



REPORT TO THE POLICE SERVICE BOARD

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Date of Report: 9/17/2024

Type of Report: Public

Title: Report on SIU Case 24-OCI-099

Recommendation

That the Board receives this report as it relates to SIU Case 24-OCI-099.

Background

On March 2nd, 2024, at approximately 2:58 p.m., DRPS officers responded to a 911 call near Bayly St W and Harwood Ave S in Ajax. The information received stated a male had assaulted a customer at a restaurant and was spitting on other customers. The complainant left the restaurant and was located by the Subject Official (SO#1) in the parking lot.

The complainant aggressively approached SO#1, with his hands in his pockets, and ignored SO#1's verbal directions to stay back and remove his hands from his pockets. SO#1 retreated backwards in an attempt to stay at a safe distance from the complainant and continued to give him verbal commands. The complainant ignored SO#1's directions, and SO#1 pushed him back to create space between them. The subject stumbled backwards from the push, fell, and hit his head against the pavement.

SO#1 observed the complainant required medical attention and called for an ambulance to attend. SO#1 assisted the complainant until the paramedics arrived and took him to the hospital.

The hospital reported the subject had been diagnosed with a brain bleed.

Investigation

SIU Director Martino's decision, dated June 26th, 2024, summarized the investigation and result below, Director Martino reported the following:

"The complainant was seriously injured just prior to his arrest by a DRPS officer on March 2, 2024. The SIU was notified of the incident and initiated an investigation naming SO#1 the subject official. The investigation is now concluded. On my assessment of the evidence, there are no reasonable grounds to believe that SO#1 committed a criminal offence in connection with the complainant's injury."

"Section 34 of the Criminal Code provides that conduct that would otherwise constitute an offence is legally justified if it was intended to deter a reasonably apprehended

assault, actual or threatened, and was itself reasonable. The reasonableness of the conduct is to be assessed in light of all the relevant circumstances, including with respect to such considerations as the nature of the force or threat; the extent to which the use of force was imminent and whether there were other means available to respond to the potential use of force; whether any party to the incident used or threatened to use a weapon; and, the nature and proportionality of the person's response to the use or threat of force.

SO#1 was lawfully placed throughout the series of events culminating in the complainant's injury. Having been dispatched to the scene of a violent disturbance, the officer was within his rights in approaching the complainant to investigate his role in the matter."

Professional Standards Unit – Section 32 Investigation

The Professional Standards Unit conducted an investigation pursuant to Ontario Regulation 268/10. The investigation reviewed the following applicable DRPS Directives and Policies;

Authority	Number or Section	Description	Compliance		Requires Amendment	
			Yes	No	Yes	No
Directive	AO-09-010	DRPS Code of Professional Conduct	X			X
Directive	LT-05-002	Police Use of Force	X			X
Directive	AO-05-001	Special Investigations Unit	X			X
Directive	LE-12-001	Arrest and Warrant Applied For	X			X

The results of the Professional Standards Unit investigation are as follows:

Conduct: No conduct issues were identified.

Policies: All policies were adhered to.

Service: No service issues were identified.

Conclusion

SIU Director Martino has concluded, *"I am satisfied that SO#1 acted to defend himself from a reasonably apprehended assault when he pushed the complainant backward. That is what he indicated to the SIU and there is no reason to disbelieve him. The complainant had continued his advance on the officer despite being told to stop and had encroached on the officer's personal space when SO#1 reacted. In the circumstances, SO#1 had cause to fear that he was at risk of imminent attack when he forced the complainant back.*

I am also satisfied that the force used by SO#1 – a push to the torso – constituted reasonable force in self-defence. The force was at the very low end of the range of options available to the officer, who did not resort to weapons or strikes of any kind. It also occurred after efforts to de-escalate – including requests by SO#1 that the complainant stop and show his hands, and a partial retreat by the officer - failed to halt the complainant’s advance. Given the complainant’s reported violence, SO#1 had reason to fear that he was on the verge of being attacked by the complainant, whether with or without weapons, and the force he used to defend himself was clearly a proportionate response in the circumstances.

In the result, while I accept that the complainant’s injury was the unfortunate result of the force brought to bear by SO#1, I am not persuaded that it is attributable to any unlawful conduct on the part of the officer. As such, there is no basis for proceeding with criminal charges in this case. The file is closed.”

No further action is required.

Report Approval Details

Document Title:	Report on SIU Investigation File 24-OCI-099.docx
Attachments:	- DR-24-099-Durham-CI.pdf
Final Approval Date:	Aug 6, 2024

This report and all of its attachments were approved and signed as outlined below:

Chris Kirkpatrick

A handwritten signature in black ink, appearing to read "Peter Moreira", with a stylized flourish at the end.

Peter MOREIRA