



NIAGARA REGIONAL POLICE SERVICE

Police Services Board Report

CONFIDENTIAL AGENDA

Subject: Special Investigations Unit – Case Number 21-OFD-007 – Incident of January 5, 2021

Report To: Chair and Members, Niagara Police Services Board

Report Date: 2022-03-30

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 268/10 Section 32 made 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 December 22, 2021, the SIU notified the Niagara Regional Police Service (NRPS) that their investigation had concluded and advised that there were no grounds for criminal charges against any police officer.
- The subsequent Section 32 investigation by the Professional Standards Unit determined there were no issues with respect to officer conduct, policies or services provided by the NRPS.

Financial Considerations

There are no financial implications relating to the recommendations in this report.

Analysis

On Tuesday January 5, 2021, at approximately 1:33 pm, NRPS officers were dispatched to the area of Lundy's Lane and Depew Avenue in Niagara Falls regarding an impaired driver. The suspect vehicle had been involved in several driving complaints throughout

the day and was also the subject of an alert from the Hamilton Police as an impaired driver operating a stolen vehicle.

The initial responding officers located the vehicle in the area of 6812 Lundy's Lane in Niagara Falls. As officers approached the area, the vehicle fled from the scene at a high rate of speed travelling east on Lundy's Lane. A brief pursuit was initiated but was quickly terminated. Officers continued to follow the vehicle broadcasting its last known direction of travel.

Officers from the OPP later observed the suspect vehicle in the area of Mountain Road and engaged in a brief pursuit before aborting their pursuit of the vehicle.

The vehicle was later observed travelling north-bound on York Road in Niagara-on-the-Lake. Officers from the NRPS, OPP, and Niagara Parks Police made several unsuccessful attempts to stop the vehicle which included the use of a "Stop Stick", tire deflation device.

Officers continued attempts to contain the vehicle several times along the route, eventually succeeding in the area of the Niagara River Parkway and Line 4 after the suspect vehicle intentionally collided with several cruisers.

With the suspect vehicle effectively boxed-in, officers exited their cruisers and rushed towards the pickup truck. They yelled at the suspect to stop the truck and put his hands up. The suspect ignored those directions and continued to depress the accelerator of the truck spinning the truck's wheels creating thick plumes of black smoke. The front driver's door was shut and efforts to open it, including attempts to break the window, were unsuccessful.

At one point, officers deployed bursts of OC spray into the truck through the open driver side rear window.

Though bothered by the spray, the suspect did not surrender. He reached with his right arm towards the floor of the backseats and started to search through a duffle bag. The Subject Officer, Constable AB, was standing by the open driver side rear window with his pistol drawn and pointed at the suspect, told him to stop reaching into the bag. Concerned that the suspect was retrieving a firearm, Constable AB took aim at the suspect's exposed right shoulder and shot once. As the suspect continued to reach into the rear compartment and came up with his right hand with what Constable AB feared was a gun, Constable AB fired a second round which was aimed at the back of the driver's seat. The suspect fell back into the driver's seat following the second shot and became largely still.

Realizing that the suspect had been shot and was in need of medical attention, an officer climbed into the rear seats of the truck and attempted to extricate the suspect from the vehicle. With the help of NRPS ETU officers arriving on scene, the suspect was removed

from the truck and emergency medical care provided while waiting for paramedics to attend.

The suspect was transported to the hospital but could not be revived and was later pronounced deceased.

As a result of the suspect being fatally shot, the SIU was notified at 2:48 p.m., and invoked their mandate.

The SIU designated 30 members of the NRPS as Witness Officials, 2 Niagara Parks Police Special Constables, and 4 members of the OPP were also designated as Witness Officials.

The female passenger from the suspect vehicle was later charged with five criminal offences related to this incident. On February 4, 2021, the female passenger was convicted of Failing to Comply with an Undertaking, contrary to section 145(4)(a) CC and Obstruct Peace Officer, contrary to section 129(a) CC. The female accused received credit for 31 days of pre-sentence custody, a Suspended Sentence and was placed on probation for a period of 12 months.

On December 22, 2021, the Service received notification that the SIU concluded their investigation, and no further action was contemplated. In his closure letter, SIU Director Martino advised "there were no reasonable grounds in the evidence to proceed with criminal charges against the official".

A copy of the SIU report was publicly posted on the SIU's website at the following links:
https://www.siu.on.ca/en/directors_reports.php
https://www.siu.on.ca/fr/directors_reports.php.

In accordance with Ontario Regulation 268/10 Section 32, the Service's Professional Standards Unit 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, NRPS 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 also been reviewed accordingly in the context of this incident.

1. General Order 079.10 – Special Investigations Unit
2. General Order 053.22 – Use of Force
3. General Order 168.06 – Officer Notetaking
4. General Order 100.10 – Powers of Arrest
5. General Order 018.21 – Persons in Custody
6. General Order 042.11 – Suspect Apprehension Pursuits
7. General Order 095.10 – Major Incidents & Routine Criminal Investigations

Upon review, it was determined that the involved officers were fully compliant with the listed General Orders and no issues were identified.

2. Services Provided by the Niagara Regional Police Service

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

3. Conduct of Niagara Regional Police Officers

There were no officer conduct issues identified during the SIU investigation or the Professional Standards Unit 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 Service for their cooperation during the investigation.

Director Martino did raise several concerns related to:

- several involved officers who gathered together while off duty.
- criticism of officers completing their notes with CAD reports.
- a concern that officers provided the Niagara Police Association with a copy of their notes.

The Section 32 investigation of this incident related to these concerns did not identify any misconduct or breaches of legislation related to these criticisms that were raised by Director Martino.

On December 30, 2021, Inspector Luigi Greco of the Professional Standards Unit reviewed the concerns with the Executive Officer of the Special Investigations Unit.

As a result of this review, it was suggested that NRPS officers who are completing notes related to an SIU incident should note if they referenced any CAD reports while completing their notes.

The Professional Standards Unit will now directly provide Witness Official notes to their identified Legal Counsel to mitigate the SIU concern of the Niagara Police Association being used to facilitate the transfer of the notes to the Legal Counsel who are retained by the Association.

The Professional Standards Unit 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 regarding compliance with governing General Orders, the services provided or the conduct of the involved Police Service members that required corrective action, and no changes are required to existing General Orders governing these situations.

Alternatives Reviewed

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

Section 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 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.8.4.2021.11.25 – Request for Legal Indemnification – SIU Case 21-OFD-007 – Incident of January 5, 2021

C.8.6.2021.03.25 – Request for Legal Indemnification – SIU Case 21-OFD-007 – Incident of January 5, 2021

This report was prepared by Inspector Luigi Greco, 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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Chief of Police

Appendices

Not applicable