IPCA: 16-0451

9 November 2018

Clive Jordan
Via email: sales@on-target.co.nz

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Dear Mr Jordan

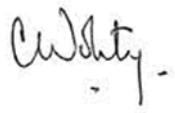
Re: Your complaint about Police charging you with supplying firearms to an unlicensed person

I write to advise you of the outcome of the Authority's investigation into your complaint that, among other things, Police wrongfully charged you with supplying firearms to an unlicensed person.

Please find attached the Authority's final report, which sets out its findings on the issues you have raised.

If you have any queries once you have read the report, please contact Authority Investigator, Andrew MacNeill (andrew.macneill@ipca.govt.nz).

Yours sincerely



Judge Colin Doherty
Chair
INDEPENDENT POLICE CONDUCT AUTHORITY

IPCA
Independent Police Conduct Authority
Mana Whanonga Pirihimana Motuhake

Complaint regarding Police investigation into firearms dealer

INTRODUCTION

1. On 18 December 2014, Police executed several search warrants as part of an investigation into suspected offences under the Arms Act 1983. One of the properties searched was rented by a firearms dealer, Clive Jordan, and another belonged to his former neighbour Mr Y, who was storing some of Mr Jordan's firearms in a safe.

2. Ten months later, in October 2015, Mr Jordan was charged with supplying 241 firearms to an unlicensed person (namely, Mr Y) and unlawful possession of two cans of tear gas spray. The charges were withdrawn by Police on 11 April 2016.

3. Mr Jordan subsequently complained to the Authority, and raised issues regarding the validity and execution of the search warrants, the decision to charge him, and the delay in laying the charges. He also believed that a Police officer had forged a witness statement from Mr Y.

4. The Authority notified Police of the complaint, and conducted its own independent investigation. This report sets out the results of that investigation and the Authority's findings.

BACKGROUND

5. This section of the report provides a summary of the incident and the evidence considered by the Authority. When quoting or describing the accounts of any officer, complainant or witness, the Authority does not intend to suggest that it has accepted that particular account.

6. Analysis of the evidence and explanations of where the Authority has accepted, rejected or preferred that evidence are reserved for the 'Authority's Findings' section.

Summary of events

The storage arrangement

7. Clive Jordan is a firearms dealer and manufacturer, and operates an online business selling firearms and parts from his home. In addition to his dealer's licence, he has a firearms licence with endorsements for pistols, and military style semi-automatic (MSSA) and restricted weapons.

8. In December 2013, Mr Jordan informed Police that he wanted to store his firearms at his neighbour Mr Y's address, subsequently referred to as 'Address A'. In the Police database, it was noted that this was a temporary arrangement while Mr Jordan built a new house.

9. Mr X, a firearms vetting officer from the Counties Manukau Arms Office, conducted a security check of Address A and was satisfied that it was appropriate for Mr Jordan to store his firearms in Mr Y's walk-in safe.

10. Mr Y did not have a firearms licence. He said he had no interest in firearms but agreed to store them in his safe as long as no ammunition was stored there and the firearms had vital components removed (so they were not in working order). The vital components were not to be stored at Address A.

11. Mr Y later said, in a statement to Police:

> *"[Mr Jordan] told me the police knew he wasn't going to live at the address. I understand this was approved by the Manukau Police Arms Office.*
>
> *… After the inspection [Mr Jordan] told me that he had discussed with [Mr X] if I could have a code for the safe. [Mr Jordan] told me that [Mr X] had said I'd need it in case of an emergency and he was ok with that."*

12. Mr Y stated that he and Mr X did not themselves discuss whether Mr Jordan was going to be living at Address A, or whether Mr Y had the code to the safe.

13. Mr Jordan told the Authority that he knew Mr Y should not have access to the firearms in the safe, because Mr Y did not have a firearms licence. Therefore Mr Jordan wrote down a new code for the safe and put it in an envelope for Mr Y with instructions to only use it in an emergency. He said he understood Mr Y never saw the envelope and it was only found much later, having fallen behind a wine rack.

14. Apparently unknown to Mr Jordan, Mr Y was still able to open the safe using a second code. While the firearms were stored there, Mr Y continued to access the safe periodically for the storage of his own valuables.

15. Police understood that Mr Jordan would be living at and operating his business out of Address A. But in January 2014 Mr Jordan rented another address, 'Address B' (also in the Counties Manukau Police District).

16. Mr Jordan told the Authority that he informed Police he had changed his home address (as required by the Arms Act 1983) in *"early 2014"*.[1] However, there was no record of Address B in the Police database, nor did the Counties Manukau Arms Office have any records that they had been informed.

17. Evidently, Mr Jordan moved some of the firearms and parts that had been stored in the safe at Address A to Address B, where he was now living and running his business. As Police were apparently unaware of Address B, they did not conduct a check of the security arrangements there. In April 2014, the Counties Arms Office carried out Mr Jordan's annual dealer inspection at Address A.

Police investigation into Arms Act offences

18. In October 2014, Police officers in the Auckland City Tactical Crimes Unit (TCU) began investigating a report that another firearms dealer, Mr W, had been selling MSSA weapons out of a supermarket carpark to people who did not possess the required firearms permits.

19. The TCU was mainly concerned with investigating burglaries, but when a local Arms Officer informed Officer A of the situation with Mr W, Officer A (a senior constable) and Officer B (a constable) decided to investigate this matter alongside their normal duties.

20. During the course of this investigation, Police received information that Mr W and Mr Jordan had imported and sold firearms to Mr V. Mr V was suspected of supplying firearms to gang associates, and some of the firearms in question had been found at crime scenes.

