
To: All Municipal Police Chief Constables

And to: All Professional Standards Officers

From: Office of the Police Complaint Commissioner

Date: September 28, 2015

Re: **Form & Manner Required for Investigation Logs, Progress Reports & Final Investigation Reports**

PURPOSE

The purpose of this bulletin is to provide an update to Professional Standard Sections of police departments and *Police Act* investigators regarding the form and manner of statutory documents and materials received during a *Police Act* investigation. The *Police Act* provides the authority to the Police Complaint Commissioner to direct the form and manner of *Progress Reports, Investigation Logs* and *Final Investigation Reports (FIR)*.

PROGRESS REPORTS

Legislation

Section 98 – Investigating officer’s duty to file reports

- (1) Within 30 business days after the initiation of an investigation, the investigating officer must file a report with the Discipline Authority and the Police Complaint Commissioner on the progress of the investigation.
- (2) At least once every 20 business days after the date of the initial report under subsection (1) and for as long as the investigation continues, the investigating officer must file a follow-up report with the Discipline Authority and the Police Complaint Commissioner on the progress of the investigation.
- (3) The Police Complaint Commissioner must provide a copy of each report filed under subsections (1) and (2) to the complainant, if any, and member or former member concerned, unless the Police Complaint Commissioner considers that doing so would hinder the investigation.

Process - Updated

The investigator is required to provide reports on the progress of the investigation to the Discipline Authority and the OPCC within 30 business days of the initiation of the investigation (date the *Initiation of Investigation* document was issued), to be followed by reports every 20 business days thereafter until the completion of the investigation.

In order to limit the number of late or missed *Progress Reports*, all reports must state the date on which the next report is expected. This practice should provide clarity for all involved parties. The OPCC will provide a copy of the *Progress Report* to the complainant. Although legislation dictates that the Commissioner must provide a copy of the *Progress Report* to the respondent member, it has been an established practice that the investigating officer will provide a copy of this report to the member.

A *Progress Report* need not be as detailed as the *Investigation Log*, but should include a brief chronological listing of the investigative steps taken up to the date of the report. Any subsequent *Progress Reports* should include the earlier steps and continue where the earlier report left off, simply adding what new steps have been taken. Therefore, the last *Progress Report* on a file will contain a complete list of all investigative steps taken during the course of the investigation.

Investigators should take care to consider third-party privacy/confidentiality concerns when crafting the list of investigative steps taken.

Please see Appendix A for the *Progress Report* template that is to be used.

INVESTIGATION LOGS

Legislation

Section 107 – Duty of investigating officer to keep records and produce them

During an investigation of a member or former member under this Division, the Discipline Authority must ensure that the investigating officer

- (a) keep and maintain all records relevant to the investigation, and
- (b) produce them for the Police Complaint Commissioner at the times and in the form and manner required by the Police Complaint Commissioner.

Process - Updated

During an investigation, it is expected that an *Investigation Log* (or Daily Log / Case Notes) will be kept by the investigating officer. Unless specified otherwise by the assigned OPCC analyst, this *Investigative Log* is to be sent to the OPCC at the same time as the *Progress Report* is due on the file.

The information contained in the *Investigation Log*, which is in an electronic format, will include, but is not limited to, the following:

- a chronological listing of all investigative steps taken with respect to the file;
- a summary of the information requested or received;
- a brief analysis of the information/evidence obtained; and
- an indication of what follow up is required or what the next investigative step will be.

The *Investigation Log* is the primary document that analysts will be referring to for oversight purposes and when examining the sufficiency of the investigation. A comprehensive *Investigation Log* will, in most circumstances, save an investigator time and effort when later drafting the Final Investigation Report.

All records related to the investigation are to be uploaded to the OPCC via FTSS as soon as practicable; ideally this should be within two business days of receipt of those materials or completion of an investigative step. Investigators should not wait until the *Progress Report* due date to send materials to the OPCC.

Please see Appendix B for an example *Investigation Log*.

FINAL INVESTIGATION REPORTS (FIR)

Legislation

Section 98 – Investigating officer’s duty to file reports

- (4) Within 10 business days after the conclusion of an investigation, the investigating officer must file a Final Investigation Report with the Discipline Authority and the Police Complaint Commissioner.
- (5) The investigating officer must include the following in the final investigation report:
 - (a) a brief account of the investigative steps taken;
 - (b) a complete summary of the relevant evidence;
 - (c) a list of all witnesses interviewed by the investigating officer;
 - (d) a list of all records related to the investigation;
 - (e) the investigating officer's assessment of the evidence and analysis of the facts.
- (6) The investigating officer must make available to the discipline authority and the Police Complaint Commissioner all of the evidence and the records referenced in the Final Investigation Report.

