

## **Press Release**

### ***The IPCC impartially examined complaints concerning the handling of exhibits Police officers should adhere to proper procedures for handling of exhibits***

(HONG KONG – 6 April 2018) The Independent Police Complaints Council (IPCC) introduced its twenty-third issue of the *IPCC Newsletter* today. The cover story of this newsletter featured three complaint cases stemming from the handling of exhibits. In addition, the newsletter covered two feature articles on the School Programme and the Secretariat delegation's visit to four oversight bodies in Australia as well as a series of stakeholders' engagement activities. Mr Larry Kwok Lam-kwong (Chairman), accompanied by Mr Daniel Mui (Deputy Secretary-General, Operations), hosted the press briefing.

In case one of the cover story, the Complainant was sentenced to imprisonment for stealing bicycle parts from his former employer (ex-employer). After being released from prison, he learned from his friend that all the bicycle parts seized by the Police had been returned to his ex-employer. Claiming that some of the bicycle parts were his personal property, and did not belong to his ex-employer, the Complainant lodged a complaint alleging that the Police failed to handle the case exhibits appropriately [Allegation: Neglect of Duty]. As the complaint was made while the appeal hearing was pending, CAPO suspended the complaint investigation according to "Sub-judice" procedure. Upon the dismissal of the appeal, CAPO re-opened the complaint investigation and attempted to contact the Complainant by various means but all in vain. CAPO thus classified the allegation as "Not Pursuable".

The IPCC disagreed with the above classification. After two rounds of Queries, CAPO registered the officer in charge of the case as Complainee 1, and the investigation officer of the theft case who made the decision to return all exhibits as Complainee 2. According to the case documents, although Complainee 1 was only informed after the wrongful return of the exhibits, as the officer in charge of the case, she did not instruct her subordinate to take remedial action as soon as practicable. It was not until five months later that the Complainee 1 took action and instructed her subordinate to collect the exhibits which had been mistakenly returned. In view of the above, CAPO reclassified the allegation against Complainee 1 as "Substantiated". Complainee 2 admitted that, considering it was unlikely that the appeal court would request a physical examination of the bicycle parts due to their sheer size, he decided to return all bicycle parts to the shop owner. Before making this decision, he did not seek prior approval from the

officer in charge nor did he clarify the ownership of the exhibits. Therefore, the allegation against him was also classified as “Substantiated”. In this case, CAPO issued warnings without Divisional Record File (DRF) entry to both Complainees.

In complaint case two, the Police suspected that the Complainant had published child pornography on the Internet. The officer in charge seized three computers at the Complainant’s residence and attached the “anti-tamper” tapes to these exhibits at the scene. Before sending them to Technology Crime Division for further examination, he placed these exhibits under his desk in the office instead of keeping them in the Property Office in accordance with procedures. After thorough examination, the Police found a large quantity of child pornography photos and video clips saved in these computers and hence decided to charge the Complainant. During the trial, the Complainant denied committing any offence and argued that someone might have planted the child pornography photos and video clips in the computers, which were not stored properly by the Police. The Court commented that though the storage of the exhibits was unsatisfactory, it would be improbable to plant such a large quantity of child pornography on the computers without being noticed. Hence, the Complainant was convicted. The Complainant alleged that the crime officer (Complainee) had led to his computers being tampered [Allegation: Neglect of Duty].

CAPO was of the view that the Complainee had taken reasonable steps to safeguard the exhibits. As the Judge also clearly pointed out that the computers had not been tampered, the allegation was classified as “No Fault”. However, the IPCC was of the view that the handling of exhibits was not satisfactory though there was no tampering. The IPCC recommended that an additional “Substantiated Other Than Reported” count of “Neglect of Duty” be registered against the Complainee. CAPO finally subscribed to the IPCC’s view, and the Complainee was given an advice without DRF entry.

In complaint case three, the owner of a food company (shop owner) suspected that the Complainant might have embezzled the company’s property, and made a report to the Police. When conducting preliminary enquiries, the investigating officer (Complainee) did not collect the Accounting Records (Accounts) as an exhibit. He made copies of the part of the Accounts that covered the company’s revenue records for the period concerned and returned the Accounts to the shop owner. Upon arresting the Complainant for theft, the Complainee took a further statement from the shop owner and seized the Accounts as an exhibit without verifying it against the photocopy that he made earlier. The Complainee then sealed the Accounts into an exhibit bag and locked it inside his drawer in preparation for the trial. During the trial, the Complainant’s defence counsel challenged that there were discrepancies between the

photocopy of the Accounts provided by the Police and the original exhibit (i.e. some alternations were found in the original Accounts). Despite being the only one having access to the Accounts, the shop owner denied having any knowledge of the discrepancies in the documents and his statements was considered incredible by the Court. The acquitted Complainant lodged a complaint against the officer in charge [Allegation: Neglect of Duty].

CAPO considered that the Complainee did not verify the exhibit against the photocopy of the Accounts he made earlier and had not stored the exhibit in the Property Office. Therefore, CAPO classified the allegation as “Substantiated” and suggested a penalty of advice without DRF entry. The IPCC agreed to CAPO’s classification of the allegation. However, having taken into account the vast experience of the police officer, CAPO subscribed to the IPCC’s view and gave the Complainee a warning without DRF entry.

Mr Larry Kwok Lam-kwong, Chairman of the IPCC, said, “The results of the above three cases reflected that the IPCC had reviewed every investigation report in a fair, impartial and evidence-based manner. The IPCC suggests the Police to strengthen the training of police officers, and if necessary, reinforce the relevant Police General Order. Officers should be reminded to handle exhibits carefully to avoid any adverse effect on the investigation work.”

The twenty-third issue of the *IPCC Newsletter* is now available on the IPCC’s website at: <http://www.ipcc.gov.hk/en/publications/newsletters/2018.html>

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**Notes to editor:**

**About the Independent Police Complaints Council**

The Independent Police Complaints Council (IPCC) is an independent body established under the Independent Police Complaints Council Ordinance (IPCCO) (Cap. 604) to observe, monitor and review the handling and investigation of “Reportable Complaints” (RCs) against the Police by the Commissioner of Police (CP). The IPCC has become a statutory body since the commencement of IPCCO on 1 June 2009.