



# 3

**真實投訴個案及  
改善建議**

**Complaint  
Cases and  
Recommended  
Improvements**

## 不恰當地使用收集所得的個人資料作私人用途 Used personal data collected inappropriately for private purposes

|   | 指控<br>Allegation   | 被投訴人<br>Complainee(s)  | 投訴警察課的原本分類<br>Original classification(s)<br>by CAPO | 最終分類<br>Final classification(s)                |
|---|--------------------|------------------------|---|--|
| 1 | 行為不當<br>Misconduct | 警員<br>Police Constable | 獲證明屬實<br>Substantiated                              | 獲證明屬實<br>Substantiated                         |
| 2 | 行為不當<br>Misconduct |                        | -   | 未經舉報但證明屬實<br>Substantiated Other Than Reported |

### 個案背景

投訴人致電「999」報案，指她的妹妹焦慮症復發，並在住所內攻擊投訴人。被投訴人與其他警務人員到達現場。調查期間，投訴人向被投訴人提供其香港身份證號碼及手提電話號碼，以作紀錄。經調查後，投訴人的妹妹被送往醫院接受治療。

其後，投訴人接獲數十通來自多個不明電話號碼的來電及 WhatsApp 訊息。投訴人接聽了其中一通來電，電話中的男子告訴投訴人其名字，並稱他是當日處理投訴人報案的警務人員之一（註：在投訴警察課調查期間，被投訴人承認他是致電投訴人的男子）。他亦向投訴人表示可協助她處理家事。是次通話後，投訴人繼續收到來自不同電話號碼的來電及 WhatsApp 訊息。投訴人注意到，這些電話號碼的 WhatsApp 帳號顯示了被投訴人的名字或外貌，因此相信所有電話及訊息均來自被投訴人。

數天後投訴人回家時，一名保安員遞給她一張字條，指一名警務人員曾致電保安室，留下其姓氏及電話號碼，並要求保安員請投訴人回電（註：投訴警察課發現字條上的電話號碼是被投訴人曾用過的，但姓氏不屬於被投訴人，而是屬於他的同袍，該名警務人員之前亦曾與被投訴人一起到過投訴人住所處理投訴人的報案）。投訴人沒有理會字條，也沒有回電。

投訴人感到遭電話和訊息滋擾，隨即作出投訴，指被投訴人濫用她的個人資料，透過手提電話聯絡她，並試圖追求她【指控一：行為不當】。

### Case background

The Complainant (COM) made a “999” report that her younger sister relapsed into an anxiety disorder and attacked COM at their residence. The Complainee (COMEE) and other police officers attended the scene. During enquiry, COM provided her Hong Kong Identity Card number and her mobile phone number to COMEE for record purpose. After enquiry, COM’s sister was sent to hospital for medical treatment.

COM later received dozens of calls and WhatsApp messages from different unknown phone numbers. COM picked up one of the calls, in which a male told COM his name and said he was one of the officers who had handled COM’s report earlier that day (note: during CAPO’s investigation, COMEE admitted that he was the male calling COM). He also told COM that he could help her deal with her family matters. After this call, COM continued to receive phone calls and WhatsApp messages from different telephone numbers. COM noticed that the WhatsApp accounts of these phone numbers either showed COMEE’s name or COMEE’s appearance. COM thus believed that all these phone calls and messages were from COMEE.

A few days later, when COM returned home, a security guard gave her a note and stated that a police officer called at the security post earlier leaving his surname and phone number and requested the security guard to ask COM to call back (note: CAPO found that the phone number on the note was a number used by COMEE. The surname, however, did not belong to COMEE. Instead, it belonged to his colleague who attended COM’s residence together with COMEE to handle COM’s police report earlier). COM ignored the note and did not return call.

Disturbed by the calls and messages, COM lodged the instant complaint alleging that COMEE had misused her personal data by contacting her through mobile phone and trying to court her [Allegation 1: Misconduct].

投訴人作出投訴後，開始收到一些由其他不明電話號碼發出的追債訊息，但她和家人均無欠債。

After lodging the complaint, COM started to receive some dunning messages from other unknown phone numbers, but neither she nor her family members were in debt.

## 投訴警察課的調查

被投訴人承認，為了追求投訴人，曾透過不同電話號碼致電並發送訊息給她。他自動請纓向投訴人表示可幫忙處理其家事，是希望與她交朋友並保持聯繫。被投訴人亦承認曾致電保安室及向保安員留下訊息，請投訴人回電。但他否認曾使用同袍的姓氏來表明自己的身份，或在投訴人作出投訴後使用其他電話號碼向投訴人發送追債訊息。就該些發送給投訴人的追債訊息，投訴警察課的調查顯示它們是經由沒有用戶登記資料的預付電話卡發送，並無證據顯示被投訴人與這些電話有關。

根據《警察通例》，除非取得資料當事人的訂明同意，以及基於收集資料的原本目的或與該目的直接相關的目的，否則警務人員不得使用在執行公務期間所收集得來的個人資料。

根據投訴人的投訴資料、電話和 WhatsApp 訊息紀錄，以及被投訴人承認指控，投訴警察課認為被投訴人違反《警察通例》，濫用投訴人的個人資料展開追求，於是把指控一分類為「獲證明屬實」。鑑於該行為不當的嚴重性，投訴警察課認為有必要對被投訴人展開紀律覆檢。

## CAPO's investigation

COMEE admitted that he had called and sent messages to COM through some different phone numbers in order to court her. By offering COM his assistance in dealing with her family matters, he wished to make friend and to maintain contact with her. COMEE also admitted having called at the security post and left a message to the security guard for COM's return call. He, however, denied having used the surname of his colleague in identifying himself or used other phone numbers to send debt collecting messages to COM after COM had lodged the complaint. As to the debt collecting messages sent to COM, CAPO's enquiry revealed that they were sent from prepaid SIM cards which had no subscriber information. There was no evidence to prove the connection between COMEE and those phone calls.

