

Allegation of threatening behaviour following Police interview in Dunedin

OUTLINE OF EVENTS

1. On 24 June 2019 Mr X complained to the Authority that he had been threatened by two Police officers following his arrest on 3 May 2019.
2. On 3 May 2019, five Police officers, including Officers A, B and C, went to Mr X's home as part of enquiries into an incident that occurred at Dunedin Airport on 17 March 2019.
3. Mr X was arrested by Officer A prior to a search of Mr X's home. Items relevant to the Police enquiries were located with the assistance of Mr X and seized. After the search Mr X was taken to Dunedin Central Police Station by Officers A, B and C.
4. Mr X was interviewed by Officer A in the presence of Officer B, while Officer C monitored the interview from a nearby room. The interview was recorded on DVD.
5. Mr X declined to answer Officer A's questions or directly address matters that were put to him.
6. When the interview concluded and the recording had been stopped, Mr X alleged that Officer A made inappropriate comments about a Police job he had applied for.
7. Following Officer A's comment, Officer D entered the interview room. According to Mr X, Officer D pointed his fingers at him in an aggressive manner and threatened Mr X and his family.
8. Mr X believed that Officer A and D's behaviour was an attempt to forcefully extract a statement from him. Mr X further stated that both he and his family felt vulnerable and scared as a result of the officers' comments.

9. The Authority was provided with a copy of the Police file and interviewed Mr X, Officers A, B, C and D. The Authority also conducted enquiries with other members of Police and viewed a recording of Mr X's Police interview.

ISSUE EXAMINED BY THE AUTHORITY

10. The Authority considered whether Officer A's and Officer D's conduct towards Mr X on 3 May 2019 was appropriate.

THE AUTHORITY'S FINDINGS

11. The Authority concludes that Officer A and Officer D did not act inappropriately in their dealings with Mr X.

ANALYSIS OF THE ISSUE

Was Officer A's and Officer D's conduct towards Mr X on 3 May 2019 appropriate?

Background

12. Mr X told the Authority that during the journey to the station Officer A tried to build rapport with him. As part of that conversation Officer A told Mr X: *"I heard about your Station Support Officer role as well."* This was a reference to the Police Station Support Officer role that Mr X had recently applied for. Mr X told Officer A why he had applied for the position. When spoken to by the Authority Mr X expressed no concerns regarding Officer A's reference to the role at this time.
13. Officer A told the Authority that Mr X introduced the Station Support Officer role into the conversation. Officer A said *"that took me by surprise. I had no information before we went to his address that he'd been getting an application to join the Police in any form or fashion."*
14. Officer B completed contemporaneous notes during the journey. Officer B did not record any comments about the Station Support Officer role, although Officer B conceded that it bore little relevance to the ongoing Police investigation and he may not have recorded it for that reason. Officer B did say that he believed the role had been raised prior to Mr X's interview, although he could not remember the exact circumstances or by whom.
15. Officer C estimated that the journey to the station took about 10 minutes. Officer C thought that the first mention of the Station Support Officer role *"had come from Mr [X]. Why that was relevant was because I'd done a lot of the enquiries around Mr [X] and it's the first time we'd even heard of anything about him making any sort of formal application for a role with the Police."*
16. The drive to the station was otherwise uneventful.

17. When spoken to by Police on 8 November 2019, Mr X stated there was a “*general conversation surrounding my application for Station Support Officer role, however, I cannot exactly remember as to how that came up for discussion and from whom.*”¹

Mr X’s interview

18. According to notes maintained by Officer B, both he, Officer A and Mr X were present in the interview room at 9.30am. Recording commenced at 9.43am.² Officer D, the most senior officer, was aware of the investigation and checked in with Officer C intermittently to check on progress.
19. At about 9.52am the DVD recording was stopped after Mr X requested to speak to a lawyer. After speaking to a lawyer Mr X returned to the interview room and told Officer A that he would not be making a further statement (Mr X had previously been interviewed by Police as a witness on 18 March 2019). However, the DVD recording of the interview and the interview transcript show that the interview recommenced at 10.23am and finished at 10.41am, during which time Mr X spoke about the matter that was under investigation.
20. Mr X told the Authority that Officer A said: “*Well, because you’re not giving a statement your application for Station Support Officer role has just gone down south.*” Mr X asked Officer A whether he was threatening him. Officer A replied: “*No, I’m not threatening you I’m just telling you the consequences.*”
21. Officer A told the Authority: “*I did say to him that it looks like your application to join the Police as [a Station Support Officer] has gone south*” but after the interview had finished (at 10.41am). Officer A further stated that he made the comment because he believed Mr X was “*not suitable to be an employee of the New Zealand Police*”. This was because Mr X was to be charged with a criminal offence.
22. Officer C confirmed that Officer A made a comment like that referred to in paragraph 20 after the interview had finished and after he had stopped making handwritten notes.
23. Officer B told the Authority that Officer A’s comment was “*nothing that I probably wouldn’t have said myself because that’s what we believed and it was fair because we’re trying to be fair with him*”. Officer B described Officer A’s comment as “*conversational*”.
24. Mr X told the Authority that Officer D “*barged*” into the interview room following Officer A’s comments about the Station Support Officer position. According to Mr X, Officer D pointed his finger in an aggressive manner and said: “*I’ll see to it that you will suffer financially and your family will suffer financially. We have enough proof against you and it will be an interesting trial.*” Mr X said that Officer D took two or three steps towards him but remained near the door. Mr X also said that before leaving the interview room, Officer D told him not to discuss the Station Support Officer role.

