

Death of a young woman following a Police pursuit in Porirua

INTRODUCTION

1. At about 8.37pm on Saturday, 21 May 2016, Mr X lost control of a Lexus while fleeing from Police on Kenepuru Drive in Porirua, Wellington and drove through a fence and into a tree. The passenger, Ms Y, died as a result of the collision.
2. The Police notified the Independent Police Conduct Authority of the pursuit and the Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings.

BACKGROUND

Summary of events

Mr X comes to Police attention

3. At about 8.30pm on Saturday, 21 May 2016, Officer A¹, a sergeant, who was alone and in a marked patrol car, was parked facing north on Titahi Bay Road. He was talking on his cell phone to one of his team members when he observed Mr X's car, a white Lexus, drive into the VTNZ/Holden dealership car park opposite him and park.
4. Mr X got out of his car and walked across the front of the Holden dealership. Officer A initially thought that Mr X might have been a security guard, but the car did not look like it belonged to any security companies that he knew were operating in Porirua and he did not recognise Mr X.
5. Officer A told the Authority that he then wondered whether Mr X could be looking at the cars but thought his actions appeared suspicious given the time of night and location.

¹ Officer A is a gold class driver and was driving a category A marked Police car, meaning he is authorised to engage in urgent duty driving and pursuits.

6. Officer A decided to take a closer look at Mr X's car and noticed that Mr X had got back in it. As he was driving into the car park, he asked the Central Communications Centre (CentComms) to run a vehicle query (QVR) on it. Officer A was not aware at this point, nor for the duration of the pursuit, that Ms Y was a passenger.
7. As CentComms was running the vehicle query, Officer A drove past Mr X and parked nearby in the car park. Mr X then started his car and exited the car park the same way he had driven into it. He headed south on Titahi Bay Road towards the North City Shopping Centre. As he did so, the vehicle query came back; that the car should be a green Lexus, not a white one; that the registration and warrant had expired; and that the car was registered to a woman at a Tokoroa address.
8. Officer A told the Authority that he decided he wanted to talk to Mr X, because he believed that the car might have been stolen or that Mr X was carrying something illegal, so he followed him.

Manner of driving before pursuit

9. Officer A radioed to see if other Police cars in the area could intercept Mr X. One unit was patrolling in the opposite direction and another was in Reiha St², so neither was able to assist.
10. The speed limit from this part of Titahi Bay Road to just before the Hagley Road roundabout is 70kph. Officer A estimated that Mr X was driving at between 70 and 80kph and that he was 200 metres behind Mr X.
11. Mr X did not slow down when the speed limit dropped to 50kph at the Hagley Road roundabout and did not stay in his lane as he went through the roundabout. Officer A saw him 'straight line'³ through the intersection without indicating any lane change. Officer A decided he needed to stop Mr X and speak to him about the manner of his driving and his speed.
12. He told the Authority that he activated his lights and siren at this point and accelerated to catch up with Mr X. He said, "*I've put my lights and siren on, more so to warn, because there's another couple of cars around, more so to warn them than indicate for him to stop because I was coming through at speed so I was wanting to warn others that I was coming through and to alert them to my presence*".
13. Mr X was not visible at this time, having gone around a bend. Before the roundabout at Walton Leigh Avenue, Officer A saw Mr X driving over Mungavin Bridge towards a roundabout that allows access to the motorway (north and south). Officer A estimated that Mr X was about 200 to 300 metres in front of him at this point.

Pursuit/Central Communications Centre

14. At this point Officer A realised that Mr X had seen him and was actively attempting to avoid him. At 8.36:21pm Officer A called CentComms to notify them of the '*failing to stop*'.

²This is past where the crash eventually happened.

³Instead of following the curve of the lane he drove straight through the intersection, cutting across the lanes.

