

Report to / Rapport au:

**OTTAWA POLICE SERVICES BOARD
LA COMMISSION DE SERVICES POLICIERS D'OTTAWA**

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Submitted by / Soumis par:

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**SUBJECT: COLLECTION OF IDENTIFYING INFORMATION – DUTIES &
PROHIBITIONS POLICY: ANNUAL REPORT**

**OBJET: COLLECTE DE RENSEIGNEMENTS IDENTIFICATOIRES – POLITIQUE
SUR LES FONCTIONS ET INTERDICTIONS : RAPPORT ANNUEL**

REPORT RECOMMENDATIONS

That the Ottawa Police Services Board receive this report for information.

RECOMMANDATIONS DU RAPPORT

Que la Commission de services policiers d'Ottawa prenne connaissance du présent rapport à titre d'information.

BACKGROUND

Following province-wide and local community-police consultation efforts in 2015, the Minister of Community Safety and Correctional Services announced that the province filed final regulations on March 21, 2016. The first regulation is known as Ontario Regulation 58/16, under the *Police Services Act* entitled “Collection of Identifying Information in Certain Circumstances – Prohibition and Duties”, commonly referred to as the “Street Checks Regulation”. The second regulation amends the Code of Conduct under Ontario Regulation 268/10 of the *Police Services Act*, and provides a code of conduct violation where a police officer is found not to comply with Ontario Regulation 58/16.

Ontario Regulation 58/16 provides for voluntary police-public interactions, which are designed to ensure that the regulated interactions are without bias or discrimination. It establishes rules for: data collection, retention, access and management, training, and policy and procedures with audit and public reporting requirements. The Regulation takes effect in two phases – July 1, 2016 and January 1, 2017.

The regulation applies when police are attempting to collect identifying information from an individual during ‘face-to-face’ encounters while:

- Investigating general criminal activity in a community;
- Inquiring into suspicious activities to detect offences;
- Gathering information for intelligence purposes.

The regulations do not apply when an officer is conducting an investigation into an offence that is reasonably suspected has been or will be committed, or in other circumstances that are specifically outlined in the regulation. For example, the Regulation does not apply if:

- The person is legally required to provide information, for example, during a traffic stop.
- The person is under arrest or being detained, or when the officer is executing a warrant.
- Complying with a specific aspect of the regulation would compromise an ongoing investigation or compromise safety.
- The officer has a reasonable suspicion that the interaction is necessary to their investigation of an offence that has been committed or that the officer reasonably suspects will be committed.

The Regulation prohibits attempts to collect identifying information about an individual/from the individual in ‘face-to-face’ encounters which are arbitrary or where any part of the reason for the attempt is that the officer perceives the individual to be within a “particular racialized group” unless certain other and legitimate conditions exist. The Ottawa Police Service (OPS) is in compliance with this prohibition and stands against such practices.

The Regulation also prohibits the use of quotas of regulated interactions for individual performance measurement. The OPS is in compliance with this requirement; quotas are not part of the practices or policies for performance reviews, promotional processes or transfers.

The Ontario Association of Chiefs of Police (OACP) created a special working group to develop model practices to address the policy, data/records management and training requirements of the regulations and ensure consistent implementation across the province, where possible.

Inspector Mark Patterson completed his project lead duties after successfully implementing the OPS project requirements and launching regulated interactions in March of 2017. As outlined in past update reports to the Board, the implementation of the regulations presented significant unplanned and costly impacts to the organization: particularly on front line training, data management processes / storage, auditing and reporting.

The OPS worked with police members and provincial partners to ensure compliance with the new legislative requirements and completed the eight hour mandatory training that was developed by the Ontario Police College and a roundtable of provincial subject matter experts. This training includes a two-hour online module and a six hour in-class training session that focuses on the new regulation requirements as well as:

- The right of a person not to provide information to the police;
- The right of a person to discontinue an interaction with an officer;
- Bias awareness, discrimination and racism and how to avoid them when providing police services;
- How a person may access information about themselves held by this service under the Municipal Freedom of Information and Protection of Privacy Act; and,
- The initiation of interactions with members of the public.

