

# 監警會 通訊

# IPCC NEWSLETTER



## 有關證物處理的投訴個案

## Complaint cases related to handling of exhibits



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

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## 有關證物處理的投訴個案

### Complaint cases related to handling of exhibits



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

根據《警察通例》，警務人員在搜證、存放及歸還證物時均須依循正確的程序。在監警會審核的投訴個案中，便有部分個案是關於投訴警務人員在處理證物時「疏忽職守」，例如錯誤歸還案件涉及之證物或沒有妥善存放。因此，本期的封面故事介紹三宗有關證物處理的投訴個案。

According to the Police General Order, police officers are required to follow the correct procedures when collecting, storing and returning the exhibits. Among the complaint cases examined by the IPCC, some of them were about police officers being alleged of “Neglect of Duty” during the handling of exhibits, such as incorrectly returned or failed to properly store the case exhibits. Hence, this cover story features three complaint cases related to handling of exhibits.

### 個案一：錯誤歸還案件涉及之證物

#### Case 1: Wrongful return of case exhibits

##### 背景

在一宗盜竊案中，投訴人因偷取其前僱主店內的單車零件而被捕。警方從投訴人住所及迷你倉檢獲大量單車零件，經法庭審訊後，投訴人被定罪及判處入獄。投訴人出獄後，從友人口中得知警方已把案中檢取的所有單車零件交還該店主。投訴人指稱部份單車零件是其個人財

##### Background

In a “Theft” case, the Complainant was arrested for stealing bicycle parts from his former employer’s shop. The Police seized a large number of bicycle parts from the Complainant’s residence and his mini storage unit. The Complainant was convicted and sentenced to imprisonment by the Court. After being released from prison, he learned from his friend that all the bicycle parts seized by the Police had been returned to the shop owner. Claiming that some of the



投訴人指稱警方未有妥善處理案中證物，當中包括大量單車零件。

(照片來源：星島日報)

**The Complainant alleged that the Police inappropriately handled the case exhibits which included a large number of bicycle parts.**

**(Photo Credit: Sing Tao Daily)**

物，並不屬於前僱主。投訴人就此投訴案件主管警務人員（被投訴人一）未有妥善處理案中證物【指控：疏忽職守】。

### 投訴警察課的調查

被判入罪後，投訴人向法庭提出上訴。在等待上訴期間投訴人作出投訴，所以投訴警察課根據「有案尚在審理中」的程序，暫停投訴調查工作。投訴人其後沒有出席上訴聆訊，上訴被駁回。投訴警察課即重新展開調查並透過不同方式聯絡投訴人，但均不果。該課遂把指控分類為「無法追查」。

### 監警會的觀察

#### 調查報告與質詢

監警會審閱該盜竊案的證物紀錄和法庭資料後，認為投訴指控相當可能獲證明屬實，故不同意「無法追查」分類。監警會發現，雖然刑事調查隊將全部檢獲之證物給單車店主辨認，及將認出的證物列入案情摘要以作呈堂之用，但由於在審訊期間，單車店主只能確認部分呈堂證物為他所擁有，因此法庭只頒令將該部分已呈堂證物歸還予單車店主，而未有就其餘證物的處理方法發出頒令。然而，調查隊伍在法庭審訊後等待上訴期間，便將所有從投訴人處所檢獲的單車零件(包括法庭命令未涵蓋的單車零件)交還單車店

bicycle parts were his personal property, and did not belong to his former employer, the Complainant lodged a complaint alleging that the officer in charge of the case (Complainee 1) failed to handle the case exhibits appropriately [Allegation: Neglect of Duty].

### CAPO's investigation

After being convicted, the Complainant appealed to the court. As he lodged the complaint to CAPO while the appeal hearing was pending, CAPO suspended the complaint investigation according to "Sub-judice" procedure. Upon the dismissal of the appeal, due to the Complainant's absence from the appeal hearing, 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".