15. After Officer A called in the pursuit, the dispatcher⁴ asked for the officer's location and, as required by Police policy, gave Officer A the pursuit warning: *"if there is any unjustified risk to any person you are to abandon pursuit immediately, acknowledge."*
16. Officer A acknowledged the pursuit warning, *"yep, copy that, acknowledge that"*. However, Officer A did not advise CentComms of his vehicle classification and driver status and CentComms did not request this information.
17. When the pursuit was called in, the dispatcher pushed the pursuit controller's button. The pursuit controller⁵, Officer B, an inspector, almost immediately went to the dispatcher's desk and 'plugged in' to monitor the pursuit.
18. The dispatcher asked Officer A about the driving conditions on Kenepuru Drive and he said *"nil vehicles, well, minimal vehicles, I'm doing 50k, doing 70 over 50 at this stage, he's pulling away"*.
19. Officer A told the Authority that he thought at this point that he had lost sight of Mr X and that he might have driven north onto State Highway 1. He said he stopped at the roundabout entrance at Mungavin roundabout.
20. Ms T was driving around the Mungavin roundabout in front of Mr X and about to head south on the on-ramp when she heard Mr X's car crash into the barrier and end up facing in the wrong direction. She pulled over on the opposite side of the roundabout from Officer A, wound down her window and saw Mr X's car drive through the roundabout and back over the bridge the wrong way.
21. Mr X then drove towards Officer A, still on the wrong side of the road. Officer A said he had to take evasive action. He then continued around the roundabout the correct way to continue pursuing Mr X.
22. Officer A told the Authority that he did not know at the time that Mr X's car had hit the barrier but he did wonder why Mr X's car had ended up facing in the wrong direction.
23. As Officer A drove back over the bridge, he saw Mr X drive back to the Walton-Leigh roundabout and go around it the wrong way. Mr X then drove down Kenepuru Drive, heading south.
24. The entire length of Kenepuru Drive has a 50kph speed limit and Mr X accelerated away from Officer A. The officer said that Mr X would have been about 300 metres in front of him at this stage. Officer A told the Authority that he kept his speed at 70kph.

⁴ The dispatcher advises the shift commander when a pursuit has commenced, maintains radio communications with the units involved in the pursuit, obtains situation reports from the pursuing units and communicates instructions from the pursuit controller. The dispatcher is also responsible for communicating the pursuit warning to the lead pursuit unit.

⁵ The pursuit controller supervises the pursuit and co-ordinates the overall response, including the appropriate tactical options. In most cases, the pursuit controller role is taken on by the shift commander in the Communications Centre.

25. Ms R was driving in front of Mr X on Kenepuru Drive with her passenger, Ms S. Due to Mr X driving quickly up behind her, Ms R pulled over to avoid being hit. She estimated Mr X was driving about 100kph. She saw Mr X pull out as if to try and overtake her but, because there was an oncoming car, he pulled back into the lane. Ms R said that the Police car was *“a long way behind”* Mr X and that it passed her *“more at a normal speed”*.
26. Ms S confirmed that Ms R pulled over to the left. She witnessed Mr X’s car drive past them at speed and then drift back into the left lane because there was an oncoming car. Ms S thought that the Police car went past about three to four seconds after the crash.
27. Officer A told the Authority that he lost sight of Mr X as Mr X went around the corner by the Bowlands bowling centre. Officer A said that he made the decision that, if he could not see Mr X’s car ahead of him when he went around the next bend, he would abandon the pursuit, as the speed he would need to travel to catch up with him would be too dangerous.
28. He told the Authority that during the short pursuit, *“I’ve probably reassessed whether I should be carrying on with it three or four times in that short amount of time”*.

Crash

29. As Mr X negotiated a relatively moderate right-hand bend, he lost control of the car, tried to correct and ended up on the wrong side of the road.
30. The car slid into a fence in front of the Institute of Environmental Science and Research (ESR) and Ms Y was trapped against a tree. Officer A rounded the corner but did not see Mr X’s car until he was almost next to it. Officer A then notified CentComms of the crash at 8.37:30pm.
31. Officer A found both Ms Y and Mr X unconscious and trapped in the vehicle. He immediately radioed for an ambulance and fire engine to attend the scene.
32. Ms Y was helicoptered to hospital but died during surgery at about 2am. Mr X received facial fractures and spinal injuries which required hospitalisation.
33. The pursuit lasted 69 seconds.
34. There was only about 24 seconds between the time the pursuit controller plugged in and the crash, which gave Officer B very little time to supervise the pursuit and relay any instructions to Officer A via the dispatcher.

Siren

35. Officer A stated in both his Police and Authority interviews that when he arrived at Mungavin roundabout and lost sight of Mr X, he stopped and turned off his siren to see if he could hear Mr X’s car.

36. In his Police interview, he stated that when he lost sight of Mr X on Kenepuru Drive, *“I cannot recall at this stage if my siren was on or off”*. In his interview with the Authority, he stated that after he left the Mungavin roundabout, *“I just can’t recall whether it went back on or not”*.
37. He later told the Authority that he recalled having his siren on. However, the siren cannot be heard on the Police audio recording of the pursuit. The dispatcher also told the Authority that normally you would hear the siren going in the background in a pursuit but she could not this time.
38. Independent witnesses said that they remembered seeing the Police car’s lights but could not recall hearing a siren. Ms R said, *“the Police car had its red and blue lights flashing. I’m not sure if the siren was on, I’m pretty sure it wasn’t”*.
39. Ms S said, *“the Police car had its lights flashing, but no sirens”*. Ms T reported that *“the cop definitely had flashing lights on. I can’t say yes if it had the siren on”*.

