



NIAGARA REGIONAL POLICE SERVICE

Police Services Board Report

CONFIDENTIAL AGENDA

Subject: Special Investigations Unit – Case Number 18-OFI-341– Incident of November 29, 2018

Report To: Chair and Members, Niagara Police Services Board

Report Date: 2022-11-23

Recommendation(s)

- 1. That the Niagara Police Services Board receives this report for information, and**
- 2. That the Niagara Police Services Board makes the report available to the public.**

Key Facts

- The purpose of this report is to advise the Board of the findings and any action taken or recommended by the Chief of Police following a notification and investigation of an incident by the Special Investigations Unit (SIU).
- Ontario Regulation 267/10, Section 11, under the Police Services Act requires that the Chief of Police initiate an investigation following a notification to the SIU.
- The purpose of the Chief's investigation is to review the policies of, or services provided by the police force and the conduct of its police officers.
- On March 28, 2019, the SIU notified the Service that their investigation revealed reasonable grounds to believe the Subject Officer (SO) had committed criminal offences and subsequently Criminal Code charges were laid by the SIU, which later were withdrawn by the Crown Attorney.
- The subsequent Section 11 investigation by the Professional Standards Unit determined there were several issues with respect to the conduct, policies or services provided by the Niagara Regional Police Service that resulted in a separate Chief's Complaint investigation under Part V of the Police Services Act.

Financial Considerations

There are no financial costs or implications associated to the recommendations.

Analysis

On Thursday November 29, 2018, members of the Service's Collision Reconstruction Unit attended the area of 200 Roland Road, Pelham to conduct a follow-up investigation regarding Incident #18-112140 which had initially occurred on November 11, 2018.

The nature of the investigation consisted of conducting measurements with the total station, which is surveying equipment used for investigations. The geographic nature of the area being investigated called for Roland Road to be closed between Effingham Street and Sulphur Springs Road. The accident scene was near a curve on a hill and any incoming traffic from either direction (Effingham Street to the west and Sulphur Springs Road to the east) posed a safety concern for the investigating officers.

Constable A.B. was assigned from 3 District (Welland) to man a barricade at Effingham Street and Roland Road and ensure its closure during the follow-up investigation by the Reconstruction Unit. The barricade was approximately 1.6 kilometers to the west of the scene being investigated.

At approximately 11:47 am, Constable A.B. advised the communicator via police radio that he had to leave his post to use the washroom. The communicator responded via police radio and advised Constable A.B. to wait until a unit was sent to relieve him of his duties. Constable A.B. proceeded to leave his post without waiting for another unit to relieve him.

Detective Sergeant C.D. became aware that the post at Effingham Street and Roland Road was not being secured as traffic had entered the reconstruction scene from the west. Detective Sergeant C.D. subsequently attended the area of Effingham Street and Roland Road to investigate.

At approximately 12:04 pm, Constable A.B. advised the communicator that he could now head back to the scene. The unit that was sent to provide relief was preempted by the communicator prior to their arrival at the barricade. Constable A.B. was marked as having returned to scene at 12:14 pm.

At approximately 12:16 pm, Sergeant C.D. advised the communicator that shots had been fired, he had been attacked by Constable A.B. and that Constable A.B. had been hit.

At 12:17 pm, an Armed/Barricade Person Incident (Inc. #18-117432) was generated upon receipt of information from a civilian witness who reported that they witnessed two officers fighting and one was shot.

Detective Constable E.F. responded to Effingham Road and Roland Road after hearing seven to nine gun shots in continuous succession. Detective Constable E.F. was the first officer on scene. Constable E.F. had conversation with Detective Sergeant C.D. and provided first aid to Constable A.B.

Constable A.B. was transported by ambulance to the St Catharines Hospital and ultimately transferred via air ambulance to Hamilton General Hospital.

Due to the discharge of a firearm by a Service member which caused serious injuries, the SIU was contacted and invoked their mandate.

The SIU responded to the scene on November 29, 2018. During the course of the investigation the SIU formally designated Detective Sergeant C.D. as a Subject Officer and 15 other officers as Witness Officers.