Search warrants

21. In December 2014, Police planned to execute search warrants for the properties of Mr V and Mr Jordan, in an effort to find evidence relating to suspected Arms Act 1983 offences. Officer A told the Authority that the aim of the investigation was to revoke the firearms licences of the people involved and pursue criminal charges.

22. New Zealand Customs agreed to assist Police with conducting the search warrants, as they were concerned about the importation of firearm parts that could make up MSSA weapons.

23. Officer A completed the search warrant applications with assistance from Officer B. While checking the addresses Officer B discovered that, although the Police database showed that Mr Jordan's security and residential address was Address A, Mr Jordan was actually living at Address B. Police decided to search both properties because the dealer records could have been held at either address.

24. Officer A and Officer B did not advise the Counties Manukau Arms Office of their plans to search Mr Jordan's properties.

25. The search warrants were approved, and were executed at about 6.30am on 18 December 2014. Police were looking for business records, phones and computers, and took the

[1] Section 34 of the Arms Act 1983 states: *"Every holder of a firearms licence who changes his address shall, within 30 days after doing so, give notice in writing thereof to the Arms Office nearest to his new address."*

opportunity to conduct security inspections of the addresses and assess their suitability to store firearms. Armed Offenders Squad (AOS), Auckland City Arms Office and New Zealand Customs staff assisted with the searches.

Address A

26. Officer C took part in the execution of the search warrant at Address A, along with another detective. Mr Y opened the safe for the officers, and they found 241 firearms stored inside.

27. According to Police photographs, Mr Jordan's firearms were neatly stacked within the safe. The officers removed the firearms and individually photographed each one. When they were finished conducting an inventory they put the firearms back into the safe, leaving them in a pile on the floor.

Address B

28. Officer D (a sergeant) oversaw the execution of the search warrant at Address B, and Officer B was the Exhibits Officer. They found that Mr Jordan was living at this property, with his firearms workshop based in the garage. A large number of MSSA firearm parts were stored there in boxes, along with tools to assemble them.

29. Officer B commented that Police were not expecting there to be so many firearms and parts at this address, and as the Exhibits Officer he was quite overwhelmed and stressed.[2]

30. According to a report completed by Officer B, Police found and seized three restricted firearms that appeared to be in an operable state in safes that were not bolted to a wall or the floor. A shotgun was also seized. Police said these firearms were seized under section 18(2)(a) of the Search and Surveillance Act 2012, due to breaches of the Arms Act 1983 (including that the storage arrangements were not adequately secure).[3]

31. Police also found and seized two cans of tear gas spray,[4] a collection of flick knives and two butterfly knives. Officer B advised the Authority that one of the Customs staff told him the knives were 'prohibited goods' under the Customs Import Prohibition Order 2014. Officer B said that the spray and knives were in plain sight,[5] and were seized without a warrant because they are restricted weapons and he believed Mr Jordan had breached the Arms Act (in respect of possession of the spray) and the Customs Import Prohibition Order (in respect of importing the knives).

32. Officer B reported that the garage had no alarm system, and the rear door was not sufficiently secure. He wrote: *"Effectively a burglar with basic tools and a van could have accessed an arsenal of firearms with minimal effort."*

[2] The Auckland Arms Officers attended Mr V's address and Address A, but did not attend Address B.
[3] See paragraph 129 below for the relevant legislation.
[4] 'Sabre CS Tear Gas Chemical Defence Weapon' spray.
[5] Section 123 of the Search and Surveillance Act 2012 empowers Police to seize items in plain view while they are exercising a search power, if they have reasonable grounds to believe that they could have seized the items under a search warrant that could have been obtained or a search power that could have been exercised – see paragraph 131 below for the relevant legislation.

33. For this reason, Police decided to move the disassembled MSSA firearms to be stored in the safe at Address A, which Officer D understood to be the secure address associated with Mr Jordan's dealer's licence. These MSSA parts were placed inside the safe, on top of the pile of firearms already there.

34. Mr Jordan said that after Police had left Address B, he found a Police evidence bag (made of brown paper with clear plastic viewing panel) of firearm parts, namely 'lower receivers',[6] that had been left outside by his garage door at the side of his house. Mr Jordan took a photograph of them, and called his lawyer. He then called Officer B, who advised him to put them in the safe at Address B.

35. When interviewed by the Authority, Officer B vaguely recalled that Mr Jordan may have called him after the search. He also accepted that Police could possibly have left a bag of lower receivers (but not complete firearms) behind at Address B. He thought he had told Mr Jordan that if he had something he should not have, he should put it in the safe at Address A, and that he should talk to the Arms Office about the situation with his firearms.

Police actions following the execution of the search warrants

36. Two weeks after the search warrants had been executed, the code for Mr Y's safe at Address A was changed so that only Mr Jordan could access it.

37. The Counties Manukau Arms Office conducted a security check of Address B on 17 January 2015. The safes were now secured to the wall and floor, and the Arms Office approved the address on the condition that Mr Jordan's private collection of restricted weapons remained in the safe at Address A.

38. In the meantime Officer B was tasked with the ongoing investigation into Mr Jordan allegedly supplying an unlicensed person with firearms.

39. On 12 January 2015, Mr Jordan's lawyer wrote to Officer B requesting documents relating to the execution of the search warrant, and noting that Police had not yet provided a full inventory of the items that were seized (as required by section 133 of the Search and Surveillance Act 2012).[7]

40. Officer B responded to this request on 21 January 2015, stating that he believed the inventory of seized items had been posted to Mr Jordan before Christmas and that a copy of the search warrant documents had been left at the affected addresses. He sent Mr Jordan's lawyer further copies of the search warrant documents and an extract from the exhibits register which showed the items that had been seized from Address B.

