



TRANSIT POLICE

INDEPENDENT INVESTIGATIONS OFFICE

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Office of Primary Responsibility: Inspector Support Services

POLICY

[See also: AC140 – Complaints and Use of Force chapters OH010 – OH060]

Definitions

Chief Civilian Director (CCD) – The Chief Civilian Director of the IIO, who is the person in charge of the IIO.

Chief Officer – The Transit Police Chief Officer or delegate.

Critical Incident – Pursuant to the *Police Act* and the Memorandum of Understanding respecting IIO Investigations, whenever on-duty officers attend:

- (a) any incident where there is a reasonable belief that the presence, action, or decision of an **on-duty** officer
 - i. may have been a contributing factor in the **death** of any person, including all in-custody deaths;
 - ii. may have been a contributing factor in a **life-threatening injury** to any person;
 - iii. may cause **disfigurement** (permanent change in appearance), if there were no medical intervention;
 - iv. may cause **permanent loss or impairment of any function or mobility** of the body, if there were no medical intervention;
- (b) any discharge of a **firearm** by an **on-duty** officer where there is a reasonable belief that any person (including a police officer) may have been **injured**;
- (c) any incident where there is a reasonable belief that the action of an **off-duty** officer
 - i. may have been a contributing factor in the **death** of any person;
 - ii. may have been a contributing factor in a **life-threatening injury** to any person;
 - iii. may cause **disfigurement** (permanent change in appearance), if there were no medical intervention;
 - iv. may cause **permanent loss or impairment of any function or mobility** of the body, if there were no medical intervention.

NOTE: The IIO has asked that police agencies do not notify the IIO of on-duty incidents that concern pre-existing mental or physical illnesses or injuries that are not reasonably believed to have “resulted from the presence, action or decision of an on-duty officer.”

Designated Constables – The Transit Police police officers appointed by the Police Board.

Director - Police Services – The Director of Police Services, Ministry of Justice.

IIO – The Independent Investigations Office of British Columbia established pursuant to s. 38.02 of the *Police Act*.

In-custody Death – A death of a person who was detained by or in the custody of a Member, or was in the custody of a police service.

Involved Officer (Involved Member) – A Member involved in or present during an incident that is within the jurisdiction of the IIO and includes Subject Officers and Witness Officers.

Member – Designated Constable, the Chief Officer or a Deputy Chief Officer of the Transit Police.

Police Act – The BC Police Act, RSBC 1996, c. 367, and the regulations thereto, including the Transit Police Operations Regulation, all as amended from time to time.

Reportable Injury – As defined in the *Police Act*, any of the following: “an injury caused by discharge of a firearm; an injury requiring emergency care by a medical practitioner or nurse practitioner and, transfer to a hospital; or any injury described by s. 184(2)(c) of the *Police Act*.”

Serious Harm – As defined in the *Police Act*, “injury that may result in death, may cause serious disfigurement, or, may cause substantial loss or impairment of mobility of the body as a whole or of the function of any limb or organ”.

Subject Officer –

- a. An on-duty Member whose presence, action, or decision is reasonably believed to have been a contributing factor in the death of any person, including in-custody deaths;
- b. An on-duty Member who has discharged a firearm, where there is a reasonable belief that any person (including a Member) may have been injured by that discharge;
- c. An on-duty Member whose presence, action, or decision is reasonably believed to have resulted in injury requiring emergency care by a medical practitioner or nurse practitioner and also requiring transfer to a hospital or community medical facility, or
- d. An off-duty Member whose action is reasonably believed to have been a contributing factor in the death of any person, or is reasonably believed to have resulted in injury requiring emergency care by a medical practitioner or nurse practitioner and also requiring transfer to a hospital or community medical facility.

Transit Police – The South Coast British Columbia Transportation Authority Police Service.

Witness Officer – A Member involved in or present during the incident who is not a Subject Officer.

Authority

1. As Police Officers, Members are authorized by law to use force in the lawful execution of their duties.
2. Members are required to comply with requirements of the *Police Act*, regulations and standards thereto, all as amended from time to time.

