheries Development Loan Fund Advisory Committee
- Member, Municipal Services Appeal Board

Dr Hon LUI Ming-wah, SBS, JP

Vice-Chairman, IPCC

Education and Professional Qualifications

MSc, University of New South Wales, Australia

PhD, University of Saskatchewan, Canada

PEng

Occupation

Managing Director

Major Public Service

- Member, Legislative Council
- Member, Council of the Hong Kong Polytechnic University
- Advisor, Hong Kong International Arbitration Centre
- Member, The Chinese People's Political Consultative Conference
- Advisory Professor, Shandong University

Mr YEUNG Yiu-chung, BBS, JP

Member, IPCC

Education and Professional Qualifications

BSocSc, Chinese University of Hong Kong

Diploma in Education, Chinese University of Hong Kong

Occupation

Secondary School Principal

Major Public Service

- Hong Kong Deputy to the Ninth and Tenth National People's Congress of the People's Republic of China
- President, Hong Kong Federation of Education Workers
- Member, Executive Committee, Commission on Strategic Development
- Member, Antiquities Advisory Board
- Member, Action Committee Against Narcotics

Dr LO Wing-lok, JP

Member, IPCC

Education and Professional Qualifications

MBBS (HK)

MRCP (UK)

DTM&H (Lond)

FHKCP

FHKAM (Medicine)

FRCP (Edin)

Occupation

Doctor

Major Public Service

- Member, Advisory Council on Food and Environmental Hygiene
- Member, Commission on Strategic Development
- Member, Community Sports Committee
- Member, Country and Marine Parks Board
- Member, Equal Opportunities Commission

Ir Edgar KWAN

Member, IPCC

Education and Professional Qualifications

BSc (Eng), University of Hong Kong

MSc (Eng), University of Hong Kong

MBA, Chinese University of Hong Kong
Fellow, The Hong Kong Institution of Engineers
Fellow, The Institution of Civil Engineers, UK
Fellow, The Institution of Structural Engineers, UK
Chartered Engineer, UK
Registered Professional Engineer (Civil and Structural)

Occupation

Civil Engineer

Major Public Service

- Chairman, Construction Industry Training Authority
- Vice-President, Hong Kong Construction Association
- Adjudicator, Registration of Persons Tribunal
- Member, Engineers Registration Board
- Member, Appeal Tribunal Panel (Buildings)

Dr SHUM Ping-shiu, BBS, JP

Member, IPCC

Education and Professional Qualifications

MBBS (HK)

FRCPsych (UK)

FHKAM (Psychiatry)

Occupation

Doctor

Major Public Service

- Member, Mental Health Review Tribunal
- Member, Health Committee, Medical Council of Hong Kong
- Former Member, Executive Committee of the Society for Aid & Rehabilitation of Drug Abusers (2003–2006)
- Former Member, Long-term Prison Sentences Review Board (1997–2006)
- Former Member, Elderly Commission (1997–2003)

Professor Daniel SHEK Tan-lei, BBS, JP

Member, IPCC

Education and Professional Qualifications

PhD (Psychology), University of Hong Kong

BSocSc, University of Hong Kong

Fellow, Hong Kong Psychological Society

Occupation

Professor

Major Public Service

- Member, Governing Committee of the Beat Drugs Fund Association
- Member, Citizens Advisory Committee on Community Relations of the Independent Commission Against Corruption
- Member, Women's Commission
- Chairman, Executive Committee of Heep Hong Society
- Chairman, Society of Boys' Centres

Mr Daniel CHAM Ka-hung, MH, JP

Member, IPCC

Education and Professional Qualifications

MBA, University of Hull, UK

FCMI (Fellow of Chartered Management Institute, UK)

Diploma in Recreation Management, Chinese University of Hong Kong

Diploma in Management Studies, Hong Kong Polytechnic University

Occupation

Company Director

Major Public Service

- Member, Yuen Long District Council
- Chairman, Tin Shui Wai South Area Committee
- Vice-Chairman, Security and Guarding Services Industry Authority
- Member, Licensing Appeals Board
- Member, Hospital Authority New Territories Regional Advisory Committee

Dr Charles KOO Ming-yan, MH

Member, IPCC

Education and Professional Qualifications

PhD (Honoris Causa) in Business Management, Pacific Western University, USA
MA in Journalism, University of Wisconsin-Madison, USA
MSc in Education, University of Southern California, USA
Diploma in Communication, Hong Kong Baptist University
Fellow, The Royal Society for the Encouragement of Arts, Manufactures and Commerce, UK (FRSA)
Fellow, The Institute of Commercial Management, UK (FICM)
Full Member, Institute of Public Relations, UK (MIPR)
Professional Manager, The Professional Institute of Management of Canada (PMgr)

Occupation

Consultant

Major Public Service

- Member, Executive Committee, Society for Aid & Rehabilitation of Drug Abusers
- Former Treasurer, Causeway Bay Area Committee (2004-2006)
- Former Chairman, Wan Chai District Fight Crime Committee (1998-2002)
- Former Chairman, Causeway Bay Area Committee (1998-2000)
- Former Member, Fight Crime Committee Publicity and Promotion Sub-committee (1996-2000)

Mr Edward PONG Chong, BBS, JP
Member, IPCC

Education and Professional Qualifications

MMet, University of Sheffield, England
BSc, University of Manchester, England
Chartered Engineer
Member, Institute of Materials, Minerals & Mining, UK
Member, The Hong Kong Institution of Engineers

Occupation

Company Executive Director

Major Public Service

- Chairman, Security and Guarding Services Industry Authority

- Chairman, Security Services Training Board, Vocational Training Council
- Member, Tuen Mun District Council
- Member, Tuen Mun South West Area Committee
- Member, Advisory Board of Yan Oi Tong

Mr HUI Yung-chung, BBS, JP

Member, IPCC

Education and Professional Qualifications

BA (Honours), University of Hong Kong

Certificate in Education, University of Hong Kong

Master of Education, University of Hong Kong

Occupation

Principal

Major Public Service

- Chairman, Southern District Fight Crime Committee
- Member, Appeal Panel (Housing)
- Adjudicator, Panel of Adjudicators (Control of Obscene and Indecent Articles)
- Member, Ap Lei Chau Area Committee
- Vice-Chairman, Aberdeen Kaifong Welfare Association

Professor Benjamin TSOU Ka-yin, BBS

Member, IPCC

Education and Professional Qualifications

PhD (UC, Berkeley)

MA (Linguistics), Harvard University

Fellow, The Chartered Institute of Linguists (UK)

Member, Royal Academy of Overseas Sciences (Belgium)

Occupation

Director, Language Information Sciences Research Centre, City University of Hong Kong

Professor (Chair) of Linguistics and Asian Languages, City University of Hong Kong

Major Public Service

- Expert Representative for China, ISO/TC37 Committee on Textual Segmentation
- Member, Chinese Language Interface Advisory Committee
- Member, Appeal Board on Exemption from the Language Proficiency Assessment Requirement
- Member, Personalized Vehicle Registration Marks Vetting Committee
- Former Member, Sir Edward Youde Memorial Fund Council (1987–2003)

Dr Michael TSUI Fuk-sun

Member, IPCC

Education and Professional Qualifications

Master of Dental Science, University of Sydney, Australia

Bachelor of Laws (Hons), University of London, UK

Dental Surgeon, Dental Council of Hong Kong

Barrister, Supreme Court of Hong Kong

Occupation

Dentist (Private Practice)

Arbitrator (China International Economic and Trade Arbitration Commission)

Major Public Service

- Member, Municipal Services Appeal Board
- Member, Securities and Futures Appeals Tribunal
- Former Member, Security and Guarding Services Industry Authority (2000–2006)
- Former Member, Dental Council of Hong Kong (1989–2001)
- Former Member, Criminal and Law Enforcement Injuries Compensation Boards (1997–2003)

Dr TSE Tak-fu, BBS

Member, IPCC

Education and Professional Qualifications

MBBS (HK)

FRCP (Lond)

FRCP (Edin)

FRCP (Glasg)
FHKCP
FHKAM (Medicine)
FACC

Occupation

Medical Specialist (Cardiology)
Registered Chinese Medicine Practitioner

Major Public Service

- Deputy Commissioner (Human Resources), Auxiliary Medical Service
- Council Member, Hong Kong College of Cardiology
- Advisor (Medical Affairs), Hong Kong Life Saving Society
- Member, Court of the University of Hong Kong
- Member, Chinese Medicine Council of Hong Kong

Ms Priscilla WONG Pui-sze, JP
Member, IPCC

Education and Professional Qualifications

LLB, University of Hong Kong
LLM, London University, UK
Barrister (Counsel)
Advocate & Solicitor, Republic of Singapore

Occupation

Barrister-at-law

Major Public Service

- Chairman, Appeal Board (Betting Duty Ordinance)
- Deputy Chairman, Appeal Board Panel (Consumer Goods Safety)
- Member, Board of Trustees of the Lord Wilson Heritage Trust
- Member, Management Committee of the Consumer Legal Action Fund
- Member, Council of the Hong Kong Academy for Performing Arts

Mrs Helena YUEN CHAN Suk-yee
Member, IPCC

Education and Professional Qualifications

LLB, University of London

MA, Institute of Transpersonal Psychology, USA

PhD (Candidate), University of Hong Kong

Accredited Mediator and Supervisor, Hong Kong International Arbitration Centre

Occupation

Solicitor

Major Public Service

- Member, Advisory Board, Caritas Family Crisis Support Centre
- Member, Board of Director, Chi Lin Buddhist Primary School
- Member, Promotion and Fund-raising Sub-committee, Family Institute, University of Hong Kong
- Former Member, Standing Committee, Agency Development and Partnership, Hong Kong Council of Social Services (2001-2005)
- Founding Chairman, Community Mediation Sub-committee (2000-2003), Former Council Member (1997-2006) and Vice-Chairman (2003-2006), Hong Kong Mediation Council, Hong Kong International Arbitration Centre

Mr Frederick TONG Kin-sang

(Representative of the Ombudsman)

Ex-officio Member, IPCC

List of IPCC Lay Observers

1. Mr CHAN Bing-woon, SBS, JP
2. Mr Bunny CHAN Chung-bun, BBS, JP
(till 31 March 2006)
3. Mr CHAN Ka-wai
4. Mr Jacky CHAN Kwok-kai
5. Mr CHAN Kwok-tim, MH
6. Mr Henry CHAN Man-yu
7. Mr Tony CHAN Tak-wai
(till 31 August 2006)
8. Ms Vivien CHAN, JP
9. Mr CHAN Wai-chung, MH
10. Mr CHAN Wai-ming, MH
11. Mr Dominic CHAN Wing-kam, MH
12. Mr William CHAN Wing-lim
13. Mr Joseph CHAN Yuek-sut, BBS
14. Ms CHAU Chuen-heung, MH, JP
15. Mr CHAU How-chen, SBS, JP
(till 31 March 2006)
16. Mrs Betty CHENG YUEN Pui-yan
17. Ms Emily CHEUNG Mui-seung
18. Mr Christopher CHEUNG Wah-fung,
JP
19. Ms Susanna CHING Che-man
20. Dr CHIU Chun-bong, JP
21. Mr Joseph CHOW Kam-siu
(till 31 March 2006)
22. Mr CHOW Yick-hay, BBS, JP
23. Mr CHU Ching-hong
24. Rev CHU Yiu-ming
25. Mr Christopher CHUNG Shu-kun, MH, JP
26. Mr CHUNG Wai-ping, BBS, MH
(till 31 March 2006)
27. Mr FUNG Kam-chiu, MH
28. Mr Eugene FUNG
29. Mr HAU Shui-pui, SBS
(till 31 March 2006)
30. Mr HUI Ka-hoo, MH
31. Mr IP Kwok-chung, SBS, JP
32. Mr KAN Chi-ho, MH
33. Mr KO Tam-kan
34. Mr David LAI Tat-sang, MH

35. Dr Lawrence LAM Chi-kit, MH, SBStJ36. Mr Stewart LAM Kin-ko
37. Mr LAM Kit-sing 38. Dr Conrad LAM Kui-shing, JP
39. Mr LAM Tak-leung, MH 40. Mrs Peggy LAM PEI Yu-dja, GBS, JP
41. Mr Ivan LAU Ho-kit 42. Ms Elizabeth LAW, MH
43. Ms LEUNG Fu-wing, MH 44. Mr LEUNG Kin-man, MH
(till 31 March 2006)
45. Mr LEUNG Lai 46. Mr LEUNG Sau-chi, JP
(till 31 March 2006)
47. Mr Edward LEUNG Wai-kuen 48. Mr LEUNG Wing-kuen
(till 31 March 2006)
49. Dr Eric LI Ka-cheung, GBS, JP 50. Mr David LI Ka-fai, MH
51. Mr LO Kwok-hung, BBS, MH 52. Mr LO Tze-on
53. Ms MAR Yuet-har, BBS, MH 54. Miss Rosanda MOK Ka-han
(till 31 March 2006)
55. Mr NG Kwok-fai 56. Mr George NG Sze-fuk, BBS, JP
(till 31 March 2006)
57. Mr Thomas PANG Cheung-wai, JP 58. Mr Joseph PANG Yuk-wing, JP
59. Ms Samanta PONG Sum-yea 60. Ir TAM King-leung
61. Mr SUEN Kai-cheong, MH, JP 62. Mr TAM Kwok-kiu, MH, JP
(till 31 March 2006)
63. Dr Banny TAM Ping-lap 64. Mr George TAM Siu-ping
65. Mr Teddy TANG Chun-keung, MH 66. Ms Christina TING Yuk-chee, SBS,
JP
67. Mr Jimmy TSE Lai-leung, MH 68. Dr John TSE Wing-ling, MH
69. Mr Aaron WAN Chi-keung, BBS, JP 70. Mr Justein WONG Chun, JP

71. Mr WONG Kam-chi, MH, JP
72. Mr WONG Kin-pan
73. Hon WONG Kwok-hing, MH
(till 31 March 2006)
74. Ir Peter WONG Kwok-keung, JP
(till 31 March 2006)
75. Ir Billy WONG Wing-hoo, JP
76. Ms Ada WONG Ying-kay, JP
(till 31 March 2006)
77. Mr WU Chor-nam, JP
78. Ir Hugh WU Sai-him
79. Mr Edwin YEUNG Chi-wai
80. Mr Andy YEUNG Chun-sing
81. Mr YIP Wah, BBS, JP
82. Mr David YIP Wing-shing, MH
83. Mr Chris YIP Yiu-shing, MH
84. Mrs YUEN CHAN Po-hing
85. Mr Roger YUNG Kwok-chung

Chapter 1 Major Activities of the Year

Introduction

- 1.1 The Independent Police Complaints Council (IPCC) is an independent body whose Members are appointed by the Chief Executive. Its main function is to monitor and review the investigations conducted by the Complaints Against Police Office (CAPO) of the Hong Kong Police Force (HKPF) of complaints made against the Police by the public.
- 1.2 To further promote the independent status of the IPCC and enhance its monitoring role in the police complaints system, the IPCC has instituted a programme geared at continuous improvement. This Chapter summarizes some of the major activities of the IPCC in 2006.

Performance Pledges of the IPCC

- 1.3 To provide a higher level of service, the IPCC promulgated in 1998 a set of performance pledges in terms of the standard response time in handling public enquiries and monitoring complaints against the Police. The standard response time for monitoring of complaints is measured from the date of receipt of CAPO's final investigation reports. The performance of the IPCC in meeting its pledges in 2006 is summarized below:

	Performance Target	No. of Enquiries/ Cases Processed Within Target	% Within Performance Target
Standard response time for enquiries			
By telephone or in person	Immediately	728 (738)	100 (100)
In writing	Within ten days	350 (312)	99.4 (100)
Standard response time for monitoring of complaints			
Normal cases	Less than 3 months	1,304 (1,806)	99.5 (100)
Complicated cases	Within three to six months	801 (1,021)	99.8 (99.9)
Appeal cases	Within three to six months	77 (115)	93.9 (99.1)

Figures in bracket denote the performance achieved for 2005.

- 1.4 There is a decrease in percentages within the performance targets in respect of the monitoring of normal, complicated and appeal cases in 2006, as compared to 2005. This is because during the initial period of the Personal Data Leakage Incident (the Incident)¹, the IPCC Secretariat's existing manpower resources were internally redeployed to follow up on matters arising from the Incident. As a result, normal complaint case examination work was protracted. With additional manpower and the resumption of normal business, the IPCC is on track to attain a high level of performance in the coming year.

¹ Details of Personal Data Leakage Incident can be found in Chapter 2.

Monitoring of Serious Complaints

- 1.5 The Serious Complaints Committee monitored 7 cases in 2006. CAPO provided monthly progress reports on these cases. The Committee raised queries and sought clarifications on some of the reports while CAPO's investigations were still being conducted.

Monitoring of CAPO's Investigation Reports

- 1.6 The IPCC endorsed a total of 2,114 CAPO's investigation reports involving 3,518 allegations during the year. More details are given in Chapter 5.

The IPCC Observers Scheme and Briefing for Newly Appointed Lay Observers

- 1.7 In 2006, 14 new Lay Observers were appointed by the Secretary for Security to observe investigations by CAPO/Formation investigating officers and Informal Resolution interviews, while 15 serving Lay Observers retired. A briefing was conducted by the IPCC Secretariat on 25 August 2006 for the new Observers to familiarize them with the police complaints system and the operation of the Observers Scheme. As at 31 December 2006, there were altogether 70 Lay Observers.



Briefing for the new IPCC Lay Observers on 25 August 2006.

- 1.8 In 2006, 317 observations (138 for Informal Resolution and 179 for others) were arranged under the Scheme, among which 4 visits were conducted by IPCC Members and 313 visits were conducted by Lay Observers.

Interviewing Witnesses Scheme

- 1.9 Under the IPCC Interviewing Witnesses Scheme, IPCC Members may interview witnesses to clarify doubtful points in the course of examining CAPO's investigation reports.
- 1.10 Each interview is conducted by a panel of two IPCC Members. After each interview, a report is submitted to the full Council which will follow up with CAPO on the panel's recommendations. No witness was interviewed by the IPCC under the Scheme in 2006.

Proposal to establish the IPCC as a Statutory Body

- 1.11 To enhance the credibility and transparency of the police complaints system, the Administration plans to make the IPCC a statutory body. IPCC's composition, functions and powers will be specified in law.
- 1.12 The Administration consulted the IPCC on the latest draft IPCC Bill during the year. The IPCC will keep in view the introduction of the IPCC Bill into the Legislative Council.

Talks at Secondary Schools

- 1.13 As part of its on-going publicity programme, the IPCC continued to organize talks at secondary schools in 2006. The talks aimed at promoting an awareness of the operation of the police complaints system and the Council's work among the younger generation.



Staff of the IPCC Secretariat deliver publicity talk at a secondary school.

Visits to Frontline Policing Activities

- 1.14 On 13 September 2006, IPCC Members made a visit to the Child Protection Policy Unit under a visit programme organized by the Complaints and Internal Investigations Branch of the Hong Kong Police Force.





IPCC Members are briefed on measures to handle and investigate domestic violence cases by officers of Child Protection Policy Unit, Hong Kong Police Force.

- 1.15 The visit was aimed at enhancing IPCC Members' understanding of the Police's role and efforts in combating domestic violence. It was considered very useful by the participating Members.

Visit of the Delegation of the Discipline Bureau of the Ministry of Public Security

- 1.16 A 16-member delegation of the Discipline Bureau of the Ministry of Public Security visited the IPCC on 11 January 2006. During the visit, they were briefed on the Council's roles and functions by the IPCC Secretariat.



The delegation of the Discipline Bureau of the Ministry of Public Security visits the IPCC.

Visit of the Delegation of the China Supervision Institute

- 1.17 A 10-member delegation of the China Supervision Institute, accompanied by the staff of the Office of the Ombudsman, visited the IPCC on 21 November 2006. During the visit, they were briefed on the Council's roles and functions by Mr YEUNG Yiu-chung, BBS, JP, Member of the IPCC.



The delegation of the China Supervision Institute visits the IPCC.



Mr YEUNG Yiu-chung, BBS, JP, IPCC Member, presents a souvenir to Mr FU Kui, Head of the delegation.

Chapter 2 The Personal Data Leakage Incident

The Incident

- 2.1 The Personal Data Leakage Incident was first reported in a local newspaper on 10 March 2006, stating that a database apparently sourced from the IPCC containing complaint data such as CAPO reference number, the identity card number, name and address of each complainant was found accessible on the Internet. A subsequent investigation revealed that in early 2004, an information technology person who was known to the IPCC Secretariat as an employee of the outsourced contractor engaged by the IPCC Secretariat for enhancement of the computer statistical system (CSS) of the IPCC had uploaded the database to a server which was made accessible on the Internet. The complaint data was collected from CAPO in accordance with Section 62 of the Personal Data (Privacy) Ordinance (the Ordinance) to prepare statistics and carry out research as one of the terms of reference of the IPCC.

