



NIAGARA REGIONAL POLICE SERVICE

Police Services Board Report

CONFIDENTIAL AGENDA

Subject: Special Investigations Unit – Case Number 23-OCI-006 – Incident of December 4, 2022.

Report To: Chair and Members, Niagara Police Services Board

Report Date: 2023-11-24

Recommendation(s)

- 1. That the Niagara Police Services Board (Board) receive this report for information, and**
- 2. That the Niagara Police Services Board (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 268/10, Section 32 under the Police Services Act requires 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 May 5, 2023, the SIU notified the Service that their investigation had concluded and advised that "there is no basis for proceeding with criminal charges in this case against the officer".
- The subsequent Section 32 investigation by the Professional Standards Unit (PSU) determined there were no issues with respect to officer conduct, policies or services provided by the Niagara Regional Police Service (NRPS).

Financial Considerations

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

Analysis

On December 4, 2022, at approximately 10:00 p.m., officers responded to an address on Regional Road 65 in the Town of West Lincoln for a noise complaint/ disturbance.

The complainant, reported a male neighbor, known as MR, playing excessively loud music in his garage with the door open.

Constable AB and Constable CD arrived at the residence and could hear the loud music. MR was intoxicated, swore at the responding officers, and claimed they were trespassing on his property. The officers advised MR to turn the music down. He eventually turned the music down and closed the garage doors. The officers left the residence but parked up the street in anticipation of further complaints.

At 10:56 a.m., the complainant contacted police again and advised MR had turned the music up again. Constable AB and CD returned to the home of MR to find that he had blocked his driveway with his truck to prevent officers from attending. He continued to drink beer and told officers to leave.

Constable AB informed MR that he would be arrested for mischief if he didn't turn the music down. MR advised Constable AB he would turn the music up louder and Constable AB advised him he was under arrest. MR attempted to enter his home when Constable AB attempted to arrest him. MR began punching Constable AB as they entered the home and continued to resist.

Constable AB, with the assistance of Constable CD, was eventually able to handcuff MR.

MR was escorted to the marked police vehicle of Constable AB and taken to the Niagara Health System, St. Catharines, for treatment of a small cut on his left cheek. While enroute to the hospital, MR continually banged his head off the plexiglass of the police vehicle. Once at the hospital, MR shouted at hospital staff and was seen by a doctor. He made no complaint of injury and was transported to the police station. He was charged with mischief and failure to allow lawful enjoyment of property. He was driven home and released on a Form 10.

On December 29, 2022, MR contacted the SIU directly via telephone and reported that he had been seriously injured by officers on December 4, 2022. MR had attended a different hospital on December 5, 2022, where he was diagnosed with a fractured nose.

On December 30, 2022, the SIU notified the Niagara Regional Police Service that they would be conducting a preliminary investigation as a result of MR's call to them.

On January 9, 2023, the SIU invoked their mandate.

The SIU designated Constable AB as the Subject Official and Constable CD as a Witness Official.

On May 5, 2023, the SIU closed its investigation into this matter. In his Director's Report, SIU Director Mr. Joseph Martino wrote "It remains unclear when precisely the Complainant sustained his injuries. There is evidence that he repeatedly banged his head against the Plexiglas partition inside the cruiser following his arrest, which might well be responsible for the broken nose and/or concussion. Be that as it may, as there are no reasonable grounds to believe that the SO comported himself unlawfully in his dealings with the Complainant, there is no basis for proceeding with criminal charges in this case against the officer."

A copy of the SIU report was publicly posted on the SIU's website.

In accordance with Ontario Regulation 268/10, Section 32, the Service's PSU conducted an investigation and review of this incident which 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 32 investigation encompassed a compliance review of applicable Provincial legislation which 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 NRPS

PSU 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 079.10 – Special Investigations Unit
2. General Order 168.06 – Officer Note Taking
3. General Order 100.10 – Powers of Arrest
4. General Order 053.23 – Use of Force

Upon review, it was determined 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.

2. Services Provided by the NRPS

There were no issues identified relating to the services provided by the NRPS during this incident.

3. Conduct of NRPS Officers

There were no officer conduct issues identified during the SIU investigation or the PSU investigation and review of this incident with regard to compliance with general orders or legislation. On behalf of the SIU, Mr. Martino thanked the members of the police service for their cooperation during the investigation.

The PSU investigation and review of this incident was undertaken in compliance with Section 32 of Ontario Regulation 268/10 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 no issues identified as it pertains to services provided, the conduct of the involved police service members, or the existing general orders governing these situations.

Alternatives Reviewed

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

Subsection 34(1) of Ontario Regulation 268/10 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 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.

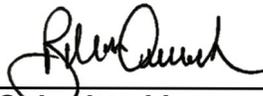
Relevant Policy Considerations

Not applicable.

Other Pertinent Reports

C8.3.2023.11.23 – Request for Legal Indemnification – SIU Case Number 23-OCI-006 – November 23, 2023.

This report was prepared by Inspector Lynda Hughes, Professional Standards Unit, reviewed by Superintendent Luigi Greco, Executive Services and recommended by Bill Fordy, Deputy Chief, Support Services.



Submitted by:

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Chief of Police

Appendices

Not applicable.