

監警會 通訊

IPCC NEWSLETTER



監警會匯報 佔領事件投訴之審核進度

IPCC updates its progress on Occupy Movement complaints



獨立監察警方處理投訴委員會
Independent Police Complaints Council

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查詢 Enquiries

電話 Tel : 2524 3841
傳真 Fax : 2524 1801 / 2525 8042
電郵 Email : enq@ipcc.gov.hk

地址 Address

香港灣仔港灣道26號華潤大廈10樓1006-10室
Rooms 1006-10, 10/F, China Resources Building,
No. 26 Harbour Road, Wan Chai, Hong Kong

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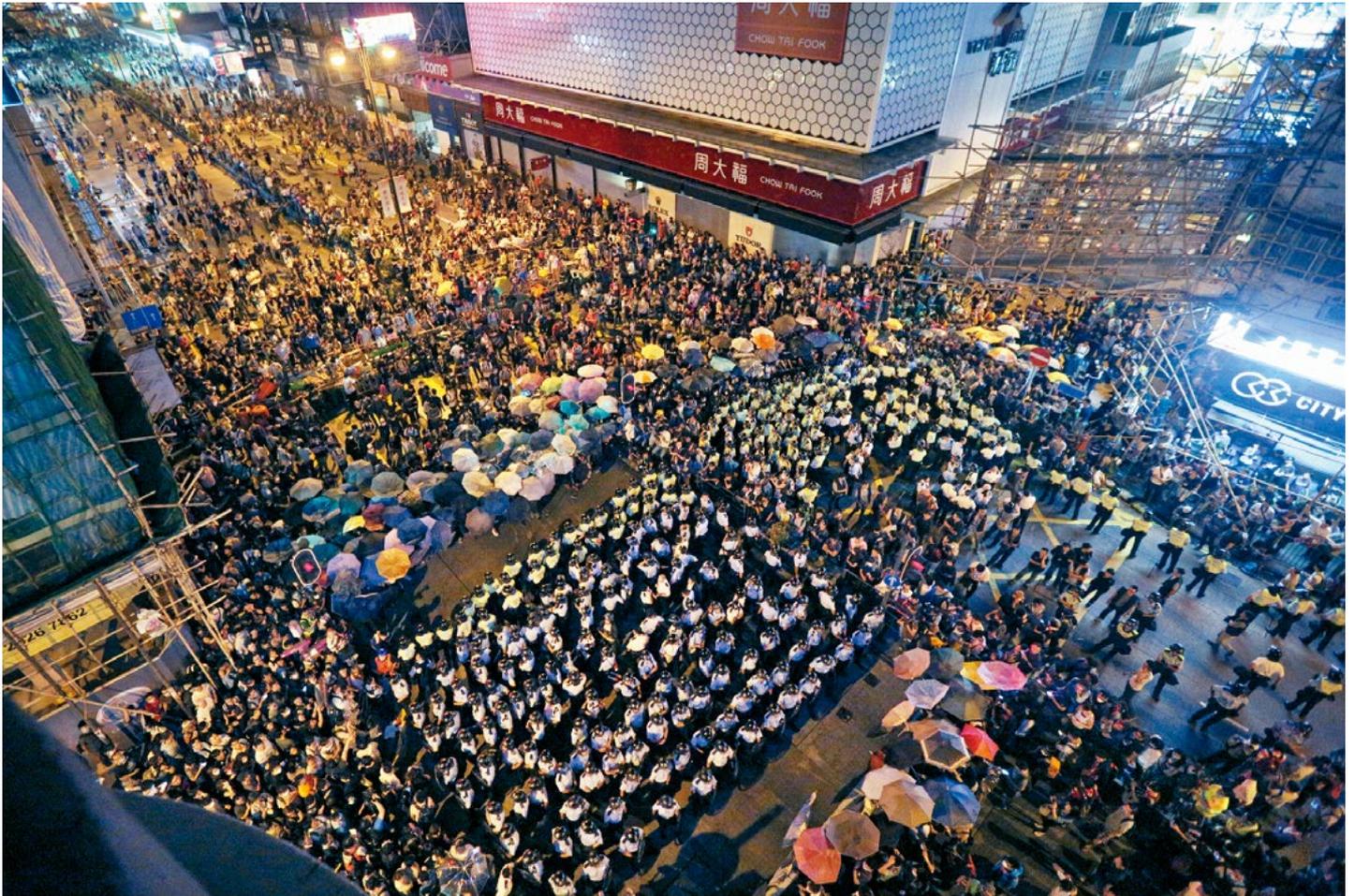
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監警會匯報佔領事件投訴之審核進度

