

Three searches undertaken by Police following Mosque attacks found to be unlawful

Outline of Events

1. Following the March 15 2019 terror attacks in Christchurch, NZ Police established a process codenamed Operation Whakahaumanu, to identify individuals who may hold extremist views and present security risks to New Zealanders. The operation was prevention focused and aimed at mitigating the potential for future acts of violence.
2. A number of Individuals of interest were identified through a range of sources and the information was assessed to determine their level of risk and what action was required. In many cases this involved the Police conducting enquiries with the individual and speaking with their family, friends and associates. The process also sometimes included a search of the individual's home or place of work and the seizure of their firearms and firearms licence.
3. The Authority received a total of 13 individual complaints arising from the Police operation. The complaints varied in nature but included common themes that the searches were unlawful, the questioning of licensed owners was inappropriate, and the searches were conducted in an overly 'heavy handed' manner.
4. Acknowledging the high alert environment in which the Police were operating at the time however, the Authority determined that the manner in which the searches were conducted did not require further consideration and focused only on the lawfulness of the searches.
5. The Authority referred some of the complaints to Police for investigation but also elected to conduct its own independent investigation. Of the cases referred for investigation, the Authority finds three of them were unlawful.

The Authority's Investigation

6. As part of its investigation the Authority conducted a number of interviews, reviewed the information provided by Police and maintained oversight of the Police investigations into each complaint. Some of those cases are still active and are yet to be resolved.

The Authority's Findings

WERE THE SEARCHES CONDUCTED BY POLICE LAWFUL?

7. In investigating these complaints, the Authority recognises that Police were operating in an environment of unprecedented and heightened risk following the March 15 attacks, and there was a public expectation they take action to mitigate any further risks. It was therefore entirely appropriate that they set up an operation to eliminate or mitigate risk of further violence and ensure public safety.
8. However, it is evident to the Authority that Police did not give sufficient consideration to their powers of search and seizure and there was inadequate planning in that regard before the operation got underway. In some cases, Police relied on section 18 of the Search and Surveillance Act 2012 to conduct the searches and to seize firearms and licences from their owners.
9. Section 18 of the Search and Surveillance Act 2012 provides that a constable who has reasonable grounds to suspect that any one or more of the circumstances outlined in subsection (2) exist in relation to a person may, without a warrant, do any or all of the following:
 - a) search the person;
 - b) search anything in the person's possession or under his or her control (including a vehicle);
 - c) enter a place or vehicle to carry out any activity under paragraph (a) or (b);
 - d) seize and detain any arms found;
 - e) seize and detain any licence under the Arms Act 1983 that is found.
10. The circumstances in subsection 2 are that the person is carrying arms, or is in possession of them, or has them under his or her control, and—
 - a) he or she is in breach of the Arms Act 1983; or
 - b) he or she, by reason of his or her physical or mental condition (however caused),-
 - i. is incapable of having proper control of the arms; or
 - ii. may kill or cause bodily injury to any person; or

- c) that, under the Family Violence Act 2018,—
- i. a protection order or a police safety order is in force against the person; or
 - ii. there are grounds to make an application against him or her for a protection order.
11. Although the Police are required to obtain a warrant where there is time to do so¹, they may exercise the section 18 power without warrant in situations of urgency.
12. A breach of the Arms Act may take a number of forms, from offences with obvious and immediate implications for public safety to possessing a firearm without a licence. Police do not have the power to enter and search a place merely because they think it is possible that firearms, or firearms additional to those already surrendered, are there; the reasonable suspicion threshold requires that they think that is inherently likely.

Mr X - Canterbury

13. Mr X came to notice as a person of interest following an anonymous call to Crimestoppers alleging that he was involved in white supremacy, anti-Muslim hate speech and racist behaviour. Other checks showed that Mr X had an historic mental health issue and had previously been a member of a Facebook group that had an association with a website describing itself as “far right-wing”. Mr X had also posted comments indicating to Police that he might be opposed to the Government’s gun law reforms.
14. On 10 April 2019 Mr X was at home with his partner and teenage son when Police arrived at his address. Four armed officers entered his house and ‘cleared’ it before other officers entered and spoke with Mr X who showed Police his firearms cabinets.
15. The officer in charge of the search told Mr X that his house was being searched under section 18 of the Search and Surveillance Act 2012. Police remained at Mr X’s address for about three hours, leaving with a large number of Mr X’s firearms and his firearms licence. Mr X later complained that the search was unlawful, and he and his family were unlawfully detained.
16. When Police visited Mr X’s address, they knew he was the holder of a firearms licence and that it was likely that he might have firearms in his home, which it was lawful for him to possess. In the context of this search, for Police to have conducted a lawful search they would have needed reason to suspect an offence under the Arms Act had been or was being committed. The fact that Mr X had posted concerning Facebook messages did not constitute an offence under the Arms Act.
17. Police told the Authority that they relied on section 18(2) of the Act in that they had reasonable grounds to suspect Mr X was in possession of firearms and by reason of his mental condition suspected he was incapable of having proper control of the arms or may kill or cause bodily injury to any person.

