

Summary Report

Use of Police dog during an arrest in Upper Hutt

INTRODUCTION

1. At around 1.30am on Thursday 5 June 2014, Police arrested Mr X who had fled from the scene of an attempted burglary in Upper Hutt. A Police dog was used during the arrest and Mr X received serious dog bite injuries.
2. The Police notified the Independent Police Conduct Authority of the injuries to Mr X. Mr X also made a complaint to the Authority stating that the dog handler did not restrain his Police dog after Mr X had surrendered, and that the dog handler punched him five or six times in the face while he was being bitten by the dog.
3. The Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings.

BACKGROUND

4. At about 1.10am on 5 June 2014, Police were called to the Brown Owl shops in Akatarawa Road, Upper Hutt, after someone reported seeing two people trying to break in. Police soon arrived in the area and set up cordon points nearby. At about 1.20am officers on the cordon saw two people running away from the shops, heading north on Akatarawa Road.
 5. Officer A, a dog handler, arrived at the scene to track the offenders. He parked on State Highway 2 and walked towards the Brown Owl shops with his Police dog. There he found a backpack and a hacksaw which had been left behind the building.
 6. The Police dog found a scent that led from behind the shops out to Akatarawa Road. Officer A harnessed his dog and they began following the scent. When they reached the road in front of the shops Officer A saw two men, now known to be Mr X and Mr Y, on the opposite side of the street walking back towards the shops. The men were about 30 metres away and Mr X was holding a torch.
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7. Officer A yelled out to the men that he was a Police officer and they were to stay where they were or he would release his Police dog. Mr X later acknowledged hearing this command, however he and Mr Y decided to flee.
8. Officer A ran after the men and released his Police dog from its tracking harness. Mr X and Mr Y ran down the driveway of a house about 80 metres north of the shops; at this point they split up and Mr X veered right across the front lawn and attempted to get over a wooden fence bordering the neighbouring property.

Mr X's account

9. Mr X told the Authority that he winded himself on the fence and fell back onto the ground, which was when the Police dog started biting him. He said that the Police dog initially got him by his left ankle but never pierced the skin. He tried to shake the dog off, and believes that this may have been why the dog then bit him on his left arm. The dog then bit him on his right leg and finally on his left leg.
10. Mr X said that the dog handler should have known that he had "*surrendered from the start*", because he was not fighting back and was screaming because of the bites. He never said anything to the dog handler but believes the handler should have seen that he had surrendered from his body language.
11. Mr X also said that while he was on the ground the dog handler grabbed him and started punching him in the face, which allowed the dog to continue biting him on both legs. He thought he was punched about five or six times but could not remember exactly because there was so much happening at the time. He said that the serious injuries to his legs were caused by the dog handler pulling him in one direction and the dog in the other.
12. Mr X said that he told Officer B, the officer who arrested him and took him to the Police station, that Officer A had punched him. Officer B denied that Mr X ever said anything about being punched. Mr X did not mention the punches to the Police doctor or the hospital staff who later treated him.

Officer A's account

13. Officer A told the Authority that as he was running after Mr X and Mr Y he saw them go down the driveway and then lost sight of them momentarily. He first realised that the dog had caught Mr X when he heard Mr X yell "*the dog's got me*". At that point he was at the top of the driveway, about 20 metres from Mr X's location at the fence. He had been running at a full sprint but slowed down a bit because he did not know where Mr Y was.
 14. Officer A entered the driveway and saw Mr X standing up against the fence with the Police dog behind him. The officer could clearly see the dog's reflectorised tracking harness but could only see the outline of Mr X because it was dark. He realised that the dog had hold of one of Mr X's legs so he ran over to remove the dog. He slipped and slid down a small bank beside the fence, which delayed him from reaching the dog.
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15. While he was sliding down the bank, Officer A saw Mr X fall backwards to the ground. At the time the Police dog was biting Mr X's left leg. The officer said it took a further three to four seconds for him to get to the dog, take hold of its harness and physically remove the dog from Mr X.
 16. Officer A denies punching Mr X. He said the dog may have bitten Mr X multiple times because it could not get a good hold on him, and that Mr X's injuries could have been aggravated by Mr X pulling against the bite of the Police dog as he was trying to climb over the fence.

After the arrest

17. After Officer A removed the Police dog, other officers arrived and arrested Mr X. Officer A and the dog then tracked Mr Y, who was arrested without injury after they found him hiding up a nearby tree. Both Mr X and Mr Y admitted that they had attempted to break in to the shop on Akatarawa Road.
18. Police took Mr X to the Lower Hutt Police station where he was examined by a Police doctor. He was then taken to Lower Hutt hospital for treatment and remained there for eight days.
19. Mr X had a range of injuries, including abrasions on his chest, a dog bite on his left forearm, grazes on his knees, and deep lacerations on both legs.
20. The Police doctor who examined Mr X later said that he "*vaguely remembered*" Mr X telling him that he got the chest abrasions by climbing over the fence while the dog held onto him. He also said: "*I asked him about injuries or other injuries which is what I always do. He said he had no other injuries, and there were no other visible injuries to the head or to the face.*" The hospital records noted that Mr X did not have any "*head/face/neck injuries*".

The Authority's investigation

21. As part of its investigation the Authority interviewed Mr X, Officer A and four other officers who attended the incident. The Authority also visited the scene and reviewed documents provided by Police.

LAWS AND POLICIES

Power to arrest

22. Section 32 of the Crimes Act 1961 provides that a constable is justified in arresting any person whom he believes, on reasonable grounds, to have committed an offence; whether or not the offence has been committed or the person committed it.
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Use of force by Police

23. Section 39 of the Crimes Act 1961 provides for a Police officer to use reasonable force in the execution of their duties such as arrests and enforcement of warrants. 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.”*
24. 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.
25. Section 62 of the Crimes Act 1961 makes a Police officer criminally responsible for excessive use of force.

