



OWEN SOUND POLICE SERVICES BOARD

Expires: Indefinite

Repeals: 2005-03 & 1998-09

Revisions: August 01, 2017

BY-LAW NO. 2017-03

A BY-LAW TO AUTHORIZE THE OWEN SOUND POLICE SERVICES TO ACCEPT, INVESTIGATE AND RESOLVE COMPLAINTS MADE BY A MEMBER OF THE PUBLIC OR INITIATED INTERNALLY IN ACCORDANCE WITH THE POLICE SERVICES ACT

WHEREAS the Board passed bylaw 2005-03 on the 24th day of February, 2005; and

WHEREAS the Board deems it necessary to review bylaw 2005-03; and

This By-law directs the Chief of Police to create a Complaint Policy, which includes procedures to deal with complaints that are within the responsibilities of the Chief.

This By-law contains procedures to deal with complaints that are not within the responsibilities of the Chief and subsequently must be accepted, investigated and resolved by the Owen Sound Police Services Board. Specifically the Board is responsible for:

- Complaints about the policies of, or services provided by the Owen Sound Police Service where a member of the public is not satisfied with the Chief's disposition and submits a written request for review to the Board and;

- Complaints about the conduct of the Chief of Police or Deputy Chief of Police.

WHEREAS the Police Services Act sets out the responsibilities of the Owen Sound Police Services Board and;

WHEREAS the said Act provides that the Board is responsible for the provision of police services and for law enforcement and crime prevention in the municipality and shall establish policies for the effective management of the Police Service and;

WHEREAS the said act requires the Board to direct the Chief of Police and monitor his or her performance and;

WHEREAS the said act authorizes the Board to make, by By-law, rules for the effective management of the Police Service and;

WHEREAS the Act sets out obligations of the Board and Police Service relative to complaints and;

WHEREAS the Board has considered the provisions of the Act in the context of its responsibilities and recognizes and adheres to the principle that fair, open, prompt, thorough and efficient response to complaints is a cornerstone to establishing and maintaining a positive *community/police* relationship and;

WHEREAS the Board deems it expedient to enact this By-law to ensure that the response to complaints by the Board and the Service adheres to the principles set out above;

NOW THEREFORE the Owen Sound Police Services Board enacts as follows:

1. Definitions:

For the purposes of this By-law:

- (a) "Act" shall mean the Police Services Act and amendments thereto,
- (b) "Board" shall mean the Owen Sound Police Services Board,
- (c) "Chief" shall mean the Chief of Police for the Owen Sound Police Services,
- (d) "Commission" shall mean the Ontario Civilian Commission on Police Services,
- (e) "Commission Review Waiver Form" shall mean a form signed by a member of the public or Police Officer waiving the right for a review or an appeal to the Commission,
- (f) "Complaint" shall mean a complaint about a policy or service provided by the Owen Sound Police Service or about the conduct of an Owen Sound Police Officer,
- (g) "Complaint Form" shall mean a form approved by the Commission and used to formally initiate a complaint and provide the circumstances surrounding the complaint,
- (h) "Conduct" shall mean and includes both misconduct and unsatisfactory work performance as outlined in the Act and Regulations,

- (i) "Deputy" shall mean the Deputy Chief of Police for the Owen Sound Police Services,
- (j) "Member" shall mean a member of the Owen Sound Police Services and includes a Police Officer,
- (k) "Member of the Public" shall mean a member of the public as defined in the Act.
- (l) "Regulations" shall mean the regulations of the Police Services Act and amendments thereto,
- (m) "Service" shall mean the Owen Sound Police Services.

2. General:

- (1) The Chief of Police shall:
 - (a) Develop a Complaint Policy, which includes procedures to ensure that complaints are processed in accordance with this By-law and the Act. A copy of the Policy shall be provided to the Board,
 - (b) Ensure compliant forms are available at the Service,
 - (c) Ensure that a public information pamphlet adopted by the Commission is available to any person and that such pamphlet is given to each person who makes a complaint at the time of such complaint,
 - (d) Ensure that all Members are aware of the Complaint Policy and Procedures and of the availability of the said forms and pamphlets,
 - (e) Ensure that all Members receive training in respect to the complaint provisions of the Act,
 - (f) Ensure that all directions from the Commission pursuant to the Act are complied with forthwith in accordance with this By-law and the Act,
 - (g) Make quarterly written complaints reports to the Board in March, June, September and December of each year. The reports shall include the following information,

Policy or Service Complaints:

- (i) The total number of policy or service complaints made,
- (ii) The number of policy or service complaints which the Chief took no action,
- (iii) The number of policy or service complaints which the Chief took action, and a summary of the action taken,
- (iv) The number of requests for review made to the Board,

- (v) The number of requests for review made to the Board, which the Board took action or no action, a summary of the action taken and the Service response to the Board action,
- (vi) The average time to complete the complaint process from the date the complaint is received to the date it is disposed of,
- (vii) The number of time extensions made in respect of policy or service complaints.

