

Complaint of excessive force following a traffic stop in Whakatane

INTRODUCTION

1. At about 9.10pm on Friday 13 May 2016, Police arrested Mr X for failing to accompany a Police officer to the Whakatane Police station. During the arrest, Police used a baton to break the driver's side window of Mr X's truck.
2. On 21 May 2016, Mr X made a complaint to the Authority stating that Police threatened him with violence, smashed his driver's window for no reason, and dragged him into the Whakatane Police station using a handcuff. Mr X also complained that Police did not return his friend's property, taken following the arrest.
3. The Authority notified Police of the complaint and advised that the matter would be investigated by the Authority pursuant to section 17(1)(a) of the Independent Police Conduct Authority Act 1988. This report sets out the results of that investigation and the Authority's findings.

BACKGROUND

Traffic stop

4. Mr X told the Authority that at about 9.06pm on Friday 13 May 2016, he and his friend Mr Y were travelling home in Mr X's Toyota Hilux (the 'Hilux'). As Mr X, the driver, turned south onto King Street, Whakatane, he saw a Police car parked on the corner of King and Haig Streets.
5. Officer A, the driver of the Police car in question, was conducting random vehicle stops in the Whakatane area, checking for alcohol and driver licensing breaches. At about 9.06pm, Officer A had just finished with a vehicle stop, when he saw the Hilux travelling south on King Street. As it passed him, he pulled out and began to follow it.

6. Officer A told the Authority that he was looking for his next random vehicle to pull over when he saw the Hilux drive past. At the time, he did not recognise that the Hilux was Mr X's and he was just *"going through the process"* when he decided to follow the Hilux in order to pull it over.
7. Mr X continued south on King Street before going around the roundabout at the Goulstone Road intersection, completing a 180 degree turn. As Mr X navigated around the roundabout, Officer A, who had followed Mr X down King Street, activated his Police car's flashing red and blue lights and siren to signal Mr X to stop.
8. On seeing Officer A's signal, Mr X said he immediately stopped his Hilux in the middle of the northbound lane and wound his window down about three to four inches.
9. Officer A said Mr X came to a stop on a raised courtesy crossing which blocked the left side of the road. He said he waited for about 10 to 20 seconds to see if the Hilux would move, and when it did not, he got out of his car and approached the driver's window.
10. Officer A said he immediately recognised the driver as Mr X and he asked him to move his vehicle from the lane. Officer A said Mr X refused to move and began talking over him, calling out his name and accusing him of being unlawful.
11. Mr X told the Authority that Officer A walked over to his Hilux and asked him to pull over to the side. He said he told Officer A that he would not move, as the last time he did, Police charged him with failing to stop. When he refused to move, Mr X said Officer A began asking for his name and driver licence. Mr X said that he questioned Officer A, asking why he needed the information given they had recently been in Court together and he already knew who he was.
12. In his complaint to the Authority, Mr X said he had immediately recognised the officer as Officer A and believed he was pulled over because Officer A was *"harassing"* him.
13. Officer A told the Authority that even though he knew Mr X's identity, he asked him to supply his name, driver licence and residential address pursuant to the Land Transport Act 1998 (refer to paragraphs 94-96). Officer A said that Mr X was *"quite transient"* so he wanted to confirm where he was living. Officer A also wanted to check Mr X's licence status as Mr X has gone through periods of being disqualified and forbidden to drive.
14. Officer A said Mr X refused to comply with his request and instead kept talking over him about how he lacked authority and jurisdiction.
15. Mr X told the Authority that Police are aware that he has a licence, so he does not understand why he needs to physically hand it to them when they already have a record of it. He also believes that he does not need to produce his licence because he is *"not acting in commerce and driving for a wage. [He is] travelling in private capacity which is [his] right"*.
16. When Mr X refused to comply with Officer A's directions to move his car and supply his name and driver licence, Officer A radioed the Northern Communications Centre (NorthComms) and advised the dispatcher that he was having trouble with a traffic stop and requested backup. He stated that the driver was Mr X, a *"local activist"*, and he was currently blocking the northbound

lane on King Street. Officer A also advised that if Mr X continued to fail to comply, then he would be arrested. Officer B, a Sergeant at the Whakatane Police station, heard Officer A's radio communication and responded, "yeah copy, just follow procedure".