According to the Police General Orders, a police officer shall not use personal data collected during the execution of official duties for any purposes other than for which they were collected or a purpose directly related to that purpose, unless prescribed consent has been obtained from the data subject.

Based on COM's complaint information, the records of the phone calls and WhatsApp messages and COMEE's admission to the allegation, CAPO concluded that COMEE breached the Police General Orders by misusing COM's personal data to court her and classified Allegation 1 as "Substantiated". Given the seriousness of the misconduct, CAPO considered that a disciplinary review against COMEE was warranted.

## 監警會的觀察

監警會同意投訴警察課指控一的調查結果，同時要求投訴警察課調查透過保安員交給投訴人的字條。被投訴人的電話號碼通話紀錄顯示，在有關時間內有一通電話從他的電話號碼撥打至投訴人寓所大廈的保安室，而保安員同時在字條上記下了尋找投訴人的來電者提供的電話號碼，該電話號碼屬於被投訴人。因此，監警會認為儘管被投訴人否認了指控，但有證據證明被投訴人曾假扮其同袍，試圖通過保安員聯絡投訴人。

因此，監警會要求投訴警察課對被投訴人新增一項「未經舉報但證明屬實」的指控（指控二），而被投訴人的紀律覆檢亦須處理這項「行為不當」的指控。投訴警察課同意監警會的意見。監警會通過上述的指控分類及對被投訴人的懲處。

## IPCC's observation

While agreeing with CAPO's finding on Allegation 1, the IPCC requested CAPO to address the note given to COM through the security guard. The call record of COMEE's phone number indicated that there was a call made from his phone number to the security post of COM's building at the material time, and the security guard had contemporaneously jotted down on the note the phone number provided by the caller looking for COM, which belonged to COMEE. The IPCC therefore considered that despite COMEE's denial of the allegation, there was evidence showing that COMEE had pretended to be his colleague in his attempt to contact COM via the security guard.

The IPCC thus recommended that CAPO register one count of "Substantiated Other Than Reported" (Allegation 2) against COMEE, and address such misconduct in the disciplinary review against COMEE as well. CAPO subscribed to the IPCC's view. The IPCC endorsed the aforementioned classifications of the allegations and the penalty awarded to COMEE.

## 未有妥善更新「通緝人士」紀錄 Failing to maintain the “Wanted Person” records properly

|   | 指控<br>Allegation        | 被投訴人<br>Complainee(s)      | 投訴警察課的原本分類<br>Original classification(s)<br>by CAPO | 最終分類<br>Final classification(s) |
|---|-------------------------|----------------------------|---|---------------------------------|
| 1 | 疏忽職守<br>Neglect of Duty | 文書助理<br>Clerical Assistant | 獲證明屬實<br>Substantiated                              | 獲證明屬實<br><b>Substantiated</b>   |

### 個案背景

投訴人起初因違反輕微交通條例後未有繳付罰款而被警方列入「通緝名單」。最後，投訴人繳清罰款，法庭亦隨即以備忘錄通知警方中央交通違例檢控組，將投訴人從「通緝名單」中移除。中央交通違例檢控組一名隸屬警隊的文書助理負責跟進。

數年後，投訴人向警方報失財物。警方發現投訴人是一名被通緝人士，遂拘捕投訴人未有支付罰款。後經與中央交通違例檢控組澄清，法庭早已取消投訴人的通緝令，投訴人獲無條件釋放。

投訴人作出投訴，指控文書助理（被投訴人）在他清繳罰款後，未有將他從「通緝名單」中移除【指控：疏忽職守】。

### 投訴警察課的調查

投訴人其後決定撤回投訴。鑑於個案有表面證據支持，投訴警察課遂繼續調查。當與投訴警察課會面時，被投訴人承認，她在接獲法庭的備忘錄時，忽略了電腦系統中顯示投訴人被列作「通緝」。因此，她並未將此事通知她的上司，亦未有向刑事紀錄科提出將投訴人從「通緝名單」中移除。

投訴警察課將該指控分類為「獲證明屬實」，並建議被投訴人須接受警告，但無須將事件記入其分區報告檔案中。

### Case background

The Complainant (COM) was initially placed on the “Wanted List” by the Police for an outstanding fine payment stemming from a conviction in relation to minor traffic offence. COM eventually settled the payment and the court informed the Central Traffic Prosecution Division (CTPD) of Police by memorandum to remove COM from the “Wanted List”. The Clerical Assistant (CA) at CTPD, a member of the Force, was responsible for following up on this action.

A few years later, COM made a lost property report to the Police. The Police noticed COM’s wanted status and arrested COM for non-payment of fine. Upon clarification with CTPD that the warrant against COM had already been cancelled by the court, COM was released unconditionally.

COM lodged the instant complaint alleging that the CA (COMEE) had failed to remove him from the “Wanted List” after he had settled the outstanding fine payment [Allegation: Neglect of Duty].

### CAPO’s investigation

COM later on decided to withdraw the complaint. Given that the case was supported by prima facie evidence, CAPO proceeded with the investigation. When interviewed by CAPO, COMEE admitted that she had overlooked COM’s “Wanted” status in the computer system when she received the memorandum from the court. Thus, she did not notify her supervisor of the matter nor did she request the Criminal Records Bureau to remove COM from the “Wanted List”.

CAPO classified the allegation as “Substantiated” and proposed a “Warning without Divisional Record File (DRF) Entry” against COMEE.

