



Fatal pursuit of Israel Porter

INDEPENDENT POLICE CONDUCT AUTHORITY

INTRODUCTION

1. At about 3.50pm on Saturday 27 March 2010 a Mazda station wagon driven by Israel Maki Tane Porter collided with a Toyota van, carrying six people, following a short Police pursuit in Hamilton. Mr Porter died at the scene. The driver of the van and his five passengers all received minor injuries.
2. The Police notified the Independent Police Conduct Authority of the pursuit, and the Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings.

BACKGROUND

Summary of events

3. On 27 March 2010, Officer A, a highway patrol officer, was on duty in Hamilton in a marked patrol car (see paragraphs 48 - 50 for detail). He was accompanied by a television cameraman who had been filming events for a forthcoming television series.
4. At about 3.45pm, Officer A was in the forecourt of a petrol station at the intersection of Horsham Downs Road and Thomas Road in Horsham Downs, Hamilton. After refuelling his patrol car, Officer A drove to an exit where his attention was drawn to a blue Mazda station wagon approaching from his left.
5. From the noise of the Mazda's engine and Officer A's direct observations, it was apparent to Officer A that the vehicle was being driven in excess of the 50kph speed limit.
6. The Mazda was being driven by 27 year old Israel Porter, however, Officer A was unable to identify him, or read the registration number as it went past.
7. It is highly probable that Mr Porter saw the police car waiting at the exit as he passed the petrol station.

8. Officer A waited for another vehicle to enter the petrol station, before exiting onto Horsham Downs Road behind the Mazda. Officer A estimates that, at this stage, the Mazda was approximately 100 metres ahead.
9. Officer A activated his warning lights and siren indicating to Mr Porter that he was required to stop. Traffic volume was light, and there was no traffic between the patrol car and the Mazda. Officer A believed that the Mazda driver would stop once he was alerted to do so by the warning devices.
10. As the two vehicles moved into a more rural area further along Horsham Downs Road, with a higher speed limit of 80kph, the Mazda overtook another vehicle and accelerated faster. Officer A concluded that the driver was deliberately attempting to evade apprehension and at 3.48pm, as required under the Police pursuit policy (see paragraphs 57), he notified the Northern Communications Centre (NorthComms) that he had a *“failing to stop”*.
11. The NorthComms dispatcher acknowledged the pursuit and asked for details of the location. Officer A immediately gave the location and advised that he could not read the registration number.
12. After being advised of the pursuit, the dispatcher, as he is required to do, attempted to create a computer record of the event (see paragraph 59 for detail of role of dispatcher). However he had difficulties in doing so because he was not familiar with the location in which the pursuit was taking place. These difficulties continued throughout the pursuit and distracted the dispatcher from his core tasks (for more on this issue see paragraphs 73 - 80).
13. As required under the pursuit policy, the NorthComms dispatcher then gave Officer A the following warning: *“If it becomes an unjustified pursuit, to abandon immediately. Do you understand?”* (see paragraph 57 for the correct wording of the pursuit warning). Officer A immediately acknowledged the warning and also said *“Just a random stop, just on Borman Road, thanks”*.
14. Mr Porter had by this time turned onto New Borman Road, a newly created sub-division with a speed limit of 50kph. There was no other traffic on this road. Officer A said later in interview that although his own speed had reached 110kph at the time, the Mazda was being driven at faster speeds and was by now over 200 metres ahead.
15. A local resident, helping his child ride a bike, heard the engine noise of the approaching Mazda and estimated it was travelling at between 140 and 160kph. He attempted to slow the driver by standing in the middle of the road and waving his arms. His actions did briefly slow Mr Porter, and Officer A was able to gain some ground and note the registration number.

