

**Report of the Police Complaints Authority
on the Investigation into the Death of James Christopher Hughes
in Auckland on 9 July 1994**

Introduction

At approximately 4.23am on Saturday 9 July 1994 Fireman James Christopher Hughes died when a Toyota Corolla car driven by Mr Asofa Ioane Fa'asipa struck a stationary fire appliance on Auckland's Northern Motorway at a point approximately 400 metres north of the Onewa overbridge.

Fireman Hughes, who was standing next to the appliance, was at the time attending, in the course of his duty, a prior fatal collision between a car and a taxi-van which had occurred just over an hour earlier at 3.20am. Fireman Hughes (49) was one of the crew of Brown Watch at Birkenhead Fire Station. He was on duty as a driver and pump operator.

A number of fire and other emergency vehicles and personnel including the Police were at the scene. Traffic control of the scene was being exercised by Police officers at the time.

It emerged that the car driven by Mr Fa'asipa had earlier been seen by the driver of a Mobil fuel tanker, Mr Roger John McCutcheon, at a point about 21 kilometres south of the scene of the collision which caused the death of Fireman Hughes. Mr McCutcheon first noticed the car, without lights on and its left-hand indicator going, about 300 metres north of the Papatoetoe off-ramp in the middle northbound lane. The car was travelling north on the motorway in an erratic manner.

Mr McCutcheon considered this to be sufficiently hazardous and potentially dangerous to other traffic that he later made two telephone calls from his truck to the Police after observing the vehicle to alert them to the risk to the safety of other road users posed by the Toyota car's

uncertain and unpredictable progress. Full details of these observations by Mr McCutcheon are given hereinafter. Mr McCutcheon was driving an articulated Freightliner tanker truck with a carrying capacity of 38,500 litres of fuel, together weighing 39 tonnes.

It is appropriate at this point to mention that following the fatal accident the Police laid several charges against Mr Fa'asipa and he pleaded not guilty. He changed his plea in early August and pleaded guilty to manslaughter.

He was sentenced on 25 August 1995 in the High Court in Auckland to six years imprisonment and disqualified from driving for seven years.

Report to the Police Complaints Authority

Shortly after 7.30am on 9 July the circumstances of Fireman Hughes' death were notified to me by an officer from Police National Headquarters. This notification was required because of the involvement of Police in the situation within which the death of Fireman Hughes occurred.

Section 13 of the Police Complaints Authority Act 1988 requires the immediate notification to the Authority by the Commissioner of Police of any incident in which death or serious bodily harm is sustained by any person where a member of the Police was acting in the execution of a duty.

Action Taken

I deemed it essential I go from Wellington to the scene in Auckland on 9 July 1994. I was met by Detective Inspector Maurice Whitham who had been assigned to the internal Police investigation into the matter. I was briefed by him and by an Inspector and Senior Sergeant of the Police Motorways Division on the circumstances and on initial investigatory developments. I was taken to the scene and made my own observations.

I subsequently informed the Commissioner of Police that I would oversee the Police investigation of the incident. There has been no complaint by any person as a result of the collision and the death of Fireman Hughes.

I identified the issues requiring primary scrutiny to be, firstly, the adequacy of the arrangements made by the Police at the original crash site, this being an important part of the circumstances bearing on the fatal collision involving Fireman Hughes.

A further issue of equal significance was the adequacy of the Police response to the telephone reports made by Mr McCutcheon about the erratic driving of Mr Fa'asipa's car.

The latter issue embraced the action taken by staff on duty in Auckland Central Control Room on receipt of the calls. It was necessary to establish what steps, if any, had been taken to intercept and stop the northward bound car being erratically driven by Mr Fa'asipa. Secondly, it was necessary to determine the action taken by them to alert Police on duty at the scene of the first fatal collision to the danger the car posed.

The aim of this report is to address these issues and to draw conclusions, making such recommendations as are appropriate.