### IPCC's observation

#### Investigation Report and Queries

The IPCC, having examined the exhibit list and court case records, opined that the complaint allegation would likely be classified as "Substantiated", thus disagreed with the classification of "Not Pursuable". The IPCC also noticed that, although the crime team provided all seized exhibits to the bicycle shop owner for identification and listed those identified items in the brief facts to be presented to the Court, the bicycle shop owner could only confirm his ownership of some of the exhibits during the trial. Therefore, the Court merely ordered the identified exhibits to be returned to him and no disposal order was issued on the handling of the remaining bicycle parts. The crime team, however, returned all bicycle parts seized from the Complainant's premises, including those not covered by the court order, to the shop owner. The IPCC considered that the exhibits in this case comprised bicycle parts which were presented in court but without court disposal order as well as those not presented in court. The crime team should not have handed all exhibits to the shop owner, when the

主。監警會認為此案涉及的證物中，包括已呈堂但未涵蓋在法庭歸還命令的單車零件，以及未呈堂的單車零件。調查隊伍在仍未釐清證物擁有權前，不應將它們全部交還單車店主。再者，當時投訴人已經對定罪提出上訴，有可能在上訴中爭議有關單車零件的擁有權。按照警隊內部指引，調查隊應待上訴期結束後，才可歸還擁有權並無爭議的證物。因此監警會向投訴警察課提出質詢，要求該課進一步調查刑事調查隊伍人員在處理案件證物方面是否恰當。

### 投訴警察課回覆

經過監警會兩輪質詢後，投訴警察課將案件主管列為被投訴人一，負責調查案件並決定歸還證物的警務人員列為被投訴人二。

被投訴人一向投訴警察課表示當接手盜竊案時，法庭審訊經已完結，並正等待上訴。案件資料顯示，被投訴人二有向被投訴人一匯報已將涉案的所有單車零件交還單車店主。雖然被投訴人一在事後才知悉證物已全部歸還，但作為案件主管理應知悉警隊相關內部指引(即不可於上訴期內歸還案中證物)。然而，當被投訴人一得知證物錯誤地歸還後，並沒有盡快指示下屬修正問題，向單車店主安排取回相關單車零件。直至五個月後，被投訴人一才採取行動，指示下屬取回錯誤歸還的證物。有鑑於此，該課把其指控分類為「獲證明屬實」。

被投訴人二向投訴警察課解釋，單車店主曾向他表示單車零件會折舊，希望警方盡快歸還。被投訴人二亦考慮到有關證物有相當體積，認為上訴庭要求實物呈堂的可能性不大，因此決定把所有單車零件交還店主。他承認歸還該些證物前未有事先徵得案件主管同意及澄清擁有權事宜。該課認為被投訴人二應按照警隊內部指引謹慎處理所有證物，而非自行推測上訴庭會否要求將實物呈堂，及不應於上訴期內歸還案中證物。加上他未有確認各項證物的擁有權便草率決定歸還，故其指控亦分類為「獲證明屬實」。

由於投訴警察課接納監警會的觀點，將兩名被投訴人的指控分類為「獲證明屬實」，並向二人作出警告但無須記入分區報告檔案中，所以監警會通過本宗投訴個案的調查結果。

ownership was not clarified. Furthermore, the Complainant had already applied for an appeal against conviction, in which there might be dispute on ownership of the bicycle parts. As stipulated in the Police internal guidelines, the case exhibits should only be returned after the lapse of the appeal period and when there is no dispute in ownership. As a result, the IPCC raised Queries to CAPO, requesting further investigation into the appropriateness of the handling of case exhibits by the crime team.

### CAPO's Reply

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.

