

Summary Report

Use of force against a youth in Auckland

INTRODUCTION

1. On the evening of 2 March 2014, Police received a report of a burglary in Gulf Harbour, Auckland. Police attended the scene and spoke to a youth they believed to be connected to the burglary.
2. While the youth was being spoken to, a physical altercation took place between the youth and a Police officer. When he returned home a short time later, the youth told his mother that he had been assaulted and injured by a Police officer.
3. The youth's mother notified the Independent Police Conduct Authority of the alleged assault, and the Authority conducted an independent investigation into her complaint. This report sets out the results of that investigation and the Authority's findings.

BACKGROUND

Summary of events

4. At about 9.30pm on 2 March 2014, Police received a report of a burglary in Waterside Crescent, Gulf Harbour. Mr X, a security guard, reported that a mail room had been broken into and that he had seen three males leaving the scene.
5. Following the break in, the three males walked towards Gulf Harbour Drive. Mr X followed them in his vehicle. Two of the males ran off when they reached Gulf Harbour Drive. The third – Y, aged 17 - continued to walk along the road, opposite Wentworth College.
6. Mr X parked in the driveway of Wentworth College and called Y towards him. Y crossed the road and spoke to Mr X. He told Mr X that he had done nothing wrong, and that one of his friends had broken into the mail room.

7. Mr X told Y that he had called the Police. Y continued to speak with Mr X and willingly waited with him until the Police arrived 10 to 15 minutes later. Mr X said that Y was initially “a bit mouthy” but had “calmed right down” by the time the Police arrived.
8. Officer A, a sergeant, arrived at the college first, closely followed by Officers B and C, both constables. They stopped their cars in the carpark at the front of the main college building. Officer A then drove off to examine the scene of the burglary, about 400 metres away, while Officer B spoke to Y and Officer C spoke to Mr X.
9. The pairs then moved apart from each other. Officer C and Mr X moved towards the remaining Police car, where they either stood or sat while they spoke to each other (see paragraphs 29 and 32). Officer B and Y moved towards the college building where they stood on a walkway that runs along the front of the building and is covered by a verandah.
10. Officer B and Y have different accounts of what happened next.

Y's version of events

11. According to Y, after the Police arrived Officer B began to ask him questions about his personal details and what had happened. Y said that he answered all of the questions but was “shaken up” and could not remember his phone number when asked.
12. Officer B told Y that he “wasn’t cooperating” and was “annoying him.” Y said that Officer B then grabbed Y’s right arm and led him around the corner of the college building, out of view of Officer C and Mr X. Y was not sure why he was taken there.
13. Y told the Authority that Officer B then pinned him against the wall and put his arm across his throat while telling him that he “needed to cooperate.” Y said he would cooperate but that he would “report what he did to me.” Y said that he did not swear or raise his voice at Officer B, and was not acting threateningly in any way.
14. Y said that Officer B then “slammed” him to the ground, onto his front. Officer B placed his knee on Y’s back so that, according to Y, “all his pressure was on my body...I was just screaming for him to stop.”
15. Y told the Authority that he did not push Officer B, and that after Officer B pinned him against the wall he couldn’t move his arms. He tried to reach for his mobile phone, which was in his right pocket, to try and record what was happening but was unable to do so.
16. Y said that after Officer B took him to the ground, Officer B led him to a Police car and continued to question him. Y asked Officer B how he would explain the abrasions on Y’s face, to which Officer B said “well you pushed me.” Y said that Officer B was “getting really angry” with him throughout the rest of the interview.
17. Y told the Authority that he began to refer to the Police as “pigs” after the interview had finished and he was going to be released. He said that this is the way he and his friends talk about the Police, but that he apologised to the officers present every time he used the term. He said that this was the only time he got “lippy.”

Officer B's account of events

18. According to Officer B, Y was initially compliant but had a “bad attitude,” calling Officer B and his colleagues “fucken pigs.”
19. In addition, Y kept checking his cell phone and “looking around.” Officer B believed that Y was possibly looking for his friends, who Officer B thought might be nearby, and communicating with them via text message.
20. Officer B asked Y to move away from the college building and into the carpark. Officer B told the Authority that he hoped this would obscure Y from his friends’ view. He added that this area was better lit than under the verandah, which aided him in taking notes.
21. Officer B continued to speak to Y, in order to obtain his details. He said that Y was “abrupt” and “confrontational,” at one point standing very close to Officer B and calling him a “fucken pig.” Officer B told Y to “cut the language” and “check his attitude.”
22. Officer B said that Y then became quite agitated and pushed him. Officer B raised his hand and, pointing his finger towards Y, said “don’t push me.” Y then pushed Officer B a second time. Officer B responded by grabbing the front of Y’s jacket, pulling him off balance and putting him on the ground in an ‘arm bar’ hold which involves securing the person’s bicep, pulling their arm to the officer’s hip and bending them forward. Officer B said he did this to restrict Y’s movements and protect himself from further assault, and considered that this use of force was justified and necessary.
23. Officer B then told Y “if you calm down I will let you sit up,” which Y did. However, according to Officer B, Y still had a “rotten attitude.”
24. Officer B, who was kneeling on the ground next to Y, then used his iPhone to run a background check on Y. While he was doing so Y told him “I am going to report this.”
25. While Officer B was running the background check, Officer A returned and told Officer B that he and Y could sit in Officer A’s car. Once in the car Officer B took a notebook statement from Y.
26. While giving his statement Y asked if his face was bruised. Officer B checked and said that it wasn’t, but took some photos. Y did not complain of any further injuries. Officer B sustained grazing to his left and right knuckles.
27. After taking Y’s statement, Officer B decided not to arrest Y for assault. Officer B told the Authority that this decision was based on several considerations, including:
 - Y’s lack of previous offending, and Officer B’s belief that an “unnecessary” criminal conviction could hinder Y’s future career.
 - The fact that, although Y’s “attitude got the better of him,” he was generally “reasonable.”