Narrative of Events

Events in the early hours of Saturday 9 July 1994 followed two distinct and separate phases. The point at which these phases came together was the collision which resulted in the death of Fireman Hughes.

First came the collision between the car and taxi-van which required the presence on the motorway of a considerable force of Fire, Police, Ambulance and other emergency personnel and vehicles. Secondly came the erratic northward progress of the car driven by Mr Fa'asipa. These two sequences will be described separately, that relating to the car and taxi-van collision first.

The First Collision

At approximately 3.20am on Saturday 9 July 1994 a Honda car travelling north on the Northern Motorway, Takapuna, at high speed collided with a taxi-van which was also travelling north in the centre lane at approximately 100kmh. The collision occurred at a point approximately 400 metres north of the Onewa overbridge. The Honda had crossed into the

centre lane from the left. There is a possibility that it entered the motorway from the Onewa on-ramp. The driver apparently lost control of his vehicle, skidding for approximately 50 metres before colliding with the rear of the taxi.

After the collision the Honda continued along the motorway out of control until impacting with the median barrier. It came to rest 160 metres beyond the scene of the initial collision. The driver was over the limit and was charged separately.

As a result of the collision the driver of the taxi lost control of his vehicle. The front of the taxi collided with the centre median barrier. The taxi rolled and slid along the motorway on its left-hand side, and the front middle passenger, Adam Charles Roberts, was thrown out of the vehicle across the median barrier and onto the southbound carriageway. Mr Roberts, a 25 year old visitor to New Zealand from Wales, died as a result of the injuries he sustained.

There were 11 passengers in the taxi. They were a group of friends who had been together in central Auckland to farewell one of their number who was going to Wales to her sister's forthcoming wedding. At about 3.00am the group left the dance venue where they had spent part of the evening and took the taxi, intending to go to a restaurant on the North Shore for breakfast.

At 3.28am Auckland Central Police Control Room was notified of the first collision by the Fire Service.

Police, Fire and Ambulance Services went to the scene and during the aftermath and road clearance phase of the incident the middle and fast lanes of both the north and the southbound carriageways were closed in the vicinity of the collision site. One lane on each of the two carriageways, north and southbound, was open for the passage of traffic with Police traffic control measures being exercised in each case.

On the southbound carriageway Police and Fire vehicles were parked in the fast and middle lanes. Traffic was slowed by Police posted some 100 metres north of the scene and directed

into the slow lane and motorway shoulder. Two parked Police cars with red and blue incident lights operating and road flares on the motorway surface were utilised to maintain the traffic flow. No major disruptions of traffic flow or incidents were reported on the southbound lanes of the motorway.

The location of vehicles on the northbound side of the motorway is of more significance in this examination.

The taxi-van had come to rest on its side against the median strip on the northbound side but facing south. A few metres to the south of the taxi-van was parked a fire appliance, an International heavy pump. This was the appliance being tended by Fireman Hughes when the fatal collision occurred. It was parked at an angle facing in a north-westerly direction in the fast and middle northbound lanes, with the rear of the appliance nearest to the median barrier.

At that point the northbound side of the motorway is 14 metres in width from the median barrier to the shoulder. Each of the three lanes is 3.5 metres wide and there is a 1.8 metre margin between the right edge of the right-most, fast, lane and the median barrier. There is also a 1.7 metre margin between the left edge of the left most, slow, lane and the hard shoulder of the motorway. The front left corner of the fire appliance projected 2.43 metres into the centre lane.

It is significant that the pump control panel of the appliance is located on the passenger side of the vehicle. The way the appliance was parked meant that an operator standing at the panel would have been visible to vehicles approaching the parked appliance from the south, as did the car driven by Mr Fa'asipa.

Eighty-five metres south of that fire appliance in the fast lane was parked a Police vehicle, with red and blue incident lights operating, protecting the scene. Another Police vehicle, similarly illuminated, was between it and the fire appliance.

