

### 彰顯監警會審視警方對舉報罪案的處理方法

### Meticulous approach adopted by the IPCC in examining the Police handling of a crime reported by the complainant

#### 個案重點 Highlights of the Case

| 指控<br>Allegation(s)     | 被投訴人<br>Complainee(s)           | 投訴警察課原來分類<br>Original Classification(s)<br>by CAPO | 最後分類<br>Final Classification(s)     |
|-------------------------|---------------------------------|--|-------------------------------------|
| 疏忽職守<br>Neglect of Duty | 一名警署警長<br>A Station<br>Sergeant | 並無過錯<br>No Fault                                   | 無法完全證明屬實<br>Not Fully Substantiated |

此個案突顯監警會如何仔細審視一宗警方處理舉報罪案時「疏忽職守」的投訴。經監警會質詢後，投訴警察課同意把指控分類由「並無過錯」改為「無法完全證明屬實」。

投訴人任職舞蹈學院，報警指有人入侵其電腦系統，並從閉路電視偷看她更衣的片段。一名警署警長經初步評估後，認為未有足夠證據將案件轉交至刑事調查隊處理，故建議投訴人到個人資料私隱專員公署（私隱公署）尋求協助。投訴人認為警署警長提出到私隱公署求助的建議屬「疏忽職守」而投訴。經調查後，投訴警察課認為該名警署警長曾作充分的初步查問，亦在衡量現有的資料後才作出案件不涉及刑事成份的結論，故把指控分類為「並無過錯」。

This case highlights the meticulous approach adopted by the IPCC in examining a complaint of “Neglect of Duty” in the Police handling of a crime reported by the complainant. The complaint was eventually reclassified from “No Fault” to “Not Fully Substantiated” after IPCC queries.

The complainant reported to the Police that someone had accessed the computer system of her dancing school to view CCTV footage of her changing clothes. After an initial assessment, a Station Sergeant (SSGT) could not establish sufficient evidence for referral to a crime unit, and advised the complainant to report the case to the Office of the Privacy Commissioner of Personal Data (PCPD). The complainant lodged a complaint of “Neglect of Duty”, stating that the SSGT had inappropriately asked her to report her case to the PCPD. After investigation, CAPO classified the allegation as “No Fault”, having found that the SSGT had conducted an adequate initial enquiry and evaluated the available information before reaching the conclusion that no criminal act had occurred.

然而，監警會認為該名警署警長沒有正確處理投訴人的案件，因為案件中明顯有人干犯「有犯罪或不誠實意圖而取用電腦」罪。經商討後，投訴警察課認同監警會的見解，把指控分類改為「無法完全證明屬實」，並向警署警長作出訓諭。

### 個案背景

投訴人於一間舞蹈學院任職，事發當日，投訴人報警指懷疑有人入侵舞蹈學院的電腦系統，偷看並錄取閉路電視內她於儲物室更衣的片段。案件由一名警署警長處理，由於初步查詢顯示案件不涉及刑事罪行，該名警署警長遂徵詢私隱公署意見，並建議投訴人到該署求助。

投訴人於是到私隱公署舉報，但私隱公署表示事件未有違反《個人資料（私隱）條例》。同日，投訴人作出投訴，指警署警長建議她向私隱公署求助為處理不當 [指控：疏忽職守]。

### 投訴警察課的調查

在調查此個案時，該名警署警長向投訴警察課表示，由於投訴人未有提供任何證據證明電腦系統被入侵，相信閉路電視片段外流屬機件故障，或投訴人遭惡意戲弄，故評估案件不涉及刑事成份。該名警署警長更表示曾致電私隱公署徵詢意見，得悉該署有可能受理此案後，才向投訴人提出他的評估及到私隱公署求助的建議。投訴警察課認為該名警署警長已作出恰當的查問和仔細的衡量，才作出案件不涉及刑事成份的結論，已經履行了他的職責。投訴警察課更考慮到投訴人就事件再次向警方報案，案件當時曾轉交至刑事調查隊處理，惟因為證據不足案件被終止調查。因此，投訴警察課把指控分類為「並無過錯」。

The IPCC opined that the SSGT had failed to properly handle the complainant's report as there was probably a prima facie case of "Access to Computer with Criminal or Dishonest Intent". After deliberation, CAPO subscribed to the IPCC's view and decided to reclassify the allegation as "Not Fully Substantiated" and to advise the SSGT.