17. Officers B and C, who were driving separate Police cars, both heard Officer A's request for assistance over the radio and began to drive towards King Street.
18. Mr X said Officer A started to get aggressive and described his demeanour as being "furious, angry, red-faced, agitated [and] demanding". He said Officer A kept telling him that "under the Land Transport Act I need your name". When Mr X refused, he said Officer A got angrier and angrier, and then told him that he was required to undergo a routine breath test. Mr X told Officer A that he did not consent to a test and requested to speak to a Maori liaison officer.
19. Officer A said that while he was talking to Mr X, he could see an "open stubby of beer" sitting in a cup holder between the two front seats. As a result, he told Mr X that he was required to undergo a breath screening test¹. When Mr X refused, Officer A said he told him that he would have to accompany him to the Whakatane Police station for the purpose of an evidential breath test² or blood test.
20. Mr X told the Authority that he does not drink alcohol and that there was no alcohol in his car at the time of the traffic stop. This statement was corroborated by Mr Y, the front seat passenger, who also told the Authority that Mr X does not drink alcohol.
21. Officer A said Mr X refused his request to accompany him Whakatane Police station, so he warned him that if he continued to refuse, then he would be committing an offence and could be arrested for failing to accompany a Police officer.
22. While this was happening, Mr Y, who had two cell phones, used one of them, the Samsung Galaxy S5, to video record Mr X's interaction with Officer A.
23. Officer A said that, despite being warned that he would be arrested, Mr X continued to refuse to cooperate. When Officer A saw that other Police officers were arriving at King Street, he told Mr X that he was under arrest for failing to accompany and advised him of his rights. Officer A then ordered Mr X to get out of the Hilux. Mr X responded by winding up his window.
24. Officer B told the Authority that when he arrived at King Street, traffic had begun to build up at the roundabout due to Mr X blocking the lane.
25. At the same time, Officer C arrived at the scene and parked on the left side of the road, in front of the Hilux. Officer C said that he immediately recognised the Hilux as belonging to Mr X due to the truck's distinctive markings.

¹ A breath screening test is used to see to detect the presence of alcohol.

² An evidential breath test can be used as evidence in court. It is done using a more accurate machine either at a Police station or a mobile breath-testing station.

26. Officer A told the Authority that during the Police tactical training, officers are taught to “*show force*” by pulling out either a Taser or baton, and presenting it to an offender to demonstrate that “*this is real, this is what's going to happen*” if the offender does not cooperate.
27. As a result, when Mr X wound his window up, Officer A drew his baton and told Mr X that, if he did not get out of the Hilux, he would smash the window. He said he initially warned Mr X with a show of force by tapping the baton on the window.
28. This was witnessed by Officer B, who said that while he was diverting the traffic into Goulston Road, he could hear Officer A speaking to Mr X and warning him that he would smash his driver’s window if he did not comply with his instructions.
29. When Mr X continued to refuse his request, Officer A said he then used his baton to smash the front driver’s window, and reached into the Hilux to try and unlock the door.
30. Mr X told the Authority that Officer A did not tell him that he was under arrest, or advise him of his rights. Instead, Mr X said Officer A became more aggressive and, without warning, he “*just smashed the window.*”
31. As soon as Officer A struck the window with his baton, Mr X said Officer A put his hand inside the Hilux, unlocked the door and “*ripped it open with force*”. Mr X said he immediately put his Hilux into gear, activated his hazard lights and drove off.
32. Less than seven minutes after Officer A first requested backup, Officer A radioed NorthComms to advise them that he was in pursuit, saying, “*subject was placed under arrest, driven off from vehicle stop, now failing to stop*”.
33. The pursuit lasted approximately four minutes and covered a distance of about two and a half kilometres. During the pursuit, Officer A’s lights and siren were activated and Mr X did not exceed speeds of 40kph³.
34. While Mr X was driving, Mr Y rang the Police emergency 111 line using his second cell phone and advised the operator that Police had assaulted them and that he wanted to speak to a Maori liaison officer. The NorthComms dispatcher, who could hear Police sirens in the background, told Mr Y to pull over and follow Police instructions. However, Mr Y replied that they felt threatened and that they were “*trying to get to the safety of the New Zealand Police station*”.
35. At one point during the pursuit, NorthComms authorised the use of road spikes to try to safely stop the Hilux. Although the road spikes were deployed successfully, Mr X was able to continue driving another 500 metres before coming to a stop outside the Whakatane Police station.

Use of force at the Whakatane Police station

36. As soon as he arrived at the Police station, Mr X got out of the Hilux and lay on his back on the ground next to it.

³ The area covered in the pursuit is governed by a 50kph speed limit.