In addition to the illumination emanating from the emergency and Police vehicles, all of which were operating their overhead warning lights, Police officers equipped with torches

were on the northbound carriageway south of the accident scene slowing other traffic and directing it to the slow lane and hard shoulder to pass the collision scene.

A witness who drove past the scene travelling north later stated:

“The scene to me was clearly lit by flashing red and blue lights, there was ample warning as the lights could be seen from quite a distance. It seemed to me that the lights simply couldn’t be missed by anyone approaching the scene. The staff at the scene had organised what seemed to me as a proper detour round the scene and wide of where the emergency services were working.”

The Chief Fire Commander who attended stated he could see the illuminated crash scene from as far away as Parnell Fire Station, more than 5km distant across the city by direct line of sight. He added he was satisfied with the protection of the scene by the Police.

It is difficult to ascertain the exact number of Police, Fire, Ambulance and other emergency vehicles at the scene. The numbers varied at different times as the Police and other vehicles arrived and left for various reasons. These included the procurement of emergency equipment, the removal of the injured and the removal in custody of the Honda driver.

This then was the situation at the first collision scene shortly before the approach of the Toyota car driven by Mr Fa’asipa.

The Issue: Adequacy of Protective Measures at First Collision Site

On the basis of the evidence revealed by the investigation into the circumstances surrounding the death of Fireman Hughes I find that the arrangements made by the Police for the protection of the first fatal crash scene to have been quite adequate.

My finding is supported by there having been no accident or near accident involving any other traffic which passed the scene during the hour preceding the fatal collision of Mr Fa’asipa’s

car with the stationary fire tender. Traffic had safely negotiated the motorway scene in both northerly and southerly directions under the control and directions of the attendant Police.

Further, witnesses have stated that the scene was brilliantly illuminated and clearly visible for great distances. The overall circumstances, notwithstanding that an emergency situation existed, were such that with normal care no other road user would have been endangered or greatly inconvenienced by it.

The Second Collision

The Toyota was first noticed by Mr McCutcheon, the driver of a Mobil tanker truck, on the Southern Motorway about 300 metres north of the Papatoetoe on-ramp travelling north ahead of him. This was approximately 21km south of the collision scene. The car had no lights on and was travelling in the middle of the three lanes.

Mr McCutcheon had commenced work at 9.30pm at Wiri Oil Depot. After making deliveries in Huntly, Henderson and Papatoetoe he was on his way to make his last delivery of the night at the North Shore.

As Mr McCutcheon went to overtake the Toyota on its right via the fast lane the Toyota veered right towards the tanker until Mr McCutcheon, watching it through his side mirror, thought it was going to go under his vehicle. Mr McCutcheon braked heavily and the Toyota shot ahead narrowly missing the front left corner of the tanker.

As it passed, the Toyota ran up onto the concrete median barrier, at a point on the motorway near the Bairds Road overbridge, swerved violently to the left across all three lanes before straightening up and continuing to swerve between the left and centre lanes.

Mr McCutcheon, alarmed at the way in which the Toyota was being driven, made a 555 emergency call from the cab of his truck to Auckland Police by cellphone using an emergency number when he was between the Bairds Road overbridge and the Otahuhu off-ramp. His call was made, according to the Police Control Room record, at 4.09am.

At this point I turn to consider the arrangements that existed in the Police Central Control Room at the time these incidents were in progress and at about the time the first call from Mr McCutcheon was received. This is an essential part of my evaluation.

The functions of personnel in the Control Room can be divided into three positions, Communicators, Dispatchers, and Supervisors. They all operate computer terminals and the Dispatchers communicate by radio with Police cars and units in the city. The Communicators are principally responsible for receiving phone calls, computer messages, and the like, the registering of jobs and for giving advice to members of the public. Once a job has been entered by a Communicator at any terminal the computer electronically sends this information to the relevant Dispatcher. The Dispatcher could be located some distance away from the Communicator in the large Control Room.

