
Police release personal information in Warkworth

Outline of Events

1. The complainants, Mr X and Ms Y, owned and managed a Motor Lodge (the Motor Lodge) situated in Warkworth, Auckland. Mr X and Ms Y leased the Motor Lodge building, from a Trust (the Trust).
 2. In 2016 the property came to the notice of local Police who identified it as an area of interest for criminal activity.
 3. On 6 December 2016 Police stopped and searched a vehicle that had been seen leaving the Motor Lodge and seized some cannabis leaf. The occupants of the vehicle told Police that they had purchased the cannabis from Mr X's adult daughter, Ms Z. Police conducted a search at the Motor Lodge leading to the arrest of both Ms Z and Mr X for drug related offences.
 4. Between 20 December and 22 December 2016 Police sent emails to the manager of the Trust. The emails contained photographs taken during the search of the Motor Lodge following the arrest of Mr X and Ms Z.
 5. Early the following year the Trust manager conducted an inspection of the Motor Lodge accompanied by Police.
 6. On 8 February 2017, Mr X and Ms Y were served with a Notice of Intention to cancel their lease at the property. Cited in the notice was information that Mr X and Ms Y later learnt had been provided by Police which led them to make a complaint to the Authority. They subsequently sold their business at a substantial loss.
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The Authority's Investigation

7. Mr X and Ms Y complained to the Authority about the release of information. The Authority then conducted an independent investigation.
8. The Authority's investigation included interviewing police employees, ex-employees and the complainant, Ms Y. The Authority conducted a thorough review of the Police investigation file and the National Intelligence Application (NIA) records relating to the location.¹
9. The Authority identified and considered the following issues:
 - 1) Did the Police engage in a deliberate strategy to have the motel business of Mr X and Ms Y closed down, and if so, was this a justified strategy?
 - 2) Was the search of the Motor Lodge on 6 December 2016 lawful?
 - 3) Was the release of the information contained in the email sent by Officer A on 20 December 2016 justified?
 - 4) Was the release of the information contained in the email sent by Officer A on 22 December 2016 justified?
 - 5) Was the release of the information contained in the email sent by Officer A on 24 December 2016 justified?
 - 6) Was the Police visit to the motor lodge on 6 January 2017 appropriate?
 - 7) Was the Official Information Act release by Police on 6 March 2017 proper?
 - 8) Did Officer A intentionally mislead Police during their investigation into the release of the information?

The Authority's Findings

ISSUE 1: DID THE POLICE ENGAGE IN A DELIBERATE STRATEGY TO HAVE THE MOTEL BUSINESS OF MR X AND MS Y CLOSED DOWN AND IF SO WAS THIS A JUSTIFIED STRATEGY?

10. On 1 August 2014 Mr X and Ms Y took over the lease of the Motor Lodge. At this time, they were a couple and lived at the Motor Lodge together while managing the business.

¹ The **National Intelligence Application (NIA)** is a Police database which holds information about individuals who have come into contact with Police.

Officer A's account

11. Officer A was working as a Field Intelligence Officer (FIO) based at Warkworth Police Station in a role that she had held for some time. She stated that she had received no specialised training when she went into the role. She described the role of a FIO as:

“to gather and collect information from offenders and the community...coming back to the Police core values of safer communities together...locking offenders up, that sort of thing which was sort of our main focus as Intel. Gathering that information and dealing with it”

12. Officer A stated that during the time the complainants owned the Motor Lodge, there were 141 occurrences relating to the premises over an 18-month period that required Police involvement.
13. She said that they had *“people in the community come into the Police station with children, their children not wanting to walk to school because of the undesirables that were hanging around the motel”*. There are no recorded complaints in NIA from anyone in the community relating to the occupants of the Motor Lodge.
14. Officer A stated the Motor Lodge was a *“hub of criminal fraternity”* and that local Police, including Officer A, decided *“... let's look at this motel unit and see what we can do to move them on”*.

Officer C's account

15. Officer C was an FIO based in Orewa Police station. He told the Authority:

“The Motor Lodge became a location of interest or concern for the management team, raised at several management meetings. There had been numerous calls for service to the property and so [Police were] looking for opportunities to lessen calls for service, public trust and confidence and to nut out what was happening and what we could do about the people....

Police area management wanted the FIO's to do more work to identify what else we could be doing. We'd had a similar address...in Orewa where we were having lots of calls for service... we engaged with the owner of that property around the problems that were occurring in there and through engaging with the owner we were able to resolve a lot of the problems and we ended up closing it down.”

16. Officer C stated that the directions from the area management that related to the Motor Lodge were in line with the Police actions relating to the Orewa property, to try and work with the owners, look at the issues at the address and adopt a multi-agency approach to solve the problems.

Overall

17. The Authority has conducted a review of the occurrences recorded in NIA which occurred during Mr X's and Ms Y's tenancy (1 August 2014 to 8 December 2017). This is a period of 40 months as opposed to the 18 months that Officer A referred to. Over the period the Authority analysed there were in fact a total of only 77 occurrences linked to the address.

