

Disclaimer:

This consultation draft is intended to facilitate dialogue concerning its contents. Should the decision be made to proceed with the proposal, the comments received during consultation will be considered during the final preparation of the regulation. The content, structure, form and wording of the consultation draft are subject to change as a result of the consultation process and as a result of review, editing and correction by the Office of Legislative Counsel.

NOTE: The amendments proposed by the Information and Privacy Commissioner of Ontario appear in this document as red text.

ONTARIO REGULATION

to be made under the

**POLICE SERVICES ACT:
A CONSULTATION DRAFT**

**COLLECTION OF IDENTIFYING INFORMATION IN CERTAIN CIRCUMSTANCES
– PROHIBITION AND DUTIES**

[Skip Table of Contents](#)

CONTENTS

PART I

APPLICATION AND INTERPRETATION

- 1. Application — attempts to collect
- 2. Application — information collected
- 3. Interpretation — attempt to collect identifying information
- 3.1 Definitions

PART II

PROHIBITION — CERTAIN COLLECTIONS OF INFORMATION

- 4. Limitations on collection of certain information

PART III

DUTIES RELATING TO COLLECTIONS OF INFORMATION

OFFICER DUTIES WHEN ATTEMPTING TO COLLECT INFORMATION

- 5. Duties to inform when attempting to collect information
- 6. Document for individual
- 7. Police officer must record reason and other information
- 8. INCLUSION OF COLLECTED INFORMATION IN POLICE DATABASES
- 8.1 Identifying information in police databases – unrestricted database; restricted database
De-identified information in police databases

RESTRICTIONS ON PERFORMANCE TARGETS

- 9. Performance targets not to be used in evaluating work performance

PART IV

OTHER MATTERS

TRAINING

- 10. Chiefs of police must ensure training

POLICIES AND PROCEDURES

- 11. Boards and Minister must develop policies
- 12. Chiefs of police must develop procedures

REPORTS, REVIEWS AND COMPLIANCE

- 13. Annual report
- 14. Chiefs of police must review practices and report
- 15. Chiefs of police must make records available
- 16. Review of Part III

COMMENCEMENT

- 17. Commencement

PART I APPLICATION AND INTERPRETATION

Application — attempts to collect

1. (1) This Regulation applies with respect to an attempt by a police officer to collect identifying information about an individual from the individual in the performance of the police officer's duties.

(2) This Regulation does not apply with respect to 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, but only with respect to an attempt to collect that specific information;
- (b) the individual is under arrest or is being detained;
- (c) the officer is engaged in a covert operation;
- (d) the police officer is responding to or following up on a call for service and requests that a complainant or witness provide a voluntary statement for the purpose of investigating a particular offence;
- (e) the officer is executing a warrant or acting pursuant to a court order;
- (f) the attempted collection is made in an informal or casual interaction, the officer's questions are not of an investigative nature and the officer has no intention, at the time of the attempted collection, of recording the information; or
- (g) 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.

Application — information collected

2. (1) This Regulation applies with respect to identifying information collected on or after July 1, 2016 as a result of an attempt to collect to which this Regulation applies.

(2) This Regulation applies with respect to identifying information that was collected before July 1, 2016 only as provided under paragraph 7 of subsection 11 (1), subsection 11(2), subsection 11 (2.1), subsection 11(2.2), subsection 11 (3) and under subsection 12 (1) in relation to that paragraph and those subsections.

Interpretation — attempt to collect identifying information

3. (1) For the purposes of this Regulation, an attempt to collect identifying information about an individual from the individual is an attempt to collect identifying information by asking

the individual, in a face to face encounter, to identify himself or herself, to provide information for the purpose of identifying the individual or to provide any other identifying information and includes such an attempt whether or not identifying information is collected.

(2) For greater certainty, photographing or recording an individual is not an attempt to collect identifying information from the individual for the purposes of this Regulation.

Definitions

3.1 In this Regulation,

“Identifying information” means information that, if recorded, would be “personal information” within the meaning of section 2 (1) of the *Freedom of Information and Protection of Privacy Act* or section 2 (1) of the *Municipal Freedom of Information and Protection of Privacy Act*.

PART II PROHIBITION — CERTAIN COLLECTIONS OF INFORMATION

Limitations on collection of certain information

4. (1) A police officer shall not attempt to collect identifying information about an individual from the individual if,

- (a) any part of the reason for the attempted collection is that the officer perceives the individual to be within a particular racialized group unless,
 - (i) the officer is seeking a particular individual in the course of doing anything set out in paragraph 1 of subsection (2), and
 - (ii) being within the racialized group forms part of a credible and reasonably detailed description of the particular individual or is evident from a visual representation of the particular individual; or
- (b) the attempted collection is done in an arbitrary way.