General

3. In the course of their duties, Members are subject to many levels of accountability. Under the *Police Act*, Members' actions are subject to possible criminal investigation as well as disciplinary investigation. The *Police Act* provides authority to the IIO to conduct investigations into the conduct of a Member that may lead to charges against the Member under the *Criminal Code of Canada (Criminal Code)*, or other federal or provincial statutes. The IIO jurisdiction is different to that of the Office of the Police Complaint Commissioner (OPCC) which oversees the citizen complaint and disciplinary processes.
4. Pursuant to the *Police Act*, the IIO has jurisdiction to investigate the following:
 1. any incident where it appears that:
 - a. a person may have died or suffered serious harm as a result of the actions of a Member, whether on or off duty, or
 - b. a Member, whether on or off duty, may have contravened a prescribed provision of the *Criminal Code* or of another federal or provincial enactment; and
 2. whether that incident is reported to the IIO by the Transit Police, another police agency or the OPCC, any other alleged act, or alleged omission of an act by a Member where the BC Minister of Justice or Director – Police Services orders that an investigation be conducted by the IIO.
5. BC policing agencies have specific obligations and timelines regarding Critical Incidents. The Transit Police is required to immediately notify the IIO whenever on-duty officers attend a Critical Incident as defined in this policy.
6. The IIO has entered into a Memorandum of Understanding (IIO MOU) with all policing agencies within British Columbia, including the Transit Police, which establishes procedures for the IIO investigation process of Critical Incidents. Accordingly, the Transit Police will no longer investigate such incidents, unless the IIO declines jurisdiction over the incident.
7. Members will comply with IIO requirements under the *Police Act* and the IIO MOU, including the duty to cooperate fully with the CCD and IIO Investigator in respect of the exercise of powers or performance of duties under the *Police Act* by the CCD and IIO Investigators.
8. When the IIO becomes involved in an investigation, Members will still be required to comply with Transit Police policy AC140 – Complaints regarding incidents involving death, serious harm and reportable injuries and Transit Police use of force policies (OH010 to OH060), including provision on Subject Officer Response Reporting.

PROCEDURES

Critical Incident Notification by Members

9. Members must immediately report to their supervisor on occurrence (on-duty and off-duty) of any Critical Incident.

1. In the event of a Critical Incident occurring off-duty, the Member will contact the Watch Commander on duty via the Operations Communication Centre.
10. In the event of a Critical Incident, notification will occur as follows:
1. Upon becoming informed of the Critical Incident, the Watch Commander (or Transit Police Supervisor in charge) will immediately notify by personal contact the Inspector Operations and the Inspector Professional Standards (the respective Deputy Chief Officer is to be notified if their Inspector is unavailable);
 - a. the Watch Commander will include the incident in the Shift Report and ensure that a copy of the shift report is forwarded to [REDACTED]
 2. the Inspector Operations will ensure that the IIO, Deputy Chief Officers and Chief Officer are notified and may direct resources to attend the scene until the IIO (or OPCC) direct otherwise; and
 3. the Inspector Professional Standards will notify the OPCC of the incident.

Off-Duty

11. To ensure that the IIO is notified of off-duty incidents within its jurisdiction, police officers (including Transit Police Members) who become/are involved in an off-duty Critical Incident, will immediately identify themselves as police officers to the on-duty officers attending the incident. Off-duty officers who identify themselves as police officers, in compliance with this direction, are deemed to not be in violation of s. 77(3)(c)(iii) of the *Police Act* where a corrupt practice includes using or attempting to use one's position as a police officer for personal gain or other purposes unrelated to the proper performance of duties as a police officer.

Notification to IIO

12. Unless otherwise so determined by the Chief Officer, the Inspector Operations is assigned as the Transit Police designate for notification to the IIO. The Inspector Operations will be responsible for the immediate notification to the [REDACTED] upon recognition that any on-duty or off-duty incident is within the criteria of a Critical Incident.

NOTE: This is separate from the Transit Police requirement to notify the OPCC whenever there has been a "reportable injury" as defined in the *Police Act*. The Inspector PSU continues to be the Chief Officer designate for advising the OPCC as required for Part 11 of the *Police Act*. See Transit Police Policy Chapter AC140 – Complaints.

