**HAMILTON POLICE SERVICE**

**CONFIDENTIAL
INFORMATION REPORT**

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| **TO:** | Chair and MembersHamilton Police Service Board |
| **BOARD MEETING DATE:** | February 20, 2025 |
| **SUBJECT:** | Special Investigation Unit’s Probe into the Injury of S.O.SIU File 24-OSA-231 |
| **REPORT NUMBER:** | 25-004 |
| **SUBMITTED BY:** **SIGNATURE:** | Frank Bergen, Chief of Police |

**EXECUTIVE SUMMARY**

On June 1, 2024, Hamilton Police were dispatched to 94 MacNab Street North, Hamilton, in relation to a weapons in progress call. Information was received that an individual involved in a bar fight had brandished a firearm. Officers located three individuals in a parking lot that matched the descriptions of the parties involved in the altercation. All parties fled, but were arrested after foot pursuits were undertaken. A loaded .45 caliber handgun was located where the three individuals had initially been seen. As well, drugs were located in the possession of two of the parties and additional drugs were located, apparently discarded, in the area of the foot pursuits.

One of the arrested individuals is S.O., the Complainant. He was transported to Division 10 and searched, which was captured on video. When later being interviewed, the Complainant alleged that the Subject Official grabbed his testicles.

The SIU was contacted and invoked their mandate.

**INFORMATION**

Background

Provincial legislation requires that the Chief or designate shall conduct an investigation promptly into any incident in which the Special Investigations Unit (SIU) has investigated a member of a police service. The purpose of the Chief’s investigation is to investigate the member’s conduct in relation to the incident, the policing provided by the member in relation to the incident, and the procedures established by the Chief of Police as they related to the incident (Section 81(4)). The Chief is mandated to make the report to the Board within 90 days after the SIU Director publishes a report in respect of the incident (if no charges are laid), or within 90 days after the disposition of the charges (if charges are laid) (Section 8(3) of Ontario Regulation 90/24). The Board shall publish the report on the internet within 30 days of receiving the report (section 8(5) O. Regulation 90/24).

On June 1, 2024, Hamilton police were dispatched to 94 MacNab Street North, Hamilton, in relation to a weapons in progress call. Information was received that an individual involved in a bar fight had brandished a firearm. He had two other males with him. Descriptions of the three individuals was obtained and their location, across the street from the bar, was updated. Officers arrived and located three individuals in a parking lot that matched the descriptions of the parties involved in the altercation. All parties fled, but were arrested after foot pursuits were undertaken. A loaded .45 caliber handgun was located where the three individuals had initially been seen. As well, drugs were located in the possession of two of the parties and additional drugs were located, apparently discarded, in the areas of the foot pursuits.

One of the arrested individuals is S.O., the Complainant. He was transported to Division 10 and searched, while on video. The Subject Official conducted a thorough search; it was not a strip search. When the Complainant was later being interviewed, he alleged that the Subject Official grabbed his testicles during the course of the earlier search.

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

Conclusion

The report prepared by the SIU Director Joseph Martino has not been made available as a public document. Per the SIU, “investigations of sexual assault allegations is always associated with a risk of further deterring what is an under-reported crime and undermining the heightened privacy interests of the involved parties, most emphatically, the complainants, the SIU Director has decided to withhold publication of the Director’s Report.” In his report, Director Martino stated the following:

“On June 1, 2024, the HPS notified the SIU of information in their possession in which it was reported that a male in their custody – the Complainant – had been sexually assaulted by a HPS officer. The SIU initiated an investigation naming the SO the subject official. The investigation is now concluded. On my assessment of the evidence, there are no reasonable grounds to believe that the SO committed a criminal offence in connection with the sexual assault complaint.

A *sexual assault* consists of an *assault* within any of its definitions in the *Criminal Code* that is sexual in nature and violates the sexual integrity of the victim: *R. v. Chase*, [1987] 2 SCR 293.

The evidence falls short of reasonably establishing that the Complainant was sexually assaulted by the SO during the search conducted by the officer. The SO denies any allegation that the search he conducted involved him putting his hand inside the Complainant’s underwear. WO #2, who was present at the time, indicates that the search was conducted professionally by the SO. The video footage does depict the SO, on two occasions, grabbing at the Complainant’s clothing over his crotch. Given that a quantity of drugs had already been seized from one of the Complainant’s pockets in a prior search, it made sense to want to ensure that there was nothing being concealed in the area of the Complainant’s genitalia. The video does not show the officer inserting a hand into the Complainant’s underwear. On this record, it appears that the SO had legitimate law enforcement reasons for the contact in question. As such, I am unable to reasonably conclude that he touched the Complainant in a sexual manner.

For the foregoing reasons, there is no basis for proceeding with criminal charges in this case. The 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. The Complainant, and his two friends, were lawfully arrested. The subsequent search was in keeping with both policy and common law. The actions and conduct of the Subject Official were reasonable and within the scope of policy.

FB/W. Mason

c: Paul Hamilton, Deputy Chief – Support

 Will Mason, Superintendent – Professional Development Division

Marco Visentini, Legal Counsel