[redacted]

Law Enforcement Complaints Agency Ontario

DISCLAIMER: In accordance with the *Community Safety and Policing Act* and the *Freedom of Information and Protection of Privacy Act*, the summary below has been de-identified to remove the personal information of individuals, including public complainants and persons who were the subject of the investigation.

DE-IDENTIFIED SUMMARY UNDER SECTION 167(2) OF THE CSPA

Original Police Service: Date of Complaint: 10/21/2024

Type of Investigation:

Referred to Same Service: ◉ Referred to Other Service: ○ Retained by LECA: ○

Service Investigations Referred to:

De-identified Summary of Complaint

On Thursday September 19th, 2024, at 1352 hours, [redacted] Police Service received a call to attend [redacted] regarding a male passed out behind the wheel of a vehicle which was completely damaged.

[redacted] Police officers attended the location and located the vehicle parked crooked in the middle of the lot with the hood up, front bumper detached on the ground, and the front windshield shattered. Inside the vehicle, police observed a lone male to be passed out seated in the driver's seat. In the lap of the male was a burnt pipe and a torch-style lighter. The vehicle was not running.

At 1358 hours, officers woke the male and advised him that he was being detained for an investigation regarding operation while impaired. The male identified himself as the registered owner of the vehicle. The complainant was patted down for weapons by police and was lodged in the rear of her police cruiser, then being read a caution.

At 1404 hours, officers observed the involved vehicle as described above. The respondent officer then attended the complainant's location and spoke with him briefly through the window of the cruiser, inquiring that he knew why he was being detained, to which he did.

Given the totality of the evidence: third party witness concerned that the male may be impaired, the complainant found being passed out behind the wheel with a burnt pipe and torch lighter in his lap, the vehicle appearing as though it has been involved in a recent collision, the vehicle likely having been driven to the location recently due to it being parked in the middle of the parking lot in a frequented public location, the male appearing lethargic and his eyes appearing slow to respond, the respondent officer formed the opinion that the complainant was impaired by drug.

As a result, at 1408 hours, the officer advised the complainant that he was now under arrest for operation while impaired.

At 1408 hours, 1409 hours, and 1410 hours, respectively, the respondent officer read the complainant his right to counsel, caution, and the drug recognition evaluation demand. The officer then completed a search of the complainant's person, as no male officer was on scene. This searched revealed no belongings. The complainant was then transferred into the rear of the respondent officers police cruiser. The keys to the complainant's vehicle were located in the ignition.

At 1420 hours, the complainant was transported to the [redacted] Police Service. Transport arrived at 1429 hours.

The complainant was subsequently paraded before a [redacted] Police Service Staff Sergeant and was booked into custody. The complainant was then given the opportunity to speak to his lawyer.

The complainant then completed the drug recognition expert evaluation while in custody and passed the exam.

As a result of the exam, at 1621 hours, the respondent officer released the complainant from custody, unconditionally. All property was returned to the complainant, and he was subsequently walked out of the secure area to the lobby area of [redacted] Police Service. At that time, the Records Clerk at the front desk provided the complainant with the vehicle release form for his vehicle.

The complainant alleges that the respondent officer from [redacted] Police Service made an unlawful arrest, was negligent in not conducting a fulsome and thorough investigation and took inappropriate enforcement action. The complainant further alleges that the respondent officer damaged the vehicle during a search.

Unsubstantiated Code of Conduct Allegations

Allegation #1

YOU ARE ALLEGED TO HAVE COMMITTED MISCONDUCT IN THAT, AT THE TIME OF THE ARREST, YOU KNEW OR REASONABLLY OUGHT TO HAVE KNOWN THAT THE ARREST WAS UNLAWFUL, contrary to Section 7 (1) of the Schedule Code of Conduct of Ontario Regulation 407/23 and therefore, contrary to Section 195 (a) of the Community Safety Policing Act, R.S.O. 2019, as amended.

Allegation #2

YOU ARE ALLEGED TO HAVE COMMITTED MISCONDUCT IN THAT, YOU CONDUCTED YOURSELF IN A MANNER THAT UNDERMINED, OR WAS LIKELY TO UNDERMINE, PUBLIC TRUST IN POLICING, contrary to Section 10 of the Schedule Code of Conduct of Ontario Regulation 407/23 and therefore, contrary to Section 195 (a) of the Community Safety Policing Act, R.S.O. 2019, as amended.

Allegation #3

YOU ARE ALLEGED TO HAVE COMMITTED MISCONDUCT IN THAT, BY ACT OR OMISSION, YOU FAILED TO PERFORM YOUR DUTIES APPROPRIATELY WITHOUT LAWFUL EXCUSE, THAT YOU KNEW, OR REASONABLY OUGHT TO HAVE KNOWN WOULD AMOUNT TO FAILURE TO PERFORM YOUR DUTIES APPROPRIATELY, contrary to Section 19 of the Schedule Code of Conduct of Ontario Regulation 407/23 and therefore, contrary to Section 195 (a) of the Community Safety Policing Act, R.S.O. 2019, as amended.