13. In the event that the IIO declines to investigate any Critical Incident of which they have been notified by the Transit Police, the Inspector Operations will notify, via e-mail, the Deputy Chief Officer Operations of the details of the incident (e.g., general occurrence number and date and time of notification to the IIO) and the contact information of the IIO member.
14. In the event that the Professional Standards Unit (PSU) becomes aware of an incident within the IIO jurisdiction and PSU is not aware of the IIO having been notified, then the Inspector Professional Standards will immediately advise the Inspector Operations about the incident so that IIO notification can occur.

Designation of Liaison Officer

15. When the IIO determines that an incident is within their mandate, the Inspector Operations will either assume the IIO Liaison Officer role or promptly designate an IIO Liaison Officer to the incident. The Liaison Officer will not be an Involved Member.
16. Prior to being designated a Liaison Officer, the Member will be required to receive training on obligations within the IIO MOU and the *Police Act*.

Responsibilities of Liaison Officer

17. The Liaison Officer will be responsible for the following:
 1. ensuring that the Transit Police is providing the resources and assistance reasonably required by the IIO Investigator;
 2. as soon as practicable, canvassing the Involved Members and the Members attending to secure the scene and assist with the preservation and seizure of evidence;
 3. canvassing for and recording of conflicts of interests and potential appearances of conflict of interests between Involved Members and Members attending the scene, and when determining that conflicts of interest and/or potential appearances of conflicts of interest exist, provide a written summary of this information to the IIO Investigator upon their attendance at the scene;

NOTE: As set out in the IIO MOU, conflicts of interest and potential appearances of conflicts of interest include, but are not limited to: work relationships, family relationships, and personal relationships between Involved Officer(s) and officers from a police service who attend the scene.
 4. working with the IIO Investigator to resolve any issues regarding who is responsible for the costs of specialized scene examination or specialized follow-up investigations;
 5. ensuring that the following information is compiled for the scene and safety report and that this report is provided to the IIO Investigator upon their attendance:
 - a. injuries to anyone;
 - b. status, location and identity of any subjects involved in the incident (police and civilian);
 - c. details of any un-located subjects and other dangers;
 - d. parameters and boundaries of the scene;
 - e. location of any evidence relevant to the incident;
 - f. status, location and identity of any potential witnesses to the incident; and
 - g. names of any person an Involved Member has spoken to;
 6. ensuring that Involved Members are aware of their designation (as determined by the IIO) as either a Subject Officer or Witness Officer and that any disagreement or dispute regarding this designation are resolved; and

7. ensuring that the Transit Police is complying with the terms of the IIO MOU and statutory obligations under the *Police Act*.
18. In the event of a disagreement or dispute between the Liaison Officer and the IIO Investigator over control of the scene of an Incident, or the amount or type of assistance or resources to be provided to the IIO by the Transit Police, or any other matter, the Liaison Officer will consult with the Deputy Chief Officer Operations (or designate). If the disagreement or dispute cannot be resolved, the matter will be referred to Chief Officer (or designate) for resolution with the CCD (or designate).
19. The Liaison Officer (if other than the Inspector Operations) will be responsible for notifying the Inspector Operations as soon as practicable upon IIO attendance at an incident. This notification will include details of the incident (e.g., general occurrence number and date and time of notification to the IIO) and the contact information of the IIO Investigator.

