

**IPCA**Independent Police  
Conduct Authority

Mana Whanonga Pirihiimana Motuhake

## Police actions during the investigation and prosecution of defendants for the murder of Mr Palmiro MacDonald

1. The Independent Police Conduct Authority received a complaint concerning the actions of three Police officers, referred to as Officers A, B, and C. These officers were involved in the investigation and subsequent trial of defendants charged with the murder of Mr Palmiro MacDonald on 23 March 2016. The defendants' legal representatives complained and raised several concerns regarding each officer, which we outline in the report.
2. The complaint followed a High Court hearing, which found that both the Police and the Palmerston North Crown Solicitor had breached obligations by failing to disclose information.
3. It is not the function of the Authority to reconsider matters that have already been dealt with by the Courts, nor do we deal with matters where the Courts are the proper authority for seeking a remedy, provided such a remedy was reasonably available.<sup>1</sup> Consequently, our inquiry does not extend to those issues around disclosure already dealt with by the Court in this case, nor disclosure issues that the Court could have reasonably dealt with as the appropriate authority. Our inquiry is focused on allegations of misconduct by the officers, not addressed by the Court.
4. We do not address the conduct of the Palmerston North Crown Solicitor, which was the subject of a separate inquiry by Crown Law.
5. As part of our inquiry, we interviewed Mr W, one of the legal representatives, along with Officers A, B, and C. We also reviewed relevant Police and Court documents, including (with their consent) the officers' interviews in the Crown Law inquiry.
6. Police conducted a concurrent employment investigation under the Authority's oversight.

<sup>1</sup> See section 18(1)(b)(v) of the Independent Police Conduct Authority Act 1988.

## The Authority's Findings

### Issue 1: Was Officer A's notetaking and disclosure adequate?

Officer A's notetaking was adequate.

Officer A's failure to disclose his interview notes and Witness A's letters, while not intentional, constituted a breach of his obligations.

### Issue 2: Was Officer B's disclosure adequate?

Witness A's letter of assistance should have been disclosed to the Court.

The failure to disclose the document was a mistake rather than a deliberate act.

Officer A should have informed the investigation team that he had uploaded a copy of the letter of assistance into the special case folder he had created.

Officer B should have followed up with either Officer A or D about the status of this document.

### Issue 3: Did Officer C mislead the Court?

Officer C should not have omitted to record the presence of the Crown prosecutor and his junior at the meeting in his job sheet.

Officer C did not mislead or attempt to mislead the Court.

Officer C's conduct did not amount to an attempt to pervert the course of justice.

Officer C did not state that he disclosed all the information he had.

We are not in a position to make a finding on the issue of disclosure of Officer C's notebook.

## Recommendations

We recommend that Police prescribe in policy that interviews conducted for the purpose of taking statements from prison informant witnesses should be audio or video recorded as standard practice.

## BACKGROUND INFORMATION AND TIMELINE OF EVENTS

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7. On 23 March 2016, Mr MacDonald was shot several times with a firearm. His remains were found six months later near the Mangahao dam.
8. Police subsequently charged three defendants, Mr Z, Y, and X, with Mr MacDonald's murder.



9. Police received information from five prison detainees alleging that they heard the defendants, who were detained at various points in time, admitting to or implicating the involvement of one another in Mr MacDonald's murder. This type of evidence is referred to as 'inmate admissions evidence'. The circumstances around the murder suggest it was an act of gang violence.
10. During the trial, two witnesses refused to testify, while the defence seriously impugned another's credibility. A successful prosecution depended on the evidence of the two remaining witnesses, namely Witnesses A and B.
11. The complaints we received stem from the Police's interactions with Witness A.

#### Police's initial interactions with Witness A

12. Witness A, who was in custody on unrelated charges, requested a meeting with Officer A to provide information about Mr MacDonald's murder. In late [REDACTED], during their first meeting, Witness A expressed that he had information but was hesitant to share it due to safety concerns. No specific details about the murder were discussed.
13. In late [REDACTED], Officer A again met with Witness A, who said that he heard Mr Z say that:
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]
14. During the meeting, Officer A made written notes on what was discussed, including a mind map.<sup>2</sup> Officer A told Witness A that he would draft a formal statement and return it for him to sign. Witness A continued communicating with Officer A after the meeting, calling and writing to him from prison.
15. Witness A read but did not sign his statement, citing fears of retaliatory violence from gang members against himself or his family. Witness A first sought confirmation of assistance from Police before he would sign his statement or testify in Court.
16. In [REDACTED], Officer A met with the Crown Solicitor in Palmerston North to discuss Witness A's statement and concerns. The Crown Solicitor provided the following assurances that were communicated to Witness A and recorded as part of his statement:
  - *The statement will remain sealed and will not be disclosed.*
  - *All relevant applications, including an application for witness anonymity, will be made to protect Witness A's identity.*

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<sup>2</sup> A visual diagram representing central ideas placed in the middle, with associated ideas arranged around them.

- Although the Crown will make the applications to protect his identity, the decision to grant anonymity will ultimately be within the discretion of the judge.
  - If the application to protect his identity is unsuccessful, Officer A will meet with Witness A to explain the outcome and discuss his possible further cooperation.
17. In early [REDACTED], Officer A again met with Witness A, who signed his first statement on the basis that it would remain sealed, pending an anonymity application.
  18. In [REDACTED], Police provided a 'letter of assistance' to the Court dealing with Witness A's unrelated charges. This document outlined how Witness A aided the murder investigation and resulted in a [REDACTED] per cent reduction from his initial sentence indication.
  19. In mid [REDACTED], Witness A provided a second statement to Police, outlining that he overheard Mr Y discussing the murder, [REDACTED]. The same conditions (outlined in paragraph 16) applied.
  20. Witness B also provided a statement to Police, [REDACTED]. Witness B also received a letter of assistance in return for his statement.

