

Guidelines and Directives 010

**Notifications of Misconduct from
Special Investigations Unit**

Effective Date: April 1, 2024

Preamble

Pursuant to the Law Enforcement Complaints Agency (LECA) *Rules of Procedure*, the Complaints Director (Complaints Director) may issue guidelines at any time as the Complaints Director deems necessary to carry out their functions under the Act, or in regard to LECA's practices and procedures. Where any guideline conflicts with the Rules or the Act/Regulation, the Rules and the Act/Regulation shall apply.

Purpose of Guideline

- The *Community Safety and Policing Act* (CSPA) 2019, S.O. 2019, c. 1, Sched. 1 and the *Special Investigations Unit Act* (SIU Act) 2019, S.O. 2019, c. 1, Sched. 5 create a framework whereby the Ministry of the Solicitor General (Minister), police services boards, Special Investigations Unit (SIU), the Inspector General of Policing (IG), Chiefs of Police and the Ontario Provincial Police Commissioner (Commissioner) are obligated to notify the Complaints Director of potential misconduct.
- Under subsection 35.1 of the SIU Act, if during an investigation the SIU Director becomes aware of a complaint or issue with respect to the conduct of a person against whom a complaint may be brought under Part X of the CSPA, and that the conduct may constitute misconduct as defined in the CSPA, they shall notify the Complaints Director.
- This Guideline provides guidance on when and how the SIU should notify the Complaints Director, and what details to provide to assist the Complaints Director in determining what is in the public interest, including an investigation by LECA, a notification under the CSPA, a systemic review, or a Notice of Inquiry and Examination under LECA Rules of Procedure,

e-Notification

1. All notifications of potential misconduct should be provided to the Complaints Director through e-Notification, available online.
2. The e-Notification should provide adequate information to the Complaints Director to allow him to determine whether it would be in the public interest to initiate an investigation. This information includes, but is not limited to, the nature of misconduct, time, date and location of the incident, the identity of the officer or the special constable subject of the notification, and the affected person.
3. The SIU should respond to Complaints Director's inquiries or provide any additional information required, to assist the Complaints Director in determining whether it is in the public interest to initiate an investigation or take any other action regarding a notification.

Types of conduct that may be reported:

4. Notifications shall be provided to the Complaints Director in accordance with subsection 35.1 of the SIU Act.
5. The SIU Director is only responsible for notifying the Complaints Director of potential misconduct that comes to their attention during an SIU investigation. The SIU is not responsible for notifying the Complaints Director if potential misconduct is identified outside of an SIU investigation, that is, when the SIU has decided not to invoke its jurisdiction.
6. The SIU should ONLY notify the Complaints Director of misconduct by individuals who fall under the jurisdiction of LECA, including sworn police officers, special constables of Niagara Parks Commission and the Peace Officers of the Legislative Protective Service.
7. The SIU shall not notify the Complaints Director of potential misconduct by an officer or special constable whom the SIU Director knows has been retired, terminated, or resigned from the police service.
8. The SIU shall not notify the Complaints Director of any potential misconduct that took place prior to April 1, 2024 as those incidents would fall outside the framework of the CSPA.

9. The SIU should not notify the Complaints Director of internal employment-related grievances or complaints made by members of the same service against members of the same service unless they directly involve a member of the public.
10. The SIU shall not notify LECA of any deficiencies in the training or the broader policies or procedures of a police service.
11. The SIU is not required to notify the Complaints Director of violations of the *Charter of Rights and Freedom* or the *Human Rights Code* when they do not involve any misconduct and do not directly affect a member of the public.
12. The SIU is not required to notify the Complaints Director of administrative failures, management, or operational errors that may not rise to the level of misconduct or do not directly involve a member of the public.
13. Where the subject matter of a notification is already the subject of an ongoing public complaint or investigation, the Complaints Director will consider the public complainant's rights under the complaints process. Such that, the notification will not supersede or negate the complaint.
14. The SIU is not required to notify the Complaints Director of potential misconduct by a police officer if the SIU Director is aware there is an active public complaint investigation, or a public complaint has been made to the Complaints Director about the same incident and alleging the very same misconduct.
15. If SIU receives a complaint from a member of the public about a potential misconduct by a police officer or special constable, and the incident does not fall within the SIU jurisdiction to investigate, the SIU should forward that complaint to LECA, inform the person who made the complaint that the complaint has been forwarded, and provide the person with information about the role of the Complaints Director in accordance with section 155 of the CSPA.

Timing of Notification

16. The SIU should notify the Complaints Director of potential misconduct after completion or termination of an SIU Investigation.
17. The notification can be further delayed in the following circumstances at the discretion of the SIU Director:

- a. Notification may interfere with a parallel ongoing criminal investigation or proceeding.
 - b. Notification may interfere with an immediate or ongoing law enforcement response.
 - c. There is an imminent risk to the safety of the public or a member of the police service which would require an immediate a response.
18. As criminal proceedings and investigations have primacy over other proceedings, and in light of the risk that a misconduct investigation may interfere with and/or be delayed by a criminal proceeding/investigation, the SIU may delay providing notification to the Complaints Director, when charges have been laid and until the completion of the related criminal proceedings.

Access to Records

19. In accordance with subsection 35.1(2) of the SIU Act, after the completion of an SIU Investigation and on the request of the Complaints Director, the SIU may make the SIU files available to the LECA, unless the Complaints Director would not be entitled to obtain or have access to such record under the CSPA.