41. Also on 21 January 2015, an Arms officer from the Counties Manukau Arms Office wrote a report to Officer B recording that the Arms Office had become aware that Mr Jordan had changed his address to Address B without notification. He stated: *"This is an offence under Sec.*

[6] 'Lower receivers' are not complete firearms but a firearms licence is required to possess them legally.
[7] See paragraph 132 below for the legislation.

34 Arms Act 1983. At this point in time no action has been taken pending your investigation into other matters."

42. On 28 January 2015 Officer B completed a report requesting that Mr Jordan's firearms licence be revoked. Ultimately Mr Jordan's licence was not revoked.

43. Meanwhile the Police investigation into the alleged Arms Act offences continued. Officer B started a new role in the Crime Squad, but decided to continue holding the file on Mr Jordan because he thought that no one else would be willing to take it on. There was no formal oversight of the investigation and, due to Officer B's heavy workload in the Crime Squad, progress was very slow.

44. On 23 February 2015 Mr Jordan's lawyer again wrote to Officer B with questions about why certain items were seized, including the collection of flick knives and two butterfly knives, and why Police suspected Mr Jordan of the Arms Act offences listed on the search warrant. It appears that Officer B did not respond to this letter.

Mr Y's statement

45. In April 2015, Officer B interviewed Mr Y. He took handwritten notes of the interview, and later typed them up into a statement (Statement 1) which he emailed to Mr Y for his signature on 6 May 2015.

46. Mr Y did not think that Statement 1 was an accurate record of the interview, and wanted to make some changes to it. He asked Mr X, who had carried out the initial security check of Address A, to assist him. Together they created Statement 2, which clarified some points and ended with a brief character reference for Mr Jordan. Mr Y said that he printed out and signed Statement 2, and left it at his office reception for Officer B to pick up.

47. Officer B told the Authority he must have picked up the signed statement from Mr Y's office, but he could not recall whether or not he had observed Mr Y signing the statement. He acknowledged that it was possible Mr Y had not signed it in his presence. He did not think he had inspected the statement for changes to the original, and said he would have just read it and observed that it was fine for his purposes. On 7 May 2015 he signed and scanned the statement, which was added to the investigation file.

48. Mr Y later discovered that the signed statement in the investigation file was actually Statement 1, not Statement 2. He also found that the statement had his initials on each page, which he denied writing on either version of the statement. Consequently Mr Y and Mr Jordan believed that Officer B must have 'cut and pasted' or forged Mr Y's signature and initials onto Statement 1.

Further requests for information

49. On 14 May 2015 Mr Jordan's lawyer emailed Officer B, asking for an update regarding the return of seized items to Mr Jordan.

50. This was followed on 10 June 2015 by another letter from Mr Jordan's lawyer to Officer B, again seeking information about what had led to Police conducting the searches of Mr Jordan's and Mr Y's addresses, and documentation regarding the warrantless seizures of the knives and tear gas spray.

51. Officer B emailed Mr Jordan's lawyer on 23 September 2015, apologising for the delay in his response and stating that he was *"operating under a misunderstanding that all of the requested information was included in a disclosure made by [Officer A] on 21 June 2105 in relation to two of your other clients …."*

52. Officer B advised Mr Jordan's lawyer that he had now provided all the search documentation. He said that the rest of the information Mr Jordan's lawyer had requested would be contained in the disclosure provided by Officer A on 21 June 2015, apart from two documents which he was withholding on the basis that disclosing them would *"prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial"*.[8]

53. Finally Officer B said he intended to return the seized knives to Mr Jordan the following week, as he had decided not to bring any charges relating to Mr Jordan's possession of them.[9]

54. Mr Jordan's lawyer was not satisfied with Officer B's response, and on 25 August 2015 he made a complaint to the Ombudsman about the Police's delay in responding to his requests.

Charges laid against Mr Jordan

55. On 14 October 2015, after some other enquiries had reached dead ends, Officer B charged Mr Jordan with supplying 241 firearms to an unlicensed person (Mr Y), and possession of two cans of tear gas spray.[10] He also returned the knives that had been seized during the search in December 2014.

56. After Mr Jordan was charged, his lawyer made further specific requests for information but again had difficulty obtaining the documents he sought from Officer B.

57. On 23 November 2015, the Ombudsman advised Mr Jordan's lawyer that his complaint about the delayed response from Police to his 10 June 2015 request for information had been upheld. Police acknowledged that they had failed to meet their Official Information Act 1982 obligation to respond within 20 working days.

58. On 30 March 2016, Mr Jordan's lawyer filed an application for the dismissal of the charges against Mr Jordan.[11] He stated that information about the validity of the Police search had not yet been disclosed, nor had key witness statements (from, for example, Mr X and the Counties

[8] Section 6(c) of the Official Information Act 1982.
[9] Officer B referred to section 151(1)(a) of the Search and Surveillance Act 2012, under which Police may keep custody of a seized item that is *"required for investigative or evidential purposes"* until a decision is made not to bring proceedings for an offence in respect of the seized item.
[10] Under sections 44(1) and 50(1)(b) of the Arms Act 1983 – see paragraphs 126 and 128 below for the legislation. Both of these offences have a maximum penalty of 3 years' imprisonment.
[11] Under section 147 of the Criminal Procedure Act 2011.

