

Report to / Rapport au:

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

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Submitted by / Soumis par:

Policy and Governance Committee / Comité des politiques et de la gouvernance

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**SUBJECT: BOARD POLICY CR-18: COLLECTION OF IDENTIFYING
INFORMATION IN CERTAIN CIRCUMSTANCES – PROHIBITION AND
DUTIES**

**OBJET: POLITIQUE DE LA COMMISSION CR-18 : COLLECTE DE
RENSEIGNEMENTS IDENTIFICATOIRES DANS CERTAINES
CIRCONSTANCES – INTERDICTION ET OBLIGATIONS**

REPORT RECOMMENDATIONS

That the Ottawa Police Services Board approve the Collection of Identifying Information in Certain Circumstances Policy attached as Document 1.

RECOMMANDATIONS DU RAPPORT

Que la Commission de services policiers d'Ottawa approuve la Politique sur la collecte de renseignements identificatoires dans certaines circonstances, ci-jointe en tant que Document 1.

BACKGROUND

In March 2016 the Province filed a new Regulation under the *Police Services Act* called the “Collection of Identifying Information in Certain Circumstances – Prohibition and Duties” (Ontario Regulation 58/16). The Regulation provides rules for voluntary police-public interactions in certain circumstances (Regulated Interactions), which are designed to ensure that the interactions are without bias or discrimination.

The Regulation establishes rules with regard to these Regulated Interactions for: data collection by officers, provision of a document/receipt to individuals, the retention of information gathered from individuals, access and management of that information; training; monitoring and reporting requirements. The Regulation further requires the development of Board policy in the following five areas by July 1, 2016:

1. The document to be given to a member of the public from whom identifying information is requested.
2. The content of the annual report from the Chief of Police.
3. The report from the Chief of Police in respect of the disproportionate attempted collection of identifying information from individuals perceived to be within a group or combination of groups.
4. The retention of, access to and disclosure of identifying information collected before January 1, 2017.
5. The retention of, access to and disclosure of identifying information collected on or after January 1, 2017.

DISCUSSION

A Board policy that meets the requirements of Regulation 58/16 is attached to this report as Document 1. The policy is largely consistent with a recommended policy drafted by a working group of the Ontario Association of Chiefs of Police (OACP), of which OPS Inspector Mark Patterson is a member.

The Regulation also requires that Chiefs of police develop procedures in compliance with their Board's policy as well as the requirements of the Regulation. A memo from Chief Bordeleau is attached as Document 2 that addresses OPS plans for meeting the requirements of the Regulation and Board policy.

The Board policy template prepared by the OACP includes additional requirements that go beyond the minimum requirements in the Regulation. These additional sections of the policy address:

1. **Monitoring Requirements:** Section 14 – The Regulation requires the Chief to conduct and report on detailed reviews of an appropriately sized random sample of the entries of identifying information in the database. The draft policy would allow the Chief to conduct a review of the entire dataset, rather than an appropriately sized random sample.

3. **Additional reporting requirements:** The policy includes the following additional reporting requirements in Section 16 that go beyond what is required by the Regulation:

- Tracking of the times a Regulated Interaction led to a charge.
- The number of complaints (public and Chief's) resulting from or related to Regulated Interactions along with their status outcome.
- The number of Municipal Freedom of Information and the Protection of Privacy requests relating to Regulated Interactions.
- An estimate of the cost of complying with the Regulation.

The Chief supports the additional provisions as they provide more clarity, transparency and will better prepare the police service and the Board for the mandated Ministry review by January 1, 2019.

Chief Bordeleau's separate report contains additional detail on the specifics of the Regulation and their application to the OPS.

CONSULTATION

Inspector Mark Patterson has participated in a working group of the OACP in developing template documents that all boards and police services can use if they wish. The OACP's goal is to ensure as much consistency as possible among police services as it will better enable statistical comparisons and provide greater clarity for the public.

FINANCIAL IMPLICATIONS

The financial implications of implementing Regulation 58/16 are unknown at this time but will be tracked and are expected to be significant. The Chief will be reporting on the cost as part of his first annual report on the Regulation.