(2) For the purpose of clause (1) (b), an attempted collection by a police officer from an individual is done in an arbitrary way unless the officer has a reason that the officer can articulate that complies with all of the following:

1. The reason includes details about the individual that cause the officer to reasonably believe that identifying the individual

(a) may be relevant to,

- i. gathering information, for criminal intelligence purposes, about individuals known or reasonably suspected to be engaged in illegal activities; ~~or~~
- ii. inquiring into specific suspicious activities for the purpose of detecting related illegal activities; or

iii. investigating a particular offence; or

(b) is necessary to the proper performance of a specific common law or statutory duty.

2. The reason does not include either of the following:

- i. that the individual has declined to answer a question from the officer which the individual is not legally required to answer, or
- ii. that the individual has attempted or is attempting to discontinue interaction with the officer in circumstances in which the individual has the legal right to do so.

3. The reason is not only that the individual is present in a neighbourhood or area.

PART III DUTIES RELATING TO COLLECTIONS OF INFORMATION

OFFICER DUTIES WHEN ATTEMPTING TO COLLECT INFORMATION

Duties to inform when attempting to collect information

5. (1) A police officer who attempts to collect identifying information about an individual from the individual shall, at the outset of the encounter or at the first reasonable opportunity thereafter,

- (a) inform the individual that he or she is not required to remain in the presence of the officer, provide identifying information or answer the officer's questions; and
- (b) inform the individual of the specific reason why the information is being sought.

(1.1) Despite subsection (1), a police officer is not required to inform the individual under clause (a) of subsection (1) if the officer has a reason, which he or she can articulate and that includes details relating to the particular circumstances, to believe that informing the individual could reasonably be expected to result in imminent and serious harm to an individual.

(2) Despite subsection (1), a police officer is not required to inform the individual under clause (b) of subsection (1) if the officer has a reason, which he or she can articulate and that

includes details relating to the particular circumstances, to believe that informing the individual under that clause,

- (a) would likely compromise a police investigation of a particular offence;
- (b) would likely allow a confidential informant to be identified; or
- (c) would likely compromise the safety of an individual.

Document for individual

6. A police officer who attempts to collect identifying information about an individual from the individual shall, unless it would be unreasonable in the circumstances to do so, give the individual a document that contains at least the following information:

- 1. The officer's name and officer identification number and the date, time and location of the attempted collection.
- 2. The information provided to the individual under section 5.
- 3. Whether the police officer has recorded or intends to record identifying information about the individual.
- 4. Information about how to contact the Independent Police Review Director.

Police officer must record reason and other information

7. (1) A police officer who attempts to collect identifying information about an individual from the individual shall record the following:

- 1. The officer's reason required under section 4, including the details referred to in paragraph 1 of subsection 4 (2).
- 2. Whether the individual was informed as required under subsection 5 (1) and, if informing the individual under subsection 5 (1) was not required under subsection 5(1.1) or subsection 5 (2), the reasons why that was not required.
- 3. Whether the individual was given a document referred to in section 6, and, if the document was not given, the reasons why it was impractical to give the document in the circumstances.
- 4. The apparent race, gender, age and ethnicity of the individual.
- 5. The date, time, and location of the officer's encounter with the individual.

6. Such other information as the chief of police requires the officer to record.

(2) A police officer shall not attempt to include identifying information under subsection (1) in a database unless, at the end of the encounter, the officer reasonably believes that there is a valid reason for recording the information consistent with the limitations in section 4.

INCLUSION OF COLLECTED INFORMATION IN POLICE DATABASES

Identifying information in police databases – unrestricted database; restricted database

8. (1) This section applies with respect to the inclusion, in databases under the control of a police force, of identifying information about an individual collected by a police officer from the individual.

(2) The chief of police shall ensure that the requirements under this section are complied with.

(3) Access to identifying information shall be restricted in accordance with subsection (7) unless the information may be included under this section without limiting the access of members of the police force.

(4) Subject to subsections (5) and (6), identifying information may be included in a database without limiting the access of members of the police force if,

(a) a person designated by the chief of police has reviewed the information, as well as the officer's reason required under section 4 (including the details referred to in paragraph 1 of subsection 4 (2)), and has determined that, in view of the information recorded by the officer, it is reasonable to conclude that the officer complied with the requirements of sections 4, 5, 6 and 7 and the requirements of the procedure developed under section 12; or

(b) the database indicates that: (i) a review and determination described in clause (a) has not been done for the information and (ii) the information may not be used in any way without the written permission of the chief of police.

(5) The following apply with respect to the information and the review and determination described in clause (a) of subsection (4):

1. The review and determination shall be done within 30 days after the information was first entered into a database under the control of the police force and the indications required under clause (b) of subsection (4) shall be retained until that review and determination has been done.