Manukau Arms Officers), and details of the firearms that were transferred from Address B to Address A following the search. He also said that phone calls to Police had not been returned, and *"it appears that the police are being deliberately non-compliant"*.

59. Police withdrew the charges against Mr Jordan on 11 April 2016. On 6 July 2016 the Police prosecutor completed a 'filing report' stating his reasons for withdrawing the charges and his concerns about the case, including that:

    a) he had not received the full file despite earlier requests from other prosecutors;

    b) Police had permitted Mr Jordan to store his firearms at Mr Y's address (Address A) during the construction of his new home, and that address had been approved as secure and acceptable to Police;

    c) Mr Jordan had retained all his firearms and his dealer's licence after the searches were carried out;

    d) Officer B believed he had completed disclosure, but *"expressed frustration that he had been unable to obtain statements or documents from the Arms Office";*

    e) *"it was clear that there had been a breakdown in the relationship"* between Officer B and the Counties Manukau Arms Office, which seemed to result in conflicting advice being given to Mr Jordan about the storage of his firearms and incomplete disclosure to Mr Jordan of relevant material; and

    f) the delay between the execution of the search warrants and the charges being filed was *"probably 'undue delay'"*.

60. The Police prosecutor determined that the charge relating to possession of the tear gas spray should also be withdrawn, due to *"the demise of the 'lead' charge"* and the delay.

Mr Jordan's complaint to the Authority

61. On 27 August 2016 Mr Jordan's lawyer wrote to the Authority outlining *"a number of serious concerns"*. These included:

    a) the validity of the search warrant;

    b) Police transferring firearms from Address B to Address A after the execution of the search warrant;

    c) that charges were not laid within *"the six month period"*;

    d) that Mr Y's witness statement had been altered *"including forging initials and manipulation of signature ('cut and paste')"*; and

    e) *"deliberate and persistent"* delay in the disclosure of documents by Police.

62. In his affidavit supporting this complaint, Mr Jordan stated that Police had *"left 17 firearms on the back lawn"* following the search of Address B. He also argued that by transferring firearms from Address B to the safe at Address A, Police had effectively supplied Mr Y, an unlicensed person, with firearms – the same offence with which Mr Jordan was charged.

Police investigation

63. Police conducted employment investigations into the actions of Officers A, B and D and upheld some aspects of the complaint, including issues related to the:

- management of the seizure of exhibits;
- movement of firearms from Address B to Address A;
- delay in providing disclosure; and
- lack of information gathered from the Counties Manukau Arms Office.

Examination of Mr Y's witness statement

64. In the course of the Police investigation into Officer B's actions, Police examined Statement 1 to assess whether Officer B could have forged Mr Y's signature and initials. A Senior Document Examiner compared samples of Mr Y's signature and handwriting with Statement 1, and concluded with a high level of certainty that Mr Y had signed and initialled the document. She noted that the signatures and handwriting had been done in ink (that is, not 'cut and pasted' onto the document).

THE AUTHORITY'S INVESTIGATION

65. During its investigation the Authority reviewed documentation provided by Police, and interviewed Mr Jordan and Mr Y as well as five Police officers, two Arms Office staff and the Senior Document Examiner.

THE AUTHORITY'S FINDINGS

66. The Authority identified and considered the following issues:

1) Did Police have reasonable grounds to apply for a warrant to search Addresses A and B?

2) Did Police conduct the search appropriately?

   a) Was the manner in which Police conducted the search appropriate?

   b) Was the warrantless seizure of knives and tear gas spray appropriate?

   c) Did Police leave a bag of lower receivers at Address B?

d) Was it appropriate for Police to take firearms and parts found at Address B to be stored in Mr Y's safe at Address A?

3) Did Officer B forge Mr Y's witness statement?

4) Was there an unacceptable delay in charging Mr Jordan?

5) Under the circumstances, should Officer B have charged Mr Jordan with supplying firearms to Mr Y?

6) Did Officer B fail to disclose information to Mr Jordan's lawyer?

Issue 1: Did Police have reasonable grounds to apply for a warrant to search Addresses A and B?

67. Mr Jordan questioned whether Police had reasonable cause to search his property and seize his business records. He stated that Police could have just visited him and asked to inspect the records, as they are entitled to do under the Arms Act 1983. He also said that if Police had consulted the Counties Manukau Arms Office, they would have advised that Mr Jordan was *"harmless and approachable"* and would cooperate with the investigation.

68. After interviewing the officers involved in the investigation and reviewing the search warrant applications, the Authority is satisfied that Police did have reasonable grounds to search Addresses A and B and seize Mr Jordan's business records. In order to ensure that Police obtained all available evidence, it was appropriate for them to conduct the searches rather than just approaching Mr Jordan about their concerns as he suggested.

69. It may have helped the Police's understanding of Mr Jordan's storage arrangement with Mr Y if Police had consulted the Counties Manukau Arms Office before conducting the searches.

70. However, the officers said they did not consider this necessary, and that it was important to keep the planned searches secret. Additionally, Officer B was concerned that Mr Jordan appeared to have deceived the Counties Manukau Arms Office about his living arrangements. Therefore the Authority considers that it was reasonable for Police not to consult the Arms Office before the searches were carried out.

FINDING

Police did have reasonable grounds to apply for a warrant to search Addresses A and B.

Issue 2: Did Police conduct the search appropriately?

2a) Was the manner in which Police conducted the searches appropriate?

71. The Authority did not receive any complaint about the way in which Police officers personally interacted with Mr Jordan and Mr Y during the searches, but Mr Jordan told the Authority that

the searches caused *"severe disruption"* to him and his neighbours and affected his ability to run his business.

