



**SERIOUS INCIDENT
RESPONSE TEAM**

Summary of Investigation

SiRT File # 2016-028

Referral from

Cape Breton Regional Police

October 3, 2016

Ronald J. MacDonald, QC
Director
January 30, 2017

Facts:

On October 3, 2016, the Cape Breton Regional Police (CBRP) contacted SiRT about a possible obstruction of justice committed by one of their members. They were concerned a member may have either provided false information knowing it would be used in a request for a search warrant, or may have mishandled a drug exhibit. SiRT opened an investigation at that time, and concluded the investigation on November 29, 2016. In order to protect the integrity of the investigation, SiRT did not issue a media release at the time.

During the investigation SiRT took a statement from one civilian witness, as well as statements from three witness police officers. Notes were received from another police officer. In addition, relevant file materials were received and reviewed, as well as relevant court documents.

The Serious Incident Response Team Regulations made under the provisions of the *Police Act* mandate that a subject officer is not required to provide a statement or any notes or reports to SiRT. In this matter, Officer 1, the subject officer, gave a statement and provided a copy of his relevant notes.

The referral from the CBRP resulted from their review of a closed file that involved a seizure of drugs pursuant to a search warrant. The affidavit filed seeking the warrant was written and sworn to by Officer 2. In that affidavit, he noted that police had received information that the target of their investigation was selling drugs from that person's home.

The affidavit also included information given to Officer 2 by Officer 1. It suggested that Officer 1 told Officer 2 that several months earlier he had seized a large quantity of drugs from the same target. On review, CBRP could not find any record of that seizure. There was a concern that the information provided by Officer 1 was false or that if the drugs were seized they were mishandled by Officer 1.

In his statement, Officer 2 stated that he recalled receiving the information directly from Officer 1 as he was preparing the affidavit, and that Officer 3 witnessed this. Officer 2 had no independent notes about the information provided, and no other records were made relating to this information.

Officer 3 also recalled the information provided by Officer 1. However, he also did not have a written record of it, and remembered additional relevant details that were consistent with information later provided by Officer 1, which Officer 2 did not record in the affidavit. This raised an issue regarding the accuracy of the recording of the details made by Officer 2.

The target cooperated with the SiRT investigation completely. The target does not have a criminal record (no conviction resulted from the drug seizure). This person recalled the previous incident when Officer 1 was at the person's home. While Officer 1 was told by the target that the target had sold some drugs from home, when Officer 1 was there that particular day there were none at the home and Officer 1 made no seizure.

Officer 4 was with Officer 1 on that day. However, he had no notes of the incident and his recollection was poor. He did not recall any drugs being taken from the target's home.

Once all other persons were spoken to in the investigation, Officer 1 was contacted by SiRT and informed of the investigation. He had not been aware of it up to that time. He was immediately cooperative with the investigator, and provided an oral statement by phone. He provided an in person formal statement the next day to the investigator. In this statement, he gave details that confirmed what was indicated by the target, and that while the target admitted to selling drugs he did not find any the day he was at the target's house. He did have notes in relation to his visit to the target's home, and provided a copy to SiRT.

Officer 1 pointed out that he told Officer 2 the target admitted selling drugs from home. This would have been very useful evidence when applying for a search warrant. However, Officer 2's affidavit did not contain this information. This also suggests that Officer 2 made errors when recording what Officer 1 had told him.

When Officer 2 spoke to Officer 1, he did not obtain an independent written record from Officer 1, nor did he take a statement from him. Rather, he stated he received the information verbally, and added it to his affidavit as it was being drafted. This procedure leaves open the possibility for misinterpretation or unintentional error.

Relevant Legal Issues:

This investigation examined whether there was evidence that Officer 1 had committed the offence of obstruction of justice. Obstruction of justice can be committed in various ways. Providing false information to another police officer which would then be included in an affidavit used to obtain a search warrant could constitute the offence. Not properly handling seized drugs to hide the fact of a seizure could also constitute the offence.

In order to lay any charge, there must be reasonable grounds, based on admissible evidence, to show a person committed an offence.

Conclusions:

The evidence provided by Officer 1 appeared to be credible, and was consistent with that provided by the target, who also appeared credible.

The investigation demonstrated that other than the affidavit created by Officer 2, there was no documentation to support the information purportedly provided by Officer 1 regarding the stated drug seizure several months prior to the affidavit being prepared.

In addition, the facts appear to demonstrate two known examples of errors in the information captured by Officer 2 in the affidavit from Officer 1.

Further, Officer 1 would know there were no records of drugs having been seized several months earlier. If in fact he had seized drugs but there was no record, it seems unlikely he would alert others to that fact. The fact he provided information is more consistent with his evidence that no drugs were seized.

The most likely conclusion to be drawn from these facts is that Officer 2 misunderstood what was told to him by Officer 1. The conversations occurred in an uncontrolled and unrecorded fashion. In addition, these facts fall well short of providing reasonable grounds to believe that Officer 1 deliberately provided false information or mishandled seized drugs.

Therefore, there are no grounds to consider any charges against Officer 1.