Scene Security

20. The Transit Police will be responsible (as first responder) for the containment and preservation of any scene of a Critical Incident where the IIO becomes involved in the investigation. The Transit Police is required to take any lawful measures that appear to be necessary and expedient for the purpose of obtaining and preserving evidence related to that incident.
 1. Pursuant to the Transit Police MOU with jurisdictional police (JPDs), in the event that the JPD arrives on scene and assumes command of the incident, pending arrival of the IIO Investigator, the Transit Police will assist with scene security as requested by the JPD.
21. The Watch Commander (or the Liaison Officer if so delegated by Inspector Operations) will take responsibility for scene security and evidence preservation and where required, may assign a Member to coordinate the securing of the incident scene and evidence preservation.
22. The assigned Member in charge of scene security and evidence preservation will, in consultation with the Watch Commander or the Liaison Officer (if so delegated by the Inspector Operations), ensure that the scene(s) is secured with police barrier tape and that the scene is secured at a reasonable distance to protect the complete scene and any physical evidence that may be present. The assigned Member in charge of scene security and evidence preservation will ensure that the scene remains secured until the IIO Investigator attends the scene and thereafter turn control of the scene over to the IIO Investigator.
23. In the event that the IIO is delayed in arriving at the scene of the incident, the IIO Investigator may delegate control of the scene to the Transit Police for an extended period of time and may provide direction to the Liaison Officer via telephone regarding crime scene security and preservation of evidence.

Preservation and Seizure of Evidence

24. Prior to the arrival of the IIO Investigator, the assigned Member in charge of scene security and evidence preservation will, in consultation with the Liaison Officer, ensure that evidence at the

scene is properly secured until it can be turned over to the IIO Investigator, including, but not limited to:

1. seizing a Member's uniform or other clothing, with due regard for the Member's safety, dignity and privacy, if it is considered to have evidentiary value;
 2. seizing any firearm that was discharged and any intermediate weapon, restraint or related equipment that was used, deployed or otherwise appears to be relevant to the investigation;
 3. securing any police vehicle if it is considered to have evidentiary value;
 4. obtaining breath or blood samples if impaired driving by a Member is suspected; and
 5. seizing any other perishable evidence.
25. Any evidence secured or seized at the scene will be processed in the same manner as required in Transit Police policy. The Liaison Officer will ensure that such evidence is turned over to the IIO as directed by the IIO Investigator.
26. The Liaison Officer (or Member so designated by the Liaison Officer) will direct all Involved Members not to communicate their recollections or accounts of the incident directly or indirectly to anyone other than an IIO Investigator until they are interviewed by the IIO, other than for the purposes listed in s. 37 of this policy. The Liaison Officer will take other reasonable steps as are considered necessary to ensure that the Involved Members do not discuss the incident prior to being interviewed by the IIO and will document all steps taken to do so.

Canvassing for Witnesses and Videotape Evidence

27. The IIO Investigator may, prior to arriving at the scene, request that the Transit Police canvass the area around the scene of the incident for witnesses and/or videotape evidence. The Liaison Officer will direct the assigned Member in charge of scene security and evidence preservation at the scene to carry out those requests, if reasonable.
28. If the Liaison Officer concludes that weather, lack of resources or extraordinary costs will prevent the Transit Police from complying with the IIO's request, the Liaison Officer will advise the IIO as soon as practicable.
29. Any disagreements or disputes regarding what resources the Transit Police may provide in order to comply with such requests will be resolved by the Liaison Officer.
30. In the event that a witness(es) to the Critical Incident is located by Members, then Members will only obtain the name and contact information of the witness. The witness is not to be interviewed unless requested to do so by an IIO Investigator.

Continued Assistance After the IIO Arrival at the Scene

31. Once the IIO Investigator arrives on the scene, the assigned Member in charge of scene security and evidence preservation will, in consultation with the Liaison Officer, provide such assistance and resources as the IIO requires to process the scene and to conduct the initial investigation. If the Liaison Officer concludes that because of weather, delayed IIO arrival, lack of resources, or extraordinary costs, the Transit Police is unable to fulfill a request from the IIO, the Liaison Officer will advise the IIO Investigator as soon as practicable.
32. The Transit Police will be responsible for examining and processing the scene(s) of the incident subject to monitoring by the IIO Investigator. The Liaison Officer will liaise with the IIO Investigator if the IIO Investigator has directions to provide regarding the work of Members and be responsible for providing direction to facilitate requests from the IIO Investigator.
 1. The Transit Police will request JPD assistance where necessary, in accordance with the Transit Police and JPD protocols.
33. The Transit Police will provide interview rooms, recording equipment, exhibit storage facilities and other Transit Police facilities to the IIO upon request, provided such rooms and equipment are available.
 1. The Transit Police will request JPD assistance where necessary to fulfill IIO requests.