IPCC updates its progress on Occupy Movement complaints



照片來源 (封面及本頁): 星島日報 Photo Credit (cover and this page): Sing Tao Daily

佔領行動始於2014年9月28日，於同年12月15日結束。起初示威者先後聚集於金鐘、旺角及銅鑼灣多條主要的交通道路，繼而長駐在道路上。警方派出大批警員到場控制情況，期間示威者和警方多次發生大規模衝突。警方曾出動胡椒噴劑、警棍及催淚氣體等試圖驅散人群。直至10月底，有的士及公共小巴團體申請禁制令，限制示威者繼續佔領旺角的道路。因應禁制令獲批，警方於11月底在旺角完成兩次清場行動，但以「購物團」為名的示威行動則隨即冒起。直至12月中，隨著警方完成金鐘及銅鑼灣的清場行動，歷時79日的佔領行動告終。

The Occupy Central Movement (OCM) took place between 28 September and 15 December 2014. It began with protestors gathering at and henceforth occupying main transportation routes in Admiralty, Mong Kok, and Causeway Bay. Police officers were deployed to maintain public order by adopting crowd control measures and calling on the protestors to disperse. As the situation became more chaotic, the Police used OC foam, police batons, and tear gas in attempts to disperse the crowds. In late October, the taxi and public light bus companies applied for an injunction to restrain the protestors from further occupying the roads in Mong Kok. The injunction was granted and the Police carried out two clearance operations in late November, during which the “shopping tours” took place. In December, with the clearance of Admiralty and Causeway Bay, the 79-day occupy finally came to an end.

圖表一 Figure 1

引起投訴的事件分類 Categorization of events giving rise to complaints

事件 Events	總數 Total
清場行動 Clearance operation	61
拘捕示威者 Arrest of protesters	44
人群控制管理 Crowd control managements	35
處理投訴及公眾查詢 Handling of complaints and public enquiry	7
交通分流 Traffic diversion	5
新聞報道 News coverage	5
處理支持及反對佔領人士之糾紛 Handling disputes between pro- and anti-OCM	4
處理「購物團行動」 Handling of "Shopping Tour"	3
使用催淚氣體 Use of CS grenade	1
其他 Others	7
總數 Total:	172

須匯報投訴

佔領行動共衍生172宗須匯報投訴，涉及177名投訴人。四分之三的投訴個案來自九龍區發生的事件，其餘的來自港島區。當中最多個案投訴有關警方的清場行動(61宗)，其次是警方拘捕示威者(44宗)，及人群控制管理(35宗)。(詳情參閱圖表一)

監警會了解公眾非常關注事件，決定將所有涉及佔領事件的投訴交由嚴重投訴個案委員會處理。投訴警察課需要每月向監警會匯報調查進度。收到投訴調查報告後，監警會秘書處的審核團隊和嚴重投訴個案委員會，會同時審核個案，以加快進度。就觀察投訴警察課調查投訴期間進行的會面及搜證，監警會觀察員的出席率達100%。

監警會通過的調查結果

截至今年12月，監警會收到投訴警察課169宗投訴的調查報告，通過其中168宗，共涉及274項指控，依次序最多的是「不禮貌/粗魯無禮/粗言穢語」(67項)、其次是「毆打」(63項)及「疏忽職守」(62項)。(詳情參閱圖表二)

監警會是以獨立、公平及以證據為依歸的原則去審核每一宗投訴。通過的指控中，有四項「獲證明屬實」，包括一項「毆打」、兩項「不禮貌」

Reportable Complaints

All in all, there was a total of 172 complaints arising from the OCM, involving 177 complainants. Three-quarters of the complaint cases originated from incidents that occurred in Kowloon; the remaining cases took place on Hong Kong Island. The significant events giving rise to complaints included the Police's clearance operations (61 cases), followed by the arrest of protesters (44 cases) and the Police's crowd control management (35 cases). (For details refer to Figure 1)

