

**Agriculture, Fisheries and Conservation Department's
handling of a report on police officers' alleged violation of
Prevention of Cruelty to Animals Ordinance
by sending a police dog to the scene where tear gas was used**

Investigation Report

The Complaint

This Office received a complaint from the complainant against the Agriculture, Fisheries and Conservation Department ("AFCD") on 26 October 2019.

2. The complainant made a report to AFCD via 1823 on 22 October 2019, alleging that police officers had violated the Prevention of Cruelty to Animals Ordinance ("the Ordinance") (Cap. 169). The complainant provided AFCD with two photographs taken on 21 October 2019, which showed that the scene was filled with tear gas, and police officers were all wearing gas masks while a police dog had no protective gear at all. According to the complainant, the Society for the Prevention of Cruelty to Animals had publicly stated that tear gas might cause severe burns to the eyes, mouth, throat, respiratory tract and skin of animals as well as make animals cough and suffer breathing difficulty, retching, and watery eyes. Hence, the complainant considered that the decision of the handler and commander concerned to send the police dog to the tear gassed scene to carry out duties without any protective gear constituted a violation of the Ordinance. On 25 October, 1823 relayed to the complainant the reply from AFCD that the Department believed the Police had made reasonable judgement as to whether the police dog should be deployed to the scene and provided with protective gear for the operations, and suggested that the complainant enquire of the Police about such operations or arrangements.

3. The complainant found AFCD's reply sloppy and was dissatisfied that AFCD accepted the Police's judgement without conducting any investigation despite that police officers do not have immunity by law.

Our Findings

The Ordinance

4. Pursuant to section 3(1)(a) of the Ordinance, any person who cruelly beats, kicks, ill-treats, over-rides, over-drives, overloads, tortures, infuriates, or terrifies any animal, or causes or procures or, being the owner, permits any animal to be so used, or, by wantonly or unreasonably doing or omitting to do any act, causes any unnecessary suffering or, being the owner, permits any unnecessary suffering to be so caused to any animal shall be liable on summary conviction to a fine of \$200,000 and to imprisonment for three years. The Ordinance does not contain any provision for immunity to any Government department.

Impacts of Tear Gas on Dogs' Health

5. AFCD noted that tear gas may be composed of different chemicals which may have different impacts on animals depending on their species, duration of exposure to such chemicals and the chemical concentration. AFCD was not aware of any scientific literature that could provide research data on the impacts on dogs under general use of tear gas. Whether dogs will suffer the same temporary allergic effects as human beings when being exposed to tear gas of the same level is yet to be studied.

AFCD's Role in Matters Regarding Service Dogs

6. Service dogs such as army dogs, police dogs, explosive, drug or quarantine detector dogs, disaster rescue dogs, hunting dogs, guard dogs, snowfield dogs and herding dogs may face different safety or health risks in their respective working environment. Deployment arrangement of service dogs is a professional judgement made by the relevant departments according to the duties of the dogs and actual circumstances. As service dogs, police dogs are taken care of and monitored by their handlers, and by providing necessary training, the handlers will build a strong partnership with them so that they can assist in carrying out duties. As the police dogs' daily care, training and performance of duties are managed by their handlers on a one-to-one-basis, the handlers shall pay close attention to the physical condition and needs of their dogs when carrying out duties. In case the handlers notice that their dogs are unwell, they should promptly arrange inspection and treatment for the dogs by veterinary surgeons.

7. Every week, AFCD veterinary surgeons visit the Police Dog Unit Headquarters and Training Base to provide general veterinary services including physical examination, general treatment and prescription of veterinary medicine for police dogs in need of such services. Besides, AFCD has previously organised

seminars with Government departments with service dog units for exchange of views on matters relating to service dogs, including how to safeguard the welfare of service dogs on duty. As regards the protective gear for service dogs being called to the scene where tear gas is used, AFCD said that it was not aware of any international literature providing relevant suggestions or guidelines.

Procedures for Handling Reports on Alleged Violation of the Ordinance

8. AFCD's Animal Management (Operations) Division follows up on cases relating to animals (including reports from members of the public on alleged violation of the Ordinance) in accordance with the internal guidelines on handling public enquiries and requests. Generally speaking, AFCD would respond to enquiries and requests made to AFCD via 1823 or email, and give a reply or preliminary reply within 10 calendar days. For cases relating to animal welfare, AFCD will investigate and take follow-up action as soon as practicable. Animal welfare cases involve various issues including condition of transportation, captive environment, nuisance barking, disputes with neighbours, discovery of injured or dead animals, suspected cases of poisoning animals as well as keeping animals at places not suitable for their living, etc. In handling various animal welfare cases, AFCD has different handling procedures and investigation methods depending on their nature, circumstances and information and evidence provided by the public. It will assess whether the cases involve cruelty to animals, and decide what follow-up actions should be taken in accordance with the relevant information and veterinary surgeons' professional judgement.