Concurrent Investigations by the Transit Police

34. In the event that the Transit Police is conducting its own investigation (hereinafter referred to as a "Concurrent Investigation") after a Critical Incident (e.g., criminal investigation into the actions of a suspect arising out of the Critical Incident, internal disciplinary investigation, PSU investigation or any other internal review of Members' actions) the following procedures will apply:
 1. the Liaison Officer will notify the IIO Investigator immediately of any Concurrent Investigation and provide the IIO Investigator with the contact information of the Lead Investigator and/or Team Commander conducting the Concurrent Investigation; and
 2. the Liaison Officer, in consultation with the Lead Investigator of the Transit Police Concurrent Investigation, will liaise with the IIO Investigator to determine which investigation will be given priority and which agency will control the scene and the evidence seized.
35. If the IIO Investigator, in consultation with the Liaison Officer, determines that the Transit Police Concurrent Investigation should have priority, the IIO Investigator may delegate control over the scene and evidence to the Transit Police. The Liaison Officer will ensure that such delegation is received in writing.
 1. In such an event, the Member(s) conducting the Transit Police Concurrent Investigation will take over control of the scene and the evidence however, they will also preserve evidence

that may be relevant to the IIO investigation in addition to the Transit Police Concurrent Investigation and will liaise with the IIO Investigator for this purpose.

36. Where there is a Concurrent Investigation, the Liaison Officer, in consultation with the Lead Investigator and/or Team Commander of the Transit Police Concurrent Investigation will consult with the IIO to determine the process with respect to the interview of witnesses. Where a person is a suspect in one investigation and a witness in another, there will be advance consultation between the Liaison Officer and the IIO before that person is interviewed by either.
1. The general principle that will apply in determining which interview should occur first is that the interview of a person in jeopardy will proceed before any interview of the same person as a witness takes place.

Involved Members

37. Involved Members are prohibited from discussing the incident with anyone until such time as they have been interviewed by the IIO, except for communication that is necessary for the purpose of:
1. protecting public safety and obtaining medical care for any injured persons;
 2. ensuring that evidence is identified and secured;
 3. furtherance of a Concurrent Investigation;
 4. obtaining advice from the Member's union or legal counsel;
 5. enabling the Member to obtain appropriate health care (including mental health); and
 6. any other purpose agreed upon by the IIO Investigator and the Liaison Officer.
38. If requested, Involved Members are required to assist the Liaison Officer to compile relevant information for a scene and safety report as described in s. 17 of this policy.
39. Involved Members will be notified as soon as practicable by the IIO Investigator whether they are a Witness Officer or a Subject Officer. This notification will be verbal followed by written confirmation. Members will comply with the procedures that pertain to the designation assigned to them.
40. If the Member does not agree with the designation, the Member will advise the Liaison Officer. The Liaison Officer will work with the union and the IIO Investigator to resolve any issues with the designation. Any disagreements or disputes regarding this designation will be referred by the Liaison Officer to the Chief Officer (or designate) if the Liaison Officer is unable to resolve them.

Witness Officers

41. A Member who has been identified as a Witness Officer has an obligation under the *Police Act* to fully cooperate with the IIO investigation. A Witness Officer also has the right to obtain advice from their union.
42. Witness Officers will submit a copy of their notes and reports related to the incident under investigation to the IIO Investigator prior to the end of the Member's shift unless there are exceptional circumstances, in which case the Liaison Officer will consult with the IIO Investigator and arrange an alternate timeframe for submitting the notes and reports.
43. If the IIO Investigator requests an interview with a Witness Officer, that Witness Officer will participate in an interview(s) on the date, time and location set by the IIO Investigator. The Liaison Officer will consult with the union and the IIO Investigator to resolve any hardships that result from the interview(s) date, time, and location.

NOTE: The Witness Officer interview is to occur before the end of the witness officer's shift or within 24 hours of the Member being contacted by the IIO Investigator, or at any other time agreed by the IIO Investigator, and on any additional occasions as determined by the IIO Investigator.