## 監警會的觀察

監警會認同上述指控的分類。不過，監警會認為，被投訴人所犯錯誤嚴重，導致投訴人被「通緝」數年，最終令投訴人遭受不必要的拘捕。因此，應提高對被投訴人的處分，以充分反映事件的嚴重性。

投訴警察課接納監警會的意見，鑑於被投訴人的嚴重疏忽，將其處分提高至「書面警告」。

為解決程序上的明顯不足之處，中央交通違例檢控組亦推出了以下改善措施：(1) 所有法庭取消備忘錄須先送交至主管（即註冊處主管）以作分配；(2) 中央交通違例檢控組的當值警員將查核電腦系統，以確保已執行刪除操作。

## IPCC's observation

The IPCC agreed with the classification of the allegation. Nevertheless, the IPCC was of the view that COMEE's mistake was serious as it had caused COM to remain on the "Wanted List" for several years, which eventually resulted in the unnecessary arrest of COM. As a result, the level of action against COMEE should be escalated to sufficiently reflect the seriousness of the incident.

CAPO subscribed to the IPCC's view and escalated the level of action to "Written Warning" in light of the severity of COMEE's negligence.

In order to address the apparent shortfall in the procedure, CTPD also took the initiative to introduce the following enhancement measures: (1) all court cancellation memorandum should be routed to the supervisor first (i.e. the Officer-in-charge of the Registry) for assignment; (2) a duty Police Constable at CTPD would cross check the computer system and ensure the deletion actions have been taken.



## 未有在時限內就不小心駕駛提出檢控 Failing to file prosecution for careless driving within the time bar period

|   | 指控<br>Allegation        | 被投訴人<br>Complainee(s) | 投訴警察課的原本分類<br>Original classification(s)<br>by CAPO | 最終分類<br>Final classification(s) |
|---|-------------------------|-----------------------|---|---------------------------------|
| 1 | 疏忽職守<br>Neglect of Duty | 督察<br>Inspector       | 獲證明屬實<br>Substantiated                              | 獲證明屬實<br>Substantiated          |

### 個案背景

投訴人駕駛一輛小巴在道路上行駛，一輛私家車突然從支路駛出，與投訴人的小巴相撞。在等候警方到場期間，投訴人注意到私家車內有一名乘客（被捕人一）在私家車司機（被捕人二）旁邊。警方調查期間，被捕人一聲稱自己是該私家車的司機。投訴人立即向警務人員指出，被捕人二才是肇事司機。因此，被捕人一及二因「串謀妨礙司法公正」被捕。由於被捕人二並未持有有效駕駛執照，被捕人二亦因「駕駛時無駕駛執照」及「駕駛時無第三者保險」被捕。

警區刑事調查隊負責調查「串謀妨礙司法公正」的刑事罪行，而一名意外調查隊的督察則獲指派為案件主管，負責調查與交通違例相關的罪行。

經初步調查，有證據顯示被捕人二干犯了「不小心駕駛」、「駕駛時無駕駛執照」及「駕駛時無第三者保險」。該名督察將該交通案件轉交刑事調查隊，以便就全部三項交通罪行連同「串謀妨礙司法公正」的刑事罪行，一併徵詢律政司的法律意見。

律政司審閱個案文件後發現，被捕人二就「不小心駕駛」所提供的警誡供詞缺少了一頁，要求警方補上該缺頁，並重新呈交該案件，以供進一步考慮。根據律政司指示，待被捕人二的刑事案件結束後，可能會起訴他「不小心駕駛」。因此，律政司以「串謀妨礙司法公正」罪起訴被捕人一及二，並以「駕駛時無駕駛執照」及「駕駛時無第三者保險」罪起訴被捕人二。經審訊後，針對被捕人一及二的各項控罪均被裁定罪名成立。

### Case background

The Complainant (COM) was driving a minibus on a road when a private car suddenly emerged from a slip road and crashed with COM's minibus. While waiting for the Police, COM noticed that there was a passenger (AP1) in the private car besides the driver (AP2). During Police investigation, AP1 claimed himself was the driver of the private car. COM immediately pointed out to the police officer that AP2 instead of AP1 was the driver. As a result, AP1 and AP2 were arrested for "Conspiracy to Pervert the Course of Justice". As AP2 did not hold a valid driving licence, AP2 was also arrested for "Driving Without a Driving Licence" and "Driving Without Third Party Insurance".

District Investigation Team was responsible for making enquiry into the criminal offence of "Conspiracy to Pervert the Course of Justice" whereas an Inspector (IP) from the Accident Investigation Team was assigned as the Officer-in-charge for investigation of the traffic-related offences.

After initial investigation, evidence revealed that AP2 had committed "Careless Driving", "Driving Without a Driving Licence" and "Driving Without Third Party Insurance". The IP referred the traffic case to the crime team for seeking legal advice from Department of Justice (DoJ) on the three traffic offences together with the criminal offence of "Conspiracy to Pervert the Course of Justice".

Having examined the case documents, DoJ found that one page of AP2's cautioned statement in respect of the offence of "Careless Driving" was missing. DoJ requested the Police to resubmit the case with the missing page for further consideration. According to DoJ, the offence of "Careless Driving" might be laid against AP2 upon conclusion of the crime case ("Conspiracy to Pervert the Course of Justice") against him. As a result, AP1 and AP2 were charged with the offence of "Conspiracy to Pervert the Course of Justice", and the offences of "Driving without a Driving Licence" and "Driving without Third Party Insurance" against AP2 were proceeded. AP1 and AP2 were subsequently convicted of their respective charges after trial.