General guidance on use of force

26. The Police have a range of tactical options available to them to help restrain a person, make an arrest or otherwise carry out lawful duties. They range from communication or ‘empty hand’ tactics, such as distracting or punching an offender, to the use of Police dogs, Tasers and firearms.

Tactical Options Framework

27. The Tactical Options Framework sets out a range of options available to Police in responding to a situation, depending on the actions of the offender.
28. Which option is appropriate in a set of circumstances depends on whether the offender:
 - is cooperative;
 - is resisting, either passively or actively (such as running away);
 - is actively hostile and intending to cause physical harm; or
 - presents a threat of death or grievous bodily harm.

Use of force with Police dogs

29. The Police Manual of Best Practice states that a dog handler is personally responsible for any use of force by their dog.
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30. Dog handlers must consider all tactical options available to them when considering the use of force with Police dogs. Before releasing the dog, the dog handler must be satisfied that the use of force is:
 - justified in the circumstances; and
 - the minimum possible in the circumstances.
 31. Before releasing the dog, the handler should warn the suspect and give them a reasonable time to comply, unless it is unsafe or impracticable to do so.
 32. Dog handlers must have control of their dog at all times during deployment. This means that the dog is under physical or voice control and responds to that control.
 33. Dog handlers must stop their dog from biting as soon as possible after the dog has bitten any person. People bitten or injured by Police dogs must be given appropriate medical care as soon as practicable.
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THE AUTHORITY'S FINDINGS

Was Officer A's suspicion that Mr X was a fleeing offender reasonable in the circumstances?

34. When Officer A encountered Mr X and Mr Y on Akatarawa Road at around 1.30am, he was following a track that led away from the shop where he had found evidence of an attempted burglary.
35. Both men fled after Officer A told them to stay where they were, even though he warned them that he had a Police dog. The Authority is satisfied that there were reasonable grounds for Officer A to suspect that these two men were responsible for the attempted burglary.

FINDING

It was reasonable for Officer A to suspect that Mr X was involved in the burglary.

Was Officer A justified in using his Police dog to apprehend Mr X?

36. Officer A was the only officer in the immediate area. Mr X and Mr Y ignored his warning about the Police dog and attempted to escape.
37. The officer was about 30 metres from Mr X and Mr Y when they fled. Tactical options other than his Police dog, such as using oleoresin capsicum spray (OC spray) or a baton, were not available or appropriate due to the distance between Officer A and the offenders.
38. Releasing the Police dog to chase the offenders was the only realistic tactical option that would enable Officer A to catch and arrest the suspected burglars. The risk of the Police dog biting an innocent bystander was low because it was around 1.30am and the dog had already identified the offenders.

FINDING

Officer A was justified in deploying his Police dog to prevent Mr X from escaping.

Was the Police dog under Officer A's control at all times, and did Officer A remove the dog in a timely manner?

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39. Police policy requires dog handlers to have control of their dog at all times, including when it is biting an offender. In this case Mr X complained that Officer A failed to stop the Police dog from biting him after he had surrendered.
40. When Officer A began chasing Mr X and Mr Y, he briefly lost sight of them as they entered the driveway on Akatarawa Road. Unsurprisingly, the Police dog caught up to Mr X at the fence before Officer A could get there.
41. Mr X and Officer A have given different accounts of what happened next:
- Mr X says that he wined himself on the fence and fell to the ground before the dog started biting him.
 - Officer A says that Mr X was still standing up against the fence when the dog was biting him, and only fell to the ground at around the same time Officer A slipped down the bank beside the fence.
42. The Authority notes that the Police doctor later remembered Mr X telling him that he received the abrasions to his chest when he was trying to climb over the fence and the dog had hold of him (see paragraph 20). While the Authority acknowledges that this was a “vague” recollection, it tends to support Officer A’s version of events that Mr X was still standing and trying to get over the fence when he received the dog bite injuries.
43. In any event the Authority finds that Officer A did have control of the Police dog, and stopped it from biting Mr X as quickly as he could after catching up to the dog and recovering his footing after slipping down the bank.

FINDINGS

Officer A had control of the Police dog at all times.

Officer A was briefly delayed in removing the Police dog from Mr X because he slipped down a bank. In the circumstances, he removed the dog in a timely manner.

Did Officer A punch Mr X as alleged?

44. Mr X said that, before Officer A removed the Police dog from his leg, the officer grabbed him and punched him five or six times in the face while he was on the ground. He also said he told Officer B that Officer A had punched him.
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45. Officer A denied punching Mr X and Officer B denied that Mr X told him he had been punched. Mr X did not advise the Police doctor or the hospital staff that he had been punched, and there are no independent witnesses or medical evidence to support his claim.

FINDING

There is no evidence to support Mr X's complaint that Officer A punched him in the face five to six times.

CONCLUSIONS

46. The Authority has concluded on the balance of probabilities that:

- 1) Officer A reasonably suspected that Mr X was involved in the attempted burglary;
- 2) Officer A was justified in using his Police dog to apprehend Mr X;
- 3) Officer A had control of the Police dog and, in the circumstances, removed it from Mr X in a timely manner; and
- 4) there is no evidence to support Mr X's claim that Officer A punched him in the face five or six times.



Judge Sir David Carruthers

Chair
Independent Police Conduct Authority

13 November 2014

ABOUT THE AUTHORITY

Who is the Independent Police Conduct Authority?

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

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

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

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

WHAT ARE THE AUTHORITY'S FUNCTIONS?

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

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

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



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