

Issue 1: Was Officer A's treatment of Mr X and Mr Y when they were stopped on the street justified and appropriate?

7. At about 5am on 11 May 2018, a woman was sexually assaulted in St Marys Bay.¹ In the following days, Police conducted patrols in the area, particularly in the early hours of the morning, to try and identify any possible suspects or witnesses.
8. At about 2.30am on 16 May 2018, Mr X and his friend, Mr Y, were walking along Hackett Street in St Marys Bay. Officer A was patrolling the area in a Police car. He saw Mr X and Mr Y near the Shelly Beach Road end of Hackett Street and decided to stop and talk to them.
9. Officer A said he stopped in the middle of the road and called out to Mr X and Mr Y. Mr X kept walking slowly and Officer A asked him what he was doing. Mr X said he was "*out walking.*" Officer A then asked him where he had been, and Mr X replied "*nowhere.*" Officer A asked Mr X if he had any identification. Mr X did not answer.
10. Officer A asked Mr X to come over to the patrol car. Mr X lent into the window on the driver's side. Officer A asked him his name and Mr X replied with his first and last names and also provided his age. Officer A asked Mr X for his date of birth, but Mr X would only give his age. Mr X did not answer a question about whether he was working but did answer a question about whether he had any previous dealings with Police. Officer A checked Mr X's details in the Police database.
11. Mr X did not respond to two requests for his address before walking away from the patrol car. Officer A asked Mr X to wait but he continued to walk away. Officer A radioed to request other units in the area look for Mr X, providing his description and the direction in which he had walked.
12. Officer A got out of his patrol car and went to speak to Mr Y. He asked Mr Y if he knew where Mr X was going. Mr Y replied that he might be going to his home at the supported accommodation. Officer A radioed this information to the other units.
13. Officer A obtained Mr Y's name and contact details and had a general conversation about the reason Police were patrolling the area.
14. Mr X's mother later complained that the questioning of Mr X went beyond the types of questions that could be expected when someone is stopped on the street. She said that Mr X felt intimidated and overwhelmed by the questions, so he walked off.
15. Police do not have a general power to require members of the public to answer questions. If a person is stopped by Police on the street and asked questions, that person is generally not legally required to answer. The person can decide whether to respond to such questions and to what extent (see paragraphs 38-39 for further explanation).

¹ The offender was subsequently apprehended. At the time, he was also suspected of other offending in the Ponsonby/Freemans Bay/St Marys Bay area earlier in May.

16. Police routinely speak to, and ask questions of, members of the public, as Officer A did in this situation. Mr X voluntarily answered Officer A's questions until he no longer felt comfortable doing so. At that point, he was legally entitled to stop talking to Officer A and walk away.

FINDINGS ON ISSUE 1

It was appropriate for Officer A to ask Mr X and Mr Y general questions as part of his patrol activities. However, Mr X's and Mr Y's engagement was voluntary, and both were entitled to stop talking to Officer A and leave.

Issue 2: Was the treatment by Police of Mr X at the supported accommodation justified and appropriate?

Entering the supported accommodation

17. Mr X's mother complained about Police entering the supported accommodation in order to continue questioning Mr X.
18. After the encounter with Officer A, Mr X walked back to the supported accommodation. He did not tell Mr Z that he had just had an encounter with Police. Mr X decided to have a shower and went into the shared bathroom opposite his room.
19. As does anyone else, Police have an implied licence to go onto a property and knock on the door. Unless they have a search warrant or a lawful reason to search a property without a warrant, the occupier of the property can refuse to allow entry to the address at any stage.
20. Officers B and C responded to Officer A's request to locate Mr X and went to the supported accommodation. Officer B knocked on the door several times before Mr Z answered. Officer B asked Mr Z if Mr X lived at the address and was told he did. Officer B then asked if Mr X could come to the door to speak with them. Mr Z went to ask Mr X if he would speak to Police and Mr X said he would not. Mr Z told Police that Mr X would not come to the door but he allowed the officers to enter the address.
21. Although Police were made aware that Mr X did not want to speak to them, they were allowed into the address by Mr Z who, as the night manager, had authority to let them in. However, that authority only applied to communal areas within the supported accommodation.

Use of force on Mr X

22. After being allowed into the address by Mr Z, Officers B and C followed him along a hallway towards Mr X's room. Officer B turned the corner, heard yelling and saw Mr Z trying to push a bathroom door open with his shoulder. Mr X was on the other side of the door trying to close it.
23. Officer B was concerned that Mr X might try and escape through the bathroom window, so he forced the bathroom door open. Mr X was agitated and yelled at Police to stay away from him. The bathroom was dimly lit, and Officer B said he was concerned that Mr X may have a weapon. Officer B stayed by the door and tried to talk to Mr X.

24. Mr X ran toward Officer B and shoved him in the chest. Officer B grabbed Mr X, and continued to try and talk to him. He could feel Mr X trying to move his arms.
25. Officers D and E arrived, and Mr X was restrained. Officer B handcuffed Mr X and took him to the lounge area of the supported accommodation to calm down. Once he was calm, the handcuffs were removed.
26. As Police knew that Mr X did not want to speak to them, they should not have attempted to do so after being given entry by Mr Z and Officer B should not have attempted to force his way into the bathroom. Mr X did not match the description of the suspect Police were trying to locate² and was entitled not to answer any further questions.
27. The use of force and subsequent handcuffing and detention of Mr X was unlawful.

