

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

DISCUSSION

The regulations presented significant unplanned 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.

Further to the last update submitted to the Board, in March 2017, the purpose of this report is to provide the annual report as per Ottawa PSB and OPS policy; 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.

Chief of Police Procedures

The regulation also requires police services to develop procedures that are consistent with the requirements of the Board's approved policy and the final regulations. The OPS has created procedures which include best practice models developed by the OACP Special Working Group. The OPS procedures ensure compliance with the regulation including: data collection, training, audit, access, and reporting.

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 before they attempt to collect identifying information or review it internally.

The mandatory eight hour training 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.

An OPS Chief's General Order was issued for the mandatory training sessions, and priority was given to front-line officers. The required training presented significant unplanned pressures; however, officers were able to complete the training during their working hours. Additional training sessions will be provided throughout the year, and on an ongoing basis, to ensure training compliance for officers returning to front-line police roles and to meet the required three (3) year re-training requirement.

In December 2016, another Chief's General Order suspended the former street check procedures and delayed the implementation of the new procedures for regulated interactions in order to allow for the completion of the mandatory training, system updates, and testing. The OPS announced the launch of the new regulated interaction procedures on March 24, 2017, and officers were permitted to begin utilizing the new procedures on March 28, 2017.

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 - commencing in 2018 and annually thereafter.

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 (March 28, 2017 to December 31, 2017):

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: Five attempted collections were made. Identifying information was collected from all five; however, only two of them met the requirements of a Regulated Interaction.

- B. the number of individuals from whom identifying information was collected:
Seven.
- 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: Six or
 - female individuals: One
- 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: Three
 - 30 – 49: Two
 - 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;

- Asian – One
- Black – One
- Middle Eastern – Two
- 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 seven 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:

- Baycrest Dr/Walkley Rd; Division 3, Sector 34: One attempt.
- Rideau Street; Division 2, Sector 24: One attempt.
- Pickford Drive, Division 1 Sector 13: One attempt.
- Sanibel Private, Division 1, Sector 15: One attempt.
- Roberston Road/Haanel Road, Div 1, Sector 15: 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 five complied with the Regulation. Although only five 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:
- i. for the purpose of an ongoing police investigation – Zero
 - ii. in connection with legal proceedings or anticipated legal proceedings – Zero
 - 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 the *Act* – Two
 - iv. in order to prepare the annual report or a report required due to disproportionate collection – One
 - v. for the purpose of complying with a legal requirement – Zero or
 - vi. 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 – Zero
- N. the number of complaints (public and Chief's) resulting from or related to Regulated Interactions along with their status or outcome – Two. Both resulted in withdrawals. OIPRD never specifically identified either as a Regulated Interaction
- O. the number of *Municipal Freedom of Information and the Protection of Privacy* requests relating to Regulated Interactions – One and

- P. an estimate of the cost of complying with the Regulation. An estimate and breakdown of the cost of complying with the regulation is provided below under Financial Implications.

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

CONSULTATION

As outlined in an earlier report to the Board, consultation and engagement have 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. The OPS also carried out an engagement plan with police and community members in order to make a local submission to the province. Following the announcement of the new regulations, presentations and other engagement opportunities were provided to local communities and stakeholders during the local implementation of the legislation.

The Ministry provided some public education materials early last year, and the Ottawa Police Youth Advisory Committee (YAC) created a youth friendly handout to provide local outreach to youth about the new legislation.

Updates and engagement opportunities continue to be provided to local stakeholders and are available at the dedicated web page at ottawapolice.ca/regulatedinteractions. Current consultation efforts are focused on the independent review of the legislation.

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 introduced last year on the arbitrary collection of identifying information by police, also referred to as carding or street checks.

Justice Tulloch will make recommendations on all aspects of the use of carding or street checks, and whether options exist to improve the implementation of the regulation, focusing on:

- The consistent application of the regulation without bias or discrimination
- Compliance by police officers and chiefs of police when applying the regulation
- Challenges encountered in applying the regulation
- The appropriateness of the accountability and oversight mechanisms of the regulation
- Whether additional changes are necessary to improve the practice of street checks, or whether street checks are still necessary in today's policing practices.

Justice Tulloch will also work in consultation with Ontario's Anti-Racism Directorate to examine whether the continued use of street checks by police services and the regulation properly reflects the government's plan to eliminate systemic racism.

According to the legislation, his final report will be published no later than January 1, 2019.

As part of his mandate, Justice Tulloch met with local police services, in the fall of 2017, to discuss the application of the legislation, compliance, and challenges being experienced by police services.

From November 6 – 8, 2017, Justice Tulloch met with various sections/members of the OPS; as well as community stakeholders and members of the Ottawa PSB. Information and recommendations gathered during these meetings will be included in his final report.

Justice Tulloch will be conducting public consultations across Ontario – as part of his review mandate; beginning this spring. The Ottawa consultation session is scheduled for April 16, 2018, 6 to 8pm, at the Bronson Centre (Mac Hall), 211 Bronson Avenue.

FINANCIAL IMPLICATIONS

The regulations presented significant unplanned impacts to the organization and officer time under tight timelines and local budget pressures; particularly on front line training,

data management processes and storage, auditing and reporting. OPS worked with police members and provincial partners to ensure compliance with the new legislative requirements.

Listed below are the approximate costs to implement the legislation. The Incurred Costs are those the OPS had to pay for (in addition to salary); while the Built in Costs are information only – as those totals represent officer salary totals (based on the number of officers involved and the number of hours required). As that training was done during the officer's duty hours - no overtime was required.

Incurred Costs:

- Master Trainer training x two: \$10,000.00
 - Receipt Books: 1,960.00
 - Overtime for trainers: 5,000.00
 - OACP Working Group Meetings: 2,100.00
 - Facility Rentals 10,000.00
 - Training supplies: \$ 1,000.00
- \$ 30,060.00**

Built in Costs:

- Training the Trainers: \$ 15,000.00
Training was conducted by our master trainers – all on duty.
 - Officer Training: Based on 1000 officers / eight hours each. 377,000.00
This training was done on duty.
 - Records/Data Management:
Four officers reviewed every street check (2012 – 2016). 154,000.00
Five days/week for four months.
- \$546,000.00**

CONCLUSION

While the regulations have presented significant and unplanned impacts and challenges to the organization, we have worked with police members and provincial partners, under tight timelines and limited resources, to ensure compliance with the legislation.

The number of regulated interactions for the first year is quite low and appears to be consistent across the province. We will await the findings of Justice Tulloch's review to gain greater insight into the implementation benefits and challenges of the new legislation. In the meantime, we will maintain close monitoring, training and supports, so officers can engage in regulated interactions.

We are committed to professional and bias-neutral policing and we will continue to provide both police and community members with meaningful updates and engagement opportunities on regulated interactions and other related initiatives within our bias-neutral policing strategy.