



IPCA

Independent Police
Conduct Authority

Mana Whanonga Pirihiimana Motuhake

Unjustified use of Police dog

1. On 4 October 2022, a Police dog handler released his Police dog to catch two people, Ms X and Mr Y, who were fleeing from Police.
2. Earlier, Police stopped pursuing Mr Y because he was driving dangerously (Ms X was a passenger in the car). Officers followed the car to a rural location and a police dog tracked the occupants of the car. The dog handler challenged two figures in the dark to stop. When they continued to move away, he released the dog. The dog bit Ms X on the leg causing serious injuries. Mr Y surrendered soon after without further incident.
3. Police notified us of this incident as required by section 13 of the Independent Police Conduct Authority Act 1988.¹ We conducted an independent investigation into the incident. We spoke to Ms X and the Police staff involved. We attempted to speak to Mr Y, but he has not responded.

The Authority's Finding

Issue: Was Officer A justified in using the Police dog against Ms X?

The use of the Police dog to bite Ms X was not justified.

¹ Section 13 says: "Where a Police employee acting in the execution of his or her duty causes, or appears to have caused, death or serious bodily harm to any person, the Commissioner shall as soon as practicable give to the Authority a written notice setting out particulars of the incident in which the death or serious bodily harm was caused."

Analysis of the Issue

ISSUE: WAS OFFICER A JUSTIFIED IN USING THE POLICE DOG AGAINST MS X?

What happened on 4 October 2022?

4. On the evening of 4 October 2022, the Palmerston North Tactical Dog Team² of Officer A (a Police dog handler) and his partner Officer B (a constable) had been called to an incident in the Foxton Beach area. Two known offenders with outstanding warrants for their arrest had crashed their car and run away. Regular fleeing drivers, they were known to assault Police, and had safety flags for possession of firearms and knives. It was thought one of the offenders may have been picked up by the occupants of another car. Officers A and B were not required to track the two suspects.
5. Shortly after, Police radioed about the dangerous speed of a different car travelling on the road to Foxton Beach. At about 10.35pm, Police Comms identified the car as belonging to Mr Y over the radio.
6. Another officer radioed he had dealt with the car and occupants earlier in the day and *“the driver will probably be [Mr Y]”*, and Mr Y had bail conditions not to drive between 7pm and 7am. A check of Mr Y’s details was done over the radio.
7. Other Police staff attempted to stop Mr Y’s car but he did not stop, and avoided road spikes. Police abandoned the pursuit³ because he was driving dangerously.⁴ Ms X told us that Mr Y drove away from Police *“fast”*.
8. Another Police officer radioed the reason for stopping the car was speed, and the front of the car was damaged so it may have been involved with the other fleeing car. Police did not know if anyone else was in the car. Officers confirmed on the radio they were going to Mr Y’s home to check if he was there.
9. While they were still in the Foxton area, Officers A and B spotted Mr Y’s car passing them and followed behind at a distance of 500m. At about 10.42pm, the officers saw the lights of the car turn off the main road into a side road in a rural location 15 minutes’ drive from Foxton, heading towards Palmerston North. Ms X later told us she did not realise Police were still following them. At about 10.45pm, Police radioed Mr Y’s mother had confirmed he was not at home and was staying in the Foxton area.
10. Officers A and B began a search for Mr Y’s car. They found it abandoned behind large sheds on private property; the car was empty. Officer B spoke to the house occupant who did not know the car.

² Both officers were armed with Glock pistols and Officer B had a sponge round weapon.

³ The officer’s notebook entry states: *“[Mr Y] clearly identified as driver”* during the short pursuit. This was not communicated over the radio at the time.

⁴ Driving at about 110km per hour in a 50km per hour area.