Entering and searching Mr X's room

28. During the course of the Authority's investigation, Mr X stated that he saw a Police officer enter his room in the supported accommodation. He did not give permission for the officer to do this and was not asked for permission.
29. Officers B, C, D and E all said that they did not enter or search Mr X's room and did not see any other officer do this. They said their interactions with Mr X occurred in the hallway, bathroom and lounge of the supported accommodation. They also said that they were not aware which room was Mr X's but, in any event, they had no reason to enter it or search it.
30. There are differing accounts from Mr X and Police as to whether Police entered Mr X's room and searched it. However, the Authority is satisfied on the balance of probabilities that Police had no need to enter Mr X's room and did not do so.

General comments

31. In summary, Police were initially on the property with implied consent and then had express consent from Mr Z to enter the communal areas of the supported accommodation. They should not have attempted to speak to Mr X when they knew he had told Mr Z that he would not speak to them. Their actions after they entered the supported accommodation were unlawful.
32. In the Authority's view, Police entered the supported accommodation because Mr X had walked away from questioning on the street and they wanted to continue questioning him at his address, rather than because they genuinely considered him a suspect.
33. The Authority also believes that, once Police knew where Mr X lived, they should have returned the next day if they felt it necessary to question him further.

FINDINGS ON ISSUE 2

Police had implied consent to be at the property and were then given express consent to enter the communal areas by Mr Z.

² An intelligence briefing produced by Police on 14 May 2018 described the offender as Indian. Mr X is not Indian.

However, Police should not have attempted to speak to Mr X when they knew he did not wish to speak to them. Their use of force on Mr X and handcuffing and detention of him was unlawful.

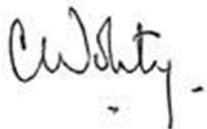
The Authority is satisfied on the balance of probabilities that Police did not enter Mr X's room.

SUBSEQUENT POLICE ACTION

34. The Police investigated the matter and met with Mr X and family members in December 2018. An apology was provided and Mr X was given the opportunity to explain to Police how the incident had affected him and his trust and confidence in Police.
35. Officer A took a photograph of Mr Y on his mobile phone after he had spoken to him. Officer A's notebook entry shows that Mr Y consented to his photograph being taken at the time. Mr Y told the Authority that, while he accepts he provided consent at the time, he felt uncomfortable having his photograph taken but believed he had no choice but to agree. Mr Y asked the Authority to ensure that his photograph had been removed from the Police database. Police have confirmed that there is no photograph of Mr Y taken on 16 May 2018 on their database.
36. Mr X's mother believed that Mr X had also been photographed by Police at the supported accommodation. However, none of the officers present said they photographed Mr X and Police have confirmed that there is no such photograph on their database.

CONCLUSIONS

37. The Authority concluded that:
 - Although Mr X and Mr Y voluntarily answered Officer A's questions, both were entitled to stop talking to him and leave.
 - Police had implied consent to be at the supported accommodation and were then given express consent by Mr Z to enter the communal areas. However, Police should not have attempted to speak to Mr X when they knew he did not wish to speak to them. Their use of force on Mr X and handcuffing and detention of him was unlawful.
 - The Authority is satisfied on the balance of probabilities that Police did not enter Mr X's room.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

4 February 2020

IPCA: 17-2513

Questioning members of the public

38. If an officer asks a member of the public for information, it is generally up to the person to decide what information, if any, to provide. Police do not have a general power to require a member of the public to answer questions, even if the person has been arrested.
39. In certain circumstances, Police do have authority to require a person to provide information:
- a) the name, address and date of birth of the driver of a vehicle that has been stopped by Police; and
 - b) the name, address and date of birth of a person they believe is committing an offence relating to the sale of alcohol.

Entry to property

40. Much like anyone else, under common law Police have an implied licence to go onto property but consent is required by a lawful occupier to enter any premises on that property. Consent can be revoked at any time and Police can be asked to leave. If asked to leave, Police must do so unless they have another lawful reason to stay.
41. Police can also enter any premises if they have a warrant or a legal power to enter premises without a warrant. A number of laws, including the Search and Surveillance Act 2012, give Police the power to enter and search premises without a warrant. Situations in which the Police can do this include:
- a) if they have reasonable grounds to suspect there is a risk to the life or safety of a person, or if they suspect an offence is being committed that is likely to cause injury to a person or serious damage to property;
 - b) to secure evidence relating to a serious offence (an offence punishable by a sentence of 14 years or more in prison), i.e. Police believe a serious offence is being or is about to be committed and that evidence may be destroyed or damaged if they wait to get a warrant;
 - c) if someone is 'unlawfully at large' (has escaped from prison or from Police custody or there is an arrest warrant for them) and the Police believe they are in the premises;
 - d) to avoid losing an offender or evidence of an offence, i.e. the Police believe that someone suspected of committing an offence is in the premises, and that they need to enter immediately to prevent the person from escaping or destroying evidence;
 - e) they have reason to suspect that someone in the house has firearms when they should not (for example, they are breaching the Arms Act 1983, they have a physical or mental condition which stops them from being in proper control of them, or there is a protection order or Police Safety Order against them);

- f) if they have reasonable grounds for believing the property contains certain illegal drugs, and a drug offence is taking place or about to take place and it is not practical to get a warrant; and
- g) they can be authorised by the Director of the New Zealand Security Intelligence Service to act without a warrant to intercept or seize a communication, document, or thing that relates to terrorist activity.

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.



Whaia te pono, kia puawai ko te tika

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