

March 2, 2016

Devon Clunis
Chief of Police
Winnipeg Police Service
P.O. Box 1680
Winnipeg MB R3C 2Z7

Dear Sir:

Re: Notifications to the IIU

A recent matter of allegations of Criminal Code conduct on behalf of a police officer has caused me to examine the threshold determination employed by the Winnipeg Police Service in providing formal notifications to the Independent Investigation Unit.

I am concerned that there may be internal criminal investigations of WPS members that are not brought to the attention of the IIU, as required by law. In that regard, the IIU is forestalled from discharging its legislative mandate of providing oversight and, when appropriate, undertaking independent investigations into such matters.

On ^{17(1) 17(2)(b)} the IIU received a telephone notification, through Superintendent J. Szyszkowski, advising that ^{17(1) 17(2)(b)}

^{17(1) 17(2)(b)} I advised him that on the information provided, this was a discretionary matter and that the IIU would assume a review and monitor role in these circumstances at this time. The investigation would remain in the hands of the WPS.

A formal notification pursuant to Part VII of the PSA was prepared and forwarded to my attention that same day. In this formal notification, it was stated ^{17(1) 17(2)(b)}

^{17(1) 17(2)(b)}

I am very concerned over the timings of these forms of notifications to the IIU, specifically in relation to ongoing investigations conducted by the WPS Professional Standards Unit. More specifically, my focus is not on mandatory investigations such as death, serious injury or

prescribed offences but rather the larger grouping of matters falling within the scope of s. 73 through 75 of the PSA. I am reproducing those provisions for your review (emphasis added by me):

DIVISION 3

INVESTIGATIONS BY POLICE SERVICES INTO POLICE OFFICER CONDUCT

73(1) A police chief must, as soon as practicable, notify the independent investigation unit

(a) when the police service receives a formal complaint that a police officer has engaged in conduct that constitutes a contravention of the *Criminal Code* (Canada) or any another federal or provincial enactment, other than the provisions prescribed under clause 65(1)(c); or

(b) when the police service is conducting an investigation into the conduct of a police officer and there is evidence that the officer may have contravened the *Criminal Code* (Canada) or any another federal or provincial enactment, other than the provisions prescribed under clause 65(1)(c).

73(2) At the request of the civilian director, the police chief must give the civilian director information about the complaint or investigation and the status of the police service's investigation.

73(3) When an investigation into a matter referred to in subsection (1) has been completed, the police chief must provide the civilian director with the results of the investigation.

74 On request of the civilian director, the police chief of a police service must allow a civilian monitor or a member of the independent investigation unit to monitor the progress of an investigation by the police service into a matter referred to in subsection 73(1).

75(1) The independent investigation unit may assume conduct of an investigation into a matter referred to in subsection 73(1) if the civilian director considers it to be in the public interest to have the unit conduct the investigation.

75(2) The civilian director must notify the police chief of the police service if the independent investigation unit is assuming conduct of the investigation.

75(3) Upon receiving notice from the civilian director, the police chief must turn over conduct of the investigation to the independent investigation unit.

75(4) Division 2 applies, with necessary changes, to an investigation conducted by the independent investigation unit under this section.

I am puzzled by the timing of the notification in these circumstances, ^{17(1) 17(2)(b)}

17(1) 17(2)(b)

17(1) 17(2)(b)

Of greater concern is the implication that PSU has been involved in this investigation for an unknown period of time prior to the notification to the IIU. ^{17(1) 17(2)(b)}

17(1) 17(2)(b)

Whatever period of time PSU was involved in this investigation, it significantly exceeds what could be characterized "as soon as practicable" as set out in the PSA.

Notifying the IIU after a PSU investigation has determined there are sufficient grounds to arrest and charge a police officer with a Criminal Code or other statutory offence effectively renders the IIU's ability to exercise its legislative mandate to monitor and provide oversight to this process a nullity. The investigation has been completed before the IIU has been provided a single fact to consider.

Furthermore, it renders s. 75(1) a meaningless and powerless mechanism in light of the decision already made by the police service. Once again, the investigation has been substantially completed and a formal charge laid before the civilian director has considered whether the public interest requires independent investigation.

It would appear that the decision to notify the IIU is directly connected to the decision to arrest and charge the officer after a substantial portion of the investigation was undertaken.

This model of notifications being made on completion of an internal investigation is more troubling in those situations where investigations into alleged criminal or related conduct has been initiated by PSU and closed or concluded without charges or consequences arising. A notification will never be made and the IIU will never know of the existence of the complaint or investigation, thereby denying this office any opportunity to provide oversight or permitting the civilian director to exercise his legislated mandate to determine whether the public interest requires an independent investigation by the IIU.

This cannot and should not represent the interpretation to be prescribed for the notification process under the PSA.

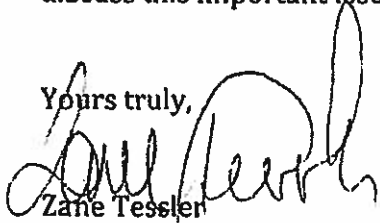
In my opinion, the legislative scheme created by the PSA is clear – the IIU is to be notified at the earliest opportunity when a complaint is received or investigation into alleged criminal conduct is initiated and not at the conclusion of the police services' internal processes. In accordance with the PSA, the Winnipeg Police Service, through its Chief or designate, is required to report all such matters as soon as practicable. The IIU has expected notifications of any Criminal Code or other statutory investigations undertaken since it became operational in June 2015.

This information is critical for the IIU to assess and determine which matters, if any, require oversight or independent investigation. Delaying the notification process beyond the stated deadline of "as soon as practicable" is counter intuitive, counter-productive and contrary to the legislative scheme.

It would be very helpful if the service would prepare and provide a list of all criminal or statutory investigations undertaken by the Professional Standards Unit since June 2015 and the status of all open matters at this time to my attention as soon as possible.

This matter needs an immediate and clear resolution. I want to meet at the earliest opportunity to discuss this important issue in detail.

Yours truly,

A handwritten signature in black ink, appearing to read 'Zane Tessler', written over the typed name.

Zane Tessler
Civilian Director

cc: Deputy Chief D. Smyth

IIU.

(1) 17(2)(e)

From: 17(1) 17(2)(e) @iiumanitoba.ca>
Sent: Wednesday, March 02, 2016 11:50 AM
To: Clunis, Devon
Cc: Smyth, Danny; Tessler, Zane
Subject: Notifications to the IIU (Sent on Behalf of Zane Tessler)
Attachments: WPS Notifications to IIU 2016-03-02.pdf

Please find attached a letter from Mr. Zane Tessler with respect to the above-captioned. The original letter will be forwarded via regular mail.

7(1) 17(2)(e)

Manager Strategic Policy & Coordination
 Independent Investigation Unit of Manitoba
 T. 204.948 17(1) 17(2)(e)

Website: IIUManitoba.ca

16-03-03
 - DANNY HAS SPOKON WITH ZANE
 - WILL FOLLOW UP WITH A LETTER