法庭判決後，該名督察並未跟進被捕人二「不小心駕駛」的罪行，並將案件結案歸檔，沒有採取進一步行動。投訴人表示，他曾就是次交通意外作出保險申索，惟保險公司以被捕人二未有被控「不小心駕駛」為由拒絕他的申索。投訴人不滿，遂投訴該名督察（被投訴人）未能就被捕人二「不小心駕駛」的罪行提出檢控。

## 投訴警察課的調查

被投訴人與投訴警察課會面時解釋，他認為在該交通意外中，須負上法律責任的是投訴人而非私家車司機，而他的小隊並未找到任何獨立證據，可支持或否定任何一方就意外成因的說法。被投訴人認為，在衡量各方可能性後，並無存在任何有力的證據，就「不小心駕駛」罪進行檢控。

然而，投訴警察課發現，在被投訴人的初步調查中，他認為造成該意外的責任是在於被捕人二而非投訴人，而被投訴人未能解釋他對該意外起因的評估為何前後不一。投訴警察課認為，被投訴人有關不檢控被捕人二「不小心駕駛」的解釋並不可信。

投訴警察課亦發現，在律政司指出被捕人二的「不小心駕駛」警誡供詞缺少了一頁後，被投訴人並無就該罪行作出跟進。交通意外的調查工作被擱置四個月後，被投訴人才向上司建議將該交通案件結案歸檔。

投訴警察課認為，被投訴人的處理欠專業，未有採取適時或合理的行動處理是次交通案件，尤其是沒有採取行動調查「不小心駕駛」的罪行。因此將此投訴個案分類為「獲證明屬實」，並建議向被投訴人作出訓諭但無須將事件記入其分區報告檔案中。

## 監警會的觀察

監警會認同投訴警察課調查結果的分類，但對於向被投訴人採取的建議行動，會方則有所保留。

監警會留意到被投訴人在其初步調查中特別強調，被捕人二在駕駛期間沒有注意到投訴人的小巴，以致兩車相撞。因此，按照合理預期被投訴人會以「不小心駕駛」票控被捕人二。

After the court case was concluded, the IP did not follow up with the offence of “Careless Driving” against AP2 and filed away the case with no further action taken. According to COM, he had filed an insurance claim in respect of the traffic accident but the insurance company rejected him on the ground that AP2 was not summonsed for “Careless Driving”. Dissatisfied, COM lodged a complaint against the IP (Complainee) for failure to prosecute AP2 for “Careless Driving”.

## CAPO's investigation

When the Complainee (COM) was interviewed by CAPO, he said that it was COM rather than the driver of the private car who should be held liable for the traffic accident, and his team did not find any independent evidence to support or negate either party's version about the cause of the accident. COM considered that on the balance of probabilities, there was no conclusive evidence to proceed with the prosecution relating to the offence of “Careless Driving”.

However, CAPO noticed that COM concluded the preliminary investigation by stating that AP2 rather than COM was at fault for causing the accident. COM failed to explain his inconsistent assessment on the cause of the accident. CAPO considered that COM's subsequent explanation for not proceeding with the charge on “Careless Driving” against AP2 was not convincing.

CAPO further found out that COM did not follow up the said offence against AP2 after receiving DoJ's comments on the missing page of the cautioned statement for “Careless Driving”. The investigation of the traffic accident had been left idle for four months before COM recommended to his supervisor that the case be closed and filed away.

CAPO opined that COM lacked professionalism in taking timely or reasonable actions to deal with the entire traffic case, in particular his inaction to investigate the offence of “Careless Driving”. The complaint was classified as “Substantiated” and an “Advice without DRF Entry” against COM was proposed.

## IPCC's observation

Whilst the IPCC agreed with CAPO's classification of investigation results, the Council had reservation about the proposed action against COM.

The IPCC took note that COM specially highlighted in his initial investigation that AP2 had driven without due observation of COM's minibus leading to the collision. It was reasonably expected that COM should summon AP2 for the offence of “Careless Driving”.



即使是在被捕人一及二其他罪名被定罪後，被投訴人仍可繼續追查「不小心駕駛」罪。然而，被投訴人並未採取進一步行動。最終，由於六個月的檢控時限屆滿，因而無法再票控被捕人二「不小心駕駛」。

經仔細考慮後，監警會認為，對被投訴人採取的行動應提升至「警告並記入其分區報告檔案中」，以反映被投訴人是次失職的嚴重性。經質詢後，投訴警察課接納監警會的建議，認為「警告並記入其分區報告檔案中」實屬恰當，以提醒警務人員日後避免重蹈覆轍。

COMEE could have pursued the offence of “Careless Driving” against AP2 even after the other offences against AP1 and AP2 were concluded. Nevertheless, COMEE took no further action thereafter. Eventually, AP2 could no longer be summonsed for “Careless Driving” since the prosecution time bar period of six months had already lapsed.

After careful consideration, the IPCC was of the view that the level of action against COMEE should be escalated to “Warning with DRF Entry” to reflect the seriousness of the misconduct. After Queries, CAPO subscribed to IPCC’s recommendation and considered that a “Warning with DRF Entry” would be appropriate to serve as an alert to officers to prevent recurrence.

## 個案四 Case 4

# 投訴人因未能從公仔機夾取公仔而報警求助 Making a police report for failure to beat a toy grabbing machine

| 指控<br>Allegation          | 被投訴人<br>Complainee(s)  | 投訴警察課的原本分類<br>Original classification(s)<br>by CAPO | 最終分類<br>Final classification(s) |
|---------------------------|------------------------|---|---------------------------------|
| 1 不禮貌<br>Impoliteness     | 警員<br>Police Constable | 無法追查<br>Not Pursuable                               | 並無過錯<br>No Fault                |
| 2 疏忽職守<br>Neglect of Duty |                        | 無法追查<br>Not Pursuable                               | 並無過錯<br>No Fault                |

### 個案背景

投訴人和她的兒子到一間夾公仔機商店，在輸掉遊戲後，投訴人與店員發生爭執，並致電附近警署的報案室求助。一名警務人員（被投訴人）接到投訴人的電話，向她解釋該個案屬消費者糾紛，建議投訴人向消費者委員會尋求協助。不過，投訴人堅持要求警方到場協助，因此被投訴人派遣警務人員到現場。在警務人員前往現場途中，投訴人再次致電警署，聲稱因為留在店內等候警務人員抵達對她和兒子造成不便，因此不需要警方協助。

