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CHIEF OF POLICE

REPORT
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For Information

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DATE: September 19, 2022

SUBJECT: **CLOSED SPECIAL INVESTIGATIONS UNIT FILES 22-OVI-033, 22-OCI-051, 22-OVI-073, AND 21-OCI-421.**

FROM: Nishan Duraiappah, Chief of Police

RECOMMENDATION

It is recommended that this document be received as information concerning Special Investigations Unit (S.I.U.) files 22-OVI-033, 22-OCI-051, 22-OVI-073, and 21-OCI-421.

REPORT HIGHLIGHTS

- Details describing the involvement of the S.O.'s and the S.I.U. complainants.
- Findings of the Special Investigations Unit.
- Conclusions concerning the services provided by the police service and the officer's compliance with policies and procedures.
- Subject Official is abbreviated S.O. and Witness Official is abbreviated W.O.

DISCUSSION

22-OVI-033 (Mr. B.P.)

Executive Summary:

On Friday February 4, 2022, Constable T. G. commenced a nightshift at 7:00 p.m. and was due to complete that shift on Saturday February 5th at 7:00 a.m.

At approximately 5:18 a.m., another member of 21 Division, D Platoon executed a traffic stop on Bovaird Drive East near Sunnyvale Gate, Brampton. The registered owner of that vehicle was on CPIC for firearms offences, entered by Toronto Police, which was announced to everyone on the 21 Division radio band, by Communications.



At that moment, Constable T. G. was in the area of Clark Boulevard and Torbram Road and for officer safety reasons, she began to make her way northward to assist with the above traffic stop. Constable R. S. was in close proximity and was following Constable T. G. northbound.

Northbound Torbram Road is a posted 60 km/h zone; this area is flat and straight, the roads were dry, the area is well illuminated by overhead streetlights, and the traffic was very light. While northbound, her speed hovered just over 100 km/h, reaching a top speed of 123 km/h, just north of Queen Street East.

Constable T. G. did not have either the roof lights or the siren of her cruiser activated.

At approximately 5:22 a.m., she was still proceeding northbound, now steadily at 120 km/h, she approached Williams Parkway. Also at that same intersection was Mr. B. P. He was operating his 2012 Honda Accord, four door black, southbound, slowing in the left turn lane intending to turn left onto eastbound Williams Parkway. Although he did make note of the oncoming cruiser, he began his left turn, believing he had enough time to complete the turn prior to her arrival. As the Honda Accord, entered her path, Constable T.G. attempted to take evasive action by reducing her speed, but violently collided with the Honda. The impact of the collision caused the Honda to roll over and land on its roof, on the north side of the intersection.

Constable R. S. was still immediately behind Constable T. G. and observed all of the above events unfold before him. He immediately brought his cruiser to a stop and checked on the status of both drivers. Two ambulances were dispatched as well as the services of the Brampton Fire Department.

Mr. B. P. complained of soreness to his chest and after he was extricated, he was subsequently transported to Sunnybrook Health Sciences Centre in Toronto, by ambulance. After x-rays were completed, it was confirmed that he had suffered a fractured sternum.

Constable T.G. was also transported to Sunnybrook Hospital after initial assessment at BCH. Constable T.G. suffered multiple fractures to her arms and multiple leg fractures.

The Special Investigations Unit was notified and Mr. James Troy was assigned as the lead investigator. Detective Sergeant Babensee and Detective Bassier of the Investigative Support Bureau were assigned to liaise with the Special Investigations Unit and conduct an administrative review.

Findings of the Special Investigations Unit:

On June 3, 2022 Special Investigations Unit Director, Mr. Joseph Martino, issued a concluding letter to Chief Nishan Duraiappah (Appendix I). In his letter Mr. Martino states,

"The file has been closed and no further action is contemplated. In my view, there were no reasonable grounds in the evidence to proceed with criminal charges against the official."

Furthermore, in his report to the Attorney General, the Director states;

“The offence that arises for consideration is dangerous driving causing bodily harm contrary to section 320.13(2) of the Criminal Code. What is required is a marked departure from the level of care that a reasonable person would have exercised in the circumstances. In the instant case, the issue is whether there was any neglect in the manner in which the SO operated the cruiser, sufficiently egregious to attract criminal sanction, that caused or contributed to the collision. In my view, there was not.

