



PUBLIC REPORT OF THE  
CHIEF CIVILIAN DIRECTOR

Regarding the July 5, 2013 serious injury of  
an adult male involving the Vancouver Police  
Department

IIO 2013-000069

## **INTRODUCTION**

The Independent Investigations Office (IIO) is responsible for conducting investigations into all officer-related incidents which result in death or “serious harm” (as defined in Part 11 of the *Police Act*) within the province of British Columbia. As the Chief Civilian Director of the IIO (CCD), I am required to review all investigations upon their conclusion, in order to determine whether I “consider that an officer may have committed an offence under any enactment, including an enactment of Canada or another province.” (See s.38.11 of the *Police Act*). If I conclude that an officer may have committed an offence, I am required to report the matter to Crown Counsel. If I do not make a report to Crown Counsel, I am permitted by s.38.121 of the *Police Act* to publicly report the reasoning underlying my decision.

In my public report, I may include a summary of circumstances that led to the IIO asserting jurisdiction; a description of the resources that the IIO deployed; a statement indicating that the IIO, after concluding the investigation, has reported the matter to Crown Counsel; or a summary of the results of the investigation if the matter has not been reported to Crown Counsel.

This is a public report related to the investigation into the serious harm of an adult male that occurred on July 5, 2013, in Vancouver. The affected person sustained serious harm in conjunction with an interaction with the Vancouver Police Department (VPD).

Pursuant to s.38.11 of the *Police Act*, RSBC 1996 Chapter 367, I have reviewed the concluded investigation. I do not consider that any officer may have committed an offence under any enactment and will not be making a report to Crown Counsel.

In my public report, I am only permitted to disclose personal information about an officer, an affected person, a witness, or any other person who may have been involved if the public interest in disclosure outweighs the privacy interests of the person. Prior to disclosing any personal information, I am required, if practicable, to notify the person to whom the information relates, and further, notify and consider any comments provided by the Information and Privacy Commissioner (s.38.121(5) of the *Police Act*).

In this case, I have considered the advice provided by the Information and Privacy Commissioner. I will not be disclosing names of any persons involved.

The affected person was 30 years old at the time of his injury.

## **NOTIFICATION AND JURISDICTION DECISION**

On July 5, 2013, the VPD received a call from an individual who indicated that the affected person was armed with pepper spray and had made threats to her, at a storage facility. The VPD responded to the storage facility and located the affected person. While taking him into custody, a police service dog (PSD) was deployed and the affected person sustained bite injuries to his leg, which required medical treatment. The IIO was not initially notified of the incident by the VPD. Instead, the IIO received notification from the Office of the Police Complaint Commissioner on October 31, 2013 based on the fact that a police report indicated that the affected person required surgery in order to treat his injuries. The IIO asserted jurisdiction as the affected person may have suffered serious harm as the result of the deployment of a VPD police service dog.

## **INVESTIGATIVE EVIDENCE CONSIDERED**

IIO investigators interviewed two witness officers and reviewed a written report submitted by the Subject Officer shortly after the incident. Police radio transmissions, an ambulance report and video evidence from the storage facility were also reviewed.

### **General Timeline**

The following sequence was established by reviewing radio transmissions, police data and information provided by witness officers:

- 1:25 AM: 911 call received from the complainant.
- 1:28 AM: First officers arrive at the storage facility.
- 1:35 AM: The Subject Officer and his PSD arrive at the storage facility.
- 1:37 AM: Witness Officer 2 reports seeing a male, later identified as the affected person.

### **Video Evidence**

Surveillance video from the storage facility included two cameras, each with partial views of the incident. Footage from both cameras was reviewed and a timeline of the affected person's interaction with police was established.

The first camera had a view of the area outside the door where the incident occurred. The door itself was just out of view.