37. When Officer A arrived at the Police station he saw Mr X lying on the ground next to the Hilux. Officer A said he immediately approached Mr X and asked him to roll over so that he could be handcuffed.
38. Officer A said Mr X refused to roll onto his stomach and instead put his hands under his body so he could not be handcuffed. Officer A told the Authority that he was focused on getting Mr X into handcuffs as quickly as he could. He said Police training teaches officers that *“when you’ve got a cuff on someone you’ve got control of them”*.
39. Officers B and C, who arrived outside the Police station within seconds, saw that Mr X was lying on the ground, refusing to comply with Officer A’s instructions. As they went to help Officer A handcuff Mr X, Mr Y got out of the Hilux and tried to push his way between the officers and Mr X. Officer A said, *“[Mr Y] was actually physically pulling officers off, preventing [Mr X] being handcuffed and taken into custody”*. He said he had to push Mr Y away, warning him to stand back or he would also be arrested.
40. Within minutes, Mr X’s friends and family began to arrive outside the Police station and the officers became concerned about the growing crowd. Although Officer A had managed to get a handcuff locked onto Mr X’s right wrist, they were unable to handcuff his left wrist. As a result, Officer B decided that they needed to move Mr X inside the Police station for their own safety and so they could gain control of him.
41. Officer A told the Authority that as a rule he prefers to use six officers to safely move someone who is actively resisting. However, because they were worried about the gathering crowd, Officer A said they had to make do with the three available officers, who then tried to carry Mr X inside.
42. Mr X told the Authority that Officer A *“forcibly ripped [his] arm up and put the cuff on tight”*. He said that the officers then dragged him up the front stairs of the Police station, with Officer B holding his left arm, Officer C grabbing his boots and Officer A using *“the handcuff as his dragging device”*.
43. Mr X said that due to his size the three officers couldn’t lift him, and as a result, his shoulders, back and bottom were dragged along the ground and up the stairs.
44. Officers A, B and C all denied dragging Mr X into the Police station, and told the Authority that they each helped carry him by holding onto his arms and legs. However, they all stated that due to Mr X’s build it was possible that his bottom may have hit the stairs as they did so.
45. Officer B said that they decided to go up the stairs and through the public entrance way because it was the quickest and safest route into the custody area. He said if they had left Mr X outside or tried to go through the rear processing area at the back of the station, they would have *“opened [themselves] for more issues from the people that were arriving because they’re all of the same ilk ... they are all activists”*.

46. Footage from the Police station CCTV camera, which is situated at the front counter, shows Officers A, B and C carrying Mr X by his arms and feet. Due to the angle of the camera, only Mr X's arms and feet are visible.
47. Once Mr X was through the front counter, the officers carried Mr X through a side corridor, into the main watchhouse, down some stairs and into the cell area.
48. In his complaint, Mr X said Officer A *"used excessive force to force [him] against [his] will and dragging [him] by the cuffs causing bruising"*. He told the Authority that the officers *"dragged"* him through the front door and then through a set of internal doors. He said the doorways were narrow and the officers did not accommodate his size. Instead, they tried to bend him around the doorway and force him through the door. Once they went through the watchhouse, they then *"dragged"* him down some steps into the processing area, where he was rolled onto his stomach. Mr X said that Officer A then stood on his arm.
49. Officer A told the Authority that he was not pulling Mr X by the handcuff, and he was instead supporting Mr X's wrist as he lifted him, holding onto the handcuff with one hand and holding his lower arm with the other hand. He accepted that Mr X may have felt some discomfort as they carried him around corners; however, he said that Mr X did not mention being in pain.
50. Officer E, the watchhouse keeper, told the Authority that once Mr X was brought into the custody area, he and Officer C searched Mr X while he lay on the ground. During the search they removed his gumboots, watch, belt and head scarf.
51. After the items were removed, Officer E asked Mr X to stand up so that they could move him into the holding cell. Officer E said that although Mr X was not physically resisting them at this stage, he refused to get up and yelled out that he did not consent.
52. When Mr X refused to stand up and enter the holding cell, Officer A said he then *"dragged him with the cuff ... it was unsupported"*. Officer A admitted that *"being dragged like that was barbaric, but [he] was pissed off at the time"* because Mr X refused to move when he was asked to.
53. However, Officer A said his perceived cumulative assessment of Mr X (refer to paragraph 92), *"was formed from his behaviour on the night and his past history of violence towards Police"* and was that Mr X *"is an unpredictable and volatile man ... whom given an opportunity will strike out when your back is turned"*. He said that *"there was no other safe way [he] was going to do it"* so he used both hands on the handcuff to pull Mr X into the cell which would have had a similar pain effect as the 'bottle top' technique⁴.
54. Officer E told the Authority that as Mr X was not resisting or fighting them, he thought that the officers could have just held him under his arms and pulled him into the holding cell. He said he was, *"a little bit surprised when he got pulled by the handcuffs into the holding cell. That was a bit rough, truthfully"*.

⁴ The bottle top technique is used for pain compliance and involves forcing the metal cuff on an angle against the subject's wrist to apply pressure.