18. An occurrence is an event or call for service, either reported to or discovered by Police that is recorded in NIA.
19. Of the 77 occurrences linked to the address, only 32 occurred at the address itself. The others were associated to the address because they involved persons who had once resided at or had been previously seen there.
20. Of the 32 occurrences that occurred at the address, seven were liquor licensing processes and hotel compliance checks, eight were family harm incidents involving Mr X and Ms Y, one was a lost property enquiry, one was a request for information from Police, one was a car crash which occurred outside, one was a person reported as suspicious by Ms Y and one was a suicide attempt by an occupant.
21. The 12 remaining occurrences were reports where criminal offences were reported. Of these 12, there were 5 offences committed where the victim was a person linked to the address. The remaining 7 offences were all linked to three different offenders who had previously resided or were currently residing at the address.
22. The Authority accepts that there may have been confidential information provided to Police by people who wished to remain anonymous and therefore would not have been recorded in NIA. When spoken to about this Officer C stated that he did not receive any Covert Human Intelligence Source information about the Motor Lodge but believed that there had been some.
23. From the evidence available to the Authority, Police liaised and worked with the owners of the property, not Mr X and Ms Y who were the owners of the business, instead making them the targets of the operation that was undertaken. The Authority accepts that the opportunity to work with them was affected during the period when Mr X had active charges before the Court, but this did not necessarily preclude Police from positively engaging with them.
24. Officer A made the intention of her actions clear when she told the Authority, *"We've got rid of the shit out of our community that was there and isn't that what we try to do?"*
25. Officer C did not agree with that view and strongly argued that it was only ever his intention to prevent further offending at the location.

Conclusions

26. The assessment of the NIA data undertaken by Police was flawed and was interpreted as presenting a much greater concern than was actually the case. The Police appear to have assessed that Mr X and Ms Z were central to the perceived issues at the location and this has led to an uninformed and unjustified approach to the perceived problem.
27. The Police actions to target breaches of the lease, taken in conjunction with the landlords, resulted in the business being forced to close. The Authority believes that this was a consequence of Police actions, whether direct or indirect.
28. Given the nature of the various Police occurrences linked with the Motor Lodge over the relevant period, as set out above, these actions went well beyond the bounds of a legitimate

Police intelligence operation. In particular, Officer A's stated intent to drive Mr X and Ms Y out of the community was inappropriate.

FINDINGS

The Police assessment of the NIA information relating to the Motor Lodge was flawed.

Police actions to target breaches of the lease by Mr X and Ms Y went well beyond the bounds of a legitimate Police intelligence operation.

Officer A's stated intent to drive Mr X and Ms Y out of the community was inappropriate.

ISSUE 2: WAS THE POLICE SEARCH OF THE MOTOR LODGE ON 6 DECEMBER 2016 LAWFUL?

29. In an earlier visit to the Motor Lodge, Officer A had spoken with Ms Y in the reception area. During this visit Ms Y had explained that her relationship with Mr X had ended and she had moved into another area within the Motor Lodge. Ms Y advised the Authority that she had pointed out to Officer A which units Mr X and his daughter Ms Z were living in, which could be seen clearly from the reception area. Ms Y believes this conversation took place in either June or July 2016.
30. Officer A told the Authority she was aware that Mr X had moved out of the manager's unit and was residing in Unit 26 "*behind the bar in the unit with his daughter*". She believes she learnt this in July 2015. Her recall in this respect is different from the account given by Ms Y, who was confident that she told Officer A that Mr X and Ms Z were residing in Units 26 and 25 respectively. The Authority prefers the evidence of Ms Y in this respect as she was the one with direct knowledge of where people were living within the Motor Lodge complex.
31. On 6 December 2016, Officers A and B (a detective) stopped a car that they had seen leaving the Motor Lodge. The two female occupants of the car told Police that they had just purchased cannabis from a person at the Motor Lodge. From the information provided Police determined that the cannabis was purchased from Ms Z.
32. Officer A stated that they did not have time to go and get a warrant, so they went straight to Unit 26, where they believed Ms Z was residing. They entered the unit, invoking a warrantless search power under the Search and Surveillance Act 2012.
33. Section 20 of the Search and Surveillance Act 2012 gives officers the power to enter and search a place without a warrant if they have reasonable grounds:
 - to suspect that there is a specific controlled drug in the place;
 - to suspect that an offence has been committed or is about to be committed in respect of that drug;
 - to believe that it is not practicable to obtain a warrant; and
 - to believe that an immediate search must be carried out to ensure evidence is not destroyed, concealed, altered or damaged.

34. As Officer A entered the unit, Mr X was sitting on his bed with his back to the door using a blow torch. Believing that Mr X was consuming methamphetamine, Police detained Mr X and handcuffed him. In the process of doing this, Mr X told Police: *"it's under the bed, it's under the bed"*.
35. A search of the area under the bed resulted in Police finding small amounts of cannabis and methamphetamine. It was found that Mr X was not smoking methamphetamine at the time, but was rather using the blow torch to make an ordinary glass bowl.
36. Police advised Mr X that they were after Ms Z and asked him where she was. At that point they heard Ms Z yell out from Unit 25 directly next door. Officer A stated: *"... she was compliant, showed us where her cannabis was..."*
37. After the search of Ms Z's unit, Police moved into the defunct bar and kitchen area of the Motor Lodge which was situated immediately across the hallway, opposite the units occupied by Mr X and Ms Z. This area is clearly separate from the units they had searched. Officer A told the Authority that other people who were known to Police were *"just hanging around"* there, and additional Police staff were brought in to assist with the search of this area as well.
38. During the searches Officer A took a series of photographs using her Police issued mobility device . She said:
- "... photographs were taken the day of Mr X's arrest, of the kitchen and bar area... I believed that Mr W needed to know what his building was like and who he was renting it to... I'm thinking I'm doing my job and I'll take photographs and send it through to Mr W."*
39. Section 110 (j) of the Search and Surveillance Act 2012 gives officer powers to take photographs of the place being searched and any thing found in that place, if the person exercising the power has reasonable grounds to believe that the photographs may be relevant to the purposes of the entry and search.
40. Mr X and Ms Z were both subsequently arrested and bailed from the Police station to appear in Court on 12 December 2016.
41. It is clear from the information provided by Officer A that the Police had the power only to enter and search the unit of the Motor Lodge that they reasonably suspected was occupied by Ms Z, as she was clearly identified by the occupants of the vehicle stopped as the supplier of the cannabis.
42. Ms Y had advised and shown Officer A the units that were being occupied by Mr X and Ms Z respectively. This is corroborated by Officer A who knew that the couple had separated and acknowledges knowing about it during the same month as Ms Y had referred to, albeit mistakenly a year earlier.
43. Ms Y advised the Authority that the bar and kitchen area had been closed to members of the public since January 2016.