### The anonymity applications

21. On 27 October 2017, the Crown applied for anonymity in relation to some of the prison witnesses, including Witness A.
22. These applications were made under sections 110,<sup>3</sup> and 112 of the Evidence Act 2006.<sup>4</sup>
23. Witness anonymity is a process that allows a person to give evidence in Court without revealing their identity. This process protects individuals from potential repercussions by those they are testifying against. Typically, this is implemented by having the witness give their testimony from behind a screen or via a CCTV system.
24. According to the Solicitor-General's Prosecution Guidelines:
 

*"A defendant's ability to confront and challenge prosecution witnesses is an important component of the right to a fair trial. An application for a witness anonymity order is, therefore, a significant step in a prosecution. The Solicitor-General must approve the making of any such application before it is filed in Court."*<sup>5</sup>
25. In line with this requirement, Officer B submitted an affidavit to the Solicitor-General in support of the Crown's application. In this affidavit, Officer B indicated that Witness A had a legitimate fear for his safety. Officer B expressed that he had no reason to doubt Witness A's honesty. As

<sup>3</sup> [Evidence Act 2006 No 69 \(as at 28 November 2023\), Public Act 110 Pre-trial witness anonymity order – New Zealand Legislation](#)

<sup>4</sup> [Evidence Act 2006 No 69 \(as at 28 November 2023\), Public Act 112 Witness anonymity order for purpose of High Court trial – New Zealand Legislation](#)

<sup>5</sup> [Prosecution Guidelines - Crown Law](#)



part of the application, the Police provided Witness A's two statements and a copy of his criminal record; both documents were heavily redacted.

26. In response to the anonymity application, the defence requested that the Court appoint an independent counsel to review the unredacted disclosure documents, as provided for under section 115 of the Evidence Act 2006.<sup>6</sup> The defence argued that the significant redactions in Witness A's two statements deprived them of the ability effectively to challenge his evidence.
27. The Court appointed an independent counsel, instructing him to determine:
- *Whether the safety of the witness or any other person is likely to be endangered.*
  - *Whether there is reason to believe that any witness has a motive or tendency to be dishonest.*
  - *Whether the witnesses' credibility can be tested without disclosure of their identity.*
  - *Whether an anonymity order would deprive the defendants of a fair trial.*
28. After reviewing the information, the independent counsel reported to the Court that:
- *Witness A genuinely and honestly feared that his safety would be endangered if his identity was disclosed.*
  - *Based on his previous convictions, Witness A tended to be dishonest.*
  - *Witness A did not appear to have any motive to be dishonest.*
  - *Witness A's credibility might not be able to be thoroughly tested without disclosure of his identity.*
  - *The nature of the evidence to be given by Witness A was such that if his credibility could not be thoroughly tested, there might be prejudice to the defendant's right to a fair trial.*
29. After this report, the prosecution withdrew the application for anonymity for Witness A. The Court then granted the prosecution time to consult with Witness A to determine if he would give evidence without anonymity.

### The meeting with Witness A

30. In [REDACTED], Officer C, the officer in charge of the investigation, and the Crown prosecutor and his junior met Witness A in a suitable interview room. Witness A was informed of the report by the independent counsel, and it was explained that it was unlikely that the Court would grant anonymity. Witness A was asked if he would give evidence without anonymity. He refused.

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<sup>6</sup> [Evidence Act 2006 No 69 \(as at 28 November 2023\), Public Act 115 Judge may appoint independent counsel to assist – New Zealand Legislation](#)

31. The Crown prosecutor did not wish for Officer C to record his or his junior's presence at the meeting.
32. Officer C authored a job sheet documenting the meeting with Witness A.<sup>7</sup> He did not record the presence of the Crown prosecutor or his junior. However, Officer C did record their presence in his notebook.<sup>8</sup>
33. Because Witness A refused to give evidence without the protection afforded by anonymity, the Crown brought a second anonymity application on 28 February 2018. Officer C's job sheet, wherein the presence of the Crown prosecutor and his junior at the meeting was not documented, was submitted to the Court to support the application. This was disclosed to the defence.
34. Mr W informed the Court several times that he believed disclosure in relation to Witness A was incomplete. Mr W specifically outlined reasons for believing that Witness A received a letter of assistance from the Police, which was not disclosed.
35. On 7 March 2018, the Crown submitted a memorandum to the Court stating:
- "Counsel for the Defendants (Mr X) and (Mr Y) have made repeated assertions that Police have refused or declined to disclose. There is no evidence to support that contention, nor is there evidence to suggest the Defendants have been prejudiced by the course of disclosure to date."*
36. At the insistence of Mr W, Officers A and B were cross-examined during a pre-trial hearing on 18 April 2018. As a result, this led to the disclosure of information that had not been disclosed to the defence, specifically relevant are:
- Witness A's letter of assistance.
  - A report by Officer A in support of a letter of assistance for Witness A.
  - Officer A's handwritten notes (and mind map) of his interview with Witness A.
  - Witness A's letters to Officer A, [REDACTED].
37. On 18 May 2018, the Court denied the anonymity application for Witness A. The Crown acknowledged that without Witness A's evidence, the prosecution could not continue, and the murder charge against Mr X was dismissed.
38. As a result, Witness A was not involved in the trial and retrial of the remaining defendants. Ultimately, the charges against those defendants were also dismissed.

