

Trespassing Police officer took firewood without permission

OUTLINE OF EVENTS

1. The Kaingaroa Forest in the Bay of Plenty region is managed by a forest management company. For health and safety reasons, access to the forest is by permit only. Permits to enter the forest for business or recreational purposes are issued by a security company, on behalf of the forestry company.
2. Entry points to the forest have signs displayed, stating access is by permit only. The security company is contracted to patrol the forest and ensure people comply with the permit system.
3. Police have a right of entry to the forest, without a permit, for law enforcement purposes. Murupara Police station is situated nearest to the forest on the Rotorua side and officers from there are regularly assigned jobs in the forest.
4. On 17 January 2016, a vehicle pulling a trailer entered the Kaingaroa Forest without a permit. The forest's security manager, Mr X, wrote to the driver of the registered vehicle, a Police officer (Officer A), asking him to explain his presence in the forest. Mr X received no response and issued a trespass notice against Officer A, for two years from the date of issue, 25 May 2016.
5. On 26 March 2018, after finishing duty for the day, Officer A drove into the forest in the Police four-wheel drive (truck) to collect firewood. He did not have a permit to enter the forest or permission to take the firewood. After taking some firewood, Officer A drove to his home address in the Police truck and kept it there overnight.
6. The following day, Officer A was rostered to work but instead drove the Police truck back into the Kaingaroa Forest, to collect firewood. He did not have a permit to enter the forest and did not have permission to take the firewood. Two security staff approached Officer A who said he did not have a permit to be there. They took photos of Officer A and advised the forest security manager Mr X. Mr X noted that Officer A was still subject to the trespass notice following the 17 January 2016 incident and referred the matter to Police.

7. Police notified the Independent Police Conduct Authority about Officer A's activities in the Kaingaroa Forest. The Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings.

THE AUTHORITY'S INVESTIGATION

8. The Authority interviewed Officer A and his supervisor, Officer B, as well as other Police staff working at Murupara Police Station at the time of the incidents. It also spoke to the Kaingaroa forest security manager, Mr X, and one of the security staff members who came across Officer A in the forest on 27 March 2018. The Authority reviewed all documentation provided by Police relating to these incidents, including CCTV images of the 17 January 2016 incident, and the Police investigation and prosecution file.
9. The Authority identified and considered the following issues:
 - 1) Was Officer A trespassed from the Kaingaroa forest?
 - 2) Did Police know Officer A was trespassed from the Kaingaroa forest?
 - 3) Were Officer A's actions on 26 and 27 March 2018 lawful and in accordance with Police policy?

THE AUTHORITY'S FINDINGS

Issue 1: Was Officer A trespassed from the Kaingaroa forest?

10. At about 5.30am on Sunday 17 January 2016, CCTV footage captured a vehicle towing a trailer entering the Kaingaroa forest through the Rainbow Road gate, half way between Rotorua and Murupara. The vehicle was registered to Officer A (a Rotorua Police officer) and the trailer was registered to his associate, a forestry employee, Mr Y.
11. The CCTV footage was reviewed by the forestry security manager, Mr X. The footage was poor quality and the person's face was obscured by the hood the person was wearing. Although Mr X did not think it was Mr Y, he was aware that the trailer belonged to Mr Y so he sought an explanation from him. Mr Y denied being responsible but indicated the person who was, was a Police officer.
12. When spoken to by the Authority, Mr X recalled the conversation with Mr Y:

"I did make a reference at some point to him [Mr Y] that I'm going to trespass the vehicle owner, send him a trespass notice, and he did kind of laugh at me and said, "Good luck with that," and indicated it was a police officer. So I carried on regardless and trespassed the vehicle owner which was [Officer A]"
13. On 5 May 2016 Mr X sent a 'please explain' letter to Officer A's home address. Mr X wrote, ... *"I would like to give you the opportunity to explain, in writing only, why your vehicle was in the*

forest on the above date. If I do not hear from you by the 19th May 2016 I will proceed to enforce forest access regulations without further notice to you.”