44. On the basis of Officer A's statement referred to in paragraph 32, it appears that Police may have initially entered Mr X's unit in the mistaken belief that Ms Z was residing there. This is, however, contrary to what Ms Y told Officer A and Police therefore did not have any reasonable grounds to suspect that she was in Unit 26 and should have taken steps to find out what unit she was in. Their actions in entering Unit 26 were not undertaken in bad faith, but their mistake nevertheless rendered the entry unlawful. This consequently made their subsequent search of the unit and their arrest of Mr X for possession of a controlled drug also unlawful.
45. The search of Ms Z's unit, however, was lawful.
46. The subsequent search of the defunct bar area was unlawful. By this time Police had identified the units occupied by Mr X and Ms Z and had no reasonable grounds to suspect that there was any evidential material in the defunct bar area. Their search was nothing more than a fishing expedition, perhaps as part of an attempt to gather evidence of other activities to provide to Mr W in pursuit of Officer A's overall goal of having Mr X's and Ms Y's tenancy revoked.
47. Mr X subsequently pleaded guilty to charges of possession of methamphetamine and cannabis. He was later discharged without conviction.

FINDINGS

The search of Unit 26 in which Mr X was residing was unlawful.

The search of Unit 25 in which Ms Z was residing was lawful.

The search of the defunct bar and kitchen area was unlawful.

ISSUE 3: WAS THE RELEASE OF THE INFORMATION CONTAINED IN THE EMAIL SENT BY OFFICER A ON 20 DECEMBER 2016 JUSTIFIED?

48. Mr V is a trustee of the Trust that owns the Motor Lodge. Sometime between 12 and 20 December 2016 Officer A telephoned Mr V. When interviewed by the Authority, Officer A stated:

"...he was unaware that the buildings owned by him were considered by the community to be frequented by undesirable elements. Similarly, he was unaware that his premises had been used in the commission of multiple offences against the Misuse of Drugs Act 1975".

49. Officer A went on to say that she:

"... considered it in his interests and the interests of the community that he was fairly appraised of the activities taking place in the premises that he owned. I considered, particularly given the New Zealand Herald article of 20 August 2015, this information was already in the public domain." ²

² "Alleged drug dealers arrested in Warkworth" New Zealand Herald (New Zealand, 20 August 2015)
https://www.nzherald.co.nz/crime/news/article.cfm?c_id=30&objectid=11500268

50. The New Zealand Herald article details the arrest of two men after a search warrant was executed in relation to drug dealing from a Warkworth motel. It went on to say that concerns were raised with Police by members of the community. There was no mention in the article of the names of the persons arrested or of the motel at which the search warrant was executed.
51. Mr V confirmed that he received this call *“out of the blue”* from Officer A. He said that she told him *“how much trouble Police were having with the Motor Lodge and that the neighbours were complaining.”* He went on to say that he was aware of the media article before Officer A had called him and had spoken to Ms Y at the time about the arrests. She had confirmed with him that neither she nor Mr X were involved with the incident.
52. Due to Mr V’s distance from the area and his health, he provided Officer A with the contact details for his son, Mr W, who is a beneficiary of the Trust. He also telephoned his son and informed him that someone from the Police was going to make contact about the Motor Lodge.
53. When subsequently interviewed during the Police investigation into the complaint by Mr X and Ms Y, Mr W told Police that he received a telephone call from Officer A on or before 20 December 2016, and that he told her that he had completed an inspection of the premises in August 2015 with no issues and was unaware of anything illegal occurring at the Motor Lodge. He also told Police: *“From memory [Officer A] told me that the Police had had a lot of callouts and during one recent one they had taken photographs showing the condition of the place”*.
54. Following this telephone conversation Officer A emailed Mr W, attaching a series of 11 photographs. There was no text in the email apart from Officer A’s email signature. Ten of the photographs show general untidiness within the defunct bar area, with one photograph showing an unmade double bed. None of the photographs provide any evidence of any criminal offending or damage to the building.
55. Officer A told the Authority that the bar and kitchen area was open to the public for meals and drinks at this time. She said that the photographs demonstrated that there were health and hygiene issues in an area of the Motor Lodge being used by the public and that the owner needed to be made aware of these.
56. This is incorrect. The Authority accepts Ms Y’s statement that the bar and kitchen area were closed permanently to the public in January 2016, and that it was being used by members of Mr X’s and Ms Y’s families and friends in a private capacity. The Authority is also satisfied that this would have been obvious to Officer A.
57. When asked by the Authority what statutory power she had relied on to take the photographs, Officer A replied, *“probably none”*.
58. She was asked if she had consulted with anyone prior to sending the email and she replied: *‘yeah I would’ve, by memory I would’ve run it past [Officer C].’*
59. Officer C told the Authority he was not aware of the email being sent at the time. He believed that the information had:

“been reviewed by a supervisor or the email had been generated with the supervision of the sergeant at the time, so Officer A... would be getting guidance from that supervisor to say we are ok to release this.”