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<sup>7</sup> A Police job sheet is an official document, chronologically recording action taken, information gathered, people spoken to, and exhibits seized in respect of specific events.

<sup>8</sup> A Police notebook is an official diary recording an officer's duties.



## Analysis of the Issues

### ISSUE 1: WAS OFFICER A'S NOTETAKING AND DISCLOSURE ADEQUATE?

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#### What is the nature of the complaint regarding Officer A's conduct?

39. During the early phase of the Police investigation, Officer A had an active role as the officer in charge of suspects. This entailed identifying and investigating possible suspects or persons of interest. Subsequently, although not involved in the Police investigation anymore, Officer A interviewed Witness A [REDACTED].
40. In essence, the complaint against Officer A is that he did not keep sufficient notes of his interactions with Witness A and failed to disclose his notes and the letters from Witness A before the pre-trial hearing.
41. Mr W says that Officer A initially drafted a statement after speaking with Witness A. Following further clarifications from the witness, Officer A made amendments to this statement, which he called a "live document." Mr W believes that Officer A failed to keep previous drafts of the statement. As a result, the defence could not compare the draft statements with the final statement to assess Witness A's credibility.
42. According to Mr W, the issue of not keeping thorough notes was of consequence. For example, an inculpatory remark attributed to Mr Y in the handwritten notes of Officer A was inexplicably attributed to Mr X in the final statement.
43. Mr W states that Officer A, an experienced investigator, failed to keep and disclose proper notes of interactions with a key witness, thereby hindering the defence's ability to perform their functions effectively.

#### What does Officer A say happened?

44. Officer A stated that he was initially involved in the investigation of Mr MacDonald's disappearance from [REDACTED] to [REDACTED]. At that time, it was still unknown that Mr MacDonald had been murdered. The case was treated as a missing person investigation. Officer A described it as an "extremely difficult investigation" because nobody wanted to speak to the Police, likely due to the gang-related context. By the time he left the investigation, Mr MacDonald had still not been located.

#### What happened regarding Witness A's first statement?

45. In [REDACTED], Officer A was approached by a Corrections officer who informed him that an inmate wanted to speak to a detective about a murder. Officer A then spoke with Witness A, who indicated that he had information regarding Mr MacDonald's murder. According to Officer A, Witness A was extremely concerned for his safety and that of his family, and no specific details about the murder were discussed. Officer A believed there was a significant risk to Witness A's safety, as he was incarcerated among known gang members. Therefore, it was crucial that no

one knew that Witness A was speaking to or intended to speak to Police about the murder. No notes were taken during this meeting.

46. Officer A arranged a follow-up meeting with Witness A in a suitable interview room. In late [REDACTED], Officer A met with Witness A, who expressed concerns about providing information to the Police. Officer A encouraged Witness A to share what he knew so that he could properly advise him on the options available to address his concerns. Witness A agreed and told him what he knew. Officer A stated that the meeting lasted less than an hour. He also explained to Witness A that Police could possibly support him during his upcoming sentencing by providing a letter of assistance, although the decision was not his to make.
47. Officer A says that he took notes during the meeting *"as if recording a statement"*, making a mind map and written notes. He told Witness A that he would draft a formal statement and return it for him to sign, emphasising that signing the statement would be entirely Witness A's choice, and he would not be pressured to do so.
48. Officer A told us that he drafted a statement based on the notes he had taken, his conversation with Witness A, and the letters he had sent him. Although Witness A called him from prison, those discussions did not directly pertain to what he disclosed about the murder, and no changes were made to the statement as a result of the phone calls.
49. Officer A says that he referred to the statement as a *"live"* document because it had not yet been reviewed and signed by Witness A. In his mind, until Witness A reviewed the document, confirmed that it accurately reflected his account, and signed it, the document could not be considered a witness statement. Once this process was completed, the document would no longer be a draft or *"live"* document; it would become an official witness statement. Officer A also clarified that the statement was not continuously updated with substantial changes.
50. The next day, Officer A brought the typed statement to Witness A for review. After making minor changes, Witness A agreed it was correct but refused to sign until receiving assurances regarding protection from the Police. This led to Officer A's meeting with the Crown prosecutor and subsequent issuing of the letter of assistance for Witness A (discussed in paragraphs 79-81).

#### *What happened regarding Witness A's second statement?*

51. Officer A again received a phone call to meet with Witness A in prison and arranged to speak with him in a suitable venue.
52. In mid [REDACTED], Officer A met with Witness A and took his laptop to this meeting. Witness A then disclosed further information, as detailed in paragraph 19. Officer A gave the same assurances to protect Witness A's identity as when he made his first statement. Officer A says he recorded what Witness A told him in an electronic statement on his laptop. Although he used his laptop, Officer A says he also made handwritten notes, explaining:

*"...these are just scrawlings while I'm speaking to them because I'm not a fast enough typist, so you would have a conversation about something, I would*



*clarify that, take some notes and then I'm just typing and then as I'm typing will further clarify the information."*

53. Witness A signed his second statement the following day.
54. Officer A recalls that he may have told Witness A that a letter of assistance was issued for him, but since this was several years ago, he cannot be entirely sure about the details. Officer A stated that the letter of assistance was not used as an incentive for Witness A to give a second statement. This is because the letter was authorised before Witness A requested the second meeting, and it pertained to the assistance he provided at the first meeting and does not apply to information disclosed at the second meeting.