16. Officer A gave the dispatcher details of the direction of travel and the Mazda's registration number (although this was later found to be incorrect). Officer A also requested assistance from other Hamilton units as Mr Porter appeared to be heading back into Hamilton City.
17. Officer A then observed the Mazda turn right from New Borman Road into Gordonton Road and saw other road users having to take evasive action to avoid a collision. Officer A slowed down as he approached the intersection; and after he had safely negotiated it, he observed the Mazda, now 300 – 400 metres ahead, overtaking other vehicles and travelling primarily on the wrong side on the road.
18. By this time the dispatcher had been joined by a supervisor who assumed the role of pursuit controller as required under the pursuit policy. The pursuit controller assumed his responsibilities after the vehicles had entered Gordonton Road, but was initially focused on assisting the dispatcher who was still having difficulty in creating the event record.
19. Gordonton Road is a main arterial route with one lane in each direction, separated by a flush painted median. The speed limit in this area is 80kph. Officer A advised NorthComms: *"Gordonton Road, heading Northbound thanks. My speed ah 110,115,120. He is overtaking on the wrong side of the road."* This transmission was acknowledged by the dispatcher, who also asked for a report on weather conditions.
20. The pursuit controller stated that on assuming control of the pursuit he heard Officer A report his speed as 120 kph, but was incorrectly advised by the dispatcher that the road had a speed limit of 100 kph (in fact the limit was 80kph). The speed did not therefore raise any immediate concerns with the pursuit controller and he made no decision to call for the pursuit's abandonment. The pursuit controller cannot recall hearing Officer A's advice that the Mazda driver was overtaking on the wrong side of the road.
21. In interview, Officer A said that he made a conscious decision *"in the interests of public safety not to travel on the incorrect side of the road after the blue vehicle [the Mazda]"*.
22. Officer A also said in interview that due to the manner of Mr Porter's driving on Gordonton Road he decided to abandon the pursuit. He said he cannot recall if he made his intention known to NorthComms, or to his passenger, or made any verbal comment. However it is clear from the transcript of radio transmissions that Officer A said: *"[call sign] I might stand...sorry he's carried on through Thomas Road"*. This indicates an intention to stand down or abandon the pursuit on the part of Officer A.
23. These transmissions were heard by the pursuit controller, who later reported that he thought they were an indication that Officer A was considering abandoning the pursuit. However at the time he heard them, the pursuit controller did not question Officer A about his comments or the current risk factors.

24. At the intersection with Thomas Road, the Gordonton Road southbound lane widens and splits to allow space on the right for traffic turning into Thomas Road. Other traffic continues straight through on a moderate left hand bend into a relatively straight and flat stretch of road. Officer A said he estimated the Mazda was travelling at speed of 130 to 140kph through this intersection. He said that he observed Mr Porter drive around the right hand side of vehicles waiting to turn right at the intersection, with no visibility of any traffic coming in the opposite direction, and then disappear from view. It was then that he made the firm decision to abandon pursuit.
25. As required under the pursuit policy, Officer A was required to advise NorthComms of his decision to abandon. However he was unable to do so immediately as he could not safely operate the radio while negotiating the intersection with Thomas Road.
26. Once through the intersection Officer A had his radio in his hand and was about to notify NorthComms of his decision to abandon, when he noticed debris in the air about 600 to 700 metres ahead and immediately realised that there had been a crash, probably involving the Mazda. As he came upon the scene he advised the dispatcher of the head-on collision and requested further assistance.
27. After passing through the Thomas Road intersection, Mr Porter had continued to drive down Gordonton Road on the wrong side of the road until he struck the right front side of a Toyota van being driven north. The accident occurred entirely in the northbound lane, 63 metres south of the intersection of Gordonton Road and Puketaha Road. The roadway from that intersection has double yellow 'no-passing' lines between the lanes. There was no indication that either driver took evasive action to avoid the crash.
28. As a result of the impact the van rolled onto its left hand side, coming to rest 13 metres north of the impact area. The driver and five passengers received minor injuries.
29. The Mazda continued forwards and then rolled following the collision, coming to rest 91 metres south of the point of impact. The station wagon sustained significant damage, especially to the driver's side. When Officer A reached the Mazda, it was immediately apparent to him that Mr Porter was already deceased.
30. The pursuit lasted less than two minutes and covered a distance of 3.9 kilometres.
31. The entire pursuit was observed by the television cameraman in the passenger seat of the police car. It was not filmed however as the cameraman had packed away his gear while the car was being refuelled at the service station. The cameraman had not initially seen the Mazda driving at speed and became aware of the pursuit when Officer A activated his lights and siren in Horsham Downs Road.
32. The cameraman said that the Mazda was driven at high speeds for the duration of the pursuit and the driver did not demonstrate any intention of slowing down at any stage. He

