



Royal Canadian
Mounted Police

Gendarmerie royale
du Canada

Security Classification/Designation
Classification/désignation sécuritaire

"E" Division
Operations Strategy Branch

Your File - Votre référence

PC-2007-2344

Our File - Notre référence

2007-30019

Mr. Jason Gratl
c/o BC Civil Liberties Association
Suite #550 - 1188 West Georgia Street
Vancouver, BC
V6E 4A2

Date

December 23 2008

Dear Mr. Gratl:

This letter is in reference to the public complaint you lodged with the Commission for Public Complaints against the RCMP (CPC) on November 13, 2007.

A thorough investigation has been conducted and I am now in a position to address your concerns.

Background Information:

On October 14, 2007, Richmond Detachment members were called to Vancouver International Airport following a report of a disturbance in the International Arrivals secure area. Initially, airport security officers attended but were unable to communicate with a 40 year old agitated male who apparently could not respond to English language. This male was sweating profusely and was acting out by shouting. He picked up a small folding table and threw it against a glass wall and then attempted to throw a computer that was still tethered to a counter. As a result, airport security contacted the RCMP. RCMP officers arrived on scene and within a short time, a member activated a Conducted Energy Weapon (CEW). The male, later identified as Robert Dziekanski, fell to the floor and was restrained with the use of handcuffs.

The male fell unconscious and subsequently died at the scene. The Integrated Homicide Investigation Team (IHIT) and BC Coroner's service were called to the scene to investigate. Initial Media briefings were conducted by Sergeant Lemaitre and Corporal Carr.

An unrelated traveler by the name of Paul Pritchard, used his own digital camera to record continuous footage of the encounter between Mr. Dziekanski and airport security, as well as the arrival and interactions of RCMP officers.

Summary of Complaint:

You allege that there are several misleading statements and misrepresentations made by RCMP media relations officers (MRO's) during the first few days following the police custody death of Robert Dziekanski on October 14, 2007. You also allege that the RCMP had no legal right to seize the video recording from Pritchard and suppress it in a manner that was, either in intent or effect, to advantage the RCMP's reputation or project a more favorable account of the RCMP's role during

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the encounter with Dziekanski.

You quoted newspaper articles when outlining your allegations; specifically:

1. That Sergeant Lemaitre stated the attending police officers attempted to calm Dziekanski and as a last resort, used the taser.
2. That Sergeant Lemaitre stated Dziekanski may have been under the influence of alcohol, drugs or had a medical condition that caused his death.
3. That Sergeant Lemaitre stated that Dziekanski was sweating profusely and was violent which could indicate either drug use or a medical condition and that there was obviously something very different going on inside of him.
4. That Corporal Carr stated the Pritchard video recording was being withheld from the public to prevent witness account contamination but that the RCMP was continuing to publicly espouse subjective information about the incident thereby contaminating potential witness accounts to the detriment of Dziekanski and to the benefit of the RCMP.
5. That Corporal Carr stated the Pritchard video recording was being withheld from the public to prevent upsetting Mrs. Cisowski (the decedent's mother), even though she and her lawyer wanted it released.
6. That Corporal Carr publicly attacked Paul Pritchard's motive for release of the video.

There have been numerous public complaints lodged relating to this incident, specifically there has been a public complaint lodged relating to the seizure and retention of the video recording taken by Mr. Paul Pritchard. Section 45.36 of the RCMP Act allows for the disposition of complaints should other avenues of investigation be continuing, in this case a Criminal Investigation into the Police Custody Death of Mr. Dziekanski. As such any allegations relating to the seizure and retention of the video recording taken by Mr. Paul Pritchard will be addressed in relation to the MRO's conduct only.

Staff Sergeant Tom Forster was assigned to the investigation of your public complaint.

Findings of Investigation:

In December 2007, the RCMP investigator, Staff Sergeant Forster met with you to determine whether there was any specific evidence to support your allegations and to complete the public complaint form. You did not provide Staff Sergeant Forster with any further documentation or evidence. You did cite newspaper articles and advised that much of the information was held in the public domain. In the course of this interview it was also discussed that you had a reasonable expectation that during the course of this public complaint investigation, if other non-specified inaccuracies surfaced regarding the release of information to the media by the RCMP in relation to Mr. Dziekanski (decedent), that those issues should be investigated.

Staff Sergeant Forster reviewed information found in the public domain and attempted to obtain information from sources that you cited in your public complaint. The media sources cited in your public complaint referred Staff Sergeant Forster to their legal department and did not cooperate by providing the requested information. As a result, Staff Sergeant Forster relied on media

interviews as located in the public domain, as a result the examination of video footage of news segments could only be placed in context if either the preamble and/or postscript was included in the clipping. Interviews were also conducted with members related to the concerns of this public complaint, including the subject members.

Allegation #1: That Sergeant Lemaitre stated the attending police officers attempted to calm Dziekanski and as a last resort, used the taser.

As noted in the Pritchard video, the CEW was utilized approximately 25 seconds after members arrived at the scene. Sergeant Lemaitre in an interview with the CBC on October 16, 2007 defended the actions of the members by telling the reporter how various use of force options were not ideal during the altercation with Dziekanski. At this point in time, no opinion from a use of force expert had been received by IHIT indicating whether the use of the CEW or the use of force generally was appropriate or not. Such a report was not requested by IHIT until early November 2007.

There are several media video clips in the public domain which show Sergeant Lemaitre reporting that members tried to calm Dziekanski down, all to no avail and that a CEW was deployed. Members of the RCMP are familiar with use of force options included in the Incident Management Intervention Model and when interviewed about his comments to the CBC, Sergeant Lemaitre stated he barely recalled doing that interview. He believed his motivation for explaining the various options was to try to help a lay person understand what process the members would have been going through before the CEW was employed. Sergeant Lemaitre when interviewed advised that he was not misrepresenting information.