Complainee 1 stated to CAPO that she only took over the theft case after the Complainant had been convicted and when his appeal was pending. According to the case documents, Complainee 2 had reported to Complainee 1 that all bicycle parts had already been returned to the shop owner. Although Complainee 1 was only informed after the wrongful return of the exhibits, as the officer in charge of the case, she should be acquainted with the relevant Police internal guidelines (i.e. the case exhibits could only be disposed of after the determination of the appeal). Yet, when Complainee 1 was aware of the wrongful return of the exhibits, she did not instruct her subordinates to take remedial action as soon as practicable and retrieve the relevant bicycle parts from the shop owner. It was not until five months later that the Complainee 1 took action and instructed her subordinate to collect the exhibits that had been mistakenly returned. In view of the above, CAPO reclassified the allegation against the Complainee as "Substantiated".

Complainee 2 explained to CAPO that the shop owner asked him to return the bicycle parts as soon as possible, as their value would be depreciated. Having considered the sheer size of the exhibits, Complainee 2 reckoned that it was unlikely that the appeal court would request a physical examination of these bicycle parts. Hence, he decided to return all bicycle parts to the shop owner. He admitted that he failed to obtain prior consent from the officer in charge and clarify the ownership of the bicycle parts before making this decision. CAPO was of the opinion that Complainee 2 should act in line with the Police internal guidelines and take a cautious approach when dealing with case exhibits. Complainee 2 should not draw his own conclusions regarding whether the appeal court would opt to physically examine the exhibits, nor should he return the case exhibits during the appeal period. Coupled with the fact that he failed to ascertain the ownership of each exhibit, and made a hasty decision regarding their return, the allegation against him was therefore reclassified as "Substantiated".

As CAPO subscribed to the IPCC's view that the allegations against both Complainee 1 and Complainee 2 should be reclassified as "Substantiated", and they should receive warnings without Divisonal Record File (DRF) entry, the IPCC endorsed the findings of the instant complaint.

### 個案二：未有將證物妥善存放

#### Case 2: Failed to properly store exhibits



投訴人指控負責案件的警員沒有妥善保存電腦，導致其電腦被人干擾。

(照片來源：星島日報)

*The Complainant alleged that the officer in charge of the case did not store his computers properly, leading to possible interference by others.*

*(Photo Credit: Sing Tao Daily)*

#### 背景

警方收到情報，懷疑投訴人在網上發布兒童色情物品。經調查後，負責案件的警員在投訴人的住所以「管有兒童色情物品」及「發布兒童色情物品」罪名拘捕投訴人，並檢取三部電腦。由於警員在現場初步檢查電腦時未有發現任何兒童色情物品，因此決定將電腦轉交科技罪案組作進一步檢查。該名警員在現場檢取電腦為證物及用防干擾標籤貼在電腦上，在未轉交科技罪案組之前，放置在自己的辦公桌下。

經科技罪案組檢查後，警方發現投訴人的電腦儲有約60,000張兒童色情相片和630段兒童色情影片，於是決定控告投訴人上述

#### Background

Based on intelligence, the Police suspected that the Complainant had published child pornography on the Internet. After investigation, a crime officer arrested the Complainant for “Possession of Child Pornography” and “Publishing Child Pornography” at his home, where three computers were seized. As no child pornography could be found in the computers upon preliminary examination at the scene, the crime officer decided to pass them to the Technology Crime Division (TCD) for forensic examination. Upon seizing the computers as exhibits at the scene, the officer attached “anti-tamper” tapes to them. Before sending the computers to TCD, he placed them under his desk in the office.

After examination by TCD, approximately 60,000 photos and 630 video clips of child pornography were found to have been saved in the computers. As a result, the Police charged the Complainant with the above two offences. During the trial, the Complainant denied committing the offences and indicated that the Police had mishandled

兩項罪名。審訊中，投訴人否認控罪，並指警員處理電腦的程序有問題。投訴人辯稱由於該警員沒有妥善保存電腦，因此有人可能栽贓，載入兒童色情相片和影片。法庭指雖然警員處理證物方法不理想，但幾乎不可能有人安放如此大量的兒童色情相片及影片到投訴人的電腦而無被人發現，因此判投訴人罪成。