- 1:44:27 AM: Witness Officer 1 enters the view of the camera walking towards the door to the storage area. The officer approaches the keypad beside the door to the storage area. As he does so, the Subject Officer and his PSD enter the area.
- 1:44:33 AM: Witness Officer 1 steps to the right, out of view of the camera, in the area of the door.
- 1:44:36 AM: Witness Officer 1 partially re-enters the view of the camera and is standing at the keypad.
- 1:44:42 AM: Witness Officer 1 steps back and raises his arms in a stance that appears to be consistent with having drawn his firearm. He walks backwards several steps, while the Subject Officer and his PSD move toward the door.
- 1:44:50 AM: Witness Officer 1 moves to his left and raises his firearm, pointing it in the direction of the door. The PSD appears to be barking, straining against his leash to move towards the door.
- 1:44:53 AM: The Subject Officer and his PSD move towards the door.

- 1:44:55 AM: The Subject Officer and his PSD move out of the view of the camera, appearing to enter the storage area.
- 1:45:05 AM: The PSD drags the affected person into the parking lot. The affected person is lying prone on the ground.
- 1:45:15 AM: The Subject Officer pulls the PSD away from the affected person.
- 1:45:25 AM: Witness Officer 1 moves in to handcuff the affected person.
- 1:45:57 AM: Witness Officer 2 enters the view of the camera and walks over to the affected person and the officer who handcuffed him.

The second camera was located inside the facility and had a view of the door where the incident occurred.

- 1:43:55 AM: The affected person opens the door and exits the storage area.
- 1:44:01 AM: The affected person re-enters the storage area and runs further into the storage area, out of view of the camera, holding a bag in his left hand.
- 1:44:39 AM: The affected person approaches the door and looks out the window. He is wearing a purse-like bag and is carrying a walkie-talkie in his right hand, but is no longer holding the bag that he previously had in his left hand.
- 01:44:49 AM: The door opens. It is not clear whether the door is being pushed open by the affected person or pulled open from the outside.
- 01:44:51 AM: The affected person takes a step backward and pauses for approximately three seconds. The affected person then steps further backward, and as he is doing so, the PSD and the Subject Officer enter the storage locker.
- 1:44:58 AM: The affected person appears to fall to the ground. The affected person lands just out of the view of the camera.
- 1:45:00 AM: The PSD is seen dragging the affected person toward the door of the storage area by the affected person's lower left leg.
- 1:45:08 AM: The affected person has been dragged out of the storage area and is lying prone on the ground as the door closes.

Another camera in the facility showed the affected person apparently talking on the walkie-talkie at 1:42 AM.

## **AFFECTED PERSON**

According to VPD reports, the affected person gave an innocent explanation for his presence in the storage locker building, but those reports did not contain his version of the arrest.

IIO investigators made numerous unsuccessful attempts to locate the affected person, without success. Given the inability to locate the affected person, it was not possible to obtain a statement from him, nor was it possible to obtain consent for the release of his medical records.

## **WITNESS OFFICERS**

Witness Officers were interviewed by IIO investigators. According to Witness Officer 1, he and Witness Officer 2 were responding to a 911 call from the complainant, who had reported that the affected person had chased her with a can of bear spray at a storage facility.

Witness Officer 1 stated that they arrived at the location about three minutes after receiving the call, and he dropped Witness Officer 2 off at the north side of the facility and continued to the west entrance. Witness Officer 1 stated that he heard Witness Officer 2 yell, "Vancouver Police, stop right there!" and he and the Subject Officer ran toward her location. Witness Officer 2 then told them that the affected person had come to the door, looked out, saw her, and ran back inside.

Witness Officer 1 stated that he approached the door and stood at the keypad beside it, when the door opened slightly and he saw the affected person through a glass panel in the door. He stated that he saw something in the affected person's hands, which he thought might have been a walkie-talkie. Witness Officer 1 drew his gun and told the affected person to stay there. It appeared to him that the affected person started to back up into the building.

