

Request for Consideration

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| <input type="checkbox"/> Agenda Item
(Submitted to Municipal Clerk's Office by Noon at least 5 working days prior to the meeting) | <input type="checkbox"/> Added Item
(Submitted to Municipal Clerk's Office by Noon at least one day prior to meeting) | <input type="checkbox"/> Request from the Floor
<input checked="" type="checkbox"/> Notice of Motion |
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Council or Committee: Halifax Board of Police Commissioners:

Date of Meeting: October 18, 2021

Subject: Drafting of HRP and RCMP communication policy where police complaint investigation is ongoing or a complaint is reasonably foreseeable

Motion for Council to Consider:

That the Board of Police Commissioners prepare a draft of a communication policy (to be received and reviewed by the Board at their December meeting) which will apply to the HRP and will be recommended to apply to the RCMP. This policy will limit the ability of police to make public statements about matters that: (1) are currently the subject of a police complaint investigation, or (2) for which it is reasonably foreseeable that a complaint will be filed in the future.

Reason:

1. Legislative authority a. HRP

Section 55(1) of the *Police Act*, SNS 2004, c 31 reads:

55 (1) The function of a board is to provide

- (a) civilian governance on behalf of the council in relation to the enforcement of law, the maintenance of law and order and the prevention of crime in the municipality; and
- (b) the administrative direction, organization and policy required to maintain an adequate, effective and efficient police department

According to legal counsel for HRM, the language in 55(1) which requires the Board to provide policy, as well as similar language in the by-law and MOU, make it clear that the Board's authority goes beyond mere recommendation of policies. However, the Board's power in this regard is limited by the exclusion in s 55(1) which states that the Board shall not exercise jurisdiction relating to the actual day-to-day direction of the police department.

Additionally, s 55(3) reads in part:

(3) Without limiting the generality of subsection (1), a board shall

- ...
- (d) ensure that police services are delivered in a manner consistent with community values, needs and expectations;
- (e) act as a conduit between the community and the police service providers

b. RCMP

Section 68(1) reads:

68 (1) The function of an advisory board is to provide advice to the council in relation to the

enforcement of law, the maintenance of law and order and the prevention of crime in the municipality, but the advisory board shall not exercise jurisdiction relating to complaints, discipline, personnel conduct or the internal management of the Royal Canadian Mounted Police.

Additionally, section 68(3) reads in part:

(3) Without limiting the generality of subsection (1), an advisory board shall, subject to the police contract or policing agreement,

...

(d) ensure that police services are delivered in a manner consistent with community values, needs and expectations;

(e) act as a conduit between the community and the police department;

(f) recommend policies, administrative and organizational direction for the effective management of the police department;

2. Rationale

Both the *Police Act* and the *Royal Canadian Mounted Police Act*, RSC 1985, c R-10, provide for schemes under which members of the public can file complaints against the police. Under both statutes, police officers are designated to conduct the investigations arising from these complaints. In his 2017 *Report of the Independent Police Oversight Review*, Justice Michael Tulloch of the Ontario Superior Court of Justice wrote (emphasis added):

7.340 – Investigations

143. There is broad consensus among members of the public and policing stakeholders that an effective public complaints system depends in part on the integrity of the investigative process. Public and policing confidence requires thorough and competent investigations, conducted with fairness and impartiality.

...

150. A commonly expressed view at my consultations was that “the police should not be investigating police.” Nonetheless that is the current state of affairs. The [Office of the Independent Police Review Director] is largely a screening body and not an investigative one.

Public perceptions of the impartiality of police complaint investigations—and thus public confidence in the complaints system more generally—may be negatively impacted in circumstances where police, especially very senior officers, make public statements about matters that are currently subject to investigation. The same may also be the case where police officers make public statements concerning matters about which the police know or ought to know that one or more members of the public may soon file a complaint. In either case, the negative impact may be especially acute where a public statement is made by an officer who outranks, or is publicly perceived to outrank, the officer who is designated to complete the complaint investigation.

This policy is intended to address a concern first raised in correspondence from Councillor Waye Mason who, in a letter to the board dated July 20, 2021, wrote in part (emphasis added):

I am writing to you today regarding an email sent regarding an active police complaint that was sent to some Halifax Regional Councillors regarding by the Acting Chief Officer of the Halifax Division on Sunday July 18 (attached).

In summary my concerns are:

1. the complaint process will run per the Police Act and this update may have been inappropriate while that independent process plays out;

Outcome Sought: To prepare a draft communication policy to deal with circumstances where a police complaint investigation is ongoing or a complaint is reasonably foreseeable.

Commissioner Harry Critchley