### Case Background

The complainant worked at a dancing school. On the day in question, the complainant reported to the Police that someone might have accessed the computer system of the dancing school to record and view CCTV footage of her changing clothes inside the storeroom of the dancing school. A SSGT handled the complainant's report. After initial enquiries, the SSGT concluded that no crime had been committed. After the SSGT had then consulted the PCPD, he also advised the complainant to report the case to the PCPD.

The complainant subsequently made a report to the PCPD, but was advised that her case did not constitute a breach of the Personal Data (Privacy) Ordinance (PD(P)O). On the same day, the complainant lodged a complaint stating that the SSGT had not accepted her report and had inappropriately asked her to report her case to the PCPD [Allegation: Neglect of Duty].

### CAPO's Investigation

During CAPO's investigation, the SSGT explained that the complainant had not provided any evidence to suggest that the computer system had been accessed without authority. He said he believed that the CCTV footage had been taken due to a technical malfunction or by someone playing a trick on the complainant. He thus assessed that no crime had been committed. He also consulted the PCPD by phone and learned that PCPD might take up the case. He then informed the complainant of his assessment and advised her to report the case to the PCPD. CAPO considered that the SSGT had fulfilled his duty by conducting appropriate enquiries upon receipt of the report. The SSGT had also considered and evaluated the whole situation before concluding that there was insufficient information to prove a crime. CAPO had also taken into consideration the fact that, following the incident with the SSGT, the complainant had made another report to the Police which was taken over by a crime unit but subsequently curtailed, as there was insufficient evidence to establish a criminal case. Hence, CAPO classified the allegation as "No Fault".

### 監警會的觀察

在審視這宗投訴個案時，監警會注意到投訴人曾向該名警署警長明確指出，懷疑閉路電視公司非法入侵其電腦系統，並偷看她更衣的片段。鑒於投訴人並未授權閉路電視公司進入其電腦系統，惟從表面證據看來，投訴人的懷疑與閉路電視片段的內容，顯示該公司有職員懷有犯罪或不誠實的意圖，並干犯《刑事罪行條例》第161(1)條「有犯罪或不誠實意圖而取用電腦」罪。

該名警署警長在處理案件時，排除案件涉及刑事成份的可能而不作跟進。因此，監警會認為該名警署警長處理該宗案件的方法並不正確，忽視案件的刑事成份，沒有把案件轉交刑事調查隊跟進處理，及不恰當地建議投訴人到私隱公署舉報。

經過兩輪的質詢，投訴警察課同意監警會的觀點，把指控重新分類為「無法完全證明屬實」，認為警署警長雖非蓄意疏忽，但因欠缺處理案件的專業敏感度以至判斷錯誤。投訴警察課建議對該名警署警長作出訓諭，但無需把事件記入分區報告檔案中。

監警會通過這宗個案的調查結果。

### IPCC's Observation

Upon examining the case documentation, the IPCC observed that the complainant had clearly told the SSGT that the CCTV company was suspected of unlawfully accessing the computer system and viewing the CCTV footage of the complainant changing clothes. In light of the complainant's version of events and the CCTV footage in question, it was possible that the staff of the CCTV company had a dishonest or criminal intent, as the complainant had not authorised the CCTV company to access the computer system. Hence, there was probably a prima facie case of "Access to Computer with Criminal or Dishonest Intent", pursuant to section 161(1) of the Crimes Ordinance.

Nevertheless, the SSGT had ruled out the possibility of a crime having been committed, without further enquiry. The IPCC was of the view that the SSGT had failed to properly handle the complainant's report, failed to observe the crime element in the report, failed to refer the report to a crime unit for further investigation and inappropriately advised the complainant to seek assistance from the PCPD.

After two rounds of queries, CAPO agreed with the IPCC's view and reclassified the allegation as "Not Fully Substantiated" because the SSGT's negligence was not a deliberate inaction but an error of judgment, showing a lack of professional sensitivity but no malicious intent. CAPO recommended advising the SSGT without a Divisional Record File entry.

The IPCC endorsed CAPO's findings in this case.