

**IN THE MATTER OF**

A complaint under s 74 of The Private Security Personnel and Private Investigators Act 2010 against  
**AVISHEK MAHARAJ**

**HEARD** in person at Auckland on 8 August 2022

**DECISION**

[1] A complaint of misconduct was made against Avishek Maharaj alleging he had breached privacy and security requirements while working as a security technician at the University of Auckland.

[2] I referred the complaint to the Complaints, Investigation and Prosecution Unit (CIPU) for investigation. CIPU found that the following incidents had occurred:

- Mr Maharaj sent the complainant images of corpses from the University Medical School.
- Mr Maharaj sent the complainant the University of Auckland's Vice Chancellor's residential address and details of room lay out.
- Mr Maharaj took the complainant into secured areas of the University buildings after hours without prior approval which was contrary to the terms and conditions of his access card.
- Mr Maharaj sent the complainant photographs of security cameras, the security office and computer screen shots of work emails and meeting invitees.

[3] There were other aspects of the complaint that CIPU found had not been established. Those aspects of the complaint are dismissed.

[4] Mr Maharaj denies he sent the complaint pictures of a cadaver but other than that accepts the matters outlined above. He acknowledges his behaviour was unacceptable and amounts to unsatisfactory conduct but not necessarily misconduct. He says he is sorry for what he did but considers his actions should be considered in the context in which they occurred. The complainant was the only person to whom he disclosed sensitive security information and at the time they were in a close relationship. He wants to be able to keep his certificate so he can continue to work in security.

[5] The issues I therefore need to decide are:

- Did Mr Maharaj send a photograph of a cadaver to the complainant?
- Is Mr Maharaj guilty of misconduct or unsatisfactory conduct as a result of the established breaches of the privacy and security requirements relating to his work at the University of Auckland?
- If so, what is the appropriate penalty?

**Did Mr Maharaj send a photograph of a cadaver to the complainant?**

[6] The complainant says that Mr Maharaj sent her photographs of a cadaver in an unzipped body bag using a messaging function where the photograph is only viewable for a short time before being automatically deleted. She has provided copies of the messages

sent and received before and after the photographs. These clearly show that she received images that she found disturbing.

[7] Mr Maharaj says that as there are no copies of the photographs provided it cannot be proved he sent them. This submission however disregards the programme in which he sent the photographs. I do not accept his explanation that he is unfamiliar with the technology. Such an explanation is not credible from a security technician with the level of experience and seniority Mr Maharaj claims to have.

[8] I also do not accept Mr Maharaj's explanation that the only photos he sent in these messages was a plastic skeleton wearing a wig or Christmas hat. That image was more comical than disturbing. I further note that when interviewed by his employer at the time she records that Mr Maharaj accepted he had sent photographs of a cadaver from the medical school to the complainant.

[9] After considering all the evidence I conclude that Mr Maharaj took a photograph of at least one cadaver in a partly unzipped body bag while working as a security technician at the Medical School and sent a copy of the photograph to the complainant.

### **Is Mr Maharaj guilty of misconduct or unsatisfactory conduct**

[10] Unsatisfactory conduct is defined in the s 4 of the Act as:

- (a) Conduct that falls short of the standard that a reasonable member of the public is entitled to expect from a reasonably competent licensee or certificate holder; or
- (b) Conduct that is incompetent or negligent, or
- (c) Conduct that would reasonably be regarded by private security personnel...of good standing as being unacceptable.

[11] Mr Maharaj's actions were sufficiently serious for the University to ban him from working on any of the University sites. His employer also considered his actions to constitute such serious breaches of his employment conditions that they would be entitled to dismiss him. However rather than dismissing Mr Maharaj they accepted his voluntary stand down period and issued him with a first and final warning.

[12] Mr Maharaj's conduct fell short of the standards that a reasonable member of the public is entitled to expect from a reasonably competent certificate holder and therefore amounts to unsatisfactory conduct.

[13] Section 4 of the Act defines misconduct as being conduct by a certificate holder "that a reasonable person would consider to be disgraceful, wilful or reckless or conduct that contravenes the Act".

[14] Any of the actions outlined in paragraph [2] may not on their own amount to misconduct. However, in combination they demonstrate a concerning pattern of behaviour by Mr Maharaj of flouting privacy and security requirements of both his direct employer and that of the University where he was deployed. Both the university and Mr Maharaj's employer considered his action amounted to serious misconduct in an employment setting.

[15] I am therefore satisfied that a reasonable person would consider Mr Maharaj's conduct to be disgraceful wilful or reckless. I accordingly conclude that Mr Maharaj was also guilty of misconduct.

### **What is the appropriate penalty?**

[16] Misconduct is a discretionary ground for cancellation of a certificate. Section 81(1)(c) of the Act says that instead of cancellation I can make other orders including suspending a certificate, ordering the certificate holder to undertake further training, impose conditions on the certificate holder, reprimand the certificate holder or impose a fine of up to \$2,000.

[17] In determining the appropriate penalty, I need to consider both the gravity of the misconduct, the impact of any penalty and any other relevant factors in relation to Mr Maharaj's competency, experience and character.

[18] Mr Maharaj says he is very sorry for what he did. However, I have seen little genuine remorse for his actions. Throughout the process he has largely blamed the complainant for his breaches and justified his actions by saying she was barraging him with text messages while he was working and wanting to know what he was doing.

[19] Mr Maharaj has provided no evidence of a barrage of text messages. Even if the complainant was constantly texting him there are much better ways of dealing with personal messages during working hours than sending images and information that breached both the university and his employer's protocols and security.

[20] I accept that the complainant was the only person he sent the information to and she is the only person he took into the university buildings out of hours without the appropriate authority. At the time Mr Maharaj considered the complainant to be his girlfriend and trusted her not to share the information he sent. There is no evidence that the information was disseminated any wider other than in the context of this complaint and other associated complaints made by the complainant at the time.

[21] Mr Maharaj's employer advises that no other issues have arisen before or since the series of events outlined above. Mr Maharaj has in all other respects proved himself to be a responsible and competent security employee. They consider Mr Maharaj has learnt from his mistakes and is unlikely to act in a similar way in the future.

[22] I also accept that Mr Maharaj has already suffered financially as a result of his misconduct. He voluntarily stood down from his job around the time this complaint was filed. In addition, he was banned from working at the University and received a final warning from his employer.

[23] Had Mr Maharaj not already faced disciplinary action from his employer and the University I would have considered suspending Mr Maharaj's certificate. However, I accept that Mr Maharaj voluntarily stood down from his job at the time and he has learnt from his mistakes. He has worked in security for several years and suspending or cancelling his certificate would mean he is likely to lose his job.

[24] I therefore conclude that the appropriate penalty is a fine and a reprimand. In setting the amount of the fine I have considered the negative financial impact Mr Maharaj has

already faced as a result of his misconduct and the disciplinary action taken by his employer and the University.

### **Summary & Orders**

[25] Mr Maharaj is guilty of misconduct as a result of serious breaches of security and privacy protocols and requirements of the University and his employer. The penalty for Mr Maharaj's misconduct is a reprimand and a fine.

[26] I therefore order:

- a) Mr Maharaj is formerly reprimanded
- b) Mr Maharaj is fined \$600.00

**DATED** at Wellington this 18<sup>th</sup> day of August 2022



P A McConnell

**Private Security Personnel Licensing Authority**