Section 129 – Duty of investigating officer to provide all records to Police Complaint Commissioner

- (1) As soon as reasonably practicable after the conclusion of an investigation concerning the conduct of a member or former member under this Division, the investigating officer must provide all records related to the investigation to the Police Complaint

Commissioner, in the form and manner required by the Police Complaint
Commissioner.

Process - Updated

Prior to the completion of the FIR, investigators are to contact the assigned OPCC analyst to discuss any concerns or issues regarding the thoroughness of the investigation. The analyst should have received all investigative materials prior to the submission of the FIR.

In order to maintain the consistency and quality of FIR's submitted by investigators, the OPCC requires the FIR to be submitted in the following format:

Cover Page

- Name(s) of member and complainant (or indication if it was an ordered investigation)
- Name of investigator
- OPCC file number
- Date FIR submitted to the OPCC and Discipline Authority

Executive Summary

- Description/background of incident giving rise to the complaint or ordered investigation
- Receipt of registered complaint or Order for Investigation
- Allegation(s) investigated and assessment of the evidence and analysis of the facts leading to the recommendation(s) by the investigator

Member(s) Identified

- Summarize how member(s) was determined to be associated to the complaint

Misconduct Identified

- Clearly set out the allegation(s) that form the basis of the investigation

Procedural Reports/Extensions

- Set out the chronological order when reports were submitted to OPCC, including requests for extensions

Investigation

- List of investigative steps conducted. This is to include a list of all witnesses interviewed and all records related to the investigation.
- Comprehensive and thorough summary of investigative steps taken during the course of the investigation.

- May be in chronological order or broken down into categories of evidence such as civilian witness statements, witness member statements, respondent member statements, video, PRIME files, etc.
- Include findings and links/references to where they are located in the source material.

Analysis and Recommendation

- Provide an assessment of the evidence and an analysis of the facts. Each identified allegation should be addressed separately. This will include, but is not limited to,
- Setting out the applicable law and/or statute;
- Discussion of the creditability and reliability of witnesses and other relevant investigative materials;
 - A determination of the facts proven, evidence adduced from the investigation and the weight placed on the evidence leading to the conclusion;
 - Application of relevant legal tests;
 - Conclusion for each allegation, including a recommendation to the DA of whether the investigator believes there is sufficiently clear, convincing and cogent evidence to support a finding of substantiation or not.
- There is no requirement for the investigator to make recommendations regarding disciplinary or corrective measures.

The Act stipulates that investigations are to be completed in six months (see section 99) unless an extension is granted by the Commissioner or the Discipline Authority (DA) directs further investigation under section 115 or section 132 of the Act. If an investigator completes an investigation prior to the six month time limit, investigators must submit the FIR to the OPCC and the DA within 10 business days of concluding their investigation.

Upon completion of a *Police Act* investigation, the investigator must submit the FIR and all attachments to the OPCC and the DA. There is no provision under the Act that allows for submissions from any party to be sent to the DA at this stage; this includes the respondent member, union agent, legal counsel or the complainant.

The investigation stage of the *Police Act* process is focused on the collection of evidence and the preparation of an FIR. Any attempt at this stage to influence the views of the Investigator or the decision of the Discipline Authority undermines public confidence in the accountability of both the investigation and the disciplinary process. The *Police Act* clearly defines and limits what materials are to be provided to the Discipline Authority and the OPCC at this stage of the process.

The *Police Act* is very clear in defining the rights of members and complainants throughout the process contemplated under the Act. In particular, the respondent member can: request further

investigation pursuant to section 114; decide whether they will attend a discipline proceeding and give evidence pursuant to section 124(9); and request witnesses testify at the discipline proceeding pursuant to section 119.

Investigators and DA's are to immediately disclose to the OPCC communications from any party that attempt to influence the views of Investigator or Discipline Authority. Our Office will then consider what action if any may be warranted pursuant to the *Police Act*.

All FIR's, with attachments, are to be submitted to the OPCC in electronic format through the OPCC's secure file transfer site (FTSS). It is recommended that the FIR be submitted in a PDF format.

The complainant is entitled to receive a copy of the FIR, but not the attachments. The member or former member is entitled to receive a copy of the FIR along with all of the evidence and records referenced in it. Pursuant to section 112(1), it is the responsibility of the DA to provide this documentation to the complainant and member (or former member).

If required, portions of the FIR provided to both the member and the complainant may be severed pursuant to Division 2 of Part 2 of the *Freedom of Information and Protection of Privacy Act*. In order to avoid, or at least limit the amount of redaction required when drafting the FIR, the investigator should take care in protecting third-party privacy concerns. The redacted version of the FIR and DA decision should be provided to this office as the complainant or member may request disclosure as per section 112(7) of the Act of all or part of the information that was severed from the report.



Stan T. Lowe
Police Complaint Commissioner

Appendices

- A. Progress Report Template
- B. Investigation Log Example