#### *What happened regarding Officer A's late disclosure?*

55. After taking Witness A's statements, Officer A sealed them with his notes and the letters he received in separate envelopes, which he handed to another officer for safekeeping in a controlled safe at the station. Officer A authored a report outlining the actions he had taken and emailed Officers B and C, as well as their supervisor. In the report and email:
- He informed them that he had taken Witness A's statements and secured them for safekeeping.
  - He suggested retaining the documents until a security plan was decided to deal with them.
  - He also asked if the investigation team wanted him to create a secure folder to upload the documents into.
56. Officer A says he did not receive a response to the above suggestions and requests he had sent. Police records indicate that Officer A emailed the individuals again to inform them that he had uploaded the statements into the secure case folder he created with instructions on accessing them. Officer A says he returned to his "*considerable workload*" and did not further follow up with Officers B and C.
57. On 18 April 2018, after being cross-examined at the pre-trial hearing, Officer C called Officer A to ask if he had taken any notes during his conversations with Witness A. Officer A replied that he could not remember, so he retrieved the secured envelopes the following morning to review them. Officer A states: "*I was surprised and shocked to find that there were three envelopes instead of two. I had expected only the two statements because I had forgotten about the original notes.*"
58. Officer A contacted Officer C and provided the documents. He was also cross-examined on 20 April 2018, as part of the pre-trial hearing.



## Analysis

### *Was Officer A's record-keeping adequate when he took Witness A's statements?*

59. There is no dedicated Police policy for dealing with inmate admission evidence; instead, related issues are covered in various existing policies. The *'Investigative Interviewing Witness Guide'* outlines guidelines for interviewing prison informant witnesses. The same provisions for taking statements from general witnesses apply to prison informant witnesses.
60. The policy advises officers to take notes to aid their memory and prescribes that they use them to draft statements on a computer later. Once the statement is prepared, the witness should be asked to review it and make any desired corrections or additions.
61. Officer A made notes during his first and second meetings with Witness A when taking his statements. There are no requirements for officers to transcribe conversations verbatim. We are satisfied that Officer A's notes were sufficient for their intended purpose: to facilitate the drafting of a statement. Officer A adhered to the policy when he took Witness A's statements.
62. Officer A clarified the discrepancy regarding the attribution of the remark, saying it was merely an error in recording. He initially recorded that Mr Y made the remark, but Witness A corrected this, stating that it was Mr X who made the remark.
63. We have also considered whether Officer A should have saved previous iterations of Witness A's first statement, that is, a copy of each statement before any amendments to show how it eventuated in a final statement. When asked about this, Officer A stated that he was unaware of such a practice in taking witness statements. We have reviewed Police policy, and officers are seemingly not required to do this. We asked Officer A how he would handle a situation where a witness made a significant change to their statement that might raise doubts about their truthfulness. Officer A responded that he would take a separate statement, but he noted that this situation was not applicable in the current case.
64. The Court commented that Officer A was: *"...a conscientious officer who (was) unlikely to have failed to record or delete anything that could be important to the defence. There is simply no evidence to suggest otherwise."* While we accept that there is no evidence to suggest that Officer A would have failed to record relevant information, it cannot be assumed, as a matter of general practice, that all Police officers would behave similarly.
65. We draw attention to the Court's remarks, which are pertinent to the issue of recording information when interviewing incentivised prison witnesses:

*"I respectfully agree with the observations of the Chief Justice and Williams J in the passage from W (SC38/2019) v R quoted at [41] above. There is a need for additional recording safeguards (including potentially by use of an audio or visual recording device) to be in place when Police are interacting with incentivised witnesses. In the present case there is no dispute that there was neither an audio nor a video recording made. Although (Officer A's) notes are plainly not a word for*



*word record the decision in W (SC38/2019) v R had not been released when (Officer A) had his interactions with Witness A."*

66. Police have updated their policies concerning inmate admission evidence after the judgement in *W v R*.<sup>9</sup> The current policy recognises that prison witnesses can be important witnesses, but their evidence will likely be the subject of careful judicial scrutiny.

67. To this effect, policy outlines the following:

- *"The best way to maximise the quality of the evidence of investigatively important witnesses is to visually record their interview."*

but then continues to say,

- *"Police can apply to the judge for an investigatively important witness, excluding prison/cellmate witnesses, to give evidence in chief by visual record based on a number of grounds."*

68. In our view, this wording is ambiguous. In accordance with the Court's view of the matter, we recommend that policy prescribe that interviews conducted to take statements from prison informant witnesses must be audio or video recorded as standard practice.

#### *Did Officer A breach his obligations in respect of disclosure?*

69. Officer A explained that there was a delay of over five months between handing the envelopes to the officer for safekeeping and Witness A signing his first statement. After the first statement was signed, Officer A uploaded it into the secure case folder he had created. Officer A acknowledged: *"I must have forgotten that those original handwritten notes from [REDACTED] and the letters even existed."* Officer A commented: *"I felt terrible, as I don't like making mistakes; I pride myself on being a high-performing Police officer."*

70. Obviously, had he been so inclined, Officer A could have said he did not take any notes and withheld the documents; no one would have known otherwise. Officer A did not do this. He disclosed the documents he found and acknowledged his mistake. We do not hold any concerns about Officer A's integrity and accept that in light of his workload and the fact that he did not have physical control of the documents, he merely forgot to disclose them.

