

- 2) Did Constable A's actions in relation to this matter result in an actual or perceived conflict of interest?
- 3) Did Constable B's actions in relation to this matter result in an actual or perceived conflict of interest?

THE AUTHORITY'S FINDINGS

Issue 1: Did Officer A fail to investigate Mr Z's concerns about poaching on his land?

7. Officer A and Mr Z first spoke in April 2017. Officer A told the Authority he was off duty at the time and was doing some maintenance to the Police-owned house where he was living. He had recently moved to the community and started work as the sole-charge officer at the local one-person Police station. Mr Z introduced himself and told Officer A about the ongoing problem he was having with people coming onto his property without permission and poaching. Officer A said Mr Z asked him to watch out for this kind of activity.
8. Officer A said he gave advice about actions Mr Z could take to deter poachers, such as putting up signs and cameras on his land.
9. Officer A did not enter any information onto the Police database regarding his discussion with Mr Z. He told the Authority he did not think this was necessary because he believed his interaction with Mr Z had been a general conversation about an ongoing issue, rather than a report from Mr Z of a specific offence. He explained that, being new to the area, he wanted to hear from members of the community about the main issues occurring there.
10. Officer A said he had previously set up anti-poaching community watch networks elsewhere and hoped to do the same in this community.
11. Officer A approached neighbouring landowners and made them aware of Mr Z's concerns. Officer A advised landowners to be mindful of this activity and to report anything suspicious to him. He also spoke to a representative from the local hunting club about the issue. Over the following weeks, he provided Mr Z with further advice regarding the matter by email. At the end of the hunting season that year, poaching-related issues on Mr Z's land ceased.
12. In April 2018, Mr Z resumed email communication with Officer A about the issue of poaching as there had been further incidents on his land.
13. On 7 May 2018, Mr Z emailed Officer A a detailed statement regarding two specific incidents of poaching on his land, occurring on 15 and 26 April 2018. He provided images captured by cameras installed on his land and the names of two suspects. Officer A told the Authority this was the first time Mr Z made an actual complaint about specific instances of poaching activity since first mentioning his concerns about this in April 2017.
14. Mr Z's statement explained that poaching on his land had been a long-standing problem. It had caused his family to fear for their safety and the safety of anyone else on their land who could

be accidentally shot by someone. He listed the efforts he and his family had made to protect their property and deter poachers.

15. Officer A was on rostered days off on 7 and 8 May 2018. He told the Authority that when he was back on duty and received Mr Z's report, he had several other urgent operational matters to attend to, such as a fatal road collision out of town. He was therefore unable to deal with Mr Z's report immediately.
16. On either 20 or 21 May 2018, Officer A reviewed Mr Z's report and submitted a request for this to be formally entered into the Police database for investigation. He was scheduled to go on leave for two weeks, so he asked staff from another Police station to progress the matter in his absence and to update Mr Z.
17. When Officer A returned from leave on 4 June 2018, Mr Z told him he had not received any updates. Officer A found that the matter had not been progressed and told Mr Z he would ensure that this happened. He subsequently provided updates to Mr Z by email on 29 June and 10 July 2018. Officer A told the Authority that a number of operational duties significantly impacted upon his priorities and prevented him from actively progressing Mr Z's report.
18. Police became aware of Mr Z's concerns about Officer A's handling of the matter on 23 July 2018 via a third party and reassigned the file to another officer. Police later charged two men with unlawful hunting in relation to the incidents Mr Z reported.

FINDING ON ISSUE 1

Officer A did not fail to investigate Mr Z's concerns about poaching on his land. The delay in him progressing an investigation once an actual complaint was received was not unreasonable in the circumstances.

Issue 2: Did Constable A's actions in relation to this matter result in an actual or perceived conflict of interest?