The Central One Dispatcher is responsible for the radio traffic and direction and control of vehicles in the Central District of Auckland. Other Dispatchers are responsible in the same way for the other four Districts, Papakura, Manukau, Western and Northern. As jobs appear on the Dispatcher's screen they are passed by the Dispatcher by radio to the various Police units and in the case of a central city incident, such as a burglary, the Central One Dispatcher may be responsible for positioning vehicles and for ensuring patrols are carried out to endeavour to apprehend offenders.

Once a job has been received by a Communicator and entered onto the computer the Communicator's function in respect of that job is complete, and Communicators often do not hear the result of the particular job. The Dispatcher, seeing the job on the computer, then allocates it to a patrol car in the city.

At busy times Supervisors also act as Communicators and this occurred on two occasions during the incident that began with the first 555 call of Mr McCutcheon's with Supervisors receiving calls in respect of another motor accident and a burglary. Those jobs in that case were entered by them on to the computer as if they were Communicators.

In Mr McCutcheon's first call he spoke to Sergeant D N W McBride, acting as Communicator, and, in a 1 minute 35 second call, reported that he was following a car the driver of which was, according to Mr McCutcheon, obviously drunk. At the beginning of the call he had travelled a further 3km from the first sighting, which put Mr Fa'asipa's vehicle about 18km from the accident site. During the call, assuming Mr McCutcheon was travelling at 80kmh, Mr McCutcheon and Mr Fa'asipa would have travelled a further 2km to a point north of the Otahuhu ramps and overbridge. In his call Mr McCutcheon described the way the car was being driven and that it had no lights on. Mr McCutcheon was able to pass to Sergeant McBride the registration number and colour of the car.

Sergeant McBride seemed to interpret a remark made by Mr McCutcheon about the Ellerslie/Penrose off-ramp as raising the possibility that Mr Fa'asipa was about to leave the motorway, but this is unclear.

Mr McCutcheon was told by Sergeant McBride the Police would do the best they could about the car, but that a fatal accident had occurred over the North Shore on the motorways. He was also told the Police would try and get a car there and see if they could intercept Mr Fa'asipa's Toyota.

In the Police Control Room Sergeant McBride, during Mr McCutcheon's call, orally instructed the Central One Dispatcher, Constable Michaela McBride (no relation), who was controlling Police cars in the city, that he needed a car to make an interception on the motorway, of the Toyota car. Other cars in the central Auckland area were committed to various tasks, including the first motorway collision, which rendered them unavailable for any alternative operational duties. Constable McBride therefore called to Sergeant McBride, whilst he was still on the telephone to Mr McCutcheon between 4.09.44 and 4.11.19am, that there were no cars available at that time for an interception of the Toyota.

Immediately before Mr McCutcheon's first call was received in the Control Room there was in Central Auckland a Police effort to catch four offenders breaking into a restaurant near St Patrick's Cathedral in the downtown area. At 4.08am Inspector A. Waugh in the Control Room had received a call from a member of the public reporting a burglary in progress at the

Thai Restaurant in Wyndham Street. The call concluded at 4.15am. The burglary response was in full swing and being controlled by Constable Michaela McBride, who was the Central One Dispatcher, with four cars committed to the pursuit and apprehension of the offenders who had scattered in four different directions. Three offenders were eventually arrested.

Constable McBride was receiving information directly from Inspector Waugh and was totally committed to the control and co-ordination of the efforts to apprehend the four offenders. This involved communicating with and controlling the cars, marking movements on a map, placing cordons and recording the various movements of units. There was some confusion for her to resolve about which cars had caught offenders because some had been apprehended.

This activity preoccupied Constable McBride from the time Inspector Waugh started to receive the report of the burglary at 4.08am. This preceded Sergeant McBride's receipt of Mr McCutcheon's first telephone call at 4.09am.

Sergeant McBride did not ignore this first call of Mr McCutcheon and himself checked the registration number of the Toyota car passed to him by Mr McCutcheon. He noted it was registered to a South Auckland address and advised his supervisor, Senior Sergeant Underwood.

