

Summary Report

Use of a Police dog during an arrest in Titahi Bay

INTRODUCTION

1. On 18 January 2015, Mr X was bitten by a Police dog in Titahi Bay, Wellington. Mr X received significant injuries to his right arm and left thigh.
2. The Police notified the Independent Police Conduct Authority of this incident. 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. At about 11.30pm on 18 January 2015, Police were called to investigate a person acting suspiciously in the grounds of Ngati Toa School, Piko Street, Titahi Bay.
4. Several officers and a Police dog unit were dispatched to the school. Officer A, the dog handler, and his dog searched the school grounds and found Mr X in Takapuwahia Reserve next to the school.
5. While the area was poorly lit, Officer A could see that Mr X was holding a bag and what looked like two pieces of wood.
6. Officer A said that it took some time for him to get Mr X's attention. However, Mr X eventually began to comply with his instruction, to walk out to the roadway. Officer A said that as they were walking, Mr X dropped his bag and a pair of nunchucks fell out. Mr X then became agitated, picked up the nunchucks, said he was going home and started walking away from Officer A.

7. Officer A told Mr X numerous times to drop his weapons (wooden staffs and nunchucks) and stay where he was. He told Mr X that he was arresting him for possession of an offensive weapon. However, Mr X did not obey his instructions and kept walking away.
8. As Mr X was non-compliant, and Officer A was alone in the dark and did not know what Mr X was doing with his weapons in the school grounds, Officer A believed he was left with no choice other than to deploy his dog.
9. In his Tactical Options Report (TOR) Officer A said, *“no other tactical option was available to me where I would not be putting myself at risk of serious injury in making the arrest”*. He commanded his dog to “rouse” or bite Mr X.
10. Mr X told the Authority that he went to the school to do some martial arts training, as at that time of night it is quiet with no-one around and his mother did not like him practising at home. He explained to the Authority that he does this training for exercise and art, not combat.
11. Mr X confirmed Officer A’s account. He said that a constable approached him and warned him several times to drop his weapons, or the dog would be released, but he did not listen and just walked off as he wanted to get home. As he began walking away, the dog was released and bit him.
12. Officer A told the Authority that when his dog bit Mr X on the leg, Mr X struck the dog on the head with one of his wooden staffs. Mr X then told Officer A that he was *“giving up”* so Officer A called the dog off. However, instead of giving up, Mr X got to his feet and moved towards his weapons. Officer A then deployed his dog for a second time.
13. Mr X said that after he was bitten the first time, the officer told him to stay down to be handcuffed. He initially knelt down but then got up, and started walking away again, and the dog then bit him a second time.
14. Mr X denied hitting the dog with his wooden staffs but told the Authority he did grab the dog’s muzzle, with the staffs in his hand, and tried to throw the dog off him.
15. When Officer B arrived to assist with handcuffing Mr X, Officer A called his dog off again. However, Mr X began struggling with Officer B, swinging his arms around and pushing Officer B away. As Officer A feared for Officer B’s safety, he deployed his dog for a third time.
16. Mr X accepts that he pushed Officer B, saying that he did so because he did not want to get handcuffed.
17. The dog bit Mr X on the arm. Despite this, Mr X continued resisting being handcuffed. Officer A believed it was necessary to keep his dog attached to Mr X’s arm until he and Officer B could apply the handcuffs and have Mr X fully under control.

18. Mr X received serious dog bite injuries and had to have treatment in hospital. An ambulance officer initially gave him first aid at the Police station and then a Police officer drove Mr X to hospital. En route, Mr X told the officer that he understood why the dog was used, as he was carrying a bag full of weapons and *“it doesn’t look ideal”*.

Mr X

19. Mr X has a history of serious mental illness. In his interview with the Authority he said that, *“the Police did not do anything wrong”* and that, *“it was all my fault”*.
20. Mr X was charged with resisting arrest, obstruction, and possession of an offensive weapon. These charges were withdrawn after Mr X wrote a letter of apology to Officer A.

THE AUTHORITY’S FINDINGS

Was Officer A’s use of his Police dog justified in the circumstances?

21. Section 39 of the Crimes Act 1961 provides that Police can use reasonable force in the execution of their duties such as arrests, where the use of force is necessary to overcome any force used in resistance.
22. The Police *Use of Force* policy provides guidance to Police officers about the use of force. Police officers have a range of tactical options available to them to help de-escalate a situation, restrain a person, effect an arrest or otherwise carry out lawful duties. These include communication, mechanical restraints, empty hand techniques (such as physical restraint holds and arm strikes), OC spray, batons, Police dogs, Tasers and firearms.
23. Police policy provides a framework for officers to assess, reassess, manage and respond to use of force situations, ensuring the force is timely, necessary and proportionate given the level of threat and risk to themselves and the public. An officer must also constantly assess an incident based on information they know about the situation and the behaviour of the people involved; and the potential for de-escalation or escalation. The officer must choose the most reasonable option (use of force), given all the circumstances known to them at the time.
24. A key part of an officer’s decision to decide when, how, and at what level to use force depends on the actual or potential actions of the people involved, and depends on whether they are cooperative, passively resisting, actively resisting, assaultive or presenting a threat of grievous bodily harm or death to any person. Victim, public and Police safety always take precedence, and every effort must be made to minimise harm and maximise safety.
25. Before releasing a Police dog, the handler must be satisfied that the use of force is justified under the circumstances, and must call on the offender to desist unless it is impractical to do so.
26. As Officer A approached Mr X he issued a verbal challenge, as required by Police policy, warning him that a Police dog would be used to arrest him if he did not comply with instructions to drop his weapons and remain where he was.

27. Mr X ignored these instructions, walked away and tried to avoid arrest. Therefore, Officer A was entitled to use force against him. As it was dark, he was alone, and Mr X was in possession of several dangerous weapons, Officer A was justified in using a tactical option that would be effective on someone who was moving and could control them, until they could be disarmed and safely handcuffed.
28. Officer A twice called his dog off when it seemed that Mr X was complying. However, on both occasions, Mr X quickly began resisting again. In order to control Mr X, Officer A re-deployed his dog.
29. On the third occasion that Officer A deployed his dog he did not remove it until Mr X was handcuffed and no longer a threat.
30. Mr X accepts that he twice tried to walk away from Officer A and did not comply with his instructions. He also says that he grabbed the Police dog and tried to throw it off him and resisted being handcuffed by Officer B.
31. In the circumstances, deployment of the dog was the least violent tactical option available to Officer A to prevent Mr X's escape and make an arrest.

FINDINGS

Officer A was justified under law and Police policy in using his Police dog to apprehend and arrest Mr X. This was the only realistic tactical option available to Officer A in the circumstances.

Officer A's use of the dog on Mr X three times was appropriate and justified.

Officer A had control over his dog and removed the dog from Mr X as quickly as he could in the circumstances.



Judge Sir David Carruthers

Chair
Independent Police Conduct Authority

2 September 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 about the Police conduct, policy, practice or procedure which was the subject of the complaint. The Authority may make recommendations to the Commissioner.



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