confirmed that Officer A was well behind the Mazda throughout the pursuit and at the time the crash occurred.

Environment

33. The weather conditions at the time were sunny and fine, the road was dry and visibility excellent.
34. The road surface was tar-seal and was in good condition. Road traffic volume was initially extremely light through Horsham Downs but became moderate to heavy once the pursuit entered Gordonton Road.

Police crash analysis

35. A Police Serious Crash Unit investigator attended the scene at about 4.10pm while the Mazda and the van were still in situ. He conducted a scene examination and reconstruction of the accident. His examination focused on the environment, the vehicles and the people involved; and found as follows.

Environment

36. The road and road markings were in good condition. The crash scene section of Gordonton Road is straight and level. Visibility was excellent and the conditions were fine and dry. Environmental factors were discounted a causative factor.

Vehicles

37. Although the Mazda vehicle had been modified with a 1600 cc turbo-charged engine (rather than the normal 1300 cc engine) and a vehicle inspector noted that one of the tyres had tread depth below the warrant of fitness standards, these were not considered to have been contributing or causative factors in the fatal collision.
38. The Toyota van was found to have no faults and was not a causative factor in the collision.

Toyota van driver

39. The driver of the Toyota van was driving within his lane and at just below the posted speed limit. His driving was not a causative or contributing factor in the crash.

Mazda driver - Israel Porter

40. The following were found to be causative factors:
 - Mr Porter was driving the Mazda in a southerly direction but was in the northbound lane prior to and at impact. This driving was seen by nine other road users.

- Mr Porter was driving the Mazda at excessive speed, variously estimated by 11 witnesses to have been between 100 and 160kph.
- Mr Porter had a blood alcohol level of 107 milligrams of alcohol per 100 milliliters of blood. The legal blood alcohol level for New Zealand Drivers aged 20 years or over is 80 milligrams of alcohol per 100 milliliters of blood.
- Toxicology testing found that Mr Porter had a blood THC level of 1 microgram per litre. This is the equivalent of smoking a single cannabis cigarette within about 0.5 to 6.5 hours prior to death.

Israel Porter

41. Israel Porter's identity was not known during the pursuit.
42. At the time of his death Mr Porter was 27 years old and employed as a security guard. He had recently separated from his partner.
43. The Mazda vehicle had been purchased by him recently.
44. He had consumed two large bottles of beer at lunchtime, and had reported sick to his employer later that day.
45. Mr Porter did not have criminal or traffic convictions. Family and friends of Mr Porter have said that his actions on 27 March 2010 in fleeing from Police and driving in the manner that he did were out of character.

Cause of death

46. A post mortem examination carried out found that Mr Porter died from serious head injuries.
47. The Coroner held an inquest into the death of Mr Porter and issued his finding on 27 August 2010. He found that Mr Porter died from injuries sustained in a motor vehicle collision whilst he was attempting to evade Police.

Officer A

48. Officer A is an experienced police officer having served 10 years with New Zealand Police, the last 2 ½ years with the Highway Patrol.
49. Officer A is certified to a 'Gold' standard under the Police Professional Driving Programme. He has been trained in Police pursuit policy and is entitled to engage in a pursuit without supervision.