Senior Sergeant Underwood told Sergeant McBride to broadcast the details of the Toyota and its erratic progress in a 10/1 message. This is an immediate radio message which is broadcast to all Police patrols and Stations. In this case it was to notify all staff of a car being driven erratically and its location, so that any staff in the vicinity who were free could attempt to locate that vehicle.

Sergeant McBride attempted to broadcast the 10/1 message but, because of the congested nature of the radio channel at that time, other broadcasts prevented him doing so immediately. He therefore wrote the necessary message and placed it on Constable McBride's work-station for her to broadcast when an opportunity arose. Meanwhile the pursuit of the four burglary offenders in the downtown area continued. By 4.17am three of them had been apprehended, the remaining one still being sought.

There clearly was considerable activity in the Control Room at this time. At 4.17am Senior Sergeant Underwood in the Control Room received a telephoned report of an accident at the intersection of Queen/Victoria Street between two cars. Occupants of one car were reportedly aggressively drunk. The Senior Sergeant put a call out for one of the burglary cars to detach and attend to this accident.

Mr McCutcheon continued to drive north in his truck. The Toyota remained in his view, its speed varying between 50kmh to 80kmh, well within the 100kmh speed limit but with the car continuing to wander over all three motorway lanes. Other cars overtook the Toyota, some having to take evasive action in the process as the Toyota veered towards them.

At a point on the motorway north of the Greenlane interchange the Toyota slowed and came to a standstill in the fast lane next to the median barrier on the uphill section towards Market Road overbridge. This was approximately 11.1km south of the first fatal collision scene on the motorway north of the Onewa overbridge. Mr McCutcheon overtook. He looked down into the Toyota and clearly saw the driver and the front seat passenger, who was curled up asleep. Mr McCutcheon stopped some distance further on in the left-hand layby at the start of the Newmarket Viaduct. He saw a number of vehicles go past. After a few minutes the Toyota appeared, still unlit and weaving from side to side across all lanes as it progressed. Mr McCutcheon followed close behind. The Toyota was travelling at about 50kmh.

At this point Mr McCutcheon made a second 555 emergency call to the Police and was received by a different Communicator, Constable V. Tamatea. This was at 4.19.01am and the call lasted 1 minute 45 seconds until 4.20.46. It was made as Mr McCutcheon drove through the Victoria Park flyover and finished at the bottom, north end, of Victoria Park. This was only 4.7km south of the first fatal collision scene. He reported that the Toyota was approaching the Harbour Bridge, veering across three lanes, and expressed the opinion that the driver of the car was badly drunk and likely to kill someone.

At this point two off-ramps, those at Stafford Road and Onewa Road, remained before the first collision scene.

Immediately after the termination of the second 555 call at 4.20.46am, Constable Tamatea was required to react to the report of a violent domestic incident by briefly assisting another Communicator.

He then spoke by telephone to the Police Harbour Bridge Control Motorways Dispatcher, Constable Aukina, and told her of the weaving approach to the Bridge of the Toyota. The timing of this call is not recorded, but from other timings and events it was made at approximately 4.22am, or shortly after.

Constable Aukino, at 4.23:15am, called on the radio to any Police unit in the vicinity of the first collision. Her call was made only five seconds before the collision was reported at 4.23:20am between the Toyota car driven by Mr Fa'asipa and the stationary fire appliance being tended by Fireman Hughes, resulting in the fireman's instant death. Constable Aukino called on the radio to any Police unit in Section 11 of the motorway, this being the section on which the first fatal collision had occurred. The record indicates that at the time the Constable made her call, and before she was able to pass on the information about the approach of the Toyota, a Police officer at the scene also made a call to report that the second fatal collision had happened. The collision evidently occurred at the moment, or within seconds, of her call to other Police vehicles for assistance.