Remedial Actions Taken after the Incident

- 2.2 As soon as the leakage came to light, a number of remedial actions were immediately taken. The IPCC Secretariat contacted major search engine companies and Internet service providers in Hong Kong and overseas to request them to remove the leaked personal data from the Internet, including their caches. The IPCC set up a Task Force to look into the Incident and reported its initial findings to the public through a press conference on 13 March 2006. Hotlines manned by the IPCC Secretariat and sub-committees manned by Members of the IPCC were set up to receive enquiries from the public and to meet those who expressed concern over the Incident. The IPCC Secretariat also worked closely with the Police in its cyber patrolling service and with the Office of the Privacy Commissioner for Personal Data to thwart any abusive use of the leaked personal data. The IPCC, through its Chairman, made unreserved public apologies on 11 March and 17 March 2006. The IPCC also published an open apology in major local newspapers on 10 April 2006 to the persons affected by the leakage for any inconvenience caused. On 25 April 2006 and 11 May

2006, the IPCC Secretariat also sent personal letters to complainants and complainees affected by the Incident to apologize for the inconvenience caused.

- 2.3 On 8 April 2006, the IPCC published an open report setting out the material facts that led to the leakage, and making various recommendations on tightening up internal security measures in the handling of personal data by the IPCC Secretariat and in offering redress to the persons affected². The IPCC also provided the Privacy Commissioner for Personal Data (the Commissioner) with all necessary information relating to the Incident to facilitate his statutory investigation under the Ordinance. (On the Commissioner's findings, please refer to paragraph 2.9 below.)
- 2.4 Arising from the Incident, the IPCC sub-committees met 93 affected persons and relayed their concerns and difficulties to the Government.
- 2.5 As at the end of December 2006, a total of 29 claims for compensation were lodged by individuals affected by the Incident, among which four were lodged via legal proceedings. A number of other requests (for example, on changing identity card numbers, and accommodation) were also received from the affected persons. They were processed by the IPCC Secretariat in co-ordination with the relevant Government departments.

² Details of the IPCC Report on Leakage of Personal Data can be found at

[http://www.ipcc.gov.hk/en/pdf/Independent_Police_Complaints_Council_\(IPCC\)_report_On_Leakage_of_Personal_Data_\(8_April_2006\)_EN.pdf](http://www.ipcc.gov.hk/en/pdf/Independent_Police_Complaints_Council_(IPCC)_report_On_Leakage_of_Personal_Data_(8_April_2006)_EN.pdf)

Enhancement and Tightening of Internal Security Measures in the Handling of Classified Information Including Personal Data

- 2.6 Soon after the Incident came to light, a comprehensive review of the internal security measures of the IPCC Secretariat was undertaken with a view to tightening up and improving the

security system. The following measures were implemented following the review:

- (i) confining access to the CSS of the IPCC to the Secretary, IPCC and such persons with her express permission; limiting access on a “need-to-know” basis; and reducing the extent and level of personal data kept or to be kept in the CSS of the IPCC;
- (ii) reinforcing the security awareness of, and precautionary measures needed to be taken by staff of the IPCC Secretariat on the use of personal data by reviewing and implementing a series of internal guidelines, to ensure that personal data would be used in a proper and secure manner;
- (iii) appointment of a full-time technical staff member to handle information technology related matters;
- (iv) reinforcing the security requirements in the contracts of outsourcing services, including prohibiting the outsourced contractor or agent to use or disclose complaint data for a purpose other than those for which the outsourced contractor or agent was assigned to carry out; prohibiting sub-contracting of services except with the prior consent of the Secretary, IPCC; and auditing the outsourced contractor or agent from time to time to confirm if it was carrying out the required security measures and obligations; and
- (v) conducting an information technology security risk assessment in the IPCC Secretariat.

2.7 By the end of 2006, the work related to (i) to (iv) was already completed. The assessment exercise in (v) would be completed by January 2007, and depending on the recommendations of the contractor, the IPCC Secretariat would take steps to further improve its security system.

Addressing Enquiries and Claims from the Public

2.8 In the first three months after the Incident, enquiries were received from 1,026 people - either at meetings with the sub-committees, in writing or through the hotlines. The enquiries included ascertaining whether the person's data was leaked, expressing concerns and grievances over the leakage, and enquiring about the remedies to be offered. The enquiries, whether made verbally or in writing, were attended to quickly to allay their worries. For those enquiring about or making claims on compensation and other requests for assistance, they were advised by the IPCC Secretariat to provide written information and material in support of their claims and requests for further consideration.

The Report of the Privacy Commissioner for Personal Data

2.9 The Commissioner commenced his investigation of the Incident on 15 March 2006, under Section 38 of the Ordinance. The Commissioner completed his investigation and sent a copy of his report to the IPCC on 18 September 2006. The Commissioner also served an Enforcement Notice on the IPCC pursuant to Section 50 of the Ordinance, on the basis of the Commissioner's view that the IPCC had contravened the requirements of Data Protection Principle 4 in Schedule 1 of the Ordinance in relation to the steps taken to ensure that personal data held by a data user was protected against unauthorized or accidental access, processing or other use. The Enforcement Notice required the IPCC within 28 days after the issue of the notice to devise policies and practical guidelines for the proper handling of complaint data when dealing with an outsourced contractor or agent and implement effective measures to ensure compliance with these policies and guidelines. At the same time, the Enforcement Notice required that a review of existing outsourcing contracts should be made to endeavor to incorporate into those contract terms measures required to be taken by the contractor to protect complaint data handed to them by the IPCC. The report of the Commissioner was published on 26 October 2006.

2.10 As a response to the Enforcement Notice and the report, the IPCC submitted a Position Statement³ to the Commissioner on 5 October 2006 setting out the Council's stance vis-a-vis the findings in the Commissioner's report and his decision to serve on the IPCC the Enforcement Notice. In considering the Commissioner's report, the

IPCC contended that a distinction should be drawn between the Council and the IPCC Secretariat, the latter being a free-standing Government agency staffed by civil servants and which acted in accordance with the rules and regulations applicable to all Government departments.

- 2.11 The Commissioner's report made various findings relating to the treatment of personal data. The IPCC accepted those findings in so far as they were related to the IPCC Secretariat. The IPCC considered the report had, however, erroneously associated the Council with such findings and compounded such error by serving the Enforcement Notice on the Council. The IPCC did, however, share the concern of the Commissioner that every step should be taken to ensure that the leakage of personal data would never be repeated again. Despite its strong objection to the validity of the Enforcement Notice, the IPCC had, with close participation by the IPCC Secretariat and other relevant Government departments, complied with the Enforcement Notice on 16 October 2006. Clear and detailed directives were also put in place in the IPCC Secretariat regulating the treatment of personal data (please refer to paragraph 2.6 above for more details). The Commissioner expressed satisfaction with the IPCC's compliance with the Enforcement Notice.

³ Details of the Council's Position Statement can be found at <http://www.ipcc.gov.hk/en/pdf/PositionStatement.pdf>

Chapter 3 General Information

The Independent Police Complaints Council (IPCC)

- 3.1 The IPCC has its origin in the UMELCO Police Group which evolved into the Police Complaints Committee (PCC), a non-statutory but independent body commissioned by the then Governor in 1986. The PCC was renamed as the Independent Police Complaints Council (IPCC) on 30 December 1994.
- 3.2 The IPCC comprises a Chairman, three Vice-chairmen and fourteen Members appointed by the Chief Executive. The Ombudsman (or her representative) serves as an ex-officio Member. With effect from 1 January 2006, Mrs Helena YUEN CHAN Suk-yea was appointed as a new Member to the Council.
- 3.3 The main function of the IPCC is to monitor and review the investigations conducted by CAPO of public complaints against the Police. Its terms of reference are:
 - (a) to monitor and, where it considers appropriate, to review the handling by the Police of complaints by the public;
 - (b) to keep under review statistics of the types of conduct by police officers which lead to complaints by members of the public;
 - (c) to identify any faults in Police procedures which lead or might lead to complaints; and
 - (d) where and when it considers appropriate, to make recommendations to the Commissioner of Police or, if necessary, to the Chief Executive.
- 3.4 For better execution of its duties, the IPCC has committees dedicated to different subjects:

(a) The Publicity and Survey Committee

To consider, plan and launch IPCC publicity activities, including surveys and researches.

Chairman: Hon Alan LEONG Kah-kit, SC

Members: Dr SHUM Ping-shiu, BBS, JP
Professor Daniel SHEK Tan-lei, BBS, JP
Mr Daniel CHAM Ka-hung, MH, JP
Mr Edward PONG Chong, BBS, JP
Mr HUI Yung-chung, BBS, JP
Professor Benjamin TSOU Ka-yin, BBS

(b) The Serious Complaints Committee

To determine the criteria for classifying serious cases and the procedures for monitoring serious complaints; to monitor and review complaints which meet the set criteria.

Chairman: Dr LO Wing-lok, JP

Members: Hon Alan LEONG Kah-kit, SC
Dr Hon LUI Ming-wah, SBS, JP
Ir Edgar KWAN
Dr SHUM Ping-shiu, BBS, JP
Dr Charles KOO Ming-yan, MH
Dr Michael TSUI Fuk-sun
Ms Priscilla WONG Pui-sze, JP

The IPCC Secretariat

3.5 The IPCC is supported by a full-time Secretariat, headed by an Administrative Officer Staff Grade 'C' (as Secretary) with 21 general grades staff and a Senior Government Counsel serving as legal adviser to the IPCC. The major function of the Secretariat is to examine all complaint investigation reports submitted by CAPO in detail to ensure that each and every case is investigated in a thorough and impartial manner before recommending them to IPCC Members for endorsement. Under the supervision of the Secretary and

Deputy Secretary (Chief Executive Officer), three teams, each comprising one Senior Assistant Secretary (SAS) and one Assistant Secretary (AS), pitched at Senior Executive Officer and Executive Officer I levels respectively, are responsible exclusively for vetting complaint investigations. The fourth team, Planning and Support, comprising one SAS and 13 executive, clerical and secretarial staff, is responsible for general administration, research, publicity and other support services, as well as servicing the Serious Complaints Committee. During the second half of the year, a number of non-civil service contract staff, including a Special Duty Team, a Senior Public Relations Officer, and an Assistant Information Technology Officer, were employed to deal with matters arising from the Personal Data Leakage Incident (please refer to Chapter 2 for more details). An organization chart of the IPCC Secretariat, as at 31 December 2006, is at Appendix I.

Processing of Complaints Against the Police

(a) Role Played by the Complaints Against Police Office (CAPO)

3.6 All complaints, irrespective of origin, are referred to CAPO for investigation. A flow-chart illustrating the process by which complaints are examined and investigated by CAPO is at Appendix II. It also shows how Police Formations, specialist Police Divisions, the Government Prosecutor and the Police Legal Adviser may become involved in an investigation. At the conclusion of investigation, CAPO classifies a complaint according to the result (please refer to Chapter 5 for more details) and prepares a report for the IPCC for review and endorsement.

(b) Role Played by the IPCC

3.7 The CAPO submits to the IPCC all investigation reports together with the related case or crime investigation files. These are scrutinized in detail by the Executive Officers of the Council Secretariat who will seek legal advice from the in-house Senior

Government Counsel where necessary.

- 3.8 All CAPO reports, including the draft replies to complainants, are discussed in detail at the weekly Secretariat case conferences chaired by the Secretary, IPCC.
- 3.9 After a case conference, the Secretariat raises written comments and queries, if any, with CAPO. Where appropriate, the Secretariat also draws CAPO's attention to inadequacies in existing Police policies, procedures and practices and proposes remedial measures.
- 3.10 The replies received from CAPO are carefully scrutinized by the Secretariat before preparing its own covering reports for consideration by the IPCC. Vetted cases are submitted to Members in batches every week.
- 3.11 IPCC Members are divided into three sub-groups to share the workload. Each sub-group comprises a Vice-chairman and five Members. Each case is studied by the respective Vice-chairman and Members. The Chairman of the IPCC examines all serious cases and any other cases submitted to him by the Secretary and/or any Vice-chairman or Member.
- 3.12 The majority of the cases are cleared by circulation of papers. However, complicated cases which involve policy implications or which cannot be resolved by correspondence between the Secretariat and CAPO are discussed at the Joint IPCC/CAPO Meetings which are chaired by the Chairman of the IPCC.



Joint IPCC/CAPO Meeting

3.13 At Appendix III is a flow-chart illustrating the various steps by which complaints are examined and monitored by the IPCC.

Follow-up Action Taken after Endorsement of the CAPO Reports

- 3.14 Following endorsement by the IPCC, CAPO will inform the complainants of the results of investigations. CAPO will also notify the complainees of the results and take other appropriate follow-up or remedial action.

- 3.15 As part of the review mechanism, the IPCC Secretariat has assumed the responsibility of informing complainants of the outcome of CAPO review/re-investigation into their complaints.

Chapter 4 Complaint Classifications

Introduction

4.1 A complaint may consist of one or more allegations. After an allegation has been investigated, it is classified, according to the findings, into one of the following eleven classifications:

- Substantiated
- Substantiated Other Than Reported
- Not Fully Substantiated
- Unsubstantiated
- False
- No Fault
- Withdrawn
- Not Pursuable
- Curtailed
- Informally Resolved
- Sub-judice

Substantiated

4.2 An allegation is 'Substantiated' :

where there is sufficient reliable evidence to support the allegation made by the complainant.

Example

The complainant (COM), while using her mobile phone outside the scaffoldings of a construction site, got wet as some water and sand debris were dropped from the construction site. Noting that her mobile phone which got wet was not working, she entered the construction site and managed to locate male A, the person-in-charge of the construction site, for compensation. She later went to a hospital for medical treatment with the finding of 'Head Injury'.

On the following day, she reported the case to a police station where Detective Senior Police Constable X (DSPC X) took over the investigation. After site enquiry by DSPC X, the person-in-charge of the scaffolding work expressed his willingness to compensate COM and requested to talk with COM regarding the compensation. DSPC X arranged a private talk between COM and male A at the crime office of the police station. DSPC X did not take part in the talk. After settlement of the compensation, COM, in the presence of male A and DSPC X, demanded the Police to take prosecution action against the construction site. Amidst his explanation that police prosecutions hinged on the available evidence and legal procedures, DSPC X said that 'the concerned party has agreed to compensate for the damage of your mobile phone, but you want more than that...'. On hearing this, COM became furious and vigorously interrupted the conversation by speaking foul language. COM refused to listen to DSPC X's further explanation and left the police station immediately afterwards. She alleged that the Police was biased in favour of the construction site personnel ('Misconduct'). After investigation, the company which carried out the scaffolding work was summonsed under Section 4B, Summary Offences Ordinance.

After investigation, CAPO noted that DSPC X was put in a trying moment during which he had exercised self-constraint towards COM's insulting words. Though DSPC X explained that his conversation with COM was interrupted by the latter, as corroborated by male A, CAPO noted that his unpleasant remarks uttered to COM in context, appeared subjective in nature and unnecessary. The allegation of 'Misconduct' was therefore 'Substantiated' against DSPC X.

Substantiated Other Than Reported

- 4.3 The following definition is adopted for 'Substantiated Other Than Reported' ('SOTR'):

where matters other than the original allegations have been identified (such as breach of internal discipline or failure to observe Police Orders and Regulations) and are found to be substantiated. Such matters must be closely associated with the complaint itself.

Example

The complainant (COM) made a report to the 999 console about a vehicle obstruction on a road. About 45 minutes later, COM alleged that he received a call from Police Constable X (PC X) who told him that there was no obstruction at the location and argued with him using foul language. Within half an hour following PC X's call, COM received two more calls of a similar nature. COM suspected that they were made by the same officer. He also received nine more similar nuisance calls in the following morning. COM lodged a complaint of 'Offensive Language' against PC X and made a report of 'Telephone Nuisance'.

COM later withdrew his complaint of 'Offensive Language' and the allegation was classified as 'Withdrawn'. Regarding his report of 'Telephone Nuisance', police investigation revealed that Police Constable Y (PC Y), after knowing the altercation between PC X and COM, made the nuisance calls to COM by using a prepaid SIM card. PC Y admitted having made the nuisance calls to COM, and it transpired that PC X did not stop PC Y's act and kept quiet about it. The legal advice sought did not recommend a charge of 'Telephone Nuisance' due to the time bar for proceedings. Since the officers' misconduct constituted a breach of discipline which was closely related to the original complaint of 'Offensive Language', a 'Substantiated Other Than Reported' count of 'Misconduct' was registered against the two officers. Disciplinary proceedings would be instituted against them.

Not Fully Substantiated

4.4 The 'Not Fully Substantiated' classification applies:

where there is some reliable evidence to support the allegation made by the complainant, but insufficient to fully substantiate the complaint.

Example

The complainant (COM) went to a police station in District A to make a report of theft of her mobile phone which took place in District B. COM alleged that Detective Senior Police Constable X (DSPC X) told her that it was no use to report the case there and persuaded her to report the case directly to the police station in District

B. Instead of acting upon DSPC X's advice, the complainant lodged an allegation of 'Neglect of Duty' against DSPC X after leaving the police station.

DSPC X, who denied the allegation, admitted having explained the reporting procedures to the complainant by advising her that the case would be transferred to District B for follow-up enquiry, and COM then left without giving a statement. CAPO noted that it was the duty of the Duty Officer, or in his absence, the Assistant Duty Officer, to assess each individual report for referral to the Divisional Crime Unit. DSPC X should not have made a pre-judgment on the classification of COM's report. Moreover, CAPO opined that DSPC X might have over-emphasized the referral of the case, which led to a misinterpretation by COM that her report was rejected and her departure without making a report. However, considering that there was no independent witness or other corroboration to prove what actually transpired in the dialogue between COM and DSPC X at the material time, the allegation of 'Neglect of Duty' was classified as 'Not Fully Substantiated'.

Unsubstantiated

4.5 A complaint is classified as 'Unsubstantiated':

where there is insufficient evidence to support the allegation made by the complainant.

4.6 In a typical 'Unsubstantiated' complaint, the complainant's allegation is denied by the complaine and there is neither independent witness nor other evidence to support either side's story.

Example

Whilst the complainant (COM) was driving a public light bus (PLB) with passengers on board in the late evening of the material day, his vehicle was intercepted by Police Constable A (PC A) who was performing anti-PLB robbery snap check duty. In the course of checking, PC A observed that the upper part of COM's seat belt was fastened by a clip which hindered the proper movement of the belt, resulting in it being loosened. After conducting a measurement, he

found that the distance between COM's chest and the belt was about two fists apart. PC A thus pointed out to COM that he had committed the offence of 'Driving light bus without being securely fastened with seat belt' and ticketed him for the offence. COM said that he had fastened his seat belt while he was driving and only loosened the seat belt to get his driving licence from his wallet for PC A's checking.

COM drove away after the incident and lodged a complaint of 'Rudeness' against PC A subsequently, alleging that the latter put the fixed penalty ticket and the driving licence on his hand with force and told him to drive away rudely after ticketing him. COM claimed that the other officer who also boarded his PLB in the course of the snap check could be his witness. COM did not dispute the ticket and had settled it before lodging his complaint.

PC A flatly denied COM's allegation and claimed that he had never treated COM rudely as alleged. He stated that throughout the incident, he was the only officer on board COM's vehicle. Sergeant B (SGT B), who came forward to mediate the case at a later stage, confirmed that the other two officers at the scene were at the material time engaged in their own duties and did not participate in the checking of COM's vehicle with PC A, and he did not witness how PC A returned the driving licence together with the ticket to COM. CAPO subsequently tried to locate the passengers on board COM's vehicle at the material time by visiting the PLB stand but to no avail.

This was a one-against-one case. COM's allegation was denied by PC A and there was no independent witness or other corroborative evidence to support either side's version. Under the circumstances, the allegation of 'Rudeness' was classified as 'Unsubstantiated'.

False

4.7 A 'False' complaint is one:

where there is sufficient reliable evidence to indicate that the allegation made by the complainant is untrue, be it -

(a) a complaint with clear malicious intent; or

(b) a complaint which is not based upon genuine conviction or sincere belief but with no element of malice.

4.8 When a complaint is classified as 'False', CAPO will consider, in consultation with the Department of Justice as necessary, prosecuting the complainant for misleading a police officer. Prosecution, however, will not be taken where there is no malicious intention on the part of the complainant.

Example

Police Constable A (PC A) saw the complainant (COM) walking across the road without using a nearby footbridge. PC A intercepted COM and informed him that he would be summonsed for 'Jaywalking'. Upon receiving the summons, COM lodged a complaint of 'Fabrication of Evidence' against PC A alleging that the latter fabricated evidence to summons him as he was in fact riding on a bicycle and not walking across the road at the material time.

COM raised the same allegation in court but the Magistrate accepted PC A as an honest witness whose evidence reflected the truth and did not believe in COM's version. The Magistrate commented in his verdict that if COM had ridden on a bicycle across the road at the material time, PC A could have prosecuted him for other more serious offences. After trial, COM was convicted of the charge of 'Crossing within 15 metres of footbridge' and fined \$800.