14. Officer A did not respond within the requested time frame and a trespass notice was couriered to his home address. The notice was served on 25 May 2016 and stipulated it was in force for two years from this date.
15. When Officer A received the trespass notice, he said he called to speak to Mr X but got no reply. He then went to the security office in Rotorua with the warning letter and the trespass notice. Officer A said he asked to speak to Mr X but was told he was unavailable, and any communication would need to be in writing. According to Officer A, he made other attempts to contact Mr X but ultimately did not follow up with an explanation in writing.
16. Officer A denied being in the forest on 17 January 2016. He told the Authority he often lent his vehicle out to friends and family members but when he made enquiries to identify who had used it on this occasion, they denied any knowledge. Officer A said he was unable to establish who had used his truck on 17 January 2016, and so he decided to “[take] *it on the chin because that was my fault for lending my truck out.*”
17. Officer A said he was also approached by the Murupara Police Station supervisor, Officer B, with a file in relation to the 17 January trespass. Officer B had CCTV images of the person who was with Officer A’s vehicle as it entered the Rainbow Road gate on that day. Officer A said he told Officer B that it was not him in the photo, but he would try to find out who had his truck at the time.
18. Mr X, having delegated authority as the lawful occupier of the forest, suspected that Officer A had trespassed or would do so again, and so he was entitled to issue the trespass notice.
19. The Authority has not been able to establish whether Officer A was in the forest that day. The Authority is satisfied that Officer A was served the trespass notice and was aware of his obligations to stay out of the forest for two years, under the Trespass Act 1980.¹ The two-year period covered by this trespass notice began on 25 May 2016.

FINDING ON ISSUE 1

Officer A was issued a trespass notice forbidding him from entering the Kaingaroa forest between 25 May 2016 and 25 May 2018.

Issue 2: Did Police know Officer A was trespassed from the Kaingaroa forest?

20. Mr X (the forest security manager since 2015), told the Authority that he regularly notified Murupara Police of any trespass or compliance issues in the forest. Ms U, who works for the Police told the Authority that she often had direct contact with Mr X, either by email or phone call. She would create a file for any non-compliance issues Mr X reported and notify the Murupara officers for them to follow up.

¹ See paragraphs 67-69.

21. Officer B told the Authority he was made aware of the trespass around the time of the incident on 17 January 2016. He could not recall how it came to his attention but believed he was likely notified by the security company. He said the CCTV images confirmed for him the person in the photo was not Officer A.²
22. It is unclear to the Authority what other action was taken in relation to this investigation. There is no record of the trespass recorded in the Police computer. Officer B was the last person with the file and should have ensured that it was entered into the police computer and proper enquires into obvious leads were followed up.
23. Officer B told the Authority that he was not aware that Officer A had been served a trespass notice in relation to the January 17 matter. Officer B did acknowledge that he had “*heard it through the grapevine*” that Officer A may have been trespassed, but he did not make any further enquiries. Officer B did not follow up with Officer A to try to confirm the identity of the person in the vehicle as he should have done.

Officer A posted to Murupara Police Station

24. In October 2017, a short-term vacancy arose at Murupara Police Station and Officer A was offered the position by Officer B. Officer A could not recall whether he told Officer B about the trespass notice but assumed Officer B knew.
25. Officer A said he did not advise his Rotorua supervisor, Officer C, about the trespass notice as he did not believe it affected his job. He said it was rare to be dispatched from Rotorua to attend a job in the Kaingaroa Forest and said he would have advised Officer C if the need arose.
26. Rotorua Police are the first port of call for back-up when Murupara Police need assistance or cover when they are short staffed. Therefore, there was a real possibility Officer A could have been deployed into the forest.
27. Officer A should have realised that the trespass notice was relevant to his ability to perform his role as a police officer in the area he was stationed. His explanation that he would advise his supervisor if the need arose, demonstrated poor judgement.
28. Officer A's failure to notify Officer C of the trespass notice had the potential to adversely impact Police deployment decisions, to ensure compliance with the Trespass Act 1980. The Authority considers that Officer A had an obligation to ensure his employer was aware of the trespass notice, at the earliest opportunity.
29. Officer A was deployed to Murupara and his duties regularly took him into the forest. When interviewed by the Authority, Officer A said he did not recall entering the forest between October and December 2017 for policing or any other purpose.
30. In December 2017, Officer A was formally posted to Murupara Police Station. He said he told Officer B about the trespass notice and it would expire in January 2018 upon the two-year anniversary of the 17 January 2016 incident. Officer A told the Authority that he genuinely