Witness Officer 1 stated that the Subject Officer followed the affected person into the building, and then pulled the affected person out of the building, with the PSD attached to the affected person's left leg. Shortly after pulling the affected person out, the Subject Officer released the PSD off of the affected person and Witness Officer 1 handcuffed him.

Witness Officer 1 stated that the PSD went in after the affected person, bit him and pulled him out of the building. Witness Officer 1 stated that the subject officer gave a release command at some point, but he did not recall exactly when that was. Witness Officer 1 did not recall whether the PSD released right away.

According to Witness Officer 2, when she and Witness Officer 1 arrived, she held the north side of the facility, while Witness Officer 1 met with the complainant. While Witness Officer 1 was speaking with the complainant, Witness Officer 2 stated that she saw the affected person poke his head out of a doorway, then exit the building with a walkie-talkie in his hand. Witness Officer 2 broadcasted that he had come out, drew her gun and gave the command "Stop, police!"

Witness Officer 2 stated that the affected person went back inside the building. Witness Officer 2 saw the Subject Officer and the PSD go into the building, but then lost sight of them and could not see them inside the building.

Witness Officer 2 estimated that she was standing about 15 metres from the door when the incident occurred, and she could see the door of the storage unit and the backs of the other officers. She heard Witness Officer 1 giving commands but could not clearly make out what he was saying. Witness Officer 2 did not recall what, if anything, she heard the Subject Officer say.

## **SUBJECT OFFICER**

The Subject Officer declined to make a voluntary statement, but requested that his duty-to-account report be reviewed by IIO investigators and used as his voluntary statement. The report was prepared on the same day as the incident.

The Subject Officer's report states that upon arrival, he spoke with the complainant and formed the opinion that the affected person was arrestable for assault with a weapon and possibly for break and enter. The Subject Officer removed his PSD from his vehicle, intending to search for the affected person and arrest him. The Subject Officer heard Witness Officer 2 state over the radio that a man (the affected person) was opening a door, and heard her yell, "Vancouver police". The Subject Officer then heard Witness Officer 2 say over the radio that the man went back into the building.

The Subject Officer approached the door where the affected person had last been seen. The affected person came to the door and Witness Officer 1 yelled at him to stop and open the door. Witness Officer 1 then opened the door, and the Subject Officer could see the affected person standing inside.

The Subject Officer suggested that if the affected person disappeared back into the building, police would be at a tactical disadvantage. He yelled at the affected person multiple times to stop and lay down on the ground, but the affected person was non-compliant. The Subject Officer gave his PSD the command to apprehend the affected person. The PSD made contact with the affected person's left leg. The Subject Officer had his PSD pull the affected person outside the door, which the Subject Officer described as an "open safe area". Once the Subject Officer felt that the affected person was compliant, he gave his PSD the command to release him.

## **PATIENT CARE REPORT**

A Patient Care Report was obtained from the BC Ambulance Service. The report described a four to five centimetre laceration to the soft tissue of the front of the leg and puncture wounds to the calf. The report attributed the injury to a dog bite. According to police reports, hospital personnel stated that the affected person would require surgery to repair the damage to his leg.

## **ISSUE**

The general issue in any IIO investigation is whether a person suffered serious harm or death as a result of the actions of an officer and, if so, how and why. If I consider an officer may have committed an offence, I must forward a report to Crown Counsel. There are a number of legal issues to be considered to determine whether a report to Crown Counsel must be made.

Pursuant to the *Criminal Code*, police officers are permitted to use reasonable force against members of the public. Relevant *Criminal Code* provisions state that:

- A police officer acting as required or authorized by law, “is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose” (section 25(1)).
- Any police officer who uses force “is criminally responsible for any excess thereof according to the nature and quality of the act that constitutes the excess.” (Section 26).