As COM's complaint was deemed fully resolved in court, the allegation of 'Fabrication of Evidence' was classified as 'False'.

No Fault

4.9 An allegation is classified as 'No Fault':

where the allegation is made either because of a misinterpretation of the facts or a misunderstanding; or when there is sufficient reliable evidence showing that the actions of the officer concerned were fair and reasonable in the circumstances, done in good faith and conformed with the requirements stipulated in Section 30 of the Police Force Ordinance, Cap. 232, Laws of HKSAR.

- 4.10 Two common reasons for classifying a complaint as 'No Fault' are first, the complainant may have misunderstood the fact, and second, the complainee is acting under instruction from a superior officer or in accordance with an established police practice.

Example

The complainant (COM) was the defendant in a 'Theft' case, in which male A was the victim and male B was the prosecution witness. On the material day, male A was sleeping on a platform outside the Hong Kong Cultural Centre with his pair of shoes left on the ground. Male B saw COM attempting to steal male A's portaphone but to no avail. COM then stole the shoes and walked away. When male B shouted at COM, he immediately threw away the shoes and ran. Males A and B chased and stopped COM in the vicinity. A report was made to the Police. Eventually, COM was arrested and charged with 'Theft'. During the trial, COM pleaded guilty and admitted the brief facts of the case. He was convicted and fined. Five months later, he applied for an appeal against conviction but his application was rejected. He then lodged a complaint against Detective Senior Inspector X (DSIP X) alleging that the latter should not believe in the versions of the witnesses and seize the shoes as exhibit ('Neglect of Duty'). He said that he pleaded guilty to the charge only because he did not want the trial Magistrate to impose a heavier sentence on him if he denied the charge.

DSIP X denied the allegation. He contended that having examined all the evidence available during the crime investigation, he concluded that there was sufficient evidence to lay the charge

against COM, who made no complaint throughout the enquiry. After investigation, CAPO found that DSIP X's decision to charge COM was justified and appropriate, as evidenced by COM's conviction. In the circumstances, CAPO considered that the allegation was judicially resolved and accordingly classified it as 'No Fault'.

Withdrawn

4.11 A complaint is classified as 'Withdrawn' :

where the complainant does not wish to pursue the complaint made.

4.12 A complainant's withdrawal does not necessarily result in the case being classified as 'Withdrawn'. The IPCC and CAPO will examine the available evidence to ascertain whether a full investigation is warranted despite the withdrawal.

Example

The complainant (COM) was caught red-handed for stealing a handbag from a woman who was having tea with her family in a restaurant. He was arrested by the Police for the offence of 'Theft' and Detective Police Constable X (DPC X) took a Record of Interview (ROI) from him. Under caution, COM confessed that he stole the handbag out of greed. After he was charged with the offence, COM lodged a complaint of 'Threat' alleging that during the taking of the ROI, DPC X threatened to beat him up if he did not admit the offence.

After the trial, COM was convicted on his own guilty plea and was sentenced to six months' imprisonment. After the conclusion of the trial, CAPO interviewed COM at the prison to obtain details of his complaint. COM unequivocally expressed his decision to withdraw his complaint without giving any explanation. His withdrawal was verified by a staff

of the Correctional Services Department. The allegation of 'Threat' was classified as 'Withdrawn'

Not Pursuable

4.13 A complaint is classified as 'Not Pursuable' :

where the identity of the officer(s) being complained against cannot be ascertained; or where there is insufficient information to proceed with the investigation; or when it has not been possible to obtain the co-operation of the complainant to proceed with the investigation, e.g. when the complainant declines to make a statement.

4.14 The definition does not mean that when the complainant cannot identify the complaine, no further action will be taken. CAPO will still make an effort to identify the complaine(s) on the basis of the information available. Only after such an effort has produced no result will a conclusion be reached that the identity of the complaine cannot be ascertained.

4.15 If a complaint has been classified as 'Not Pursuable' because of the complainant's refusal to give a statement, he may reactivate it later by giving a statement, after which an investigation will be conducted.

Example

The complainant (COM), who was arrested for 'Possession of Dangerous Drugs' outside a disco, lodged a complaint of 'Fabrication of Evidence' against Sergeant A (SGT A) for picking up a packet containing suspected dangerous drugs from the ground near her left foot and claiming that the packet belonged to her. The manager of the disco informed the Police that the CCTV tape outside the entrance of the disco at the material time had been erased. After the trial, the court

acquitted COM on the benefit of the doubt.

SGT A denied the allegation. The complaint investigation officer sent two letters to COM in order to seek the latter's assistance in the investigation but the letters met with no response. Without the assistance of COM, the investigation of the complaint could not be proceeded with. The allegation of 'Fabrication of Evidence' was therefore classified as 'Not Pursuable'.

Curtailed

4.16 A complaint is classified as 'Curtailed' :

where a complaint has been registered with CAPO but on the authorization of the Chief Superintendent (Complaints and Internal Investigations Branch), is curtailed, i.e. not to be investigated further, owing to special circumstances such as known mental condition of the complainant.

Example

The complainant (COM) had mental problem and was a client of a social service centre. One day, COM entered a classroom of the centre where a lesson was underway but he was not a student of the class. As COM caused trouble and disrupted the class, staff of the centre removed him from the classroom and a dispute arose. COM then dialed '999' to call for assistance from the Police.

In response to COM's report, Police Constable X (PC X) was deployed to the scene. Later, COM lodged a complaint alleging that PC X failed to show him his police warrant card ('Neglect of Duty') and did not allow him to go to the toilet ('Unnecessary Use of Authority').

PC X stated that he did show his warrant card to COM upon request, although this was not witnessed by any staff of the centre. Besides, PC X said that during the enquiry, COM

requested to go to the toilet but his request was refused by staff of the centre.

After the incident, COM was admitted to the psychiatric ward of a hospital. The doctor in charge of COM's case said that COM refused to disclose his medical condition and his tentative date of release from the hospital. Besides, COM also declined to be interviewed by the CAPO investigator. Since CAPO could not have access to COM, it was impracticable for it to complete the investigation into COM's complaint against PC X.

Given COM's mental condition, Chief Superintendent (Complaints and Internal Investigations Branch) finally approved the curtailment of CAPO's investigation into the complaint case. The allegations of 'Neglect of Duty' and 'Unnecessary Use of Authority' were classified as 'Curtailed'.

Informally Resolved

- 4.17 The Informal Resolution (IR) scheme aims at a speedy, satisfactory resolution of very minor complaints such as impoliteness during the ticketing of traffic offence.
- 4.18 A minor complaint suitable for IR will not be subject to a full investigation. Instead, a senior officer at least at the Chief Inspector of Police rank in the complainee's division will act as the Conciliating Officer (CO). The CO will make enquiry into the facts of a complaint by talking with the complainant and complainee separately. If he is satisfied that the matter is suitable for IR and if the complainant agrees, the complaint will be informally resolved.
- 4.19 The IR scheme cannot be used in the following circumstances:
 - (a) the allegation is about unjust refusal of bail which amounts to a loss of personal freedom;
 - (b) the complainant does not agree to the complaint being dealt with by IR;

- (c) criminal or disciplinary charges might ensue; or
- (d) there is a significant conflict of testimony between the complainant and the complaine. (The CO would formulate his judgement as to the facts and decide whether IR, or the normal full investigation, should be carried out.)

Example

The complainant was questioned and searched by the complaine while chatting with a friend around mid-night in a park. He alleged that the complaine was impolite to him during the questioning and search and treated him like a criminal. In view of its minor nature, the complaint was considered suitable to be dealt with by 'Informal Resolution'.

After being explained of the aim of 'Informal Resolution' by the Conciliating Officer, the complainant agreed to have his complaint resolved informally. The complaine was interviewed by the Conciliating Officer. He was reminded to act professionally when discharging his duties and to treat members of the public with courtesy.

Sub-judice

4.20 A sub-judice complaint is a complaint related to a matter pending prosecution in court. It will be dealt with by a set of special procedures of which the main principles and features are:

- (a) the basic facts of a complaint including the time, date, location and nature of the allegation(s) and the identity of complaines should be established as soon as possible;
- (b) a complainant may choose to either give a statement (which will not be under caution) or give the basic facts of his complaint orally or lodge a complaint but defer the disclosure of detailed information until the court hearing

of the case against him has been completed;

- (c) where the basic facts of the complaints are disclosed, CAPO will carry out a preliminary enquiry irrespective of whether any written statement has been provided by the complainant;
- (d) the preliminary enquiry may include, among other things, scene visit(s) and identifying and interviewing independent witnesses;
- (e) where the identity of complainee(s) is in dispute or there is prima facie evidence to suggest criminal or disciplinary proceedings are likely to be pursued, identification parades should be conducted as soon as practicable;
- (f) on completion of preliminary enquiry, if CAPO considers that the complaint is sub-judice and there is no other evidence which makes it necessary to continue with the investigation in the interest of justice and the complainant has indicated unequivocally that he wishes his complaint to be treated as sub-judice, the complaint investigation will be suspended;
- (g) nevertheless, complaint investigation will proceed as normal if the case falls within the following circumstances
 -
 - (i) the complaint does not concern matters which will impinge on the Court's prerogative; or
 - (ii) the complaint is serious and there is sufficient evidence or some other good reasons to suggest that it is likely to be substantiated; or
 - (iii) there is indication of police misconduct sufficient to justify interference with the prosecution; or
 - (iv) where the complainant unequivocally requests that his complaint be investigated and not be treated as sub-judice and CAPO considers it reasonable and appropriate to carry on the investigation; or
 - (v) it is in the interest of justice that the complaint

be investigated sub-judice; or

- (vi) investigation can proceed in-part for the preservation of evidence including the conduct of identification parades;

In case of doubt, advice from the Department of Justice will be sought;

- (h) albeit investigation is suspended until the completion of the legal proceedings against the complainant, steps will be taken to preserve exhibits and documentary evidence for any future investigation; and

- (i) upon completion of the legal proceedings against the complainant, CAPO will conduct a review. If it is considered that the results of the court case or matters arising from the court proceedings have in effect finalized the complaint and that no further investigation is necessary, a final report will be submitted to the IPCC. If it is considered that the complaint should be investigated, the complainant will be contacted for a full statement so that full investigation can be conducted.

4.21 When an investigation is suspended under the sub-judice procedures, CAPO will furnish a report to the IPCC. The IPCC will be provided with a final report after the conclusion of the court case and, where necessary, the completion of further investigation.

Example

The complainant (COM), a secondary school student, was arrested for 'Claiming to be a Member of Triad Society'. He alleged that when he was taken to the police station, two police officers punched his head and neck in the police vehicle (i.e. 'Assault') with a view to inducing his confession. COM agreed to have his complaint handled by sub-judice procedures and refrained from giving details of his complaint. CAPO suspended investigation pending court trial.

COM was subsequently convicted of three counts of 'Inviting a Person to become a Member of Triad Society', one count of 'Claiming to be a Member of Triad Society' and three counts of 'Criminal Intimidation'. He was sent to a rehabilitation centre. After trial, COM withdrew his complaint.

Others

4.22 As a verdict on a complaint, the classification is no doubt the single most important aspect monitored and reviewed by the IPCC. However, the importance of the classification should not deflect attention from the ultimate objectives of the complaint system, which are to:

- (a) give the complainant a fair, reasonable and clear reply on the outcome of his complaint; and
- (b) recommend remedial action (including legal or disciplinary action where appropriate) to prevent any police action which would cause justified grievance.

4.23 The IPCC monitors and reviews all complaints, including those classified as 'Withdrawn', 'Not Pursuable' and 'Informally Resolved'. Even where the complainants themselves have withdrawn their cases, the IPCC has to ensure that reasonable effort has been made by CAPO to get at the truth, that no undue influence has been exerted on the complainants and that any lessons which can be learnt are learnt and remedial actions taken accordingly. CAPO is also required to submit regularly summaries of 'Non-Reportable Complaints' to the IPCC to ensure that every reportable case of complaint against the Police will be monitored by the IPCC.

Chapter 5 General Review of Statistics on Complaint Cases Endorsed by the IPCC

Number of Complaints

5.1 In 2006, CAPO registered the receipt of 2,542 complaints, representing a decrease of 5.6% over the figure of 2,694 for 2005. The number of complaints (Note: a complaint may consist of more than one allegation) received and registered by CAPO in 2004, 2005 and 2006 and the avenues through which these complaints were received are shown in Appendices IV and V respectively.

Nature of Allegations

5.2 All complaints received and registered by CAPO are categorized by the nature of allegations. Where there are several allegations in a complaint case, the more serious one will be taken as the principal allegation and the case is generally categorized as such. Appendix VI illustrates the categorization of complaints received by CAPO in 2004, 2005 and 2006 according to the nature of allegations. The five major areas of complaints against the Police in 2006, in descending order, were 'Neglect of Duty' (37.6%), 'Misconduct/Improper Manner/Offensive Language' (27.7%), 'Assault' (22.1%), 'Threat' (5.4%) and 'Fabrication of Evidence' (3.6%).

Number of Investigation Reports

5.3 In 2006, the IPCC endorsed a total of 2,114 investigation reports of which 286 were carried over from the previous years, involving 3,518 allegations. The reduction in the number of endorsed cases by 714 cases (25.2%) in 2006, as compared to 2,828 investigation reports endorsed in 2005, was mainly attributable to the outbreak of the Personal Data Leakage Incident in March 2006 (please refer to Chapter 2 for more details). During the initial period of the Incident, the Secretariat's manpower resources were redeployed to follow up on matters arising from the Incident, until the provision of additional staff designated for the task in July 2006. As a result,

normal complaint case examination work was protracted. In addition, there is a general trend showing a decline in the number of complaints raised against the Police. In 2006, the number of cases received by the IPCC from CAPO is 2,437, representing a reduction of 546 cases or 18.3% over the figure of 2,983 in 2005.

- 5.4 A table showing the progress in processing and endorsing CAPO investigation reports as at 31 December 2006 is at Appendix VII. The respective number of allegations by category for cases concluded in 2004, 2005 and 2006 and the percentage distribution of these allegations are shown in Appendix VIII. Allegations of 'Assault', 'Misconduct/Improper Manner/Offensive Language', 'Neglect of Duty', 'Unnecessary Use of Authority' and 'Fabrication of Evidence' accounted for 95.2% of the total figure in 2006.

Queries Raised with CAPO

- 5.5 A total of 829 queries/suggestions were raised with CAPO in respect of cases endorsed in 2006, of which 565 were accepted by CAPO and 264 were met with satisfactory explanations by CAPO. More details are given in Chapter 6.

Results of Investigations and Substantiation Rates

- 5.6 The results of investigations endorsed by the IPCC in 2004, 2005 and 2006 together with the percentage distribution are at Appendix IX.
- 5.7 In 2006, 739 out of 3,518 allegations were resolved by way of Informal Resolution. Of the remaining 2,779 allegations, 40 were classified as 'Substantiated', 60 'Substantiated Other Than Reported', 4 'Not Fully Substantiated', 610 'Unsubstantiated', 187 'False', 152 'No Fault', 7 'Curtailed', 1,140 'Withdrawn' and 579 'Not Pursuable'. Allegations which were 'Curtailed', 'Withdrawn', 'Not Pursuable' or 'Informally Resolved' were normally not fully investigated.
- 5.8 The substantiation rate in relation to the 1,053 fully investigated allegations in 2006 was 9.9%, a breakdown of which is appended below:

Classification	No. of Allegations Endorsed	Substantiation Rate(s)
Substantiated	40	3.8%
Substantiated Other Than Reported	60	5.7%
Not Fully Substantiated	4	0.4%
Total	104	9.9%

- 5.9 Since substantiating a complaint requires clear evidence or convincing justifications, the IPCC has to examine each individual complaint thoroughly and impartially to uphold fairness to both complainants and complainees. It must be stressed that substantiation rates should not be regarded as a yard-stick in assessing the effectiveness of the police complaints system.
- 5.10 The substantiation rates in relation to fully investigated allegations endorsed by the Council in 2004, 2005 and 2006 are shown in Appendix X.
- 5.11 A table showing the breakdown of the results of investigations, by each category of allegations, endorsed by the IPCC in 2006 is at Appendix XI.

Follow-up Action Taken on Investigation Results

- 5.12 Criminal/disciplinary proceedings or internal action were taken against 114 police officers on 'Substantiated', 'Substantiated Other Than Reported', and 'Not Fully Substantiated' cases in 2006, subsequent to the endorsement of the results of investigations by the IPCC. The criminal/disciplinary proceedings and internal action taken against police officers on cases endorsed in 2004, 2005 and 2006 are at Appendix XII. The Police Force will also take remedial action to rectify procedural weaknesses revealed in the course of investigating complaints.
- 5.13 A complainant making a false allegation with clear intent of malice is liable to prosecution. In 2006, no complainant was charged for making a false complaint on the complaint cases endorsed in the year.

Classification Changes

- 5.14 As a result of the IPCC's queries, the results of investigation in respect of 44 complaint allegations were changed in 2006.

Suggested Improvements to Police Procedures and Practices

- 5.15 In 2006, the IPCC made a number of suggestions to improve police procedures. Some of the more significant ones are described below:

(a) The IPCC identified two complaint cases in which the complainers did not follow the proper procedures by misusing personal data collected in their course of duty to report the misconduct of the two complainants who were staff of another Government department and a public transport company respectively. To avoid recurrence of similar incidents, which might bring embarrassment to the Police, the Police was suggested to bring to the attention of all frontline officers the proper procedures to be followed (i. e. by reporting via his chain of command) when lodging a complaint against staff of other Government departments or organizations. To improve awareness of the issue, the Police was also advised to consider, for example, including the lessons learnt from these two complaint cases in the CAPO Monthly Report or the Complaints Prevention Committee Bulletin.

The Police advised that they would remind officers of the proper way to handle personal data collected during their course of duty by making reference to the two instant cases in the CAPO Monthly Report and/or under the Complaints Prevention Committee Bulletin.

(b) The complainant was the victim of a traffic accident. After he was informed by a police officer that the investigation of the traffic case had been completed, he made an application for the relevant documents in order to lodge a civil suit against the opposing party of the traffic accident. Upon receipt of the complainant's application, the supervisor of the General Registry, who was not

responsible for investigating the traffic case, wrote to the complainant furnishing him with incorrect information that the investigation into his traffic case was still in progress. The complainant therefore complained that there was insufficient communication between the police officer and the supervisor of the General Registry. As a result of IPCC's query, the Police reviewed the relevant work processes. Additional instruction was given to the General Registry to refer correspondence to the relevant investigation team for action in case the master register did not indicate that the investigation was completed. To avoid similar complaints, the IPCC also suggested that the Police considered applying the new procedure to other General Registries in the Police Force.

The Police advised that for service enhancement, the new procedure would be considered by other General Registries in the Police Force.

- (c) The complainant was required to submit his vehicle registration document and insurance policy to a traffic police officer at an operational base. The complainant was dissatisfied with the officer's arrangement that he had to wait at the rear gate of the operational base while the officer made photocopies of the said documents. The complainant considered that the police officer should have arranged for him to wait at the report room. However, the report room in question was closed down and there were no guidelines on how members of the public should be received after the closure of the report room. To prevent a recurrence of similar complaints, the IPCC suggested the Police to consider issuing official guidelines so that police officers working at the operational base would know how to receive members of the public.

The Police informed the IPCC that for service enhancement, they had circulated an email message to all officers of the operational base reminding them to make mutually-convenient and acceptable arrangement with members of the public to prevent recurrence of similar complaints.

- (d) The complainant reported the loss of her identity card to a MTR Reporting Centre. The Police advised the complainant

to go to a police station to collect her lost identity card, which was found and handed over to the police station concerned, upon conducting a match-check in the computer system. However, when the complainant subsequently contacted the property office of the police station concerned, she learnt that her identity card had already been sent to the Immigration Department. She was dissatisfied with the improper handling of her case and lodged a complaint against the officers concerned. The IPCC considered that if the action taken by the property office, i. e. returning the complainant's identity card to the Immigration Department, had been recorded in the computer system, the Police could have advised the complainant of the action taken, and would not have advised her to go to the police station concerned to collect her identity card. To enhance the quality of service to the public and avoid similar complaints in future, the IPCC suggested the Police to explore measures to improve the existing procedures in handling similar cases.

The Police advised that they had enhanced the practical application of the property matching function in the computer system, and amended the relevant provisions on 'Found Property' in the Force Procedures Manual.

- (e) The complainant lodged a complaint alleging that he was not promptly informed by the Police of the impounding of his motorcycle. In the course of examining the complaint, the IPCC noted that different regions had different practices of issuing notices to registered owners of impounded vehicles. The IPCC suggested the Police to look into the possibility of standardizing the practices in this respect and issuing a formal Force-wide instruction so as to give a clear and standardized instruction to all officers regarding when to issue the notice and to avoid possible complaints from different practices adopted in different regions.

The Police advised that they accepted the suggestion of standardizing the procedure of issuing notices to the registered owners of impounded vehicles and would amend the relevant Traffic Procedures Manual in due course.

