

FINAL REPORT: IIU concludes investigation into police officer conduct following fatal pedestrian/vehicle collision in Winnipeg

On October 19, 2017, at 1:10 p.m., the Independent Investigation Unit (IIU) was notified by the Winnipeg Police Service (WPS) of concerns respecting the conduct of two WPS officers during the investigation of a fatal pedestrian/motor vehicle collision that occurred the evening of October 10, 2017 near the intersection of Main Street and Sutherland Avenue in Winnipeg. According to this notification, it was alleged that a breathalyzer technician refused direction from his supervisor to administer a breath test on the driver of the motor vehicle, thereby resulting in an unnecessary delay in the test being conducted. It was further alleged that a member of the WPS traffic unit disobeyed an order to secure the driver's motor vehicle for the purposes of obtaining a search warrant and instead attempted to perform a data download of the vehicle's airbag control module prior to obtaining the warrant.

As this notification involved allegations of breaches of a prescribed offence of obstruction of justice under IIU Regulation 100/2015, IIU assumed responsibility for this investigation in accordance with section 66(4) of *The Police Services Act* (PSA). The IIU civilian director designated the breathalyzer technician as subject officer 1 (SO1) and the WPS traffic unit member as subject officer 2 (SO2). Six members of WPS were designated as witness officers (WO1 - 6).

As outlined under the PSA, a subject officer cannot be compelled to provide his notes to IIU investigators or to attend an interview with them. In this matter, both SO1 and SO2 attended IIU and were interviewed by investigators.

IIU investigators also received and reviewed a file package from WPS containing narratives, notes and memoranda relative to these allegations.

The following facts have been determined:

On October 10, 2017 at approximately 8:05 p.m., an off-duty WPS constable was involved in a fatal motor vehicle collision with a pedestrian on Main Street near Sutherland Avenue in Winnipeg. Subsequent investigation by the IIU, with assistance from specialized units within WPS, resulted in this officer being charged with a number of criminal offences.

Breathalyzer Technician:

A briefing meeting was conducted on October 10 at 10:10 p.m. with a number of members the investigative team assembled to investigate this incident. Present at the briefing were SO1, SO2, WO1, WO2, WO3 and WO4.

WO1, a sergeant with the WPS Traffic Section, assigned various duties to subordinates and, in particular, chose SO1 to conduct a breathalyzer test on the driver, who was currently in custody at WPS headquarters (HQ). At the briefing, SO1 stated he was uncomfortable doing the test. Various participants at this meeting recounted SO1 providing a number of reasons for his discomfort, as follows.

WO1 stated that SO1 said he was uncomfortable doing the test as he was concerned about the amount of pressure he would be under if charges resulted and he had to go to court. WO1 stated he lost confidence in SO1's abilities and chose to call in another breathalyzer technician, as opposed to ordering the constable to do it. WO1 clearly stated he did not order SO1 to perform the breath test that night.

WO2 and WO3 stated that SO1, when assigned responsibility for the breathalyzer test, told WO1 he had reservations about doing it because he felt the test should be administered by someone of a higher rank than the driver. WO2 and WO3 also said that SO1 stated he would perform the test if he was ordered to do so by the sergeant (WO1), but the sergeant did not do that, choosing instead to call on another breathalyzer technician.

WO4 provided a different accounting of the exchange at the briefing, saying that SO1 expressed concerns about being unable to properly articulate himself in court if the matter went to trial. WO4 recalled SO1 repeatedly saying he was uncomfortable doing the breathalyzer test on the driver, but would perform it if ordered by WO1. WO1 did not order SO1 to do so, instead calling in another officer to perform the test.

SO1 attended the IIU offices and provided a statement, under charge and caution, on the allegation against him. He denied refusing to do the breathalyzer test on the driver, stating he had only expressed his reservations about doing it. These concerns included his lack of experience in performing breathalyzer tests, the significance of the investigation, and his fear of being a weak link in the investigative process. WO1 responded to SO1's concerns by calling in another officer to do the breathalyzer test.

Traffic Unit Member:

On October 10th, 2017 at approximately 9:15 p.m., WO5, a sergeant with WPS homicide unit, was assigned overall charge of the investigation into the fatal pedestrian/motor vehicle collision. He attended WPS HQ and met with WO1 and WO6 (a sergeant in charge of WPS forensic identification unit) to discuss the investigation. He instructed WO6 to "deploy the necessary resources to both the collision scene and arrest scene" and, in particular to "seize the ...vehicle, tow it to HQ and obtain a search warrant to search it." The following morning, WO5 was advised by WO6 that the vehicle was towed to HQ and secured pending a search warrant. However, WO6 informed WO5 that SO2 (the traffic unit member) had attempted to download data from the vehicle despite being informed that a search warrant was being obtained. It appeared that SO2

disagreed with the direction from WO5 (homicide sergeant) as he believed this was a traffic division investigation.

WO5 stated he had directed WO6 to secure the vehicle pending a search warrant being obtained. It was his understanding that WO6 had relayed that direction to SO2 at the scene, but the direction was ignored. WO5 said he had no direct contact with SO2.

WO1 stated he was unaware that WO5 issued any order to secure the vehicle for a search warrant, and he did not relay anything similar to the officer. WO1 further stated that any download of the vehicle done by SO2 that night would have been done as part of standard investigative procedure in the Traffic Section, and that a search warrant to do so was unnecessary in the circumstances.

WO6 was interviewed and acknowledged receiving direction from WO5 that the vehicle was to be secured and a search warrant obtained before any actions were taken with it. WO6 then travelled to the location where the vehicle was situated to find SO2 with the car. WO6 explained to SO2 that the vehicle was not to be touched as there was a search warrant forthcoming, at which point SO2 stated he had already downloaded data from the airbag control module. WO6 stated SO2 did not do anything with the vehicle following his direction that it was not to be touched.

SO2 attended the IIU offices for an interview. He denied disobeying an order not to download crash data from the car, stating he had been unaware of any such order that night. SO2 stated he had been instructed by WO1, during a briefing at WPS HQ, to proceed with his part of the investigation in accordance with established unit procedures. He believed that downloading the airbag control module without a search warrant was lawful when the suspect vehicle had remained in police custody following the arrest of an accused person.

Conclusion:

Following a review of this thorough and complete investigation, I am not satisfied that the actions of either SO1 or SO2 were done wilfully or with intent to frustrate, interfere or obstruct the ongoing investigation into the fatal pedestrian/motor vehicle collision that occurred the evening of October 10.

I am satisfied that SO2 was not aware of the specific direction given by WO5 to not touch the vehicle, until he had already downloaded data from it. I am satisfied that his actions to download data from the vehicle was in accord with standard traffic unit procedures for an investigation of this type.

In relation to SO1, while I am not satisfied that his actions were in any way criminal or criminally motivated, I am satisfied that there are sufficient grounds to justify WPS conducting its own internal investigation into his conduct on this evening. Issues such as competency and training skill sets should be part of this internal investigation.

In any event, in light of these conclusions, these investigations are complete and IIU will close its file.

I have directed that the investigative file be forwarded to Manitoba Prosecution Service to be incorporated into the prosecution materials regarding the circumstances of the fatal pedestrian/motor vehicle collision of October 10, 2017.

This report will be released publicly once the prosecution of the fatal pedestrian/motor vehicle collision has been completed.

Final report prepared by:

Zane Tessler, civilian director
Independent Investigation Unit
December 18, 2017

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