There are aspects of the SO’s conduct that are subject to legitimate scrutiny. Primary among those are her sustained speeds of twice the 60 km/h speed limit on Torbram Road without the use of her emergency lights or siren. It is difficult to understand the need for such speed. She and the WO were travelling to the area of Bovaird Street East and Sunnyvale Gate to assist another officer with a traffic stop as the vehicle that had been pulled over was of interest to the Major Crime Unit of the Toronto Police Service. The situation was not one of urgency and neither officer had been dispatched to assist; rather, that task had fallen to another officer. It is even more difficult to understand the need for such speed without the use of emergency lights and/or siren. The SO’s failure to activate her lights or siren needlessly deprived other traffic along her route, which, though minimal, was not non-existent, of the added notice that equipment would have provided of her vehicle’s speed. More to the point, it prevented the Complainant from identifying the officer’s vehicle as a police cruiser, which could well have averted the collision at the intersection. The cumulative impact of these indiscretions, in my view, render the SO’s driving dangerous. They fall short, however, of constituting a marked departure from a reasonable standard of care.

Given the heavy onus on persons making left turns to yield to oncoming traffic, I am satisfied that the officer was to a greater or lesser extent reasonably entitled to expect that the Complainant would not attempt his turn until some point after she had cleared the intersection. Weighed in the balance with these extenuating considerations, I am not reasonably satisfied that the SO’s dangerous driving transgressed the limits of care prescribed by the criminal law”

Conclusion:

As a result of the Special Investigations Unit investigation, the Director, Mr. Joseph Martino determined that although the S.O.’s operation of the police vehicle leading up to the intersection, i.e. speeding, could be justified, he questioned the S.O.’s failure to use the roof lights or siren to alert the other users of the roadway. Despite this, there were no grounds for proceeding with charges against the officer notwithstanding the injury the complainant sustained.

The Subject Official was determined to have been in breach of Peel Regional Police Policy I-A-701(F) “Operation of Police Vehicles. Although the officer’s speed was in excess of the posted limit, they did not have their emergency equipment activated at the time of the collision. Furthermore, the officer was not wearing their seatbelt. At the time of this report the officer has not returned to duty.

The Administrative Review has been forwarded to the Accident Review Committee for further discussion.

22-OCI-051 (Mr. W.P.)**Executive Summary:**

On February 15, 2022, officers were dispatched to 2420 Surveyor Road in Mississauga, for reports of a Domestic Disturbance at the Family Shelter.

Upon arrival, officers located the Complainant who was heavily intoxicated. Investigation revealed that the Complainant was wanted on several warrants with Barrie Police Service, Timmins Police Service and South Simcoe Police Service. When the officers moved to arrest the Complainant, he took a fighting stance and threatened the officers. The Complainant was grounded and a struggle ensued. During the struggle, the Complainant refused to provide his hands for handcuffing resulting in several knee strikes being delivered by the S.O.

Following the arrest, the male made no complaints of injuries and he was transported to 11 Division where he was processed on new charges of Causing a Disturbance and Assault with Intent to Resist Arrest.

On February 18, 2022, the Complainant contacted Peel Regional Police to advise that he sustained broken ribs during the arrest.

The Special Investigations Unit was notified and Mr. Bill Marshall was assigned as the lead investigator. Detective Sergeant Babensee and Detective Bassier of the Investigative Support Bureau were assigned to liaise with the Special Investigations Unit and conduct an administrative review.

Findings of the Special Investigations Unit:

On June 17, 2022, Special Investigations Unit Director, Mr. Joseph Martino, issued a concluding letter to Chief Nishan Duraiappah (Appendix I). In his letter Mr. Martino states,

"The file has been closed and no further action is contemplated. In my view, there were no reasonable grounds in the evidence to proceed with criminal charges against the official."

Furthermore, in his report to the Attorney General, the Director stated,

"I am also satisfied that the force used to arrest the Complainant, namely, a CEW discharge, takedown and two knee strikes, was legally justified. The CEW deployment, though it had no effect on the Complainant, would appear to have been a reasonable tactic at the time. In his words and gestures, the Complainant had given the officers cause to believe that he would physically contest his arrest. The parties were also beside a major road in Mississauga - Erin Mills Parkway. In the circumstances, there was a need to quickly neutralize the Complainant without risking a manual engagement that could spill over into traffic. The same could be said for the takedown performed by WO #1. With the Complainant on the ground, the officers could better expect to manage any continuing resistance on his part. Indeed, the Complainant put up a struggle on the ground and was eventually met

by two knee strikes by the SO. The strikes, successful in subduing the Complainant, amounted to a reasonable escalation of force in light of the difficulties the officers were having in wresting control of his arms.