Chapter 6 Monitoring and Review of the Handling of Complaints

Introduction

- 6.1 The IPCC's role in monitoring and reviewing CAPO's work has been described in Chapter 3. This Chapter illustrates how the IPCC performs its role in a proactive way and highlights its achievements in reviewing individual complaints and police procedures.

Major Categories of Queries/Suggestions Raised with CAPO

Nature of Queries/Suggestions	No. of Queries/ Suggestions in 2006	Accepted	Satisfactorily Explained/ Followed up
<p>(a) Thoroughness of investigation and clarification on ambiguous points in the CAPO reports/CAPO files</p> <hr/> <p>The IPCC is primarily concerned with the comprehensiveness and impartiality of the investigations carried out by CAPO. To ensure that a complaint has been thoroughly examined, the IPCC may suggest further interviews with complainant(s), complainee(s) and/or witness(es); scene visits or the seeking of further medical or legal advice, etc. The IPCC may also propose addition, deletion or amendment to allegations made against police officers, the complainant list, the complainee list and the contents of reports.</p>	548	384	164
<p>(b) Appropriateness of classifications</p> <hr/> <p>In examining the evidence available, the IPCC may discuss with CAPO on the re-classifications of results (from a higher to a lower classification or vice versa). Proposals to add 'Substantiated Other Than Reported' counts may also be made.</p>	75	44	31

Nature of Queries/Suggestions	No. of Queries/ Suggestions in 2006	Accepted	Satisfactorily Explained/ Followed up
(c) Reasonable grounds for exercising constabulary powers	2	1	1
<p>One of the IPCC's main concerns is to maintain a balance between the civil liberties and rights of individual citizens and the power of the Police in the detection or prevention of crime. Queries concerning the propriety of the Police in exercising certain constabulary powers, such as checking of identity cards, stop-and-search, use of handcuffs and arrest, are raised where necessary.</p>			
(d) Compliance with police procedures and practices	52	23	29
<p>Queries are raised by the IPCC with CAPO from time to time to ascertain if the police officers involved in a complaint case have complied with the relevant police procedures and practices in exercising their constabulary powers, although the complainant may not have raised a specific complaint.</p>			
(e) Improvement to police procedures	5	4	1
<p>Suggestions on improvement to police procedures which are complaint-inducing are made where appropriate by the IPCC to the Force. For details, please refer to Chapter 5, para. 5.15.</p>			

Nature of Queries/Suggestions	No. of Queries/ Suggestions in 2006	Accepted	Satisfactorily Explained/ Followed up
(f) Other queries	147	109	38
Total	829	565	264

- 6.2 The Commissioner of Police has full discretion in the imposition of disciplinary action on police officers. The IPCC may, however, comment on the proposed disciplinary action such as whether it is commensurate with the gravity of the offence. In a number of 'Unsubstantiated' cases, the IPCC took the initiative to recommend that the officers concerned be advised to make improvements, such as the exercise of more common sense and tact in dealing with members of the public, compliance with the provisions of the relevant Police General Orders and/or Police Headquarters Orders, making adequate notebook entries, etc.
- 6.3 The Council commented on the proposed disciplinary action/advice for the police officers concerned on 23 occasions in 2006. Of these, 19 were accepted and 4 were satisfactorily explained and followed up by CAPO.
- 6.4 The number and nature of queries/suggestions raised by IPCC in 2004, 2005 and 2006 are listed in Appendix XIII.

Chapter 7 Cases of Interest

Reason for Reporting Individual Cases

- 7.1 The earlier Chapters, in particular, Chapters 3 and 4 have described in detail the framework, procedures and the major factors affecting IPCC's deliberations. This Chapter gives an account of actual cases which the Council considered would be of interest to the general public.

Selection of Cases for Reporting

- 7.2 This Chapter presents summaries of 13 selected cases. They aim at giving the readers a glimpse of the efforts of the investigating officers, the contributions of the Council and the various factors taken into account in classifying a complaint. These cases are sampled from the more 'controversial' ones where the IPCC and CAPO may not necessarily be in agreement over the interpretation of evidence or even the findings of an allegation. Hopefully, these cases would highlight the fact that investigation reports are always vigorously vetted by the IPCC in an independent and impartial manner.

Anonymity

- 7.3 In the following summaries, the persons involved will remain anonymous for reasons of personal privacy. To minimize the probability of their being identified, details such as date, time and place of the incidents have been omitted unless these are absolutely necessary for a better understanding of the case.

- 7.4 The case summaries are prepared on the basis of the investigation reports endorsed by the Council in 2006 and reflect the position as at the end of the year.

Case Summaries

Case 1

Neglect of Duty - Unsubstantiated
Neglect of Duty - Substantiated
Misconduct - Unsubstantiated
Neglect of Duty - Unsubstantiated
Neglect of Duty - Unsubstantiated
Misconduct - Unsubstantiated

- 7.5 On the material day, the complainant (COM 2), an expatriate, was travelling on board a taxi from Central en route to her residence, whereas Police Constable A (PC A) was on motorcycle patrol duties in the same vicinity. When PC A's motorcycle reached a road junction in the area, it had a head-to-tail collision with the taxi in which COM 2 was travelling. PC A fell off his motorcycle and was injured. In spite of this, PC A called the Police Console to seek assistance. In response, Sergeant B (SGT B) was deployed to the scene to render assistance and conduct enquiry, followed by other police officers and emergency vehicles. Shortly after the impact, the taxi driver (Mr X) checked on COM 2 who indicated she was fine at the material time. Mr X then told COM 2 to take another taxi and leave the scene, because he had to remain to assist the Police in the accident investigation. COM 2 complied, and the Police did not conduct any enquiry with her there and then.

- 7.6 Whilst on board another taxi, COM 2 felt her neck and shoulder were painful, and called her fiance (COM 1) (also an expatriate) informing him of the incident and sought help. After COM 2 returned to her residence, COM 1 made a 999 call on her behalf to complain about the poor handling of the incident by PC A and SGT B. The call was received by Police Communications Officer

C (PCO C). Thereafter, COM 1 took COM 2 to a nearby hospital for medical examination and treatment. Whilst at the hospital, COM 1 alleged that he received a call from Police Constable D (PC D). He relayed the details of the accident to PC D who then requested COM 1 to provide COM 2's personal particulars to the Police Post at the hospital for further action. PC D also told COM 1 that he would keep COM 1 posted of COM 2's medical condition.

7.7 Afterwards, COM 2 was invited by the Police to give a statement with a view to assisting in the accident investigation. Ten days after the accident, COM 2, accompanied by COM 1, attended the police formation concerned to give a statement where they were served by Sergeant E (SGT E). After the statement taking, COMs 1 and 2 respectively lodged the following complaints to CAPO against the police officers whom they had dealings with throughout the incident:

- (a) PC A failed to conduct enquiry with COM 2 at the scene in that he failed to show concern for COM 2's condition, and obtain her personal particulars ('Neglect of Duty');
- (b) SGT B failed to conduct enquiry with COM 2 at the scene in that he failed to show concern for COM 2's condition, and obtain her personal particulars ('Neglect of Duty');
- (c) PCO C displayed a kind of insulting attitude by sniggering, when COM 1 relayed the incident to him over the phone at the material time ('Misconduct');
- (d) PC D failed to keep COM 1 posted of COM 2's medical condition as promised when COM 1 relayed the details of the incident to PC D over the telephone ('Neglect of Duty');
- (e) SGT E refused to provide COM 1 with the personal particulars of PC A and SGT B upon request ('Neglect of Duty'); and
- (f) SGT E pretended not to know English in front of COM 1 ('Misconduct').

- 7.8 For allegation (a), PC A denied the allegation. CAPO's investigation revealed that although PC A was injured at the material time, he had made reasonable efforts to ensure the well-being of the other parties involved in the accident (including COM 2 and Mr X) by asking Mr X to check on COM 2, and called the Police Console for assistance the soonest. CAPO considered that as an injured party, PC A could neither be expected to carry out his normal constabulary duties nor act as an at-scene investigator. Notwithstanding this, PC A had done what he could have possibly done in the circumstances, and was not at fault. CAPO thus classified allegation (a) as 'No Fault'. As regards allegation (b), CAPO considered that SGT B, being the first-at-scene officer, did not seize the opportunity to make enquiry with COM 2 before she left the scene, and hence was at fault. Allegation (b) was found to be 'Substantiated'.
- 7.9 For allegation (c), PCO C denied the allegation. CAPO reviewed the Console audio tape recordings, and concluded that PCO C had remained earnest and helpful throughout the teleconversation. PCO C explained that he was not laughing at the time, and that it was merely his natural expression which appeared to be peculiar. In the absence of corroborative evidence to support or disprove either side's version, allegation (c) was classified as 'Unsubstantiated'. That said, appropriate advice would be given to PCO C with a view to enhancing his verbal communication skills and professionalism.
- 7.10 In respect of allegation (d), PC D denied the allegation. CAPO's investigation revealed that PC D was not the Investigating Officer of the traffic accident case, and there was no conceivable reason for PC D to make the promise to COM 1 as alleged. In the absence of any independent witness or corroborative evidence to support or disprove either side's version, allegation (d) was classified as 'Unsubstantiated'.
- 7.11 As regards allegation (e), CAPO's investigation revealed that when COM 1 indicated that he would lodge a complaint against the injured police officer (i.e. PC A) and the first-at-scene officer, SGT E was then only certain about the identity of PC A but not that of the first-at-scene officer. It would therefore be premature and inappropriate for SGT E to disclose the

requisite information to COM 1 at that juncture. Besides, it might also prejudice the interest of his police counterparts. Moreover, since COM 1 was to lodge a complaint against the officers concerned anyway, it would be more appropriate for SGT E to verify all the information in connection with the complaint before replying to COM 1. In fact, SGT E had properly registered his complaint and referred it to CAPO for follow-up action. As such, SGT E's refusal to provide the personal particulars of the officers concerned to COM 1 could not be regarded as negligence. Allegation (e) was thus classified as 'No Fault'. For allegation (f), SGT E denied the allegation. CAPO's investigation confirmed that SGT E had sought the assistance of a police interpreter to facilitate a smooth encounter between him and COM 1 on the material day. In the absence of corroborative evidence to support or disprove either side's version, CAPO classified the instant allegation as 'Unsubstantiated'.

7.12 After examining the case, the IPCC had reservations over the 'No Fault' classification for allegations (a) and (e) on the following grounds:

- In respect of allegation (a), although PC A said that he had checked on the well-being of COM 2 and Mr X, Mr X gave a somewhat different version by saying that he was the one to check on PC A first right after the accident. Mr X was also unsure if PC A had the chance to check on COM 2 himself. In his statement, Mr X made no mention that PC A had asked him to check on COM 2 at the material time. Given the different versions of PC A and Mr X, the situation thus boiled down to a one-against-one situation. In the absence of independent witness or corroborative evidence to support or disprove either side's version, the IPCC suggested CAPO to consider re-classifying allegation (a) as 'Unsubstantiated';
- As regards allegation (e), the crux of COM 1's complaint was SGT E's refusal to provide him with the personal particulars of the injured police officer and the first-at-scene officer. The IPCC considered that while SGT E might have acted in good faith in this incident, it remained indisputable that there was only one injured police officer, i.e. PC A, and SGT E was aware of the latter's identity at the material time. Since COM 1's

request was specific, it appeared reasonable for SGT E to at least provide the identity of PC A to COM 1 first, to be followed by a more detailed explanation of why the rest of his request could not be complied with. On this basis, the IPCC suggested CAPO to re-classify allegation (e) as 'Unsubstantiated'.

- 7.13 After consideration, CAPO subscribed to the views of the IPCC, and agreed to re-classify allegations (a) and (e) as 'Unsubstantiated'. The IPCC endorsed CAPO's investigation result of this case.

Case 2

Assault - False

- 7.14 The complainant (COM) was the defendant in a 'Trafficking in Dangerous Drugs' ('Trafficking') case. COM raised a complaint in open court that during statement-taking, three unidentified plainclothes male police officers, namely Police Constable A (PC A), Police Constable B (PC B) and Sergeant C (SGT C), who were involved in his arrest, had fisted his chest, belly, waist and back for 10 times. COM also claimed that PC B burnt his pubic hair with a cigarette lighter ('Assault'). COM was sent to hospital for medical treatment, and was later discharged with findings of 'tenderness and redness on chest wall, burnt ends over pubic hair and fracture on left seventh rib'.

However, COM refused to be examined by the Forensic Pathologist.

- 7.15 Subsequent CAPO investigation revealed that three other detainees were with COM in the same temporary cell at the police station where COM was detained at the material time. Two detainees testified that they had witnessed COM burning his pubic hair with a lighter inside the temporary cell in the early morning of the date when he lodged his complaint in court.

- 7.16 Although COM had renewed his 'Assault' allegation against the

three officers in subsequent court hearings of the 'Trafficking' case, he was eventually convicted on his own plea, and was sentenced to four years' imprisonment. Following his conviction of the 'Trafficking' case, CAPO sought legal advice on the weight of evidence in charging COM for making a malicious complaint against the police officers involved. Acting upon the advice, CAPO formally charged COM with two counts of 'Making a False Report of the Commission of an Offence'. COM pleaded guilty to both charges, and was sentenced to two months' imprisonment for each charge with one month to run concurrently, i. e. a total of three months. In light of COM's own plea to the two charges of 'Making a False Report of the Commission of an Offence', CAPO considered that COM's 'Assault' allegation had been judicially resolved, and therefore classified it as 'False'.

7.17 After examining the case, the IPCC requested CAPO to clarify the source of the cigarette lighter which COM used to burn his pubic hair. According to the relevant Police Orders, a detained person should be searched by the Duty Officer of a Report Room, or any officer detailed by the Duty Officer, prior to his being secured in a Temporary Holding Area or a cell block. In response, CAPO conducted further investigation with a view to identifying the source of the cigarette lighter, but to no avail. CAPO advised that the presence of the cigarette lighter might either be an omission by the searching and witnessing officer, or it might have been left behind by other detained persons. That said, CAPO recognized that access to smoking materials by detained persons inside police cells was a serious matter which might result in serious consequence, and had advised the concerned police formation to look into the matter with a view to tightening up controls to avoid any recurrence.

7.18 The IPCC endorsed CAPO's investigation result of this case.

Case 3

Neglect of Duty - Substantiated

7.19 The complainant (COM), while serving sentence in a prison following her conviction of 'Using the Document of Identity of Another Person', befriended an inmate, Ms X. Ms X told COM that she had used a forged passport to enter Hong Kong, and revealed to COM her true identity. COM then passed this piece of crime information to the Police in the hope that she would get a reduction in her prison sentence on appeal. COM also requested the Police to maintain the anonymity of her informant status. However, she later realized that SIP Y disclosed her identity as the informant to Ms X by listing her as a prosecution witness. COM therefore lodged a complaint against SIP Y for failing to maintain the anonymity of her informant status, resulting in her being threatened by Ms X and other inmates in the prison ('Neglect of Duty').

7.20 Upon CAPO's enquiry, SIP Y confirmed that he was aware of COM's request to remain anonymous. However, his investigation revealed that COM and Ms X schemed together by allowing COM to 'leak' Ms X's true identity to the Police so that COM would get a reduced sentence on appeal. The Senior Government Counsel, when consulted about the matter, considered it not secure to lay a charge of 'Perverting the Course of Justice' against COM. Nevertheless, in view of his findings that there was a possible conspiracy between COM and Ms X in the matter, SIP Y considered it unnecessary to maintain the anonymity of COM's informant status. Eventually Ms X was prosecuted and convicted of 'Using a False Travel Document'. CAPO was of the view that there was no supportive evidence suggesting that SIP Y's decision was negligent, and hence classified the 'Neglect of Duty' allegation as 'Unsubstantiated'.

7.21 Upon examination of the complaint, the IPCC had a number of observations on the 'Unsubstantiated' classification, and requested CAPO to consider re-classifying the allegation. They are as follows -

(a) the respective cautioned statements from COM and Ms X did not indicate that they had schemed together. COM never admitted to have conspired with Ms X, whereas Ms X only stated that after disclosing her true identity to COM, she suspected that COM intended to use the information for her

(COM' s) own benefit, and therefore Ms X chose to surrender her true identity to the Police;

(b) there was insufficient evidence to prove that COM had perverted the course of justice;

(c) COM was still officially treated by the Police as an informant who had provided useful information to the Police;

(d) there is a well-established common law principle that in a public prosecution, the prosecutor is generally not required to disclose the details of informants, unless the disclosure may be of substantial assistance to the defence case. In view of Ms X' s own confession, the non-disclosure of COM' s identity would in no way prejudice a fair trial for Ms X; and

(e) there was no justification for SIP Y to totally disregard the request of COM to remain anonymous. In view of the specific circumstances of the case, SIP Y should have sought legal advice on whether COM' s request should be acceded to.

7.22 Having examined the IPCC' s observations, and re-examined the case, CAPO agreed that despite the suspicion against COM, there was insufficient evidence to establish collusion between COM and Ms X, and the two were never prosecuted for the offence of 'Perverting the Course of Justice'. The evidence from COM was not so material to the prosecution of Ms X, and COM should therefore not have been listed as a prosecution witness. Under the circumstances, CAPO agreed that it would have been politic if SIP Y had sought legal advice on whether COM' s informant status should be disclosed or not. In view of these considerations, CAPO agreed that SIP Y had failed to fulfill his duty by rejecting the legitimate request of COM to remain anonymous, and the allegation was re-classified from 'Unsubstantiated' to 'Substantiated'.

7.23 The Council endorsed the revised investigation result, and further suggested that the Police should draw an informant' s attention to the risk of having his/her identity disclosed if the disclosure is considered truly necessary in the

circumstances, before the informant renders any assistance in the investigation.

Case 4

Unnecessary Use of Authority - No Fault
Unnecessary Use of Authority - Unsubstantiated
Unnecessary Use of Authority - Unsubstantiated
Neglect of Duty - Substantiated Other Than Reported
Neglect of Duty - Substantiated Other Than Reported
Neglect of Duty - Substantiated Other Than Reported
Neglect of Duty - Substantiated Other Than Reported

7.24 The complainant (COM) was a salesman of an apparel shop. On the material day, COM had a scuffle with his customer, and in the heat of the dispute, fought with the customer. A report was made to the Police. After initial enquiry, the Police arrested COM and the customer for the offence of 'Fighting in a Public Place'. Since COM sustained injury in the fight, he was sent to the hospital for medical examination and treatment under the escort of the Arresting Officer, and the customer was brought back to a police station for further enquiry and processing. As the Arresting Officer would soon go off-duty on the material day, the Duty Officer of the police station concerned (SSGT A) instructed two police constables (PC B and PC C) to attend the hospital with a view to relieving the Arresting Officer of the escort duty. Before leaving the station for the hospital, SSGT A told PCs B and C to work in pairs, and instructed one of them to draw a pair of Handcuffs Transport Belt (HTB) from the Armoury of the police station as a precautionary measure. He further reminded one of them (whom he could not recall) that prior to the use of HTB, the officer concerned should call SSGT A to seek prior authorization and make a proper notebook entry regarding its justification, in line with the police force requirement. (Note: CAPO's investigation revealed that it was PC B who drew the HTB from the Armoury on the material day.)

7.25 Upon arrival at the hospital, PCs B and C took over the escort

duty from the Arresting Officer. COM was then not handcuffed. In light of COM's status as a suspect/detained person, and there was a likelihood of COM escaping when he needed to move around the public area of the hospital, PC B passed the HTB to PC C who then applied it on COM without seeking prior authorization from SSGT A. After receiving medical examination and treatment, COM was brought back to the police station for processing, where Detective Police Constable D (DPC D) and Detective Senior Inspector of Police E (DSIP E) were the Investigating Officer and the Officer-in-Charge of the crime case respectively. After initial processing, COM was released on police bail pending further enquiry. COM then lodged a complaint with CAPO against the police officers whom he had encountered in the crime case.

7.26 Subsequent to further investigation, DSIP E charged COM and the customer jointly with the offence of 'Fighting in a Public Place'. As his complaint was closely related to his criminal charge, CAPO treated COM's complaint as 'Sub-judice'. In court, COM raised the same complaint against the police as his defence, but the trial judge convicted him and made no comment on his allegations. COM subsequently sought and was allowed an appeal of his conviction. He did not raise the allegations in the appellate court.

7.27 After the completion of court proceedings, CAPO re-opened the investigation of COM's complaint, the details of which were as follows:

(a) PCs B and C unnecessarily restrained COM with the HTB when he was in the hospital ('Unnecessary Use of Authority');

(b) PCs B and C disallowed COM's requests to make phone calls in the hospital and the police station, and to answer an incoming call in the police station ('Unnecessary Use of Authority'); and

(c) DPC D and DSIP E unnecessarily declined the request of COM and his lawyer to give a statement or a record of interview to the Police ('Unnecessary Use of Authority').