投訴人在同一天作出投訴，指被投訴人對她不禮貌，對她說「又話要警察，依家又話唔要」【指控一：不禮貌】，以及未有妥善地處理她的報案【指控二：疏忽職守】。

### Case background

The Complainant (COM) and her son went to play toy grabbing machine in a shop. After losing the game, COM had a dispute with the shop staff and called a nearby report room to make a “Dispute” report. A police officer (Complainee) answered her call and explained to COM that her case was a consumer dispute and advised her to seek assistance from the Consumer Council. However, COM insisted on police attendance. The Complainee (COMEE) thus assigned police officers to attend the scene. While the police officers were on their way to the scene, COM called the police station again saying that police assistance was no longer required as it was inconvenient for her and her son to stay at the shop and wait for the Police’s arrival.

COM lodged a complaint on the same day, alleging that COMEE had treated her impolitely by uttering “you insisted that police assistance was required, now you say it is no longer needed” [Allegation 1: Impoliteness] and failed to handle her report properly [Allegation 2: Neglect of Duty].

## 投訴警察課的調查

投訴警察課在接獲投訴後，以電話錄音系統嘗試聯絡投訴人四次，但均無人接聽。投訴人沒有向投訴警察課提供其他聯絡方式，因此投訴警察課將兩項指控分類為「無法追查」。

## 監警會的觀察

監警會審視了相關證據，特別是投訴人與被投訴人的對話錄音，認為即使投訴人沒有提供協助跟進調查，仍可就指控一和二得出明確結論。

關於指控一，監警會檢視過對話錄音，留意到儘管被投訴人已向投訴人解釋該案屬於消費者糾紛，但她仍然堅持要求警方協助。在整段錄音中，被投訴人並沒有不禮貌或不專業地對待投訴人。

至於指控二，警方的紀錄顯示了被投訴人曾調派警務人員到現場處理該案件。因此並沒有任何證據顯示被投訴人疏忽處理，相反所有證據均反駁投訴人的指控。

監警會考慮上述證據後，認為此投訴可得出明確結論，並建議投訴警察課重新考慮指控一及二的分類。這宗投訴個案的兩項指控被重新分類為「並無過錯」，而監警會亦通過其調查結果。

## CAPO's investigation

After receiving this complaint, CAPO called COM via Telephone Recording System four times but the calls were not answered. Since COM did not provide other means of contact, CAPO therefore classified both allegations as "Not Pursuable".

## IPCC's observation

Having examined the available evidence, in particular the audio recording of the conversations between COM and COMEE, the IPCC considered that even without the assistance of COM, a definite finding could be reached for both Allegations 1 and 2.

Regarding Allegation 1, the audio recording was examined. The IPCC noted that COM insisted on police attendance despite COMEE's explanation that her case was a consumer dispute. Throughout the audio recording, COMEE was neither impolite nor unprofessional to COM.

As to Allegation 2, the police records showed that COMEE did deploy police officers to the scene to handle COM's report. There was no evidence showing any negligence on COMEE's part. All the evidence rebutted COM's allegations.

Having considered the above-mentioned evidence, the IPCC was of the view that a definite finding for the complaint could be reached and recommended CAPO to revisit the classification of Allegations 1 and 2. CAPO reclassified the two allegations as "No Fault" and IPCC endorsed the case.

## 警隊常規和程序改善建議

### Recommended improvements to Police practices and procedures

為履行《監警會條例》第8條(1)(c)的職能，監警會於審核須匯報投訴時，若發現警隊常規或程序有任何缺失或不足之處，會適時向警方提出可行的改善建議。其後，監警會會透過「調查報告通過後的跟進工作事項」及與投訴警察課舉行的季度聯席會議，監察警方實施改善建議的進度，以進一步提升警隊的服務質素。

監警會於報告期內向警方提出了17項改善建議。這些建議不僅與投訴個案及提升警方服務質素有關，更與市民的日常生活息息相關，例如（一）加強《交通程序手冊》指引以減少投訴及提高「交通意外傷亡援助計劃」的成效；（二）加強處理接收市民信件的紀錄和監察系統以改善公共服務；以及（三）加強警方程序指引讓警務人員就交通相關罪行提出恰當控罪。

以下是改善建議及相關投訴個案的示例。

To discharge the function under section 8(1)(c) of the IPCCO, the IPCC makes timely and practical recommendations to the Police whenever it identifies any fault or deficiency in the Police practices or procedures while vetting the Reportable Complaint reports. The IPCC will then monitor implementation status of the improvement-related matters by the Police via the “Post-endorsement Issues Follow-up” and quarterly Joint Meetings with CAPO, with a view to enhancing Police’s service quality.

During the reporting period, the IPCC made 17 improvement recommendations to the Police. These recommendations were not merely correlated with complaint cases and enhancement of the Police service quality, but also closely linked to the daily life of members of the public, including: (1) enhance guidelines of Traffic Procedures Manual to reduce complaints and promote effectiveness of the “Traffic Accident Victims Assistance Scheme”; (2) enhance record keeping and monitoring system for correspondence handled by the Police for betterment of public service; and (3) enhance guidance on police procedures to enable officers serving proper traffic offence-related charges.

Below are examples of improvement recommendations illustrated by related complaint cases.



