

IN THE MATTER OF A COMPLAINT
AND
DISCIPLINARY PROCEEDINGS AGAINST
REG. NO. XXXX CONSTABLE A.A.
UNDER THE POLICE ACT,
R.S.A. 2000, C. P-17

DECISION

Procedural Background

On December 2nd, 2021, Constable A.A. was cited for two counts of misconduct. For ease of reference, the counts are reproduced hereunder.

Count #1:

Engaging in the misconduct of Deceit contrary to section 5(1)(d) of the *Police Service Regulation* and as further defined by section 5(2)(d)(i) of the *Police Service Regulation*.

Details of Allegation

On or about October 13, 2019, you received a request from the EPS FOIPP Office for "data, pictures or text messages on a 'work issued' cell phone between yourself and B.B. ". On or about October 29, 2019 you advised FOIPP that you had reviewed your phone and did not have any records relating to the request. Your response was false, misleading or inaccurate.

Count #2

Engaging in the misconduct of Neglect of Duty contrary to section 5(1)(h) of the *Police Service Regulation* and as further defined by section 5(2)(h)(i) of the *Police Service Regulation*.

Details of Allegation

On or about October 13, 2019, you received a request from the EPS FOIPP Office for "data, pictures or text messages on a work issued cell phone between yourself and B.B.". You neglected to review your work issued cell phone in relation to this request and failed to identify the text messages between yourself and B.B. that were in your possession.

The hearing was commenced via email on 2021-12-06 by Marco BALDASARO, The Presenting Officer. The usual three exhibits were entered without objection. Constable A.A. was represented by Mr. Darin SPRAKE.

Exhibit 1 – Memorandum appointing me as Presiding Officer,
Exhibit 2 – Memorandum appointing Marco BALDASARO as the Presenting Officer,
Exhibit 3 – Notice and Record of Disciplinary Proceedings.

The hearing was set over to 2022-02-07 without plea. Prior to that date, counsel advised that work had commenced on a likely agreement and plea change. When this came to pass, the matter was set for February 10th via Zoom videoconferencing.

On that date, the Presenting Officer entered the string of email messages that commenced the proceedings as well as the statement of agreed facts signed by Constable A.A. and the Presenting Officer. They were accepted as exhibits without objection.

Exhibit 4 – Email message commencing the proceeding,
Exhibit 5 – Statement of Agreed Facts.

Mr. BALDASARO advised that Constable A.A. wished to accept count #2 and this was confirmed by Mr. SPRAKE. The plea was accepted and Mr. BALDASARO withdrew count #1.

Evidence

The statement of agreed facts set out the circumstances.

- 1. The matters set out in this Statement of Agreed Facts are admitted solely for the purpose of the disciplinary hearing to be conducted into the charges as set out in the Notice and Record of Disciplinary Proceedings dated December 2, 2021. They are not admitted for any other purpose or any other proceedings. Either party may call additional evidence on the matters set out in this Statement of Agreed Facts, but may not contradict the agreed upon facts.*
- 2. Cst. A.A. has been a member of the Edmonton Police Service (“EPS”) since November 28, 2011. Cst. A.A.’s Service Record Summary is attached hereto as **Exhibit “A”**. At all material times, Cst. A.A. was patrol constable in Northeast Squad 3.*
- 3. On or about February 13 and 14, 2019 Cst. A.A. exchanged a series of text messages with B.B. (“B.B.”) in relation to an uttering threats complaint made against B.B..*
- 4. B.B. subsequently died by suicide.*
- 5. Portions of the text message conversation were obtained by B.B.’s parents (the “B.B.s”) following B.B.’s death.*
- 6. In an effort to obtain the complete text message conversation between Cst. A.A. and B.B., the B.B.s made a FIOP request to EPS seeking copies of any data, pictures or text messages exchanged between Cst. A.A. and B.B. (the “FOIP Request”).*
- 7. The FOIP Request was provided to Cst. A.A..*

8. *Cst. A.A. responded to the FOIP Request and advised the EPS FOIP Unit that he had reviewed his work issued cell phone and had no records to produce.*
9. *A complaint was subsequently filed by counsel for the B.B.s against Cst. A.A. in relation to, inter alia, Cst. A.A.'s response to the FOIP request (the "Complaint").*
10. *In the course of responding to the Complaint, Cst. A.A. reviewed his cell phone and located the text messages he exchanged with B.B.. The text messages were subsequently produced.*
11. *Cst. A.A. acknowledges that he neglected to thoroughly review his work issued cell phone in relation to the FOIP Request and thereby failed to identify and produce the text message exchange with B.B. as required.*
12. *Cst. A.A. agrees that the above facts support the finding that he engaged in one count of Neglect of Duty and pleads guilty to that charge.*
13. *Cst. A.A. has a clean disciplinary record.*

In view of the plea and having satisfied myself the count is made out in the facts, I found the count proven.

Penalty

The Presenting Officer advised that a joint submission on sanction had been prepared. The recommendation is for a reprimand, a 10 hours suspension without pay and specific training with the Freedom of Information Privacy office.

The proposed sanction meets the goals of *Amery* as it provides for remedial training, offers both specific and general deterrence and demonstrated the Edmonton Police Service recognizes seriousness of the misconduct. Mitigating the sanction is Constable A.A.'s clean disciplinary record and his cooperation in bringing the matter to a conclusion without the need for witness evidence. Aggravating factors include the recognition that this misconduct is serious and can have a corrosive effect on the public trust.

Mr. SPRAKE thanked the Presenting Officer for his fair approach to what he believes is a sentence that strikes the balance and provides for remediation. Constable A.A. has made significant effort to improve his practice with respect to managing and storing his phone messages.

Decision

Recognizing the deference a Presiding Officer should give to joint submissions as per the Supreme Court decision in *Anthony-Cook* I find the proposed penalty to be appropriate.

I impose the following sanction on Constable A.A.:

1. A Reprimand,
2. 10 hour suspension without pay to be served in one pay period,
3. The member shall obtain training on what is expected of EPS sworn members when they receive a FOIPP request. This will be done through the EPS FOIPP unit arranged by Professional Standards Branch, with FOIPP Analyst Louise McCloskey and Cst. A.A. and must be completed within six months of the date of this direction

Oral and written decision dated February 10th, 2022.

Fred R. KAMINS, Chief Superintendent, RCMP (Retired)

The Presiding Officer

Mr. M. BALDASARO

The Presenting Officer

Mr. D. SPRAKE

Counsel for Constable A.A.