- 7.28 For allegation (a), CAPO considered that as COM had to receive medical treatment including an X-ray examination, and that he had to move around in the public area of the hospital, there was a likelihood of COM escaping at the subject location. The circumstances therefore necessitated a need for the officers concerned to apply the HTB on COM. Besides, the relevant police internal order stipulated that a police officer might use wrist restraints (including HTB) to ensure the security and control of a person whom the officer had reason to believe was likely to escape. Moreover, police procedures stated that whenever a detained person was escorted to a hospital or clinic for medical examination or treatment, he might be restrained by handcuffs or HTB provided that such use was compatible with the relevant police internal order. In light of the foregoing, CAPO considered the use of HTB on COM by the officers concerned justifiable and appropriate in the circumstances, and hence classified this allegation as 'No Fault'.
- 7.29 For allegation (b), both PCs B and C denied the allegation. In the absence of any independent witness or corroborative evidence to support or disprove either side's version, CAPO classified this allegation as 'Unsubstantiated'.
- 7.30 For allegation (c), DPC D and DSIP E denied the allegation. DSIP E stated that both COM and his lawyer requested him to take a witness statement from COM in the latter's capacity as a victim of the crime case. However, as the Police regarded COM as a suspect of the crime case at the material time, DSIP E explained to COM and his lawyer that it would be more appropriate for COM to give a record of interview than a witness statement, which was in line with police guidelines concerning the questioning of suspects and the taking of a statement. That said, if at any stage of the investigation there was evidence to suggest that COM was indeed a victim rather than a suspect, the Police would invite COM to give a witness statement. Noting DSIP E's explanation, both COM and his lawyer raised no request, and did not give any statement, nor a record of interview. CAPO also approached COM's lawyer to assist in the complaint investigation, but to no avail. In the absence of any independent witness or corroborative evidence to support or disprove either side's version, CAPO classified this allegation as 'Unsubstantiated'.

- 7.31 CAPO also registered two 'Substantiated Other Than Reported' counts of 'Neglect of Duty' against PC B for (i) failing to seek authorization from SSGT A prior to applying the HTB on COM in the hospital; and (ii) failing to make proper notebook entries regarding the application of HTB on COM.
- 7.32 After scrutiny of the case, the IPCC had no comment on the classifications for allegations (a) to (c), as well as the two 'Substantiated Other Than Reported' counts of 'Neglect of Duty' against PC B. However, the IPCC noted that SSGT A had already briefed PCs B and C to perform the escort duty in pairs before they left the police station for the hospital. In other words, they were acting in concert, and both had the responsibility to ensure that the use of the HTB was properly authorized and documented. On this basis, the IPCC considered that two additional 'Substantiated Other Than Reported' counts of 'Neglect of Duty' should be registered against PC C as well for (i) failing to seek authorization from SSGT A prior to applying the HTB on COM in the hospital on the material day; and (ii) failing to make proper notebook entries regarding the application of HTB on COM.
- 7.33 After review, CAPO agreed to register two 'Substantiated Other Than Reported' counts of 'Neglect of Duty' against PC C as suggested. The IPCC endorsed CAPO's investigation result of this case.

Case 5

Neglect of Duty - Substantiated
Neglect of Duty - Substantiated Other Than Reported
Neglect of Duty - Substantiated Other Than Reported

- 7.34 The complainant (COM) found a black-colour private car KZ XXX of the same model and peculiarities as his stolen vehicle at a car show. He made a report to the Police, and two uniformed police officers, PCs A and B, attended the scene for enquiries. They

first checked the registration, chassis and engine numbers of KZ XXX with the Police Console and confirmed that it was not a stolen vehicle. They then inspected the vehicle and found the peculiarities mentioned by COM on it. During the enquiry, PC A and COM also located another private car of the same make at the car show. After comparison, they found that the thickness of the metal plate of the engine number of KZ XXX was obviously thinner. The case was considered suspicious and crime investigation detectives, DPC C and DSGT D, were requested to attend the scene for further enquiries. In the presence of COM, PC A briefed DPC C and DSGT D about the initial findings, including the observation pertaining to the thickness of the engine number plate of KZ XXX. PC A also reported to DSGT D that COM had earlier checked with the sole agent of the vehicles of the same make, who indicated that KZ XXX was white in colour when it was first registered. DPC C and DSGT D then took over the case for further investigation.

- 7.35 After inspection, DPC C and DSGT D considered that the peculiarities as mentioned by COM were not unique to prove conclusively that KZ XXX was COM's stolen vehicle. They considered that since COM had examined KZ XXX in detail at the car show prior to his report to the Police, this might explain why he could point out those peculiarities. Moreover, DPC C and DSGT D could not find any sign of alteration on the chassis and engine numbers of the vehicle, and the numbers were also found to be consistent with those recorded in the vehicle licence. They therefore concluded that there was insufficient evidence to impound KZ XXX immediately for forensic examination, particularly when the car owner, Mr Y, did not consent to have his vehicle impounded immediately at the scene, but agreed to leave the vehicle at the car show, pending forensic examination.
- 7.36 DSGT D then reported his investigation result to DWSIP E, who agreed with his assessment. DWSIP E had also examined the initial findings of PCs A and B as recorded in the investigation report (Pol. 155), but found no suspicion in the case. Although she noted from DPC C's checks that Mr Y and the previous owner of KZ XXX had numerous criminal records, including vehicle crime, she did not consider it justified to impound the vehicle immediately for forensic examination. However, to ease COM's suspicion, she directed DSGT D to arrange for a forensic

examination of KZ XXX as soon as possible.

7.37 Five days later, COM was informed by DWSIP E that KZ XXX was reported missing and then recovered, with some parts of the vehicle found stolen and its chassis number defaced, on the day when the forensic examination was scheduled. After consulting the Government Chemist, DWSIP E told COM that the severe damage to the chassis number of KZ XXX had rendered it impossible to trace its true identity through forensic examination. COM then lodged a complaint to CAPO against DPC C, DSGT D and DWSIP E for their failure to take instant action to impound KZ XXX for forensic examination, resulting in the loss of material evidence in the investigation of his report ('Neglect of Duty').

7.38 CAPO's investigation revealed that the vehicle bearing the registration number KZ XXX was originally white in colour according to the registration record in the Transport Department. The record showed that the colour of the vehicle was changed to black four days after COM's vehicle was stolen, with the registered owner changed subsequently to Mr Y. Both DPC C and DSGT D, when interviewed by CAPO, denied that COM, PCs A or B had mentioned to them the original colour of the vehicle bearing the registration number KZ XXX. For DWSIP E, she only learnt that the original colour of the vehicle was white when she was interviewed by CAPO. However, before any further action was taken by the Police to impound the vehicle for examination, Mr Y had successfully applied to re-stamp a new chassis number on KZ XXX with the Transport Department and then resold the vehicle to a bona fide purchaser.

7.39 With CAPO's intervention, KZ XXX was eventually examined by the Government Chemist regarding its original colour. It was confirmed that KZ XXX, contrary to its registration history, had never been white in colour. Although it could not be ascertained that KZ XXX was indeed COM's stolen vehicle, it was almost certain that KZ XXX was not the original vehicle bearing the registration number KZ XXX, which should be white in colour when it was first registered. Judging from the whole circumstances, CAPO considered that reasonable inference could be drawn that COM's vehicle was purposely stolen, converted and laundered to become the vehicle bearing the registration number KZ XXX, which

was reported to have been totally damaged in an earlier incident according to the record of the sole agent. CAPO then referred the information to the relevant police district for crime investigation, as the case was suspected to be related to a professional vehicle laundering syndicate.

7.40 In connection with the complaint, CAPO was of the view that there were three occasions when the vehicle laundering process could have been stopped by the Police, viz. -

- (a) when COM found KZ XXX at the car show and reported the matter to the Police;
- (b) when KZ XXX was coincidentally reported missing and then recovered on the day of the scheduled forensic examination; and
- (c) when DWSIP E learnt from CAPO that the original colour of the vehicle bearing the registration number KZ XXX was white.

7.41 On the first occasion, although DPC C and DSGT D claimed that they had conducted a thorough investigation at the scene to erase the suspicion, CAPO considered that they were reasonably expected to attach sufficient weight to COM's report and his suspicion, since there appeared no other convincing reason to justify why COM was so eager to report the matter to the Police after he had been compensated in full by his insurer for his stolen vehicle. While it might not be desirable to immediately impound KZ XXX in view of Mr Y's objection, DPC C and DSGT D could have put the vehicle on guard to facilitate subsequent forensic examination as early as possible. DPC C and DSGT D apparently had not considered this option and imprudently left KZ XXX in the hands of Mr Y, the prime suspect. This eventually resulted in the coincidental missing of the vehicle shortly before the scheduled forensic examination, and the defacement of the chassis number, which rendered it impossible to trace its true identity through further examination in this aspect.

7.42 Moreover, CAPO advised that there are dedicated teams in the Hong Kong Police Force who are specialized in handling vehicle

laundering cases, but DPC C and DSGT D did not consider that the case was suspicious and hence did not seek advice from the specialists concerned. As DPC C and DSGT D's decision of not impounding KZ XXX at the material time had attributed to the successful laundering of the vehicle in question, the 'Neglect of Duty' allegation against them was classified as 'Substantiated'. DSGT D was the most senior officer who decided not to impound KZ XXX immediately at the scene and DPC C only followed his instruction. DPC C was therefore advised without an entry in his divisional record file, while a recorded warning with an entry in his divisional record file was given to DSGT D having regard to the serious nature of the matter.

7.43 On the second occasion, DWSIP E claimed that she found the case suspicious when KZ XXX was coincidentally reported missing and then recovered on the day of the scheduled forensic examination with its chassis number defaced. However, due to her inadequate experience and training in handling similar vehicle laundering cases, she only sought advice from the Government Chemist on the possibility of further examining the chassis number to trace the true identity of the vehicle. As the chassis number had been severely damaged, the Government Chemist advised that further examination in this area was impracticable.

7.44 On the third occasion, CAPO considered that a reasonable officer in the rank and experience of DWSIP E should have been prudent enough to seek advice from her seniors, from specialists in the Hong Kong Police Force, or from the Government Chemist on what possible actions she could take to trace the true identity of the suspect vehicle. However, DWSIP E failed to take any prompt action. Two months later, KZ XXX was re-stamped with a new chassis number and resold to a bona fide purchaser. Had DWSIP E taken instant action to seize KZ XXX for further examination when she learnt about the original colour of the vehicle, the vehicle laundering process could have been stopped and the prime suspect, Mr Y, could not have reaped the profit from the laundering process. The 'Neglect of Duty' allegation against DWSIP E was hence classified as 'Substantiated'. In addition, a 'Substantiated Other Than Reported' count of 'Neglect of Duty' was also registered against DWSIP E as she failed to make any file record regarding her communications with the officer-in-charge of the case on the recovery of KZ XXX on the

day of the scheduled forensic examination, her bringing the matter to the attention of her supervising officer, and her subsequent communication with the Government Chemist on the possibility of tracing the true identity of KZ XXX by further examination when its chassis number was defaced. She was given a recorded warning with an entry in her divisional record file relating to these two substantiated counts of 'Neglect of Duty'.

7.45 In the course of examining the complaint, CAPO also found that PCs A and B had failed to make proper records in their notebooks and the investigation report (Pol. 155) regarding their observations pertaining to the thickness of the engine number plate of KZ XXX, as well as COM's finding from the sole agent that the vehicle bearing the registration number KZ XXX was white in colour when it was first registered. The omission had partly affected the initial decision of DWSIP E to concur with the assessment of DPC C and DSGT D in not impounding KZ XXX immediately as she was not given full details of the information unveiled at the scene. PCs A and B were advised without an entry in their divisional record files to be more prudent in making proper and detailed records of their investigation findings in their notebooks and in Pol. 155.

7.46 The Council endorsed CAPO's investigation result of the case.

Case 6

Assault - Unsubstantiated

7.47 The complainant (COM) was a secondary school student with records of unpunctuality, skipping classes and other misdemeanours at school. On the material day, COM was late for school again. The School Principal (Mr X) asked to see COM with a view to enquiring about the reason for his lateness. Shortly after, Mr X told the School Discipline Mistress (Ms Y) to interview COM at the School Social Worker's office together with Police Constable A (PC A) who was paying a liaison visit to the school at the material time. When walking along the

corridor leading to the interview venue, COM alleged that PC A grabbed his hair and pulled him into the School Social Worker's office. COM believed that Ms Y and a class of students who were attending physical education lesson at the material time might have witnessed the incident.

7.48 Upon arrival at the interview venue, COM claimed that PC A had asked Ms Y to leave, so that PC A would interview him alone. During the interview, COM alleged that PC A slapped his face for about five to six times, and fisted his stomach twice. PC A further told COM to touch his head to the floor, but he refused. PC A then kicked COM's buttock once, and used his finger to poke COM's forehead for three to four times. COM also claimed that PC A had uttered to him that 'With a finger, I could prod you to death.'

7.49 When PC A handed COM back to Mr X after the interview, COM alleged that PC A had made a reference to Mr X that COM would now behave himself, as he had just finished practising 'Kung Fu' with COM. After PC A's departure, COM further alleged that Mr X had said to him that he (Mr X) did not want to grant a licence to the Police to beat his students. Nevertheless, COM did not make a complaint at this juncture. When COM returned home that evening, he revealed the whole incident to his mother, but did not ask to receive any medical examination or treatment. Three days later, COM's mother lodged a complaint on behalf of her son against PC A for 'Assault'. The Police then arranged for COM to receive medical examination and treatment at a hospital where he was diagnosed with tenderness on his right ear, and bilateral mandibular region of his face. He was discharged on the same day.

7.50 CAPO's investigation revealed that COM was interviewed and counselled by PC A and Ms Y in the School Social Worker's office on the material day. PC A denied the allegation, and stated that he had interviewed COM together with Ms Y, although the latter had left the room briefly to check if Mr X had completed his interviews with other students. CAPO also tried to invite both Mr X and Ms Y to give a statement, but they declined on the ground that they were preoccupied with their work. That said, Mr X and Ms Y agreed to give a verbal account that they

did not witness any police assault on COM on the material day. Ms Y further confirmed that PC A had interviewed COM in her presence on the material day, although she had left the room briefly to check on Mr X's interview with other students. Ms Y added that PC A was polite and sincere to COM during the encounter. CAPO further conducted a site visit with a view to locating any eye witness to the incident, but to no avail. In the absence of independent witness or corroborative evidence to support or disprove either side's version, CAPO classified the 'Assault' allegation as 'Unsubstantiated'.

7.51 After examining the case, the IPCC expressed concern about the stance of Mr X and Ms Y in the complaint investigation. Although they provided a verbal account that they did not witness the alleged incident, they nevertheless refused to come forward and give a written statement when invited by CAPO. Having regard to their respective positions as senior members of the school, the IPCC considered that they should have adopted a more proactive and forthcoming approach, and co-operated with the Police in a complaint investigation involving their student. Notwithstanding this, taking all factors into account including the fact that the provision of a written statement by a witness is entirely voluntary, the IPCC endorsed CAPO's investigation result of this case.

Case 7

Misconduct - Unsubstantiated (Non-reportable Complaint)
Neglect of Duty - Unsubstantiated

7.52 The complainant (COM) stopped his car at a roadside and waited for the return of his girlfriend from the market. Several vehicles were also parked along the same road causing obstruction to traffic. Meanwhile, PC A and another police officer were deployed on board a police vehicle to the vicinity to handle a report of 'Theft of Bicycle'. When PC A saw the traffic congestion, he took traffic control action and directed the vehicles to drive away. When signalled by PC A to move off, COM drove up to him without fastening his seat

belt. PC A therefore stopped COM and ticketed him for 'Driving a motor vehicle on a road without being securely fastened to his seat by seat belt'. About one and a half months later, COM lodged a complaint alleging that PC A failed to wear his cap when he alighted from the police vehicle ('Misconduct'). COM also alleged that PC A had stood next to an unattended car X parked in front of his vehicle for minutes, but did not take any enforcement action against it or any other vehicles illegally parked on the same road ('Neglect of Duty').

7.53 Upon CAPO's enquiry, PC A denied having failed to put on his cap. He stated that he had walked up and down the road several times to direct traffic and ticketed two unattended vehicles. When he walked up to car X, he saw COM's vehicle pulled in and stopped behind. He then signalled COM for a few times to drive away, but COM gave no response. When he started to walk up to COM's vehicle, COM pulled away without fastening his seat belt. He therefore stopped and ticketed COM. During the ticketing action, COM challenged PC A by asking why the latter did not start his traffic enforcement action from the other end of the road. PC A then explained to COM his authority over traffic control action as well as the reason for the ticket. When he was talking to COM, a female driver returned to car X and drove off. PC A further remarked that he had given a short period of grace to all unattended vehicles before initiating the enforcement action. He did not ticket car X because the driver returned and drove off when he was talking to COM.

7.54 For the allegation of 'Misconduct', it would normally be categorized as a 'Non-reportable Complaint'⁴ since COM was apparently not an aggrieved party to the alleged misconduct. In the instant case, CAPO however considered that the allegation was part of the encounter between COM and PC A, from which the instant complaint arose. On this basis, the allegation was categorized as a 'Reportable Complaint'⁵. As CAPO's investigation did not unveil any independent or corroborative evidence to support the version of either side, the allegation of 'Misconduct' was classified as 'Unsubstantiated'.

7.55 On the allegation of 'Neglect of Duty', CAPO noticed that PC

A had exercised his discretion to allow the drivers of the unattended vehicles to return and drive away. It was also confirmed that PC A had issued two tickets for illegal parking prior to the enforcement action against COM. CAPO considered that PC A had fulfilled his duty in maintaining a smooth traffic flow on the material day, and there was no evidence to suggest that he had neglected his duty. The allegation was classified as 'No Fault'.

7.56 Upon examining the case, the IPCC had reservations about categorizing the 'Misconduct' allegation as a 'Reportable Complaint' because whether an allegation could be considered as part of the event leading to the complaint as a whole was not a factor for deciding whether it should be categorized as a 'Reportable Complaint'. As for the 'Neglect of Duty' allegation, the IPCC noted that COM and PC A had provided different accounts of the manner in which PC A dealt with car X, and the circumstances under which car X was let go. As it was a typical one-against-one situation, the IPCC considered it more appropriate for CAPO to re-classify the 'Neglect of Duty' allegation from 'No Fault' to 'Unsubstantiated'.

7.57 Having re-examined the case and IPCC's observations, CAPO agreed to re-categorize the allegation of 'Misconduct' as a 'Non-reportable Complaint', and also re-classify the allegation of 'Neglect of Duty' as 'Unsubstantiated'.

7.58 The Council endorsed the revised investigation results of the case.

4 According to the CAPO Manual, 'Non-reportable Complaints' are complaints which are not required to be reported to the IPCC but fall within the purview of CAPO to review. Allegations made by a complainant who is not an aggrieved party to the alleged misconduct; allegations made against off-duty officers, if being a police officer is not essential to the burden of the complaint; and a request for review of the crime investigation in which the complainant is a concerned party are examples of 'Non-reportable Complaints'.

5 'Reportable Complaints' are complaints the investigation results of which are subject to IPCC's endorsement. 'Reportable Complaints' must be made by the

aggrieved party to the alleged misconduct.

Case 8

Neglect of Duty - No Fault

Neglect of Duty - Unsubstantiated

Neglect of Duty - Substantiated

Neglect of Duty - Unsubstantiated

7.59 The complainant (COM) and two males had set up an insurance company. The latter two subsequently started their own business, causing a series of disputes with COM. Arising from these disputes, COM made two reports to the Police on 'Criminal Damage' and 'Theft' respectively, whereas one of the two males made a report to the Police on 'Dispute'. However, COM insisted that he was the informant of all three crime cases. He alleged that the officer-in-charge of the 'Theft' case, DSIP A, had failed to consolidate the three crime cases as promised and investigate them professionally and thoroughly ('Neglect of Duty'). Moreover, he claimed that he had received a letter signed by DSIP A dated 15 January but bearing a post chop of 26 March. COM considered that the discrepancy in time indicated the unprofessionalism of the officer concerned in crime investigation ('Neglect of Duty'). He therefore lodged a complaint to CAPO against DSIP A.

7.60 In the course of the complaint investigation, SIP B of CAPO issued a letter to COM, stating that SGT C of CAPO had contacted COM earlier by telephone to ascertain his stance. However, COM alleged that the said description in the letter was wrong. The telephone call was indeed made by COM to SGT C instead of the other way round, as he had never provided CAPO with his telephone number ('Neglect of Duty'). In addition, SIP B recapped in his letter that during the teleconversation with SGT C, COM refused to provide further information to assist in the complaint investigation, and questioned why his complaint was handled by the Kowloon Office of CAPO. However, COM denied having made such remarks during his teleconversation with SGT C, and considered that SIP B's account in his letter was inaccurate ('Neglect of

Duty'). Two additional allegations were therefore registered against SIP B.