Mr McCutcheon in a statement taken after the event described how the Toyota moved to the left as it came off the Victoria Park motorway flyover. Its speed dropped but the unpredictability of its progress continued. It came very close to Mr McCutcheon's vehicle, cutting across from the left lane to the right lane and then cutting back across to the left again.

In the same statement Mr McCutcheon said he saw the Toyota go onto the Harbour Bridge in the left-hand lane of the clip-on lanes, but again weaving from lane to lane. The Toyota was lost to Mr McCutcheon's sight as it crested the Bridge but as Mr McCutcheon came over the rise he immediately saw before him all the flashing lights at the collision scene.

Mr McCutcheon saw the brake lights of the Toyota light up. There were at that time three or four other cars between his truck and the Toyota behind the Toyota but not attempting to pass,

clearly because of the Toyota's unpredictable and weaving progress. However, at the northern end of the Bridge these cars fanned out and passed the Toyota. Mr McCutcheon caught up with it, the speed by this time being about 90kmh.

As Mr McCutcheon drove under the Onewa overbridge he realised he would have to start slowing down for the collision scene; in the statement he said that he had been told of it by Constable Tamatea during the second 555 call. The Toyota however continued towards the scene without slowing, in the right-hand lane and weaving erratically.

Mr McCutcheon then saw the Toyota swerve violently to the left, crossing the lanes, and then swerve suddenly back to the right heading directly towards the parked fire appliance, this being the appliance being tended by Fireman Hughes. Mr McCutcheon watched the Toyota drive straight into the side of the appliance and the fireman standing beside it. The fireman, Mr McCutcheon stated later, was facing away from the approaching Toyota, looking straight at the appliance.

Approach to Evaluation

Before moving to an evaluation of the calls made by Mr McCutcheon there are some general remarks I ought to make. In this Report on the death of Fireman Hughes the single most important issue the Authority must decide is whether the Police made an adequate operational response to the warnings received from a concerned and highly responsible citizen as he witnessed from the cab of his truck an apparently drunken motorist who presented a clear and convincing danger to the public using the highway, and to himself and his passenger.

A member of the public might very reasonably think that apparently alcohol impaired driving, which is indisputably a major cause of death, injury and damage on the roadways, is not often reported to the Police in advance of a tragedy as this was and something should have been done. The telephoned reports having been made, that necessarily focuses sharply on the operational response of the Police to those warnings and obvious request for some form of prevention or apprehension before an actual tragedy occurs. The foregoing sets out the issue and in the evaluation of the Police response that follows it has not been ignored or downplayed.

Having made the foregoing comments it is still necessary for the Authority to state clearly what the standard for the evaluation must reasonably be. The response of the Police must be judged by the circumstances existing at the time the calls were made and most importantly the deployment of resources at the command of the Control Room.

To begin with there were some unusual aspects to the reporting of Mr Fa'asipa's driving. The fact that a tanker driver had the technical equipment of a cellphone available speaks of the advance of communication technology. I make a more general comment on this at the end of this Report. The time of early morning hours at around 4.00am must be taken into consideration. I think perhaps the most important point is to keep constantly in mind the precise circumstances that faced the Control Room in regard to workload. It would be a significant and unfair error of procedure if the evaluation of operational Police response commenced from the now established fact that Fireman Hughes was killed by an apparently drunken driver and then allow that to be the controlling factor in the evaluation. When the first phone call was made by Mr McCutcheon (which was the more important one in gauging Police response) Mr Fa'asipa was about 16km south of the first fatal accident scene and with no certainty, or even probability, that his driving would take him to the scene and the tragedy that occurred. The assessment must be objective and reasonable considering the circumstances at the time.

Faced with the circumstances existing at the time of the first McCutcheon call, the actuality of the Police's response must be examined applying a reasonable standard that ought to have been adopted in all the circumstances by prudent Police officers to avoid the accident that resulted in Fireman Hughes' death. In short did the personnel of the Control Room respond in a proper and reasonable way to the first call of Mr McCutcheon about Mr Fa'asipa's driving given the totality of the relevant circumstances existing at the time? It is that issue upon which I focus for the evaluation of Police response.