² Officer A was stationed at Rotorua at this time but Officer B knew him and spoke to him, as outlined in paragraph 17.

believed he was able to enter the forest after 17 January 2018 and was acting in good faith when he told Officer B about the trespass expiration date.

31. Officer B confirmed that in December 2017, Officer A advised him the trespass period was due to expire in January 2018.
32. Officer A told the Authority that he had issued trespass orders as part of his role as a Police officer and was aware they are in place for two years from the date of issue. Officer A said, *“Everything rested on my shoulders. It was my fault that I did not check up on everything, the time, the date, when I was allowed to access the forestry”*.
33. A Police staff member told the Authority that throughout the time Officer A worked at Murupara he went into the forest looking for drugs. Furthermore, Officer A stated in a statement provided to the Police that he was required to work in the Kaingaroa Forest as part of his duties in Murupara. He said Officer B encouraged him to drive into the forest as often as possible to look for illegal activity, and that as of March 2018, he had spent three months familiarising himself with the roads in the Kaingaroa Forest.
34. The Authority is satisfied that Officer A continually breached the trespass order between October 2017 and May 2018.

FINDINGS ON ISSUE 2

Police did not know that Officer A had been trespassed from the Kaingaroa Forest, until Officer A told Officer B in December 2017.

Officer A trespassed in the Kaingaroa forest on a number of occasions between October 2017 and May 2018, and was in breach of the trespass order.

Officer B was the last person with the trespass file and should have ensured that it was entered into the police computer and proper enquires into obvious leads were followed up.

Issue 3: Were Officer A’s actions on 26 and 27 March 2018 lawful and in accordance with Police policy?

26 March 2018

35. Officer B was on leave for the week commencing 26 March 2018. Officer A was rostered on a ‘prevention week’ which allows time away from frontline duties to do prevention and administrative tasks.
36. On 26 March 2018, Officer A told the Authority he called Officer B to advise him he was going into the forest to look for cannabis and that, if he were unable to find any cannabis, he would collect some firewood. Officer A said Officer B approved this plan.
37. Officer B however has a different recollection of the conversation. He told the Authority that he did not and would not give Officer A permission to use the police vehicle for private use or encourage Officer A to collect firewood.

38. Officer A was scheduled to work 8am to 4pm on 26 March 2018. He arrived at the Murupara Police Station at 11.30am with his personal vehicle towing a trailer. He removed the trailer from his vehicle and secured it on the Police truck. He transferred wood cutting equipment from his personal vehicle into the Police truck, put on Police overalls, and drove to the Kaingaroa forest.
39. Officer A told the Authority he intended to go into the forest and look for cannabis and if he could not find any, he would collect some firewood.
40. By coincidence, Officer A met two officers from Rotorua, who were also planning to look for cannabis in the forest. After a conversation with the Rotorua officers, Officer A went with them and together they found a cannabis plot, removed the plants and took them back to Rotorua Police Station.
41. Officer A then returned to the Kaingaroa forest in the Police vehicle to collect firewood. Having done so, he took the wood and the Police vehicle to his home, where it remained overnight.

27 March 2018

42. On 27 March 2018, Officer A was again rostered to work 8am to 4pm but he did not go to work that day. Instead he took the Police truck and his trailer back out to the Kaingaroa forest to collect firewood.
43. On this occasion, two forest security staff observed the Police truck and a trailer from a distance. As they approached, they could see Officer A cutting firewood with a chainsaw, wearing civilian clothing and safety gear. The security staff stopped to speak to Officer A and asked him if he had a permit, to which he said no. They asked him for identification and took photos of him with the Police truck.
44. Officer A said the security staff told him they thought he was someone else and there was no cause for concern, and he could continue collecting firewood. Officer A said he told the security officers he had sought permission from three other security staff in the past. Officer A left the forest with firewood in his trailer, returned home, unloaded the firewood, then returned the Police truck to Rotorua Police Station.
45. Ms V, one of the forest security officers who spoke with Officer A has no recollection of Officer A saying he had permission to take the firewood.