50. His marked patrol vehicle was designated as 'Category A', meaning it may be used as the lead vehicle in a pursuit.

LAWS AND POLICIES

Legislative authority for pursuits

51. Under the Land Transport Act 1998, the Police are empowered to stop vehicles for traffic enforcement purposes. Under the Crimes Act 1961, the Police are empowered to stop vehicles in order to conduct a statutory search or when there are reasonable grounds to believe that an occupant of the vehicle is unlawfully at large or has committed an offence punishable by imprisonment. Where such a vehicle fails to stop, the Police may begin a pursuit.

Police pursuit policy¹

Definition

52. A pursuit occurs when (i) the driver of a vehicle has been signalled by Police to stop, (ii) the driver fails to stop and attempts to evade apprehension, and (iii) Police take action to apprehend the driver.

Overriding principle

53. Under the Police pursuit policy, the overriding principle for conduct and management of pursuits is: *"Public and staff safety takes precedence over the immediate apprehension of the offender."*

Risk assessment

54. Under the Police pursuit policy, before commencing a pursuit an officer is required to first undertake a risk assessment. This involves consideration of the speed limit and manner of driving by the offending vehicle, identity and other characteristics of the occupants of the offending vehicle, weather conditions, the environment, traffic conditions, and capabilities of the Police driver and vehicle. The officer must then *"determine whether the need to immediately apprehend the offender is outweighed by the potential risks of a pursuit to:*

¹ The Police policy in place at the time of this incident was called the pursuit policy. On 18 October 2010 the pursuit policy was replaced by the fleeing driver policy. All references to Police policy in this report relate to the pursuit policy unless otherwise stated.

- *the public*
- *the occupants of the pursued vehicle*
- *Police.”*

55. If there is no need to immediately apprehend the offender, or the risks are too great, the pursuit must not be commenced.
56. Throughout a pursuit, Police must continue to assess the risks involved and they must abandon it if the risks to safety outweigh the immediate need to apprehend the offender.

Communication requirements

57. When a pursuit commences, the communications centre must be notified. The communications centre must provide the following warning: *“If there is any unjustified risk to any person you are to abandon pursuit immediately”*, which the pursuing officer must acknowledge. The pursuing officer must provide information about the pursued vehicle, its location and direction of travel, and the reason for pursuit. The communications centre must prompt for information about speed, road and traffic conditions, weather, the offender’s manner of driving and identity, and the pursuing officers’ driver and vehicle classifications.

Roles and responsibilities

58. Under the policy, the driver of a Police vehicle has primary responsibility for the initiation, continuation and conduct of a pursuit. The driver must comply with relevant legislation, drive in a manner that prioritises public and Police safety, continue to undertake risk assessments throughout the pursuit, comply with all directions from the pursuit controller (i.e the shift commander at the Police communications centre), and comply with all directions from a Police passenger if the passenger is senior in rank or service.
59. The dispatcher at the Police communications centre must maintain radio communications with staff involved in the pursuit, give the safety reminder referred to in paragraph 13, and communicate instructions from the pursuit controller.
60. The pursuit controller (i.e. the shift commander at the communications centre) is responsible for supervising the pursuit and coordinating the overall Police response, and for selecting and implementing appropriate tactics.

Abandonment

61. A pursuit must be abandoned if at any stage the risks to safety outweigh the immediate need to apprehend the offender. The pursuit controller must then give the direct order

“All units, [Comms Centre] Alpha, abandon pursuit now. I say again, all units abandon pursuit now.”

62. The policy sets out the steps that must be carried out following a decision to abandon a pursuit:

Step	Action
1	<i>Acknowledge the direction to abandon pursuit</i>
2	<i>Immediately reduce speed to increase the distance between the offender’s vehicle and their own</i>
3	<i>Deactivate warning devices once below the speed limit</i>
4	<i>Stop as soon as it is safe to do so</i>
5	<i>Report abandonment to the pursuit controller, confirming that they are stationary and giving their position.</i>

THE AUTHORITY’S FINDINGS

Commencement of pursuit

63. Israel Porter was signalled to stop for a traffic infringement under section 114 of the Land Transport Act 1998. On his failing to stop, Officer A was authorised to commence a pursuit.
64. Mr Porter’s reaction, once he became aware of the signal to stop, was to accelerate away in an attempt to avoid apprehension.
65. At that point Officer A assessed the risk factors involved in pursuing, including the speed of the Mazda and the density of traffic (see paragraph 9). Officer A deemed that the risk involved in pursuing Mr Porter was justified and that it was prudent for him to continue.

