



## Collection of Identifying Information in Certain Circumstances – Prohibition and Duties PRP-OP-003

Effective Date: 2017/01/27

### **Policy Statement**

*It is the policy of the Regional Municipality of Peel Police Services Board that the requirements set out in this Receipt shall form part of the Board Policies and the Chief of Police is hereby directed to comply with these requirements in his/her administration and operation of Peel Regional Police.*

*The Board is committed to enhancing the community's trust and confidence in police services and to ensuring that services are delivered without bias or discrimination. The practices and procedures of the Peel Regional Police Service in respect to the collection of identifying information shall not be arbitrary or based upon any racial or biased profiling, and shall reflect a commitment to enhancing positive relationships between the community and the Service, ensuring professionalism, accountability and transparency.*

### **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 Ontario Regulation 58/16 made under the *Police Services Act*.

**b) Database**

Means the paper or electronic filing system under the control of the Chief 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).

**c) 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.

**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) Regulated Interaction**

Is an attempt by a police officer to collect identifying information by asking an 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,

- i. if that attempt is done for the purpose of,
  - a. inquiring into offences that have been or might be committed;
  - b. inquiring into suspicious activities to detect offences; or
  - c. gathering information for intelligence purposes;
- ii. but does not include an attempted collection made by a police officer for the purpose of investigating an offence the officer reasonably suspects has been or will be committed;
- iii. and does not include an attempt by a police officer to collect identifying information from an individual if,
  - a. the individual is legally required to provide the information to a police officer;
  - b. the individual is under arrest or is being detained;
  - c. the officer is engaged in a covert operation;
  - d. the officer is executing a warrant, acting pursuant to a court order or performing related duties; or
  - e. the individual from whom the officer attempts to collect information is employed in the administration of justice or is carrying out duties or providing services that are otherwise relevant to the carrying out of the officer's duties.

**g) Regulation**

Means Ontario Regulation 58/16 made under the *Police Services Act* of Ontario.

**General**

2. The Chief shall establish procedures regarding Regulated Interactions that:
  - a. ensure compliance with Ontario Regulation 58/16, Board policy, the Police Services Act, the Canadian Charter of Rights and Freedoms, the Ontario Human Rights Code, and the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA);
  - b. ensure Regulated Interactions are not conducted on the basis of biased policing, including racial profiling, or in an arbitrary manner;
  - c. acknowledge that collecting "identifying information" includes collecting any "information for the purpose of identifying the individual" as defined by this policy;

- d. ensure police officers approach all attempts to collect personal information consistent with the regulation, regardless of whether the police officer intends to identify the individual;
  - e. inform both the individual's right to disengage from a Regulated Interaction and that an officer's disengagement from a Regulated Interaction is an acceptable, valued and sometimes necessary policing practice; and
  - f. ensures officers not attempt to collect identifying information about an individual from the individual (unless the police officer is exempt from a requirement to notify the individual because of a specific exemption in section 6 of the Regulation) without first informing the individual:
    - i. that he or she is not required to provide identifying information to the officer; and
    - ii. has informed the individual why the police officer is attempting to collect identifying information about the individual.
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 training 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 5(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; and
    - 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. The Chief shall establish procedures that require police officers conducting Regulated Interactions to comply with the Document requirements as set out in section 7 of the Regulation, including the exemptions described in the Regulation.
9. The Chief shall ensure that the Document contains:
  - a. the name and badge number of the police officer and any other officer involved in the collection of identifying information;
  - b. the date, time and location of the Regulated Interaction;
  - c. information about how to contact the Office of the Independent Police Review Director;
  - d. an explanation that the individual can request access to information in the Service's custody or control under MFIPPA and information about how to make such a request; and
10. The Chief shall ensure that the Document contains the mandated information required by the Regulation and this Policy. Any amendments thereto are provided to the Board for its review and approval before use.

**Training**

Commencing January 1, 2017, the Chief shall ensure that:

11. Every police officer who attempts to collect identifying information about an individual from the individual, or anyone acting as the Chief's designate under section 9 of the Regulation, have successfully completed the training required under section 11 of the Regulation within the previous 36 months.
12. The Chief shall ensure that, the training referred to in section 11 of this policy includes the mandatory training required by section 11 of the Regulation on the topics of:
  - a. the right of an individual not to provide information to a police officer, the limitations on this right and how to ensure that this right is respected;
  - b. the right of an individual to discontinue an interaction with a police officer, the limitations on this right and how to avoid an unlawful psychological detention of an individual;
  - c. bias awareness, discrimination and racism and how to avoid bias, discrimination and racism when providing police services;
  - d. the rights that individuals have to access information about themselves that is in the custody, or under the control, of a police force;

- e. the initiation of interactions with members of the public; and
  - f. the Regulation and its application.
13. The Chief shall provide to the Board copies of all training modules on Regulated Interactions for review upon request from the Board.