7.61 After CAPO's investigation, the first 'Neglect of Duty' allegation against DSIP A was classified as 'No Fault' as the crime case files revealed that DSIP A had followed standard procedures in the crime investigation. As regards the second 'Neglect of Duty' allegation against DSIP A and the last 'Neglect of Duty' allegation against SIP B, they were both classified as 'Unsubstantiated' in the absence of any independent witness or corroborative evidence to prove or disprove the version of COM or the officer concerned. On the third 'Neglect of Duty' allegation against SIP B, the investigation record of SGT C confirmed that it was COM who telephoned SGT C on the material day. As SIP B's description in his letter gave an impression that the telephone call was initiated by SGT C, which was contrary to the fact, this allegation was classified as 'Substantiated'. The IPCC endorsed CAPO's investigation result of the case.

7.62 Having been informed of the investigation result, SIP B wrote to CAPO seeking a review of the 'Substantiated' classification of the third 'Neglect of Duty' allegation. In support of his review request, he argued that the word 'contacted' as used in his letter to COM showed no indication as to who made the telephone call. It was COM who subjectively interpreted the phrase as 'SGT C had telephoned him'. SIP B opined that the subjective interpretation or misinterpretation of COM should not be a reason for the substantiation of this allegation.

7.63 After reviewing the issue in question, CAPO initially supported SIP B's review request and considered the 'Neglect of Duty' allegation should be re-classified from 'Substantiated' to 'Unsubstantiated' for the following reasons -

(a) the purpose of SIP B's letter was to urge COM to contact CAPO to facilitate further investigation, instead of giving a perfectly unambiguous description of past events. While accuracy is an aspiration intrinsic to the work of the Police, it was wrong to treat any ambiguity as 'Neglect of Duty', particularly when the ambiguity in question did not

relate to any matter at issue. Where gross negligence or recklessness was absent, a failure could not constitute a 'Neglect of Duty' ;

- (b) human fallibility is a universal affliction to which no one is immune. In interpreting the circumstances of complaints concerning human behaviour, it is a fundamental requirement to be able to suitably accommodate errors and decide what is reasonably tolerable. It is futile to pursue absolute accuracy when no matter at issue is jeopardized;
- (c) as a complaint investigation is about 'fairness' and 'reasonableness', a constructive rather than literal interpretation of the word 'contacted' is necessary. In the instant case, any reasonable man would have had little trouble in accepting the wording used in SIP B's letter; and
- (d) it was wrong in principle to find a substantiation to appease a difficult complainant.

7.64 However, the IPCC had reservations about re-classifying the third 'Neglect of Duty' allegation from 'Substantiated' to 'Unsubstantiated' and offered the following observations -

- (a) according to the CAPO Manual, 'Neglect of Duty' is defined, inter alia, as '*Where an officer fails to carry out all or part of the duty required of him*'. To substantiate a case of 'Neglect of Duty', it has to be established that the subject matter of the complaint constitutes '*all or part of the duty required of*' a police officer, and the officer '*fails to carry out*' that duty. There is no requirement that the officer concerned has to be grossly negligent or reckless;
- (b) there is little doubt that a police officer has a duty to ensure that the information provided is correct when communicating with members of the public. With no exception, SIP B had such a duty, rather than an aspiration, to ensure that the content of the letter issued by him to COM was correct in this case;
- (c) the IPCC did not consider the word 'contacted' as used in SIP B's letter had an ambiguous meaning. According

to the dictionary, *'if you contact someone, you telephone or write to them in order to tell or ask them something'*. In other words, the description in SIP B's letter only pointed to one meaning, i.e. SGT C had telephoned COM, which was contrary to the fact;

- (d) the error in the letter was due to SIP B's failure to discharge his duty of ensuring that the information provided in communication with COM was correct;
- (e) as the error was the subject matter of the complaint and was sufficiently proved by independent evidence, whether the error was committed by SIP B with intent or not was irrelevant; and
- (f) SIP B did not adduce any new evidence or information to refute the error at issue in his review request.

7.65 In view of the above observations, the IPCC did not see any valid ground for re-classifying the third 'Neglect of Duty' allegation against SIP B from 'Substantiated' to 'Unsubstantiated'. The IPCC also reiterated its stance that in endorsing a finding of substantiation, the Council does so on the basis of evidence, and there is no question of appeasing a difficult complainant. After re-examining the case and the IPCC's observations, CAPO agreed that the 'Substantiated' classification of the third 'Neglect of Duty' allegation should be upheld. SIP B was advised without an entry in his divisional record file that he should avoid such unnecessary misunderstanding in his future correspondence with the public.

7.66 The Council endorsed CAPO's final review result of the case.

Case 9

Neglect of Duty - Unsubstantiated
Misconduct - Unsubstantiated
Impoliteness - Unsubstantiated

- 7.67 The complainant (COM), a barrister by profession, was stopped and searched by a police constable (PC X), and another woman police officer (WPC Y), as he was suspected of being in possession of equipment fit for an unlawful purpose. After the search, COM was released unconditionally since no illegal item was found on him.
- 7.68 COM was dissatisfied with PC X's acts during the search, and lodged a complaint against PC X later on the same day. COM alleged that PC X failed to inform him of the reason for conducting the search on him at the material time ('Neglect of Duty'). He further complained that at the moment when he emptied the front right pocket of his trousers and showed PC X the keys and coins as per PC X's request during the search, PC X suddenly touched his right buttock without prior notification. He considered this an indecent act ('Misconduct'). COM was also dissatisfied with PC X's making unnecessary remarks regarding his profession and suddenly moving towards him during the search ('Impoliteness').
- 7.69 PC X categorically denied all the allegations made by the COM. PC X explained that he intercepted the COM, and conducted a search on COM at the material time because COM had walked hastily and avoided eye contact with him (PC X). The shoulder bag carried by COM was bulky which gave rise to his (PC X's) suspicion that COM might have carried in his shoulder bag equipment fit for an unlawful purpose. PC X stated that he had told COM the reason for the stop and search, and demanded to search his (COM's) body and bag. Since COM appeared to be nervous and kept moving when he (PC X) requested to search COM's bag, PC X immediately stepped one pace forward and requested COM to stop moving, and conducted a quick search on COM to ensure that there was no dangerous item in his (COM's) possession. PC X claimed that he gave clear instructions to COM during the search. He started the search from the upper body, waist, trousers, and finally searched the shoulder bag. PC X admitted that he patted on COM's upper clothes and trousers' pockets quickly during the search. The statement of WPC Y, who assisted PC X in conducting the stop and search at the material time, corroborated PC X's version.
- 7.70 CAPO's investigation indicated that CCTV facility was installed at one of the shops in the vicinity. However, it did not capture

the search location, and the shop attendants stated that they had no idea about the search. The owner of a newspaper stall in the vicinity, who noticed that two police officers conducted a stop and search on a Chinese male at the material time, stated that she did not pay attention to them and only heard the Chinese male said 'I will complain you'. She refused to give any statement to assist in the CAPO investigation.

7.71 After investigation, CAPO considered that the stop and search conducted by PC X on COM was fully justified under Section 54(1) of the Police Force Ordinance, Cap 232. For the allegations of 'Neglect of Duty' and 'Impoliteness', CAPO classified them as 'Unsubstantiated' since PC X denied the allegations, and there was no corroborative evidence or independent witness to prove or disprove either side's version.

7.72 As regards the allegation of 'Misconduct', CAPO commented that the 'touch' alleged by COM was not a physical contact on his buttock, but rather a search of the rear right pocket of his trousers. CAPO observed that COM considered the 'touch' as an act of indecency, based only on his subjective perception since he (COM) might be over sensitive and had a flawed perception of the search. CAPO was of the view that PC X did nothing more than the lawful execution of his duty based on his reasoned judgement at the material time, and the allegation was purely a misconception and misunderstanding on the part of the COM himself. CAPO therefore classified this allegation as 'No Fault'.

7.73 Upon examining the investigation result of COM's complaint, the IPCC had reservation about the 'No Fault' classification for allegation of 'Misconduct'. The IPCC raised the following observations and comments:

- (a) the allegation was a typical one-against-one situation without any independent witness or corroborative evidence to prove or disprove the allegation, which was similar to the other two allegations raised in the complaint that were classified as 'Unsubstantiated';
- (b) COM's version indicated that PC X touched him over the

front right pocket of his trousers and his right buttock in a sudden way, without prior notification in the course of the search at the material time. It was different from the usual way of conducting a body search by the Police such as giving prior instruction, starting the search from the upper body, waist, trousers, etc. as described in PC X's version. There was also no corroborative evidence to support CAPO's comment that *'the 'touch' alleged by COM was not a physical contact on his buttock but rather the search of the rear right trousers' pocket'* ;

- (c) in determining whether the alleged 'touch' in the instant case was indecent, a number of parameters should be taken into consideration such as PC X's manner in carrying out the search, the force of the 'touch', the tone adopted by PC X, as well as the feeling of COM at the material time, etc. However, there was no independent witness or objective evidence to demonstrate the details of those parameters in the instant case; and
- (d) in the absence of any independent witness and corroborative evidence to support either side's version, it was not appropriate to rely mainly on PC X's version to classify the allegation of 'Misconduct' as 'No Fault'.

7.74 In response, CAPO commented that the crux of the allegation of 'Misconduct' was whether the alleged 'touch' had exceeded the limit of normal physical contact during a body search and whether it amounted to an act of indecency. As both sides' versions suggested that PC X searched the pockets of COM's trousers one by one, CAPO considered it reasonable to conclude that the alleged 'touch' was part of the search and nothing more than a normal physical contact during a body search. However, in respect of the issue of 'indecency', CAPO subscribed to the IPCC's view that whether a 'touch' was indecent depended on various parameters including the form of contact, the force of the touch, etc., and there was no corroborative evidence or independent witness to describe the details of the search conducted by PC X at the material time. In this regard, CAPO agreed to change the 'No Fault' classification for the

allegation of 'Misconduct' to 'Unsubstantiated'.

7.75 The IPCC appreciated that 'Stop and Search' actions were essential for the Police in its crime detection and prevention work, and agreed that PC X had lawful and justifiable grounds to stop and search the COM in the instant case. There was also no conclusive evidence to prove that PC X had committed any procedural impropriety in conducting the search at the material time. Nevertheless, in a one-against-one situation where there was no corroborative evidence or independent witness to prove or disprove either side's version, the IPCC considered that an 'Unsubstantiated' classification for the allegation of 'Misconduct' was more appropriate, and thus endorsed CAPO's investigation result of the case.

Case 10

Offensive Language - Not Fully Substantiated

7.76 The complainant (COM) was interviewed by DPC X, a Detective Police Constable, in connection with a debt collecting case. COM alleged that DPC X kept swearing at him with offensive language at the interview. COM subsequently lodged a complaint against DPC X for the insulting remarks made against him (COM) during the interview ('Offensive Language'). To support the allegation, COM claimed that he had recorded DPC X's swearing on his MP3 player at the material time, and produced a cassette tape containing a duplicate of the relevant recording to CAPO. However, COM declined to release his MP3 player to CAPO because there were other recordings on it.

7.77 DPC X stated that he interviewed both COM and Mr A, COM's appointed debt collector, in the police station at the material time. He admitted that he had verbally warned them not to resort to illegal activities when collecting debt. DPC X denied having uttered the offensive language at COM and Mr A. Having listened to the cassette tape produced by COM, DPC X stated that he could not recognize the voices, and had no

idea what the recording was about.

- 7.78 DSSGT Y, a Detective Station Sergeant, who had been DPC X's supervisory officer for almost a year, was invited to listen to the cassette tape produced by COM. He also indicated that he could not recognize the voices in the recording. On the other hand, CAPO had tried but without any success to contact Mr A for enquiry. COM was also unable to provide any further information to assist CAPO to locate Mr A. CAPO's investigation revealed that there was no other witness to the incident.
- 7.79 Having examined the cassette tape produced by COM, CAPO found that the recording had a running time of about four minutes. It had no indication of the date or time of the recording, or the time when the recording started or stopped. Owing to the poor sound quality of the recording and the indistinct voices, CAPO could only confirm that it contained voices of three males. The only piece of dialogue that was clearly audible was between two males, one of whom could be identified as a police officer and the other one with a surname which was the same as that of COM. Their conversation was found to be linked to the subject of debt collecting, and foul language and swearing could be heard at intervals uttered by the police officer.
- 7.80 As both DPC X and SSGT Y indicated that they could not identify the voices in the recording, and Mr A, the only witness, could not be located, coupled with COM's refusal to submit his MP3 player to the Police to assist in the investigation, CAPO considered that the cassette tape could only support COM's allegation that the conversation was about debt collection with audible swearing uttered by a police officer. It could not be convincingly accepted as an authentic recording of a conversation between COM and DPC X on the material day. It could also not be confirmed that it was DPC X who was recorded under the circumstances. CAPO concluded that there was some reliable evidence to support COM's allegation, but insufficient to fully substantiate the complaint. The allegation of 'Offensive Language' was subsequently classified as 'Not Fully Substantiated'. DPC X was advised, without an entry in his divisional record file, to conduct

himself in a professional way and uphold the Police image through high quality service in carrying out his duty in future.

- 7.81 Upon examining the recording provided by COM, the IPCC agreed with CAPO's assessment and comments on the sound quality of the cassette tape, as well as the content of the conversation recorded therein. As it could not be proved beyond doubt that the police officer in the recording was DPC X, the IPCC concurred with CAPO's classification for the allegation of 'Offensive Language', and considered the subsequent action taken against DPC X as appropriate. The IPCC endorsed CAPO's investigation result of the case.

Case 11

Neglect of Duty - No Fault

Neglect of Duty - No Fault

Neglect of Duty - Substantiated Other Than Reported

- 7.82 The complainant (COM) filed a claim against Ms A, whom COM claimed was his ex-girlfriend, in the Small Claims Tribunal for a debt. Ms A did not attend the hearing, and the Adjudicator of the Tribunal issued a Form of Award and ordered Ms A to pay the debt. COM wanted to serve the Form of Award on Ms A, but he did not have her address. COM therefore submitted a data access request for the personal data of Ms A to B Formation of the Police. .

- 7.83 COM's request made to B Formation was handled by SIP X, a Senior Inspector, who later sent a letter to COM informing him that no data could be released to him because B Formation did not possess Ms A's personal data. Upon COM's further request, SIP X referred COM's request to the Police Regional Missing Person Unit (RMPU) since it possessed the personal data of Ms A in connection with a case of 'Missing Person' involving Ms A. When contacted by RMPU, Ms A, the data subject, expressly refused to release her personal data to COM. Without the consent of

the data subject, RMPU decided to refuse COM's request. PC Y, a police constable of RMPU, subsequently issued a letter to COM informing him that the Police could not accede to his request since the data subject refused to release her personal data to COM.

7.84 COM subsequently made the same data access request to C Formation of the Police. Without knowledge of COM's previous request made to B Formation and Ms A's express refusal for the release of such data, C Formation acceded to COM's request by applying an exemption stipulated in the Personal Data (Privacy) Ordinance (PD(P)O). CIP Z, the Information Access Officer of C Formation, issued a letter to COM informing him of the address of Ms A.

7.85 COM was dissatisfied with the refusal of his data access request by B Formation and RMPU, and subsequently lodged a complaint to CAPO against SIP X and PC Y. COM alleged that SIP X failed to release the data to him by stating in a letter to him that B Formation did not possess the data (allegation (a) - 'Neglect of Duty'). COM also alleged that PC Y failed to release the data to him by stating in a letter to him that Ms A did not consent to release her personal data to him (allegation (b) - 'Neglect of Duty').

7.86 CAPO's investigation revealed that COM had made a report of 'Missing Person' of Ms A to B Formation about one year before he made the data access request to B Formation. The case was subsequently concluded by RMPU. Since it was RMPU which located Ms A and obtained her personal data in connection with the 'Missing Person' case, B Formation was neither the data user nor in possession of Ms A's personal data as requested by COM. CAPO considered that the action taken by SIP X in handling COM's request was correct and in line with established police procedures, and classified the allegation of 'Neglect of Duty' against SIP X as 'No Fault'.

7.87 Regarding the allegation against PC Y, CAPO indicated that under the PD(P)O, COM had no right to access the personal data of Ms A without the consent of Ms A, since COM was neither the

data subject nor a relevant person of the data. CAPO therefore considered that the decision of RMPU to refuse COM's data access request was appropriate. Moreover, CAPO found that PC Y was not involved in making the decision of declining COM's request. However, COM insisted on complaining against PC Y because PC Y was named in the letter of refusal issued by RMPU to COM. CAPO concluded that COM's allegation against PC Y was made as a result of misunderstanding and misinterpretation of the facts, and classified allegation (b) 'Neglect of Duty' as 'No Fault'.

7.88 In examining the decision of C Formation in acceding to COM's data access request, CAPO observed that C Formation might not have followed the relevant police guidelines in processing requests for information for civil proceedings since it had not requested COM to make a declaration before releasing the data to him. Such disclosure was made in the absence of Ms A's consent. It was also not clear whether alternative means to enforce the Form of Award had been explored. In order to verify whether C Formation's decision in disclosing the personal data of Ms A to COM was proper, CAPO sought legal advice from the Department of Justice (DoJ) on the issue. DoJ commented that it was not clear whether C Formation had taken into account all relevant factors in making its decision since there was a lack of detailed record of such deliberations. If C Formation was aware of the background of the dispute between COM and Ms A, it should have taken extra care in considering whether any exemption should be invoked to release Ms A's personal data to COM. Having considered the legal advice, CAPO considered that C Formation did fail to properly document and record its actions and deliberations made in handling COM's request, and thus CIP Z was advised, without an entry in his divisional record file, to observe the relevant guidelines in future.

7.89 Upon examining the investigation result of COM's complaint, the IPCC had reservation about the 'No Fault' classification for allegation (a) 'Neglect of Duty' because SIP X did not refer COM's request to RMPU for follow-up action until after COM made a further request to SIP X upon receiving a letter refusing his request issued by SIP X. The IPCC considered that SIP X had negligence in failing to refer promptly COM's request to the relevant division for follow-up action. Having examined

DoJ's comments on the propriety of C Formation's decision in acceding to COM's request for Ms A's personal data, and the relevant police guidelines and orders governing the handling of requests for personal information from a member of the public, the IPCC was of the view that C Formation appeared not to have fully complied with the relevant guidelines in processing COM's request and made an appropriate decision. As the action taken by C Formation on COM's request was closely related to his complaint, the IPCC suggested CAPO to register a 'Substantiated Other Than Reported' count of 'Neglect of Duty' to the responsible officer in C Formation.

7.90 In response to the IPCC's comment on allegation (a), CAPO pointed out that the main concern of COM's allegation against SIP X was his failure to release the data requested by COM by stating in his letter to COM that B Formation did not have the data. CAPO considered that SIP X did nothing wrong in respect of COM's allegation. However, CAPO agreed that in the spirit of giving quality service to the public, SIP X should have forwarded COM's request to RMPU earlier when he first received the request, and advised COM in his letter that his request had been forwarded to RMPU for consideration. In light of this, CAPO changed the classification of allegation (a) 'Neglect of Duty' from 'No Fault' to 'Unsubstantiated'. SIP X would be advised, without an entry to his divisional record file, to enhance his professionalism in handling similar cases in future.

7.91 With regard to C Formation's handling of COM's data access request, CAPO found that C Formation did fail to comply with the relevant police guidelines in processing COM's request, particularly in failing to seek Ms A's express consent in disclosing her address to COM, and the decision of CIP Z in applying the exemption under the PD(P)0 to COM's request was also questionable. CAPO concurred with the IPCC's view that the negligence of CIP Z in this respect was closely related to COM's complaint, and therefore agreed to register a 'Substantiated Other Than Reported' count of 'Neglect of Duty' against CIP Z, who was advised, without an entry to his divisional record file, to observe the relevant guidelines in handling similar requests in future.

7.92 Having considered CAPO's further elaboration on SIP X's handling of COM's request, and as COM's allegation against SIP X did not specifically relate to a delay in referring his request to RMPU, the IPCC considered it more appropriate to maintain the classification of allegation (a) 'Neglect of Duty' as 'No Fault'. With regard to SIP X's failure in referring COM's request to RMPU instantly and the impropriety of C Formation in handling COM's request, the IPCC considered that CAPO's recommendation of offering suitable advice to SIP X and registering a 'Substantiated Other Than Report' count of 'Neglect of Duty' against CIP Z for better handling of similar cases in future was appropriate. CAPO agreed with the IPCC's views and the allegation of 'Neglect of Duty' against SIP X was finally classified as 'No Fault'.

7.93 The IPCC endorsed CAPO's investigation result of the case.

Case 12

Unnecessary Use of Authority - Unsubstantiated

Unnecessary Use of Authority - Unsubstantiated

Unnecessary Use of Authority - Unsubstantiated

Neglect of Duty - No Fault

Neglect of Duty - No Fault

Neglect of Duty - Substantiated Other Than Reported

7.94 The complainant (COM), a young national of X country studying in Hong Kong, was intercepted by three police constables, PCs A-C. Following a search, a small quantity of cannabis resin was found inside COM's cigarette box. COM was arrested for 'Possession of Dangerous Drugs' at the scene, and taken to a police station for further investigation. After statement taking in the police station, a Detective Senior Police Constable, DSPC D, sought COM's consent to conduct a search of COM's house. As COM did not raise any objection, the police party took COM to his residence to conduct a house search. The result of the house search was negative.