## 1 加強《交通程序手冊》指引以減少投訴及提高「交通意外傷亡援助計劃」的成效

道路交通意外可能導致受影響人士死亡、身心受創及經濟損失。交通意外受害人可向社會福利署（社署）申請《交通意外傷亡援助計劃》（計劃），以獲得快速的經濟援助，減輕受害人和其家庭的經濟負擔。在2018/19年間，向警方呈報的交通意外傷亡人數有19,278人，而向這些受害人發放的援助金總額達2.802億港元（資料來源：社署發布的《交通意外傷亡援助基金2018/19年度年報》）。在一般情況下，負責調查交通意外的警務人員會盡快將該計劃告知受害人。有關表格必須經由警方協調，再提交予社署，以支持受害人的正式申請。然而，監警會觀察到，警務人員可能難以遵守《交通程序手冊》所規定的期限處理計劃的表格，從而導致警務人員遭到投訴。

報告期內的一宗個案中，投訴人被的士撞倒後送院治療。兩日後，一名警務人員向投訴人錄取口供，並協助她填寫計劃的「初步申請表」（表格）中甲部的個人資料。（註：表格由兩部分組成。表格甲部由受害人填寫及簽署，以提供受害人個人資料及交通意外資訊，而表格乙部則由警方填寫及簽署，以確認交通意外的詳情，包括交通事故中涉及的車輛保險資料。）根據《交通程序手冊》，非致命事故的表格必須在意外發生後七個工作天內填妥並提交給社署。然而，投訴人其後接到社署通知，指警方在意外發生一個半月後才提交有關表格。投訴人隨即作出投訴，指控該名警務人員耽延處理其表格。

監警會根據現時警方的指引審視事實後，發現投訴人已在時限內填妥及簽署表格甲部。但是，包含事故車輛保險資料的表格乙部在意外發生後一個半月才完成。該名警務人員表示，雖然他尚未從肇事的士司機取得所需的保險資料，而表格乙部亦不完整，但他仍在交通意外發生後兩天便將表格提交社署。該名警務人員進一步表示，當他在一個半月後從司機處取得必要的資料時，再次向社署提交了表格。然而，經向社署作出查詢後顯示，社署只收到過一次的表格，即在交通意外發生的一個半月後。因此，該名警務人員未有及時處理表格的指控被列為「獲證明屬實」。

## 1 Enhance guidelines of Traffic Procedures Manual to reduce complaints and promote effectiveness of the “Traffic Accident Victims Assistance Scheme”

Road traffic accidents could lead to deaths, physical and psychological injuries, and financial losses to the involved parties. Under the Traffic Accident Victims Assistance Scheme (TAVAS), victims of traffic accidents may apply for speedy financial aid through the Social Welfare Department (SWD) to alleviate financial burden on themselves and their families. In year 2018/19, 19,278 cases of traffic casualties were reported to the Police and the assistance paid to these victims amounted to HK\$280.2 million (Source: Traffic Accident Victims Assistance Fund Annual Report 2018/19 published by the SWD). Normally, the police officer who investigates the traffic accidents will introduce the scheme to the victims at the first opportunity. Relevant forms have to be coordinated and submitted by the Police to SWD as support for victim's formal application. Nevertheless, the IPCC observed that police officers might have difficulties in meeting the timeframe, as set out in the Traffic Procedures Manual (TPM), for the handling of the forms under the TAVAS, which could give rise to complaints against the officers.

During the reporting period, there was a case at which the Complainant (COM) was hit by a taxi and sent to hospital for treatment. Two days later, a Police Constable (PC) took a statement from COM and assisted her in filling in her personal information in Part A of a “Preliminary Application Form” (the Form) under the TAVAS. (Note: The Form comprises two parts. Part A of the Form is to be completed and signed by the victim to provide the victim's personal information and the traffic accident information; whereas Part B of the Form is to be completed and signed by the Police to confirm the traffic accident details including the insurance information of the vehicle involved in the traffic accident.) According to TPM, the Form in respect of non-fatal incidents has to be completed and referred to SWD within seven working days of the accident concerned. COM, however, was subsequently informed by SWD that the Police submitted the Form one and a half months after the accident. COM therefore lodged the instant complaint against the PC for the delay in the handling of her Form.

Upon examination of facts against the prevailing police guidelines, IPCC found that Part A of the Form had been timely completed and signed by COM. However, Part B of the Form containing insurance information of vehicle involved in the accident was only completed one and a half months after the date of incident. The PC claimed that he submitted the Form to the SWD two days after the traffic accident, even though he had not yet obtained the required insurance information from the taxi driver concerned and Part B of the Form was incomplete. The PC further stated that he submitted the Form to the SWD again one and a half months later when he obtained the necessary information from the driver. Nevertheless, enquiry with SWD revealed that SWD only received the Form one time, i.e. one and a half months after the traffic accident. The allegation that the PC failed to handle the Form timely was therefore classified as “Substantiated”.

監警會在審視投訴時注意到，在某些情況下，涉及交通意外的司機在提供其車輛保險資料時可能會拖延，因而導致前線警務人員未能在《交通程序手冊》規定的時間內向社署提交完整的表格。

監警會作出建議後，警方交通總部就《交通程序手冊》內的有關係文進行了檢討，並修訂了相關指引，對向社署提交表格所需的時限提供更清晰的界定，以及容許警務人員在一經收到車輛保險資料後再補交給社署。在改善《交通程序手冊》指引後，交通總部亦推出了外展宣傳活動並進行內部培訓，提醒前線警務人員注意上述改善內容，以及在認為有需要時，可以根據《汽車保險(第三者風險)條例》行使權力要求司機在五個工作天內提供車輛保險資料。新指引為前線警務人員在執行任務時提供了更清晰的指示，並確保交通意外受害人的計劃表格能及時處理。

While examining the complaint, the IPCC noticed that in some cases, drivers involved in traffic accidents might have delayed when providing their vehicle insurance information, resulting that the frontline officers could not submit complete Forms to the SWD within the timeframe required by the TPM.