CCTV Footage in Custody Area

55. During its investigation, the Authority analysed the video footage provided by the CCTV camera in the custody area, which shows the processing bay and holding cell. The video footage includes audio.
56. The footage begins by showing Officers A, B and C carrying Mr X down the stairs into the custody area. As the officers navigate through an open swinging door into the main custody area, Officer E takes over Officer C's position at Mr X's feet. From the angle of camera, Mr X appears to be lying with his back on the ground, while Officers A and B pull him. It is evident from the video footage that Officer A is pulling Mr X by the handcuff on his right wrist.
57. Once in the main custody area, Mr X remains on his back while Officers C and E search him. During the search, Officer A remains holding the handcuff attached to Mr X's right wrist. At the same time, Mr X can be heard requesting to speak to a Maori liaison officer and saying that he does not consent.
58. At one point during the search Officer E attempts to remove the cord from Mr X's pants. When he reaches down with his pocket knife to try and cut the cord, Mr X lifts his right leg in Officer E's direction, and tries to push him away. Officer A can be heard yelling, *"don't kick the officer ... if you kick the officer, I will kick you"*. Mr X replies, *"shut up [Officer A] I was kicking nobody, you just want to assault me"*.
59. After Officer E has completed his search, Officer A asks Mr X to stand up. When Mr X refuses, Officers E and C move to the side and Officer A drags Mr X into the cell by the handcuff. Officer A then removes the handcuff and Mr X is left in the holding cell.

Custody and property

60. As part of his complaint, Mr X states that he was not advised of his rights in full and that Officer A *"snatched"* Mr Y's cell phone.

Bill of Rights

61. Officer E told the Authority that while Mr X was in the holding cell he went through the custody procedure where he attempted to ask Mr X a number of questions about his wellbeing. Officer E said that he was not able to complete the questions and had to rely on his own evaluations due to Mr X refusing to cooperate and talking over him. During this time, Officer E advised Mr X of his rights.
62. The CCTV footage shows that immediately after Officers A and C leave the custody area Mr X yells out that he wants his *"bill of rights"*. At approximately 10.09pm, Officer E approaches the holding cell and asks Mr X if he is aware of what he has been charged with. When Mr X replies that he does not, Officer E says that he is being charged with *"failing to stop"*. This causes Mr X to become agitated and start shouting at Officer E. Officer E then attempts to advise Mr X of his rights, however, he stops when Mr X becomes verbally abusive. Officer E then leaves the custody area while Mr X continues to yell and swear.

63. Approximately one hour later, CCTV footage shows Officer E and Officer F speaking to Mr X. Officer E advises Mr X that he has been charged with failing to give his name and address, failing to remain for a breath screening test, failing to remain stopped, and careless driving. He tells Mr X that they need to take his photograph and fingerprint him in order to give him bail. However, Mr X continues to yell and swear at him. As Officer F leaves the custody area, Officer E advises Mr X of his rights.
64. Custody records show that Mr X arrived in the custody area at 9.41pm. He was released on bail at 12.17am on Saturday 14 May 2016.
65. Before he was bailed, Mr X refused to sign the Notice to Person in Custody form which acknowledges that he was advised of his rights.
66. Mr X signed the Notice of Police Bail; however, he noted on the form that he signed it under *“duress and threat”*.

Property

67. Mr Y told the Authority that after Mr X had been taken into the custody area, Officer A returned to the front of the Police station and began to look inside the Hilux. As he was doing this, Mr Y began recording Officer A with his Samsung Galaxy S5 cell phone, which was encased in a cell phone wallet. When he got close to Officer A, Mr Y said Officer A *“just snatched my phone ... and put it in his vest”*.
68. Later, as he was wrestling with Officer A, Mr Y said his portable battery charger and his other cell phone, the one that he used to call 111, fell out of his pocket and landed on the ground. Mr Y said he did not see what happened to his property once it was on the ground.
69. Officer A told the Authority that Mr Y approached him outside when he was arranging a tow truck for the Hilux. He said Mr Y was filming him with his cell phone and the light from the camera was in his face. Officer A said he swiped the phone with his hand, causing the phone to dislodge from the case. He then put the case in his body armour and later gave it to the watchhouse keeper. Officer A said he did not retrieve the phone from the ground and is not aware of what happened to it.
70. Mr X told the Authority that when Officer E and Officer F tried to return his property to him, Officer E had included with his items, Mr Y’s Samsung Galaxy S5 phone cover. Mr X said that he told the officers, *“What the fuck is my brother’s phone case doing in my belongings?”* and asked them to explain where Mr Y’s cell phone was if it was not with the case.
71. Officer F told the Authority that when he was trying to return Mr X’s property to him, Mr X told him that the Samsung Galaxy S5 phone cover belonged to Mr Y. As a result, he removed the phone cover from Mr X’s property sheet and transferred it onto Mr Y’s property sheet.
72. When Mr Y was released from Police custody, he said Police only returned back to him his Samsung Galaxy S5 phone cover and his portable battery charger. Mr Y said his Samsung Galaxy

S5 and his other cell phone, *“wasn’t in my property and it should still be in the Whakatane Police station property.”*