其後投訴人向投訴警察課指控負責案件的警員(被投訴人)導致其電腦被人干擾【指控：疏忽職守】。

### 投訴警察課的調查

投訴警察課認為，被投訴人已採取合理程序保存證物，在帶走電腦時立即於現場貼上防干擾標籤。若有人在運送及存放期間開啟電腦，標籤便會在證物上留下痕跡。當被投訴人把電腦交到科技罪案組時，亦曾確認電腦上的標籤完好無缺。聆訊中，主審法官亦明確指出有關電腦不曾被干擾，同時排除了有人栽贓之可能。基於上述兩點，投訴警察課將指控分類為「並無過錯」。

### 監警會的觀察

監警會認為雖然法庭已表明證物並未因被投訴人的行為而受到干擾，但亦指出該名警員處理證物的方法不理想。根據《警察通例》，所有證物均須交予證物室保存。然而，被投訴人沒有依循正確程序妥善將證物交予證物室，反而將它們放置在自己的辦公桌下數天後才轉交科技罪案組。

監警會認同投訴警察課把「疏忽職守」的指控分類為「並無過錯」，但認為被投訴人在處理證物時未盡完善，有機會讓投訴人辯稱有人栽贓將兒童色情物品載入其電腦，因此建議對被投訴人多加一項「未經舉報但證明屬實」的「疏忽職守」指控。經過監警會提出質詢，投訴警察課最終接納建議，並對被投訴人作出訓諭而無須將事件記入其分區報告檔案中。

his computers. The Complainant argued that the seized computers were not stored properly so that someone might have planted the child pornography photos and video clips on them. The Court commented that though the handling of the exhibits by the Police 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.

Subsequently, the Complainant approached CAPO and alleged that the crime officer (Complainee) had led to his computers being tampered. [Allegation: Neglect of Duty].

### CAPO's investigation

CAPO was of the view that the Complainee had taken reasonable steps to safeguard the exhibits by promptly sticking the "anti-tamper" tapes on them when they were seized at the scene. Should anyone tamper with the computers in the course of delivery and storage, the "anti-tamper" tapes would leave marks on these exhibits. When the Complainee handed the computers to TCD, he confirmed that the "anti-tamper" tapes remained intact. At the hearing, the Judge also clearly pointed out that the computers had not been tampered, and excluded the possibility that someone could have planted the pornography. Based on these two points, CAPO classified the allegation as "No Fault".

### IPCC's observation

The IPCC considered that though the Court clearly indicated that the exhibits had not been tampered with, it did comment that the exhibit handling process was unsatisfactory. According to the Police General Order, all exhibits should be stored in the Property Office. However, the Complainee did not follow the correct procedures for storing the exhibits in the Property Office. Instead, the computers were placed under his desk for several days before they were sent to the TCD.

The IPCC agreed with CAPO in classifying the allegation of "Neglect of Duty" as "No Fault". However, the IPCC was of the view that the Complainee failed to handle the exhibits properly, offering the Complainant a chance to argue that someone had planted the child pornography in his computers. Therefore, the IPCC recommended that an additional "Substantiated Other Than Reported" count of "Neglect of Duty" be registered against the Complainee. After Queries, CAPO finally subscribed to IPCC's view, and the Complainee was given an advice without DRF entry.

### 個案三：不恰當處理證物

#### Case 3: Inappropriate handling of exhibits



投訴人不滿警員在檢取證物時，未有將會計賬簿與影印版本作詳細對照。

(照片來源：星島日報)

*The Complainant was dissatisfied with police officer for not verifying the photocopies of the Accounting Records with the original document upon seizing the exhibit.*

*(Photo Credit: Sing Tao Daily)*

#### 背景

投訴人受僱於食品公司負責售賣海鮮，並可分得每日利潤一成作酬金。其後，僱主指經會計師點算，發現投訴人在扣除一成酬金後，未交出利潤港幣八萬餘元予公司，懷疑投訴人盜取公司資產，遂報警求助。在初步調查時，負責的警務人員(被投訴人)並未有檢取會計賬簿(賬簿)為證物，僅影印賬簿內涉案交易的六頁賬目作調查之用，並將賬簿歸還僱主。經警方深入調查後，投訴人最終被拘捕，並控以「盜竊」罪。