72. The Authority found that Police took some steps to decrease the disruption caused by the searches, including that:

- the need to seize electronic items was reduced by having experts onsite to clone data when possible; and
- AOS officers were in regular Police uniform and had a low key presence.

73. However, one particular issue which Mr Jordan raised was the way Police had replaced his firearms into Mr Y's safe at Address A. Mr Jordan was unhappy with how Police left the firearms and stated that some were scratched and damaged as a result.

74. It is clear that before Police searched the safe, the firearms were neatly stacked inside. But after Police had removed and photographed each firearm, the officers piled the weapons up on the floor of the safe rather than re-stacking them. Bins of the firearm parts brought from Address B were then placed on top of the pile.

75. One officer involved in the search acknowledged that they had piled the firearms on the floor of the safe, and said that Police *"don't tend to make people's beds when we leave from search warrant"*. He denied that the weapons had been thrown around or damaged, and said that it would have taken the officers too long to place them back in the safe exactly as they had found them.

76. The Authority finds that, although Police could have made more of an effort to stack the firearms into Mr Y's safe more neatly, their actions in piling them up on the floor were not unreasonable. It is not clear whether damage resulted from this and, if so, to what extent. The Authority has not been presented with evidence of damage to the firearms, and Mr Jordan has never made a claim to Police for compensation.

FINDING

Police generally conducted the searches in an appropriate manner.

2b) Was the warrantless seizure of knives and tear gas spray appropriate?

77. Mr Jordan objected to the Police's seizure of his knives and tear gas spray, which he stated were legally in his possession. These items were not included in the Police's search warrant.

78. According to his report, Officer B was of the view that he was able to seize the tear gas spray and flick knives *"under the provisions of the [Search and Surveillance Act 2012] relating to breaches of the Arms Act and items found in plain sight"*.

79. Officer B subsequently advised the Authority that he seized all these items under section 123 of the Search and Surveillance Act 2012, which empowers Police to seize *"items in plain view"* while they are exercising a search power.[12]

Tear gas spray

80. Tear gas spray is classed as a *"restricted weapon"* under the Arms Act 1983 and it is illegal to possess it or import it into New Zealand.

81. In this case, had Officer B not seized the spray under section 123 of the Search and Surveillance Act 2012, Police would have been empowered to seize the spray under section 18(2) of the same Act, which allows warrantless searches (and seizure) in relation to breaches of the Arms Act.[13]

82. Section 10(2) of the Arms Act allows a licensed dealer to receive restricted weapons such as tear gas spray, as long as the dealer *"immediately surrenders"* the restricted weapon to the nearest Arms Office for inspection and inquiries. The Authority has not seen any evidence that Mr Jordan intended to surrender the tear gas spray before Police seized it.

83. Officer B charged Mr Jordan with unlawful possession of the tear gas spray, but Police decided not to pursue this charge when they withdrew the main charge of supplying firearms to an unlicensed person.

Knives

84. Mr Jordan argued that the knives were not covered by the Arms Act 1983 and that Police did not have authority to seize them.

85. Officer B advised the Authority that the knives were seized as *"items in plain view"* under section 123 of the Search and Surveillance Act 2012.[14] Officer B said:

> *"We were not searching for these items and had no reasons to suspect [Mr Jordan] had them prior to the warrant but they were discovered incidental to the purpose of the search and were seized."*

86. Under section 123, Police must have *"reasonable grounds to believe"* that they could have seized the items under a search warrant that could have been obtained or a search power that could have been exercised. Officer B argued that the Customs and Excise Act 1996 would have empowered the search for and seizure of the knives as *"prohibited goods"*, because it is generally illegal to import flick knives and butterfly knives.[15]

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[12] See paragraph 131 below for the relevant legislation

[13] See paragraph 129 below for the relevant legislation.

[14] See paragraph 131 below for the relevant legislation.

[15] Clause 3 of the Customs Import Prohibition Order 2014 (since revoked and replaced by the Customs Import Prohibition Order 2017) stated that *"The importation of the goods specified in the Schedule is prohibited, except with the consent of, and subject to any conditions not inconsistent with this prohibition as may be imposed by,— (a) the Commissioner of Police; or (b) a Deputy Commissioner of Police."*

87. The Authority considers that it was reasonable for Officer B to seize the knives as possible evidence of unlawful importation. As it happened, insufficient evidence was found from Mr Jordan's business records to prove that he had committed an offence under either:

a) section 209(1)(a) of the Customs and Excise Act 1996 – importation of prohibited goods; or

b) section 212(1) – possession or custody of prohibited imports (this charge would have required Police to prove that Mr Jordan knowingly had the goods in his possession and knew they were prohibited imports).

88. Officer B discussed the matter with Customs and, after determining that they did not want to seek forfeiture of the knives, decided to return them to Mr Jordan.

89. The Authority notes that the knives were only returned in October 2015, about ten months after they were seized. The delays in the investigation after the search warrant was executed are discussed further in Issue 5 below.

Report on warrantless seizure

90. Mr Jordan said that Police should have completed reports on the warrantless seizures of the tear gas spray and the knives (as required by section 169 of the Search and Surveillance Act 2012).[16] However Police did not disclose these to him after he was charged.