The IPCC understood that the OCM was of immense public interest and thus decided to put all the complaints arising from the Movement under the purview of the Serious Complaints Committee. Under this arrangement, Complaint Against Police Office (CAPO) must report its investigation progress to the IPCC every month. After receiving the investigation reports, the IPCC Secretariat's vetting team and the Serious Complaints Committee vet the cases simultaneously to speed up the process. IPCC Observers have attained a 100% attendance for all the observations in relation to the interviews and collection of evidence during CAPO's investigation of the OCM complaint cases.

Investigation results endorsed by the IPCC

As at December 2016, the IPCC has received the investigation reports from CAPO for 169 Reportable Complaints and endorsed 168 of them. A total of 274 allegations were involved, with the top allegations being "Impoliteness/Rudeness/Offensive Language" (67), followed by "Assault" (63) and "Neglect of Duty" (62). (For details refers Figure 2)

The IPCC strictly adheres to the principles of independence, fairness and the basis of evidence in its scrutiny of each and every complaint case. Of the allegations involved in the endorsed cases, four have

圖表二 Figure 2

已通過274項的指控及其調查結果 Nature and results of 274 allegations endorsed

	獲證明屬實 Substantiated	未經舉報 但證明屬實 Substantiated Other Than Reported	無法證實 Unsubstantiated	虛假不確 False	並無過錯 No Fault	投訴撤回 Withdrawn	無法追查 Not Pursuable	透過簡便 方式解決 Informally Resolved	總數 Total
不禮貌 Impoliteness									
粗魯無禮 Rudeness	2	0	5	0	0	15	39	6	67
粗言穢語 Offensive Language									
毆打 Assault	1	0	6	0	0	4	52	0	63
疏忽職守 Neglect of Duty	1	1	4	0	9	11	31	5	62
行為不當 Misconduct	0	0	7	0	3	9	26	1	46
濫用職權 Unnecessary Use of Authority	0	0	4	0	3	1	19	0	27
捏造證據 Fabrication of Evidence	0	0	1	1	1	0	2	0	5
恐嚇 Threat	0	0	0	0	0	0	2	0	2
警務程序 Police Procedures	0	0	0	0	2	0	0	0	2
總數 Total:	4	1	27	1	18	40	171	12	274

及一項「疏忽職守」。另外有一項「疏忽職守」被列為「未經舉報但證明屬實」。而分類為「無法追查」的則佔最多，超過六成。(詳情參閱圖表二)。

監警會仔細分析「無法追查」的個案，發現主要原因是投訴人拒絕作供，當中有過半數個案的投訴人沒有留下足夠的聯絡方法，或不回應投訴警察課的電話、電郵及信件。會方相信這亦導致不少嚴重的指控無法有意義地去跟進，例如有八成的毆打是分類為「無法追查」。

另一方面，對於投訴警察課列為「無法追查」的投訴，監警會並非「照單全收」，會建議投訴警察課盡力聯絡投訴人，例如要求投訴警察課在不同時間最少打三次電話、發出兩次信件給投訴人，或透過投訴人的代表律師聯絡。即使投訴人沒有作供，監警會亦會建議從其他渠道搜證，希

been classified as “Substantiated”, including one count of “Assault”, two counts of “Impoliteness” and one count of “Neglect of Duty”. Additionally, there is one count of “Neglect of Duty” classified as “Substantiated Other Than Reported”. The majority of the allegations have been classified as “Not Pursuable”, taking up over 60% of all the allegations (For details refers to Figure 2).

After the IPCC’s in-depth analyses of these “Not Pursuable” cases, it was revealed that the main reason for cases being classified as such was the complainant not coming forward to give a statement. In over half of these cases, the complainants either did not provide sufficient contact details or respond to CAPO’s telephone calls, emails or letters. The Council believes that as a result of this, complaints involving serious allegations could not be meaningfully investigated – for example, 80% of the “Assault” allegations were classified as “Not Pursuable”.