- That Officer B would need to take Y to the Henderson Police Station for processing, and bring him back to Gulf Harbour, which would take several hours. At the time of this incident, Officer B had already passed the end of his shift and was due in court early the next morning.

28. If Officer B had arrested Y he could have issued Y with a pre-charge warning, which he said he considered but decided was not warranted (see paragraph 40 for further information on pre-charge warnings). Instead, he gave Y a general warning for assault and let him go home.
29. Officer B did not consult with Officer A, his superior, over his decision to warn, but not arrest, Y. He also failed to record in his notebook that he had warned Y for assault.

Mr X

30. Mr X told the Authority that he was standing outside the Police car talking to Officer C when he heard a scuffle behind them. He turned around and saw Officer B kneeling on Y's back. Mr X thought this was "part and parcel" and turned back to continue talking to Officer C after "a split second."
31. Mr X said that, at this point, Y and Officer B were near the corner of the building, by one of the columns that ran along the front of the walkway.
32. Mr X added that he did not hear any raised voices, and that Y had been compliant when he and Officer B walked towards the building.

Officer C

33. Officer C told the Authority that when Officer B and Y walked away, he and Mr X were sitting in the Police car, facing the opposite direction, so he did not see where they went.
34. Officer C said that while he was talking to Mr X he heard Officer B say "don't push me." Officer C did not get out of the car to go to Officer B's aid because he did not think that Y was a threat to Officer B, and knew that Officer B could "handle it." He added that he never saw the scuffle and did not know where it took place.

Officer A

35. Officer A told the Authority that when he returned to the college after securing the scene of the burglary he saw Y sitting against the wall near the corner of the building, near a pillar. He said Officer B was standing or kneeling next to Y.
36. At that stage, Officer A was unaware that an altercation had taken place, and neither Y nor Officer B said anything to him about it. Officer A described Y as "belligerent," but that just seemed to be his general demeanour.

37. Officer A said that he would have expected Officer B to have told him about the altercation between Y and himself. Instead, he first became aware of it on his way back to the Police station when he was informed that Y's mother had contacted the Police to complain that Y had been assaulted by an officer.
38. Officer A said that, had he been aware that Y had pushed Officer B, he would have expected that Y would be arrested, taken to the Police station, and dealt with by way of a pre-charge warning. However, after learning of the assault allegation against Officer B, he did not think that it was appropriate to arrest Y in case the arrest was seen as "retribution" against him for making a complaint.

LAWS AND POLICIES

Law on use of force

39. Section 48 of the Crimes Act 1961 provides legal justification for a Police officer to use reasonable force in defence of themselves or another. When assessing what force may be reasonable, the officer must consider the level of threat that a situation presents. This includes assessing the incident they are responding to as well as the behaviour of the person that they are dealing with.

Policy on pre-charge warnings

40. A pre-charge warning is a lawful alternative to prosecution for some minor offences. A pre-charge warning is issued in writing at the Police station after a person has been arrested for a qualifying offence and meets the criteria for a pre-charge warning.
41. A pre-charge warning is intended to hold an offender to account and deter them from further offending by informing them that their offending has been treated seriously and recorded.

THE AUTHORITY'S FINDINGS

Was the force used by Officer B against Y justified?

42. Both Officer B and Y told the Authority that an altercation took place between them in which Officer B used force against Y. However, both have different accounts of the nature of the force used, and the circumstances surrounding its use.
43. Y told the Authority that Officer B led him around the side of the college building where he pinned Y against the wall, with his arm across Y's throat, before slamming Y to the ground and kneeling on his back. Y denied pushing Officer B or acting threateningly in any way
44. Officer B told the Authority that he was compelled to use force against Y after Y pushed him twice, despite being warned not to. Officer B said that he grabbed Y's jacket and took him to the ground in a controlled manner before placing him in an 'arm bar' hold in order to restrict

his movements, and to protect himself from further assault. He also said that this use of force took place in front of the college building.

45. In order to find that the force used by Officer B was justified, the Authority must be satisfied that the force was used in self-defence, and was reasonable in the circumstances.
46. The Authority is of the opinion, based on the available evidence (including the statements of Mr X and Officers A and C), that Officer B is mistaken in his recollection of events regarding his and Y's position at the time the force was used. The Authority is satisfied that Officer B and Y were around the corner of the college building – and thus out of the view of any other person - when the altercation between him and Y took place. As no one else witnessed it, there is no independent evidence as to the nature of the altercation between Officer B and Y, or the circumstances surrounding it.
47. Due to this lack of evidence, the Authority is unable to resolve the significant conflict between Officer B's account and Y's account of events, and is therefore unable to make a finding as to whether the force used by Officer B was justified and reasonable in the circumstances.

FINDING

Due to the conflict in evidence, the Authority is unable to make a finding as to whether the force used by Officer B against Y was justified or not.

CONCLUSIONS

48. Due to the conflict in evidence, the Authority is unable to make a finding as to whether the force used by Officer B against Y was justified or not.



Judge Sir David Carruthers

Chair
Independent Police Conduct Authority

3 March 2015

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 Sir David J. Carruthers.

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 on whether any Police conduct, policy, practice or procedure (which was the subject of the complaint) was contrary to law, unreasonable, unjustified, unfair, or undesirable. The Authority may make recommendations to the Commissioner.



Whaia te pono, kia puawai ko te tika

PO Box 25221, Wellington 6146

Freephone 0800 503 728

www.ipca.govt.nz