¹ The Authority notified Police of Mr X’s complaint on 8 July 2019 and separate enquiries were undertaken by a Police investigator.

² The interview start time is referred to on the DVD recording and the typed transcript of interview.

25. Officer D told the Authority that he was “*popping my head into the...monitoring room*” from time to time and checking on progress with Officer C. When he did this for a final time he overheard Mr X referring to the Station Support Officer role, which he objected to: “*my actions...were such that from a consistency perspective I was disappointed that those matters were being raised in a criminal investigation interview.*” Officer D further stated that he was concerned that Mr X was trying to divert attention from the matter under investigation and imply that Police had an ulterior motive for arresting him. Officer D told the Authority that he probably “*poked*” his finger at Mr X and said: “*There is no place for comments around that sort of stuff in this environment...This is a criminal inquiry [Mr X] and, you know, this is no place for it.*”
26. Officer D was unaware that Officer A had mentioned the Station Support Officer role beforehand but confirmed that he would have interjected had he overheard Officer A make any reference to the role.
27. Officer A told the Authority that “*the door was opened by [Officer D] shortly after I made [the Station Support Officer role] comment to [Mr X], and [Officer D] stood at the doorway and made a comment along the lines about: “It’s inappropriate to make comments about employment matters,” or words to that effect*”. Officer A said Officer D’s comment was directed at Mr X. Officer A did not construe Officer D’s actions as threatening.
28. Officer B told the Authority that Officer D “*wasn’t ranting and raving, it wasn’t over the top, he came in frustrated, you know: “You’re lying, tell the truth...You won’t be getting a job here”*”. According to Officer B, Officer D stood in the doorway of the interview room for about five seconds before leaving. Officer B did not think that Officer D’s comments or delivery were inappropriate in the context of the situation and did not therefore record them.
29. Officer C told the Authority that Officer D visited him in the monitoring room at about the time Mr X was challenging Officer A’s comment about the Station Support Officer role. According to Officer C, Officer D indicated that Mr X’s comments were inappropriate and entered the interview room. Officer C recalled Officer D standing in the doorway and pointing his finger at Mr X. Officer C was of the view that Officer D considered Mr X’s comments inappropriate in the context of a criminal investigation: “*I didn’t consider it was aggressive or threatening but it was a telling off.*”
30. At 11.11am on 3 May 2019, Officer D sent an email to Officer C detailing his interaction with Mr X for disclosure purposes. The email stated:

“At about 1050hrs I entered into an interview room...after hearing that the subject of the interview [Mr X] had raised the fact that he had applied for a support role with the NZ Police.

I stated that it was entirely inappropriate to have raised this matter in the context of a criminal investigation and that he had to behave himself. I indicated that there was a great deal of evidence available that convinced me that he was involved in this crime and that I was looking forward to the trial.”

31. Officer D told the Authority that he sent the email to Officer C because he thought his intervention might be something that Mr X relied upon to “*blur the facts*” at court. Officer D further stated that his intervention was not an attempt to coerce a statement from Mr X: “*That horse had bolted*”.

Other matters of relevance

32. On 8 November 2019, a Police investigator took a written statement from Mr X as part of a Police investigation into his complaint. Mr X told the investigator that immediately after a DNA sample was requested, Officer A told him that the media had contacted Police. Mr X took Officer A’s comment as an implied threat – that Police would disclose Mr X’s name if he did not cooperate and provide a statement.
33. The DNA request is captured during the video interview. There is a period of 13 seconds of silence between Mr X’s last comment in respect of the DNA request and the end of the recording. Any alleged reference to the media by Officer A is not captured.
34. When questioned about Mr X’s comments Officer A told the Authority that “*There was no threat by me to release [Mr X’s] name to the media and honestly I didn’t want that.*”
35. The Authority has examined information that shows Mr X’s personal mobile telephone was used to contact six media outlets during the evening of 17 March 2019.
36. On 28 September 2019, Mr X contacted the Authority and provided a copy of an email sent by Officer D to a senior officer on 12 April 2019. The email had been provided to Mr X as part of Police disclosure. Mr X stated that a phrase used by Officer D in his email – “*feel his collar*” – demonstrated a propensity towards threatening and aggressive behaviour, hence Officer D’s response when Mr X declined to give a statement.
37. When interviewed by the Authority, Officer D stated that the phrase is commonly used by him and denotes that there is sufficient evidence to arrest and charge an individual. He said it was not a threat.
38. Mr X also told the Authority that he raised concerns regarding Officer D’s conduct with custody staff when he was being processed after his interview. There is no record of any relevant comments made by Mr X on his custody documentation. A Police officer who dealt with Mr X in the custody area told the Authority that Mr X asked a lot of questions about the next stages of the investigation but did not raise any concerns regarding his treatment by other officers.