FINDING

Officer A complied with the law and with Police pursuit policy in commencing the pursuit.

The officer considered the relevant risk factors and formed the view that the immediate need to apprehend the offender outweighed the risks.

Communication by the pursuing officer

66. When it became apparent that the Mazda driver was not going to stop, Officer A correctly notified NorthComms that he was in pursuit of a vehicle that had failed to stop.
67. The NorthComms dispatcher gave Officer A the safety warning required under the pursuit policy (see paragraph 13), and Officer A acknowledged the warning.

68. Officer A immediately gave the NorthComms dispatcher information about the location, the direction of travel, the posted speed limit and advised that he could not see the registration number.
69. Following his acknowledgement of the safety warning, Officer A advised the registration number, his location and direction of travel. He then responded to the dispatchers question about whether he needed assistance from other units, and advised speed and manner of driving (see paragraphs 16 and 19).
70. Officer A had just given the dispatcher an update on location and been given the results of the registration search when the crash occurred. The next transmission from Officer A was advising NorthComms that there had been a head-on collision at the intersection with Puketaha Road and asking for assistance.

FINDING

Officer A complied with the pursuit policy in respect of communication.

Speed and manner of driving of Officer A

71. Officer A's driving was witnessed by numerous people throughout the pursuit. All confirm that Officer A was some distance behind the Mazda and driving at lower speeds.
72. Officer A was observed by witnesses as slowing to negotiate the intersections at New Borman Road and Gordonton Road, and at Gordonton Road and Thomas Road. Witnesses describe him as driving "*in a sensible manner*" and "*driving with caution...and did not place any other motorist at risk*". Officer A's top speed, as reported by him, was 120kph in an 80kph speed zone. His speed on Gordonton Road is reported by witnesses to have been between 50 and 80 kph; these witnesses also stated that Officer A slowed at the intersection with Thomas Road.

FINDING

Officer A complied with the pursuit policy in relation to speed and manner of driving.

Oversight of the pursuit by NorthComms

73. For the facts relating to the role of the NorthComms dispatcher and pursuit controller see paragraphs 59 and 60.
74. For issues relating to the assessment of risks involved in the pursuit and the consideration of abandonment see paragraphs 81 - 89.

75. The difficulties the dispatcher had in creating a computer record of the pursuit distracted him from the actual pursuit and as a consequence he did not fully engage with Officer A in ascertaining all the risk factors, as required under the pursuit policy (see paragraph 57).
76. The pursuit controller joined the dispatcher at 3.49:15pm, some 50 seconds after the pursuit commenced, and after the vehicles had entered Gordonton Road. The pursuit controller said that he had been away from his desk attending the briefing of the oncoming shift of staff and so there was a longer than usual delay in him reaching the dispatchers desk, once he was made aware of the pursuit.
77. The pursuit controller decided that he would let the dispatcher keep trying to confirm the exact location of the pursuit rather than distract him by asking the standard set of questions about risk factors.
78. The pursuit controller then spent another 20 or 30 seconds focused on assisting the dispatcher with the event location and waiting while the registration details were checked, rather than concentrating on the incident itself.
79. Officer A advised NorthComms of the crash at 3.50:13pm. At that time the pursuit controller was still not aware of the history of the pursuit or of the known risk factors.
80. In normal circumstances, the pursuit controller communicates with pursuing patrols via the dispatcher. However, in this situation the dispatcher was having obvious technical difficulties that were distracting him from engaging with Officer A. Accepting the brevity of the pursuit nevertheless, the pursuit controller should not have become involved in the technical difficulties and should have started communicating directly with Officer A.