60. When the Authority asked about her knowledge of the rules governing disclosure of personal information, Officer A said: *“No, I wouldn’t know... what my rights are to send information through.”* When further asked if Officer A now knew what the law was around the disclosure of personal information, she said, *“No”*. When asked if she had made any effort to find out, she replied that she had enrolled in a Basic Investigators’ Course.
61. Police policy regarding disclosure of personal information states that before disclosing personal information, in the absence of a request, an officer must believe on reasonable grounds the disclosure is permitted by one of the exceptions in the Privacy Act 1993.
62. Information Privacy Principle (IPP) 11 (section 6 of the Act) must be applied when deciding whether to disclose personal information in the absence of a request or statutory demand. This principle prohibits the disclosure of personal information, unless the officer believes on reasonable grounds that the disclosure is permitted by one of the listed exceptions. Personal information is defined in the Act as any information about an identifiable person.
63. The IPP that has been subsequently relied on by Police in this instance is IPP 11(e)(i), which permits disclosure where necessary to avoid prejudice to the maintenance of the law, including prevention, detection, investigation, prosecution and punishment of offences.
64. To rely on this, an officer must first identify in what way the maintenance of the law would be prejudiced if the information was not disclosed. Secondly, the officer must reasonably believe that prejudice to the maintenance of the law would be created if the disclosure was not made and be able to list the factors supporting that belief. The belief must be held at the time the exception is used and cannot be formulated in retrospect.
65. The Police policy states, in effect, that disclosure must be the last resort and that only sufficient information to ensure the identified prejudice is prevented should be disclosed. It also states that it is important for the officer to think carefully, take guidance and perhaps consult with Police Legal Services before making any proactive disclosure.
66. The photographs taken by Officer A clearly included personal information, taken in private areas of the Motor Lodge (Unit 26 and the defunct bar and kitchen area), being used only by the managers and their families and friends.
67. There is no evidence of any damage or criminal offending in the photographs disclosed.
68. The Authority believes Officer A took the photographs with the intention of disclosing them to Mr W and Mr V, for the purpose of Police working with the landlords to have Mr X and Ms Y removed from the tenancy.
69. It is clear to the Authority that, at the time of the release, Officer A did not hold a belief that an exception to a privacy principle existed. In fact, she acknowledged in interview that she did not

turn her mind to the privacy principles at all. IPP 11(e)(i) has retrospectively been introduced as a means of defending the Police position once a complaint had been made about the disclosure.

70. The disclosure was not necessary to avoid prejudice of the law and constituted an unjustified breach of principle 11.
71. Officer A did not seek guidance from a supervisor or consult with Police Legal Services before making the disclosure.

FINDINGS

The photographs taken by Officer A were personal information.

Officer A had no justification for sending the email attaching those photographs.

ISSUE 4: WAS THE RELEASE OF THE INFORMATION CONTAINED IN THE EMAIL SENT BY OFFICER A ON 22 DECEMBER 2016 JUSTIFIED?

72. At 7.58am on 21 December 2016, Mr W replied to Officer A's email. The email stated:

"Thanks [Officer A]. As discussed, for the trust to consider any action, we would need to prove a breach of the lease. If you can please discuss and let me know what information can be shared. Ideally something along the lines of a conviction stemming from illegal activities performed by the leaseholder on the property. Thanks [Mr W]."

73. Officer A replied to the email at 9.25am on 22 December, and sent a copy to Officer C.
74. In this email she advised Mr W that, as the owner of the property, he was entitled to be informed when criminal activities were being conducted on his premises.
75. Officer A went on to give details of the arrest of Mr X and Ms Z and provided the next Court appearance date for their active charges. She also gave information relating to an unrelated arrest of a permanent resident of the Motor Lodge, whose offending did not occur at the location.
76. Officer A stated in the email:

"... it is distressing to the local Police and community that your motel complex is now being used as accommodation for WINZ beneficiaries from outside the area. The Department of Corrections is also releasing paroled criminals to your motel complex, using the premises as emergency accommodation. This policy has seen an upsurge of disorder and anti-social activity in the neighbourhood."
77. Officer A finished by saying that the information related only to the lessee and she had not included the long list of other incidents that had occurred at the address.
78. Officer A told Police she gave the information in direct response to the request made by Mr W and that she waited until Mr X and Ms Y had been to Court because the information was then in the public domain.

79. When the Authority asked Officer A why she believed the information about WINZ beneficiaries was something that the owner needed to know, Officer A replied:

“... they probably didn’t need to know, no...I didn’t think the information was appropriate or inappropriate, it was just information I just passed on like I would’ve with any other people that were living there.”