SUPPORTING DOCUMENTATION

Document 1 - Board Policy CR-18: Collection of Identifying Information in Certain Circumstances – Prohibition and Duties.

CONCLUSION

All police services boards in Ontario must adopt policies that comply with the new Ontario Regulation 58/16 on the Collection of Identifying Information in Certain Circumstances. The attached policy meets the requirements of the Regulation and is presented for Board approval.

Document 1

Policy Number: CR-18	Policy Subject: COLLECTION OF IDENTIFYING INFORMATION IN CERTAIN CIRCUMSTANCES – PROHIBITION AND DUTIES
LEGISLATIVE REFERENCE / AUTHORITY	Ontario Regulation 58/16 made under the <i>Police Services Act</i> , R.S.O. 1990
DATE APPROVED	
DATES AMENDED	
DATE TO BE REVIEWED	
REPORTING REQUIREMENT	

LEGISLATIVE REFERENCE / AUTHORITY

On March 21, 2016, Ontario Regulation 58/16 made under the Ontario Police Services Act became law. The Regulation is entitled “Collection of Identifying Information in Certain Circumstances – Prohibition and Duties”.

INTRODUCTION

The Ottawa Police Services Board is committed to enhancing the community’s trust and confidence in the Ottawa Police Service (OPS) and to ensuring that services are delivered without bias or discrimination. The practices and procedures of the OPS in respect of the collection of identifying information shall not be arbitrary or based upon any racial or biased profiling, and shall reflect a commitment to professionalism, accountability and transparency.

This policy sets out the Board’s requirements of the Chief of Police with respect to the “Collection of Identifying Information in Certain Circumstances – Prohibition and Duties” Regulation.

DEFINITIONS

1. For the purpose of this Policy, the following definitions apply:
 - a. annual report – means the annual report provided by the Chief of Police to a Board under section 31 of Ontario Regulation 3/99 (Adequacy and Effectiveness of Police Services) made under the Police Services Act.
 - b. community interactions – means on-duty police contact with member(s) of our community meant to:
 - i. foster positive relationships; and/or

- ii. assist members of the public (without gathering personal information for an investigative or intelligence purpose).
- c. database – means the paper or electronic filing system under the control of the Chief of Police where identifying information about an individual collected by a police officer from the individual during a Regulated Interaction is stored (but does not include a database where intelligence notes information is stored or other criminal/intelligence based databases).
- d. prohibited grounds – under the Ontario Human Rights Code means race, creed, colour, ancestry, place of origin, ethnic origin, citizenship, sex, sexual orientation, age, marital status, family status, gender identity, gender expression, or disability.
- e. racial/biased profiling – means the practice of linking a person or persons to an unlawful incident or incidents and/or relating to public safety concerns, based primarily or predominantly on prohibited grounds or stereotypes relating to those prohibited grounds.
- f. document – means the document described in section 7 of the Regulation to be offered to an individual from whom a police officer has attempted to collect identifying information.
- g. Regulated Interaction - means the interactions and documentation of such by an officer in an “attempt to collect identifying information about an individual from the individual by asking the individual”; that is, attempt to collect identifying information by asking the individual, in a face-to-face encounter, to identify himself or herself or to provide information for the purpose of identifying the individual and includes such an attempt whether or not identifying information is collected as governed by Regulation.
- h. Regulated Interaction Verifier – means the Intelligence Section Unit Commander and/or designate for the purpose of fulfilling the requirements of section 9(4)(b)(i) of the Regulation.
- i. Regulation –means Regulation 58/16 made under the Police Services Act of Ontario.

GENERAL

2. The Chief of Police shall ensure that all Regulated Interactions are done in a manner that is consistent with the Regulation and, particularly, that they are not based on racial/biased profiling or done in an arbitrary way.

