

IN THE MATTER OF THE POLICE ACT RSBC 1996  
c.367

And

IN THE MATTER OF Constable "X"

NOTICE OF DECISION ON REVIEW OF FINAL  
INVESTIGATOR'S REPORT

TO: Cst. "X"	Member
To: Mr "C"	Complainant
To: Sgt. Marvin Fefchak	Investigating Officer
And To: Stan T. Lowe	Police Complaint Commissioner

Notification section 117 (7)

(a) Description of complaint.

The complainant Mr "C" alleges that Cst.

"X" conducted a CPIC search on him for personal and not police duty related reasons.

**(b) Complainant's right to make submissions.**

At any time after receiving the investigating officer's final report under section 112(1)(b)(i), but at least ten business days before the date of the discipline proceeding specified in the notice under section 123(1)(b), the complainant may make written or oral submissions, or both, to the discipline authority in relation to one or more of the following matters:

- (a) the complaint;
- (b) the adequacy of the investigation;
- (c) the disciplinary or corrective measures that would be appropriate.

(c) A description of each allegation of misconduct.

Count 1 – That Cst. "X" disclosed to another person police data base information contrary to section 77(3)(i) of the Police Act.

Count 2- That in a statement Cst. "X" provided details of his use of CPIC which are inconsistent with GPS and CPIC records contrary to section 77(3)(f)(i)(A) of the Police Act.

## (d) Retired Judges Determination

(i) Background:

A complaint was lodged by the complainant Mr "C" that (1) he had been forced to pay money to Cst. "X" (the member) or there would be ramifications and (2) that the member had done an illegal CEPAK (sic) search

on him. The complaint was duly registered and not being informally resolved an investigation was undertaken by Sgt. Fefchak.

The allegation that the member used his position as a police officer to force the complainant to repay monies earlier paid by the complainant to "V" was investigated as a corrupt practice.

The allegation that the member had done an unlawful search by using CPIC to check the complainant was also investigated as a corrupt practice.

As a result of his investigation Sgt. Fefchak also identified a third possible misconduct, improper disclosure of information gathered as a result of the CPIC searches.

Each of the three matters above, if substantiated, would be breaches of the Code Of Professional Conduct.

Finally Sgt. Fefchak identified a possible fourth misconduct in that the statement given by Cst. "X" as required under the Police Act provided details of the member's use of the CPIC which in the investigator's opinion were not consistent with computer records. That alleged misconduct would be deceit under the Police Act.

The investigating officer interviewed and recorded statements from several witnesses, the most important of whom were the complainant, the member and "V" .

Following his investigation Sgt. Fefchak concluded that the evidence did not appear to substantiate the allegation that the member had used his position as a police officer to force the complainant to pay back monies that he would not otherwise have paid.

Sgt. Fefchak concluded that the corrupt practice of using the CPIC to check the complainant was substantiated; that the disclosure of information to "V" obtained as a result of the CPIC search was substantiated as improper disclosure .

Sgt Fefchak also concluded that the member's statement regarding his use of CPIC was substantiated as the misconduct of deceit.

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The investigating officer's decision was reviewed by Deputy Chief Goerke acting as the Discipline Authority under section 112 of the Police Act. He agreed with Sgt. Fefchak that there had been improper use of the CPIC to check Mr "C" but disagreed with respect to Improper Disclosure and

Deceit. Deputy Chief Goerke unsubstantiated both the count of Improper Disclosure and the count of Deceit.

I have been appointed pursuant to section 117(4) of the Police Act to review the investigating officer's report and the evidence and records referenced in that report and make my own decision on counts 1 and 2 above.

As required I have reviewed the investigating officer's report and the evidence and records contained therein regarding the allegation that Cst. "X" acted in a manner to wit: disclosed to another person police database (CPIC) search information that if proved would constitute misconduct contrary to section 77(3)(i) of the Police Act and am satisfied that the evidence referenced in the report appears sufficient to substantiate the allegation and require the taking of disciplinary or corrective measures.

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Similarly I have reviewed the investigating officer's report and the evidence and records contained therein regarding the allegation that Cst. "X" acted in a manner to wit: in a statement provided details of his use of CPIC which are

inconsistent with GPS and CPIC records that if proved would constitute misconduct pursuant to section 77(3)(f)(i)(A) of the Police Act and am satisfied that the evidence referenced in the report appears sufficient to substantiate the allegation and require the taking of disciplinary or corrective measures.

In reviewing the evidence with respect to Count (1) in the context of the entire investigation I have paid particular attention to the following excerpts from the statements of

"V" and Cst. "X" made to the investigating officer, Sgt. Marvin Fefchak

Marvin Fefchak (MF)

Line 415-MF. Have you ever run uh, Mr "C" -

416-"V" No

419. "V" He ( Mr "C" ) was very late one day...

423. "V" "X" I don't think had met Mr "C" at that time,...

424-25. "V" I told "X" that Mr "C" had got a ticket. I asked Mr "C" to give me the ticket so I could show it to "X" when he came...

429-32. "V" I know from my conversations then with "X" he had told me he had seen two vehicles parked outside of my house, that he had run both of those plates. That they had come back to this (INDECIPHERABLE) Ed guy and Mr "C"

436-38 "V" ...then he said look, I-I have concerns with- I don't want this guy around the kids anymore. I don't know what to tell you about this, but there's some flags there that you need to be cautious of...

441-43 MF. or flags- through the CPIC?

444 "V" Correct.