¹ See Simon France (ed), *Adams on Criminal Law: Rights and Powers* at [SS6.01];

18. The Authority however does not consider the grounds under section subsection (2) were applicable at the time Police visited Mr X's home, nor does it consider there was an urgent need to search Mr X's home under the provisions of section 18. The mental health issue referred to was very historic and the more recent information about his alleged far-right ideals was not sufficient to suspect he was incapable of having proper control of firearms or may kill or cause bodily injury to anyone. In the circumstances the appropriate way to have addressed any potential risks posed by Mr X was to first revoke his licence and then seize the firearms, rather than invoking section 18 of the Search and Surveillance Act. The search was therefore unlawful.

Mr Y - Canterbury

19. Mr Y came to notice as a person of interest following Information received that he had been posting far right-wing material on a Facebook account. On receipt of this information Police also conducted checks on Mr Y's background, history with Police and his associations dating back a number of years.
20. Mr Y was the holder of a firearms licence, but Police did not know if he owned or was in possession of firearms.
21. On 2 April 2019 a group of armed Police officers went to Mr Y's address. The purpose of the visit was to search for and seize any firearms while Mr Y's suitability to retain his firearms licence was considered.
22. Mr Y was at work at the time but his wife and family were home. After speaking with Mr Y's wife and learning that there were firearms locked away in the house, Police conducted a search under section 18 of the Search and Surveillance Act 2012.
23. While at the address the officer in charge received a phone call from Mr Y who was at his work, enquiring what was going on. Mr Y was asked if he had any firearms with him at work and he advised he had possession of an AR15 rifle that he had recently purchased. Mr Y agreed to wait at his work until Police came to see him.
24. When Police arrived at his work, they conducted a search under section 18 of the Search and Surveillance Act 2012 to seize the AR15 rifle, before returning with him to his home. There, Mr Y unlocked his gun safe and Police seized a number of firearms from it.
25. Police were aware Mr Y was the holder of a firearms licence. However, they did not know if he was in possession of any firearms at the time of their visit. After learning that firearms were present, they conducted the search. The reason given for the search was due to firearms being confirmed in the house together with the belief that Mr Y had exhibited concerning behaviour and was incapable of having proper control of the firearms and that he may use them to cause bodily injury to others.
26. With respect to both searches, the Authority does not consider there was reason to suspect Mr Y had committed an offence against the Arms Act or, by reason of his mental or physical condition, was incapable of having proper control of his firearms, or that he would kill or injure anyone with a firearm. The alleged Facebook postings were not sufficient to suspect him

incapable of having proper control of firearms, and the information Police gleaned from background checks was mostly historic and did not require an urgent response.

27. The Authority therefore does not consider the circumstances outlined in subsection (2) at para 9 above to have been applicable at the time, so that the search of Mr A's home under section 18 was unlawful. The Authority notes that Police have since formally apologised to Mr Y for the unlawful search.

Mr Z - Canterbury

28. Mr Z came to notice as a person of interest following Facebook postings that gave concern about his mental wellbeing. As a result of those postings and other background checks, Police visited Mr Z's address on 28 March 2019 to speak with him and assess his situation. Mr Z's address is a one level dwelling occupied by a number of tenants who share the common amenities.
29. When the officers arrived at the address, they found the front and back doors were open but there was no response when they knocked and announced their presence. Because the house was open, and believing someone was home, the officers walked into the house and knocked on the bedroom doors. One of Mr Z's flatmates spoke to the officers.
30. After advising the purpose of their visit, the flatmate took the officers to Mr Z's bedroom and opened the bedroom door to see if Mr Z was home (he was not). As the flatmate opened the bedroom door, a bong² was sighted in the room. On seeing this the officers entered the room to seize the bong but on examination found it was unlikely it was being used for unlawful purposes. The Officers therefore did not conduct a search of the room and left the address shortly after.
31. Mr Z later complained to the Authority about Police entering his property and searching his room. When the Authority sought a response from the officers, they advised they entered the address under section 14 of the Search and Surveillance Act and entered his room to seize the bong under section 20 of that Act.
32. Section 14 of the Search and Surveillance Act provides that a constable who has reasonable grounds to suspect that:
 - a) an offence is being committed, or is about to be committed, that would be likely to cause injury to any person, or serious damage to, or serious loss of, any property, or
 - b) there is risk to the life or safety of any person that requires an emergency response,may enter the place or vehicle without a warrant and take any action that he or she has reasonable grounds to believe is necessary to prevent the offending from being committed or continuing, or to avert the emergency.

² An implement often used to smoke substances in breach of the Misuse of Drugs Act 1975

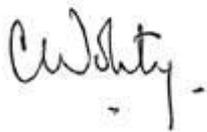
33. The Authority understands why officers felt the need to visit to Mr Z at his address in order to talk to him. However, neither of the circumstances set out in section 14 existed when they walked into the house uninvited, nor when the flatmate opened Mr X's bedroom door at their request without his consent. There is nothing to suggest that an emergency response was required to check on Mr Z. Instead, when they got no response to their knocks on the front and back doors, they should have left the address and returned later.
34. For these reasons the Authority considers the entry into Mr Z's house was unlawful and it necessarily follows that the subsequent entry into his bedroom and examination of the bong was also unlawful. The Authority notes that Police have since visited Mr Z and acknowledged that their entry into his property was conducted "incorrectly" and this was followed with a letter of apology to Mr Z from the Police Area Commander.

FINDING

The searches conducted by Police with respect to Mr X, Y and Z were unlawful.

Conclusion

35. The Authority determined that searches conducted by Police with respect to Mr X, Y and Z were unlawful.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

14 July 2020

IPCA: 18-2574, 19-0039, 18-2161

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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