Decision and Reasons

Allegation #1

YOU ARE ALLEGED TO HAVE COMMITTED MISCONDUCT IN THAT, AT THE TIME OF THE ARREST, YOU KNEW OR REASONABLLY OUGHT TO HAVE KNOWN THAT THE ARREST WAS UNLAWFUL, contrary to Section 7 (1) of the Schedule Code of Conduct of Ontario Regulation 407/23 and therefore, contrary to Section 195 (a) of the Community Safety Policing Act, R.S.O. 2019, as amended.

UNSUBSTANTIATED

- A citizen of [redacted] called in a suspicious damaged vehicle parked in a park parking lot with a male passed out in the driver seat.
- Police arrived and observed a heavily damaged vehicle which appeared to have possibly been involved in a collision.
- Police approached the vehicle and observed CW1 passed out in an awkward position with his head and neck bent way back and his mouth open.
- Officers located a used drug pipe and torch lighter in the lap of the male in plain view.
- Upon waking, CW1 appeared lethargic and had slow-reacting eyes both of which are indicative of impairment of drugs.
- The key to the vehicle was in the ignition of the vehicle and CW1 was located in the driver seat by officers.
- Following a brief investigative detention, officer DAVIS formed reasonable and probable grounds for the offence of impaired operation.

Allegation #2

YOU ARE ALLEGED TO HAVE COMMITTED MISCONDUCT IN THAT, YOU CONDUCTED YOURSELF IN A MANNER THAT UNDERMINED, OR WAS LIKELY TO UNDERMINE, PUBLIC TRUST IN POLICING, contrary to Section 10 of the Schedule Code of Conduct of Ontario Regulation 407/23 and therefore, contrary to Section 195 (a) of the Community Safety Policing Act, R.S.O. 2019, as amended.

UNSUBSTANTIATED

- CW1 alleges that officers damaged the vehicle during the search.
- Officers found the vehicle in a state that was observed to be in bad condition.
- The exterior of the vehicle was heavily damaged, and the interior of the vehicle was described by officers as “complete chaos”.
- A photograph taken of the steering column to show the key was in the ignition showed that the interior of the vehicle contained missing pieces of the steering column.
- When officer NORRIS opened the door to detain CW1, dash camera footage shows that the interior of the door panel immediately fell off the door to the ground.
- The vehicle was in rough shape when found by the officers and both officers indicated in their statements that they did not pry off any panels or compartments as part of their search incident to arrest.
- No damage was reported by any of the officers other than the existing damages they observed during the interaction. There has been no evidence provided to PSB to suggest that the officers damaged the vehicle during their search.

Allegation #3

YOU ARE ALLEGED TO HAVE COMMITTED MISCONDUCT IN THAT, BY ACT OR OMISSION, YOU FAILED TO PERFORM YOUR DUTIES APPROPRIATELY WITHOUT LAWFUL EXCUSE, THAT YOU KNEW, OR REASONABLY OUGHT TO HAVE KNOWN WOULD AMOUNT TO FAILURE TO PERFORM YOUR DUTIES APPROPRIATELY, contrary to Section 19 of the Schedule Code of Conduct of Ontario Regulation 407/23 and therefore, contrary to Section 195 (a) of the Community Safety Policing Act, R.S.O. 2019, as amended.

UNSUBSTANTIATED

- CW1 alleges that the search of his vehicle violated his rights and that they required a search warrant for the search of the vehicle.
- The search authority used by the officers in this matter was the common law search authority of incident to arrest.
- Officers have the authority to search incident to arrest for their safety, public safety, and evidence to the offence being investigated.
- In regard to a vehicle, a nexus must exist between the arrest and the motor vehicle in order for it to be included in the search incident to arrest scope.
- CW1 was in the driver seat of his motor vehicle with used drug paraphernalia in his lap and torch lighter. (pipe had a burnt bowl)
- The key to the vehicle was in the ignition of the steering column.
- CW1 was observed to be lethargic, and his eye were slow to react which are indicators of drug impairment.
- CW1 advised officers while under caution that he was living in his vehicle.
- Officers articulated the nexus to the vehicle for the incident to arrest search.
- Officers further articulated the need to search the entire vehicle citing they were searching for drug evidence related to their arrest which included the trunk due to the disclosure that he was homeless and living out of his vehicle which would suggest frequent access to the trunk and back seat.
- No further evidence was found or collected during the search outside of the pipe and torch lighter.