73. Officer F told the Authority that when Mr Y was being released from Police custody, he refused to sign his property sheet as a Samsung Galaxy S5 cell phone was not included in the property being returned to him. Officer F said he was not aware of Mr Y having a cell phone, as there was not one listed on his property sheet. He said he told Mr Y that the only cell phone he had seen was the phone that was on Mr X’s property sheet.
74. After speaking with Mr Y, Officer F told him that he would ask the other officers if they had seen his cell phone. Officer F said he spent about 15 - 20 minutes trying to find Mr Y’s phone but no one had seen it. After explaining the situation to Mr Y he refused to take any of his property and left the station.
75. Shortly after Mr Y was released, Officer F said the buzzer at the Whakatane Police station front counter went off. When he went to the front counter, Mr X, Mr Y and members of their family were standing at the counter yelling that Officer A had stolen Mr Y’s cell phone. Officer F said he told Mr Y again that they did not have his phone, but Mr Y kept yelling that Officer A had taken it.
76. Officer F said he had another look for the phone. However, when he could not find it, he had to ask Mr Y and his friends and family to leave as they were being verbally abusive. Later, when they had all left, Officer F said he went outside and searched the grounds in front of the Whakatane Police station but was unable to find a phone.
77. The ‘Person in Custody’s Property’ form for Mr X shows that four items (a watch, scarf, black chord and boots) were removed from Mr X. Items five and six (a *“silver power pack”* and *“white cell”*) have been crossed out.
78. A second item five (a *“cellphone”*) is noted on a separate line. Similarly, a second item six (*“wallet for phone”*) is listed but then crossed out and the words, *“for brother”*, are written next to it.
79. Mr Y’s ‘Person in Custody’s Property’ form has five items listed, including the portable battery charger, a USB chord, black chords, a black piece of material and a green cell phone cover. Noted next to the green cell phone cover was the comment *“[Mr X’s], previous property”*.
80. When released on bail, Mr X and Mr Y both refused to sign their Property/Prisoner receipts.

Mr X

81. Mr X’s Notice of Police Bail stated that Mr X was charged with refusing to accompany officer, failing to give name and address, failing to remain stopped and failing to stop when followed by red and blue flashing lights.
82. An additional charge of dangerous driving was later added.

83. On 21 October 2016 Mr X was convicted of failing to accompany an officer, failing to stop when followed by red and blue flashing lights and dangerous driving. The charge of failing to remain stopped was dismissed.

LAWS AND POLICIES

Use of force by Police

84. Section 39 of the Crimes Act 1961 provides for a Police officer to use reasonable force in the execution of his or her duties such as arrests. Specifically, it provides that officers may use *“such force as may be necessary”* to overcome any force used in resisting the law enforcement process unless the process *“can be carried out by reasonable means in a less violent manner.”*
85. Section 40 of the Crimes Act 1961 provides that a Police officer may use necessary force in order to prevent a person from fleeing to avoid arrest, unless the escape can be prevented by reasonable means in a less violent manner.
86. Section 48 of the Crimes Act 1961 states: *“Everyone is justified in using, in defence of himself or herself or another, such force as, in the circumstances as he or she believes them to be, it is reasonable to use.”*
87. Section 62 of the Crimes Act 1961 makes a Police officer criminally responsible for any excessive use of force.

General guidelines on use of force

88. The Police Use of Force policy provides guidance to Police officers about the use of force. The policy sets out the options available to Police officers when responding to a situation. 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.
89. Police policy provides a framework for officers to assess, reassess, manage and respond to use of force situations, ensuring the response (use of force) is necessary and proportionate given the level of threat and risk to themselves and the public. Police refer to this as the TENR (Threat, Exposure, Necessity and Response) operational threat assessment.
90. Police define TENR as:
- 90.1 ‘Threat’ is about how serious the situation is (or could be), and the present or potential danger the situation, environment, or suspect presents to themselves, other members of the public or Police. Police must assess the threat posed by the suspect, based on all available information including what they see and hear, and what is known about the suspect.

- 90.2 'Exposure' is about the potential harm to Police employees, Police operations, Police reputation and to others. Exposure can be mitigated through assessment and planning.
- 90.3 'Necessity' is the assessment to determine if there is a need for the operation or intervention to proceed now, later or not at all.
- 90.4 'Response' means the proportionate and timely execution of Police duties aided by the appropriate use of tactics and tactical options.
91. The overriding principle when applying TENR is 'safety is success'. Any force must be considered timely, proportionate and appropriate given the circumstances known at the time. Victim, public and Police safety always take precedence, and every effort must be taken to minimise harm and maximise safety.
92. 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. This may include information on: the incident type, location and time; the officer and subject's abilities; emotional state, the influence of drugs and alcohol, and the presence or proximity of weapons; similar previous experiences; and environmental conditions. Police refer to this assessment as an officer's Perceived Cumulative Assessment (PCA).
93. A key part of an officer's decision to decide when, how, and at what level to use force depends on the actions, or potential actions, of the people involved, and depends on whether they are: cooperative; passively resisting (refuses verbally or with physical inactivity); actively resisting (pulls, pushes or runs away); assaultive (showing an intent to cause harm, expressed verbally or through body language or physical action); or presenting a threat of grievous bodily harm or death to any person. Ultimately, the legal authority to use force is derived from the law and not from police policy.