91. Section 169 of the Search and Surveillance Act states that a constable who exercises a warrantless entry, search, or surveillance power must:

> *"…provide a written report on the exercise of that power to the Commissioner or a Police employee designated to receive reports of that kind by the Commissioner as soon as practicable after the exercise of the power."*

92. However the tear gas spray and knives were seized under section 123 of the Search and Surveillance Act as *"items in plain view"*. Section 123 is a seizure power, rather than an entry, search or surveillance power as specified in section 169. Therefore Officer B was not required to complete reports under section 169.

FINDINGS

The seizure of the tear gas spray and the knives was appropriate.

Officer B was not legally required to complete reports on the seizure of these items.

2c) Did Police leave a bag of lower receivers at Address B?

93. In his complaint, Mr Jordan stated that Police had *"left 17 firearms on the back lawn"* after the search of Address B. When interviewed, Mr Jordan told the Authority it was a brown evidence

[16] See paragraph 130 below for the relevant legislation.

bag of *"AR-15 lower receiver units"* and that *"anyone [could have] walked round the back of the house … and picked up that bag and made off with it."* He noted that lower receivers are the only part of the gun you need a licence to buy so *"they are actually classified by the Police as a gun"*.

94. Officer B could not recall Police having left behind a bag of lower receivers, or Mr Jordan discussing this with him, but agreed that he would have advised Mr Jordan to place the firearm parts in the safe at Address B. He told the Authority that Mr Jordan was still at the address when Police left, and that Police definitely did not leave any complete firearms behind.

95. Mr Jordan provided a photograph of what was left behind to the Authority. The lower receivers appeared to have been left by the garage door at the side of the house, which is down a shared driveway and hidden from public view. They were in a Police evidence bag, which indicates they were accidentally left behind when Police were taking firearms and parts to Address A to be stored in the safe.

FINDING

Police accidentally left a bag of lower receivers at Address B.

2d) Was it appropriate for Police to take firearms and parts found at Address B to be stored in Mr Y's safe at Address A?

96. Officer D and Officer B were not satisfied that Address B had adequate security arrangements for the storage of MSSA firearms, and decided to move them to the safe at Address A.

97. Mr Jordan argued that, by moving firearm parts from Address B to the safe at Address A, Police had, in effect, supplied Mr Y (an unlicensed person) with firearms. Mr Jordan also stated that Police reunited the firearms already in the safe with the vital components he had removed as part of his storage arrangement with Mr Y.

98. Officer C (a detective) told the Authority that at the time he thought the weapons stored at Address A were *"ready to go and operational",* and that the officers could not have known whether the firearms were operable without test-firing them. It appears that Police were not informed about Mr Y's condition that he would only store the firearms if they had vital components removed.

99. The Authority is of the view that, due to the officers' concerns about the security of Address B, it made sense for them to move the firearms and parts to the safe at Address A. They knew that Police searching Address A had found the safe to be suitably secure. Furthermore, the rest of Mr Jordan's firearms remained in the safe at Address A after that search.

100. The issue of whether it was nonetheless appropriate for Police to charge Mr Jordan with supplying firearms to Mr Y is addressed below.

FINDING

It was appropriate for Police to transfer the firearms and parts to the safe at Address A.

Issue 3: Did Officer B forge Mr Y's witness statement?

101. Mr Y and Mr Jordan said that, rather than accepting Statement 2 which Mr Y had amended and signed, Officer B must have forged or 'cut and pasted' Mr Y's signature and initials onto Statement 1.

102. Officer B denied forging or 'cut and pasting' Mr Y's signature and initials. He commented:

> *"…if it was found that I had done that my police career would be over and I would get charged. I knew that I would never forge a statement and particularly what in my mind is a co-operating witness…."*

103. In the Authority's view, the more likely explanation is that Mr Y accidentally signed and initialled Statement 1 instead of Statement 2, and left the signed Statement 1 at his office reception for Officer B to pick up. This is supported by the expert analysis of the signed statement which concluded that the handwriting on Statement 1 was Mr Y's.

104. Furthermore, the Authority considers that it is difficult to understand why Officer B would have taken the risk of forging a witness statement in this particular case, because the differences between Statement 1 and Statement 2 are not of great significance.

105. However, there was a problem with Officer B's handling of the statement because it appears Officer B signed that he had witnessed Mr Y's signature although:

a) Mr Y had not signed the statement in Officer B's presence; and

b) Officer B was not familiar with Mr Y's signature, and therefore could not verify it without having seen Mr Y sign the statement.

106. The Authority finds that this was bad practice.

FINDINGS

Officer B did not forge Mr Y's signature and initials onto Statement 1.

It was bad practice for Officer B to sign that he had witnessed Mr Y's signature in the circumstances.

Issue 4: Under the circumstances, should Officer B have charged Mr Jordan with supplying firearms to Mr Y?

107. In October 2014, when the investigation into offences against the Arms Act 1983 began, Officer B had just started working in the TCU and was training to become a detective. As set out above in paragraph 19, Officer A picked up the investigation, rather than being assigned to it by a supervisor, and Officer B then joined in. During this time the Detective Sergeant position was being covered by several different people and none of them were assigned the responsibility of training or mentoring Officer B.

108. After the search warrants were executed, it appears there was very little supervision of the ongoing enquiries and ultimately the decision to lay charges. Officer B joined the Crime Squad in January 2015 and had a very heavy workload. He was not supposed to hold on to any old files, but decided to keep the investigation into Mr Jordan because he did not think it would progress if he left it to someone else. His Crime Squad supervisors did not actively or substantively oversee his work on this file, other than advising him to complete it as soon as possible.