80. There were several inaccuracies or irrelevancies in Officer A’s email.
81. Firstly, as confirmed by the Department of Corrections on 30 March 2017 in response to a request for information by Mr X and Ms Y, they had never used the Motor Lodge as an address for placing paroled prisoners.
82. Secondly, the reference to WINZ beneficiaries residing at the address implied that these people were responsible for the perceived rise in criminal behaviour in the area. There was no evidence to support this assertion. This information was personal information that the landlord had no business knowing and it should not have been disclosed.
83. Thirdly, the reference to a long list of other incidents is at best an exaggeration. As discussed earlier in paragraphs 17-22, the Police records held in NIA for occurrences taking place at the address was limited to 32 over a period of three and a half years, many of which did not relate to offending.
84. Officer C stated that he did not recall that email specifically, but he questioned the naming of the resident who had been arrested for an offence unrelated to the motel. He believes it should have been made more generic and that the naming of people was “*not good*”.
85. The request for information from Mr W related to personal information about people other than himself and so is therefore covered under the Official Information Act 1982 (the OIA). Official information is defined in the OIA as “*any information (including personal information) held by a Department, a Minister of the Crown in their official capacity, or an organisation.*”
86. Section 9 of the OIA states where that section applies, withholding grounds will remain relevant unless the grounds relied upon in the circumstances of the particular case are outweighed by public interest grounds for the release of the information. In this case the information released related to protection of the privacy of a person and so this test should have been considered.
87. From the evidence available, the Authority is satisfied that Officer A did not turn her mind to these considerations prior to disclosing the information to Mr W.
88. The Police policy “*Disclosure under the Official Information Act 1982 (OIA)*” clearly defines how information requests should be managed and processed by Police.
89. The policy states that all requests for information received in Districts are received by the claim team. Any requests received by another group should be sent to the claim team for logging and assigning. The request is then assigned to a person who is responsible for scoping the request, collating the requested information and compiling the response. A supervisor normally reviews

a draft response before it is finalised and approved. Alongside the key process points there are timeframes which must be adhered to.

90. Due to Officer A's acknowledged ignorance of privacy legislation she neither forwarded the request for information to the person within her District who oversees the OIA requests nor sought advice before actioning the request. Instead, she replied directly to the requestor, Mr W, providing no information to put the contents of her reply in context or to say why Mr W was entitled to them.
91. The Authority believes that the information contained in the email was disclosed by Officer A with the intention of providing Mr W with the information he sought to prove a breach of the lease agreement and therefore aiding her overall aim of removing Mr X and Ms Y from the property.

FINDINGS

The disclosure of the charges faced by Mr X and Ms Z was justified.

The disclosure about the criminal history of the long term resident at the Motor Lodge was unjustified.

The disclosure about the Motor Lodge being used as accommodation for WINZ beneficiaries was unjustified.

The disclosure about the Motor Lodge being used as emergency housing for parolees released by the Department of Corrections was incorrect and in any case was unjustified.

Officer A should have sought advice or forwarded the request for information to the District OIA claim team for logging and assigning.

ISSUE 5: WAS THE RELEASE OF THE INFORMATION CONTAINED IN THE EMAIL SENT BY OFFICER A ON 24 DECEMBER 2016 JUSTIFIED?

92. On 23 December Mr W emailed Officer A again. In this email he asked if Mr X's trial was deferred or if he was released on bail.
93. Officer A replied to the email at 8.35am the following day. This email stated: "*Released on bail back in court 10 January.*"
94. In a document she prepared during the Police investigation, Officer A stated: "*The information [I released] was already in the public domain. All of the named persons had already appeared in Court and had not applied for or been granted suppression of name.*"
95. As noted above (para 78), Officer A confirmed this during her interview with the Authority, saying that it was her understanding that if a person has appeared in open court, anyone can go into the Court and obtain the type of information that she released, and that she was therefore entitled to release it herself.
96. The fact that Mr X was remanded on bail until 10 January was almost certainly information that would have been heard by anyone attending and observing the Court proceedings and could

have been passed on by them to others. The Authority accepts that, to this extent, the information released by Officer A was in the public domain.

97. There is no evidence available to the Authority about whether Officer A obtained the information by attending and observing the proceedings, asking the Court for it, or obtaining it by accessing Police records. However it was obtained, the Authority is satisfied that Mr W had a legitimate interest in knowing about the progress of Court proceedings relating to the presence of methamphetamine on premises owned by him, and the release of the information was therefore justified.
98. However, as discussed above, Officer A should have sought advice or forwarded the request for information to the OIA claim team for logging and assigning.

FINDINGS

The release of the information relating to Mr X's next Court date was justified.

Officer A should have sought advice or forwarded the request for information to the OIA claim team for logging and assigning.

ISSUE 6: WAS THE POLICE VISIT TO THE MOTOR LODGE ON 6 JANUARY 2017 APPROPRIATE?

99. Mr W sent Mr X and Ms Y an email informing them that he required an inspection of the Motor Lodge and advised that the landlord and authorised agents would enter the property on 6 January 2017.
100. On 6 January 2017, Officer C met with Mr W at the Orewa Police station. Due to concerns that Mr W had for his safety during the visit, it had previously been arranged that Officer C would accompany him during the inspection of the property. They agreed to meet at the Police station prior to it.
101. Mr W told Police that at this meeting, Officer C informed him of the call-outs that Police had attended at the Motor Lodge but did not allow him to look at or read any Police documentation at this meeting.
102. Shortly after the meeting they travelled to the Motor Lodge with another unknown Police officer. Mr W stated that there was *"nothing really to report"* from the inspection. After leaving the address they met up to discuss the inspection and talked about getting methamphetamine testing done at the premises.
103. Officer C told the Authority that his first involvement with the Motor Lodge was when he met with Mr W at the Police station prior to completing the inspection:

"He had been into the Orewa station and we were wanting information from him about what was going on there. He knew little about the property. From there it was suggested that he do an inspection at the property and satisfy himself that it was being operated properly. He sought Police to go along to assist him, we agreed on the proviso that we were there to keep the peace."