At IPCC's recommendations, the Traffic Branch Headquarters (TBHQ) conducted a review on the relevant provisions in the TPM and revised the guidelines by providing a clearer definition on the timeframes required for submitting the Forms to SWD. In addition, the revised TPM also allows officers to supplement insurance information to SWD once available afterwards. Following the enhancement of TPM guidelines, TBHQ also launched an outreach programme and conducted internal training to alert frontline officers of the aforesaid enhancement and remind frontline officers that they may exercise power under Motor Vehicles Insurance (Third Party Risks) Ordinance to demand drivers to provide vehicle insurance information within five working days if deemed necessary. The new guidelines provide clearer instructions to the frontline officers to carry out their duties and ensure that the TAVAS Forms of the traffic accident victims be processed in a timely manner.



## 2 加強處理接收市民信件的紀錄和監察系統以改善公共服務

警方每日均接到大量市民來信和查詢。妥善的紀錄保存系統，可確保這些信件能夠得以追溯及處理得當，以便警務人員有效執行職務。

在一宗涉及處理來信的投訴個案中，投訴人在一場交通意外中受傷，而在交通案件調查結束後，投訴人向交通部的調查隊寄送一封雙掛號郵件，遞交「交通意外傷亡援助金初步申請」。交通部總務室的文書助理收到郵件，並在郵件收據上加蓋辦事處印章。其後，投訴人接獲來自香港郵政的確認書，指郵件已成功送達交通部。然而，一段時間後，投訴人仍未收到警方就他申請所作的任何回覆，於是投訴警方未有妥善處理他的郵件【指控：疏忽職守】。事後發現，投訴人的郵件並未送抵相關的交通組處理，而交通部亦未曾保存該郵件的出入紀錄。

投訴警察課的調查發現，投訴人的郵件可能在文書助理處理過程中遺失。為免類似事件再次發生，投訴警察課向五個交通部提出服務質素建議，藉以改善現行的收件處理程序，以助追蹤相關信件及文件在內部傳遞時的處理。

在審閱投訴警察課的調查報告後，監警會認為投訴人的信件未有得到妥善處理的原因可能是由於交通部內沒有適當的郵件出入登記冊所致。監警會注意到不時有投訴個案源於警方與市民往來的信件處理不當。然而，由於各警務單位／警署並無有效機制記錄所有往來信件，致使投訴警察課難以找出問題所在以及誰人應負責。

儘管投訴警察課已要求五個交通部改善其收件處理程序，但監警會認為這類投訴並不限於交通部及其對來信的處理方法，亦應包括外寄信件及經常與市民接觸的其他單位。

從預防投訴角度來看，監警會建議警方就妥善記錄警方與市民之間的所有往來信件，為整個警隊制定標準做法或程序，以掌握信件的動向，避免任何可能出現的誤會。警方接納監警會的建議，並同意檢視及加強郵件處理程序。監警會將繼續監察警方的跟進行動，以及其改善程序的實施情況。

## 2 Enhance record keeping and monitoring system for correspondence handled by the Police for betterment of public service

There is a significant amount of correspondence and incoming enquiries handled by the Police from members of the public every day. A proper record keeping system will ensure such correspondence can be traced and handled properly to facilitate performance of duties by police officers efficiently.

In a complaint case involving the handling of incoming mail, the Complainant (COM), a victim injured in a traffic accident, sent a double registered mail to an investigation unit of the Traffic Formation to apply for the “Traffic Accident Victims Assistance Preliminary Application” upon the conclusion of the traffic case investigation. The Clerical Assistant (CA) of the General Registry of the Traffic Formation received the mail and stamped the office chop on the mail receipt. Subsequently, COM received a confirmation of successful delivery of his mail to the Traffic Formation from Hong Kong Post. Not hearing any reply from the Police about his application after a while, COM lodged a complaint that the Police failed to handle his mail properly [Allegation: Neglect of Duty]. It was later found out that COM’s mail never reached the related traffic team for processing and no movement record regarding this mail had been kept by the Traffic Formation.

CAPO’s investigation revealed that COM’s mail might have been lost while being processed by the CA. To prevent the recurrence of such incidents, CAPO issued a Service Quality Advice to five Traffic Formations with a view to improving the existing incoming mail handling procedures and helping to track down the whereabouts of the correspondence/documents during the internal transferal process.

After reviewing CAPO’s investigation report, the IPCC considered that the absence of a proper mail movement register in the Traffic Formation might also lead to the mishandling of COM’s letter. The IPCC was of the view that from time to time, there were complaint cases arising from the mishandling of the correspondence between the Police and members of the public. However, CAPO was unable to identify what was wrong in the process and who should be held responsible for the missing mails as there was no effective mechanism for the Police Formations/police stations to locate all incoming and outgoing correspondence.

Whilst CAPO had requested the five Traffic Formations to improve their incoming mail handling procedures, the IPCC considered that this type of complaints was not limited to the incoming mail handling practice and traffic units but also the outgoing mail and other Formations which had frequent contacts with members of the public.

From a complaint prevention perspective, the IPCC recommended the Police to devise a standard Force-wide practice or procedures on maintaining a proper record of all incoming and outgoing correspondence between Police and members of public, so as to keep track of the movements of the correspondence and avoid any possible misunderstanding. The Police accepted the IPCC’s recommendation and agreed to review and enhance the mail handling procedures. The IPCC will continue to monitor the follow-up actions taken by the Police and the implementation of the enhanced procedures.