In the result, while I accept that the Complainant's fractures are attributable to the SO's knee strikes, there are no reasonable grounds to believe that either officer comported himself other than lawfully in the altercation that marked the arrest. Consequently, there is no basis for proceeding with criminal charges in this case. The file is closed."

Conclusion:

As a result of the Special Investigations Unit investigation, the Director, Mr. Joseph Martino determined that there were no grounds for proceeding with charges against the officer notwithstanding the injury the Complainant sustained.

Furthermore, an in-depth analysis of all applicable Federal Legislation, Provincial Legislation, Peel Regional Police policies and procedures was conducted by members of the Investigative Support Bureau pursuant to Section 81, Community Safety and Policing Act, 2019. There were no identified issues as a result of this review.

22-OVI-073 (Mr. A.L.)

Executive Summary

On March 9, 2022, Central Robbery Unit (CRB) officers were conducting surveillance of the complainant in the area of Kennedy and Queen Street in Brampton. The Complainant was responsible for multiple armed robberies throughout Peel and neighbouring Regions.

Tactical Officers were also involved to assist with the arrest.

At 9:44 a.m. a stolen vehicle, operated by the Complainant was pinned against a building at which time the Complainant fled on foot.

At this time, the Complainant was clipped by a vehicle operated by a CRB officer causing him to stumble. The Complainant got up and began running again; however, he stumbled to the ground where he was arrested by Tactical officers.

The Complainant continued to struggle with the officers as they attempted to apply handcuffs and two CEWs were deployed.

The Complainant was transported to Brampton Civic Hospital where it was determined that he had a fracture to his right foot.

The incident and arrest was captured on CCTV.

The Special Investigations Unit was notified and Mr. Barry Millar was assigned as the lead investigator. Detective Sergeant Babensee and Detective Bassier of the Investigative Support Bureau were assigned to liaise with the Special Investigations Unit and conduct an administrative review.

Findings of the Special Investigations Unit:

On July 7, 2022, Special Investigations Unit Director, Mr. Joseph Martino, issued a concluding letter to Chief Nishan Duraiappah (Appendix I). In his letter Mr. Martino states,

"The file has been closed and no further action is contemplated. In my view, there were no reasonable grounds in the evidence to proceed with criminal charges against the official."

Furthermore, in his report to the Attorney General, the Director states,

"I am also satisfied that the force used by the SO was legally justified. While the use of a motor vehicle as an interdiction mechanism is inherently dangerous, I am unable to conclude it was an unreasonable maneuver in the circumstances. The Complainant was in full flight at the time seeking to avoid arrest - it was apparent that he had no intention of stopping and there was a real risk that he would make good his escape had not the SO intervened as he did. The balance of competing interests was also not such as to make the tactic prohibitive. The Complainant was being pursued for serious crimes of violence and the officers were entitled to adopt a more aggressive posture to ensure his capture in the interests of public safety. Finally, it is evident on the video footage that the SO approached the Complainant at moderate speeds and made only so much contact with him as was necessary to cause him to lose his balance.

Additional force was applied to the Complainant after he fell for a second time, including a kick by WO #1 and a CEW discharge by WO #2, but here too the evidence fails to reasonably make out a case for excessive force. The officers who dealt with the Complainant at this time described him as struggling, refusing to release his arms and attempting to stand up. The Complainant did not provide any countervailing evidence and the video footage, taken at a distance, was unhelpful with respect to the details of what was transpiring on the ground. On this record, I am unable to reasonably conclude that the force used by the officers was disproportionate to the nature and extent of the Complainant's reported resistance.

In the final analysis, though it remains unclear precisely when the Complainant's ankle was broken during his interaction with the police, I am satisfied on reasonable grounds that his injury is not attributable to unlawful conduct on the part of the involved officers. Accordingly, there is no basis for proceeding with criminal charges in this case. The file is closed."

Conclusion

As a result of the Special Investigations Unit investigation, the Director, Mr. Joseph Martino determined that there were no grounds for proceeding with charges against the officer notwithstanding the injury the complainant sustained.

Furthermore, an in-depth analysis of all applicable Federal Legislation, Provincial Legislation, Peel Regional Police policies and procedures was conducted by members of the Investigative Support Bureau pursuant to Section 81, Community Safety and Policing Act, 2019. There were no identified issues as a result of this review.

21-OCI-421 (Mr. S.M.)