Power to require a driver to stop

94. Section 68 of the Land Transport Act 1998 provides that a Police officer may require a driver of a vehicle, or a person who the officer has good cause to suspect has recently committed an offence, to undergo a breath screening test. The driver of the vehicle, who has undergone a breath screening test, must remain stopped until after the result of the test is ascertained. If the driver refuses or fails to remain stopped, the officer may arrest them without a warrant.
95. Section 114 of the Land Transport Act 1998 provides that a Police officer may signal or request the driver of a vehicle to stop the vehicle as soon as is practicable. The driver of the vehicle must remain stopped for as long as is reasonably necessary for the officer to complete his or her enforcement duties.
96. Under this section, a Police officer may also require the driver of the vehicle to give his or her full name, full address, date of birth, occupation, and telephone number, or such of those

particulars as the officer may specify. The officer may arrest the driver without a warrant if the officer has good cause to suspect the person of having:

- a) failed to comply with their request or requirement; or
- b) given false or misleading information.

New Zealand Bill of Rights

97. Section 23 of the New Zealand Bill of Rights Act 1990, provides that people who are arrested or detained under legislation have the rights to:

- *“be informed of the reason for arrest or detention at the time of their arrest or detention.*
- *Consult and instruct a lawyer without delay and to be told of that right.*
- *Have the arrest or detention’s validity determined and to be released if it is not lawful.*
- *Be charged promptly or released.”*

THE AUTHORITY’S FINDINGS

Issue 1: Did Officer A lawfully stop Mr X?

98. Section 114 of the Land Transport Act 1998 gives Police officers the power to request a driver to stop as soon as it is practicable. Under this section, officers may require the driver of the vehicle to give his or her full name, full address, date of birth, occupation, and telephone number. Failure to comply with the officer’s request could result in the driver being arrested.

99. Mr X complained to the Authority that he was pulled over because Officer A was *“harassing”* him. He said he refused to provide Officer A with his name and driver licence because they were in Court together a few weeks earlier and Officer A knew who he was. Further, Mr X stated that Police have a record of his driver licence so he does not understand why he needs to physically hand it to them.

100. Mr X also told the Authority that he believes that he does not need to produce his driver licence because he is *“not acting in commerce and driving for a wage. [He is] travelling in private capacity which is [his] right”*.

101. Officer A told the Authority that he was conducting random vehicle stops in the Whakatane area when he saw the Hilux and decided to pull it over. Although he was aware of Mr X’s identity when he approached the driver’s window, Officer A said he asked Mr X to supply his name and residential address as he wanted to confirm where Mr X was living. Officer A also asked Mr X to supply his driver licence so that he could check on its status.

102. Under section 114 of the Land Transport Act, Officer A was legally entitled to stop Mr X to check on his vehicle and driver details. Although it is evident that Officer A knew the identity of the

driver once he had approached the Hilux, as a Police officer, he is authorised under the Act to request Mr X to provide his full name and licence details.

FINDING

Officer A complied with the Land Transport Act when he signalled Mr X to stop.

Issue 2: Was the force used during the traffic stop lawful and necessary?

103. Section 40 of the Crimes Act 1961 states that a Police officer may use necessary force in order to prevent a person from fleeing to avoid arrest, unless the escape can be prevented by reasonable means in a less violent manner.
104. When Officer A was talking to Mr X, he said he saw an “*open stubby of beer*” sitting in the cup holder next to Mr X. As a result, Officer A requested that Mr X undergo a breath screening test. When Mr X refused to comply with Officer A’s request (see paragraphs 18), Officer A told him that he would have to accompany him to the Whakatane Police station for the purpose of an evidential breath test. When Mr X continued to refuse and challenge Officer A’s authority, Officer A said he then warned Mr X that he would be arrested.
105. Mr X denies hearing Officer A warn him that he would be arrested and instead states that Officer A became aggressive and without warning smashed his driver’s window with a baton.
106. In contrast, Officer A told the Authority that Mr X ignored his repeated order to get out of the Hilux and instead wound his window up. In response to this, and because he had told Mr X that he was under arrest, Officer A removed his baton and tapped it on the window as a show of force. Officer A said this was a way to demonstrate what would happen if Mr X continued to refuse to comply with his direction.
107. This action was witnessed by Officer B who told the Authority he heard Officer A warn Mr X that his window would be smashed if he did not comply with his instructions.
108. When Mr X failed to comply, Officer A used his closed baton to break the glass. As Officer A tried to reach in to grab the car keys, Mr X drove off.
109. The Authority finds that although Mr X and Mr Y deny that Mr X had consumed alcohol, under section 68 of the Land Transport Act 1988, Officer A was legally entitled to ask Mr X to undergo a breath screening test (see paragraph 94). Equally, when Mr X refused Officer A’s request, Officer A was legally entitled to arrest Mr X. When Mr X wound his window up and refused to get out of the Hilux in order to be transported to the Whakatane Police station, Officer A was entitled, under section 40 of the Crimes Act, to use necessary force in order to prevent Mr X from driving off to avoid arrest.
110. The Authority accepts that Officer A’s actions were necessary to try and detain Mr X who was resisting arrest. The breaking of the window is an approved Police tactic and the next natural

step after Mr X failed to respond to Officer A's communication and show of force. Mr X was given every opportunity to comply with Officer A's directions and failed to do so.