3. The Chief of Police shall have a Procedure that complies with the duties and obligations imposed by the Regulation and this Policy to ensure there is direction and assistance provided to officers regarding Regulated Interactions.
4. The Chief of Police shall ensure that there is a database created or adapted that allows for the recording, analysis and reporting required by the Regulation.
5. For the purpose of reporting to the Board as part of the annual report and for other analytic reasons as directed by the Board and/or the Ministry of Community Safety and Correctional Services, the Chief of Police shall establish categories for the following in addition to categories for male and female :
 - a. age groups
 - b. racialized groups
 - c. neighbourhoods or areas.
6. When establishing racialized groups as set out in 6(b), the Chief shall do so in a manner that allows the information required by the Regulation (that is, the number of attempts to collect information from individuals perceived by a police officer to be within a racialized group as referenced in paragraph 14(2)8 of the Regulation) relating to the racialized groups to be comparable to the data referred to below in (a) and (b), as released by the Government of Canada on the basis of its most recent National Household Survey preceding the period covered by the Chief of Police's annual report:
 - a. for each derived visible minority group set out in the National Household Survey, the number of individuals who identified themselves as being within that group;
 - b. the number of individuals who claimed Aboriginal identity.
7. This Policy does not apply to community interactions or lawful interactions in which a person is either detained or required to provide personal information.

DOCUMENT TO BE PROVIDED

8. Commencing January 1, 2017, the Chief of Police shall have a procedure requiring all police officers engaged in Regulated Interactions to:
 - a. offer to give the individual a document that provides a record of the attempt; and
 - b. give the individual such a document if the individual indicates that he or she wants it unless one of the exemptions in the Regulation applies (i.e. it might

compromise the safety of an individual or delay the officer from responding to another matter that should be responded to immediately, and the officer is able to articulate the reason with details).

9. The Chief of Police shall ensure that the document contains the mandated information required by the Regulation and that the document and any amendments thereto are provided to the Board for its information and input before use.

TRAINING

10. Commencing January 1, 2017, the Chief of Police shall ensure that every police officer who attempts to collect identifying information about an individual from the individual, or anyone who acts as the designate of the Chief of Police for the purpose of reviewing the database (within 30 days of data entry and/or on an annual basis pursuant to section 9 of the Regulation), has successfully completed the required training within the previous 36 months.

RETENTION, ACCESS and DISCLOSURE

11. The Chief shall have a Procedure dealing with retention, access and disclosure of identifying information that provides, at a minimum, the following:
 - a. Identifying information entered into the database five or more years ago and identifying information gathered and/or entered into the database that is determined to have been collected in non-compliance with the Regulation shall have restricted access as follows:
 - i. no person shall have access to the information without the permission of the Chief (or designate);
 - ii. a member may be permitted to access the information only if the Chief or a Regulated Interaction Verifier is satisfied that access is needed:
 - I. for the purpose of an ongoing police investigation
 - II. in connection with legal proceedings or anticipated legal proceedings
 - III. for the purpose of dealing with a complaint under Part V of the Act or for the purpose of an investigation or inquiry under clause 25 (1) (a) of the Act

- IV. in order to prepare the annual report or a report required on disproportionate collection (under section 15 of the Regulation)
 - V. for the purpose of complying with a legal requirement, or
 - VI. for the purpose of evaluating a police officer's performance.
- b. Access to, and disclosure of identifying information collected on or after January 1, 2017, including the retention of identifying information collected contrary to this Regulation, shall be restricted to the Chief and Regulated Interaction Verifiers in order to comply with the Regulation and subject to the exemptions set out in 12(a) of this policy.
- c. Nevertheless, identifying information collected contrary to the Regulation shall not be retained longer than is reasonably necessary to ensure the information is available in the circumstances in which access may be permitted under paragraph 2 of Regulation subsection 9 (10), being:
- i. for the purpose of an ongoing police investigation
 - ii. in connection with legal proceedings or anticipated legal proceedings
 - iii. for the purpose of dealing with a complaint under Part V of the Act or for the purpose of an investigation or inquiry under clause 25 (1) (a) of the Act
 - iv. in order to prepare the annual report or a report required due to disproportionate collection (under section 15 of the Regulation)
 - v. for the purpose of complying with a legal requirement, or
 - vi. for the purpose of evaluating a police officer's performance.
12. The Chief shall ensure identifying information and records relating thereto that was collected before January 1, 2017 shall be accessed, retained and/or disclosed pursuant to the Chief's Adequacy Standard mandated Procedure on the retention of records and should any of the data be determined to have been collected in violation of the law as it existed at the time of collection, its access and disclosure shall be subject to the restrictions in the Regulation.