**Supervision**

14. The Chief shall establish procedures regarding the collection of identifying information to ensure that:
- a. supervisors understand that the collection of identifying information is carried out in compliance with both the Regulation and this policy;
  - b. police officers receive effective supervision related to the collection of identifying information;
  - c. supervisors are trained to critically examine the circumstances leading to the collection of identifying information and any resulting reports to determine compliance with this policy and the Regulation and are held accountable for any failure to do so; and
  - d. where discipline is substantiated, police officer(s) may be disciplined in accordance with S. 85 of the Police Services Act.

**Reporting**

15. The Annual Report as it relates to Regulated Interactions shall be provided by the Chief to the Board in the first quarter of the calendar year commencing in 2018 and annually thereafter.

The annual report relating to Regulated Interactions shall include, at a minimum:

- 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 do something that would otherwise be required under subsection 6(1) of the Regulation:
  - i. Subsection 6(2)
  - ii. Clause 6(3)(a),(b) and (c)
- d. 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) of the Regulation);  
or

- ii. might delay the officer from responding to another matter that should be responded to immediately (subsection 7(2)(b) of the Regulation);
- e. 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; or
  - iii. individuals who self-identify otherwise
- f. For each age group established by the Chief, the number of attempted collections from individuals who are perceived, by a police officer, to be within that age group;
- g. For each racialized group established by the Chief 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;
- h. A statement, based on an analysis of the information, as to whether the collections were attempted disproportionately from individuals within a group based on:
  - i. the sex of the individual;
  - ii. a particular age;
  - iii. a racialized group; or
  - iv. 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 of the annual review, 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 five 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 7 (Document for individual) of the Regulation were complied with;
- k. 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;
- l. Where feasible, tracking of the times a Regulated Interaction assisted with an investigation;
  - m. The number of complaints (public and Chief's) resulting from or related to Regulated Interactions, along with their status or outcome;
  - n. An estimate of the cost of complying with the Regulation;
  - o. The results of any audit conducted under procedures enacted pursuant to this policy.

**Disproportionate Reporting**

- 16. 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) 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.
- 17. The Board may wish to review the collected data from time to time. The Chief shall make this information available, upon request from the Board.
- 18. The need for and contents of any supplementary report may be determined by either the Chief or the Board after review of the data in the annual report.
- 19. The Board, upon receipt of the annual report and any supplementary report, shall:
  - a. publish all reports on the Board's website so they are available to the public free of charge; and

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

**Monitoring Requirements**

- 20. At least once a year, the Chief or 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.

**Retention, Access and Disclosure of Data**

- 21. 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. i. no person shall have access to the information without the permission of the Chief (or designate);
    - ii. ii. a member may be permitted to access the information only if the Chief (or designate)r is satisfied that access is needed:
      - iii. I. for the purpose of an ongoing police investigation;
      - iv. II. in connection with legal proceedings or anticipated legal proceedings;
      - v. 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;
      - vi. IV. in order to prepare the annual report described in subsection 14 (1) of the Regulation or a report required on disproportionate collection under section 15 of the Regulation;
      - vii. V. for the purpose of complying with a legal requirement, or
      - viii. VI. for the purpose of evaluating a police officer's performance.
  - b. Where identifying information has been identified as being required under section 21 (a) of this policy, it may be retained as long as reasonably necessary for the specific purpose(s) for which it was retained and, when no longer required for that purpose(s) or otherwise by law, shall be restricted; and
  - c. 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 and identifying information collected more than five years ago, shall be

restricted to the Chief or any person designated by the Chief of Police in order to comply with the Regulation and subject to the exemptions set out in section 21 (a) of this policy.

22. 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.
23. The Chief and the Board shall disclose data compiled and retained under this policy to the Ministry of Community Safety and Correctional Services as necessary for the preparation of the Ministry's report on the Regulation as described in section 17 of the Regulation.

**Policy Consistent with Regulation**

24. This policy is intended to be consistent with Regulation 58/16. If any provision is or appears to be in conflict with the Regulation, it shall be deemed to be modified to make it consistent.

**Authority/Legislative Reference**

25.

Police Services Act, R.S.O. 1990, c.P.15, as amended, s. 31(1)  
Ontario Regulation 58/16, under Police Services Act, R.S.O. 1990, c.P.15  
Canadian Chart of Rights and Freedoms  
Ontario Human Rights Code  
Municipal Freedom of Information and Protection of Privacy Act  
Board Minute/17

**Linkage to Appropriate Police Service Procedure/Directive**

26.

I-B-706(F) Collection of Identifying Information  
I-A-601(O) Records Retention, Storage and Disposition