11. At about 10.45pm, Officer C, a constable, arrived with his partner and set up a cordon, laying road spikes across the road Mr Y drove down. Other Police were preparing to lay road spikes on the main road in both directions.
12. Officer A used his dog to track the scent from the car to a locked shed door. Officer A believed whoever he was tracking may have tried to enter the locked shed because of the indication given by his dog. He then tracked with his dog around sheds, and into bushes and trees on the rural fenced property.
13. There was no lighting, apart from the officers' torches, and even with torches it was difficult to see through the bushes. Officer A says he tried not to use torches too much as the white light blinds you when you turn it off, affecting night vision.
14. Officer A told us he saw two shadowy human figures moving away from him in dense bushes; he could not see who the figures were in the dark. Officer B was a few metres behind Officer A and heard movement but could not see anyone.
15. Officer A says he called out a warning: *"Police dog handler, stay where you are, or I will let the dog go"* but the two people continued to move quickly away from him into the bush, so he released the dog. He says there was no time to shine torch light on them.
16. Ms X has a different recollection of events. She says Mr Y told her to follow him and he started to run then jumped over the fence. She was frightened and did not know what to do. She says she did not run, and instead hid in the bushes, lying on long grass because she was scared. She told us she *"didn't want to run from the cops"*.
17. She says she saw a Police car which she assumed was looking for them, and saw torch light, but she told us she is *"100% sure"* she did not hear the officers shout out a warning about releasing the dog. She says the first thing she heard was *"sniffing"*, and then she was bitten by the Police dog. She cried out when bitten and heard an officer shout *"Over here"*.
18. We accept Ms X was moving away before hiding, and it was while she was moving Officer A released the dog. We consider it is likely Officer A gave a warning before the dog was released. Both Officer B (1 to 2 metres behind Officer A) and Officer C (from his cordon position on the road nearby) told us they heard the warning, and it was a quiet night. We acknowledge this was a high stress situation for Ms X.
19. Ms X says she was turned over onto her stomach and handcuffed with the dog still biting her leg. Officer A says he moved through bush to Ms X and immediately removed the dog from her leg (the bite lasted about 5 seconds). Officer B says the dog was removed before he handcuffed her, which avoids the risk he could be bitten. We consider the dog was removed before Ms X was handcuffed because Officer B wanted to avoid the risk of being bitten.

What happened after the dog bite?

20. Mr Y jumped over the fence. Officer B handed Ms X to Officer C and returned to help Officer A who restarted tracking with his dog. Mr Y surrendered, was arrested and later charged with

dangerous driving, failing to stop, drink driving and breaching his bail conditions. Ms X was not charged by Police.

21. Officer C took Ms X to the Police car and radioed that she had a dog bite. He was advised an ambulance would meet them at the Palmerston North Police Station which is about a 15 minute drive. No first aid or dressing was applied to Ms X's wounds.⁵
22. Officer C told us the wound had a lot of twigs, leaves, and dirt in it and he did not want to push them further into the wound.⁶ The wound was not bleeding and she did not complain of pain. Officer C sat in the back of the car with Ms X on the way back to the station talking to her. She was not distressed and was breathing normally. We consider he provided appropriate care for Ms X until her wounds could be treated by the paramedics who had been called to meet them at the Police station. Unfortunately, Ms X had serious wounds across her lower leg requiring surgery.

Was Officer A legally justified using force against Ms X?

23. The only relevant justification for the use of force in this case is section 40 of the Crimes Act 1961 which empowers Police to use "*such force as may be necessary*" to prevent the escape of someone who takes to flight to avoid arrest. "Necessary" force in this context is force that is proportionate to:
 - the seriousness of the offence for which the person is to be apprehended and the public interest in detaining them to bring them to justice; and
 - the effect of an escape on the likelihood of the person being brought to justice (such as loss of evidence or difficulties in identifying the person and/or apprehending them later); and
 - the likelihood and severity of the risk they pose of further offending if escape is not prevented.
24. Under section 40, we must determine:
 - a) whether the officer believed on reasonable grounds that the person was fleeing to avoid or escape arrest; and if so
 - a) whether the officer's use of force to prevent the escape was reasonable and proportionate.

⁵ Police instructions state that, following a dog bite, handlers must "*provide or direct other staff to provide immediate first aid as necessary in the circumstances*".

⁶ The photograph taken by Officer C and provided to us shows dirt and leaves on her leg.

Did Officer A believe on reasonable grounds that Ms X was fleeing to avoid or escape arrest?