104. The Authority accepts that Officer C accompanied Mr W on the visit for the purpose of keeping the peace. Officer C took the opportunity during the inspection of the Motor Lodge to gather intelligence; at the completion of the inspection, Officer C completed an intelligence noting in NIA, detailing persons and vehicles he had seen at the address. Officer C was following standard police procedure and acting appropriately when he did so.
105. At 11.35am that day Officer C forwarded Mr W an email he had received from The Drug Detection Agency (TDDA) about drug testing the Motor Lodge for methamphetamine.
106. The following day at 10.41am Officer C again emailed Mr W asking if he had received the email about the drug testing. He went on to ask questions of Mr W about the lack of fire evacuation notices and assembly point information signage at the Motor Lodge and informed Mr W that they were essential.
107. He also informed Mr W that the business owners should also have earthquake procedure planning/training with their staff and stated:

"I forgot to check but with the pool and laundry they are likely to have chemicals for both that will require special storage and cannot be accessed by the public or a child...I do not believe there should be any seating near the pool fence as this can be climbed on and give a child access to the pool. Can I suggest you contact the council person [Officer A] gave you the details for and discuss your observations, make a list of concerns and the lack of a building certificate of fitness."

108. On Monday 9 January Officer C emailed an "Incident Investigator", Mr U, who was employed by the Auckland District Council. Mr W was copied into this email. Officer C listed several issues that had been identified by Mr W during the inspection of the property and advised that the tenants had been issued with a 30-day notice to comply with requirements. In this email he stated:

"The owner and Police are concerned that in the event of any incident at the property the owner/trust may be at risk of prosecution and/or fine if the property was not found to be up to Council standard for fire and other areas of compliance."

Officer C went on to list information that "Police and the owner" would like confirmation of from the Council.

109. Officer C acted as a conduit for information between the Auckland District Council and Mr W until 13 January when Mr W emailed Officer C and stated: *"I believe we have enough for what we want to do, if not we can discuss further. As such you can probably stop pushing more angles until we have heard from the lawyers, if that's ok?"*
110. When Officer C was asked by the Authority what this statement meant, he replied:

"I don't know... I don't know what they wanted to do, I don't believe the context was that it was what me and him wanted to do. It reads like that but it's certainly not what took place...we just wanted the shit to stop. We couldn't arrest our way

out of it. We needed to look at a multi-agency approach...If we shut the place down tomorrow that would've solved our problems but we weren't telling him to shut it down, we can't arrest our way out of this...we will look at ways to lessen risk."

111. The Authority is satisfied that the actions taken by Officer C after the inspection were for the purpose of assisting Mr W to find grounds to terminate the lease arrangement that he had with Mr X and Ms Y. This was improper. Building compliance and tenancy investigations are civil and local authority matters and Officer C should not have been involved in them, let alone taking a leading role in correspondence with the Council.

FINDINGS

Officer C should not have become involved with tenancy and building compliance issues.

ISSUE 7: WAS THE OFFICIAL INFORMATION ACT RELEASE ON 6 MARCH 2018 PROPER AND THOROUGH?

112. On 4 January 2017 Mr W made an Official Information Act request to Police. In this request he asked for *"All information (incl occurrences) which have occurred at Walton Park Lodge"* and a *"list of any persons over the last three years who have had Walton Park as a bail address, including duration of stay"*. He went on to state: *"After comments made by the public, I am concerned about some of the activity and want to check to see if there are any violations of the lease by the leaseholders"*.
113. By 12 February he had not received a reply from Police, so he forwarded his original request to Officer C. Officer C then contacted the Waitemata Police District File Management Centre (FMC), who collate and action such requests, asking what had happened to the request made by Mr W. In this email he stated that he was working closely with Mr W about the property, having had lots of calls for service. He said that he was trying to assist Mr W so he could take legal action against the lessees.
114. On Monday 6 March 2017, Mr D, the Official Information Act and Privacy Act Coordinator for the Waitemata Police District, emailed Mr W attaching the information requested under the Official Information Act. The email apologised for the time delay, stating: *"just at that time of year there are resource issues with people on leave etc"*.
115. The information attached to the email included a list of 72 occurrences taken from NIA that were linked to the Motor Lodge. The list had redactions at the start and end, making the complete time period the report covered unknown, but the information shown covered events over a time period from at least 21 February 2004 to 14 March 2015.
116. Of these occurrences listed, 16 fell outside the time period of Mr X's and Ms Y's tenancy.
117. Mr D provided three full NIA occurrence printouts for incidents linked to the Motor Lodge. These incidents included:

- The warrantless search carried out at the Motor Lodge on 6 December 2016 involving Mr X and Ms Z. Their names and ages were left in the report, but their dates of birth and part of the narrative was redacted.
 - The arrest of a resident of the Motor Lodge on 19 August 2015 for possession of a utensil for using methamphetamine. His name and age were left in the report, but his date of birth was redacted.
 - The arrest of two residents of the Motor Lodge on 1 April 2015 for drug offending. The names of the two people and their ages were left in the report. The dates of birth of the persons involved were redacted in the early part of the occurrence, but one was left in on a different page. Some of the narrative was also redacted.
118. The request for information relating to persons on bail at the address was not addressed in the information release.
119. The information requested from Police by Mr W was not particular to Mr X and Ms Y, as he asked for a list of all occurrences from the address. The information provided to Mr W relating to the arrest of persons who were residing at the Motor Lodge was personal information. The release of this information was not justified by the Privacy Act principles and should not have been released.
120. Mr D partly justified the release of the information by advising that it was in line with information that has been provided under the memorandum of understanding (MOU) between Police and Housing New Zealand. He further stated that the focus of the MOU is to provide information that addresses tenancy issues relating to methamphetamine contamination and the disruption of neighbours and the community through criminal activity of their tenants.
121. The list of occurrences provided to Mr W was misleading in that there was no context to the information and it appears to have been provided with the explicit intent of painting Mr X and Ms Y in a bad light. Included in the list of occurrences were incidents of domestic disputes, dishonesty and violent offending. There were no names provided with the information, leaving it open to interpretation about who was involved.
122. There is no evidence that Mr D went back to Mr W or anyone else, to seek clarification about the reasons why the information was being sought.
123. The disclosure of the list of NIA occurrences, including some events which occurred 12 years prior to Mr X and Ms Z's tenancy, was not proper and breached Police policy.
124. The redactions completed were careless and failed to pay proper attention to the detail of what was withheld and released.
125. The Official Information Act provides a timeline for actioning information requests, stating that requests must be processed, a decision made on whether and how to grant it and the requester notified accordingly as soon as practicable, but not longer than 20 working days from the date the request is received.

