

Report to / Rapport au:

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

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Submitted by / Soumis par:

Chief of Police, Ottawa Police Service / Chef de police, Service de police d'Ottawa

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SUBJECT: IMPLEMENTATION OF ONTARIO REGULATION 58/16 “COLLECTION OF IDENTIFYING INFORMATION IN CERTAIN CIRCUMSTANCES – PROHIBITION AND DUTIES” (STREET CHECKS)

OBJET: MISE EN ŒUVRE DU RÈGLEMENT DE L'ONTARIO 58/16 « COLLECTE DE RENSEIGNEMENTS IDENTIFICATOIRES DANS CERTAINES CIRCONSTANCES – INTERDICTIONS ET OBLIGATIONS » (CONTRÔLES DE ROUTINE)

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

In June 2015, the Ontario government announced it would conduct public consultations over the summer as part of an effort to standardize rules governing Street Checks by creating province-wide regulations to ensure these encounters are consistent, respectful of rights, without bias, and carried out in a manner that promotes public confidence while maintaining the use of this valuable tool for police.

As already reported to the Board last July, the Ottawa Police Service (OPS) welcomed the government's decision to standardize rules governing street checks and was already engaged in an operational review of how Street Checks are performed prior to the provincial announcement. The review included research and initial consultations with members of the public, academics, community organizations, members of the police service and other stakeholders to identify key issues.

In pursuit of our ongoing work related to ensuring a professional and bias-neutral police service, it was important to build on the extensive community-police dialogue over the last three years with the Traffic Stop Race Based Data Collection Project, and contribute to the provincial street check consultation process.

The engagement plan for local community-police participation in the provincial street check consultation process was presented and approved by the board last July; and, it was implemented throughout the summer and fall months. In addition to creating a project webpage and promoting the provincial consultation sessions and feedback form throughout the summer, the Ottawa Police Service held five well attended sessions with over 75 people who represented over 40 different organizations. Several presentations were also made to community organizations including COMPAC and the Ottawa Aboriginal Coalition. The results were submitted to the province and made available publicly.

On October 28, 2015, the Ministry of Community Safety and Correctional Services released a draft regulation for consultation under the *Police Services Act* entitled "Collection of Identifying Information in Certain Circumstances – Prohibition and Duties". Many stakeholders provided review and input during the forty-five day feedback period.

DISCUSSION

Following the province-wide consultation efforts in 2015, Minister of Community Safety and Correctional Services Yasir Naqvi 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.

While the Regulation prescribes a number of requirements for interactions with persons, it does not “prohibit” the police interaction with members of the public (ie. who are not otherwise required to provide information and/or legally arrested or detained, etc.). In fact, it still permits those interactions when they are for the purposes of inquiring into offences that have been or might be committed, inquiring into suspicious activities to detect offences, or gathering information for intelligence purposes.

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 Police Service is already in compliance with this prohibition and stands with other Ontario police agencies against such practices.

The Regulation also prohibits the use of quotas of regulated interactions for performance measurement. The Ottawa Police Service is already 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. Inspector Mark Patterson continues as the OPS lead for this work and is actively participating on this provincial working group.

The purpose of this report is to provide a project update on the implementation timelines required for compliance with the Regulation.

Application of Ontario Regulation 58/16

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.
- If the person is under arrest or being detained, or when the officer is executing a warrant.
- If complying with a specific aspect of the regulation would compromise an ongoing investigation or compromise safety.
- If 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.

It should also be noted that a second regulation was also filed which amends the Code of Conduct under Ontario Regulation 268/10 of the *Police Services Act* and provides for a code of conduct violation where a police officer is found to not comply with Ontario Regulation 58/16.

Police Board Policies

The regulation requires that specific new policies be created by police services boards to include:

- The document to be provided to the individual;
- The contents, in relation to matters to which the regulation applies, of the Chief of Police's annual report;
- Supplementary reports to be provided by the Chief of Police (if it is determined that information is collected disproportionately from particular groups);
- Access to and retention of identifying information collected on or after January 1, 2017. The regulation requires that this board policy provide that information collected contrary to the regulation is not retained longer than is reasonably necessary to ensure the information is available in the specific circumstances a Chief of Police may grant access to the information (which are outlined in section 9 (10) of the regulation.); and
- Access to, retention of, or disclosure of identifying information collected before January 1, 2017.

Chief of Police Procedures

The regulation also requires the development of new procedures that are consistent with the requirements of the Board's approved policy and the final regulations. Already in development and well underway thanks to the best practice models developed by the OACP Special Working Group, the OPS procedures will ensure compliance with the regulation including: data collection, training, and access and reporting.

Implementation Dates

On July 1, 2016, the following sections of the regulation come into force:

- Sections 1-4 Application and Interpretation
- Section 10 – Prohibition of quotas as performance measurement tool
- Section 12 – Direction to police services boards and Minister to develop policies related to the application of the regulation including the retention or disclosure of legacy data
- Section 13 – Direction to Chiefs of Police to develop procedures in relation to the operationalization of the regulations, including the retention or disclosure of legacy data

On January 1, 2017, all remaining sections including training and the amended code of conduct come into effect. Officers must:

- Inform the person of their right not to provide identifying information.
- Provide a reason for requesting identifying information. The reason cannot be:
 - Arbitrary
 - That the person declined to answer a question or attempted to end the interaction
 - Based on race or solely because that individual is in a high crime location
- Offer a document that includes the officers' name and badge number and information on how to contact the Office of the Independent Review Director (OIPRD) if there are concerns about the interaction.
- Keep detailed records about each interaction.