71. Officer A was not part of the investigation team and did not receive initial emails reminding the investigation's staff to disclose all the information they had.

72. Nevertheless, it was Officer A's duty to disclose all relevant information he had generated to the investigation's staff so this could, in turn, be made available to the Court. By not disclosing his interview notes and Witness A's letters, Officer A failed to discharge his obligations.

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<sup>9</sup> (SC38/2019)

## FINDINGS ON ISSUE 1

Officer A's notetaking was adequate.

Officer A's failure to disclose his interview notes and Witness A's letters, while not intentional, constituted a breach of his obligations.

## ISSUE 2: WAS OFFICER B'S DISCLOSURE ADEQUATE?

### What is the nature of the complaint regarding Officer B's conduct?

73. Officer B, who was second in charge of the murder investigation, was also in charge of disclosure.
74. Mr W believes Officer B knew that Witness A had received a letter of assistance for making a statement to the Police and did not disclose this evidence.
75. Mr W explains that a letter of assistance can be seen as an inducement for Witness A to provide evidence. As an inducement, it can be argued that it motivated Witness A to provide false evidence in exchange for the significant sentence reduction he had received. The existence of the letter of assistance would be crucial evidence for the defence in challenging Witness A's credibility. Mr W thinks that Police deliberately withheld this evidence from the defence to prevent them from challenging Witness A's evidence.
76. Mr W believes this because Police failed to respond to his appeals to the Court, where he submitted that Witness A received a letter of assistance that was not disclosed. It was only during the pre-trial hearing, when Officer B was cross-examined, that the existence of the letter of assistance was revealed.
77. Additionally, Officer B did not inform the Solicitor-General about the letter of assistance when he submitted an affidavit supporting the Crown's application for anonymity for Witness A. In that affidavit, Officer B stated: *"I know of no reason to believe that this witness has a motive to be dishonest in this case, considering the witness's relationship with the defendant or any associates of the defendant."* Mr W believes that this omission misled the Solicitor-General in her assessment of whether to approve the Crown's application for anonymity for Witness A.
78. The Court-appointed independent counsel was tasked with assessing if Witness A had a motive to be dishonest. However, the undisclosed letter of assistance prevented him from considering this information during his review of the disclosure documents. As a result, the independent counsel reported to the Court that *"Witness A did not appear to have any motive to be dishonest."* Mr W believes that this failure to disclose the letter hindered the Court's proper functioning.

### What was Officer A's role in respect of the letter of assistance?

79. As mentioned earlier, Witness A refused to sign his initial statement until the Police provided assurances regarding the measures they would take to ensure his protection. Officer A stated that, due to this, he needed to consult someone about what guarantees the Police could offer Witness A. At that time, both Officer C and his supervisor, Officer D, were on leave and



unavailable. Therefore, Officer A spoke with the Crown Solicitor in Palmerston North, who was handling the prosecution, to discuss Witness A's statement and his concerns.

80. In [REDACTED], Officer A reported to Officers B, C, and D via email that:

- *"(The Crown prosecutor) also believed a letter of assistance was appropriate in terms of evidence to support a current murder prosecution (Mr X) and evidence to further the investigation into the culpability of (Mr Y).*
- *I believe if provided with the protection of anonymity, he will provide compelling evidence to the Court.*
- *Can you please prepare a letter of assistance for (Witness A) prior to his (date) Court appearance?"*

81. Officer D drafted a letter of assistance and handed it to Officer A for submission to the Court dealing with Witness A's unrelated case. This Court was located in the same area where Officer A worked, which was different from the area in which the murder was investigated. Officer A delivered the letter of assistance to the Court and uploaded a copy of it into the secure case folder he had created (as outlined in paragraph 55).

#### **What does Officer B say happened?**

82. Officers B and C say that there were no discussions or strategies among Police and the Crown aimed at making things difficult for the defence, especially concerning disclosure. Officer B told us that, to the contrary, he had met with defence counsel several times to try and address issues they raised concerning access to various forms of disclosure.

83. Officer B describes the murder investigation as a *"difficult and long investigation"*, resulting in *"a massive file"* exceeding 10,000 documents. Officer B states that, at the time of the incident, the investigation had been reduced to a small team consisting of himself and three other staff managing all aspects.

84. Officer B explained that as the second in charge of the murder investigation, he was responsible not only for managing the actual investigation and directing inquiries but also for receiving and reviewing all incoming information. This included handling the subsequent disclosures related to that information. Although there was a file manager, there was no dedicated disclosure manager to take on this responsibility, making the task particularly challenging due to the sheer volume of documents he had to process. Officer C added that he delegated other Police staff to assist the inquiry team when their workloads became increasingly demanding.