That said, the IPCC does not easily accept the “Not Pursuable” classifications without question. The Council will assess the merits of each case and advise CAPO to make all reasonable efforts to contact the complainant - such as by making at least three calls during different hours, issuing at least two letters, or attempting to contact the

望以其他人證、物證去協助調查，以免個案因不適當地分類而成為「漏網之魚」。

因應調查結果的分類，共有九名違規警務人員遭受不同程度的紀律行動，包括一名警務人員因「毆打」而被警告；其餘八名警務人員則因「不禮貌」、「疏忽職守」或「旁支事項」而被訓諭。

真實個案

個案一：旺角警司涉嫌毆打途人

此個案彰顯監警會以證據為依歸、獨立、公平的原則去審核投訴個案。雖然個案受到社會廣泛關注及傳媒報道，但監警會仍然堅持其理據，不因涉事警務人員的官階，或外界輿論所影響。

背景

投訴人投訴於2014年11月底一個晚上，陪同朋友到旺角觀察清場後的情況。當行到彌敦道和亞皆老街交界時，被一名便裝警務人員（警員）及一名軍裝警務人員（警司）分別使用警棍毆打。

投訴警察課的調查

調查期間，被投訴的警員及警司，均否認毆打投訴人。投訴警察課查看多條影片後，考慮到當時情況混亂，群眾顯得具侵略性，認為兩名人員均有理由使用武力去驅散人群，以免有人再次佔據道路。因此投訴警察課把對兩人的「毆打」指控分類為「無法證實」。

監警會的觀點

監警會在審核個案的整個過程，反覆查看共12條相關影片。會方同意投訴警察課對警員的裁定，原因是投訴人及警員對事發經過的描述有出入，而從影片中又看不到警員有否打中投訴人。至於有關警司的指控，監警會不認同投訴警察課的調查結果，要求和投訴警察課召開工作層面會議。

complainant via his/her solicitor. Even if the complainant does not give a statement, the IPCC will advise CAPO to gather the necessary evidence via alternative channels, in the hope that other witnesses and evidence could assist with the investigation. This is to ensure that no case would fall through the cracks because of an inappropriate classification.

With respect to the classification of investigation results, various levels of police actions were taken against a total of nine defaulting officers. One police officer received a warning for “Assault”; the other eight police officers received advice for “Impoliteness”, “Neglect of Duty” and “Outwith” matters.

Real Complaint Cases

Case 1 – Superintendent Allegedly Assaulting a Passer-by in Mong Kok

This case illustrates how the IPCC scrutinizes a complaint case independently, fairly, and on the basis of evidence. Although the case attracted widespread public attention and extensive media coverage, the IPCC firmly stood by its argument and was not deterred by either the rank of the officer involved or any pressure from public opinion.

Background

In this particular case, the Complainant alleged that he was accompanying his friend to observe the post-clearance situation in Mong Kok one night in late November 2014. The Complainant claimed that upon reaching the intersection of Nathan Road and Argyle Street, a police officer in plainclothes (a Police Constable) and another police officer in uniform (a Superintendent) assaulted him with their police batons.

CAPO's investigation

During CAPO's investigation, the Police Constable and the Superintendent denied having assaulted the Complainant. CAPO examined multiple videos with footage of the incidents and considered that given the chaotic and volatile situation in Mong Kok that night, and the crowd displaying active aggression, it was justified for the Police Constable and the Superintendent to use force to disperse the crowds, to prevent them from occupying the roads again. Therefore, CAPO classified the “Assault” allegations against the Police Constable and the Superintendent as “Unsubstantiated”.

IPCC's assessment

Throughout the vetting process of this case, the IPCC repeatedly examined a total of 12 videos. The Council agreed with CAPO in regard to the allegation against the Police Constable since there were discrepancies between the Complainant and the Police Constable's versions of the event, in addition to the footage not showing whether the Police Constable had hit the Complainant. However, the IPCC disagreed with CAPO's investigation results in the Superintendent's case, and requested a working level meeting with CAPO.