Executive Summary

On Friday December 17, 2021, at 7:38 p.m., Constable Y. M., the Subject Official (S.O.) was working a Strategic Tactical Enforcement Policing (S.T.E.P.) duty. He was wearing full police attire and operating an unmarked police vehicle. At that time, he attended the Cooksville Go station located at 3210 Hurontario Street, Mississauga, in response to complaints of breaches of the L.L.A., T.P.A., and the C.D.S.A.

While there, he observed a group of three males loitering on the property. Just then, a fourth male approached the group and it appeared that a hand-to-hand drug transaction involving Mr. S. M. (the Complainant) occurred.

The S.O. drove up closer, parked his unmarked vehicle close to the group, exited, identified himself as a police officer and directed them not to move. The Complainant immediately fled on foot and the officer pursued him. After a short distance, the male was apprehended and taken to the ground, however, he actively resisted arrest and would not surrender his hands. During the scuffle, the male accessed a canister from his waistband and sprayed an unknown substance in the officers face. The officer believed it to be pepper spray and immediately began feeling its effects. Concerned that he would be incapacitated and possibly disarmed, he immediately began striking the male in the head with closed fists, perhaps five to 10 times, however, he continued to resist. The officer then deployed his CEW. This allowed him to gain control of the male and handcuff him. Within moments, uniformed officers attended and took custody of the Complainant

An ambulance attended the scene. While there, they assessed the male and assisted with decontaminating the officer. The Complainant mentioned he was experiencing pain to his face and head and was subsequently transported to Mississauga General Hospital. There, it was confirmed that the male sustained a fracture to his nose.

The Special Investigations Unit was notified and Mr. Rob Watters was assigned as the lead investigator. Detective Sergeant Babensee and Detective Bassier of the Investigative Support Bureau were assigned to liaise with the Special Investigations Unit and conduct an administrative review.

As a result of this incident the complainant was charged with the following offences:

- (1) Assault a Peace Officer, Section 270(1)(a) of the Criminal Code of Canada,
- (2) Unauthorized Possession of a Prohibited or Restricted Weapon, Section 91(2),
- (3) Possession of a Prohibited Device or Ammunition for a Dangerous Purpose, Section 88(1),
- (4) Possession of a Weapon/Device, Contrary to Order, Section 117.01(1), and

- (5) Fail to Comply with Release Order, Other than to Attend Court, Section 145(5)(a), 2 counts.

On that date, he was held for a Bail Hearing. He was remanded in custody and on March 18, 2022 (90 days later), he pled guilty to all of the above charges. The sentence was as follows:

- (i) He was given credit for 150 days of pre-sentence custody, but sentenced another 10 days for each charge, to be served concurrently, and
- (ii) Placed on probation for a period of 12 months.

Findings of the Special Investigations Unit:

On July 5, 2022 Special Investigations Unit Director, Mr. Joseph Martino, issued a concluding letter to Chief Nishan Duraiappah (Appendix I). In his letter Mr. Martino states,

"The file has been closed and no further action is contemplated. In my view, there were no reasonable grounds in the evidence to proceed with criminal charges against the official."

Furthermore, in his report to the Attorney General, the Director states;

"Pursuant to section 25(1) of the Criminal Code, police officers are immune from criminal liability for force used in the course of their duties provided such force was reasonably necessary in the execution of an act that they were required or authorized to do by law."

The evidence establishes that the SO used no more than reasonably necessary force in taking the Complainant into custody. The tackle from behind is understandable given the Complainant was running away from the officer and seemingly had no intention of stopping. Thereafter, the punches and CEW discharges, I am satisfied, were proportionate responses in the context of a physical altercation with a man who had sprayed the officer with pepper spray and was vigorously attempting to break free of the SO's hold. The officer's eyesight was deteriorating at the time, and it was imperative that he do what he could to quickly take the Complainant into custody."

Conclusion

As a result of the Special Investigations Unit investigation, the Director, Mr. Joseph Martino determined that the tactics and force used by the officer was legally justified, there were no grounds for proceeding with charges against the officer notwithstanding the injury the complainant sustained.

Furthermore, an in-depth analysis of all applicable Federal Legislation, Provincial Legislation, Peel Regional Police policies and procedures was conducted by members of the Investigative Support Bureau pursuant to pursuant to Section 81, Community Safety and Policing Act, 2019. There were no identified issues as a result of this review.

Approved for Submission:



Chief Nishan Duraiappah

For further information regarding this report, please contact Inspector Bill Ford at extension 6080 or via e-mail at william.ford@peelpolice.ca

Authored By: *Detective Sergeant Andy Babensee #1585*