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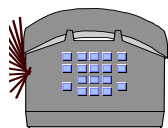
*Direct Investigation into the Administrative Arrangements  
for Market Stall Auction*

This Office will initiate a direct investigation into the administration of auctions of market stalls by the Food and Environmental Hygiene Department under section 7(1)(a)(ii) of The Ombudsman Ordinance. The background, purpose and scope of this direct investigation are at Annex A.



*Direct Investigation into the Administration  
of Urn Grave Cemeteries*

The executive summary of the investigation report is at **Annex B**.



*Enquiries*

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**Office of The Ombudsman, Hong Kong  
4 November 2004**

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*Issue No. 4 of 2004/05*

**OMBUDSMAN PROBES  
ADMINISTRATIVE ARRANGEMENTS  
FOR MARKET STALL AUCTION**

The Office of The Ombudsman will initiate a direct investigation into the administration of auctions of market stalls by the Food and Environmental Hygiene Department (“FEHD”).

“In the course of handling a complaint, we note that the arrangements adopted by FEHD to let public market stalls by auction may carry opportunities for abuse,” Ms Alice Tai, The Ombudsman, said today (4 November 2004).

“These allow a successful bidder to terminate the tenancy shortly after the agreement is signed. As a result, a tenant may secure the tenancy of nearby stalls by outbidding the competitors by offering a higher bid, and then makes an excuse to terminate the tenancy. The vacated stalls are then not auctioned again until three to five months later. This is unsatisfactory as it is not fair to other competitors and results in loss of public revenue.” Ms Tai said.

Against this background, The Ombudsman has decided to initiate a direct investigation pursuant to section 7(1)(a)(ii) of The Ombudsman Ordinance. The ambit of investigation will be to:

- examine administrative arrangements for letting public market stalls by auction;
- identify loopholes, if any, that open up opportunities for abuse; and
- suggest measures for preventing abuse.

The Ombudsman appreciates the Director of Food and Environmental Hygiene’s pledge to cooperate fully in the investigation.

The Office of The Ombudsman welcomes views from members of the public on the matter. Comments should reach the Office of The Ombudsman at 30/F, China Merchants Tower, Shun Tak Centre, 168-200 Connaught Road Central, Hong Kong (or by fax to 2882 8149 or e-mail to [complaints@ombudsman.gov.hk](mailto:complaints@ombudsman.gov.hk)) by 3 December 2004.

**Office of The Ombudsman  
November 2004**

## Executive Summary of Investigation Report on Administration of Urn Grave Cemeteries

### Background

In Hong Kong, there are five public urn grave cemeteries (“金塔墳場”). The largest is in Wo Hop Shek with spaces for over 140,000 urn graves. The other four provide about 40,000 spaces.

2. These cemeteries were previously managed by the two Municipal Councils. Since 2000, Food and Environmental Hygiene Department (“FEHD”) has taken over. Complaints to this Office and media reports have raised concern over their effective management. After preliminary inquiries into the administrative arrangements of FEHD for providing services in urn grave cemeteries, The Ombudsman decided to initiate a direct investigation under section 7(1)(a)(ii) of The Ombudsman Ordinance, Cap. 397. In a press conference held on 30 June 2004, The Ombudsman announced this direct investigation.

### The Ambit

3. This direct investigation examines:
- (a) the process of removal of remains from urn graves;
  - (b) post-removal follow-up action;
  - (c) the process of allocating new and vacated urn graves; and
  - (d) the system of maintenance of urn grave cemeteries.

### Urn Grave Records

4. Some urn graves have existed since the 1950’s. Government noted the need and decided to place them under control. In 1960, the Public Health and Municipal Services Ordinance, Cap. 132 and the Public Cemeteries Regulation, Cap. 132BI were enacted.

5. With the reorganisation of municipal services, FEHD took over the responsibility for administration of all urn graves on 1 January 2000. It attempted to transfer the records, some of them manual, to a new computer database (“History Database”). Unfortunately, flaws in data migration caused errors in the database. Consequently, FEHD could not rely on it completely and from time to time had to refer to the original manual records for confirmation.

6. In September 2001, FEHD put in place yet another new computer database (“Integrated Database”), which has the advantages of greater capacity and a fresh start. Since then, FEHD has been using this new database to process applications for new urn graves. The History Database and the manual records are kept for retrieval of pre-September 2001 records.

7. As FEHD has not fully verified the original records after the take-over due to resource constraint, it cannot be sure from these records whether an urn grave space is occupied and by whom. Undetected illegal burials and exhumations make the records even less reliable.

Consequently, FEHD cannot rely on its records for allocating an existing urn grave space that has been vacated. Besides, such circumstances as landslips and overgrowth of trees may render a space not suitable for re-allocation. Staff have to check the space physically to ensure availability for re-allocation.

8. Again, for resource constraint reasons, FEHD has no intention to conduct a full survey to verify the serial number and location, occupancy/vacancy and “occupant” of each urn grave.