44. If the IIO Investigator requests a written statement from a Witness Officer, that Witness Officer will comply within a time frame agreed upon by the IIO Investigator and the Liaison Officer.
45. Pursuant to the IIO MOU, an IIO Investigator may request video-recording of an interview with a Witness Officer, and if the Witness Officer declines to be video-recorded, the Witness Officer's interview shall be audio-recorded. If the interview is only audio-recorded, the Witness Officer will assist the IIO Investigator in video-recording any places or things that are relevant to the investigation, but the Witness Officer shall not be video-recorded (unless he or she consents), except that any physical demonstrations by the Witness Officer shall be video-recorded.

Subject Officers

46. A Member who has been identified as a Subject Officer has an obligation under the *Police Act* to fully cooperate with the IIO investigation, subject to their rights under the *Canadian Charter of Rights and Freedoms*.
47. Subject Officers will submit to the IIO Investigator copies of any notes, reports or any other relevant information that records statements made to the Subject Officer by any witness to the incident prior to the end of their shift. In exceptional circumstances, the Liaison Officer will consult with the IIO Investigator and arrange an alternate timeframe for submitting the notes and reports.

Media Relations regarding IIO Investigations

48. Where the IIO is conducting an investigation into an incident involving Members, the Transit Police may advise the media that an incident has occurred that required notification to the IIO, but only the IIO may issue media statements regarding IIO investigations.

1. In addition, the Transit Police will continue to adhere to the media protocols with its JPD partners (refer to Transit Police policy: OM010 – Media Relations).
49. In the event that the Transit Police is conducting a Concurrent Investigation, the Transit Police will consult with the IIO prior to making any media statements concerning the Concurrent Investigation in order to ensure that the Transit Police media statement will not inadvertently jeopardize the IIO investigation.
50. The Liaison Officer will advise the IIO of any key fact (holdback) evidence relating to a Concurrent Investigation, if relevant to the investigation being conducted by the IIO, and document the name and contact information of the notified IIO Investigator.

Next-of-Kin and Coroner Notification

51. In an IIO investigation where a death has occurred, the IIO is responsible for notifying the Next-of-Kin (NOK) of the deceased. However, when an IIO Investigator is unable to perform an NOK notification, the IIO may request the Transit Police to complete the notification.
52. In consideration of the Transit Police supplemental policing role and Transit Police policy OB080-Sudden Death, when such a request has been made by the IIO, Members will contact the JPD to transfer the NOK request.
 1. The Transit Police will only do a NOK when so requested by the JPD and in accordance with Transit Police policy.
53. The Transit Police will be responsible for notifying the Coroner when a death has occurred, in accordance with Transit Police policy OB080 – Sudden Death. The Coroner must be consulted before any disturbance of the body or scene.

Providing the IIO with Access to Transit Police Records

54. If the IIO requires any records from the Transit Police, the request for those records must be in writing and will be directed to the Liaison Officer. (For more detailed guidelines, refer to the IIO MOU provisions regarding Access to Records.)
55. Upon receipt of a request for records from the Transit Police regarding any Transit Police personnel, the Liaison Officer will consult with the Senior Labour Relations Advisor and Informatics Manager to ensure that they comply with any collective agreement and the *Freedom of Information and Protection of Privacy Act* before releasing any personnel records.
56. If the Liaison Officer concludes that providing the personnel records to the IIO as requested would violate the terms of the collective agreement or any law, then the Liaison Officer will decline to provide those records and will advise the IIO of the reasons.
57. If the IIO obtains a production order or other judicial order for Transit Police records, the Liaison Officer will ensure that the records listed in that order are collected and provided to the IIO according to the terms of the order.

Key References

BC Police Act [RSBC 1996, Chapter 367]

BC Provincial Policing Standards

Memorandum of Understanding Respecting Investigations between Independent Investigation Office of BC (IIO) and Jurisdictional Police [July 16, 2012]

Memorandum of Understanding between Transit Police and Jurisdictional Police