Conduct Complaints – Not Including Complaints against Chief or Deputy:

- (i) The number of conduct complaints made,
 - (ii) The number of referrals to other Services for investigation,
 - (iii) The number of complaints determined to be unsubstantiated or not acted upon and the number of reviews requested in this area and the results of those reviews,
 - (iv) The number of hearings held and the findings,
 - (v) The number of complaints dealt with informally,
 - (vi) A summary of penalties imposed,
 - (vii) The number of outstanding complaints at the end of the reporting period,
 - (viii) The average time to complete the complaint process from the date the complaint is disposed of,
 - (ix) The number of time extensions made in respect of conduct complaints,
 - (x) The number of appeals to the Commission after a hearing and the results.
- (h) Included in the report should be an analysis of the frequency, nature and substance of Policy or Service Complaints and Conduct Complaints (excluding complaints against the Chief and Deputy), and the opinion of the Chief as to whether such frequency, nature and substance of the complaints requires some form of remedial or other training, or additional resources to process the complaints, with particulars and estimated costs of the training or additional resources required.
- (i) Include in the report a statement of service costs to administer this By-law and the Complaint Policy for the period in question.
- (j) Make a confidential written report to the Board in respect of any conduct complaint which involves allegations of criminal misconduct by a Member, or which involves allegations of misconduct under the Act of such a serious nature that, if proven, are likely to call into question the integrity of the Service. Regular written update reports to the Board shall follow until the matter is finally concluded.

- (k) The report pursuant to section (j) above shall be made at the time the Chief concludes that section (j) applies.
- (2) The Board shall:
 - (a) Inform the Chief of complaint information received and processed by the Board in order to complete the above report(s),
 - (b) Deliver to the Commission, a report each year comprised of the March, June September and December reports,
 - (c) When receiving a confidential report outlined in section 9(j), take the report for information and not for action except for consultation and advice to the Chief if the Chief so requests.
 - (d) In the event that a Policy or Service Complaint or a Conduct Complaint against the Chief or Deputy is withdrawn by the Complainant, consider whether or not to request a meeting with the Complainant for determining:
 - (i) The reason the complaint was withdrawn,
 - (ii) Whether the Board should continue to deal with the complaint in accordance with the Act.
 - (iii) If a hearing was commenced, whether consent to the withdrawal of the complaint ought to be given.
 - (e) If the Chief has recommended the initiation of a hearing into an Officer's conduct but the six-month limitation period has expired, advise the Chief whether or not the delay was reasonable under the circumstances.
 - (f) Service of any forms or other documents required to be served pursuant to this By-law and the complaint policy shall be done in accordance with the Act.

3. Policy or Service Complaint:

First resolved by the Chief:

- (1) The Chief shall not commence a review of a policy or service complaint until a completed Commission Review Waiver Form is received from the Complainant or the thirty (30) day waiting period has expired,
- (2) In respect to every policy or service complaint, the Chief shall, within sixty (60) days from commencing a review, submit a written report to the Board which shall include at least the following information and/or documentation:
 - (a) A copy of the complaint,
 - (b) A copy of the relevant forms provided to the Complainant,
 - (c) The disposition and the reasons for the disposition.
- (3) The Chief shall ensure the Complainant is notified in writing of the Chief's disposition of the complaint,

- (4) The Chief may extend the sixty (60) day time limit in accordance with the Act upon written notice to the Complainant and the Board.

Board Receiving A Request for Review – Complainant Not Satisfied with Chief's Disposition:

- (1) The Board may appoint a Complaint Committee consisting of at least three (3) Board members who will review the request for review and report back to the Board,
- (2) The Board shall notify the Chief in writing that it has received a request for review immediately upon receipt of such request, and shall request from the Chief, the written report set out above, and may request any other documentation or information which was used in making any findings in respect of the complaint,
- (3) The written report and requested documentation or information shall be filed with the Board within ten (10) days from the earlier of:
 - (a) The date the Complainant filed a request for review,
 - (b) The expiry of the time for filing such requests for review.
- (4) The Board or Complaint Committee, as the case may be, shall within thirty (30) days of receiving the request for review:
 - (a) Review the report of the Chief,
 - (b) Make a written report concerning the disposition of the complaint, including a recommendation as to whether or not to hold a public hearing.
- (5) The Board or Complaint Committee may extend the above thirty (30) day review time limit upon giving written notice to the Complainant and the Chief,
- (6) If a Complaints Committee was formed, the committee shall provide to the Board, all documentation and information considered by the committee in making its recommendation,
- (7) The Board shall consider whether to obtain legal advice in respect of any aspect of the complaint which is the subject of the review,
- (8) In deciding whether to hold a public meeting, the Board shall consider at least the following:
 - (a) Whether the complaint, if found to be substantiated, raises present, past or potential issues concerning law enforcement and crime prevention in the municipality,
 - (b) Whether public input could reasonably be required to effectively deal with the complaint,
 - (c) Whether it is in the public interest to hold such a public meeting.

- (9) Notice of a public meeting to be held may be given by publication in a newspaper or newspapers that, in the opinion of the board, is of sufficient general circulation in the municipality so as to give the public reasonable notice of such meeting.
- (10) The Notice shall include at least the following:
 - (a) A summary of the nature of the complaint,
 - (b) The time and place of the meeting,
 - (c) The address for filing of written submissions,
 - (d) The deadline for filing of such written submissions,
 - (e) The procedure to be followed if a member of the public wishes to make oral submissions including a time limit in respect of the oral submissions.
- (11) The Board shall dispose of the complaint and notify the Complainant and the Chief in writing of such disposition within thirty (30) days of the completion of the recommendations report outlined in section 4 above or the completion of the public meeting. The Board may extend the thirty (30) day time limit upon giving written notice to the Complainant and the Chief,
- (12) Subject to section 13 below and to the provisions of the Act, the Board or the Complaints Committee, as the case may be, shall deal with all issues relating to the complaint in the public portion of Board or Complaints Committee meetings, or at a public meeting called for the purpose of considering the complaint,
- (13) The Board may decide to deal with all or part of a complaint in camera, or may decide not to disclose publicly the name or any public information of the Complainant, if the Board determines that the matters to be discussed are of such a nature that the interests of any person affected outweighs the desirability of having the meeting in public or of disclosing the information.

4. Conduct Complaint – Chief or Deputy:

- (1) All complaints concerning the conduct of the Chief or Deputy are to be delivered to the Chair of the Board within three (3) days of the determination that the complaint is a Conduct Complaint.
- (2) The Board shall maintain a master file in respect of each complaint considered pursuant to this section.
- (3) The Board Chair shall record all time limits set out in the Act to ensure compliance with the said time limits.
- (4) The Board shall not commence the review until a completed Commission Review Waiver form is received from the complainant or the thirty (30) day waiting period has expired.

- (5) At any time before or during an investigation into conduct that appears to be obviously conduct not of a serious nature, the Board may resolve the matter informally, if the Complainant and Chief or Deputy consent to the proposed resolution.
- (6) The Board shall, within fourteen (14) days of commencing the review of the complaint, consider at a confidential meeting:
 - (a) Whether the complaint is frivolous or vexatious or made in bad faith in accordance with the Act,
 - (b) Whether the facts upon which the complaint is based occurred more than six (6) months before the day of the complaint in accordance with the Act,
 - (c) Whether the Complainant was not directly affected by the conduct that is the subject of the complaint in accordance with the Act.
- (7) In the event that the Board decides not to deal with a complaint for any of the reasons described above, the Board shall forthwith notify the Complainant and the Chief or Deputy in writing,
- (8) In the event that the Board is of the opinion that the conduct may constitute an offence under a law of Canada or of a Province or Territory, or misconduct under the Act, or unsatisfactory work performance, the Board shall refer the matter to the Commission in order to assign a Chief of Police from another police service to immediately investigate the complaint,
- (9) If the external Chief assigned by the Commission to investigate the complaint reports that the complaint is unsubstantiated, the Board shall notify the Complainant and the Chief or Deputy in writing,
- (10) If the Chief assigned by the Commission to investigate the complaint reports to the Board that the Chief's or Deputy's conduct constitutes misconduct or unsatisfactory work performance, the Board shall, if it considers the conduct to be not of a serious nature, proceed with the informal resolution process outlined in the Act and in sections 25 and 30 below.
- (11) If the Board is of the opinion upon receiving the external Chief's report, that the Chief's or Deputy's conduct constitutes serious conduct described above in section 8, the Board shall decide whether to refer the matter to the Commission or to hold a hearing and shall act in accordance with section 14 (refer matter to Commission) or 16 (Board to hold hearing) below.
- (12) In deciding whether to refer the matter to the Commission or to hold a hearing, the Board shall consider as least the following factors:
 - (a) The nature of the complaint,
 - (b) Whether, considering the nature and duration of the relationship between the Board and Chief or Deputy, members of the public including the Complainant, or the Chief or Deputy, might reasonably perceive bias,