#### Background

The Complainant was hired by a food company to sell seafood and would enjoy a 10% share of daily profit as remuneration. The employer (shop owner) - with support from the accountant, alleged that the Complainant failed to return a profit of over HK\$80,000 to the company after deducting his remuneration. Suspecting the Complainant might have embezzled the company's property, the shop owner 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 six pages from the Accounts covering the company's revenue records for the period concerned, and returned the Accounts to the shop owner. After in-depth investigation, the Complainant was finally arrested and charged with "Theft".

投訴人被捕後，被投訴人為僱主錄口供，同時檢取賬簿作為證物。被投訴人只將賬簿封入證物袋，並鎖在自己的抽屜內，以備日後呈堂之用。然而，被投訴人在檢取證物時並未仔細翻閱賬簿中涉案的六頁賬目內容，因而忽略了其中一頁有被塗改痕跡。

審訊中，投訴人的辯護律師質疑，由警方提供的賬簿影印本與正本的內容有不一致地方(即正本賬簿當中有被塗改痕跡)。僱主雖為賬簿的唯一管有人，卻矢口否認知悉賬簿內容前後有差異。最後，法庭認為僱主的證供不可信，因此在疑點利益歸於被告的原則下，投訴人被判無罪，當庭釋放。

投訴人不滿被投訴人未能妥善處理案件的證物，且在檢取證物時，未能將該賬簿與最初的影印版本作詳細對照，因此向投訴警察課作出一項【疏忽職守】的指控。

### 投訴警察課的調查

經調查後，投訴警察課認為被投訴人在事件中未有將檢取作為呈堂證物的賬簿正本，與先前影印留底的版本比對核實。此外，在封存證物後，只將其放入自己的抽屜，並未交由證物室保管。因此，投訴警察課將指控分類為「獲證明屬實」，並建議對被投訴人作出訓諭，但無須將此事記入其分區報告檔案內。

### 監警會的觀察

監警會認同投訴警察課的指控分類。然而，監警會認為被投訴人資歷深且經驗豐富，但他未能妥善處理證物，僅對他作出訓諭而無須記入其分區報告檔案中的處分，未能充分反映事件的嚴重性。經商討後，投訴警察課對被投訴人作出警告，但無須記入其分區報告檔案中。

Upon arresting the Complainant, the Complainee took a further statement from the shop owner and seized the Accounts as an exhibit. After sealing the Accounts into an exhibit bag, he locked it inside his drawer in preparation for the trial. During this process, however, the Complainee did not carefully examine the six-page photocopy covering the company's revenue records and failed to notice the alteration made in one of the pages.

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. After the trial, the Count ruled that there was a case to answer and considered that the shop owner's statement was incredible. Due to the benefit of the doubt, the Court acquitted the Complainant.

The Complainant was dissatisfied with the Complainee's failure to appropriately handle the case exhibit and did not verify the photocopies of the Accounts with the original document upon seizing the exhibit. Therefore, he lodged an "Allegation – Neglect of Duty" to the CAPO.

### CAPO's investigation

After investigation, CAPO considered that the Complainee failed to verify the exhibit against the photocopies of the Accounts he made earlier; and improperly kept the sealed exhibit in his locked drawer instead of depositing it in the Property Office. Therefore, CAPO classified this allegation as "Substantiated" and suggested a penalty of "Advice without DRF entry".

### IPCC's observation

Whilst agreeing to CAPO's classification for the allegation, having taken into account the Complainee's long service and experience in the Force, IPCC considered that the penalty of "Advice without DRF entry" was insufficient in addressing the seriousness of the case. After deliberations, CAPO subscribed to IPCC's view and gave the Complainee a "Warning without DRF entry".