封面故事

Cover story

監警會認為警方有理由使用適當程度的武力去驅散人群，但警察指引規定，一旦達成目的就應停止使用武力。影片所見，警司揮動警棍的方向，曾經和人群疏散的方向相反。而後來投訴人已有秩序地向前行走，警司不應再向他使用武力，監警會因此要求將對警司的「毆打」指控更改為「獲證明屬實」。

投訴警察課其後回覆並建議將有關指控由「毆打」改為「濫用職權」，並界定為「獲證明屬實」，因為根據投訴手冊，警司只是錯誤地使用警權，他的行為不至於構成「毆打」，即「當警務人員在沒有合理理由下，向任何人使用任何形式的身體武力」。

監警會不同意投訴警察課的建議，仍然認為警司的行為屬「毆打」，認為應該把指控分類為「獲證明屬實」，並建議將處分提升為「警告並須記入分區報告檔案中」。

這一次投訴警察課同意監警會將指控維持為「毆打」，但認為證據不足，應該將指控分類為「無法完全證明屬實」。

由於投訴警察課的回覆並沒有提出新的理據或資料，監警會委員之前亦已不分晝夜召開多次會議，充分討論所有證據，因此不接受投訴警察課的回覆，維持將「毆打」指控列為「獲證明屬實」，並促請投訴警察課考慮向律政司尋求法律意見。監警會最終趕及在被投訴的警司退休前給予肯定的結論。

其後投訴警察課回覆監警會，指經過詳細考慮律政司的法律意見後，同意將警司的「毆打」指控分類為「獲證明屬實」，而該警司亦需要接受「警告並須記入分區報告檔案中」。

個案二：女警員於旺角被投訴人搶警棍

此個案的投訴人因有上訴案件在身，選擇將投訴列為「有案尚在審查中」，暫停調查。但監警會重視處理投訴個案的效率及成效，認為只要有理據和證據，而不影響司法程序的情況下，便應盡快處理投訴，還當事人一個公道。

The IPCC opined that while the Police had justifiable reasons to use an appropriate level of force to disperse the crowds. However, the Force guidelines provide that once the intended purpose has been achieved, the use of force shall cease. From the video footage it could be seen that the direction in which the Superintendent swung his baton was, at a certain point, opposite the direction towards which the crowds were dispersing. Afterwards, the Complainant was walking forward in an orderly manner, so the Superintendent should not have continued using force on the Complainant. Therefore, the IPCC requested CAPO to reclassify the "Assault" allegation against the Superintendent as "Substantiated".

CAPO later responded to IPCC's views and suggested changing the allegation against the Superintendent from "Assault" to "Unauthorized Use of Authority", and classifying it as "Substantiated". The reason for this is according to the Complaints Manual, the Superintendent only wrongly used his police powers; his act did not constitute "Assault", which is defined as "Where a member of the Police Force without just cause uses any form of physical force against another person or persons".

The IPCC disagreed with CAPO's suggestion and held the view that the Superintendent's act was an assault and the action taken against the Superintendent should be elevated to "Warning with Divisional Record File entry (DRF)".

CAPO then subscribed to the IPCC's view that the allegation should be "Assault", but as the evidence was insufficient, CAPO concluded that the "Assault" allegation should be classified as "Not Fully Substantiated".

Since CAPO's response did not offer any new arguments or information, and IPCC Members had already spent a considerable amount of time calling multiple meetings at various hours of the day, the Council was of the view that all the available evidence had already been thoroughly debated. Therefore, the Council did not accept CAPO's response and maintained that the "Assault" allegation was "Substantiated". The Council then requested CAPO to seek legal advice from the Department of Justice. In the end, the IPCC was able to conclude this case with definite findings before the Superintendent retired.

Afterwards, CAPO replied that after thorough consideration of the legal advice given by the Department of Justice, CAPO agreed that the allegation of "Assault" against the Superintendent was "Substantiated". The Superintendent was given a warning with a DRF entry.

Case 2 – Complainant Snatching Police Baton from a Woman Police Constable in Mong Kok

In this complaint case, since the Complainant had an ongoing appeal case, he opted to classify his complaint as "Sub-Judice" and suspend the complaint investigation. However, the IPCC puts great importance on the efficiency and effectiveness of complaints handling, and was of the view that if there were arguments and evidence available, the complaint should be handled as soon as practicable, as long as it did not affect the legal proceedings. This is so that justice could be done for the parties involved.