2. If it is determined that it is not reasonable to conclude that the officer complied with the requirements of sections 4, 5, 6, and 7 and the requirements of the procedure developed under section 12, the identifying information shall be retained in a database under the control of the police force but access to such information shall be restricted and only be made accessible in accordance with paragraph 1 of subsection (7) and clauses ii, iii, iv or v of paragraph 2 of subsection (7).

(6) Access to identifying information shall be restricted in accordance with subsection (7) after the fifth anniversary of the date on which the information was first entered into a database under the control of the police force.

(7) The following apply with respect to identifying information to which access must be restricted:

1. No person may access, use or disclose the information without the written permission of the chief of police.
2. A chief of police may permit a member of his or her police force to access, use or disclose the information only if the chief of police is satisfied that access to and use or disclosure of the information is needed,
 - i. for the purpose of an active police investigation,
 - ii. in connection with a legal proceedings or an anticipated legal proceedings,
 - iii. in order to prepare a report relating to the provision of police services, which will not identify the individuals from whom the information was collected,
 - iv. for the purpose of complying with a legal requirement, or
 - v. for the purpose of evaluating a police officer's performance.

(8) Subject to subsections (9) and (10), identifying information in a restricted database shall be securely disposed of after the second anniversary of the date on which the information was first entered into a restricted database under the control of the police force.

(9) Despite subsection (8) and subject to subsection (10), identifying information that has been identified as being required under paragraph 2 of subsection (7), including to comply with disclosure obligations in relation to the prosecution of offences, may be retained for a further period but only so long as is reasonably necessary for that purpose.

(10) Despite subsection (9), identifying information retained under paragraph 2 of subsection (5) may only be retained for a further period if it has been identified as being required under clauses ii, iii, iv or v of paragraph 2 of subsection (7).

De-identified information in police databases

8.1. (1) Information required to be recorded under section 7 shall be recorded and retained in a database under the custody and control of a police force in a de-identified manner for the purpose of assisting a chief of police, a board and the Minister of Community Safety and Correctional Services to perform their duties and functions under Part IV.

(2) A chief of police, a board and the Minister of Community Safety and Correctional Services may access, use and disclose the information referred to in subsection (1) for the purpose of performing their duties and functions under Part IV.

(3) A chief of police, a board, the Minister of Community Safety and Correctional Services or any of their officers, employees, consultants or agents may not access, use or disclose the information referred to in subsection (1) for the purpose of identifying any individuals to whom the information relates.

RESTRICTIONS ON PERFORMANCE TARGETS

Performance targets not to be used in evaluating work performance

9. A chief of police shall ensure that no performance target based on any of the following factors is used to evaluate the work performance of a police officer on his or her force:

1. The number of times, within a particular period, that the officer collects or attempts to collect identifying information about individuals from the individuals.
2. The number of individuals from whom the officer collects or attempts to collect identifying information within a particular period.

PART IV OTHER MATTERS

TRAINING

Chiefs of police must ensure training

10. (1) A chief of police shall ensure that every police officer on his or her police force who attempts to collect identifying information about an individual from the individual has successfully completed the training described in subsection (2) within the previous 36 months.

(2) The training referred to in subsection (1) is training that includes, at a minimum, training on the following topics:

1. 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.

2. The right of an individual to discontinue an interaction with a police officer, the limitations on this right and how to avoid unlawfully psychologically detaining an individual.
3. Bias awareness, discrimination and racism and how to avoid bias, discrimination and racism when providing police services.
4. The rights that individuals have to personal privacy and to access information about themselves that is in the custody or under the control of a police force.
5. The initiation of interactions with members of the public.

POLICIES AND PROCEDURES

Boards and Minister must develop policies

11. (1) A board shall develop policies regarding the following matters:

1. Attempts by police officers to collect identifying information about individuals from the individuals.
2. The informing of individuals, by police officers, as required under section 5.
3. The document to be given to individuals under section 6.
4. The entry of identifying information about individuals collected by police officers from the individuals into databases under the control of a police force.

4.1 The entry of the information listed in section 7 about police officers' attempted collection and actual collection of identifying information into databases in a de-identified manner as required under section 8.1.

5. The training referred to in section 10.
6. The collection, retention, accessibility, use, disclosure and secure disposal of identifying information collected on or after July 1, 2016, including the retention of identifying information collected contrary to this Regulation.
7. The collection, retention, accessibility, use, disclosure and secure disposal of identifying information collected before July 1, 2016 with respect to which this Regulation would have applied had the collection taken place on July 1, 2016.

(2) The policy developed under paragraph 7 of subsection (1) shall provide that identifying information collected before July 1, 2016 with respect to which this Regulation would have applied had the collection taken place on July 1, 2016,

(a) shall be transferred to a restricted database by July 1, 2016;

(b) may only be accessed, used or disclosed in accordance with subsection 8 (7); and

(c) shall, subject to subsection (2.2), be securely disposed of by July 1, 2018.