### **Urn Grave Space Allocation**

9. A new urn grave space can be allocated to an eligible applicant within one day. For vacated spaces, because of the need for site visit (para. 7), allocation takes some three weeks.

10. FEHD charges \$6,305 for an urn grave space, new or vacated. Over the last three years, a total of 2,312 urn grave spaces were allocated (758 in 2001, 772 in 2002 and 782 in 2003), generating revenue of \$14.5 million.

### **Burials and Exhumations**

11. Descendants who wish to bury or exhume remains are required to apply to FEHD for a permit. They will then usually hire a contractor for the process. To ensure compliance with statutory requirements, FEHD staff either supervise the process or inspect the urn grave upon completion.

12. Burial and exhumation without FEHD permission constitutes a criminal offence. However, FEHD has no established procedures to prevent, deter or detect breach. The urn grave cemeteries are not fenced, guarded or regularly patrolled. An illegal urn grave can, therefore, escape detection for decades.

13. FEHD admits that without a full survey, the number of undetected illegal burials and exhumations cannot be ascertained. It stresses, however, that its staff diligently follow up complaints and check for suspicious urn graves in the course of their routine duties to ensure compliance.

### **Urn Grave Maintenance**

14. Maintenance of urn graves is primarily the responsibility of descendants. FEHD carries out other aspects of maintenance such as clearing debris and fallen trees and repairing damage caused by landslips.

15. Sometimes, damage caused by landslips are irreparable. Urns are broken and remains mixed together. Remains no longer identifiable individually have to be re-buried together in a communal urn grave. At present, there are four communal urn graves. FEHD has informed the descendants concerned as far as possible based on available records.

### **Case Studies**

16. To evaluate the adequacy and effectiveness of action taken by FEHD in looking after the urn grave cemeteries, we have studied some cases (para. 21).

## **Observations and Opinions**

**17.** The size of the cemeteries and the massive number of urn graves make their administration difficult. However, this should be no excuse for lack of vigilance.

### ***Urn Grave Records***

**18.** FEHD currently maintains three sets of database, none of which can generate a reliable record (para. 7). However, FEHD seems to be content with such inadequate records. It has no intention whatsoever to improve the situation (para. 8). This is unsatisfactory and unacceptable.

### ***Urn Grave Space Allocation***

**19.** The allocation of vacated spaces is slow: this takes three weeks while new spaces can be allocated within one day (para. 9). The extra step being a site visit to verify availability. While conducting site visits is a good means to detect and deter illegal activities, this slows down allocation. If the records were accurate, site visits would not be necessary in most cases.

**20.** The allocation of urn grave spaces generates income. Over the past three years, FEHD received over \$14.5 million in allocating 2,312 spaces (para. 10). Some of this money should be used to rationalise the urn grave records, to improve their administration and to provide better service to the public.

### ***Burials and Exhumations***

**21.** Our case studies clearly show that there is room for improvement in the follow-up action on exhumation. At present, vacated urn graves are not marked on site. A signpost on a vacated space indicating its availability, informing the public of the application procedures and warning unscrupulous characters against illegal activities should minimise the possibility of illegal “recycling”. It should also draw the attention of other descendants interested in the space.

**22.** In many cases, descendants were absent at the burial or exhumation process. If the three parties concerned (i.e. FEHD, descendants and contractors) were all there to witness the process and confirm the details, it would reduce, if not eliminate, the possibility of the wrong grave being exhumed.

**23.** Current measures against illegal burial and exhumation are piecemeal and ineffective (para. 12). As it is difficult to guard the whole area and keep out potential offenders, it is important that illegal activities be deterred. A strong and clear message should be given to the public, particularly contractors and descendants, that illegal activities within cemeteries will not be tolerated. Instead, FEHD just let suspected offenders off and gave them covering approval on payment of the standard fee. As the case studies show, prosecution has never been contemplated.

**24.** There is no scheduled patrol, so detection depends on chance or enquiry and complaint. If, as FEHD claims, staff have carried out routine checks for irregularities, at least some suspicious graves or burials should have been detected and followed up for action (para. 13). However, all cases detected have resulted from enquiries, complaints or applications.

**25.** Few irregular cases have come to light. For well over four years since taking over in 2000, FEHD has to deal with only five cases, yet the follow-up action has been slow and dilatory. It takes months to post a notice, send a letter and conduct follow-up action. This is not acceptable.

**26.** In some cases, the irregularities persist but FEHD has no concrete plan to follow them up thoroughly.

**27.** Overall, this Office is astounded by FEHD's feeble action against illegal burials and exhumations. It is unethical and unfair to the deceased and their descendants and deprives Government of revenue. Illegal burials also mean lining the pockets of unscrupulous elements. The high level of easy profit and low risk of detection, and lower still of legal consequence, are tantamount to encouraging unscrupulous elements to take their chances.