7.95 COM's father contacted the Police one day after COM's arrest and requested the Police to charge COM immediately because COM had to leave Hong Kong to pursue his university studies in X country one week later, and hence COM would not return to Hong Kong in future. Taking into account the special circumstances of the case, the fact that the relevant Chemist examination result was not available, and the relatively minor nature of the offence, CIP Z, an Assistant Divisional Commander, decided not to take any prosecution action against COM and released him unconditionally. However, subsequent legal advice indicated that there was sufficient evidence to charge COM with one count of 'Possession of Dangerous Drugs', and COM should be re-arrested and charged in case he returned to Hong Kong in the near future. At the request of the Police, COM's father arranged for COM to return to Hong Kong. COM eventually pleaded guilty to the charge and was fined HK\$500. COM returned to X country to continue his studies after the court proceedings.

7.96 Subsequent to the conclusion of COM's crime case, COM's father, on behalf of COM, complained about the actions taken by the police officers on COM after arresting him on the material day. COM's allegations were as follows:

- (a) PCs A-C did not allow COM to make a telephone call to his parents informing them of his arrest when COM was detained in the police station ('Unnecessary Use of Authority');
- (b) after conducting a strip search on COM at the interview room in the police station, PCs A-C conducted two more strip searches on COM. COM alleged that the additional strip searches were unjustified and humiliating ('Unnecessary Use of Authority');
- (c) DSPC D and an unidentified plainclothes officer refused COM's request for making a telephone call to his parents in the police station ('Unnecessary Use of Authority');
- (d) DSPC D showed no interest in locating and apprehending a drug dealer when COM described to DSPC D the appearance of the drug dealer who sold the cannabis

resin to him ('Neglect of Duty'); and

- (e) DSPC D failed to inform COM of his right to object to the Police to conduct a search of his house ('Neglect of Duty').

7.97 PCs A-C and DSPC D denied the allegations. All of them stated that COM had never made a request to make telephone calls during their encounters in the police station. PCs A-C claimed that they had only conducted one strip search on COM under the instruction of SGT E, the Assistant Duty Officer of the police station. Their versions were corroborated by that of SGT E. DSPC D admitted that COM claimed during the statement-taking that the cannabis resin was bought from a male national of Y country in a park at Jordon. DSPC D explained that he was unable to take any further action since COM had not provided concrete information about the drug dealer. DSPC D also claimed that he had explained to COM the intended purpose of the house search and COM raised no objection. DSPC D made an entry on the house search in his police notebook and COM signed next to the entry. The house search was conducted in the presence of COM's father who gave consent to the search.

7.98 After investigation, CAPO classified the three allegations of 'Unnecessary Use of Authority' as 'Unsubstantiated' since there was a lack of independent witness and corroborative evidence to prove either side's version. For allegation (d) 'Neglect of Duty', CAPO's investigation revealed that COM gave a statement at the time of the arrest that he knew no more than a male national of Y country who sold him the drug in a park at Jordon. CAPO considered that the information provided by COM was not sufficient for the Police to take further action. Therefore, CAPO classified allegation (d) as 'No Fault'. Regarding allegation (e) 'Neglect of Duty', CAPO concluded that the allegation should be classified as 'No Fault' since the house search was conducted in line with relevant Police orders, and with the consent of COM and his father.

7.99 Upon examining the investigation result of COM's complaint, the IPCC found that the Department of Justice (DoJ), had reservation about CIP Z's decision of unconditionally

releasing COM and not taking prosecution action against him. DoJ particularly pointed out that there was strong evidence to support the charge of 'Possession of Dangerous Drugs' against COM. In the absence of detailed information and record proving that COM must leave Hong Kong as claimed by COM's father, DoJ considered that there was no exceptional ground in COM's crime case that warranted the non-prosecution of COM. The IPCC advised CAPO to examine the propriety of CIP Z's decision in the light of DoJ's legal advice, and take necessary follow-up action.

7.100 Having examined the IPCC's comment and DoJ's legal advice, CAPO considered that CIP Z's decision in releasing COM was procedurally incorrect because the decision for non-prosecution was the prerogative of DoJ instead of the Police, and hence CIP Z had no authority to pre-empt DoJ's decision on the issue. CAPO therefore registered a 'Substantiated Other Than Reported' count of 'Neglect of Duty' against CIP Z. CIP Z was suitably advised without an entry in his divisional record file.

7.101 The IPCC endorsed CAPO's investigation result of the case.

Case 13

Neglect of Duty - Unsubstantiated

Neglect of Duty - Substantiated

Neglect of Duty - Substantiated Other Than Report

7.102 The complainant (COM)'s private car which was parked outside her residence was hit by the car of her neighbour, Ms A. Two security officers attended the scene to inquire about the accident and took photos of the scene. Initially, Ms A's husband verbally agreed to compensate COM for the cost of the damage at the scene. COM picked up a black plastic article (the article) near the offside of her car at the scene. Coincidentally, COM found that there was a plastic mark at the nearside front corner of Ms A's car and its end matched the article. COM therefore considered

that the article came off Ms A's car as a result of the accident. COM made a report of the traffic accident to the Police later on the same day when she could not reach an agreement on the compensation with Ms A.

7.103 PC X, a police constable, was assigned as the investigation officer of COM's traffic case. After investigation, Ms A was summoned for the offence of 'Careless Driving'. During the trial, COM produced the article in court, and stated that she had shown the article to PC X at the time of making her statement on the traffic case but PC X did not seize it. COM also disclosed to the Magistrate that her family and Ms A's family had been on bad terms for a long time. The Magistrate raised doubts about why the article was not seized when COM showed it to the Police on the day she gave her statement. The Magistrate considered that the prosecution's case would be significantly strengthened if the article was seized at the material time, and further investigation conducted to prove that it was from Ms A's car. The Magistrate considered it unsafe to convict Ms A by just relying on COM's evidence without other circumstantial evidence, especially with the background of grudges between COM and Ms A. The Magistrate therefore granted the benefit of a doubt to Ms A and acquitted her of the offence of 'Careless Driving'.

7.104 On noting the court judgment on the traffic case, COM lodged a complaint against PC X for his failure to carry out a proper investigation into the traffic case resulting in Ms A's acquittal. COM alleged that:

(a) PC X failed to record details of the two security officers in her statement ('Neglect of Duty'); and

(b) PC X failed to seize the article as an evidence of COM's traffic case ('Neglect of Duty').

7.105 PC X denied failing to record details of the two security officers in COM's statement. He explained that he had not taken statements from the two security officers since they did not witness the traffic accident at all, and what they heard at the scene was only hearsay evidence. Regarding the seizure of the

article, PC X admitted that during the statement-taking, COM mentioned that she found a plastic article at the scene and believed that it was detached from Ms A's car, but she had not brought the article to the police station at the time of giving her statement. PC X recalled that COM had contacted him twice to ask for the progress of the case after the statement-taking, but did not mention the article. PC X stated that he did not further contact COM for the article because he had already asked COM to telephone him once she found the article. He considered that even without the article, there was sufficient evidence to prosecute Ms A for the offence of 'Careless Driving'.

7.106 Sergeant Y (SGT Y) and Woman Senior Inspector Z (WSIP Z), who were the supervisory officers of PC X, confirmed that they were aware of the issue of the article before deciding to summon Ms A for the offence of 'Careless Driving'. They took the view that COM might have lost the article as she had not contacted PC X to submit the article, and there was sufficient evidence to prosecute Ms A for the offence since COM had witnessed the traffic accident, and there was photographic evidence of the involved vehicles. They therefore had not directed PC X to further contact COM to seize the article. WSIP Z claimed that COM had given another story in court and did not truly reveal that she had never brought the article to PC X on the day of making her statement. WSIP Z indicated that she would conduct further investigation to establish whether the article would strengthen the prosecution case if she had known that COM and Ms A were on bad terms, but COM had never disclosed such background to the Police.

7.107 After investigation, CAPO found that the two security officers had neither witnessed the traffic accident nor recorded any details of the conversation between the parties at the scene. COM signed her statement to verify its accuracy without adding anything to it. COM also admitted that she had informed PC X that she could not provide any witness to the accident. In view of PC X's denial and there was no corroborative evidence to support COM's version, CAPO classified allegation (a) 'Neglect of Duty' as 'Unsubstantiated'.

7.108 Regarding allegation (b) 'Neglect of Duty', CAPO noted that the

statement made by COM in court was contradictory to that given to CAPO as well as the version of PC X. COM stated in court that she had produced the article to PC X during the statement-taking, but COM's statement taken by CAPO indicated that she had forgotten to bring the article to PC X at the time of statement-taking. In view of the contradictory versions of COM, and the fact that there was no independent evidence to support either side's version, CAPO classified allegation (b) as 'Unsubstantiated'. However, in view of the court comments on the Police's handling of the article, CAPO considered that PC X should have taken a more active approach to contact COM for the article, and made a record to this effect rather than waiting for COM to approach the Police on her own initiative. A verbal advice would be given to PC X to enhance his professional competency.

7.109 Upon examining the investigation result of COM's complaint, the IPCC had reservation about the 'Unsubstantiated' classification for allegation (b) 'Neglect of Duty' based on the following reasons:

- (a) Ms A was eventually acquitted of the offence in light of the court comment that COM and Ms A had been on bad terms. It was clear COM could not serve as an independent witness in the traffic case. It was necessary for the Police to gather more evidence before laying a charge on Ms A; and
- (b) PC X explained that COM had forgotten to bring the article to him at the time of statement-taking, and COM promised to approach him once she (COM) found it, but COM had never mentioned the article when she contacted PC X afterwards. However, even accepting that PC X's version was true, it would be more appropriate for PC X to take the initiative to approach COM and make enquiry with her about the whereabouts of the article since it was a valuable evidence in COM's traffic case, and it was incumbent upon PC X, as the investigation officer, to find and collect evidence pertinent to the traffic case. Therefore, PC X appeared to have neglected his duty in failing to seize the article from COM.

7.110 In response, CAPO agreed with the IPCC's comment on the

classification of allegation (b) 'Neglect of Duty' and re-classified this allegation as 'Substantiated'. Moreover, CAPO considered that SGT Y and WSIP Z had neglected their supervisory duties by failing to direct PC X to investigate the article, and thus a 'Substantiated Other Than Reported' count of 'Neglect of Duty' was registered against SGT Y and WSIP Z. They were suitably advised by their supervisory officer without an entry in their divisional record files.

7.111 The IPCC endorsed CAPO's investigation result of the case.

Chapter 8 Acknowledgements

- 8.1 The Council would like to express its gratitude to the Commissioner of Police and his staff – in particular the Director of Management Services, the Assistant Commissioner of Police (Service Quality), the Chief Superintendent, and all the staff of the Complaints and Internal Investigations Branch of the Police Force – for their co-operation and assistance in responding to the Council’s queries and suggestions in the past year.

- 8.2 Hon Alan LEONG Kah-kit, SC, Ir Edgar KWAN, Dr SHUM Ping-shiu, BBS, JP and Professor SHEK Tan-lei, BBS, JP retired from the IPCC at the end of 2006. Hon Alan LEONG Kah-kit, SC had served the Council for seven years whereas Ir Edgar KWAN, Dr SHUM Ping-shiu, BBS, JP and Professor SHEK Tan-lei, BBS, JP had served the Council for six years. The IPCC is most grateful for their devoted service and valuable contributions to the work of the Council over the years.

- 8.3 Finally, the Council would also like to record its appreciation of the contribution and dedicated support given by Mrs Brenda FUNG, Secretary to the Council, and the staff of the Council Secretariat.

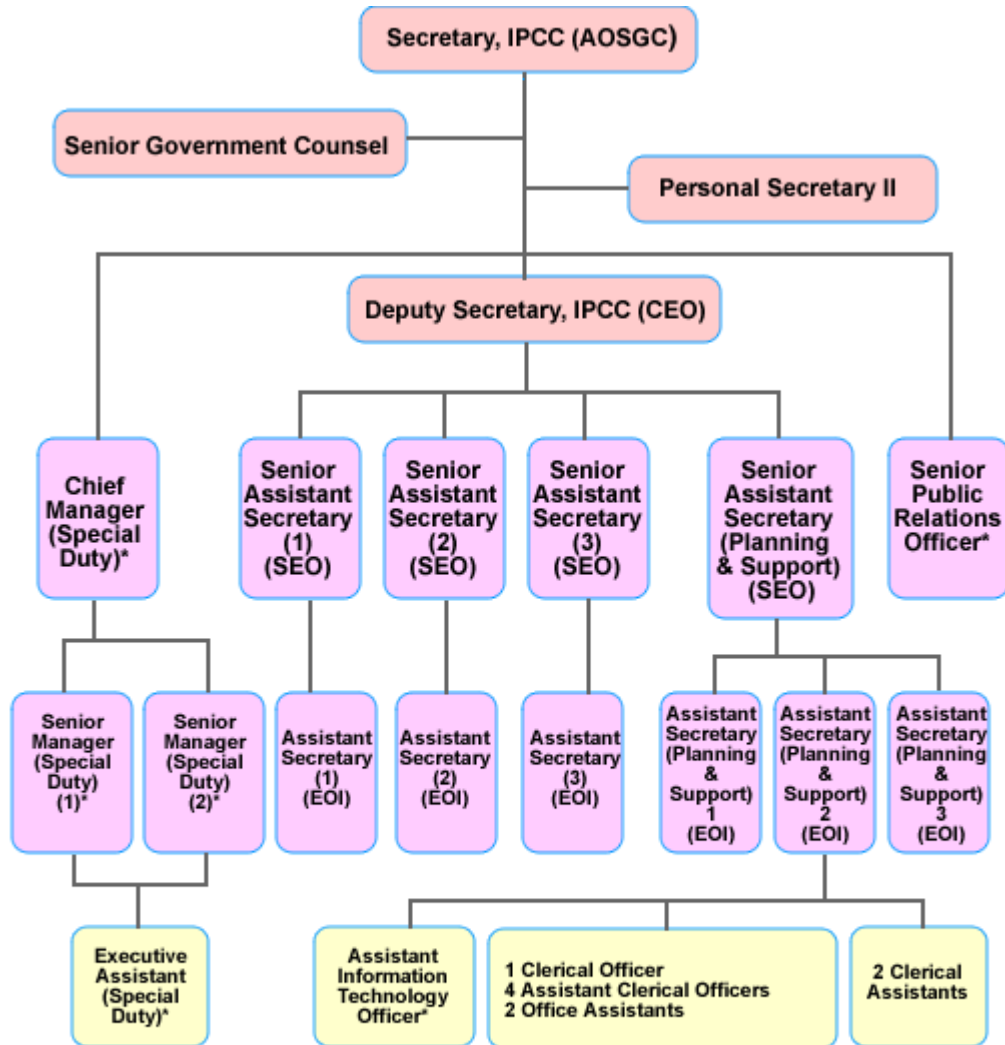
Appendices

Appendix

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Appendix I

Organization Chart of the IPCC Secretariat



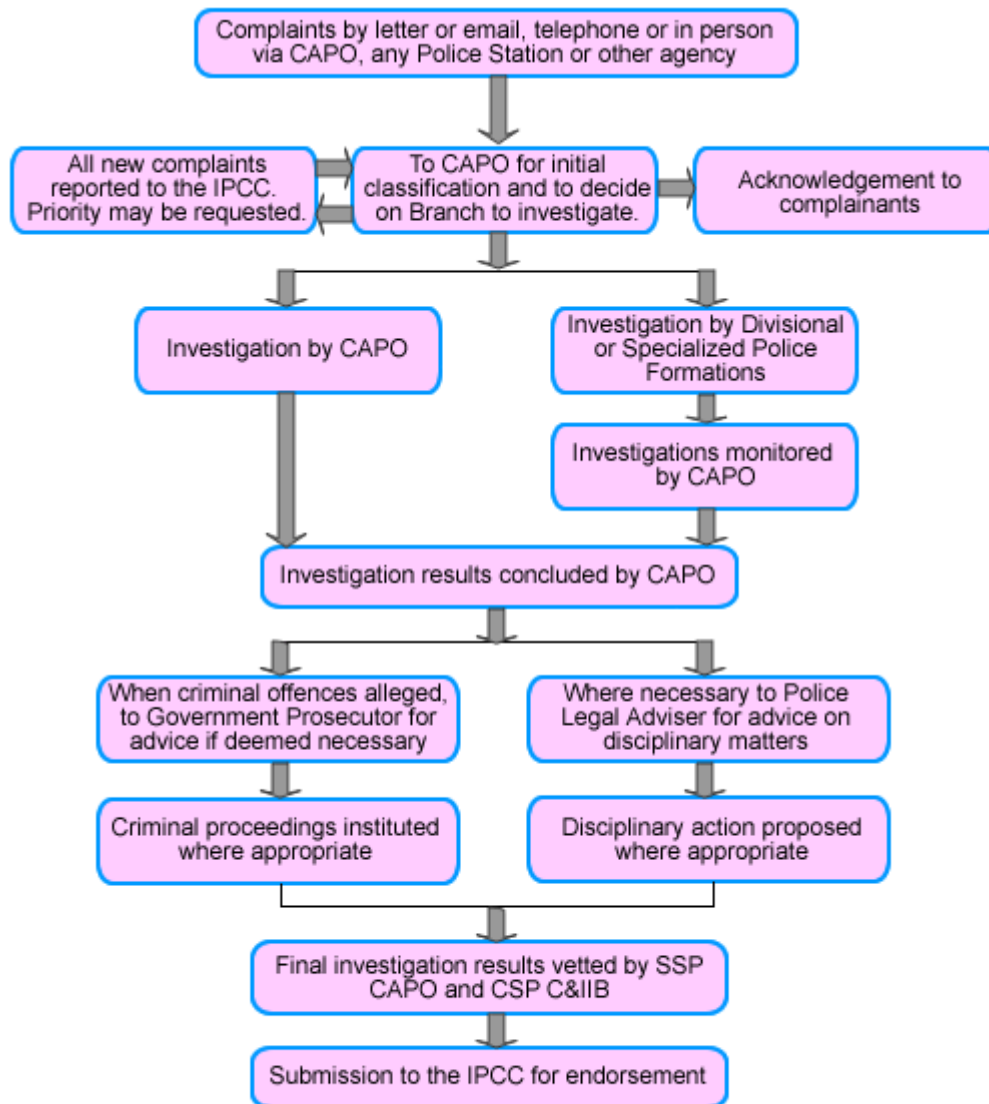
Notes : IPCC-Independent Police Complaints Council
 AOSGC-Administrative Officer Staff Grade C
 CEO-Chief Executive Officer
 SEO-Senior Executive Officer
 EO I-Executive Officer I

Remark : * Staff on contract terms

Appendix II

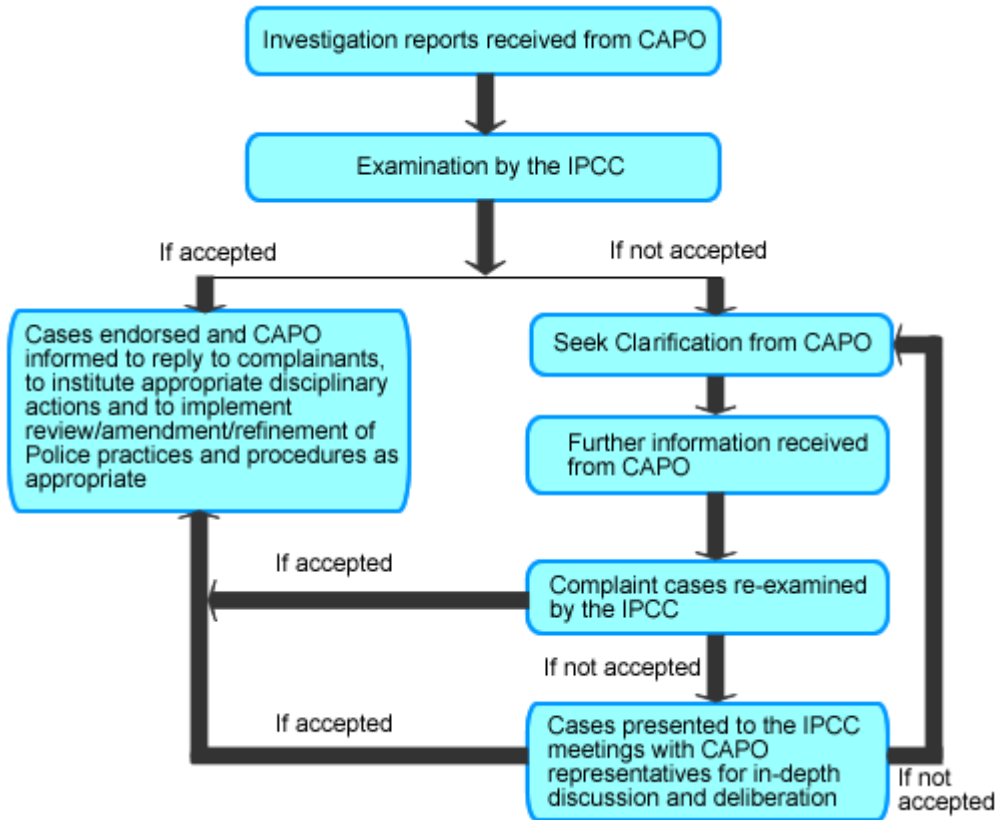
The Processing of Complaints

by CAPO Prior to their Submission to the IPCC



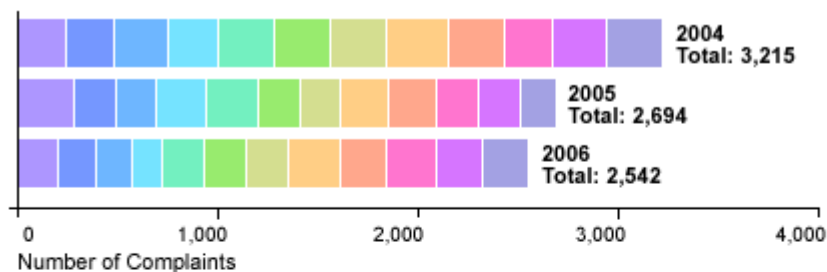
Appendix III

The Monitoring of Completed CAPO
Investigations on Police Complaints by the IPCC



Appendix IV

Number of Complaints* Against the Police Registered by CAPO
in 2004, 2005 and 2006



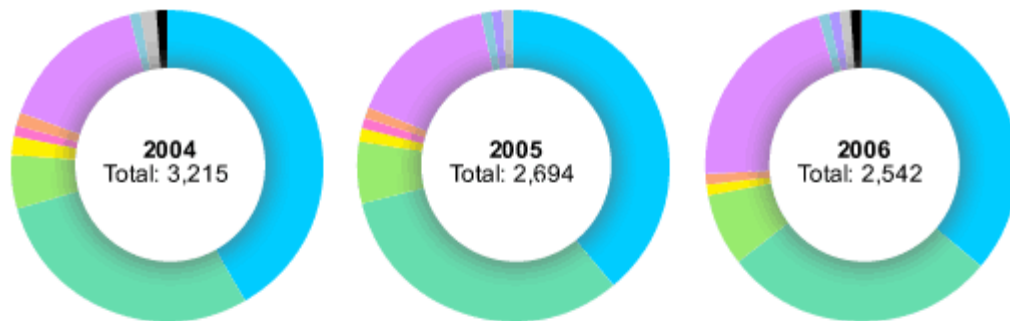
Month	2004	2005	2006
January	238	276	196
February	236	205	191
March	270	200	181
April	249	253	153
May	281	256	205
June	280	213	213
July	281	197	215
August	305	241	256
September	279	242	231
October	243	214	248
November	271	214	227
December	282	183	226
Total	3,215	2,694	2,542

Note : The figures for 2004 and 2005 have been adjusted to take account of cancellation and consolidation, etc.