126. The information was provided to Mr W by Mr D 42 working days after the request was made.

FINDINGS

The information release by Mr D was provided late, did not address all of what was requested, contained information not relevant to the request, and was careless in redactions.

ISSUE 8: DID OFFICER A INTENTIONALLY MISLEAD POLICE DURING THEIR INVESTIGATION INTO THE RELEASE OF THE INFORMATION?

Discussion with Officer A

127. During February 2017, Mr X and Ms Y became aware that Police had provided information about their business to their landlord. Their business adviser had forwarded the email dated 22 December 2016 to them (after receiving it from Mr W).

128. Ms Y told the Authority that:

- a) On 11 April 2017, she met with Officer A at the Warkworth Police station to discuss the email. During this meeting, Officer A did not reveal that she had sent the email but stated that the information might prejudice Mr X's upcoming Court appearance if it was disclosed. Officer A told Ms Y that Officer C would get back to her with more information.
- b) On 13 April 2017, Officer A phoned and told Ms Y that Officer C and Mr D had released the information. She also said that if Ms Y complained to the Authority, she would look "stupid and paranoid". For that reason, Mr X and Ms Y took no further action at that time.

Complaint to the Authority

129. In August 2017, Mr X and Ms Y complained to the Authority about the release of the information and said Officer C and Mr D were responsible for it. The Authority requested further information from Police on 1 September 2017. This task was assigned to an inspector in the Waitemata Police District, Officer E.

130. Officer E said:

- a) He asked Officer C to complete a job sheet detailing his involvement with the Motor Lodge and the release of information. Officer C's jobsheet stated that "local staff including [Officer A] ... may be able to clarify some of the matters raised by the manager."
- b) Officer E then phoned Officer A and asked if she had ever dealt with Mr W. Officer A told him she knew the two complainants (Mr X and Ms Y) quite well and had dealt with them a number of times, and that they were drug users and unreliable. She also said she had not had any verbal or written contact with Mr W.
- c) Officer E said he could not recall the exact words Officer A used, but he had no doubts about what Officer A had advised him and did not get any impression that Officer A knew

who Mr W was. Therefore, he felt confident enough to say the information had not come from Police.

131. After assessing the information provided, Police advised the Authority that there appeared, on the face of it, to be no issues with Officer C's actions. By this time, Mr D had left Police and was not asked about his involvement.
132. Officer E advised Mr X and Ms Y that the information had not been provided by anyone in Police and suggested the source was the information released under the Official Information Act request by Mr W in March 2017.

Official Information Act enquiries by legal counsel

133. Given the conflicting information Mr X and Ms Y had received, they instructed their legal counsel, Mr T, to make further enquiries on their behalf.
134. On 12 October 2017, Mr T completed an Official Information Act request to Police asking for disclosure of:
 - a) what information Mr W had requested from Police;
 - b) the information Police had released to Mr W; and
 - c) any correspondence between Police and Mr W regarding Mr X and Ms Y, in the month prior to Mr W making his Official Information Act request.
135. Police forwarded this request to a sergeant in Waitemata Police District, Officer F.
136. On 8 November 2017, Officer F emailed Mr T, attaching a copy of the Official Information Act request Mr W made to Police and the information that Police disclosed to him. Officer F advised that she would follow up on the third point of the request relating to correspondence between Police and Mr W.
137. On 10 November 2017, Mr T submitted a further Official Information Act request to Police highlighting inconsistencies in the information he had been provided with and again asking for any correspondence between Police and Mr W about Mr X and Ms Y.
138. Officer F told the Authority:
 - a) In January 2018, she spoke to Officer C who advised her Officer A had sent emails to Mr W.
 - b) She then phoned Officer A, who stated that it was Officer C who sent the emails.
 - c) She could not recall the exact words used by Officer A but was certain that Officer A said she did not send any emails.

- d) Officer A had not replied to any of Officer F's requests for staff to forward on any emails they had sent in relation to Mr X and Ms Y.
 - e) She took Officer A at her word.
139. Officer F subsequently advised Mr T that she had not been able to locate any further information or emails regarding his request.
140. On 14 February 2018, after another enquiry regarding the emails, Officer A forwarded to her supervisor the four emails she had sent to Mr W. That same day Police provided the emails to Mr T.
141. Officer F stated that, when she found out that Officer A had sent the emails, she was not impressed and felt Officer A had misled her. She did not think it was plausible that Officer A had simply forgotten about sending the emails, as Officers E and F and Officer A's supervisor had all asked her about them.