As such, the allegation that Sergeant Lemaitre misrepresented this information is not supported.

Allegation #2 That Sergeant Lemaitre stated Dziekanski may have been under the influence of alcohol, drugs or had a medical condition that caused his death.

No video recording shows that Sergeant Lemaitre asserted this information as fact. Sergeant Lemaitre when interviewed on this stated that he would have said that IHIT were investigating to see if alcohol, drugs or a medical condition existed which is what the investigation would try to determine. Further, in reviewing the IHIT file, it was noted that several eyewitnesses who were interviewed at the airport provided statements to police where they believed alcohol was involved as DZIEKANSKI was acting erratically like a person might under the influence of alcohol or a drug.

This allegation is not supported by any evidence uncovered in this investigation.

Allegation #3: That Sergeant Lemaitre stated that Dziekanski was sweating profusely and was violent which could indicate either drug use or a medical condition and that there was obviously something very different going on inside him.

The Pritchard video confirms that Dziekanski was sweating profusely. While it could indicate drug use, or a medical condition or that something was going on inside him, or something else altogether, at the time this comment was said, the autopsy report had not confirmed, eliminated or otherwise provided information about the cause of Dziekanski's sweating or his overall behavior. As well, the toxicology report had not yet been received and therefore, these comments could amount to speculation which would be contrary to RCMP policy.

There is no video of this particular comment and the newspaper sources cited by the BCCLA did not cooperate. There is no direct evidence relating to this allegation and your office was unable to provide any further information. As such, this allegation is not supported.

Allegation #4: That Corporal Carr stated the Pritchard video recording was being withheld from the public to prevent witness account contamination but that the RCMP was continuing to publicly espouse subjective information about the incident thereby contaminating potential witness accounts to the detriment of Dziekanski and to the benefit of the RCMP.

The Pritchard video is very graphic and an excellent piece of evidence in factually depicting what happened. As is prudent in any investigation, capturing what an independent witness observed before being able to be influenced by talking with other witnesses or seeing material that could influence their recollection is crucial. Corporal Carr's comments were authorized by Superintendent Rideout, an experienced homicide investigator and a police subject matter expert in investigating deaths. Withholding the video from the public and from potential witnesses until statements were obtained is a tried and true process. Once all witnesses were interviewed, the Pritchard video was released. There is no evidence that there was any attempt to suppress the video as it was presented to the BC Coroner immediately and in fact was viewed by Mrs. Cisowski's lawyer shortly thereafter.

Once Corporal Carr was assigned to be the spokesperson for the Dziekanski investigation on October 16, 2007, there were no further releases made about details from any witnesses or involved members. However, media outlets were continuing to run footage from Sergeant Lemaitre's early interview releases in anticipation of the public release of the Pritchard video on November 14, 2007. At the time, the early release by Sergeant Lemaitre were contrasted against details depicted in the video.

I cannot support this allegation as it is not supported by any evidence uncovered in this investigation.

Allegation #5: That Corporal Carr stated the Pritchard video recording was being withheld from the public to prevent upsetting Mr. Cisowski (the decedent's mother), even though she and her lawyer wanted it released.

When Corporal Carr was interviewed he stated that while he did not speak to Mrs. Cisowski, he as a parent, projected how any parent would feel about seeing a video where their child dies, nobody would want to see such a thing and especially not on national television.

As mentioned earlier, the Pritchard video was withheld for sound investigational reasons. Of note, the day before the Pritchard video was released, Pritchard himself (in an interview with CTV and Global TV) forewarned the public of the graphic nature of the depictions that he didn't think Mrs. Cisowski would want to see the video.

This allegation is not supported by any evidence uncovered in this investigation or provided to the RCMP investigator.

Allegation #6: That Corporal Carr publicly attacked Paul Pritchard's motive for release of the video.

The investigator could not locate any video that contained comments which could amount to an attack upon the character of Mr. Pritchard. You could not provide evidence of this allegation when interviewed by the investigator and the newspaper sources cited in your complaint did not cooperate in this investigation.

This investigation is not supported by any evidence uncovered in this investigation.

* Of note is that this investigation recognized that Sergeant Lemaitre did not maintain notes as expected of all RCMP members. I have personally provided Sergeant Lemaitre with operational guidance regarding both the RCMP's expectation and my own, of the importance of keeping adequate notes when involved in any file.

Conclusion:

Media Relations Officers find themselves in demanding situations when responding to incidents of a sensitive nature involving a death in custody. Attempting to release information as expeditious as the public and media desires, puts police investigations at risk. Historically, the RCMP have released little information prior to the conclusion of the investigation. Striking this balance of how much information to release can be difficult. Too much or too little may be misconstrued or put the ability to bring the investigation to a conclusion into jeopardy.

Please be advised that, pursuant to Section 45.4 of the RCMP Act, I am notifying you that the investigation into your complaint has now been concluded. If you are not satisfied with the manner in which your complaint has been addressed by the RCMP, you may request a review by the Commission for Public Complaints Against the RCMP by corresponding with them at the following address:

Commission for Public Complaints Against the RCMP
Canada Post: Bag Service 1722
Ottawa, ON
K1P 0B3
Tel: 1-800-267-6637
Fax: 1-613-952-8045

Yours truly,



Rob Morrison, Chief Superintendent
Officer in Charge
Operations Strategy Branch
"E" Division

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cc: Commission for Public Complaints Against the RCMP, File PC-2007-2344