109. At the conclusion of his enquiries. Officer B charged Mr Jordan with supplying firearms to an unlicensed person. Earlier, he had sought advice as to legal issues relating to the case. He described this advice as *"informal"*. Officer B relied, in part, on his interpretation of certain case law when laying the charges; namely *Coory v Police*.[17] This reliance overlooked other case law, more applicable to Mr Jordan's situation (for example, see *Waller v Police*).[18]

110. In circumstances where:

- Mr Jordan had attempted to restrict Mr Y's access to the safe by changing the code;
- there was a miscommunication and Mr Y was still able to access the safe without Mr Jordan's knowledge; and
- Mr Y was not given permission to (and did not) use Mr Jordan's firearms as he pleased while they were stored in the safe at Address A;

the principles in cases such as *Waller* meant Mr Jordan had a legitimate defence.

111. Additionally, the Counties Manukau Arms Office had already consented to the storage arrangement at Mr Y's property (Address A).

112. Officer B told the Authority he thought the charge was appropriate because the Counties Manukau Arms Office's approval of the storage arrangement with Mr Y was based on the belief that Mr Jordan was also living at Address A:

> *"…the set of circumstances that had been approved was [Mr Jordan] living at [Address A], storing [the firearms] there and … him being in possession of them."*

[17] *Coory v Police* (1991) 7 CRNZ 193.
[18] *Waller v Police* (2001, High Court Masterton Registry) Ap no. 11, para 12.

113. Nevertheless, the Authority considers that the charge of supplying firearms to an unlicensed person was not suitable because:

- Officer B did not have sufficient evidence to prove the offence (such as statements from the Counties Manukau Arms Officers regarding the extent of their knowledge and acceptance of the storage arrangement with Mr Y).
- As Mr Jordan pointed out, Police themselves had also 'supplied' Mr Y with firearms by transferring them from Address B to the safe at Address A when the search warrants were executed. Police were aware that Mr Y had access to the safe, yet allowed the firearms to remain there after the searches had been conducted.[19] If Police believed Mr Y's possession of the firearms was illegal, they should have taken immediate steps to remove them from his address, or ensure Mr Y no longer had access.
- Officer B was unaware Mr Jordan had a legitimate defence.

FINDINGS

Officer B's investigation into Mr Jordan was lacking an appropriate level of oversight. He should have had the benefit of more guidance and advice regarding his decision to charge Mr Jordan with supplying firearms to Mr Y, and should have sought a formal legal opinion before laying the charge.

In the circumstances, Officer B should not have charged Mr Jordan with supplying firearms to Mr Y.

Issue 5: Was there an unacceptable delay in charging Mr Jordan?

114. Although the Authority has determined that Mr Jordan should not have been charged with supplying firearms to Mr Y, it will also consider whether there was unacceptable delay in filing charges.

115. Officer B charged Mr Jordan with supplying firearms to an unlicensed person under section 44(1) of the Arms Act 1983, and possession of two cans of tear gas spray under section 50(1)(b) of the same Act, ten months after the search warrants had been executed. He told the Authority that the delay in filing the charges was due to his heavy workload, and the time it took for further lines of enquiry regarding Mr Jordan's actions (which may have led to further charges) to be completed.

116. In his complaint, Mr Jordan told the Authority that *"charges were not laid within the six month period"* and later referred to *"the Attorney General's guideline that charges should be laid within 6 months"*.

117. Both sections 44(1) and 50(1)(b) of the Arms Act 1983 are 'category 3' offences under the Criminal Procedure Act 2011. Section 25 of the Criminal Procedure Act states that charging

[19] According to Mr Jordan's lawyer, the code to the safe was only changed two weeks after the searches were conducted.

documents relating to category 3 offences must be filed within five years for offences with an imprisonment term *"not exceeding 3 years"*, as is the case with sections 44(1) and 50(1)(b) of the Arms Act. If Mr Jordan had been charged with supplying the firearms under section 43(1) of the Arms Act, which is a category 2 offence, then a six month limit would have applied.

118. The Solicitor-General's Prosecution Guidelines do not state a particular time limit, but they do refer to *"undue delay"* in filing charges as a consideration when deciding whether the public interest requires prosecution.

119. While the ten month delay is both regrettable and not good practice, the Authority's view is that, in the context of the five year filing limit and considering Officer B's workload and the further investigation he undertook before he laid the charges there was not an undue delay in this case.

FINDING

Officer B was not required to charge Mr Jordan within six months, and there was a regrettable but not undue delay in the circumstances.

Issue 6: Did Officer B fail to disclose information to Mr Jordan's lawyer?

120. Mr Jordan's lawyer had difficulty obtaining disclosure from Officer B before and after Mr Jordan was charged. The problems he experienced were detailed in his application for the charges against Mr Jordan to be dismissed.

121. When interviewed by the Authority, Officer B accepted that he had not met his obligations regarding disclosure. He said he had not been trained in how to handle disclosure under the Criminal Disclosure Act 2008 and the Official Information Act 1982, and did not initially realise that he should provide Mr Jordan with the reason why he was not disclosing the information (namely, that the investigation was ongoing).

122. Officer B also stated that he had mistakenly assumed that disclosure which Officer A had provided to Mr Jordan's lawyer on 21 June 2015, in relation to other people represented by him, also covered the information requested for Mr Jordan. He acknowledged that he had failed to check whether this was the case.

123. The Authority finds that Officer B failed to respond appropriately to the disclosure requests. The failure regarding disclosure was one the reasons why the Police prosecutor agreed to the withdrawal of the charges against Mr Jordan.

FINDING

Officer B failed to disclose information to Mr Jordan's lawyer.