## ANALYSIS

In this case, the issue is whether the Subject Officer’s deployment of the PSD was reasonable and appropriate given the totality of the circumstances. To constitute criminal assault by a police officer in the course of his duties, it would have to be established that in the context of the totality of the circumstances known to the officer, the force used was disproportionate or unnecessary. The intentional application of force to another person, without the consent of that person, may constitute an assault under the *Criminal Code*. A peace officer acting within the course of his duties, however, is granted authority under the *Criminal Code* to apply force which is reasonable and necessary in the circumstances.

When the Subject Officer attended, he received information from outside sources that the affected person was armed with a weapon, threatened the complainant with it, and had a history of violence. Seeing a walkie-talkie in the affected person’s possession would have given him reason to fear that the affected person had an accomplice. In addition, the affected person disobeyed police commands to surrender himself to police custody, even at gunpoint.

Witness Officer 2 was the first officer to see the affected person. She stated that he came out of a door to the facility with a walkie-talkie in his hand, at which time she broadcasted to other officers that she could see him. She then drew her firearm, pointed it at the affected person and commanded him to stop. Witness Officer 2 stated that the affected person retreated back into the building. This assertion is strengthened by video evidence, which shows a six second interval during which the affected person exits the building and immediately runs back inside while in the possession of a walkie-talkie.

Witness Officer 1 stated that he approached the door that the affected person had entered, and observed the affected person through a window, with something in his hands. Witness Officer 1 then drew his firearm, backed up and commanded the affected person to show his hands and exit the building. The affected person did not exit, but instead stepped backwards further into the building. Witness Officer 1’s account of these events is also corroborated by video evidence.

In his report, the Subject Officer indicated that he did not know if the affected person was in possession of a weapon, but he knew the affected person had a walkie-talkie in his possession. He yelled at the affected person multiple times to stop and lay down on the ground. The Subject Officer’s report states that the affected person did not comply; therefore he commanded the PSD to apprehend him. The Subject Officer’s report states that the PSD bit the affected person on his left leg, dragged him outside the building to a safe area, and then released him upon command. These events are also corroborated by video evidence.

The officers believed that a sense of urgency to apprehend the affected person existed. Their belief was based on the possibility that he may have been armed with bear spray, that they would have been at a tactical disadvantage had the affected person retreated into the building, and by the fact that they observed a walkie-talkie in his possession; therefore they did not know whether he had any accomplices inside.

Considering all of these factors, along with the affected person's refusal to comply with verbal commands to surrender, the Subject Officer would not have had many options in taking the affected person into custody. If the officers had opted to physically grapple with the affected person, they could have been at risk for incapacitation by pepper spray and the situation could have even escalated into a deadly force scenario.

The Subject Officer's actions would only constitute a criminal offence if he had negligently or maliciously allowed his PSD to continue to bite the affected person even after the Subject Officer had a reasonable belief that the affected person had the intention of complying with his lawful commands. Frame-by-frame observation of the security video suggests that the affected person dropped towards the ground a fraction of a second before the Subject Officer deployed the PSD. As such, it does not appear likely that the Subject Officer even had the opportunity to observe this action and appropriately react by stopping the intended PSD deployment. Although the dog left injuries, the force applied did not exceed the risks of the situation as the police officer reasonably perceived them.

The video evidence shows an interval of approximately ten seconds during which the PSD engages the affected person, drags him out of the building and releases its bite. A 10 second deployment of the PSD in this case does not appear to be unreasonable or excessive.

The Subject Officer had reason to believe the affected person posed a risk to officers attempting to assist him. As such, his decision to take the affected person into custody by deploying the PSD cannot be concluded to be unreasonable.

## **DECISION**

Since there is no reason to believe the Subject Officer may have committed any offence in this case, the IIO file will not be referred to Crown Counsel for consideration of possible charges.

I will discuss the facts of this notification with VPD command staff in order to reduce the risk of future untimely notifications.

Prepared for release 29th day of April, 2014 by

Richard A. Rosenthal  
Chief Civilian Director  
Independent Investigations Office of BC