471-76 "V" Uh, so is that- you know, we have just s-said, like is that the right thing for him to do, to tell me about that? I- for him- "X" to say- look, like you can't leave the kids in the house with him...

515-16 MF. And then the CPIC check through the vehicle showed that Mr "C" h-what-what did he tell you Mr "C"

517-18 "V" He said that he is flagged. That there's some special unit that he thinks is- that monitors sex offenders



273 "X" And I ran it's plate...

274 MF. And do you recall who the plates came back to?

275 "X" Yeah...one came to Mr "C" . Uh, Mr "C"

290-91 "X" Uh, and there was certain thing that came back about him about uh, possible stuff with children, I think

296-98 "X" I-I from the feeling I got I wasn't sure and I- it took me two, three days and I said to "V" I don't know if I should tell you this or not. I said well you're a police officer, I can advise you of this.

302-04 "X" An uh, I actually- I wasn't even sure I wanted to do that because I felt like he- you know, it's almost beyond a little bit my police responsibilities at that point.

347 "X" Yeah, at the time I think it was line of the duty, because I was in White Rock and I was on duty.

In reviewing the evidence with respect to count (2) in the context of the entire investigation I have paid particular attention to the following excerpts from the statements of:

Mr "C" , "X" "P"  
 {also shown as "P" in his statement of June 28,2010},  
 and "V" .

Line 446-MF. And Mr "C" what's the significance of that ticket you just pulled out there?

447-52-Mr "C" ... "P" ...Told me he could tell "X" 's been doing some... investigating on me...So he said to "X" I can tell you've done some investigation on him. You've put Mr "C" into one of the systems in the CPAC....And "X" said, Mr "C" asked me to check out a ticket for him.

453-MF. Okay. Did you ever ask him...

454-Mr "C" No, I never did. Never. I talked to "X" for twenty minutes while we were taking the tile out of the truck, that was it.

168-MF. First time you met "X" ?

169-70-<sup>Mr "C"</sup> Uh, I'd say it was about-I'd say about a week, week and a half in. About half way in. half way into the job, so about a week, weekans a half in.

548-9-MF. So in regards to that ticket there, did you ever have a conversation with "X" or "V" regarding uh, that violation ticket...

554-56-<sup>Mr "C"</sup> And I might have told "V" that I got the ticket in between Home Depot and her house, but I never ever gave her the ticket or showed her the ticket.

565-73-<sup>Mr "C"</sup> So I might have told her about the ticket, but I never asked her to check into it. You can't ckeck into a tinted window ticket, theres nothing to do.... I just paid the ticket.

157-63-MF. Okay. Uh, you met "X" outside the courtroom...Okay and you mentioned- we- we talked just before the recording...

165- "P" No, when-when he phoned me on the telephone

172-MF. And do you remember the contents of that conversation?

173-75- "P" Not really, just that I-talking about CPIC. I wanted to know if he did a CPIC on him... He said no. Somebody might have but it wasn't him.

499-MF. But "X" 's driving in your neighbourhood-

500-"V" Right.

501-MF. With work-uh, through work purposes of whatever.

502-"V" That's right , he was working, yeah.

503-MF. And he sees two vehicles.

504-"V".Yes.

505-MF. And he runs the plates?

506-"V" That's right.

507-MF. Of both of them.

508-"V" Right

510-"V" This is what he told me.

923-MF. Uh, so to your knowledge "X" ran uh, Mr "C" through CPIC once.

924-"V" Yeah , that's right.

925-MF. And that as a result of his vehicle parked-

926-"V" Right.

927-MF. -in front of your residence.

234-MF. Uh, there's a CPIC printout here.

235-"X" Yeah.

236-MF. You-on October 23<sup>rd</sup>-

237-"X" Yeah.

238-MF. It has you running his name or-or-

239-"X" His plate , yeah.

240-MF. -uh, it's a CPIC, it's-

241-"X" Yeah.

242-MF. -a-a lo- off line CPIC which comes back that you've run his plate.

243-"X" Yeah.

255-60-"X" -there was two plates. There was a white van in front of my house and there was a green Cherokee or something like that....like I mean I just drove by, 'cause I also work White Rock.

262-MF. Okay, so your working.

263-"X" Oh yeah, I'm working at that point.

270-76-"X" .a van in front of the house and all that, and I ran the plate. That I did....and I ran its plate and the van plate at the same time...and one came to Mr "C" Uh, Mr "C".

347-8-"X" Yeah, at that time I think it was the line of duty, because I was in- in White Rock and I was on duty.

(ii) Having decided that the evidence referenced in the investigator's report appears to substantiate allegations of misconduct requiring the taking of disciplinary or corrective measures I am offering Cst. "X" a confidential, without prejudice, prehearing conference with a prehearing conference authority to determine whether the member is prepared to admit misconduct, and if so, what disciplinary or corrective measures the member is prepared to accept.

(iii) The range of disciplinary or corrective measures that I am considering under section 126 of the Police Act are:

- Suspending the member without pay for not more than
- 30 scheduled working days;
- Reprimanding the member in writing;

- Reprimanding the member verbally;
- Giving the member advice as to his conduct.

(iv)The member, pursuant to section 119 of the Police Act may file with the discipline authority a request to call and examine or cross examine at the discipline proceeding, witnesses listed in the final investigation report provided such request is submitted in writing within 10 business days following receipt of this notice of decision.

Dated at Vernon, B.C. this 19<sup>th</sup> day of March, 2012.

Dennis B. Overend  
Retired Judge and Discipline Authority

