**HAMILTON POLICE SERVICE**

**CONFIDENTIAL
INFORMATION REPORT**

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| **TO:** | Chair and MembersHamilton Police Service Board |
| **BOARD MEETING DATE:** | October 24, 2024 |
| **SUBJECT:** | Special Investigation Unit’s Probe into the Allegations of A.C.SIU FILE: 24-OSA-261/ HPS FILE: SIU2024-017 |
| **REPORT NUMBER:** | 24-098 |
| **SUBMITTED BY:** **SIGNATURE:** | Frank Bergen, Chief of PoliceActing Chief Bergen's Signature |

**EXECUTIVE SUMMARY**

On March 11, 2024, A.C. (the Complainant) alleged that a female Hamilton Police Service (HPS) officer grabbed his penis during a search when A.C. was arrested.

On June 18, 2024, the HPS received a Law Enforcement Complaints Agency (LECA) complaint that included that A.C. had his penis grabbed during a search conducted by a female HPS officer (SO). The SIU was contacted and invoked their mandate.

**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 March 11, 2024, A.C. was at his residence on Queen Street South in the City of Hamilton. The SO and an HPS Witness Officer (WO) arrived at A.C’s apartment building. The HPS officers had grounds to arrest A.C. for mischief and a breach of probation as a result of evidence gathered days prior.

The SO recognized A.C. and stopped him as he attempted to gain access to the stairwell that the HPS officers had exited. The SO arrested A.C. and searched his person. A.C. and was then escorted to the WO’s cruiser and transported to HPS Central Division. A.C. alleged that the SO unnecessarily grabbed his penis in the course of the search of his person that occurred in the corridor of the apartment building.

A.C. lodged a complaint with the LECA that was forwarded to the HPS for screening inquiry. The LECA terminated the complaint of A.C. because of the pending criminal charges and the SIU investigation.

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 act described by the Complainant, namely, a momentary grasp of his penis, can come within the realm of legitimate searches. Having been arrested on what appear lawful grounds, the officers were entitled to search the Complainant’s person pursuant to their common law authority of search incident to arrest. Searches over a person’s clothing, as occurred in this case, may result in contact with the person’s private parts to ensure that there is nothing in that area of an evidentiary nature or that could be used as a weapon.*

*The Complainant’s rendition of events, such as the manner in which he was touched, is also inconsistent in a number of ways.*

*The SO would have perhaps been better served to have had the WO perform the search - an officer of the same sex as the Complainant. That appears to be the common practice among police services. Be that as it may, the evidence in its totality in this case falls short of any reasonable suggestion that the Complainant was sexually assaulted by the SO. The more likely scenario, in my view, is that the contact between the two was an incidental part of a legitimate law enforcement exercise. As such, there is no basis for proceeding with criminal charges in this case. The file is closed.”*

A comprehensive review of the events and information was gathered and analyzed relation to Hamilton Police Service Policies and Procedures. HPS Policy and Procedure 7.15 Search of Persons, paragraph A.6 does state “When possible, all searches shall be conducted by members of the same gender.” The SO’s actions in this case are not so unreasonable that they would be characterized as a breach of HPS policy. It is also worthy to note that it is possible A.C. could also have made similar allegations against a member of the same gender.

FB/W. Mason

c: Paul Hamilton, Deputy Chief - Support

 Will Mason, Superintendent – Professional Development Division

Marco Visentini, Legal Counsel