19. In April 2017, when Mr Z was telling Officer A of his concerns about poachers, he invited Officer A to hunt on his land. Mr Z told the Authority that he thought this would enable Officer A to familiarise himself with the layout of the property, and that this would assist with identifying and prosecuting poachers.
20. Officer A told the Authority that when Mr Z invited him to hunt on his land, Mr Z said to him that he would be able to "keep an eye on" the property. Officer A explained that he is not a hunter, so he declined this offer. He suggested to Mr Z that he could put him in touch with some experienced hunters who had good firearms practice, would respect his land, and would pass on any information about poaching or other suspicious activity.
21. Officer A told the Authority that he often receives offers from landowners to hunt or fish on their land and that this is common in rural areas. Sometimes these are just friendly offers; other times they are motivated by concerns about poaching or a type of animal causing problems for farmers. Officer A said he always declines but offers to pass on details of others who are keen

hunters, appropriately skilled, and demonstrate safe firearms practice, some of whom are current or former Police employees.

22. Officer A referred Mr Z to Mr Y, a former Police officer and experienced hunter who had previously helped Officer A and other local landowners with poaching issues.
23. Mr Z told the Authority that he had reservations about giving an acquaintance of Officer A permission to hunt on his land. Mr Z felt that his ability to control what took place on his property and who was permitted access would be undermined.
24. Following a brief conversation between Mr Z and Mr Y, it was established that Mr Y would be unable to undertake the type of hunting he normally engaged in on Mr Z's land. Mr Z therefore declined to enter into an arrangement with Mr Y and had no further dealings with him.
25. Officer A later gave Mr Z's contact details to Officer B. Officer A told the Authority that he had made Mr Z aware of his intention to contact Officer B as part of his overall strategy to address Mr Z's issues. Officer B subsequently contacted Mr Z using his Police email account, and this will be discussed further in Issue 3.
26. The Authority considered whether the actions of Officer A, in referring landowners who had invited him to hunt on their land to third parties, some of whom are Police, resulted in an actual or perceived conflict of interest.
27. Police policy states that a perceived conflict of interest arises where an outside observer might perceive that *"our other interests may interfere with our ability to be impartial, objective and independent, whether or not that is the case."*³ The policy warns officers that *"the perception of a conflict of interest can be just as damaging to reputation as an actual conflict"*. The policy states that all actual, potential, or perceived conflicts of interest must be declared to a supervisor and appropriately managed to ensure that the integrity of their investigations and actions is maintained and ensure public trust and confidence.
28. In considering whether Officer's A's actions resulted in an actual or perceived conflict of interest the Authority considered whether Officer A was, or appeared to be, using information obtained through his role as a Police officer to arrange preferential treatment for other Police employees and their associates in gaining access to land to hunt, and whether he derived any personal benefit from these arrangements.
29. The Authority found no evidence that Officer A derived any personal benefit from any such arrangement.
30. Officer A explained that hunting opportunities are *"a conversation piece"* in rural areas and gave examples of reasons landowners have invited him to hunt on their land.⁴ He also told the Authority that he refers landowners to hunters who are members of the public and not just current or former Police employees. In situations where poaching is a concern, he said he will recommend someone who he believes is appropriate and will pass on information about

³ See paragraphs 46-48

⁴ See paragraph 21

anything of concern so that he can take appropriate action. For these reasons, he said he had never been concerned that his actions might be perceived as him obtaining preferential treatment for Police and their associates.

31. In the Authority's view, Officer A's actions could result in a perceived conflict of interest. However, the Authority is satisfied that his actions were reasonable in the circumstances described and practical in terms of fulfilling his role as sole-charge Police officer and the wider objectives of New Zealand Police. The possibility of a perceived conflict of interest arising is a result of Officer A's role as the sole Police contact in a geographically large area and his development of networks designed to increase his profile and enhance his ability to address the community's concerns. This is further compounded by an understandable lack of awareness of conflict of interest issues on the part of members of the public. What appear to be reasonable requests for assistance can place an officer in a difficult position, requiring them to strike a balance between the need to maintain law and order, the establishment and reinforcement of community ties, and the avoidance of situations that may cause others to question their impartiality.
32. Police policy acknowledges that conflicts of interest will occur more often for those living and working in small communities "where everyone knows everyone". However, it does not discuss the implications of this in terms of the practicality of reporting each actual, potential, or perceived conflict of interest to a supervisor or how to manage these when officers are working alone in a small community.
33. It would be unreasonable to expect Officer A to formally report all potential or perceived conflicts of interest of this nature, and strategies suggested by policy for managing these would be impractical in this setting.
34. The Authority is currently undertaking a review of issues relating to the policing of small communities in New Zealand. The issue of conflicts of interest has been identified as a main area of focus. A more detailed discussion of the ways in which Police can best support officers working in these environments, including any recommendations for changes to policy, will be included in the Authority's report on its findings at the conclusion of that review.