Undertaking personal errands on duty

46. Officers A and B said it is common for Murupara officers to accrue a lot of overtime due to the nature of rural policing in a small team. Officer B said he often encouraged his staff to take back time in lieu during 'prevention week'.
47. Officer A said he applied for leave on 27 March 2018 but it was declined. Nevertheless, Officer A still decided not to go into work that day. He told the Authority there was another officer on duty in Murupara at the time and that he would not have gone out to the forest if there was no other officer on duty. He also said he understood Rotorua staff were covering Murupara.

48. Officer A did not have permission from a supervisor to take the day off and should not have done so.

Officer A's use of a Police vehicle

49. Officer A said he had asked Officer B *"on a number of occasions"* if he could use the Police truck to collect firewood and was told *"it's all good"*. He said it was an *"unspoken sort of rule"* that officers could use the Police truck to collect firewood. However, Officer A also said he was aware Police policy stated officers were not permitted to use Police vehicles for personal use.
50. Officer A told the Authority that every time he took the Police truck home, he advised Officer B or the in-coming officer on duty. He said he could not recall if he had advised Officer B he was taking the truck home and keeping it overnight on 26 March 2018 but the in-coming officer, Officer D, was aware.
51. Police policy states, "vehicles must not be used for private journeys ... authority must be in writing ... [and] Police employees may be authorised to retain vehicles at home overnight, if such use of the vehicle is necessary."
52. Officer B was adamant that he would not give permission for officers to use the Police truck for personal errands. He explicitly stated he did not give Officer A permission to use the Police truck to gather firewood. Officer B told the Authority that there was *"no personal use of all Police vehicles, standard"*. He said none of his staff had ever asked him to use a Police vehicle for their own use but if they did, he would have said *"no"*.

Collecting firewood without a permit

53. With the appropriate approvals, people can take firewood from the forest. In the case of people who do not work for the forestry company, a permit might be issued, depending upon the merits of the request.
54. Officer A did not apply to the forestry security company for a permit to enter the forest on 26 and 27 March 2018, as he was required to do. He did not have a permit to take firewood from the forest either.
55. Officer A told the Authority that, prior to joining Police (eight years earlier), Mr W, a forest security supervisor (and personal acquaintance) had given him permission to access firewood in the forest. However, Mr W no longer worked in the Kaingaroa forest and had not done so since Mr X took over as the forest security manager in 2015. The Authority does not accept that Officer A reasonably believed that permission was still in force.
56. Officer A also told the Authority that he had been given permission by various current forestry security staff to collect firewood without a permit. He said that on previous occasions he had asked three different security staff members if he could collect firewood and asked whether he needed a permit. He said they told him he did not need a permit as long as he was in the Police truck. Officer A said:

“That’s the normal...they [forest security] know that police go in there and just access firewood and go and get firewood and you’re okay to do it.”

57. Ms V told the Authority that she was very surprised and taken aback to see Officer A taking firewood on 27 March 2018 and had not encountered a situation like this before. After confirming that Officer A did not have a permit, she took his details and reported the matter to Mr X.
58. Mr X was adamant that anyone who wishes to take firewood must apply for a permit and that this has been the process for the four years he has been the security manager. Furthermore, all the forestry staff interviewed by Police denied giving Officer A permission to collect firewood.
59. Officer A told the Authority he was aware of the obligation to apply for a permit through the security company due to health and safety risks. He also acknowledged, *“Everything pretty much in regards to that trespass, the firewood, the lot, I know it all comes back to me and my, I got no nice way of putting it but my pretty much stupidity ...”*
60. The Authority agrees with Officer A’s reflection. It is apparent that Officer A was aware of the requirements and expectations when entering the forest yet deliberately avoided taking the necessary steps to obtain a permit.