Officer A's explanation

142. When the Authority asked Officer A why she had told Mr X and Ms Y that Officer C and Mr D had released the information, she stated: *"I don't know, probably would've been to keep a good relationship with them. I can't recall."*
143. Officer A recalled Officer E later contacting her at home and asking whether she had sent emails about the Motor Lodge. She said:
- a) Police get thousands of emails a year and the request had come nine or ten months after she had sent them.
 - b) She advised Officer E that she could not recall any off the top of her head but would check her emails when she got back to work. However, she did not do this.
 - c) She did not lie to Officer E and believed at the time she *"did really good Police work in getting these people, you know, that they had sold and they were out of Walton Park"*.
144. Regarding Officer F's enquiry about the emails several months later, Officer A stated she recalled having a conversation with Officer F on 31 January 2018. She was at home at the time and told Officer F she could not recall sending the emails but would check when she was back at work.
145. Officer A also advised the Authority she had suggested that Officer F should talk to Officer E because they had both been asking about the same thing.

Conclusions

146. The Authority is satisfied that Officer A was deliberately dishonest for the following reasons:

- She admitted to having been dishonest to Ms Y when she was asked about the disclosure of the information, advising the Authority that she did so to keep Ms Y and Mr X inside with her.
- She may have forgotten about the emails when she was asked about them the first time, but it is implausible that she forgot about them on the second occasion when she was asked, especially when she had said on the first occasion that she would check when she was back at work.
- Officer F is satisfied that Officer A deliberately lied to her.
- Officer A divulged the emails herself only when she was made aware that Police would be able to search for and find them on the system.

FINDINGS

Officer A intentionally misled Ms Y about who was responsible for the release of the information.

Officer A intentionally lied to Officers E and F during the Police investigation into the release of the information.

Conclusions

147. The Authority found that:

- 1) Police assessment of the NIA information relating to the Motor Lodge was flawed.
- 2) Police actions to target breaches of the lease by Mr X and Ms Y went well beyond the bounds of a legitimate Police intelligence operation.
- 3) Officer A's stated intent to drive Mr X and Ms Y out of the community was inappropriate.
- 4) The search of Unit 26 in which Mr X was residing was unlawful. The search of Unit 25 in which Ms Z was residing was lawful. The search of the defunct bar and kitchen area was unlawful.
- 5) The photographs taken by Officer A were private information. Officer A had no justification for sending the email attaching those photographs.
- 6) The disclosure of the charges faced by Mr X and Ms Z was justified. The disclosure about the criminal history of the long-term resident at the Motor Lodge was unjustified. The disclosure about the Motor Lodge being used as accommodation for WINZ beneficiaries was unjustified. The disclosure about the Motor Lodge being used as emergency housing for parolees released by the Department of Corrections was incorrect and, in any case, unjustified. Officer A should have sought advice or have forwarded the request for information to the District OIA claim team for logging and assigning.
- 7) The release of the information relating to Mr X's next Court date was justified. Officer A should have sought advice or forwarded the request for information to the District OIA claim team for logging and assigning.
- 9) Officer C should not have become involved with tenancy and building compliance issues.
- 10) The information release by Mr D was provided late, did not address all of what was requested, contained information not relevant to the request and was careless in redactions.
- 11) Officer A intentionally misled Ms Y about who was responsible for the release of the information. Officer A intentionally lied to Officers E and F during the Police investigation into the release of the information.

View of the Privacy Commissioner

148. Before determining its findings, the Authority sought the views of the Privacy Commissioner, particularly in relation to Issues 3, 4, 5 and 7.

149. The Privacy Commissioner noted that he had not made any independent investigation of the facts and was therefore unable to reach any conclusions as to whether the matters complained of constituted an “Interference with privacy” in terms of the Privacy Act.
150. However, on the basis of the facts and circumstances found by the Authority, the Commissioner was concerned that the proactive disclosure of Mr X’s and Ms Y’s personal information appeared inconsistent with the Privacy Act and raised concerns about Police’s handling of personal information. In particular, he considered that Officer A made unjustified disclosures of personal information.
151. The Commissioner also shared the Authority’s concerns at the apparent failure of Officer A to turn their minds to the considerations found in section 9 of the Official Information Act, in particular the privacy consideration at section 9(2)(a) when disclosing personal information.
152. The Commissioner expressed his hope that the incident would be considered seriously by the Police as it appeared to constitute breaches of not only police officers’ duty to act fairly, reasonably and in good faith but also of the Privacy and Official Information Acts. The Commissioner said that he would be concerned if the Authority’s findings and recommendations in relation to the disclosure of information were to be dismissed, as this might suggest further inquiry by his Office was necessary.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

17 September 2020

IPCA: 17-0432

About the Authority

WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

The Independent Police Conduct Authority is an independent body set up by Parliament to provide civilian oversight of Police conduct.

It is not part of the Police – the law requires it to be fully independent. The Authority is overseen by a Board, which is chaired by Judge Colin Doherty.

Being independent means that the Authority makes its own findings based on the facts and the law. It does not answer to the Police, the Government or anyone else over those findings. In this way, its independence is similar to that of a Court.

The Authority employs highly experienced staff who have worked in a range of law enforcement and related roles in New Zealand and overseas.

WHAT ARE THE AUTHORITY'S FUNCTIONS?

Under the Independent Police Conduct Authority Act 1988, the Authority:

- receives complaints alleging misconduct or neglect of duty by Police, or complaints about Police practices, policies and procedures affecting the complainant in a personal capacity;
- investigates, where there are reasonable grounds in the public interest, incidents in which Police actions have caused or appear to have caused death or serious bodily harm.

On completion of an investigation, the Authority must form an opinion about the Police conduct, policy, practice or procedure which was the subject of the complaint. The Authority may make recommendations to the Commissioner.

THIS REPORT

This report is the result of the work of a multi-disciplinary team of investigators, report writers and managers. At significant points in the investigation itself and in the preparation of the report, the Authority conducted audits of both process and content.



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