



PUBLIC REPORT OF THE

ACTING CHIEF CIVILIAN DIRECTOR

Regarding the injury to an adult male on
December 22, 2014, involving an officer
employed by the Vancouver Police
Department.

IIO 2014-000221

INTRODUCTION

The Independent Investigations Office (IIO) is responsible for conducting investigations into all officer-related incidents which result in death or “serious harm” (as defined in Part 11 of the Police Act) within the province of British Columbia. As the Acting Chief Civilian Director of the IIO I am required to review all investigations upon their conclusion, in order to determine whether I “consider that an officer may have committed an offence under any enactment, including an enactment of Canada or another province.” (See s.38.11 of the Police Act). If I conclude that an officer may have committed an offence, I am required to report the matter to Crown Counsel. If I do not make a report to Crown Counsel, I am permitted by s.38.121 of the Police Act to publicly report the reasoning underlying my decision.

In my public report, I may include a summary of circumstances that led to the IIO asserting jurisdiction; a description of the resources that the IIO deployed; a statement indicating that the IIO, after concluding the investigation, has reported the matter to Crown Counsel; or a summary of the results of the investigation if the matter has not been reported to Crown.

This is a public report related to an investigation into the serious injury of a man on December 22, 2014, in the city of Vancouver. The affected person suffered a traumatic dog bite by a Police Service Dog (PSD) under the control of Vancouver Police Department (VPD).

Pursuant to s.38.11 of the Police Act, RSBC 1996 Chapter 367, I have reviewed the concluded investigation. I do not consider that any officer may have committed an offence under any enactment and will not be making a report to Crown Counsel. In my public report, I am only permitted to disclose personal information about an officer, an affected person, a witness, or any other person who may have been involved if the public interest in disclosure outweighs the privacy interests of the person. Prior to disclosing any personal information, I am required, if practicable, to notify the person to whom the information relates, and further, to notify and consider any comments provided by the Information and Privacy Commissioner (s.38.121(5) of the Police Act). In this case, I have considered the advice provided by the Information and Privacy Commissioner. In this report, I will not be using the name of the affected person or of any other person involved in this matter.

NOTIFICATION AND JURISDICTION DECISION

On December 22, 2014 at 4:32 a.m. police were responding to a 911 call about a man looking in windows of vehicles around 34th Avenue. The 911 caller reported vandalized cars. The subject officer, and his Police Service Dog (PSD), responded to the scene. The subject officer warned the affected person not to flee or he would release the PSD.

The affected person fled the scene on his bicycle and the subject officer deployed the PSD. A chase ensued for about three to four blocks. In the pursuit, the PSD grabbed on to the right leg of the affected person. The PSD guarded the affected person until he was placed in handcuffs by the police.

The affected person suffered a fractured ankle with subsequent left Weber C fracture for which he was put in a back slab cast and was directed by medical personnel to bear no weight.

The IIO was notified and sustained jurisdiction as the affected person's injuries appeared to fall within the definition of "serious harm" as defined in the Police Act.

INVESTIGATIVE EVIDENCE CONSIDERED

Evidence examined includes radio communications, the 911 call, computer assisted dispatch records, photos and maps of the scene, forensic evidence, medical records related to the affected person, training records of the subject officer and statements by the affected person and the witness officer.

The subject officer declined to provide a statement as within his legal rights under the Charter.

GENERAL TIMELINE

- 4:32 a.m. 911 caller states a man riding a bike looking in windows of cars.
- 4:38 a.m. 911 caller reports seeing vandalized car at 34th Avenue.
- 4:53 a.m. Subject officer arrives on the scene and confronts affected person. The affected person flees and the PSD is deployed.
- 4:55 a.m. PSD bites the affected person.
- 4:57 a.m. Subject officer requests for backup to apprehend the affected person.

AFFECTED PERSON

The Affected Person gave a statement to IIO investigators while in hospital on December 22, 2014.