FINDING

The force used by Officer A during the traffic stop was lawful and necessary.

Issue 3: Was the force used to detain Mr X and carry him to the custody area justified and appropriate?

111. Section 39 of the Crimes Act 1961 states that a Police officer may use reasonable force in the execution of his or her duties such as arrests. Specifically, it provides that officers may use necessary force in order to overcome any force used in resisting the law enforcement process unless the process *"can be carried out by reasonable means in a less violent manner."*
112. Mr X complained to the Authority that once outside the Whakatane Police station, Officer A *"forcibly ripped [his] arm up and put the cuff on tight"*. Officer A then used *"excessive force"* by dragging him by the cuff up the front stairs of the Police station, through a series of internal doors and corridors and into the custody area.
113. Mr X said that due to his size the officers could not lift him, and his shoulders, back and bottom were dragged along the ground.
114. Officers A, B and C told the Authority that when Mr X arrived outside the Whakatane Police station, he immediately lay down on the tarmac and refused to move. He failed to comply with Police directions and resisted their efforts to handcuff him. At the same time, Mr Y was physically trying to pull the officers off Mr X to prevent him from being handcuffed. Due to Mr X's resistance and the interference from Mr Y, the officers only managed to apply a handcuff to one of Mr X's wrists.
115. While this was happening, the officers became aware that the family of Mr X and Mr Y were beginning to arrive outside the Police station and they had concerns that this could lead to further disturbance. The officers therefore determined that it was prudent to move Mr X into the Police station as quickly as possible. Officer B decided that the quickest and safest route into the custody area was through the public entrance way.
116. Officers A, B and C helped carry Mr X into the Police station by holding onto his arms and legs. They said that although it was possible that Mr X's bottom may have hit the stairs, they did not purposely drag him. Further, Officer A states that while he held onto the handcuff with one hand, he supported Mr X's wrist by holding onto his lower arm with his other hand.
117. The Authority accepts that the decision to move Mr X with only one handcuff attached came about due to the officer's perception of the deteriorating situation outside the Whakatane Police station. By going through the Police station, the officers had to negotiate the entry steps, several doorways and a narrow stairwell down into the custody area. Having reviewed the CCTV footage which covers the front counter and custody area, the Authority accepts that the three

officers were trying to hold Mr X off the ground and negotiate the route to the custody area without causing Mr X any injuries. It is however clear that due to Mr X's weight and large build, his lower back and bottom would have hit the ground, particularly on the entry steps and stairwell. Due to the limited space available, it would not have been practical for any other officers to assist with carrying Mr X, although Officer E did assist by opening doors.

FINDING

The force used to detain Mr X and carry him into the custody area was justified and appropriate in the circumstances.

Issue 4: Was the force used to move Mr X to the holding cell justified and appropriate?

118. Once Mr X was in the custody area he was searched by Officers C and E. During the search, Officer A did not remove the handcuff and instead continued to hold onto Mr X's wrist by the handcuff.
119. CCTV footage shows that after the search was completed, Mr X refused to cooperate with the officers and did not stand up to allow them to walk him into the holding cell. Due to Mr X's refusal to stand, Officer A dragged Mr X into the holding cell using the handcuff. Officer A described this action as "*barbaric*" and said it would have had a similar effect as the 'bottle top' pain compliance technique.
120. This was witnessed by Officer E who said he was surprised by Officer A's action and told the Authority it was "*a bit rough*".
121. It is evident from Officer A's statement and from the CCTV footage that Officer A did not consider the possible risk of injury to Mr X as he pulled him by the handcuff with his arm pulled up behind him. The Authority finds that Officer A should have removed the handcuff from Mr X's wrist, and supported his weight by holding him under his arms before pulling him into the holding cell. Although Mr X was being un-cooperative and refused to comply with the officers directions to stand up, the Authority does not believe it was necessary for Officer A to drag Mr X into the holding cell using the handcuff as a pulling device, and considers the force used to be unjustified.

FINDING

The force used by Officer A to move Mr X to the holding cell was unnecessary and unjustified.

Issue 5: Did Police advise Mr X of his rights?

122. Section 23 of the New Zealand Bill of Rights Act 1990 states that anyone who is arrested or detained should be informed at the time of their arrest or detention of the reason for it. It is also

Police policy that when arresting or detaining a person, officers must advise the person of their rights.