On March 28, 2019, the SIU notified the Service that their investigation had resulted in establishing reasonable grounds to believe Detective Sergeant C.D. had committed a criminal offence. The SIU charged Detective Sergeant C.D. with the following offences under the Criminal Code: one count of attempt murder, contrary to s. 239(1); one count of aggravated assault, contrary to s. 268(1); and one count of assault with a weapon, contrary to s. 267(a). Those charges were withdrawn on November 22, 2019.

A copy of the SIU report was NOT publicly posted on the SIU's website.

In accordance with Ontario Regulation 267/10 Section 11, the Service's Professional Standards Unit conducted an investigation and review of this incident that considered the following three areas:

1. The policies of the Police Service,
2. The services provided by the Police Service, and
3. The conduct of its police officers.

The Section 11 investigation encompassed a compliance review of applicable Provincial legislation that governs members of the Service, as well as General Orders, policies and procedures, and the conduct of the involved officers.

Where available, investigations include a review of communications recordings, Service occurrence reports, forensic evidence and reports, officer interviews conducted by the SIU and all duty book notes, SIU documentation including the Director's conclusion letter and investigative report, statements of civilian witnesses gathered and released by the SIU at the conclusion of their investigation upon the consent of the civilian witnesses, and any other information and evidence available on a case by case basis.

1. The Policies of the Niagara Regional Police Service

Professional Standards Unit investigators determined that the following General Orders had primary relevance in this matter, and they have been reviewed accordingly in the context of this incident.

1. General Order 079.09 – Special Investigations Unit
2. General Order 068.06 – Body Armour
3. General Order 033.10 – Communication Systems
4. General Order 183.08 – Portable/Mobile Radio Communications Equipment
5. General Order 053.21 – Use of Force
6. General Order 049.17 – Dress Code
7. General Order 224.04 – Workplace Violence
8. General Order 168.06 – Officer Note Taking
9. General Order 100.09 – Powers of Arrest

Upon review, it was determined that the direction and guidance provided by the relevant General Orders is sufficient in its governance for members of the Service and no issues were identified. However, there were a number of examples cited where Constable A.B. had not complied with General Orders.

2. Services Provided by the Niagara Regional Police Service

There were several issues identified relating to the services provided by the Niagara Regional Police Service during this incident, however, they were attributed specifically to Constable A.B.

3. Conduct of Niagara Regional Police Officers

There were several issues identified relating to the conduct of Constable A.B. during this incident. As a result, a separate Chief's Complaint Investigation was initiated. There were no conduct issues identified on the part of Detective Sergeant C.D. within the scope of the Section 11 investigation.

The Professional Standards Unit investigation and review of this incident was undertaken in compliance with Section 11 of Ontario Regulation 267/10 made under the Police Services Act. The relevant policies of the Police Service, the services provided, and the conduct of the involved Service members was the focus of this review and investigation.

In conclusion, there were issues identified as it pertained to services provided, the conduct of the involved Police Service members, or the existing General Orders governing these situations. These were related to the conduct of Constable A.B. which were addressed through a separate Chief's Complaint investigation. There were no issues identified on the part of Detective Sergeant C.D. in relation to this incident and related SIU investigation.

Alternatives Reviewed

- 1) To not receive the report.
- 2) To not make the report available to the public.

Subsection 11(4) of Ontario Regulation 267/10 made under the Police Services Act provides that, upon receiving this report, the Board may make it available to the public.

The Police Services Act provides that meetings of the Police Services Board shall be open to the public subject to exceptions that are set out in Subsection 35(4). The applicable exception to be considered in this case is whether or not *“the desirability of avoiding disclosure in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that proceedings be open to the public.”*

In considering whether or not to make this report available to the public, it is respectfully submitted that the Board consider the following factors:

1. There are no public security matters revealed in this report.
2. This report does not reveal any intimate financial or personal matters.

Relationship to Police Service/Board Strategic Priorities

Not applicable.

Relevant Policy Considerations

Not applicable.

Other Pertinent Reports

C.74.2020 – Legal Indemnification – SIU Case 18-OFI-341 – Incident of November 29, 2019

This report was prepared by Inspector Lynda Hughes, Professional Standards Unit and reviewed by Superintendent David Meade, Executive Services and recommended by Bill Fordy, Deputy Chief of Police, Support Services



Submitted by:

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Acting Chief of Police

Appendices

Not applicable.