(2.1) A board shall provide the public with reasonable notice of the secure disposal referred to in paragraph (c) of subsection (2)

(2.2) Identifying information referred to in subsection (2) that has been identified as being required pursuant to paragraph 2 of subsection 8(7) may be retained for a further period but only so long as is reasonably necessary for the specific purpose.

(3) The duties imposed by subsections (1), (2), (2.1) and (2.2) on boards in relation to municipal police forces apply to the Minister of Community Safety and Correctional Services in relation to the Ontario Provincial Police.

(4) The policies developed under this section shall be consistent with this Regulation.

Chiefs of police must develop procedures

12. (1) A chief of police shall develop procedures regarding the matters set out in section 11.

(2) The procedures developed under subsection (1) shall be consistent with this Regulation and the relevant policies developed under section 11.

REPORTS, REVIEWS AND COMPLIANCE

Annual report

13. (1) This section applies to,

- (a) an annual report provided by a municipal chief of police to a board under section 31 of Ontario Regulation 3/99 (Adequacy and Effectiveness of Police Services) made under the Act; and
- (b) the annual report provided by the Commissioner under subsection 17 (4) of the Act.

(2) A chief of police shall ensure that his or her annual report includes the following information in relation to attempted collections of identifying information:

1. The number of attempted collections and actual collections.

2. The number of individuals from whom collections were attempted and actually collected.
3. The number of times subsections 5 (1.2) and 5 (2) were relied upon by a police officer to not inform an individual as would otherwise be required under subsections 5 (1) and 5 (1.1).
4. The number of times a document referred to in section 6 was given and not given to an individual.
5. The number of attempted collections and actual 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.
6. For each age group established by the chief of police for the purpose of this paragraph, the number of attempted collections and actual collections from individuals who are perceived, by a police officer, to be within that age group.
7. For each racialized group established by the chief of police for the purpose of this paragraph, the number of attempted collections and actual collections from individuals who are perceived, by a police officer, to be within that racialized group.
8. A statement, based on an analysis of the information provided under this subsection, as to whether the collections were attempted or actually collected disproportionately from individuals within a group based on the sex of the individual, a particular age or racialized group, or a combination of groups and if so, any additional information that the chief of police considers relevant to explain the disproportionate attempted or actual collections.
9. The neighbourhoods or areas where collections were attempted or actually made and the number of attempted collections and actual collections in each neighbourhood or area.
10. The number of determinations, as described in clause (a) of subsection 8 (4), that a police officer did not appear to have had a reason that met the requirements of section 4.
11. The number of times members of the police force were permitted to access identifying information under each of clauses i, ii, iii, iv, and v in paragraph 2 of subsection 8 (7).

(3) A chief of police shall establish age groups for the purpose of paragraph 5 of subsection (2).

(4) A chief of police shall establish racialized groups for the purpose of paragraph 6 of subsection (2) and shall do so in a way that allows the information required by subsection (2) relating to the racialized groups to be comparable to the data referred to in the following paragraphs, 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:

1. 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.
2. The number of individuals who claimed Aboriginal identity.

(5) This section does not require the inclusion of information about anything that occurred before July 1, 2016.

Chiefs of police must review practices and report

14. (1) If an annual report referred to in section 13 reveals that identifying information was attempted to be collected or collected disproportionately from individuals perceived to be within a group, the chief of police shall review the practices of his or her police force and shall prepare a report setting out the results of the review and his or her proposals, if any, to address the disproportionate attempted collection or collection of information or any practice that appears to contravene Part II or Part III.

(2) A municipal chief of police shall provide his or her report to the relevant board, and the Commissioner shall provide his or her report to the Minister of Community Safety and Correctional Services.

(3) When a board receives a report from a municipal chief of police under subsection (2), and when the Minister of Community Safety and Correctional Services receives a report from the Commissioner under subsection (2), the board or the Minister, as the case may be,

- (a) shall publish the report on the Internet in a manner that makes it available to the public free of charge; and
- (b) may make the report available to the public free of charge in any other manner that the board or the Minister, as the case may be, considers appropriate.

Chiefs of police must make records available

15. (1) For the purpose of carrying out a duty, or exercising a power, under clause 3 (2) (b), (d), (e) or (h) of the Act, the Minister of Community Safety and Correctional Services may request a chief of police to make available to an employee in the ministry, within the period

specified in the request, any record that is relevant to that duty or power and is in the possession or under the control of the chief of police's police force.

(2) A chief of police shall comply with a request made under subsection (1).

Review of Parts I, II, and III

16. The Minister of Community Safety and Correctional Services shall ensure that a review of Part I, Part II, and Part III is conducted that allows a reasonable opportunity for input from members of the public, and that a report on the findings of the review is published no later than July 1, 2021.

COMMENCEMENT

Commencement

17. (1) [Commencement].