- (c) Whether it is in the public interest to hold such a hearing or to refer the matter to the Commission.
- (13) If the report received includes a statement that the Chief or Deputy is suspected of or charged with an offence under the laws of Canada or a Province or a Territory, or is suspected of misconduct under the Act, the Board shall consider whether to invoke the suspension provisions of the Act.
- (14) If the Board decides to refer the matter to the commission, it shall:
 - (a) Give written notice to the Complainant and the Chief or Deputy,
 - (b) Give written notice to the Commission of its decision, without reasons, together with a copy of the complaint, but shall not provide any other documentation or information to the Commission except as may be requested by the Commission,
 - (c) Meet the requirements outlined in the Act regarding remuneration of a prosecutor.
- (15) When the Board receives direction from the Commission to take action in accordance with the Act, the Board shall take such action and, and if required, serve a written notice of penalty upon all parties.
- (16) If the Board decides to hold a hearing, it shall:
 - (a) Designate legal counsel as Prosecutor,
 - (b) Give written notice to the Complainant and the Chief or Deputy
 - (c) Direct that the Prosecutor make full disclosure to the Complainant and the Chief or Deputy,
 - (d) Direct that the Board Chair arrange for a hearing room and a court reporter to record all evidence taken and submissions made at any hearing dates before the Board.
- (17) If six (6) months have elapsed since the facts on which the complaint is based first came to the attention of the Chief or the Board, the Board shall not proceed with a hearing or serve a notice of hearing unless the Board is of the opinion that the delay was reasonable under the circumstances.
- (18) The hearing shall be held within a reasonable time, and notice of any dates set for the hearing, except for the first date set in section 16 above, shall be given to the complainant in writing.
- (19) In the event that a Crown Attorney has been consulted with respect to the complaint, the Board may proceed to deal with the part of the complaint that constitutes misconduct under the Act or unsatisfactory work performance, unless the Crown Attorney directs otherwise.
- (20) The hearing shall be conducted in accordance with the provisions of the Act and the Statutory Powers Procedure Act, as amended.

- (21) Subject to the Act and the Statutory Powers Procedure Act, the hearing held by the Board shall be public, but all prior and preliminary matters dealing with the complaint shall be dealt with in confidential portions of Board meetings.
- (22) At any time, the Board may seek legal advice from an advisor independent of the Chief or Deputy, and in that case the nature of the advice shall be communicated to all parties so that they may make submissions as to the law.
- (23) If the Board finds that misconduct or unsatisfactory work performance is proven after a hearing on clear and convincing evidence, it shall:
 - (a) Adjourn the matter for a reasonable time to deal with the issue of penalty,
 - (b) Impose any of the penalties that the Act provides for the Board and prior to imposing the said penalties, the Board shall hear and consider submissions and evidence from all parties, or their counsel.
 - (c) Cause an entry to be made in the Chief's or Deputy's employment record in accordance with the Act.
- (24) The Chief or Deputy may, within thirty (30) days of receiving notice of the decisions made in section 23, appeal to the Commission in accordance with the Act and the Board shall await the Commission's direction prior to imposing any of the decisions.
- (25) If the Board decides to proceed with the informal resolution process, the Board shall serve a written notice on the Complainant and the Chief or Deputy.
- (26) The Board shall not commence the informal resolution until,
 - (a) A completed Commission Review Waiver Form is received from the complainant, or
 - (b) The thirty (30) day waiting period has expired, or
 - (c) On review, the Commission has decided that there may be an informal resolution of the complaint.
- (27) The Board may, on consent of the Complainant and the Chief or Deputy, retain an independent Mediator to assist in the informal resolution process.
- (28) The matter shall not be resolved informally unless the Complainant and the Chief or Deputy consent in writing to the proposed resolution.
- (29) If the Complainant and the Chief or Deputy do not consent in writing, the Board shall allow the Chief or Deputy to reply orally or in writing and then impose a penalty or take action in accordance with the Act.
- (30) If the Chief or Deputy refuse to accept the penalty imposed or the action taken, the Board shall not impose a penalty or take any other action or

cause an entry to be made in the employment record, but shall hold a hearing or refer the matter to the Commission.

This By-law shall come into full force and effect upon the final passing hereof.

Read a first and second time this day of , 2013.

Read a third and finally passed this day of , 2013.

G. Levine, Chair

KJ. Calver, Administrative Assistant

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