Inspector Jim Elves continues as the business owner to ensure ongoing implementation, reporting, and consistent delivery of the legislation and policy requirements.

DISCUSSION

Further to the first annual report submitted to the Board in January 2018, the purpose of this report is to provide the 2018 annual report required by the Board and OPS policy requirements, as well as the provincial legislation.

With this report, the OPS is fulfilling the provincial reporting requirement to ensure the statistics produced by the data are in a format that is shareable and comparable across the province.

Annual Reporting Requirements

As per OPS policy, the annual report for Regulated Interactions shall be provided by the Chief of Police to the Board in the first quarter of the year.

This section of the report fulfills the annual reporting requirement as per the Board, OPS policies and the provincial legislation.

Annual Report for Regulated Interactions (January 1, 2018 to December 31, 2018):

The content of the annual report as it relates to Regulated Interactions includes the following:

- A. the number of attempted collections and the number of attempted collections in which identifying information was collected; Ten attempted “Regulated Interactions” were recorded. Identifying information was collected from four of the attempts; however, only two of “attempts” met the requirements of a Regulated Interaction.
- B. the number of individuals from whom identifying information was collected; Four.
- C. the number of times each of the following provisions were relied upon to not advise the individual of his/her right that he/she is “not required to provide identifying information to the officer” and/or the reason “why the police officer is attempting to collect identifying information about the individual” as otherwise required under Regulation:
 1. might compromise the safety of an individual; Zero
 2. would likely compromise an ongoing police investigation; Zero
 3. might allow a confidential informant to be identified; Zero or
 4. might disclose the identity of a person contrary to law, including the Youth Criminal Justice Act (YCJA). Zero
- D. the number of times an individual was not given a receipt because the individual did not indicate that they wanted it; Zero
- E. the number of times each of the following clauses was relied upon to not offer or give a receipt:
 1. might compromise the safety of an individual; Zero or
 2. might delay the officer from responding to another matter that should be responded to immediately. Zero

- F. the number of attempted collections from individuals who are perceived, by a police officer, to be within the following groups based on the sex of the individual:
- male individuals; Four or
 - female individuals. Zero
- G. for each age group established by the Chief of Police, the number of attempted collections from individuals who are perceived, by a police officer, to be within that age group;
- 0 – 17
 - 18 – 29 One
 - 30 – 49 One
 - 50 and up Two
- H. for each racialized group established by the Chief of Police for the purpose of this paragraph, the number of attempted collections from individuals who are perceived, by a police officer, to be within that racialized group;
- Mediterranean – One
 - White/Caucasian - Three
- I. a statement, based on an analysis of the information, as to whether the collections were attempted disproportionately from individuals within a group based on:
- a. the sex of the individual;
 - b. a particular age;
 - c. a racialized group; or
 - d. a combination of groups and, if so, any additional information that the Chief of Police considers relevant to explain the disproportionate number of attempted collections.

Given that the number of attempts to collect identifying information was four individuals; it is difficult to formulate any real patterns/assumptions/conclusions. It should however be noted that looking at the attempts, there is no identifiable “disproportionate” pattern regarding sex, age, race or location.

- J. the neighborhoods or areas where collections were attempted and the number of attempted collections in each neighborhood or area;
- Merivale Road/Viewmount Drive; Division 1, Sector 17. One attempt.

- Blackburn Hamlet Bypass/Innes Rd; Division 3, Sector 31. Two attempts.
- Prince Of Wales Drive/Waterford Drive, Division 1 Sector 17. One attempt.

K. the number of determinations made by the Chief (or designate) as to whether the information entered into the database:

- complied with limitations on collection set out in; the Regulation, and the results of the review(s), done at least once a year, of an appropriately sized random sample of entries of identifying information included in the database to estimate within a margin of error of plus or minus 5 percent, at a 95 percent confidence level, whether it appears that limitations on collection of information, duties to inform of rights and reasons before collecting, with exceptions or document for individual – document, with exceptions were complied with.

