
To: All Municipal Police Chief Constables
Chief Officer, Metro Vancouver Transit Police
Chief Officer – Stl’atl’imx Tribal Police Service
Chief Officer – Combined Forces Special Enforcement Units (CFSEU-BC) /
Organized Crime Agency (OCA-BC)

And to: All Professional Standards Officers

From: Office of the Police Complaint Commissioner

Date: May 17, 2023

Re: **Investigating officer duty to file reports, reviews of FIR’s and submission of
Section 112 decisions by Discipline Authorities**

PURPOSE

Following the 2019 Special Committee to Review the Police Complaint Process, a number of recommendations were directed at the OPCC, which included recommendations related to compliance with section 98 of the *Police Act* and documentation relating to the notification of Final Investigation Reports (FIR) and Discipline Authority (DA) decisions to Complainants. Implementation of this recommendation was delayed in consideration of the impact of the Pandemic on agencies.

Recommendation #1:

The Office of the Police Complaint Commissioner should consider issuing a memo to the individual departments and/or discipline authority, reminding them of the progress report/decision letter submission requirements in order to meet the respective Subsections 98(1) and 98(9) of the *Police Act*.

Recommendation #2:

The Office of the Police Complaint Commissioner should consider providing clear instruction to the individual departments on how evidence of deliveries to complainants (e.g. scanned delivery receipts) should be retained and logged into the Case Tracker System.

The purpose of this Information Bulletin (Bulletin) is to confirm requirements under section 98 of the *Police Act*, particularly in relation to reviews of Final Investigation Reports and submissions of section 112 DA decisions.

RELEVANT LEGISLATION

Section 90

- 1) Subject to sections 89 [*reporting of death, serious harm and reportable injury, and mandatory external investigation in cases of death and serious harm*], 91 [*external investigation of chief constables*] and 92 [*external investigations when in public interest*], if an admissible complaint against a member or former member of a municipal police department is not resolved under Division 4 [*Resolution of Complaints by Mediation or Other Informal Means*], a chief constable of that municipal police department must promptly
 - a) initiate an investigation into the matter or notify the police complaint commissioner of the reasons for any delay in initiating an investigation,
 - b) appoint a constable of the municipal police department as investigating officer in the investigation, and
 - c) notify the police complaint commissioner of the appointment under paragraph (b).

- 2) The chief constable may appoint under subsection (1) (b) only a constable who meets both of the following criteria:
 - a) the constable has no connection with the complaint;
 - b) the constable's rank is equivalent to or higher than the rank of the member or former member whose conduct is the subject of the complaint.

Section 98

- 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.

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- 9) Within 10 business days after receiving an investigating officer's final investigation report, the discipline authority, or the police complaint commissioner in consultation with the discipline authority, may reject that report and direct that further investigative steps be taken.

- 10) An investigating officer must

- (a) promptly comply with a direction under subsection (9), and
- (b) resubmit a final investigation report to the discipline authority and the police complaint commissioner
 - i. within 5 business days after carrying out those steps, and
 - ii. in accordance with subsection (5).

11) The discipline authority must ensure that every direction under subsection (9) is carried out.

Section 112

- 1) Within 10 business days after receiving an investigating officer's final investigation report in respect of the conduct of a member or former member, the discipline authority must
 - (a) review the report and the evidence and records referenced in it,
 - (b) subject to subsection (6), provide
 - i. the complainant, if any, with a copy of the final investigation report, and
 - ii. the member or former member with a copy of the final investigation report and the evidence and records referenced in it, and
 - (c) notify the complainant, if any, the member or former member, the police complaint commissioner and the investigating officer of the next applicable steps to be taken in accordance with this section.

PROCESS

Prompt initiation of investigations and submission of Progress Reports – section 90, 98(1) & (2)

Chief Constables are reminded of their responsibilities to promptly initiate investigations into matters deemed admissible by the OPCC, and that the OPCC is to be notified for any delay in initiating investigations.

Once an investigation has been initiated, investigating officers have a number of responsibilities under section 98 of the *Police Act*. Please note that Progress Reports must be filed with the OPCC and DA within 30 business days after an investigation has been initiated. Progress Reports are due at least 20 business days after the first Progress Report has been submitted and are required as long as the investigation continues. This includes instances where a FIR has been submitted but further investigative steps have been directed.

FIR submission and review period – section 98(9)

Once a FIR is submitted to the DA for review, the DA and the Police Complaint Commissioner (Commissioner) have, within 10 business days of receipt, the authority to reject the FIR and direct further investigative steps be taken.

Pursuant to section 112(1) of the *Act*, the DA must notify the parties of their decision “within” 10 business days after receiving the FIR. Providing this decision prior to the expiry of the 10 business days can have the effect of bypassing the Commissioner’s ability to reject the FIR and direct further investigative steps. In order for the Commissioner to effectively review the Final Investigation Report and consider the necessity for any further investigative steps it is requested that the DA not disseminate their decision prior to a consultation with the OPCC.

Directions for Further Investigation and Consultation - section 98(9)

In circumstances where the Commissioner considers further investigative steps are required, the *Act* requires consultation with the DA. In these cases, the DA should expect that a delegated OPCC staff member will consult with the DA and discuss the areas of concern. Agreement of the investigative steps contemplated is not a requirement to fulfill the intent of a consultation under the *Act*. Following the consultation, if still appropriate and necessary, a notice outlining the Commissioner’s direction for further investigative steps will follow. We encourage the investigating officers to connect with the assigned OPCC analyst for further clarity on the directed investigative steps. Any investigative steps directed by the Commissioner pursuant to section 98(9) remain in effect unless formally rescinded or modified by the Commissioner.

If the DA considers a need to direct further investigative steps, the OPCC recommends connecting with a delegated OPCC staff member in advance of issuing the direction. This may relieve any duplication of efforts.

Once an investigator has received direction for further investigative steps from the DA or the Commissioner, they must “promptly” comply with that direction and then resubmit the FIR to the DA and Commissioner within five (5) business days. Depending on the number and complexity of the investigative steps directed, the timeframe to resubmit the FIR will vary between files. Investigators should make every effort to prioritize any direction received in order to mitigate any delay in resubmitting the FIR.

Resubmitting the FIR following a Direction

The form and manner of a resubmitted FIR following a direction under section 98(9) does not fall into the category of a “supplemental” FIR as described under section 115 or an “Investigation Report” under section 132 of the *Act*. The resubmitted FIR is considered a new and full report, replacing the previous version. It is expected that the resubmitted FIR will include the further investigative steps directed by the DA or Commissioner. Any new investigative materials are to be assessed and integrated comprehensively with the entire evidentiary record and previously completed investigative steps.

Once the FIR is resubmitted, the subsequent timelines are recalculated in relation to the DA decision due date and any subsequent statutory timeframes.

Dissemination of FIR and DA decisions to Complainants

It is the DAs responsibility to provide the Complainant with a copy of the FIR and section 112 decision. It is recommended that DAs ensure they have the most up to date contact details for a Complainant and that notification be provided via Registered Mail and tracking details provided to the OPCC for our records.

Office of the Police Complaint Commissioner