

LONDON POLICE SERVICES BOARD POLICY

LPSB Policy: 121

Title: Collection of Identifying Information in Certain Circumstances – Prohibition and Duties

London Police Service Procedure: Part 2, Chapter R

Police Services Act: Regulation 58/16

Approved: June 16, 2016

Revised: February 18, 2021

1. Policy of the Board

The following is the policy of the London Police Services Board with respect to the “Collection of Identifying Information in Certain Circumstances – Prohibition and Duties” (Street Checks) – Regulation 58/16 of the Police Services Act (the “Regulation”).

2. Definitions

For the purpose of this Policy, the following definitions apply:

- a. Annual Report – the annual report provided by the Chief of Police to the Board under section 31 of Ontario Regulation 3/99 (Adequacy and Effectiveness of Police Services) made under the Police Services Act;
- b. Community Interactions – 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 – 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 within a Collection of Identifying Information document;
- d. Prohibited Grounds – under the Ontario Human Rights Code include race, creed, color, ancestry, place of origin, ethnic origin, language or dialect spoken, citizenship, sex, sexual orientation, age, marital status, family status, gender identity, gender expression, physical or mental disability;
- e. Racial/Biased Profiling – the practice of an officer linking a person or persons to an unlawful incident or incidents based primarily or

- g. predominantly on prohibited grounds;
Receipt – the document contemplated in section 7 of the Regulation; and
- h. Collection of Identifying Information (to replace the term ‘Street Check’) - the interactions and documentation of such by an officer regarding an “attempt to collect identifying information about an individual from the individual by asking the individual”; that is, an 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.

3. Guiding Principles of the Policy:

This policy is not intended to reduce in anyway the ability of the London Police Service (“LPS”) to engage in community policing. Having respectful conversations and interactions with members of a community, including the exchange of information, is key to community policing and to building the trust and confidence of the public.

For the sake of clarity, examples of community interactions that would not fall under this policy or the Regulations include, but are not limited to:

1. Outreach and interactions as part of the creation or implementation of community mobilization;
2. Checking on the well-being and/or offering or suggesting assistance options to the homeless or vulnerable persons in the community;
3. Fostering relationships with members of the community;
4. Supporting inclusion and diversity of our members and our community;
5. Recruiting efforts; and
6. Sharing information with individuals or groups for the purposes of public safety.

Part I – Definitions and Interpretations

1. In the context of this policy, suspicion cannot be based on unsupported belief, but rather on sound, fair and rational judgment, while considering the totality of the circumstances that justify the inquiry.

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2. Historically, the terms “Street Check” and “Carding” have been used inconsistently and their definitions have been subject to interpretation, both personal and subjective. As a means of moving on, this policy refrains from using the terms “Street Check” and “Carding” when referencing the Collection of Identifying Information. Instead, this policy focuses on ensuring the end of arbitrary and discriminatory collection of identifying information, regardless of what that interaction is called.
3. “Prohibited Grounds” in this Policy are those identified by the Ontario Human Rights Commission, including race, creed, color, ancestry, place of origin, ethnic origin, language, citizenship, sex, sexual orientation, age, marital status, family status, gender identity, gender expression, physical or mental disability, as well as socioeconomic status.

Part II- Fundamental Principles

1. Any interactions between the police and the public that are arbitrary and/or discriminatory are unacceptable and prohibited.
2. The Collection of Identifying Information (“C2I”) shall occur only during investigations grounded in suspicion. For more guidance, see “Part III - Guidance for Conducting a Non-Discriminatory, Non-Arbitrary C2I”.
3. C2Is shall, at all times, be for reasons other than defined as Prohibited Grounds.
4. All C2I’s must be conducted in a professional and civil manner that respects the individual, adheres to the law (including Ontario Regulation 58/16 of the *Police Services Act*) and inspires confidence in the police and its interactions with the public. For greater certainty, police shall advise individuals, at the beginning of the C2I, of their right not to interact, including their right to walk away, not providing their identification, or not responding to questions. Should there be a language or accessibility or mental health barrier, police shall make all reasonable attempts to access the appropriate resources to ensure the individual understands their rights and purpose of the C2I.

5. All C2I's will result in a receipt in accordance with Ontario Regulation 58/16,. Anyone who is the subject of the C2I will be able to access their C2I record through an Freedom of Information ("FOI") request, as governed by the *Municipal Freedom of Information and Protection of Privacy Act*. If an individual makes a request for their C2I record, the fee will be waived, and the process expedited as much as possible. The processes for requesting an FOI will be on the receipt that is issued.
6. Identifying information gathered prior January 1, 2017, that does not comply with the criteria set out in paragraphs 1, 2, 3 and 4 are to be made inaccessible. This data will be accessible only in accordance with Ontario Regulation 58/16.
7. C2I data gathered after January 1, 2017 shall be retained for the shortest period possible and in accordance with LPS policies and procedures around police data retention.