85. Officer B acknowledged that Officer A had sent an initial report asking for a letter of assistance to be prepared but says that subsequently:

*"there was nothing after that confirming to me or the other members of the admin team that the letter of assistance had actually been completed, signed or even given*

*in at Court, so from that point on, I wasn't entirely aware that the document existed at all."*

86. At that time, the investigation was conducted using a different database system to manage the investigation than the one currently used. This system was still in the trial phase. Officer B stated that the investigation team found this system complex, multi-layered, and not user-friendly, especially regarding disclosure. Officer B explained that, due to the significant issues the investigation team faced with this system, the Police determined it was not suitable for their needs and decided to discontinue its use for managing investigations. Officer B says Police currently use the Investigation Management Tool (IMT) to administer investigations. The IMT would prevent many of the disclosure issues they encountered from reoccurring, including issues stemming from how Witness A's letter of assistance was dealt with.
87. Officer B acknowledged that Officer A informed the investigation team about the creation of a secure folder to store Witness A's statement. However, Officer A did not mention that he had also uploaded a copy of Witness A's letter of assistance. Officer B explained that the secure folder was separate from the main investigation file, which partly contributed to it not being reviewed for new information. Officer B expressed:

*"I understand why (Officer A) did what he did... at the top of his mind, first and foremost was that he needed to protect his witness. But for me I would have preferred if the information was on the original main investigation file."*

88. Officer B explained that, aside from Witness A, all documents related to the other prison informant witnesses were included in the main investigation file, which ensured their full disclosure.
89. Officer B explained that several months (i.e., five months) had passed since Officer A asked for a letter of assistance to be issued. When asked to prepare an affidavit to support the Crown's application for anonymity for Witness A, Officer B explained that he simply forgot about Officer A's request, and he was not thinking about the letter of assistance.
90. Officer B outlined that he was reminded of this issue only when Mr W enquired about the existence of a letter of assistance during the pre-trial hearing. Officer B then remembered the report asking for a letter of assistance to be issued and answered there may have been such a letter in existence. Officer B then made the necessary enquiries with Officer A.

## Analysis

91. We asked Officer B why he did not follow up with Officer A regarding issuing a letter of assistance after receiving the initial report on the matter. Officer B replied, *"That's a good question. I didn't. I should have."*
92. In this regard, Officer C expressed:

*"I just want you to think about the reality of one email attachment, which is not directed at me, amongst 30,000 documents and an expectation that I'm going to*



*cross-reference every single email that I'm cc'd into and think about where is that document, but not only where is that document, what underlying documents that may go with that document, and then ask for those to be searched for specifically. And I just think that that's actually unreasonable."*

93. Ordinarily, we would agree with Officer C's assessment. However, given the circumstances, Witness A was a crucial witness for the prosecution. This is evidenced by the Court record stating that after the request for anonymity was denied, *"The Crown then accepted it did not have enough evidence to prosecute Mr X and the murder charge against him was dismissed..."* The prosecution's initial commitment to seek anonymity for Witness A clearly indicated that the Crown intended to use him as a witness at trial. Considering Witness A's significance to the Crown's case, we believe it is reasonable to expect that Officer B should have recognised the importance of the letter of assistance.
94. However, it is clear that the murder investigation was complex and generated a substantial amount of documentation. In our assessment, Officer B, who was in charge of managing and directing the investigation, was also involved in managing disclosure. He was no doubt overextended and could not pay attention to detail, such as record-keeping of outstanding documents that needed to be disclosed. This role (i.e., disclosure management) should have been dedicated to the file manager, who should have been alert to the fact that a letter of assistance might be issued.
95. Officer B informed us that before this case, he had not previously prepared an affidavit in support of an anonymity application. He received assistance from the Crown prosecutor's office in drafting his affidavit. At that time, the issue of a letter of assistance was not discussed. In his affidavit, Officer B says he expressed his belief that Witness A had no reason or motive to be dishonest because he was genuinely unaware of the existence of a letter of assistance.
96. We informed Officer B that Mr W submitted a memorandum to the Court, in which he stated his belief that Witness A received a letter of assistance that was not disclosed. Officer B explained that the memorandum was not shared with the investigation team. Officer B said that if it had been, they would have conducted the necessary inquiries and ensured that the document was disclosed as it should have been.
97. Although Witness A was ultimately not called as a witness, the Crown intended to call him. As a result, the defence was entitled to relevant disclosure that could demonstrate any inducements that might be relevant to the issue of his credibility. The defence's right to this evidence only stopped after the decision was made not to call Witness A to testify; until then, the letter of assistance should have been disclosed. Additionally, the Solicitor-General and the Court-appointed independent counsel should have received the letter of assistance to ensure they could fulfil their respective duties effectively. We agree that the absence of the letter of assistance could seriously impede the proper functioning of justice. Fortunately, that did not occur.



98. Officers A and B explained why Witness A's letter of assistance was not received by the investigation team and, as a result, was not disclosed to the Court. In our assessment, this failure can be attributed to the following:
- Officer A was working independently of the investigation team.
  - The investigation team was not involved in the initial discussions about how to progress with Witness A's information, including the offer of a letter of assistance.
  - There was a lack of communication from Officer A to the investigation team, specifically concerning the letter of assistance.
  - Officer B had a high workload with multiple competing priorities. There was a notable delay between the request for a letter of assistance to be issued and the Crown's instruction for Officer B to prepare an affidavit for anonymity. These factors undoubtedly affected Officer B's ability to pay attention to detail and later recall this information.
99. As mentioned previously, Witness B also received a letter of assistance from the Police. This was properly disclosed to the defence. In our assessment, on the balance of probabilities, the failure to disclose Witness A's letter of assistance was an unintended error of circumstance rather than a deliberate act to keep information from the defence.
100. We conclude that Officer A should have informed the investigation team that he had uploaded a copy of the letter into the special case folder he had created.
101. Officer B was made aware of a potential letter of assistance in play and should have followed up with Officer A about the status of this document.

## FINDINGS ON ISSUE 2

Witness A's letter of assistance should have been disclosed to the Court.

The failure to disclose the document was a mistake rather than a deliberate act.