The driver

40. After the incident, it was determined that, at the time of the pursuit, Mr X had a warrant to arrest for failing to appear in Levin District Court on 18 May 2016 in relation to two charges of driving while suspended (third or subsequent offence), receiving property, theft and two charges of failing to answer District Court bail. He also had about 150 previous convictions. The Lexus’ Warrant of Fitness expired on 25 December 2015 and the registration expired on 1 January 2016. Stolen licence plates were found in the boot of Mr X’s car.
41. The toxicology results on Mr X’s blood sample showed the presence of methamphetamine, cannabis, tramadol (pain relief) and lignocaine (local anaesthetic).
42. Mr X was charged with reckless driving causing death. He appeared in Court on 22 March 2017 and pleaded guilty. He was sentenced on 19 May 2017 to five years imprisonment.

Crash analysis

43. A Police crash investigator examined the scene. The speed calculations done for the purposes of the crash report indicate that Mr X was travelling at a speed of no less than 107kph at the time of the crash.
44. Speed was recorded as the cause of the crash.

LAWS AND POLICIES

Power to require a driver to stop

45. Section 114 of the Land Transport Act 1998 provides that a Police officer may signal or request the driver of a vehicle to stop the vehicle as soon as practicable and provide their details.

Fleeing driver policy

46. The overriding principle of the Police fleeing driver policy is that: “Public and staff safety takes precedence over the immediate apprehension of the offender”.
47. During a pursuit, warning lights and siren must be simultaneously activated at all times. The Communications Centre must also be advised immediately if there is a fleeing driver and that a pursuit has been initiated.
48. The fleeing driver policy outlines that the communication procedure for relaying speed is: “{call sign} report speed, posted speed limit and manner of driving”.
49. Officers are required to carry out risk assessments before and during a pursuit in order to determine whether the need to immediately apprehend the fleeing offender is outweighed by the potential risks of a pursuit to the public, the occupants of the pursued vehicle, and/or the occupants of the Police vehicle.
50. Unless there is an immediate threat to public or staff safety, a pursuit must be abandoned if:
 - 50.1 the identity of the offender becomes known,
 - 50.2 the distance between the primary unit and the offending vehicle is too great,
 - 50.3 any of the risk assessment conditions change,
 - 50.4 there is a sustained loss of contact between the primary units and the Communications Centre.

ISSUES CONSIDERED

51. The Authority's investigation considered the following issues:
 - 1) Was Officer A justified in commencing a pursuit?
 - 2) Did Police comply with policy in respect of communication during the pursuit?
 - 3) Was Officer A's speed and manner of driving during the pursuit appropriate?
 - 4) Did Officer A appropriately assess the ongoing risks and consider abandonment during the pursuit?

THE AUTHORITY'S FINDINGS

Issue 1: Was Officer A justified in commencing a pursuit?

52. After following Mr X for some distance along Titahi Bay Road, Officer A saw him maintain his speed of 70-80kph when the speed limit dropped from 70kph to 50kph just before the Hagley St

roundabout. The officer then saw him 'straight line' through the roundabout without indicating any lane change.

53. Officer A wanted to stop Mr X and talk to him about his speed and manner of driving. At the Walton-Leigh roundabout, Officer A was satisfied that Mr X was aware that he wanted him to stop but that he was actively evading him. He initiated the pursuit at 8.36:21pm.
54. Due to the nature of Mr X's driving, Officer A was justified in wanting to obtain his details under section 114(3) of the Land Transport Act 1998. When Mr X did not stop and it was clear that he was evading Police, Officer A was justified in initiating the pursuit.

FINDING

Officer A was justified in commencing a pursuit.

Issue 2: Did Police comply with policy in respect of communication during the pursuit?