FINDINGS ON ISSUE 3

Officer A trespassed in the Kaingaroa forest on 26 and 27 March 2018.

Officer A did not have permission to use the Police vehicle for personal use and therefore breached Police policy.

Officer A arrived late for his rostered shift on 26 March 2018 and failed to attend his shift at all on 27 March 2018, as required.

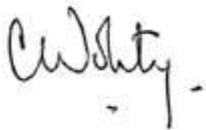
Officer A did not have permission or a permit to enter the forest or to take firewood on 26 or 27 March 2018, and should not have done so.

SUBSEQUENT POLICE ACTION

61. Police conducted a criminal investigation into the allegations against Officer A. Officer A was summonsed to court on five charges.
62. Officer A’s lawyer provided Police with information it did not gather during its investigation. As a result, Police decided to withdraw four of the five charges.
63. The Police Prosecution Service withdrew the fifth charge as it formed the view there was a technical issue with the original trespass notice issued to Officer A.
64. Officer A went through a disciplinary process and received an appropriate outcome.

CONCLUSIONS

65. The Authority finds that Officer A entered the Kaingaroa forest on a number of occasions between October 2017 and May 2018 despite being subject to the trespass notice. He also breached Police policy by using the Police truck for private use when collecting firewood while on duty. Officer A failed to meet the expected standards and values of a Police officer.
66. The Authority also determines that:
- 1) Officer A was issued a trespass notice forbidding him from entering the Kaingaroa forest between 25 May 2016 and 25 May 2018;
 - 2) Police did not know that Officer A had been trespassed from the Kaingaroa Forest, until Officer A told Officer B in December 2017;
 - 3) Officer B was the last person with the trespass file and should have ensured that it was entered into the police computer and proper enquires into obvious leads were followed up;
 - 4) Officer A trespassed in the Kaingaroa forest on 26 and 27 March 2018;
 - 5) Officer A arrived late for his rostered shift on 26 March 2018 and failed to attend his shift at all on 27 March 2018, as required;
 - 6) Officer A did not have permission or a permit to enter the forest or to take firewood on 26 or 27 March 2018, and should not have done so.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

19 December 2019

IPCA: 17-2191

Law

67. Section 4 of the Trespass Act 1980 states that, where any person is trespassing or has trespassed on any place, an occupier of that place may, at the time of the trespass or within a reasonable time thereafter, warn him to stay off that place. Where an occupier of any place has reasonable cause to suspect that any person is likely to trespass on that place, he may warn that person to stay off that place. Every person commits an offence who, having been warned to stay off any place, wilfully trespasses on that place within two years after the given warning.
68. A warning shall be given to the individual person concerned, either orally or by notice in writing, delivered to him or sent to him by post in a registered letter at his usual place of abode in New Zealand.
69. Every person who commits an offence against section 4 of the Trespass Act 1980 shall be liable on conviction to a fine not exceeding \$1000 or to a term of imprisonment not exceeding three months.

Trespass policy

70. Police constables are subject to the same laws of trespass as any other citizen unless they have legal authority to enter property under warrant or warrantless powers.

Police vehicle management policy

71. Police vehicles must not be used for private journeys or for the carriage of unauthorised passengers or private goods, nor must material deviations from routes be made in the course of authorised journeys.
72. Constables above the position of Inspector, or other Police employees of equivalent position, may authorise other Police employees under their control to take family members and friends with them in the course of a work trip in a Police vehicle, subject to the rules above. The authority must be in writing and specifically name the persons who may be carried.
73. Police employees may be authorised to retain vehicles at home overnight, if:
- such use of the vehicle is necessary (such as on-call or operational requirements); and
 - keeping the vehicle at home will not limit operational efficiency.
74. Police employees who use Police vehicles contrary to these provisions, may be subject to disciplinary action. Officers who make use of a Police vehicle for a private journey or, in the course of an official journey, divert a Police vehicle for private purposes, may be prosecuted for unlawful conversion of the vehicle.

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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