### 3 加強警方程序指引讓警務人員就交通相關罪行提出恰當控罪

根據政府的邊境禁區政策，司機必須遵守《道路交通（交通管制）規例》（第374G章）第27條，按需要向運輸署取得「封閉道路通行許可證」。而持有「封閉道路通行許可證」的人士必須遵守《道路交通（車輛登記及領牌）規例》（第374E章）第49(5)條所載的通行許可證條件。

在一宗投訴個案中，投訴人駕駛一輛輕型貨車在封閉道路上行駛時，被一名高級警員截停。在該名高級警員的要求下，投訴人向其出示他的「封閉道路通行許可證」。然而，他的許可證上並無記錄其輕型貨車的登記號碼。該許可證清楚列明，許可車輛的登記號碼應參照由運輸署發出的批准書。該許可證的背面亦印有一項條件，要求持有人須按警方要求出示該批准書。由於投訴人未能在現場出示該批准書，該名高級警員於是「無通行許可證在封閉道路上駕駛」為由票控投訴人。

其後，投訴人兩度要求中央交通違例檢控組覆檢對他發出的告票，但該組覆核後維持票控投訴人。投訴人向中央交通違例檢控組出示了有關批准信，而信上明確指出該輕型貨車獲准於有關封閉道路上行駛。投訴人的第二次覆檢由一名總督察處理。投訴人在是次覆檢中指出，他所干犯的罪行應為「未能遵守通行許可證的條件」，並非「無通行許可證在封閉道路上駕駛」。投訴人堅稱，他確實持有有效的通行許可證，只是未能遵守相關條件，向該名高級警員出示批准書。然而，該總督察考慮投訴人的觀點後，仍拒絕修訂對投訴人的控罪。

投訴人否認「無通行許可證在封閉道路上駕駛」的控罪。於審訊前，外判大律師主動將控罪修訂為「未能遵守通行許可證的條件」，並獲法庭接納。投訴人承認經修訂的控罪，而他亦被裁定罪名成立。其後，他投訴該名高級警員對他的票控並不適當，以及該名總督察未有恰當覆檢其告票還繼續對他提出檢控。

在審閱投訴警察課調查報告的過程中，監警會觀察到，投訴人未能在該名高級警員的要求下出示批准書，無疑違反其通行許可證的使用條件。然而，此舉並不構成「無通行許可證駕駛」的控罪。監警會認

### 3 Enhance guidance on police procedures to enable officers serving proper traffic offence-related charges

According to Government policy on Frontier Closed Area, drivers must obtain “Closed Road Permit” from the Transport Department on grounds of need pursuant to Regulation 27 of Road Traffic (Traffic Control) Regulations (Cap. 374G). People in possession of the “Closed Road Permits” must comply with conditions of the permit under Regulation 49(5) of Road Traffic (Registration and Licensing of Vehicles) Regulation (Cap. 374E).

In a complaint case, the Complainant (COM) drove a light goods vehicle (LGV) on a closed road and was intercepted by a Senior Police Constable (SPC). Upon the SPC’s request, COM produced his “Closed Road Permit” to the SPC for inspection. However, his permit did not record the registration mark of his LGV. Instead, the permit clearly stated that reference should be made to an approval letter issued by the Transport Department for the registration mark(s) of the permitted vehicle(s). A condition was also printed on the reverse side of the permit that the approval letter should be produced upon request by the Police. Since COM was unable to produce his approval letter on the spot, the SPC ticketed him for “Driving on Closed Road without Permit”.

Later, COM made request to the Central Traffic Prosecutions Division (CTPD) twice to review the ticket against him but CTPD decided to proceed with the ticket after reviews. COM produced to CTPD his approval letter which clearly stated that the LGV was permitted to enter the closed road. In the second review which was handled by a Chief Inspector (CIP), COM pointed out that the offence he had committed should be “Failing to Comply with Condition of Permit” rather than “Driving on Closed Road without Permit”. COM argued that he held a valid permit and that he only failed to comply with the condition by producing the approval letter to the SPC. Nevertheless, having considered COM’s viewpoint, the CIP still refused to amend the charge against COM.

COM pleaded not guilty to the offence of “Driving on Closed Road without Permit”. Before trial, the Counsel on fiat took the initiative to amend the charge to “Failing to Comply with Condition of Permit” which was accepted by the Court. COM was convicted of the amended charge upon his guilty plea. He subsequently lodged complaints against the SPC for failing to ticket him appropriately and the CIP for failing to review his ticket properly before deciding to proceed with the charge against him.

In the course of examining CAPO’s investigation report, the IPCC observed that COM had undoubtedly breached a condition of his permit when he failed to produce the approval letter upon the SPC’s request. However, this did not amount to driving without a permit. The IPCC considered that the Counsel on fiat’s decision to amend the charge indicated that COM

為，外判大律師決定修訂控罪一事，顯示投訴人確實干犯了「未能遵守通行許可證的條件」，而非「無通行許可證在封閉道路上駕駛」。

監警會與投訴警察課在工作層面會議上討論本案，並經監警會進一步質詢後，警方向律政司尋求法律意見，以釐清在相類似個案中應以哪一項控罪作出檢控。根據律政司的意見，違例司機宜應被控「未能遵守通行許可證的條件」。

監警會認為是次投訴個案顯示，就違反有關使用封閉道路而提出恰當的交通控罪，警方有需要檢討相關程序指引。監警會建議警方應就相關交通執法行動，詳細闡釋現行指引並提供支援，尤其是在需要時協助前線警務人員如何執法。警方接納監警會的建議並已採取措施，加強警務人員日後處理類似情況的能力。

had indeed committed the offence of “Failing to Comply with Condition of Permit” rather than “Driving on Closed Road without Permit”.

After discussion at a Working Level Meeting between the IPCC and CAPO and upon further Query raised by the IPCC, the Police sought legal advice from the Department of Justice (DoJ) as to what would be the appropriate charge in similar cases. According to DoJ’s advice, offending drivers should be summonsed for “Failing to Comply with Condition of Permit”.

The IPCC considered that the instant complaint revealed that it was necessary to call for a review of guidance on Police procedures with respect to serving proper charges on traffic offences related to the use of closed road. The IPCC made recommendations that the Police should elaborate the existing guidelines and review support on related traffic enforcement actions, in particular assistance to be provided to frontline officers when necessary. IPCC’s recommendations were accepted and enhancement actions were taken by the Police to improve their capability in handling similar situations effectively in future.