FINDING ON ISSUE 2

Constable A acted appropriately, notwithstanding the possibility of a perceived conflict of interest that arose because of the nature of his role as a sole-charge Police officer in a small community. Current Police policy on managing conflicts of interest is inadequate in terms of application in this setting.

Issue 3: Did Constable B's actions in relation to this matter result in an actual or perceived conflict of interest?

35. On 14 May 2018, Officer B contacted Mr Z from his Police email account with the subject heading "*Hunting Opportunity*". This was one week after Mr Z had provided evidence to Officer A regarding the two incidents of poachers on his land, and prior to Officer A acting on this.

36. Officer B introduced himself and members of his usual hunting group as current and former members of Police. He said Officer A had passed on Mr Z's details so that Officer B could contact him *"in regards to assisting with the detection and prevention of poaching on your property and the possibility of a hunt ourselves"*.
37. Mr Z told the Authority:
- "I was startled by that one... I just thought that that was completely ridiculous... here we were feeling frustrated, and trying to get some action, and here's somebody sending an email from a Police computer headed 'Hunting Opportunity', and I just was just really annoyed by that because it seemed that the writer of that email was much more interested in, well, as he defines, a hunting opportunity, than in an opportunity to apprehend people who were a problem from our point of view... I was really surprised by that..."*
38. Mr Z replied to Officer B saying he had taken advice from his legal representative and that it would be *"ill-advised and inappropriate"* for him to enter into an unofficial arrangement with Police officers.
39. When asked about this email, Officer B told the Authority that he felt that it was important for Mr Z to be aware that he was a Police officer in order to provide him with an immediate opportunity to refuse permission to hunt on his land if Mr Z felt that this might be interpreted by others as Police receiving preferential treatment. Officer B said he was aware of previous reports published by the Authority about poaching and conflicts of interest. He said he sent the email to Mr Z from his Police account to prove that he was a Police officer.
40. The Authority accepts that Officer B thought about how best to approach Mr Z because he was concerned about whether this might lead to a perceived conflict of interest, and that he was not trying to use his role to influence Mr Z to his advantage. However, by using his Police email account and wording his email the way he did, Officer B unwittingly gave the impression that he was trying to use his role to influence Mr Z in order to gain permission to hunt on his land. His email breached the Code of Conduct⁵ and Police policy relating to acceptable use of Police technology and equipment.⁶

FINDING ON ISSUE 3

Constable B's email was inappropriate and resulted in a perceived conflict of interest.

SUBSEQUENT POLICE ACTION

41. Police investigated Mr Z's complaint about Officer A failing to investigate his report of poaching and found that it was necessary to address the lack of action with Officer A to ensure that such delays do not occur again.

⁵ See paragraphs 53-54

⁶ See paragraph 55-56

42. Police found that Officer B's email to Mr Z demonstrated poor judgement and this was addressed through an employment process which resulted in an appropriate sanction.

CONCLUSIONS

43. The Authority has concluded that:

- 1) Officer A did not fail to investigate Mr Z's concerns about poaching on his land. The delay in him progressing an investigation once an actual complaint was received was not unreasonable in the circumstances.

44. The Authority also found that:

- 2) Constable A's actions in referring local landowners who have invited him to hunt on their land to third parties (whether Police or non-Police) could lead to a perceived conflict of interest. However, this has been reasonable and practical in the circumstances described. There is only the possibility of a perceived conflict of interest because of the nature of his role as a sole-charge Police officer in a small community.

Current Police policy on managing conflicts of interest is inadequate in terms of application in this setting. Further discussion on this issue, including any recommendations for changes to the policy, will be contained in the Authority's report at the conclusion of its ongoing review of policing of small communities in New Zealand.