55. As required by policy, Officer A was given a pursuit warning by the dispatcher and he acknowledged it. He provided CentComms with reports on speed, direction of travel and traffic conditions.
56. However, Officer A did not advise CentComms of his vehicle classification and driver status and CentComms did not request this information, as is required by policy.
57. Officer A notified Cent Comms that Mr X's car was "*heading back towards Porirua on the wrong side of the road, heading towards the BP, Mungavin Avenue*". He did not tell them that Mr X had hit the barrier at the Mungavin roundabout, as he said that he did not know this at the time.
58. As the pursuit only lasted 69 seconds, there was not enough time for Officer A to fully describe the driving conditions, or for the pursuit controller to provide sufficient oversight while the pursuit was in progress. Moreover, Officer A was alone, so had to drive and communicate with CentComms at the same time.
59. When the dispatcher asked Officer A what the driving conditions were like he replied, "*minimal vehicles, I'm doing 50k, doing 70 over 50 at this stage, he's pulling away*", which he said meant he was doing 70kph in a 50kph area.
60. However, the pursuit controller and the dispatcher advised the Authority that they interpreted Officer A's communication to mean that he was advising that he was driving at 50kph and Mr X was driving at 70kph.
61. This resulted in CentComms having inaccurate information about not only Officer A's speed but also Mr X's speed; Officer A was trying to convey that he was going 70kph but CentComms believed Mr X was going 70kph, when he was going significantly faster.

62. The Authority considers that this miscommunication between Officer A and CentComms was an unfortunate mistake. Officer A tried to correct his original communication, from “*I’m doing 50k*” to “*doing 70 over 50*”, but it was misunderstood.
63. Officer A quickly notified the dispatcher that the Lexus had crashed and asked for fire and an ambulance to attend.

FINDING

The communication was generally conducted in accordance with policy and was well managed by the dispatcher.

Issue 3: Was Officer A’s speed and manner of driving during the pursuit appropriate?

Speed and manner of Driving

64. The Police fleeing driver policy requires officers to drive in a manner that prioritises public and Police safety.
65. Officer A, and the vehicle he was driving, were authorised to engage in pursuits. Officer A told the Authority that he advised CentComms that he was doing 70kph in a 50kph zone and that he estimated Mr X’s speed at around 140-150kph. Officer A also told the Authority that he “*sat at about 70kph*” throughout the pursuit.
66. CCTV footage from a garage close to the crash site shows that Officer A was about six to seven seconds behind Mr X at the time of the crash, which indicates that he was not travelling as fast as Mr X and did not put undue pressure on him.

Siren

67. The fleeing driver policy (see paragraph 47) requires warning lights and siren to be “*simultaneously activated at all times*” during a pursuit.
68. In accordance with policy, Officer A kept the Police car’s red and blue flashing lights activated at all times.
69. The dispatcher told the Authority that she could not hear the siren and that normally one would hear the siren going in the background.
70. Independent witnesses reported that, while they noticed the Police vehicle’s lights, they did not recall hearing a siren.
71. Officer A told the Authority that when he lost sight of Mr X at the Mungavin roundabout, he stopped and turned off his siren to see if he could hear Mr X’s car. He said that after he left the Mungavin roundabout, he could not remember if he turned his siren back on.

72. The evidence supports a finding that Officer A did not have his siren activated from the Mungavin roundabout to the crash site.

FINDING

While Officer A's speed and manner of driving were appropriate, he did not have his siren activated at all times as is required by policy.

Issue 4: Did Police appropriately assess the ongoing risks and consider abandonment during the pursuit?

73. As required by the fleeing driver policy, pursuing officers and pursuit controllers must continually assess the risks involved during a pursuit. If the risk to the safety of the public and Police outweighs the immediate need to apprehend the driver, Police must abandon the pursuit.
74. Officer A stated that throughout this short pursuit he undertook risk assessments of Mr X's speed and manner of driving and weather and traffic conditions. Officer A was on Kenepuru Drive when he received the pursuit warning from CentComms. There was only 45 seconds from the time of the warning until the crash.
75. Officer A told the Authority that he was continually reassessing the risks. He said he was considering abandoning the pursuit when he lost sight of Mr X, on Kenepuru Drive, and was just about to do so when he discovered the crash.
76. Given the short duration of this pursuit, the Authority is satisfied that Officer A carried out an appropriate risk assessment and turned his mind to abandoning the pursuit on more than one occasion. Officer A told the Authority that he was not aware at the time of Mr X's dangerous driving, when he hit the roundabout barrier.
77. As there were only about 24 seconds from the time the pursuit controller 'plugged in' until the crash, he had very little time to have any input or assess the risks.

FINDING

Officer A assessed the risks and considered abandoning the pursuit, particularly when he lost sight of Mr X and it became clear that Mr X's driving could pose a risk to other road users. However, the crash occurred before Officer A had an opportunity to do so.

CONCLUSIONS

78. The Authority finds that:

78.1 Officer A was justified in commencing a pursuit;

78.2 Officer A should have activated his siren for the full duration of the pursuit, and

78.3 In other respects, Officer A and CentComms complied with law and policy to the extent practicable.



Judge Sir David Carruthers

Chair
Independent Police Conduct Authority

20 July 2017

IPCA: 15-2156

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 Sir David J. Carruthers.

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.



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