**HAMILTON POLICE SERVICE**

**CONFIDENTIAL
INFORMATION REPORT**

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| **TO:** | Chair and MembersHamilton Police Services Board |
| **BOARD MEETING DATE:** | June 27, 2024 |
| **SUBJECT:** | Special Investigation Unit’s Probe into the Injury of D.M.SIU FILE: 24-OSA-058 |
| **REPORT NUMBER:** | 24-059 |
| **SUBMITTED BY:** **SIGNATURE:** | Frank Bergen, Chief of PoliceActing Chief Bergen's Signature |

**EXECUTIVE SUMMARY**

On February 4, 2024, Hamilton Police Service (HPS) officers were dispatched to attend a residence for a Person with a Weapon call for service. Information was provided to the officers that D.M. (Complainant) had attended a door within the premises and displayed a handgun. D.M. indicated that he was selling the handgun. HPS officers surrounded the premises and when D.M. exited the residence he was arrested. HPS officers did not locate a weapon upon D.M.’s person but he was in breach of court imposed orders. HPS officers transported D.M. to Central Police Station where he was lodged.

On February 8, 2024, Six Nations Police Service (SNPS) contacted the HPS to advise them that D.M. reported that he had been sexually assaulted by the Subject Officer (SO) during the search of his person while in HPS custody.

**INFORMATION**

Background

Provincial legislation requires that the Chief or designate shall cause an investigation to be conducted forthwith into any incident with respect to which the Special Investigations Unit (SIU) has been notified. The purpose of the investigation is to review the policies of, or services provided by the Police Service and the conduct of the police officers involved *(section 11(2) Regulation 267/10).* The Chief is mandated to report his findings and any action taken, or recommended to be taken, to the Board within 30 days after the SIU Director advises the Chief of Police that the results of the SIU investigation have been reported to the Attorney General. The Board may make the Chief’s report available to the public *(section 11(4) Regulation 267/10).*

On February 4, 2024, at approximately 5:46 pm, a caller contacted 911 to say that D.M. had shown up at the door to his residence and displayed a copper colored handgun that D.M. was trying to sell. D.M. did not live in the building but had a girlfriend who resided in another unit within that building.

HPS officers were advised by the HPS dispatcher that D.M. was flagged as violent and a female officer reported that she previously took D.M. into custody in the past and a conducted energy weapon (CEW) was required to gain control.

A HPS officer arrested D.M. and he was transported by the SO in a cruiser equipped with DEMS video.

D.M. was searched by the SO while in the Central Police custody area of Central Division which is also recorded.

On February 8, 2024, at 10:00 am, the HPS was contacted by the SNPS to say that D.M. reported that he was sexually assaulted on February 4, 2024, at 6:06 pm, by the SO during the search of his person at Central Police Station custody.

The SIU was notified, invoked their mandate and commenced an investigation.

**Conclusion**

The report prepared by the SIU Director Joseph Martino in relation to this incident is a public document and made available on the SIU’s Ontario Government website. In his report, Director Martino stated the following:

*“The evidence does not reasonably suggest that the Complainant was sexually assault in the course of the search. It is alleged that the officer abused his position for a sexual purpose by intentionally touching the Complainant’s penis and anus, over his clothing, during the search in the booking room. The SO acknowledges that he might have made contact with the Complainant’s anus during the pat-down search, but that any such contact was incidental to the search and not done with any sexual purpose. The video footage depicts the moment during which the SO slid his left hand front to back, between the Complainant’s legs and his buttocks. The contact was fleeting and is not inconsistent with what one would expect of a pat-down search in that area. On this record, I am unable to reasonably conclude that any contact the SO might have made with the Complainant’s penis or anus was something other than incidental to what was a legitimate law enforcement exercise. It was not, therefore, sexual in nature.*

*For the foregoing reasons, there is no basis for proceeding with criminal charges in this case. This file is closed.”*

A comprehensive review of the events and information gathered in relation to the complaint has determined that there were no breaches of Hamilton Police Service Policies and Procedures.

FB/W. Mason

c: Paul Hamilton, Deputy Chief - Support

 Will Mason, Superintendent – Professional Development Division

Marco Visentini, Legal Counsel