Summary

Before moving on to address the principal aims of this report it will be helpful here to sum up briefly. The essence of this matter is that the Police were unable to take direct action in

response to Mr McCutcheon's first 555 call by virtue of all available resources being committed elsewhere including the hot pursuit of burglary offenders as described earlier.

The report of the Toyota was at that point regarded as essentially an Auckland Central District problem and it is from resources in that District that a response should come.

There were a number of Police patrol cars active in the greater Auckland area at the time the incidents described here were in progress. However computer records of Police unit dispositions show that the units in the Western, Papakura and Manukau Districts were too far away to be able to intercept the Toyota on the motorway. A vehicle from Manukau for instance would have had to travel at excessive speeds in order to travel north along the motorway to intercept the Toyota car. Also, because of the workload in the respective Districts, the practice of deploying one unit from one District to another in such circumstances is impracticable. Several Northern units were already committed to the first collision and at the scene on the southbound lanes of the motorway, as was the specialist Motorway Unit.

Only the Central City units were within the vicinity of the motorway and the record of their activities at the crucial time show that no car was free to attempt to pursue and intercept the Toyota. A series of other incidents including the burglary, an arson, the first collision and the processing of an arrest tied up the City Centre units. The only free unit was too far from the motorway to have been able to get to the Toyota. It was at the junction of Hillsborough and Dominion Roads at the time of Mr McCutcheon's first call.

Action was taken on receipt of the second 555 call to warn Police who were attending at the scene of the first fatal collision about the danger threatened by the weaving and erratic approach of the Toyota. The second fatal collision occurred contemporaneously with the radio message conveying that warning.

Almost any safety precautions at the scene of the first collision would have been insufficient to protect the emergency personnel at the scene from the danger posed by a motorist proceeding in the erratic and unpredictable manner in which Mr Fa'asipa was driving the Toyota. Its weaving swerving progress at various speeds, at one point becoming stationary

and at another hitting the median barrier, made this clear. If the accident was to realistically have been prevented, Mr Fa'asipa's car had to be stopped before the original collision site and that itself may have been difficult.

The Issues: Police Response to 555 Calls

The primary issue to be addressed was that of the Police response to the two 555 emergency calls made by Mr R. McCutcheon to the Police. It should be noted that, between 11.00pm and 7.00am, fourteen 555 calls were received in the Control Room.

When the first of Mr McCutcheon's calls was made I am satisfied that no Police resources were immediately available to take action to halt or intercept the Toyota.

The car at the Hillsborough and Dominion Road intersection could not have got to the motorway to halt Mr Fa'asipa short of the first collision scene. The possibility is so remote as to be able to be discounted. If Mr Fa'asipa was unable to respond to the brilliantly lit emergency situation at the collision scene by stopping or amending his driving, the possibility of a single Police car having been able to halt his progress is unlikely.

A witness reported seeing a Police car in the vicinity of Market Road travelling north on the motorway with emergency lights operating at 4.15am, some minutes before the final fatal collision. Enquiries have shown this car to have been one from the Mt Wellington area which responded to the second collision report indicating that the time would have in fact been after 4.23am, the time of the collision. The witness was clearly mistaken.

Sergeant McBride before the second collision was not aware of the full situation at the first collision scene apart from learning from within the Control Room that a fatality had occurred. He was unaware that a taxi with 11 passengers had been involved and that the motorway north and south was restricted to one lane only.

On receipt of Mr McCutcheon's first 555 call Sergeant McBride therefore did not know that an extensive collision scene resulting in the closure of four motorway lanes, two in each

direction, existed on the northern motorway towards which the Toyota and Mr McCutcheon were heading, albeit still approximately 16kms to the south.