POLICY CONSISTENT WITH REGULATION

13. Where this policy is inconsistent with Regulation 58/16, the Regulation shall apply and any inconsistent provision shall be deemed to be modified to render it consistent.

MONITORING REQUIREMENTS

14. At least once a year, the Chief of Police or a designate shall conduct detailed reviews of an appropriately sized random sample of the entries of identifying information included in a database under section 9(6) of the regulation or if the Chief believes it would be assistive and feasible, the entire database.

REPORTING REQUIREMENTS

15. An annual report as it relates to Regulated Interactions shall be provided by the Chief of Police to the Board in the first quarter (unless an extension is approved by the Board Chair) of the year commencing in 2018 and annually thereafter.
16. The contents of the annual report as it relates to Regulated Interactions shall include, at a minimum, the following:
 - a. The number of attempted collections and the number of attempted collections in which identifying information was collected.
 - b. The number of individuals from whom identifying information was collected.
 - c. The number of times each of the following provisions was 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 subsections 6(2) and (3):
 - i. might compromise the safety of an individual
 - ii. would likely compromise an ongoing police investigation
 - iii. might allow a confidential informant to be identified
 - iv. might disclose the identity of a person contrary to law, including the YCJA.
 - d. The number of times an individual was not given a document because the individual did not indicate that they wanted it.
 - e. The number of times each of the following clauses was relied upon to not offer or give a document:
 - i. might compromise the safety of an individual (subsection 7(2)(a))
 - ii. might delay the officer from responding to another matter that should be responded to immediately (subsection 7(2)(b)).

- 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:
 - i. male individuals
 - ii. female individuals.
- 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.
- 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.
- 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.
- j. The neighbourhoods or areas where collections were attempted and the number of attempted collections in each neighbourhood or area.
- k. The number of determinations made by the Chief (or designate) as to whether the information entered into the database:
 - a) complied with limitations on collection set out in section 5 and 9(4)(a) of the Regulation, and
 - b) 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 section 5 (limitations on collection of information), section 6 (duties to inform of rights and reasons before collecting, with

exceptions) or section 8 (document for individual – document, with exceptions) were complied with.

- I. The number of times, if any, members 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:
 - i. for the purpose of an ongoing police investigation
 - ii. in connection with legal proceedings or anticipated legal proceedings
 - iii. for the purpose of dealing with a complaint under Part V of the Act or for the purpose of an investigation or inquiry under clause 25 (1) (a) of the Act
 - iv. in order to prepare the annual report or a report required due to disproportionate collection (under section 15 of the Regulation)
 - v. for the purpose of complying with a legal requirement, or
 - vi. for the purpose of evaluating a police officer's performance.
- m. where feasible, tracking of the times a Regulated Interaction led to a charge.
- n. the number of complaints (public and Chief's) resulting from or related to Regulated Interactions along with their status or outcome.
- o. the number of Municipal Freedom of Information and the Protection of Privacy requests relating to Regulated Interactions.
- p. an estimate of the cost of complying with the Regulation.

DISPROPORTIONATE REPORT

17. If 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.
 - 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.

18. The Board, upon receipt of the disproportionate report shall:
 - a. publish the report on the Internet in a manner that makes it available to the public free of charge and may make the report available to the public free of charge in any other manner that the board considers appropriate.
 - b. consider the report and the proposals, if any, set out in the Chief's disproportionate report and consider whether to give directions under clause 31(1)(e) of the Act (i.e. direct the Chief of Police and monitor his or her performance).