

**Summaries of the ‘Substantiated’ ‘Fabrication of Evidence’ Cases
Endorsed by the IPCC in 2002**

Case 1

The complainant (COM), who was a taxi driver, had a traffic accident with another taxi driven by Mr X. PC Y (COMEE) was the investigating officer of the case. In the first interview, COM stated that Mr X should bear the sole responsibility for the accident. During the second interview, COMEE told COM that Mr X claimed that as a black stray dog ran out in front of his taxi, he swerved to avoid it thereby inadvertently causing the accident. COM disagreed with such a version. He stated that he did not see any dog but COMEE requested him to make a further statement corroborating Mr X’s version so that COMEE could charge Mr X with ‘Careless Driving’ rather than the more serious offence of ‘Reckless Driving’. COM eventually agreed to the addition of such information in the supplementary statement though he knew that this was false.

2. When being informed of the details of the second interview, COM’s employer told COM that he would be liable for the repair cost if anything went wrong as a result of his false statement. COM therefore reported the case to the ICAC and lodged a complaint to CAPO against COMEE for persuading him to make a false statement.

3. After investigation, COMEE was charged by the ICAC with ‘Doing an Act Tending and Intended to Pervert the course of Public Justice’. During the court trial, the Magistrate commented that COMEE was very unimpressive during the cross-examination, his evidence contained conflicts and was unreliable. He believed that COMEE was stupid and lazy, rather than corrupt. On the other hand, the Magistrate found the credibility of COM doubtful as he reported the case to the ICAC only because he was worried that he might have to bear the repair cost. In view of the worry borne by COM, there was doubt on his testimony. COMEE was therefore acquitted on the benefit of the doubt.

4. Based on the result of the court case, CAPO initially classified the allegation of 'Fabrication of Evidence' ('FOE') against COMEE as 'Unsubstantiated'. However, the IPCC noted from the record of a monitored telephone call and a controlled meeting arranged by the ICAC that COMEE did admit having coached COM to make the supplementary statement and assured COM that he would not be charged for changing his statement. COMEE also reminded COM not to tell anyone about what they had done. In the light of the above evidence, the IPCC believed that COMEE did mislead COM into making the supplementary statement and therefore suggested CAPO to re-classify the allegation of 'FOE' against COMEE as 'Substantiated'. CAPO accepted the views of the IPCC. In view of the serious nature of the matter, a recorded warning with an entry in his divisional record file was given to COMEE.

Note

This complaint case also involved the following allegations:-

<u>Allegation</u>	<u>Classification</u>
Neglect of Duty	Substantiated Other Than Reported
Misconduct	Substantiated Other Than Reported

Only the 'FOE' allegation is presented in the above case summary.

Case 2

The complainant (COM) was the person-in-charge of a disco. He alleged of being kicked and punched by an SIP (COMEE 1), a SSGT (COMEE 2) and a SGT (COMEE 3) at the rear exit of the disco when they were conducting a liquor licence check at the disco.

2. COM was arrested for 'Obstructing Police' and 'Permitting a Person under 18 to Drink Intoxicating Liquor in a Licensed Premises' during the liquor licence check. After his arrest, COM complained of discomfort and requested medical treatment. He was sent to the hospital for medical treatment and was discharged the next day. COM later phoned up CAPO and lodged a complaint of 'Assault' against the police officers. A few days later, COM, after being charged with 'Obstructing Police', handed in two copies of videotapes to CAPO. It was shown in one of the videotapes that COM was being kicked and punched by one of the three plainclothes males surrounding him at the rear exit of the disco. The videotape also showed that at no time did COM cause any obstruction to the police party as the police officers alleged.

3. After examining all the evidence available and seeking legal advice, the charge of 'Obstructing Police' laid against COM was withdrawn. The police officers concerned were arrested and charged. After trial, COMEE 1 was convicted of 'Common Assault' and 'Perverting the course of Public Justice' and was sentenced to a total of 30 months' imprisonment. COMEEs 2 and 3 were convicted of 'Perverting the course of Public Justice' and were sentenced to 18 months' imprisonment but were acquitted of the charge of 'Aiding and Abetting Common Assault'.

4. In view of the result of the court case, the allegations of 'Assault' and 'Fabrication of Evidence' against all three COMEEs were classified as 'Substantiated'.

Note

According to CAPO Manual Chapter 2-16-(a)(ii), the existing practice of counting allegations is that allegations of the same nature arising from the

same incident with the same result of investigation would be collectively treated as one allegation. In this case, the 'FOE' allegations against COMEES 1 – 3, which were all found to be 'Substantiated', were collectively treated as one count of 'FOE' allegation.