背景

投訴人報稱在2014年10月中的一個晚上，身處旺角彌敦道一條馬路，站在一群示威者當中，一班警員正在附近執行人群控制任務。投訴人表示聽到其中一名女警員叫他行開，霎時間他感到頭部及頸部被警棍打了兩下，他一轉身便見到該名女警員。另一方面，女警員報稱投訴人搶去她的警棍。其後投訴人因「妨礙警務人員執行職務」而被捕及起訴。大約在五個月後，投訴人在法庭上否認控罪及並表示要投訴當場的警察。

投訴警察課的跟進

投訴警察課指收到投訴後，多次聯絡投訴人不遂。後來裁判法院經審訊後裁定投訴人罪成並判囚四星期。兩個月後，投訴人聯絡投訴警察課，表示要投訴當時的女警員「捏造證據」，陷害他搶警棍，但由於他正等候法庭裁定他的上訴申請，因此要求將投訴列為「有案尚在審查中」，即暫停調查。

監警會的觀點

監警會憂慮法庭處理上訴個案可以歷時多年，有可能嚴重拖慢處理投訴的進度。為了評估是否真正有需要暫停調查，監警會要求投訴警察課提供更多法庭聆訊的資料，以澄清會方的疑問。

聆訊的資料顯示，投訴人的確因為搶警棍而被控阻差辦公。女警員供稱事發時目睹一名示威者正在踢一名警長，她舉起警棍衝向示威者，投訴人突然衝向她，用雙手抓著並搶走她的警棍。擾攘一輪後，女警員在其他警員協助下制服投訴人及奪回警棍。聆訊期間，裁判官不接納投訴人的供詞，裁定他不顧法紀及警員的警告而搶去警棍。

由於裁判官的判決十分清晰，足以證明投訴人對女警員「捏造證據」的指控是虛假及心懷惡意，加上投訴人的上訴申請被高等法院駁回，投訴警察課決定將「捏造證據」的指控列為「虛假不確」。監警會同意並通過調查報告。

Background

In this particular case, the Complainant claimed that he was among a group of protestors occupying a carriageway in Mong Kok in mid-October 2014. A police party, including a Woman Police Constable, was carrying out crowd control duties in the vicinity. The Complainant was suddenly hit by a baton twice, once on his head and once on his neck. He turned around and saw the Woman Police Constable standing behind him. The Woman Police Constable accused the Complainant of snatching her baton, and the Complainant was subsequently arrested for "Obstructing a Police Officer in the Execution of Duty". The Complainant pleaded not guilty to the offence and lodged the instant complaint against the police officer in court.

CAPO's investigation

After receiving the complaint, CAPO attempted to contact the Complainant multiple times, but to no avail. The Magistrates' Court then convicted the Complainant and sentenced him to four weeks' imprisonment. Two months later, the Complainant contacted CAPO to lodge a complaint against the Woman Police Constable for "Fabrication of Evidence" – that she framed him for snatching her police baton. However, since the Complainant was waiting for the court's ruling on his appeal case, he opted to classify his complaint as "Sub-Judice", which means the complaint investigation would be suspended.

IPCC's views

The IPCC had concerns over the suspension because appeal cases could last for years, thus causing substantial delay to the complaint investigation. The Council requested CAPO to provide further information about the offence that the Complainant was charged with, the brief facts of his case, and the trial Magistrate's ruling or comments.

According to the court case results, the Complainant was indeed charged for "Obstructing a Police Officer in the Execution of Duty" because he snatched the police baton. The Woman Police Constable testified that during the material time, she raised her baton and moved towards a protestor who was kicking a sergeant. Suddenly, the Complainant rushed towards her and grabbed her baton, eventually snatching it away from her. With the assistance of other police officers, the Complainant was subdued and the Woman Police Constable was able to retrieve her baton. The court rejected the Complainant's evidence and ruled that he had, without regard to public order and the Police's warning, snatched the Woman Police Constable's baton.

The unambiguous verdict given by the Magistrate that the complainant had snatched the Woman Police Constable's baton served as sufficient, reliable evidence that indicates the allegation made by the Complainant was untrue, with a clear intent of malice. Moreover, the Complainant's appeal was later quashed by the High Court.

CAPO therefore classified the Allegation – Fabrication of Evidence as "False". The IPCC agreed and endorsed the investigation results.