CONCLUSIONS

124. The Authority has found that Officer B should not have charged Mr Jordan with supplying his neighbour, Mr Y, with firearms. Officer B's decision to charge Mr Jordan resulted primarily from a lack of active and substantive supervision.

125. The Authority also concluded that:

1) Officer B did not forge Mr Y's signature and initials onto Mr Y's statement.

2) Police did have reasonable grounds to apply for a warrant to search Addresses A and B, and generally conducted the searches in an appropriate manner.

3) The seizure of the tear gas spray and the knives was appropriate. Officer B was not legally required to complete reports on the seizure of these items.

4) Police accidentally left a bag of lower receivers at Address B.

5) It was appropriate for Police to transfer the firearms and parts to the safe at Address A.

6) It was bad practice for Officer B to sign that he had witnessed Mr Y's signature in the circumstances.

7) Officer B was not required to charge Mr Jordan within six months, and there was a regrettable but not undue delay in the circumstances.

8) Officer B failed to disclose information to Mr Jordan's lawyer.

Judge Colin Doherty

Chair
Independent Police Conduct Authority

9 November 2018

IPCA: 16-0451

Arms Act 1983 offences

126. In respect of notifying the Arms Office about a change of address, section 34 of the Arms Act 1983 states:

> *"Every holder of a firearms licence who changes his address shall, within 30 days after doing so, give notice in writing thereof to the Arms Office nearest to his new address."*

127. Section 44(1) of the Arms Act states:

> *"(1) Every person commits an offence and is liable on conviction to imprisonment for a term not exceeding 3 years or to a fine not exceeding $4,000 or to both who sells or supplies a pistol, military style semi-automatic firearm, or restricted weapon to any person other than a person who is authorised—*
>
> > *(a) by a permit issued for the purposes of section 16(1) to bring or cause to be brought or sent into New Zealand that pistol, military style semi-automatic firearm, or restricted weapon; or*
> >
> > *(b) by a permit issued under section 35 to procure that pistol, military style semi-automatic firearm, or restricted weapon …."*

128. Section 50(1)(b) of the Arms Act provides:

> *"(1) Every person commits an offence and is liable on conviction to imprisonment for a term not exceeding 3 years or to a fine not exceeding $4,000 or to both who—*
>
> > *…*
> >
> > *(b) is in possession of a restricted weapon and is not a person authorised or permitted, expressly or by implication, by or pursuant to this Act, to be in possession of that restricted weapon …."*

Search and Surveillance Act 2012

Warrantless searches

129. Section 18 of the Search and Surveillance Act 2012 empowers Police to conduct warrantless searches associated with firearms:

> *(1) A constable who has reasonable grounds to suspect that any 1 or more of the circumstances in subsection (2) exist in relation to a person may, without a warrant, do any or all of the following:*
>
> > *(a) search the person:*

(b) search any thing in the person's possession or under his or her control (including a vehicle):

(c) enter a place or vehicle to carry out any activity under paragraph (a) or (b):

(d) seize and detain any arms found:

(e) seize and detain any licence under the Arms Act 1983 that is found.

(2) The circumstances are that the person is carrying arms, or is in possession of them, or has them under his or her control, and—

(a) he or she is in breach of the Arms Act 1983; or

(b) he or she, by reason of his or her physical or mental condition (however caused),—

(i) is incapable of having proper control of the arms; or

(ii) may kill or cause bodily injury to any person; or

(c) that, under the Domestic Violence Act 1995,—

(i) a protection order or a police safety order is in force against the person; or

(ii) there are grounds to make an application against him or her for a protection order…."

130. Under section 169 of the Search and Surveillance Act, a constable who exercises a warrantless entry, search, or surveillance power (including the power conferred by section 18) must:

"…provide a written report on the exercise of that power to the Commissioner or a Police employee designated to receive reports of that kind by the Commissioner as soon as practicable after the exercise of the power.

…

A report referred to in subsection (1) or (2) must—

(a) contain a short summary of the circumstances surrounding the exercise of the power, and the reason or reasons why the power needed to be exercised:

(b) state whether any evidential material was seized or obtained as a result of the exercise of the power:

(c) state whether any criminal proceedings have been brought or are being considered as a consequence of the seizure of that evidential material…."

Seizure of items in plain view

131. Section 123 of the Search and Surveillance Act states:

"(1) This section applies to an enforcement officer who, as part of his or her duties,—

(a) exercises a search power; or

(b) is lawfully in any place or in or on a vehicle; or

(c) is conducting a lawful search of a person.

(2) An enforcement officer to whom this section applies may seize any item or items that he or she, or any person assisting him or her, finds in the course of carrying out the search or as a result of observations at the place or in or on the vehicle, if the enforcement officer has reasonable grounds to believe that he or she could have seized the item or items under—

(a) any search warrant that could have been obtained by him or her under this Act or any other enactment; or

(b) any other search power exercisable by him or her under this Act or any other enactment…."

Inventory of seized items

132. Section 133(1)(a) of the Search and Surveillance Act provides that Police must, as soon as practicable and within 7 days of seizing any item, provide *"written notice specifying what was seized".* The written notice:

"(a) must contain information about the extent to which a person from whom a thing was seized or the owner of the thing has a right to apply—

(i) to have access to the thing; or

(ii) to have access to any document relating to the application for a search warrant or the exercise of any other search power that led to the seizure; and

(b) must contain information about the right to bring a claim that any privileged or confidential information has been seized; but

(c) need not be provided to the occupier of the place or person in charge of the vehicle or other thing from which the seizure took place, if the person who carries out the search is satisfied that none of the items seized are owned by that person.

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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