Analysis

39. Due to the nature of the offence under investigation, authority to arrest Mr X was sought from and provided by the Attorney General prior to Mr X’s arrest on 3 May 2019. Police had sufficient evidence to charge Mr X with the relevant offence and sought to give him an opportunity to comment on the evidence that had been gathered up to the time of his arrest on 3 May.
40. On 3 May 2019, the Police case against Mr X was a strong one and, other than giving him an opportunity to comment, Police did not need information from him. There was therefore no

reason to coerce or compel Mr X to give a statement. Officer A told the Authority that he spoke to Officer C about the value of continuing with the interview after Mr X had spoken to a lawyer. “[W]e also wanted to be transparent and fair to [Mr X], we didn’t want to say no or anything else, and also because he had said that he wanted to go on record and say something on DVD”.

41. The Authority believes the comment made by Officer A concerning the Station Support Officer role was simply a factual statement that reflected the reality of Mr X’s position. The Authority is satisfied the comment was made after Mr X’s interview had been concluded.
42. Similarly, the Authority is satisfied that Officer D’s comment after the interview had finished was made in response to what he believed to be an attempt by Mr X to undermine the integrity of the Police investigation. That Officer D did not overhear Officer A’s initial reference to the Station Support Officer role is credible because he only periodically checked on progress with Officer C.
43. The Authority prefers the accounts of the officers and does not accept that Officer D made overt threats towards Mr X and Mr X’s family.
44. The Authority notes that Mr X construed Officer D’s “*feel his collar*” comment as menacing. The Authority regards this expression as benign. With reference to Officer D’s email of 12 April 2019, and the context within which it was sent, the basis upon which Mr X has interpreted the comment as indicative of an intention to threaten him is unclear.
45. The Authority has found no evidence of malice behind any of the comments Mr X took issue with. It is apparent that Mr X’s arrest took place after a significant amount of investigative work had been completed, and after an authority to charge had been obtained from the Attorney General. Police did not require a statement from Mr X on 3 May 2019 and it is hard to conceive that Officers A and D, both experienced CIB detectives, would contemplate actions likely to jeopardise the successful prosecution of Mr X. Although the comments made by Officers A and D were not captured on camera, the DVD recording of the interview does not betray any tension between Mr X and Officer A.
46. The Authority notes that the accounts of the officers are consistent and supported by material generated as part of the Police investigation into events of 17 March 2019, such as the contemporaneous notes completed by Officer B and the DVD recording of Mr X’s interview. In contrast, certain elements Mr X’s account are inconsistent:
 - On 5 August 2019 Mr X told the Authority that Officer A introduced the Station Support Officer role during the journey to Dunedin Central Police Station. On 8 November 2019 Mr X told Police he could not remember who raised the subject (see paragraphs 12-17);
 - Mr X indicated to both the Authority and the Police that he refused to give a statement after speaking to a lawyer and that his refusal to do so led to Officer A’s comment and Officer D’s intervention. It is apparent that the interview of Mr X continued for about 18 minutes after he had spoken to a lawyer (see paragraph 19). The comments were made after the interview was finished; and

- There is no information that supports Mr X's comment that Officer A referred to the media after his interview had finished. Conversely, evidence gathered by Police shows that Mr X's personal mobile telephone was used to contact six media outlets on the day of the incident (see paragraphs 32-35).

47. The Authority therefore prefers the accounts of the officers spoken to as part of its enquiries and is of the view that Mr X's allegations are unfounded. Officer A's and Officer D's comments were relevant in the circumstances that they were made. Neither officer threatened Mr X, nor intended to force him to make a comment.

FINDING

Officer A and Officer D did not act inappropriately in their dealings with Mr X.

48. Mr X was convicted and sentenced to prison in the Dunedin District Court.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

11 March 2021

IPCA: 18-2993

ABOUT THE AUTHORITY

Who is the Independent Police Conduct Authority?

The Independent Police Conduct Authority is an independent body set up by Parliament to provide civilian oversight of Police conduct.

It is not part of the Police – the law requires it to be fully independent. The Authority is overseen by a Board, which is chaired by Judge Colin Doherty.

Being independent means that the Authority makes its own findings based on the facts and the law. It does not answer to the Police, the Government or anyone else over those findings. In this way, its independence is similar to that of a Court.

The Authority employs highly experienced staff who have worked in a range of law enforcement and related roles in New Zealand and overseas.

What are the Authority's functions?

Under the Independent Police Conduct Authority Act 1988, the Authority:

- receives complaints alleging misconduct or neglect of duty by Police, or complaints about Police practices, policies and procedures affecting the complainant in a personal capacity;
- investigates, where there are reasonable grounds in the public interest, incidents in which Police actions have caused or appear to have caused death or serious bodily harm.

On completion of an investigation, the Authority must form an opinion about the Police conduct, policy, practice or procedure which was the subject of the complaint. The Authority may make recommendations to the Commissioner.

This report

This report is the result of the work of a multi-disciplinary team of investigators, report writers and managers. At significant points in the investigation itself and in the preparation of the report, the Authority conducted audits of both process and content.



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