According to the affected person, he was riding his bike looking into vehicles. When he noticed the police in the area, he hid behind a parked vehicle.

The affected person said the subject officer stopped his vehicle and reversed slightly. He heard the officer yell, "Stop or I'll deploy the dog." The affected person immediately started riding eastbound and looked back to see a black German Shepherd police dog chasing him. He said that the dog caught up to him and nipped at his left leg so he kicked the dog in the head. The dog switched to his right leg and grabbed him around the lower shin area.

He described the dog as pulling on him and hanging off his leg and trying to get a good grip on him. He said it was gnawing on him and he was trying to shake it off but couldn't because he was really tired. He estimated that he rode his bike three to four blocks before he tired out and fell over to his right side, into a puddle of water and mud at the edge of a park.

The affected person did not believe his ankle fracture was the result of the fall, because he "didn't fall that hard." He said the dog gnawed on his ankle area until the handler arrived by foot and the officer then told him to put his hands above his head, and to relax and stop fighting.

WITNESS OFFICER

The witness officer provided a statement to IIO investigators on January 20, 2015. The witness officer advised that on December 22, 2014 he was working a shift that started at 0430 hours and was dressed in full uniform and driving a marked police vehicle. He heard a radio call that started as a car prowler, then turned into a call involving the dog handler.

The witness officer said he heard the PSD handler over the radio advising that he had the affected person in custody, and that he was waiting for help as soon as possible.

The witness officer said that when he arrived on the scene "...it was just the dog and (the subject officer), and he had control of his dog." The witness officer said that the affected person was on the ground, lying on his face, face down, with his arms out.

The witness officer said the PSD was "maybe" four feet away from the affected person. The witness officer handcuffed the affected person. The witness officer stated that the affected person was very co-operative.

The witness officer stated that there were no other officers at the scene when he arrived nor during the arrest and that he did not observe any interaction between the male and any other officers from the time that he arrived on scene until the point that the male was sent to the hospital with EHS.

The witness officer stated that he had no knowledge of any civilian witnesses; he did not see anyone else and no one approached him.

ISSUES

The general issue in any IIO investigation is whether a person suffered death or “serious harm” as a result of the actions of an officer, and if so, how and why. If I consider that an officer may have committed an offence, then I must forward a report to Crown Counsel. The legal issue to be considered in this case was whether any police officer used unnecessary force that caused the injury to the affected person or failed to protect him from harm.

ANALYSIS

I must consider whether the subject officer had any lawful authority to deploy his police dog to apprehend the affected person. The subject officer could *arrest* the affected person only if he had reasonable grounds to believe that he had committed an offence.

The first 911 call was responded to by the subject officer heading to the area and a second 911 call confirmed an offence had been committed. The description of a male on a bike was grounds for the subject officer to become suspicious at the sight of the affected person hiding behind a vehicle in the area where an offence had occurred. This suspicion would have been raised when the subject officer saw that the affected person had a bicycle.

Further, the affected person told the IIO investigators that the subject officer warned him that he [subject officer] would deploy a police dog if he fled. Notwithstanding the warning, the affected person did flee and by his actions raised the suspicion of the subject officer to reasonable grounds to believe that the affected person had committed an offence.

The subject officer’s actions would only constitute a criminal offence if he had negligently or maliciously allowed his PSD to continue to bite the affected person even after the subject officer had a reasonable belief that the affected person had the intention of complying with his lawful commands.

The affected person did not make any statements that would suggest that his treatment at the hands of the subject officer and his police dog was excessive or unmerited.

CONCLUSION AND DECISION

Based on all of the evidence collected during the course of this IIO investigation and the law as it applies, I do not consider that any police officer may have committed an offence under any enactment and therefore the matter will not be referred to Crown Counsel nor will the IIO take any further action in relation to this case.

Clinton J. Sadlemyer, QC
Acting Chief Civilian Director

Decision Written on August 25, 2015. Public Report Prepared for Release on August 27, 2015