123. In his complaint to the Authority, Mr X said Police did not read him his “*bill of rights*”, in particular the 1948 Universal Declaration of Human Rights”
124. When he was bailed, Mr X refused to sign the Notice to Person in Custody form, which is his acknowledgement that he was informed of his rights.
125. Officer A said that he advised Mr X of his rights when he first told Mr X that he was under arrest for failing to accompany, while on King Street.
126. Officer E also said that he advised Mr X of his rights when Mr X was in the holding cell at the Whakatane Police station.
127. Analysis of the CCTV footage of the custody area shows Mr X yelling out that he wants to hear his bill of rights. Officer E then advises Mr X that he is being charged with failing to stop and begins to inform him of his rights. On hearing his charge Mr X becomes verbally abusive and Officer E is unable to finish doing so. Approximately one hour after Mr X is brought into the custody area, Officer E returns to Mr X and advises him of his rights.
128. Under New Zealand law, Police must advise anyone who has been arrested their rights pursuant to section 23 of the New Zealand Bill of Rights Act 1990. Police are not required to provide the Universal Declaration of Human Rights. The Authority is satisfied that Officers A and E advised Mr X of his rights in accordance with New Zealand law.

FINDING

Mr X was told he was under arrest and advised of his rights under the New Zealand Bill of Rights Act 1990.

Issue 6: Were there undue delays in processing Mr X?

129. In his complaint to the Authority, Mr X said Police did not process him promptly.
130. The Whakatane Police station custody record shows that Mr X arrived in the custody area at 9.41pm.
131. Officer E, the watchhouse keeper, told the Authority that he attempted to take Mr X through the custody procedure while he was in the holding cell, but Mr X refused to cooperate, talked over him and would not answer his questions.
132. Officer E’s account is consistent with the CCTV footage which shows Mr X being uncooperative despite being warned that Police need to photograph and fingerprint him in order to give him bail (refer to paragraphs 62-63).

133. Mr X was bailed and released from custody at 12.17am. In total, Mr X was in custody for about two hours forty minutes.
134. The Authority finds that the time it took to process Mr X and prepare his bail was reasonable given Mr X's refusal to cooperate with the process.

FINDING

There were no undue delays in processing Mr X.

Issue 7: Did Police fail to take reasonable care of Mr Y's property?

135. Mr X and Mr Y complain that Officer A "snatched" Mr Y's Samsung S5 cell phone and failed to return it to him. Mr Y also complains that his other cell phone was not returned to him after Police knocked it to the ground outside the Whakatane Police station (see paragraphs 67-68).
136. Officer A told the Authority that when he swiped Mr Y's cell phone from his hand, it dislodged from the protective wallet and fell to the ground. Officer A said he gave the wallet to the watchhouse keeper but did not retrieve the phone from the ground, and is not aware of what happened to it.
137. No cell phones were recorded on Mr Y's property sheet. The green cell phone wallet was initially booked into custody under Mr X's property, but this was later moved to Mr Y's property sheet once it was known that it belonged to Mr Y not Mr X (see paragraphs 77-79)
138. Officer F, who was working in the watchhouse when Mr Y was being released from custody, was only made aware of Mr Y's cell phone when he refused to sign his property sheet. Although it appears that Officer F was only aware of one missing cell phone, the Samsung Galaxy S5, his search of the watchhouse and the grounds outside the Whakatane Police station did not result in either cell phone being located.
139. It is evident from Police property records and Police statements that no cell phones, other than Mr X's iPhone, were seized for safe keeping while Mr Y was in custody. A search for the cell phones by Officer F was also unsuccessful. In the absence of independent witnesses, the Authority is unable to come to a conclusion, on the balance of probabilities, as to what happened to Mr Y's two cell phones.

FINDING

Due to insufficient information, the Authority is unable to make a finding as to what happened to Mr Y's two cell phones.

CONCLUSIONS

140. The Authority has reached the following conclusions on the balance of probabilities:

140.1 Officer A complied with the Land Transport Act when he signalled Mr X to stop.

140.2 The force used by Officer A during the traffic stop was lawful and necessary.

140.3 The force used to detain Mr X and carry him into the custody area was justified and appropriate in the circumstances.

140.4 The force used by Officer A to move Mr X into the holding cell was unnecessary and unjustified.

140.5 Mr X was told he was under arrest and advised of his rights under the New Zealand Bill of Rights Act 1990.

140.6 There were no undue delays in processing Mr X.

140.7 Due to insufficient information, the Authority is unable to make a finding as to what happened to Mr Y's two cell phones.



Judge Sir David Carruthers

Chair
Independent Police Conduct Authority

20 June 2017

IPCA: 15-2180

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.



Whaia te pono, kia puawai ko te tika

PO Box 25221, Wellington 6146

Freephone 0800 503 728

www.ipca.govt.nz