25. Officer A says he believed the occupants of the car were fleeing to avoid arrest because:
- the driver had failed to stop for Police, swerved to avoid road spikes, and drove away fast; and
 - the occupants abandoned the car, did not surrender when instructed to, and moved away from Officer A.
26. Officer A also told us he thought the occupants of the car may be Mr Y and/or one or both of the two offenders from a different fleeing driver event he thought Mr Y may have picked up in his car (see paragraph 4).
27. At the time he released the dog, we accept Officer A had reasonable grounds to believe the occupants of the car were fleeing to avoid arrest.

Was Officer A's use of the Police dog to bite Ms X to prevent her escape reasonable and proportionate?

28. We consider it was appropriate for Officer A to use the dog to track Ms X and Mr Y, to identify their location and try to catch them. However, we do not believe the use of the Police dog to bite Ms X was reasonable. Police policy⁷ states the dog handler should not release a dog unless they are sure the dog has sighted the suspect. In this case the Police dog sighted one of the two people being tracked, before being released.
29. Officer A says he did not know who the figures were he was tracking in the dark, how many people, or whether they were armed. He concluded they may be the fleeing drivers from earlier and may be dangerous. These offenders had violent histories and had warrants for their arrest.
30. We believe any link Officer A made between Mr Y and the other two offenders was speculative. It was only a coincidence that Mr Y's car was in roughly the same area as the other fleeing driver from earlier that evening. Officer B suggested to us Mr Y knew one of the suspects, however the Police database does not record any association between them. We do not accept it was reasonable for Officer A to believe the people he was tracking to be the other two offenders.
31. Officer A says he did not know which of the two figures the dog would bite, but he viewed them equally. It was reasonable for Officer A to believe one of them was Mr Y, because Officer A knew the car was Mr Y's car and Mr Y was identified as probably the driver.
32. Although we do not have to analyse the use of the dog against Mr Y because he was not bitten, it is necessary to understand Officer A's reasoning when he released the dog. Officer A did not know which person the dog would bite so he would need a justification for the dog biting either person.

⁷ Use of force and Police dogs.

33. The proportionality of Officer A using the dog, with the possibility of injury, is assessed against three factors (see paragraph 23). We consider the decision to release the Police dog was disproportionate.
34. Driving at night, Mr Y was in breach of a condition of his bail (not an offence in itself). He had active charges for drink driving and theft, but no warrant to arrest.⁸ He had three safety flags for known to carry a weapon, most recently a knife about six months ago. The use of the Police dog to catch Mr Y for a breach of a condition of his bail was not proportionate. If tracking failed, and Mr Y did not surrender, Police knew he was the driver and could arrest him in the following days.
35. The only offence Officer A could reasonably believe Ms X had committed was being on a property without reasonable excuse.⁹ Officer A says his dog tracked to a locked door of a shed and this suggested at least one of the car occupants had tried to open the door and get into the shed. There was no evidence of a break in or that Ms X was doing anything on the property but attempting to hide from Police.
36. Officer A did not know who Ms X was, so it was not possible for him to have factored in his decision making the potential risk Ms X posed if her escape was not prevented. However, we are satisfied she posed no risk if her escape was not prevented.¹⁰
37. There are conflicting accounts from Ms X and Officer A: she says she followed Mr Y and then hid; he says she was moving quickly away from him into the bush. However, we believe the use of the dog on Ms X was disproportionate in either circumstance.
38. We consider less forceful means could have been used:
- Officer A says after the two figures disappeared from sight the threat level to him was too high, so he decided to release the dog instead of continuing to track. He states continuing to track in farmland would be “unsafe and problematic” at night with electric fences, and barbed wire on some fences. However, after Ms X was in custody Officer A did continue to track Mr Y over an electric fence and into a paddock, successfully stopping him there. We consider Officer A could have continued to use the dog to track Ms X, without needing to release the dog on her.
 - Although this was a rural area at night, Officer A’s partner Officer B was immediately on hand to assist, with other officers nearby. The road Mr Y turned down was a dead end and cordons with road spikes were set up at the top of the road and on both directions of the main road to stop Ms X and Mr Y escaping by car.

⁸ After his arrest that night, Mr Y was charged with dangerous driving, failing to stop, drink driving, and breach of bail conditions.