In the circumstances, with all of the Central City Police cars being either temporarily committed to other tasks or too far away from the motorway to be able to act effectively to stop the Toyota, the decision to make a 10/1 broadcast to alert all Police units to the erratic progress of the Toyota was the only feasible option open to the Police at that time. For reasons that have already been discussed it was not made. Had the broadcast been made units would have been on the lookout for the Toyota. That it was not made immediately was due to the preoccupation of the Dispatcher concerned with the control and direction of the cars and Police officers who were endeavouring to apprehend the four suspected burglary offenders in downtown Auckland.

At the time Mr McCutcheon's second 555 call was made the Toyota had travelled on to the environs of the Harbour Bridge. The last minute attempt of the Motorways Dispatcher, Constable Aukino, to alert the Police who were at the scene of the first collision to the advancing erratically driven Toyota was, as has been stated, too late to prevent the collision between the Toyota and the stationary fire appliance. By the time Mr McCutcheon's report had been relayed to Constable Aukino the possibility of the Toyota being stopped no longer existed.

I am consequently satisfied that no unit could have intervened to prevent the tragedy which occurred.

Cell Phone Use

I return to the use of a mobile cellular phone to report to the Police by use of an emergency number at 4.00am a driver who appeared to be a danger on the highway. The usage of cell phones for a great variety of reasons is increasing in this country as it is worldwide. According to a study released in September 1994 in the United States by the Cellular Telecommunications Industry Association the usage has doubled since 1992 and two out of three telephone numbers are now assigned to cellular phones. Personal security reasons were the No. 1 reason cited by purchasers for buying the phones, according to the Association.

It is to be expected that the Police in New Zealand will be materially affected by the increased cellular phone usage. In this instance the Police most probably would not have known of the progress of the Toyota but for the initiative taken by Mr McCutcheon in making the 555 cell phone calls. The value of contemporaneous cell phone reports in circumstances such as this is self evident, especially with the caller able to give to the Control Room in Auckland a sort of running commentary about the driving behaviour of Mr Fa'asipa. Mr McCutcheon's total talking time to Control Room was nearly 3 1/2 minutes.

There is available now to a great many citizens in New Zealand the technical ability to report to Police contemporaneously with behaviour that is suspicious at least in the criminal sense and even clearly criminal. Accidents observed to have recently occurred will no doubt be increasingly reported, especially outside towns and cities. There is a great potential here for saving lives.

The purpose of drawing attention to this aspect in this Report is that the Police service in New Zealand will in the future be put under greater pressure with emergency calls to respond. The time lag built into many emergency calls in the past will be greatly shortened. It is the combination of a motorist with a cellular phone able to make an immediate call which will cause the rise in reports. The Police may be obliged to embark on a public information programme to guide the use of cell phone reports of accidents to save repetitive calls that consume resources and time. It is to be expected telecommunication companies will be providing the service of calling Police emergency numbers by reduced touches of the buttons.

Conclusion

In conclusion I am satisfied that the collision which resulted in the tragic death of Fireman Hughes was not brought about by any operational or procedural deficiency on the part of the Police.

Neither was the failure to halt the progress of the Toyota and thereby avert the subsequent fatal collision due to any deficiency on the part of the Police.

Other on-going activity of an operational nature monopolised the reporting and controlling facilities of the Central Control Room to the degree that immediate intervention to halt the Toyota was not operationally possible in time to avert the collision. The measures taken by the Police to control and safeguard the first collision scene and passing traffic were appropriate and adequate in all but the exceptional circumstances presented by the arrival of the Toyota driven by Mr Fa'asipa. The scene of the fatality could be described as a blaze of flashing lights but the driver of the Toyota did not respond as earlier described. It was in totality an exceptional set of circumstances.

The response of Control Room staff to the two 555 emergency calls made by Mr R. McCutcheon reporting the hazardous conduct of the driver of the Toyota car was, in light of other prevailing operational pressures, appropriate.

Sir John Jeffries
POLICE COMPLAINTS AUTHORITY
31 August 1995