FINDING

The pursuit controller did not take effective command and control of the situation.

On-going risk assessment and the option of abandoning

81. Mr Porter drove the Mazda at excessive speeds from the beginning of the pursuit. On Horsham Downs Road and Borman Road where the speed limit was primarily 80kph, the pursuit was carried out at speeds around 120kph. However, due to the time of day, the very low traffic volume and the rural area, the risks involved in pursuing Mr Porter were justifiable.
82. As the pursuit passed through the New Borman Road (50kph speed limit) and the new subdivision, Mr Porter was seen to slow down. There was no other traffic on the road, and continuing the pursuit was reasonable in the circumstances.

83. When the pursuit entered Gordonton Road, traffic volume increased markedly and Mr Porter's driving became very fast and dangerous. 11 witnesses commented on Mr Porter's speed and driving style, describing him (amongst other things) as driving on the wrong side of the road, "*forcing his way between traffic*" and "*travelling at a great rate of knots*" and describing his speed as between 120 and 160kph and "*incredibly fast*" and "*absolutely ridiculous speed*".
84. Mr Porter's driving was also witnessed in part by Officer A, who reported his own speed as 120kph, and said that Mr Porter was overtaking on the wrong side of the road. In interview, Officer A said that he estimated Mr Porter's speed to be 130 – 140kph at the intersection with Thomas Road.
85. It was at this time that Officer A made the decision to abandon the pursuit in the interests of public safety. This was the appropriate decision to make at this time. Had the crash not occurred, the pursuit would have ended at this point.
86. Officer A was unable to communicate his decision to NorthComms as he first had to negotiate the intersection of Gordonton Road and Thomas Road, and could not safely operate the radio while doing so.
87. By the time Officer A had negotiated the intersection the crash had occurred.
88. Due to their pre-occupation with the technical difficulties (see paragraphs 75 - 80), neither the dispatcher nor the pursuit controller, were aware of the increasing risk to public safety posed by the pursuit. Crucial information was not taken into account by NorthComms and the risks associated with continuing the pursuit were not assessed.
89. The pursuit controller should have actively taken control of the pursuit and communicated with Officer A regarding the on-going risk assessment and the option of abandoning, especially in light of the indication given by Officer A that he was considering abandoning the pursuit (see paragraphs 22 and 23).

FINDING

Officer A correctly made the decision to abandon pursuit on Gordonton Road. However before he could do so, in accordance with the pursuit policy, Mr Porter collided with the van.

Although the duration of the pursuit was brief, the pursuit controller should have started communicating with Officer A regarding on-going risk assessment and the option of abandoning.

Subsequent action

90. As a result of a Police Investigation into this pursuit, the pursuit controller has received further coaching on the conduct and management of pursuits.

CONCLUSIONS

91. Israel Porter demonstrated by his actions that he was prepared to take risks to avoid being caught by Police.
92. The pursuit was conducted largely in accordance with policy.
93. From the time he became aware of the pursuit, the pursuit controller did not take effective command and control of it. Given the technical difficulties the dispatcher was having he should have started communicating directly with Officer A in relation to the on-going risk assessment required by the pursuit policy. In terms of section 27(1) of the Independent Police Conduct Authority Act 1988 (the Act), the Authority has formed the opinion that this failure was undesirable.

RECOMMENDATION

In terms of section 27(2) of the Act, the Authority recommends that:

- Police continue with the implementation of hands free technology in all operational vehicles, as recommended in the Barnes public report released on 8 April 2011.



HON JUSTICE L P GODDARD

CHAIR

INDEPENDENT POLICE CONDUCT AUTHORITY

JUNE 2011

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 chaired by a High Court Judge and has other members.

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 has highly experienced investigators who have worked in a range of law enforcement 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;
- 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 determine whether any Police actions were contrary to law, unreasonable, unjustified, unfair, or undesirable. The Authority can make recommendations to the Commissioner.



IPCA

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