Officer A should have informed the investigation team that he had uploaded a copy of the letter of assistance into the special case folder he had created.

Officer B should have followed up with Officer A about the letter of assistance.

## ISSUE 3: DID OFFICER C MISLEAD THE COURT?

### What are the complaint issues raised in respect of Officer C?

102. As outlined in paragraphs 30-33, Officer C, the Crown prosecutor, and his junior met with Witness A [REDACTED]. The Crown prosecutor did not want Officer C to record their presence at the meeting. While Officer C did create a job sheet documenting the meeting, he did not include the presence of the Crown prosecutor and his junior in that record. Officer C did, however, record their presence in his notebook, which was later disclosed to the defence during the costs hearing.



103. Mr W believes that Officer C's failure to include this information in a formal record misled the Court, undermined public trust in the Police, and created a dangerous precedent that threatened the integrity of the criminal disclosure process.
104. Mr W says that Officer C was instructed by the Court to obtain an affidavit from each Police officer involved in the investigation. This affidavit needed to certify that they had disclosed all discoverable material in their possession. Officer C submitted an affidavit claiming that he had complied with the Court's instructions. Mr W believes that by not disclosing his own handwritten notes from the meeting, Officer C breached the Court's order.
105. Mr W expressed concern that Officer C's conduct could have been an attempt to pervert the course of justice.

#### What does Officer C say happened?

106. In [REDACTED], the Crown prosecutor, his junior, and Officer C met with Witness A, who was visibly agitated. [REDACTED] Officer C tried to calm Witness A and establish some rapport by asking how he was doing. Witness A talked about his cell arrangements and attending a parole hearing. Officer C stated that no discussions, promises, or incentives were offered to Witness A in exchange for providing evidence in Court without anonymity.

107. Officer C states that after the meeting, the Crown prosecutor noticed him writing down his and his junior's names as attendees in his notebook. The Crown prosecutor appeared annoyed and told Officer C that it was inappropriate for him to make notes about him. In response, Officer C explained that it was his personal notebook and that he had the right to record whatever he wanted in it. Officer C recounts:

*"So, then it went to-and-fro a little bit, and (the Crown prosecutor) said something like he had the right to be involved in a conversation with (Witness A). It was not a problem, but what will happen is the defence lawyers will make it a problem. They were then going to have to go to Court and have a hearing where he would say this... (The Crown prosecutor) quoted some legislation and said, me doing this was just creating a problem and would be wasting Court time."*

108. Officer C stated that the Crown prosecutor instructed him to write a job sheet in order to present it to the Court to move the case forward. According to Officer C, the Crown prosecutor guided him on how to compose the job sheet and referenced the legislation again, repeating that it was not the role of the Police to report what the Crown did. Although Officer C could not recall the specific legislation, he found the Crown prosecutor's explanation reasonable. According to Officer C, the Crown prosecutor did not explicitly tell him not to record his name in the job sheet. However, he understood that this was what the Crown prosecutor wanted.
109. Officer C sent the Crown prosecutor a copy of the job sheet afterwards, asking if it conveyed what he wanted, to which the Crown prosecutor replied: *"It captures well what was said."* Officer C stated that he did not believe it was wrong to omit the presence of the Crown

prosecutor and his junior at the time, saying: *"I didn't think for a second that I was doing anything illegal or anything untoward because I wouldn't have, I wouldn't have had a part of it otherwise."*

110. Officer C expressed: *"In hindsight, I can see that omitting the information was unnecessary... This fell below my usual standards. I should not have followed the instructions given. I regret my actions."*

## Analyses

### *Did Officer C's conduct mislead the Court?*

111. The Court granted the Crown time to determine whether Witness A would be willing to give evidence without the need for anonymity. Officer C explained that, in his view, the purpose of the job sheet was to inform the Court that Witness A was not prepared to testify without anonymity. According to Officer C, the key issue in this case was whether Witness A would provide evidence, and this information was recorded appropriately. In Officer C's assessment, the Crown prosecutor's presence at the meeting did not impact, nor was it materially relevant to this issue.
112. We asked Mr W about the significance of this omission for the defence's case. He explained that if he had known about the presence of the Crown prosecutor and his junior at the meeting, he would have cross-examined each party separately to determine what was discussed. Mr W believes the Crown prosecutor wanted to prevent this by instructing Officer C not to record his presence at the meeting.
113. In respect of this issue, the Court observed:

*"The Crown prosecutor's instruction to (Officer C) to omit reference to his (and his junior's) presence at the meeting with Witness A from the job sheet was wrong, and a bad failure of judgement. The reasons later given for it (to avoid the possibility of being called as a witness) are certainly no justification. And I do not doubt that (Officer C) was put in a truly invidious position by the instruction; I am not therefore prepared to attribute discrete blame to him for following it. Crown prosecutors are officers of the Court and, in general terms, Police should be entitled to assume that a Crown prosecutor would only give them instructions that do not breach their obligations as such."*

114. As already said, Officer C's job sheet was disclosed to the defence, who had the opportunity to question him about the meeting with Witness A to clarify who was present and what was discussed.
115. The Court has found that the Crown prosecutor's instruction to Officer C was improper. Nevertheless, it is clear that Officer C accepted the Crown prosecutor's explanation for his instruction; consequently, Officer C did not believe the instruction was patently wrong, and complied.