⁹ Section 29 of the Summary Offences Act 1981. The offence carries a maximum prison sentence of 3 months or a maximum fine of \$2,000.

¹⁰ Ms X does not have a criminal record.

Conclusion

39. While we accept that a Police dog handler's role can be dangerous, and it is understandable for them to take a "better safe than sorry" approach, for Officer A to have assumed a worst-case scenario – that the people being tracked may have been armed and may have been dangerous – was not reasonable in the circumstances. Using a Police dog to catch a person comes with the risk of serious injury, and therefore the application of such force needs to be reasonable in the circumstances.
40. The use of a Police dog to catch Ms X was not justified, and the resulting serious injury constituted excessive force out of proportion to the offence she was suspected to have committed.

FINDING ON ISSUE

The use of the Police dog to bite Ms X was not justified.

Subsequent Police Action

41. District Police reviewed this incident and came to the conclusion that Officer A's actions were appropriate, and his use of the Police dog was justified. Officer A maintains his position that the use of force was justified.
42. However, on review of the Authority's draft report, the Commissioner of Police accepts our finding and states "*the release of the dog without knowing if Ms X was the passenger or driver, was a real risk. The option to continue tracking, with the support of the second member present was the right response.*"



Judge Kenneth Johnston KC

Chair
Independent Police Conduct Authority

15 June 2023

IPCA: 22-15439

Appendix – Laws and Policies

SECTION 40, CRIMES ACT 1961

43. Section 40 of the Crimes Act 1961 says:

“Preventing escape or rescue

(1) Where any person is lawfully authorised to arrest or to assist in arresting any other person, or is justified in or protected from criminal responsibility for arresting or assisting to arrest any other person, that authority, justification, or protection, as the case may be, shall extend and apply to the use of such force as may be necessary—

(a) to prevent the escape of that other person if he or she takes to flight in order to avoid arrest; or

(b) to prevent the escape or rescue of that other person after his or her arrest—

unless in any such case the escape or rescue can be prevented by reasonable means in a less violent manner:

provided that, except in the case of a constable or a person called upon by a constable to assist him or her, this subsection shall not apply where the force used is intended or likely to cause death or grievous bodily harm.”

USE OF FORCE WITH POLICE DOGS’ POLICY

44. Dog handlers are personally responsible for force used by the dog. The law sees little difference between dogs, when used as a means of force, and other methods and implement used by Police, such as firearms, Taser and batons. Dog handlers must believe the use of force is justified, and that the force used is as minimal as possible in the circumstances.
45. A Police dog should only be used if the offender cannot be apprehended by other means. Dog handlers must consider all tactical options when considering the use of force. Just because the handler has a Police dog with them, does not mean they should use the dog as a means of force instead of a more appropriate option. According to the Tactical Options Framework, Police dogs can be used if the suspect is considered Assaultive.
46. Dog handlers must usually issue a warning before instructing a dog to bite a person, however, policy notes that a challenge may not be given in AOS or other critical situations “if it is not practicable or would be dangerous to do so.”
47. Police dog handlers must always have control of their dog during deployment. Control means that the dog is under immediate physical, or voice control and the dog responds to that control. The extent of the force used by the dog must be kept to the minimum possible in the circumstances.

48. Policy dictates that all people bitten by Police dogs are to receive appropriate medical treatment.

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.

We are not part of the Police – the law requires us to be fully independent. The Authority is overseen by a Board, which is chaired by Judge Kenneth Johnston KC.

Being independent means that the Authority makes its own findings based on the facts and the law. We do not answer to the Police, the Government or anyone else over those findings. In this way, our 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 and may choose to investigate:

- complaints alleging misconduct or neglect of duty by Police;
- complaints about Police practices, policies and procedures affecting the complainant in a personal capacity;
- notifications of incidents in which Police actions have caused or appear to have caused death or serious bodily harm; and
- referrals by Police under a Memorandum of Understanding between the Authority and Police, which covers instances of potential reputational risk to Police (including serious offending by a Police officer or Police actions that may have an element of corruption).

The Authority's investigation may include visiting the scene of the incident, interviewing the officers involved and any witnesses, and reviewing evidence from the Police's investigation.

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. 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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