Review of each attempt to collect identifying information determined only two of the 10 complied with the Regulation. Although only 10 Regulated Interactions were attempted, each one was reviewed by the OPS Regulated Interaction Coordinator, who reports to the Sergeant and Staff Sergeant of the Intelligence Unit.

L. the number of times, if any, employees of the police force were permitted to access identifying information to which access must be restricted by virtue of one or more of the following:

- for the purpose of an ongoing police investigation; Zero
- in connection with legal proceedings or anticipated legal proceedings; Zero
- for the purpose of dealing with a complaint under Part V of the *Act* or for the purpose of an investigation or inquiry under the *Act*; Zero
- in order to prepare the annual report or a report required due to disproportionate collection; One
- for the purpose of complying with a legal requirement; Zero or
- for the purpose of evaluating a police officer's performance. Zero

M. where feasible, tracking of the times a Regulated Interaction led to a charge; Uncertain

N. the number of complaints (public and Chief's) resulting from or related to Regulated Interactions along with their status or outcome; Zero

- O. the number of *Municipal Freedom of Information and the Protection of Privacy* requests relating to Regulated Interactions; Zero for Regulated Interactions and One for street Checks and
- P. an estimate of the cost of complying with the Regulation. For the period of January 1, 2018 until December 31, 2018 there was no additional cost with regard to the Regulation.

DISPROPORTIONATE REPORT

If a disproportionate collection is identified based on an analysis of the information, as to whether the collections were attempted disproportionately from individuals within a group based on (a) the sex of the individual, (b) a particular age, (c) a racialized group, or (d) a combination of groups, in addition to the statement required in the annual report, the Chief of Police shall:

- A. review the practices of the police service; and
- B. prepare a report to the Board setting out the results of the review and his or her proposals, if any, to address the disproportionate attempted collection of information.

With only 10 attempted Regulated Interactions and two actual Regulated Interactions completed, the compiled data is far too small to draw any conclusions/patterns/behaviors. It should be noted that looking at the 10 attempts, there is no identifiable “disproportionate” pattern regarding sex, age, race or location. Therefore, no disproportionate report will be prepared.

CONSULTATION

As outlined in past reports to the Board, consultation and engagement have been an important part of this project and the development and implementation of provincial legislation – at both the local and provincial level.

Updates continue to be provided to local stakeholders and are available at the dedicated web page at ottawapolice.ca/regulatedinteractions.

INDEPENDENT STREET CHECK REVIEW

On June 7, 2017, the Government of Ontario appointed the Honorable Michael Tulloch, a judge of the Ontario Court of Appeal, to lead an independent review of the implementation of the regulation.

Following lengthy consultation efforts with police and community stakeholders across the province, Justice Tulloch released his report with recommendations on December 31, 2018.

Justice Tulloch met with the OPS Senior Leadership Team on January 8, 2019 to provide an overview of the lengthy report and discuss the findings and recommendations with senior staff. He clearly defines the difference between carding which is random collection of identifying information and has no place in policing – and street checks, which are a policing tool for public safety, and involve police obtaining identifying information from an individual outside of a police station that is not part of an investigation.

The Report of the Independent [Street Checks Review](#) is available online via the Ministry of Community and Correctional Services website. .

FINANCIAL IMPLICATIONS

The regulations presented significant unplanned impacts to the organization, which were reported in the January 29th, 2018 report to the Board. There were no new/additional financial costs for the 2018 reporting period.

CONCLUSION

The number of regulated interactions for the second annual report is quite low and appears to be consistent across the province. We will work with provincial partners and the OACP Special Working Group to review Justice Tulloch's report and gain greater insight into the implementation benefits and challenges of the new legislation and any changes the review may offer. In the meantime, we will maintain close monitoring, training and supports, so officers can engage in regulated interactions.

We are committed to professional and equitable policing. We will continue to work together with the community, on street checks and other related initiatives, to ensure policing is without discrimination and done in a way that promotes public confidence and protects human rights.