

# SIU director tells Toronto chief to ‘educate’ cops about their duty to the police watchdog

The SIU director says the Toronto police made an “incorrect decision” when they neglected to notify the police watchdog about a man who was bleeding out of his ears after a police raid.



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SIU director Tony Loparco urged Toronto's police chief to "implement appropriate educational requirements" so officers understand when they're obligated to notify the police watchdog.

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Six months before an alleged assault by an off-duty Toronto officer on teen Dafonte Miller, the director of Ontario's Special Investigations Unit asked police Chief Mark Saunders to “educate” his officers on their duties to notify the watchdog when a civilian is seriously hurt by police, according to correspondence obtained by the Star.

SIU director Tony Loparco's request to Saunders was spurred by a 2015 case where the watchdog alleges Toronto police neglected to notify the civilian agency about an incident warranting an SIU investigation, specifically the injuries of a man sent to hospital while bleeding out of his ears following a police raid.

“A decision was made not to contact the SIU,” Loparco wrote in the June 2016 letter, obtained by the Star through a Freedom-of-Information request. “This was the incorrect decision.”

Ontario's Police Service Act states the SIU must be notified "immediately" of any incident that would reasonably be considered a serious injury, including when someone is admitted to hospital. But the watchdog — which investigates serious injuries and deaths involving police — only learned of the man's injuries two and a half months later, and only after receiving a letter of complaint about the incident. The man was diagnosed with a perforated eardrum.

Meanwhile, the delay "deprived" SIU investigators of important evidence, Loparco told Saunders.

"It is my hope that you will implement appropriate educational requirements for your officers so that similar problems do not arise in the future."

Asked if any action was taken on Loparco's request to educate officers on notification requirements, Mark Pugash, spokesperson for the Toronto police, said he would not discuss the specifics of the case.

Toronto police take Loparco's comments seriously, Pugash said, but is accountable to the Toronto police board.

Toronto police have come under fire in recent weeks for failing to notify the SIU of serious injuries incurred by civilians in encounters with police, chief among them the severe alleged assault on Miller.

The Black 19-year-old suffered a broken orbital bone, broken nose and will lose an eye following the December 2016 incident. The injuries were allegedly caused by an off-duty Toronto police officer Michael Theriault and his brother, Christian Theriault. Last month, both men were charged with aggravated assault, assault with a weapon and public mischief following an investigation by the SIU.

But the watchdog did not even know about Miller's injuries until months after the alleged attack, and only then because Miller's lawyer contacted the SIU. The delay has prompted accusations by Miller's lawyer, Julian Falconer, of a deliberate coverup by police to protect the Theriault brothers, whose father is a veteran Toronto police officer working in the Professional Standards unit, which was the division that decided not to contact the SIU about Miller's injuries.

Saunders has denied allegations of a coverup, saying the SIU was not told because, based on the information his officers had at the time, notification was not required.

Last week, the SIU announced it was charging Toronto police Const. Joseph Dropuljic with assault in a separate case involving injuries incurred by a young Black man. In that case, the SIU was not notified for 11 months after the incident, and only after the victim came forward to lodge a complaint.

The repeated delays underscore what critics say is a need for stronger police oversight, including consequences for officers who don't follow laws around the SIU.

"This is what raises suspicions in people's minds because they ask, 'well, why didn't they not notify the SIU?'" said Howard Morton, former director of the SIU and now a criminal defence lawyer.

Earlier this month, Morton joined a coalition of rights groups, including the Ontario Human Rights Commission, calling for the immediate implementation of the recent report by Ontario Court of Appeal Justice Michael Tulloch.

That report made a series of recommendations aimed at stronger police oversight, including clarifying the rules around when police services must notify the SIU and officers' duty to co-operate with investigations.

At the completion of every SIU investigation involving Toronto police, the SIU director writes a letter to the chief with basic details of the investigation and its conclusion.

Unlike the two recent cases involving Black men, the May 2015 incident prompting Loparco's letter to Saunders did not result in a criminal charge against any Toronto police officer.

According to the letter, the incident started with an attempted knifepoint robbery which led to an investigation involving Toronto's Emergency Task Force (ETF). On May 30, 2015 the ETF executed a search warrant in the case.

The location of the search warrant execution, and any identifying information about the injured man or officers involved, was redacted in the letter obtained by the Star. The letter also did not state who sent the complaint letter notifying the watchdog of the man's injuries; Jason Gennaro, spokesperson for the SIU, said he could not say who wrote the letter due to confidentiality requirements.

A team of seven ETF officers arrived at the home, found it unlocked then called out for the man wanted by police to exit the home. When he didn't, the team went inside and found the man sleeping in the basement. The man refused the officers' orders to show his hands then to get on the ground. One of the officers, spotting a knife beside the man's bed, then deployed a Taser.

The man fell to the ground but continued to thrash, according to the letter, so one of the officers pressed his ballistic shield onto the man's back to immobilize him, allowing him to be handcuffed.

When the man was brought outside, there was blood coming from his ears and he had a small cut above his eyebrow. He was taken to hospital where his cut was sutured and he was diagnosed with a perforated eardrum — the latter an injury typically seen in people who encounter a deafeningly loud sound.

Loparco had to determine whether the man's injuries were caused by the officers and wondered if a loud police distraction device called a "flash bang" has been used in their entry into the home. Citing witness and officer accounts, Loparco concluded it hadn't been used and stated that the perforated eardrum was not attributable to police. He also said the force used by police was reasonable.

However, Loparco noted that because the SIU was not immediately notified, the watchdog's investigators could not go to the residence to conduct a probe to independently determine whether the loud distraction device had been used.

According to Ontario's Police Services Act, the SIU must be notified immediately of any incident "that may reasonably be considered to fall within its mandate." The SIU uses what's called the Osler definition of serious injury, which states it must be presumed someone is seriously injured when they, among other types of injuries, are admitted to hospital and suffering hearing loss.

The man's injuries "satisfied two separate presumptions contained within the definition. Thus, the SIU should have been notified," Loparco wrote Saunders.

Among Tulloch's recommendations is to set out in law the Osler definition of serious injury. As it stands, serious injury is not defined in the Police Services Act.

As reported by the Star earlier this year, Loparco has issued several complaints about Toronto police co-operation with SIU investigations within the last few years, including past failures to notify the watchdog of serious injuries. In some cases, Loparco will ask the chief to investigate an alleged incident of non-co-operation and report back.

But police chiefs are not legally obligated to respond to these letters because the SIU has no authority under the Police Services Act to demand chiefs look into officer conduct.

Morton said the provincial government must step in to enforce the laws outlining what's expected of police when it comes to SIU co-operation. It's not enough "to simply have a director out there in isolation hoping that if he writes to the chief there will be some education," Morton said.

Earlier this month, Attorney General Yasir Naqvi said he will introduce legislation in the fall session of the legislature that will "transform Ontario's police oversight system," adding the bill will be introduced shortly after the provincial legislature resumes sitting.