Part III – Guidance for Conducting a Non-Discriminatory, Non-Arbitrary C2I

1. In order to permit non-discriminatory, non-arbitrary legitimate policing activity, the following criteria are to ensure officer compliance with paragraphs 1, 2, 3 and 4.1 A police officer may conduct a C2I, if:
 - a. the approach is solely for the purpose of inquiring into offences and the officer has suspicion that the individual is engaged in the offence under investigation, or the officer has the suspicion that the individual is connected to the offence as a victim or witness; or
 - b. the approach is solely for the purpose of preventing a specific type of offence from occurring and the officer has suspicion that the individual is engaged in the offence under investigation or the officer has the suspicion that the individual is connected to the offence as a victim or witness; or

¹ These criteria are based on the "Joint Response to Ontario Draft Regulation "Collection of Identifying Information in Certain Circumstances – Prohibition and Duties" Released on 28 October 2015" by the African Canadian Legal Clinic et al.

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- c. The officer believes the approach and request for identification, personal information or an individual's circumstances is necessary to prevent an imminent or apparent risk or harm to the individual or another identified person.
- 2. The following shall not be a basis for a C2I:
 - a. an unspecified future offence or criminal investigation, or a "general investigation"; or
 - b. a person's exercise of their right to remain silent, right to object to being approached, or right to walk away; or
 - c. a "hunch" or unsupported suspicion or belief not based on a totality of circumstances; or
 - d. mere presence, show of force, or raising awareness, including for the purpose of intimidation, in a particular neighbourhood or high-crime neighbourhood, however this section does not exclude proactive, preventative community policing and public safety activities as described in the Preamble; or
 - e. where the description of a suspect, victim or witness is limited only to race (or other prohibited ground), gender and age, and lacks the additional information as described in section 5(2) of Ontario Regulation 58/16.

General

- 1. The Chief of Police shall ensure that all Collections of Identifying Information are done in a manner that is consistent with the Regulation and, particularly, shall not be based on racial/biased profiling or be done in an arbitrary way.
- 2. 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 the Collection of Identifying Information.
- 3. 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.
- 4. 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:

- a. age groups;
 - b. racialized groups;
 - c. neighbourhoods or areas; and
 - d. appropriately sized random sample of entries of identifying information for the purposes of section 9(6) of the Regulation or, if the Chief believes it would be assistive and feasible, the entire dataset.
5. 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 - see 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; and,
 - b. the number of individuals who claimed aboriginal identity.
6. This Policy does not apply to community interactions or lawful interactions in which a person is either detained or required to provide personal information.

Receipt

1. Commencing no later than January 1st, 2017, the Chief of Police shall have a procedure in place requiring all police officers engaged in the Collection of Identifying Information to:
 - (a) offer to give the individual a receipt that provides a record of the attempt; and
 - (b) give the individual such a receipt if the individual indicates that he or she wants it unless one of the exemptions in the Regulation applies (i.e., might compromise the safety of an individual or delay the officer from responding to another matter that should be responded to immediately, and is able to articulate the reason with details).
2. The Chief of Police shall ensure that the receipt contains the mandated information required by the Regulation and that the receipt and any amendments thereto are provided to the Board for its information and input (if any) before use.

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Training

Commencing January 1st, 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.

Annual Report

1. The annual report as it relates to the Collection of Identifying Information 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.
2. The contents of the annual report as it relates to the Collection of Identifying Information 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”:
 - i. might compromise the safety of an individual (subsection 6(2)),
 - ii. would likely compromise an ongoing police investigation (clause 6(3)(a)),
 - iii. might allow a confidential informant to be identified (clause 6(3)(b)), and
 - iv. might disclose the identity of a person contrary to law, including the YCJA (clause 6(3)(c));
 - d) the number of times an individual was not given a receipt 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 receipt:
 - i. might compromise the safety of an individual (subsection 7(2)(a)) and,

- ii. might delay the officer from responding to another matter that should be responded to immediately (clause 7(2)(a));
- 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, and
 - 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) 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;
- i) the neighbourhoods or areas where collections were attempted and the number of attempted collections in each neighbourhood or area;
- j) the number of determinations made by the Chief (or designate) as to whether the information entered into the database:
 - i. complied with limitations on collection set out in section 5 and 9(4)(a) of the Regulation, and
 - ii. 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 sections 5 (limitations on collection of information), 6 (duties to inform of rights and reasons before collecting, with exceptions) or 7 (document for individual – receipt, with exceptions) were not complied with;
- k) the number of times, if any, members of the police service 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

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- 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.
- l) tracking of the times a collection of identifying information led to a charge;
 - m) the number of complaints (public and Chief's) resulting from or related to the collection of identifying information along with their status or outcome;
 - n) the number of Municipal Freedom of Information and the Protection of Privacy requests relating to the collection of identifying information;
 - o) tracking of officer time for the documentation of the collection of identifying information; and,
 - p) an estimate of the cost of complying with the Regulation.

Disproportionate Report

1. 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 or (c) 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. shall 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.
2. 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; and
 - b. consider the report and the proposals, if any, set out in the disproportionate report and consider whether to give directions under clause 31(1)(e) of the Act to direct the Chief of Police and monitor his or her performance.

Retention, Access and Disclosure

1. The Chief shall have a procedure dealing with retention, access and disclosure of identifying information that provides, at a minimum, as follows:

- a. Identifying information entered into the database 5 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 Collection of Identifying Information 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 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.
 - 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 Collection of Identifying Information Verifiers in order to comply with the Regulation and subject to the exemptions set out in 20(a).
 - 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 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.
2. The Chief shall ensure identifying information and records relating thereto that were collected before January 1, 2017 shall be accessed, retained and/or

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disclosed pursuant to the Chief's 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

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.