- 3) Constable B's email to Mr Z was inappropriate and resulted in a perceived conflict of interest.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

5 November 2019

IPCA: 18-0178

Managing conflicts of interest policy

45. The ‘Managing conflicts of interests’ chapter of the Police Manual explains that conflicts of interests can occur *“fairly frequently”* in a small country like New Zealand. The policy states that all actual, potential or perceived conflicts of interest must be declared to a supervisor and appropriately managed to ensure that the integrity of their investigations and actions is maintained and ensure public trust and confidence.

46. The policy defines the following terms:

<i>“Actual conflict of interest</i>	<i>A conflict between our official duties and our other interests that could interfere with our ability to be impartial, objective and independent.</i>
<i>Perceived conflict of interest</i>	<i>The perception of outside observers that our other interests may interfere with our ability to be impartial, objective and independent, whether or not that is the case. The perception of a conflict of interest can be just as damaging to reputation as an actual conflict.</i>
<i>Potential conflict of interest</i>	<i>A situation where our other interests have the potential to interfere with our official duties in the future, or where our official duties could affect our other interests in the future.”</i>

47. The policy warns officers that *“the perception of a conflict of interest can be just as damaging to reputation as an actual conflict”*. It should be noted that Police policy does not require an actual conflict of interest to exist. It is sufficient that a conflict of interest might arise.

48. To report an actual, perceived or potential conflict of interest, the member of Police staff must notify their supervisor as soon as possible and completed the appropriate form.

49. The policy states:

“If possible, avoid the conflict

You may be able to avoid the conflict. If possible, abstain from involvement in the decisions or actions that could be compromised by your other interests. Likewise, You should avoid activities where you could be seen to be at an advantage because of information or other resources that you have access to because of your role with Police.

In a response or investigative context, another employee could be assigned to the incident or investigation. If that is not immediately possible, any decisions required could be deferred to another employee”.

50. Supervisors must consider strategies for managing each conflict of interest reported:

“Conflicts of interest can be managed in a range of ways, depending on the circumstances:

- *noting the conflict of interest only, if in the supervisor's view the conflict of interest will not cause bias or give the perception of bias*
- *obtaining the agreement of involved parties about the participation of the conflicted employee*
- *imposing additional oversight over the conflicted employee's work*
- *assigning work to another employee*
- *assigning work to an employee outside the District, Service Centre or Work group*
- *an employee stepping back or away from the role that is causing the conflict.*

In cooperation with the involved employee:

- *assess the seriousness of the conflict - is the risk low, medium or high?...*
- *identify strategies appropriate to the risk level*
- *manage the conflict of interest and record how the conflict was managed on the appropriate conflict of interest form*
- *ensure that the completed conflict of interest form is attached to the relevant file*
- *monitor the conflict of interest, if required, for any changes in circumstance*
- *consider strategies to avoid future conflicts”.*

51. The policy mentions that conflicts of interest will occur more often for those living and working in small communities “where everyone knows everyone” but does not go into this further.

Code of Conduct

52. The Police Code of Conduct states that they have high standards and employees must act professionally, exercise good judgement. They must not do anything that may bring Police into disrepute or act in a way that uses their influence, role or position to personal advantage or the advantage of others they associate with.
53. It also states that employees have an obligation to properly manage and use resources appropriately, including Police systems and technology.

Policy on acceptable access and use of technology, equipment and information

54. Employees may make limited personal use of Police technology, equipment, supplies and other resources if it is consistent with the terms of authorisation and direction of management, Police values, and expected standards of behaviour.
55. The policy states that, if an employee is unsure whether the personal usage is appropriate, they may refer to the “*the SELF test.*” ‘SELF’ is an acronym - a reminder to help officers to assess whether their actions would:
- *“stand up to Scrutiny (e.g. from the media);*
 - *Ensure compliance (e.g. with policy);*
 - *be Lawful (laws, regulations and rules); and*
 - *be Fair (e.g. to community, colleagues, your family and others).”*

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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