**28.** FEHD should have taken matters more seriously and considered steps, such as conducting a full survey, to ascertain the extent of illegal "recycling" cases. We find FEHD's attitude cavalier and somewhat callous.

**29.** Long-standing urn graves may no longer have visitors. FEHD has a duty to find and protect these graves. It should endeavour to identify these graves for tighter security measures, such as subjecting them to more frequent patrols and keeping appropriate record.

### ***Urn Grave Maintenance***

**30.** FEHD should remind descendants of their responsibilities for maintenance. As regards damage caused by landslips, it is unfortunate that some remains might never be identified (para. 15). To avoid recurrence of similar incidents, FEHD should enlist the assistance of the Government departments concerned to identify dangerous slopes within the cemeteries for preventive or remedial works where necessary. In case of landslips, FEHD should identify all the damaged graves and inform the descendants concerned.

### **Concluding Comments**

#### ***Full survey***

**31.** The lack of complete and accurate records of all urn graves has contributed to inefficient and ineffective administration of urn grave cemeteries. The extent of illegal "recycling" unknown to FEHD is particularly worrying. A full survey is, therefore, necessary and not that costly (our estimate: \$2.3 million) or difficult.

#### ***Long-term measures***

**32.** FEHD must put in place long-term measures to prevent and detect such problems as illegal "recycling" of graves as well as to maintain accurate records. We see this as Government's duty in public service and proper respect for the deceased.

### **Recommendations**

**33.** Admittedly, FEHD has taken over administration of urn grave cemeteries only since 2000. Still, it has been almost five years and time enough to put matters right.

**34.** It is time-honoured Chinese culture to respect our ancestors. Ching Ming and Chung Yeung have long been occasions for families to honour and remember our forebears at their graves. It is sad that this seems to be breaking down by neglect due to emigration, lack of descendants or their indifference. Government has a social responsibility to facilitate, encourage and sustain this culture of care and respect.

**35.** The Ombudsman makes the following recommendations to the Director of Food and Environmental Hygiene:

**(a) General**

*Staff attitude*

- i) instil among all staff concerned, including those in the frontline, due determination and a sense of duty to rectify irregularities: para. 17;

*Full survey*

- ii) conduct a full survey to verify the information of each and every existing urn grave, identify areas with long-standing urn graves for tighter security measures and identify dangerous slopes for preventive and remedial works: paras. 29 to 32;
- iii) transfer the data of the full survey to a computer database and fully test it to generate accurate, verified records: para. 5;
- iv) when the new, fully tested database becomes ready, abolish the old computer databases and manual records: para. 18;

*Long-term measures*

- v) consider alternative means for monitoring and random checks of high-risk areas to deter and detect illegal activities: para. 32;
- vi) review and, where appropriate, update the statutory requirements;

**(b) Administration of Urn Grave Cemeteries**

*Urn grave records*

- i) while the three sets of database are still in use, require staff concerned to maintain them properly and keep them accurate and up-to-date;

### ***Urn grave space allocation***

- ii) review the process for allocating vacated urn grave spaces, to shorten the processing time: para. 19;
- iii) when the new, fully tested database becomes ready, review the need for site visits before allocating vacated urn grave spaces to expedite processing: para. 19;

### ***Burials and exhumations***

- iv) review the follow-up action on approved burials and exhumations, e.g. consider setting up signposts for vacated spaces: para. 21;
- v) through such means as messages on website and leaflets for applicants, inform descendants of the importance that they be present at the burial or exhumation: para. 22;

### ***Illegal burials and exhumations***

- vi) publicise the possibility of prosecution and the penalty for illegal activities within cemeteries: para. 23;
- vii) be firm with offenders, step up prosecution and introduce administrative sanctions such as maintaining a list of unscrupulous contractors for closer surveillance: para. 27;
- viii) patrol cemeteries for random checks to detect suspicious graves and deter illegal activities: para. 24;
- ix) prescribe a performance pledge for following up detected cases of irregularity: para. 25;
- x) draw up concrete plans to follow up the five cases already detected: para. 26;
- xi) keep appropriate records of long-standing urn graves and alert staff for closer monitoring: para. 29;

## **(c) Urn Grave Maintenance**

- i) through FEHD website and leaflets, educate descendants on their responsibility towards their deceased ancestors: para. 30;
- ii) enlisting the assistance of departments concerned, arrange preventive and remedial works for dangerous slopes: para. 30 ; and
- iii) in case of landslips, inform all descendants of the damaged graves, according to the verified records: para. 30.



### **Comments from FEHD**

**36.** FEHD has accepted our recommendations. Implementation of some of them is underway.

### **Final Remarks from The Ombudsman**

**37.** The Ombudsman is grateful for FEHD's cooperation in the investigation. She appreciates its readiness to implement our recommendations.

**Office of The Ombudsman**

**November 2004**