* A complaint may consist of more than one allegation.

Appendix V

Origin of Complaints* Received in 2004, 2005 and 2006



	2004 (% of total)	2005 (% of total)	2006 (% of total)
● A. Reported to CAPO in person or by telephone	1,398 (43.5)	1,094 (40.6)	958 (37.7)
● B. Reported to a Police Station in person or by telephone	960 (29.9)	907 (33.7)	753 (29.6)
● C. Reported by letter or email (to the Commissioner of Police, Box 999, CAPO or Police Formation)	209 (6.5)	196 (7.3)	222 (8.7)
● D. Complaints made at Prisoner Reception Centres/ in Prisons	42 (1.3)	15 (0.6)	11 (0.4)
● E. Received via ICAC	6 (0.2)	8 (0.3)	0 (0.0)
● F. Received via LEGCO, Solicitors	20 (0.6)	13 (0.4)	9 (0.4)
● G. Received via Judiciary	544 (16.9)	441 (16.4)	569 (22.4)
● H. Received via Police Public Relations Bureau/ Press/Radio	7 (0.2)	5 (0.2)	5 (0.2)
● I. Received via other Government Departments	2 (0.1)	6 (0.2)	8 (0.3)
● J. Received via the IPCC	22 (0.7)	8 (0.3)	5 (0.2)
● K. Others	5 (0.2)	1 (0.0)	2 (0.1)
Total reports received	3,215 (100.0)	2,694 (100.0)	2,542 (100.0)

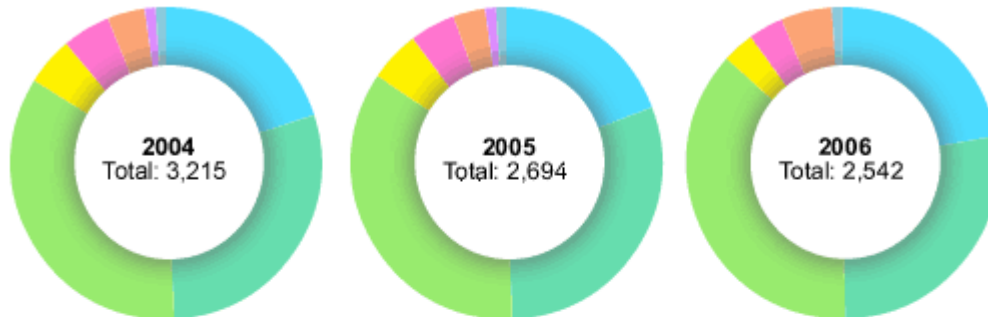
Note 1 : The figures for 2004 and 2005 have been adjusted to take account of cancellation, consolidation and amendments etc. following subsequent investigation.

Note 2 : Percentage shares may not add up to the total due to rounding.

* A complaint may consist of more than one allegation.

Appendix VI

Nature of Complaints* Received in 2004, 2005 and 2006
(According to Initial Categorization)



	2004 (% of total)	2005 (% of total)	2006 (% of total)
A. Assault	656 (20.4)	522 (19.4)	561 (22.1)
B. Misconduct/Improper Manner/Offensive Language	957 (29.8)	835 (31.0)	702 (27.7)
C. Neglect of Duty	1,142 (35.5)	972 (36.1)	957 (37.6)
D. Unnecessary Use of Authority	159 (4.9)	143 (5.3)	83 (3.3)
E. Fabrication of Evidence	160 (5.0)	124 (4.6)	92 (3.6)
F. Threat	123 (3.8)	86 (3.2)	138 (5.4)
G. Other Offences	7 (0.2)	5 (0.2)	3 (0.1)
H. Police Procedures	11 (0.3)	7 (0.3)	6 (0.2)
Total	3,215 (100.0)	2,694 (100.0)	2,542 (100.0)

Note 1: The figures for 2004 and 2005 have been adjusted to take account of cancellation and consolidation, etc.

Note 2: Percentage shares may not add up to the total due to rounding.

* A complaint may consist of more than one allegation.

Appendix VII

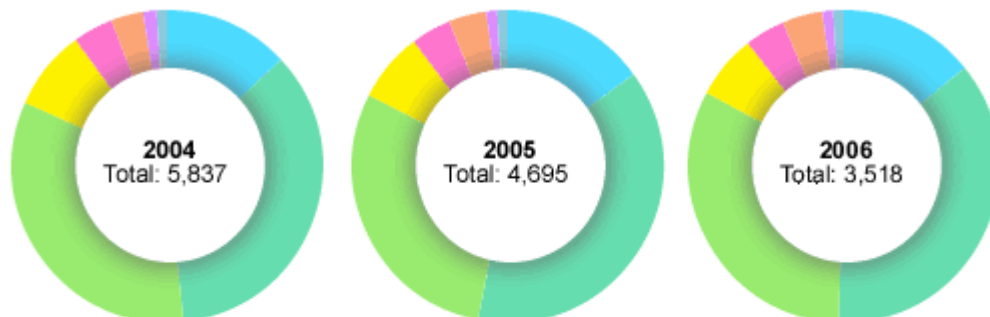
Position as at 31.12.2006 on the Processing of
CAPO Investigation Reports Received in 2006

Vetting Team	Team 1	Team 2	Team 3	Total
(a) No. of cases endorsed by the IPCC	518	653	657	1,828*
(b) No. of cases returned to CAPO for comments	18	10	15	43
(c) No. of examined cases under circulation/in the process of being circulated to IPCC Members	27	39	22	88
(d) No. of cases being/to be examined	193	132	153	478
Total no. of cases received from CAPO	756	834	847	2,437

* The figure of 1,828 represents those investigation reports received in 2006 and endorsed within the same year.

Appendix VIII

Nature of Allegations Endorsed by the IPCC
in 2004, 2005 and 2006

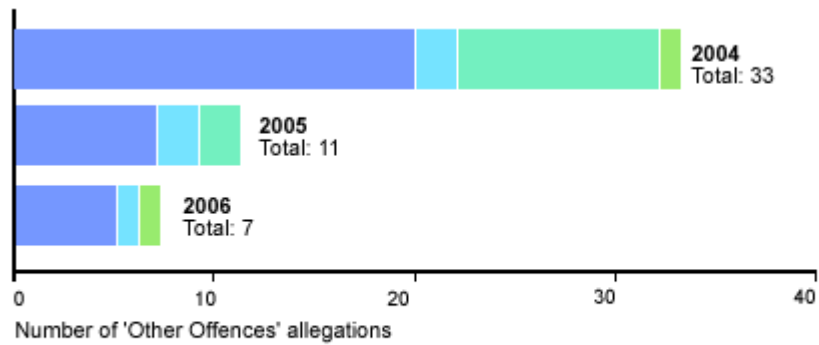


	2004 (% of total)	2005 (% of total)	2006 (% of total)
A. Assault	776 (13.3)	710 (15.1)	532 (15.1)
B. Misconduct/Improper Manner/Offensive Language	2,105 (36.1)	1,817 (38.7)	1,293 (36.8)
C. Neglect of Duty	1,983 (34.0)	1,412 (30.1)	1,144 (32.5)
D. Unnecessary Use of Authority	482 (8.3)	344 (7.3)	237 (6.7)
E. Fabrication of Evidence	243 (4.2)	201 (4.3)	143 (4.1)
F. Threat	197 (3.4)	182 (3.9)	152 (4.3)
G. Other Offences (See Appendix VIII(a))	33 (0.6)	11 (0.2)	7 (0.2)
H. Police Procedures	18 (0.3)	18 (0.4)	10 (0.3)
Total no. of allegations	5,837 (100.0)	4,695 (100.0)	3,518 (100.0)

Note : Percentage shares may not add up to the total due to rounding.

Appendix VIII (a)

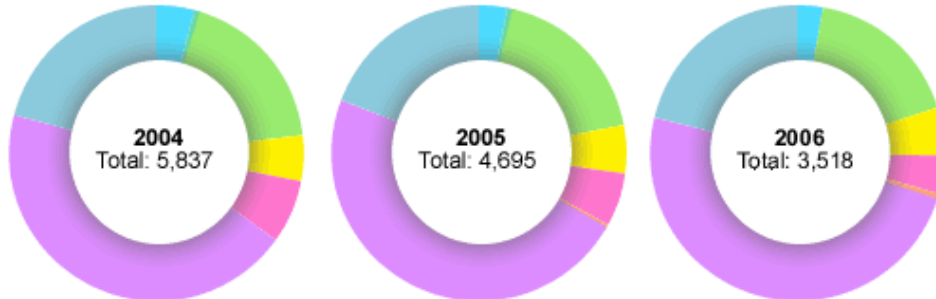
Breakdown of 'Other Offences' allegations:



	2004	2005	2006
(i) Involvement in Deception Cases and/or Criminal Syndicate/Unlawful Society	0	0	0
(ii) Theft Ordinance	20	7	5
(iii) Dangerous Drugs Ordinance	0	0	0
(iv) Perverting the Course of Justice	2	2	1
(v) Rape/Indecent Assault	10	2	0
(vi) Other Crime Ordinances	1	0	1
(vii) Others	0	0	0
Total	33	11	7

Appendix IX

Results of Investigations Endorsed by the IPCC
in 2004, 2005 and 2006



	2004 (% of total)	2005 (% of total)	2006 (% of total)
A. Substantiated/Substantiated Other Than Reported	253 (4.3)	145 (3.1)	100 (2.8)
B. Not Fully Substantiated	14 (0.2)	8 (0.2)	4 (0.1)
C. Unsubstantiated	1,070 (18.3)	854 (18.2)	610 (17.3)
D. False	296 (5.1)	244 (5.2)	187 (5.3)
E. No Fault	410 (7.0)	271 (5.8)	152 (4.3)
F. Curtailed	5 (0.1)	25 (0.5)	7 (0.2)
G. Withdrawn/Not Pursuable	2,570 (44.0)	2,246 (47.8)	1,719 (48.9)
H. Informal Resolution	1,219 (20.9)	902 (19.2)	739 (21.0)
Total no. of allegations	5,837 (100.0)	4,695 (100.0)	3,518 (100.0)

Note : Percentage shares may not add up to the total due to rounding.

Appendix X

Analysis of Fully Investigated Allegations Endorsed
by the IPCC in 2004, 2005 and 2006

Year	2004		2005		2006		
Results of Investigation	No. of Allegations	Number	Percentage to Total No. of Fully Investigated Allegations	Number	Percentage to Total No. of Fully Investigated Allegations	Number	Percentage to Total No. of Fully Investigated Allegations
(I) Allegations that Belong to the 'Substantiated' Category							
Substantiated		108	5.3%	66	4.3%	40	3.8%
Substantiated Other Than Reported		145	7.1%	79	5.3%	60	5.7%
Not Fully Substantiated		14	0.7%	8	0.5%	4	0.4%
Sub-total		267	13.1%	153	10.1%	104	9.9%
(II) Other Allegations which are Fully Investigated							
False		296	14.5%	244	16.0%	187	17.8%
No Fault		410	20.1%	271	17.8%	152	14.4%
Unsubstantiated		1,070	52.4%	854	56.1%	610	58.0%
Total No. of Fully Investigated Allegations		2,043 (100.0%)		1,522 (100.0%)		1,053 (100.0%)	

Note : Percentage shares may not add up to the total due to rounding.

Appendix XI

Number of Allegations by Nature and by Results of Investigations
as per CAPO Reports Examined by the IPCC in 2006

Nature of Allegation	Substantiated/ Substantiated Other Than Reported	Not Fully Substantiated	Unsubstantiated	False	No Fault	Curtailed	Not Pursuable/ Withdrawn	Informal Resolution	Total
Assault	0 (0)	1 (0.2)	34 (6.4)	51 (9.6)	2 (0.4)	1 (0.2)	443 (83.3)	0 (0)	532 (100.0)
Misconduct/ Improper Manner/ Offensive Language	11 (0.9)	2 (0.2)	278 (21.5)	35 (2.7)	19 (1.5)	3 (0.2)	545 (42.2)	400 (30.9)	1,293 (100.0)
Neglect of Duty	85 (7.4)	1 (0.1)	222 (19.4)	10 (0.9)	90 (7.9)	1 (0.1)	433 (37.8)	302 (26.4)	1,144 (100.0)
Unnecessary Use of Authority	4 (1.7)	0 (0)	53 (22.4)	11 (4.6)	36 (15.2)	1 (0.4)	100 (42.2)	32 (13.5)	237 (100.0)
Fabrication of Evidence	0 (0)	0 (0)	11 (7.7)	70 (49.0)	1 (0.7)	1 (0.7)	60 (42.0)	0 (0)	143 (100.0)
Threat	0 (0)	0 (0)	9 (5.9)	10 (6.6)	0 (0)	0 (0)	133 (87.5)	0 (0)	152 (100.0)
Other Offences (Note 4)	0 (0)	0 (0)	2 (28.6)	0 (0)	0 (0)	0 (0)	5 (71.4)	0 (0)	7 (100.0)
Police Procedures	0 (0)	0 (0)	1 (10.0)	0 (0)	4 (40.0)	0 (0)	0 (0)	5 (50.0)	10 (100.0)
Total	100	4	610	187	152	7	1,719	739	3,518

Note 1: Figures in brackets denote percentages to total allegations of the same nature.

Note 2: Percentage shares may not add up to the total due to rounding.

Note 3: In respect of the 2 allegations of 'Assault' which were classified as 'No Fault', there was sufficient evidence to indicate that the use of force by the complainees was reasonable and justifiable.

Note 4: Breakdown of 'Other Offences' Allegations by Results of Investigations

Nature of Allegation	Substantiated/ Other Than Reported	Substantiated/ Not Fully Substantiated	Unsubstantiated	False	No Fault	Curtailed	Not Pursuable/ Withdrawn	Informal Resolution	Total
Theft Ordinance	0	0	1	0	0	0	4	0	5
Involvement in Deception Cases and/ or Criminal Syndicate/ Unlawful Society	0	0	0	0	0	0	0	0	0
Perverting the Course of Justice	0	0	1	0	0	0	0	0	1
Dangerous Drugs Ordinance	0	0	0	0	0	0	0	0	0
Rape/Indecent Assault	0	0	0	0	0	0	0	0	0
Other Crime Ordinances	0	0	0	0	0	0	1	0	1
Others	0	0	0	0	0	0	0	0	0
Total	0	0	2	0	0	0	5	0	7

Appendix XII

Criminal/Disciplinary Proceedings and Internal Actions Taken by Police
in respect of Cases Endorsed in 2004, 2005 and 2006

A For 'Substantiated', 'Substantiated Other Than Reported' and
'Not Fully Substantiated' Complaints

(i) Criminal proceedings instituted	No. of Officers		
	2004	2005	2006
Acquitted	0	0	0
Nolle Prosequi	0	0	0
Offer no evidence	0	0	0
Convicted with absolute discharge	0	0	0
Convicted with conditional discharge	0	0	0
Bound over	0	0	0
Probation	0	0	0
Fine	0	0	0
Suspended sentence	0	0	0
Custodial sentence	0	0	0
Trial is pending and outcome is not yet known	0	0	0
Others	0	0	0
	0	0	0
(ii) Disciplinary proceedings instituted			
Acquitted	0	0	1
Conviction recorded but no punishment	0	0	0
Caution	4	3	5
Caution, suspended	0	0	0
Reprimand	2	0	0
Reprimand, suspended	1	1	0
Severe reprimand	0	0	0
Severe reprimand, suspended	0	0	0
Warned for dismissal	0	0	0
Dismissed	0	0	0
Hearing is pending and outcome is not yet known	2	15	2
Others	0	0	1
	9	19	9
(iii) Action by Formation Commanders			
Warning given to police officers concerned	17	9	5
Advice given to police officers concerned	279	145	100
	296	154	105
Total ((i) + (ii) + (iii)) *	305	173	114

B For other complaints where some form of Disciplinary Proceedings/
Internal Action was considered necessary

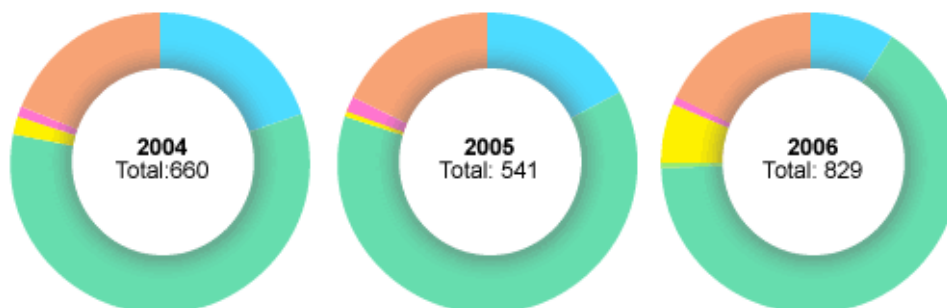
	No. of Officers		
	2004	2005	2006
(i) Criminal proceedings	0	0	0
(ii) Disciplinary proceedings	0	0	0
(iii) Warning given to police officers concerned	1	0	0
(iv) Advice given to police officers concerned	25	26	25
Total	26	26	25

Note : The figures for 2004 and 2005 have been adjusted following case review.

* This figure does not include 'Substantiated' complaints directed against the Police Force/police procedures, unidentified officers and officers no longer serving in the Police Force.

Appendix XIII

Nature of Queries/Suggestions Raised by the IPCC in 2004, 2005 and 2006



Nature of queries/suggestions raised by the IPCC

Nature	2004	2005	2006
1. Results of Investigation	130	93	75
2. Thoroughness of Investigation/Clarification of Ambiguous Points in the CAPO Reports/CAPO Case Files	386	342	548
3. Grounds for the Exercise of Constabulary Powers	0	0	2
4. Compliance with Police Practices/Procedures	12	1	52
5. Suggested Improvement to Police Procedures	7	9	5
6. Other Queries	125	96	147
Total Number of Points Raised	660	541	829

Note : A query/suggestion raised by the IPCC may contain more than one point.
 Out of 565 query points accepted by CAPO, 44 results of investigations were changed in 2006.
 The corresponding figures for 2004 and 2005 were 89 and 64 respectively.