116. As the High Court concluded, there is no evidence that Officer C was motivated by any conscious wish to mislead the Court or the defence when he failed to record the presence of prosecuting counsel at the interview. Rather, he was misguidedly complying with the direction of the Crown prosecutor. That, of course, does not necessarily mean that Officer C did not, from a legal perspective, have the necessary intention to commit an offence. However, in our assessment, any criminal charge based on his actions would fail, having regard to the circumstances as described.
117. We conclude that Officer C should not have omitted to record the presence of the Crown prosecutor and junior at the meeting in his job sheet. However, Officer C did not consciously attempt to mislead the Court.

*Should Officer C's notebook have been disclosed earlier?*

118. Mr W states that Officer C submitted an affidavit claiming he complied with the Court's instructions and certified that he disclosed all relevant information he had. However, he failed to disclose his notebook, which recorded the presence of the Crown prosecutor and his junior at the meeting.
119. Officer C asserts that this is factually incorrect because he did not sign an affidavit stating that disclosure was complete. Officer C explained that his affidavit outlined the processes that they had undertaken to identify disclosure material, and the disclosure process itself.
120. Officer C clarified that he was not personally involved in the physical disclosure of the documents, so he could not confirm the specific contents that were disclosed. He stated that he made all five of his notebooks available for disclosure. However, since the administration system used for this process has been decommissioned, there is no way to determine exactly what from the notebooks was disclosed.
121. It is correct that Officer C's affidavit did not explicitly state that he had disclosed all relevant information he possessed. It outlined the steps he took to gather information from others involved in the investigation. Thus, Officer C did not submit a false affidavit to the Court and commit perjury.
122. We have also reviewed the disclosure schedules, which are still accessible. These schedules indicate that Officer C's notebooks were disclosed after the date of the meeting. However, they do not specify which notebooks or pages were included. Our inquiries with the Police have revealed that, due to the decommissioning of the specific administration system, it is not possible to trace the disclosure references to determine whether the relevant notebook and pages were disclosed.
123. Further, because Officer C was not involved in the physical disclosure process, it cannot be said that he intentionally withheld or failed to disclose the notebook entry recording the Crown prosecutor's presence at the meeting.
124. In the circumstances, we are unable to make a finding on this issue.



## FINDINGS ON ISSUE 3

Officer C should not have omitted to record the presence of the Crown prosecutor and his junior at the meeting in his job sheet.

Officer C did not mislead or attempt to mislead the Court.

Officer C's conduct did not amount to an attempt to pervert the course of justice.

Officer C did not say in his affidavit that he disclosed all the information he had.

We are not in a position to make a finding on the issue of disclosure of Officer C's notebook.

125. Section 31 of the Independent Police Conduct Authority Act 1988 states that the Authority should not make adverse comments about any individual unless that person has been given an opportunity to respond. In line with the principles of natural justice, copies of our draft report were provided to the Commissioner of Police and the involved Police employees, who were invited to submit their feedback regarding the report's findings.
126. We acknowledge all submissions received and appreciate the contributions of those who provided feedback. We have carefully considered all submissions. Where we found common ground, we have amended our report accordingly. Submissions that we do not agree with have been considered but are not detailed in the report.

## Subsequent Police Action

127. The Police have conducted a concurrent employment investigation. One of the officers is not employed by the Police anymore, and the Police investigation was limited to the conduct of the two remaining staff members.
128. We have proactively reviewed the Police investigation and agree that it adequately covered the issues of concern. We did not agree with the investigation's findings and outcome. We have conveyed our view on this to the Commissioner of Police.



## Recommendations

129. We recommend that Police:

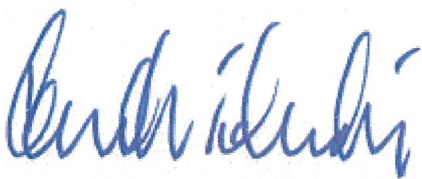
- 1) prescribe in policy that interviews conducted for the purpose of taking statements from prison informant witnesses should be audio or video recorded as standard practice.

130. Since this incident, the Solicitor-General has issued guidelines for the use of inmate admissions evidence which require prosecutors and Police to consider relevant factors such as:

- a prisoner's motive for providing information;
- the circumstances of alleged interactions;
- the availability of confirmatory evidence;
- the opportunity to fabricate evidence; and
- the character of a witness.

131. Detective supervisors are now required to review inmate admissions evidence against these guidelines in homicide investigations.

132. We believe that the current guidelines and policy with respect to inmate admission evidence would prevent or mitigate the risks that presented in this case. Consequently, we do not propose, currently, to make further recommendations in this regard.



**Judge Kenneth Johnston KC**

Chair  
Independent Police Conduct Authority

15 April 2025

IPCA: 24-21613

# About the Authority

## WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

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

We are not part of the Police – the law requires us 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. We do not answer to the Police, the Government or anyone else over those findings. In this way, our 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?

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Under the Independent Police Conduct Authority Act 1988, the Authority receives and may choose to investigate:

- complaints alleging misconduct or neglect of duty by Police;
- complaints about Police practices, policies and procedures affecting the complainant in a personal capacity;
- notifications of incidents in which Police actions have caused or appear to have caused death or serious bodily harm; and
- referrals by Police under a Memorandum of Understanding between the Authority and Police, which covers instances of potential reputational risk to Police (including serious offending by a Police officer or Police actions that may have an element of corruption).

The Authority's investigation may include visiting the scene of the incident, interviewing the officers involved and any witnesses, and reviewing evidence from the Police's investigation.

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

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This report is the result of the work of a multi-disciplinary team. 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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