Failure to comply with the regulation will be a Code of Conduct violation for police officers.

Training

The Regulation requires that police officers who will be conducting the regulated interactions or those police members who act as the Chief's designate in reviewing information under the regulation are trained by the designated "Trainers" before they attempt to collect identifying information or review it internally.

Officers and supervisors must complete the eight hour training by January 1, 2017 and every three years. Rolling out this unplanned training by the end of the year will impact the 2016 training plan and budget, including potential overtime costs.

The Minister has appointed a roundtable with knowledge of human rights, community needs, issues affecting youth, privacy laws, curriculum development, policing, and other relevant fields to provide input to the development of new training for police members.

The training shall include the following topics:

- The right of a person not to provide information to an officer. This should include limitations on this right and how to ensure that this right is respected;
- The right of a person to discontinue an interaction with an officer. The limitations on this right and how to avoid unlawfully psychologically detaining an individual;
- 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 ;
- The initiation of interactions with members of the public; and,
- Ontario Regulation 58/16 of the Police Services Act and its application.

The Ontario Police College (OPC) will be working with various subject matter experts and course design personnel at the Canadian Police Knowledge Network (CPKN) to develop training materials that address the requirements of the Regulation. The Ministry has engaged an Expert Panel to work with and provide commentary on the development of the various elements of the training.

The OPC is planning to utilize a "train the trainer" model. Once the overall curriculum is developed and approved, the process of training the trainers will begin this summer to ensure that the eight hour training is provided to all police officers who are in a position

to engage in regulated interactions as of January 1, 2017. The training will also become part of the basic recruit training at the OPC.

Reporting

As per section 14 of the regulation, the police service will also be required to conduct audits and provide a report to the Police Services Board. The annual public report will include information such as the number of attempted collections, gender, age, and race of the individuals stopped; number of times officers relied on exemptions; and the neighbourhoods/areas where the information was collected.

If the annual report indicates that a particular group (i.e. members of a racialized group) is found to be disproportionately affected, the Chief of Police must submit a supplemental report to the Police Services Board with an explanation and, in some cases, a proposal to address the disproportionate impact.

Management of Identifying Information

With respect to data management, the regulation requires the following:

- All collections of identifying information submitted are required to be reviewed within 30 days by the Chief of Police or designate, who will review:
 - The police officer's reason for collecting the information; and
 - If the police officer indicated that there was compliance with other aspects of the regulation.
- At least once a year, the Chief of Police or designate to conduct a detailed review of an appropriate random sample of entries into the database to verify compliance with the regulation overall.
- Access to identifying information to be restricted if it is found the identifying information was inappropriately collected. Access to restricted information can only be granted by the Chief of Police on a case-by-case basis for specified purposes (For example: ongoing police investigation, legal proceedings, complying with a legal requirement, etc.).
- Access to identifying information to be restricted five years after it is entered into a police database.

In addition, the Regulation provides authority for the Minister of Community Safety and Correctional Services to request, and a Chief of Police to provide, information relevant to the implementation of the proposed regulation.

Of note, the policy developed shall provide that identifying information collected contrary to this 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 – that is, for the following reasons only:

- for the purpose of an ongoing police investigation
- in connection with legal proceedings or anticipated legal proceedings
- or the purpose of dealing with a complaint under Part V of the *Act* or for the purpose of a n investigation or inquiry under clause 25 (1) (a) of the *Act*
- in order to prepare the annual report described in subsection 14 (1) or the report required under section 15
- for the purpose of complying with a legal requirement
- for the purpose of evaluating a police officer’s performance

Next Steps – Key Implementation Dates

	Key Activities	Implementation Timeline	Target Completion
1	OACP Special Working Group	April 2016 to Q1 2017	Unknown
2	Approval of Board Policy and Direction to Chief to Develop Procedures	May to June 2016	June 27, 2017
4	Development of Service Policy and Procedures (consistent with Board policy and Regulations)	May to September 2016	Fall 2016
5	Training – provincial design and development (Ontario Police College)	May to July 2016	July 2016
6	Training of Officers	September – December 2016	December 31, 2016
7	Data Management and creation of auditing and reporting systems	Summer 2016	Fall 2016
8	Procedural Implementation; audits, reporting,	Fall 2016	January 1, 2017

CONSULTATION

Consultation has been an important part of this project – at both the provincial and local level.

The Ministry of Community Safety and Correctional Services has undertaken significant province-wide consultation to develop the Regulation. As already outlined earlier in this report, the Ottawa Police Service also carried out an engagement plan with police and community members in order to make a local submission to the province.

Ongoing updates and engagement opportunities will continue to be provided during the implementation process. The province is also developing public education materials.

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 – especially related to the training and data/records management and review and reporting requirements.

Reporting on the costs will be included in the first annual report on the Regulation.

CONCLUSION

While the regulations present significant unplanned impacts on the organization, particularly on training, data management processes and storage, auditing and reporting, we will continue working with our police members as well as provincial partners to ensure compliance with the new regulations by January 1, 2017.

The Ottawa Police Service is committed to community engagement, crime prevention and community safety while balancing the rights of individuals. Regulated interactions remain an important tool for solving and preventing crime in our community.

As we move forward with the implementation, police and community members will be provided with updates and engagement opportunities.