The Case

9. According to AFCD, the case was referred by 1823 on the afternoon of 23 October 2019 and the Department sent a veterinary surgeon to the Police Dog Unit Headquarters and Training Base to examine the police dog in question the following day. After the examination, the veterinary surgeon confirmed that the dog was in good health condition and physically normal with its heart and lungs functioning properly. On 25 October, AFCD gave a reply to the complainant via 1823, indicating that "deployment of police dogs is the operational arrangement made by the Police and AFCD believes that the Police has made reasonable judgement as to whether the police dog should be deployed to the scene and protective gear should be arranged. Should there be any enquiry about or complaint against the Police's operations or arrangements, (the complainant) could enquire of the Police about the matters."

Response from AFCD

10. AFCD said that cruelty to animals in the Ordinance includes any **unnecessary suffering** caused to any animal by **wantonly or unreasonably** doing or omitting to do any act. Police dogs are service dogs that have undergone stringent training, and they will be deployed to assist frontline police officers in law enforcement. While there may be emergencies in the working environment that may pose safety or health risks to the police dogs, as far as AFCD understood, the Police had not received any reports from the handlers about police dogs feeling unwell after participating in the Police's recent operations. AFCD pointed out that the incident had come to its attention before the complainant made this complaint. It was also aware of the news coverage, the videos uploaded to the internet by the media and the photographs shared on social media (i.e. the photographs in the attachment of the complainant's email). Based on the circumstances shown in the videos and photographs, AFCD did not see any evidence that sending the police dog to the scene was wanton or unreasonable. Nor did the police dog show any clinical symptoms of being unwell in the videos and photographs. Besides, AFCD had examined the police dog and found nothing abnormal. In view of all the information, AFCD considered there was no evidence showing that the deployment of the police dog was in violation of the Ordinance.

11. AFCD explained that it had followed up on the complainant's complaint in accordance with the internal guidelines in a timely manner, and conducted a thorough investigation which included examining the videos shared on the internet about this complaint and sending a veterinary surgeon to check the health condition of the police dog in question to ensure that it was fine. Nevertheless, AFCD admitted that its reply to the complainant on 25 October 2019 had failed to explain the definition of cruelty to animals under the Ordinance, and that there was no evidence to show that deployment of the police dog was in violation of the Ordinance. Nor had AFCD mentioned in the reply that its veterinary surgeon had examined the dog to confirm that it was fine. Admitting that the reply was inadequate and had led to unnecessary misunderstanding and disturbance, AFCD tendered an apology to the complainant.

12. AFCD pointed out that deployment of service dogs is a professional decision to be made by the departments concerned according to the duties of the dogs and actual circumstances. Therefore, AFCD is in no position to comment on the Police's arrangements or provide opinions. Nevertheless, AFCD has informed the Police that veterinary assistance from AFCD for the dogs could be sought where necessary.

Our Comments

13. As AFCD explained, it had examined the information gathered and found no evidence showing that the deployment of the police dog in question was wanton or unreasonable. Besides, AFCD's veterinary surgeon had examined the police dog and confirmed that it had no clinical symptoms of being unwell. Hence, when AFCD pointed out that there was no evidence showing that the deployment was in violation of the Ordinance, it was the Department's professional judgement made according to the circumstances of the case. AFCD did not simply accept whatever the Police had said. From an administrative perspective, we consider that AFCD had followed up on the complainant's report in a timely manner and given the complainant a reply within 10 calendar days in accordance with the internal guidelines.

14. Nevertheless, AFCD's reply on 25 October 2019 had not provided the details to the complainant, and the Department also admitted that it had failed to explain the definition of cruelty to animals under the Ordinance, its follow-up action and the results and judgement. In our view, AFCD's reply did give an impression that it simply accepted whatever the Police had said without taking any follow-up action. In this light, AFCD acknowledged the inadequacy of its reply and tendered an apology to the complainant.

15. We urge AFCD to learn from this case and in future explain clearly the follow-up actions taken and the investigation result when handling reports from members of the public so that misunderstanding can be avoided.

Conclusion

16. In view of the above, The Ombudsman considered this complaint **partially substantiated**.

AFCD's Comments

17. AFCD has no objections to the content and comments in this investigation report.

Concluding Remarks

18. We are pleased to note that AFCD has accepted our comments, admitted the inadequacy of its reply and apologised to the complainant. Moreover, AFCD has reminded its staff to explain clearly the details of the follow-up actions taken and investigation result to members of the public when handling and responding to their reports so as to avoid misunderstanding.

Office of The Ombudsman

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