

REPORT OF THE

Independent Street Checks Review

EXECUTIVE SUMMARY

The Honourable Michael H. Tulloch

The Honourable Michael H. Tulloch is a judge of the Court of Appeal for Ontario.

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Acknowledgements

At the outset, I want to highlight the contributions, input, support, and expertise of many people who have been essential to the success of this Review and the completion of this report.

First, I wish to thank Chief Justice Strathy, Chief Justice of Ontario, and my colleagues on the Ontario Court of Appeal for their constant support and understanding while I was away from the Court serving as the Independent Reviewer.

Second, I thank all the team members on the Independent Street Checks Review. The success of this Review was a direct result of the team that supported me throughout this process. Each member brought a unique set of skills and expertise to this Review and each of their contributions was integral to its ultimate success. I could not have done this without their tireless commitment, dedicated service, and exemplary work over the past 18 months. Their contributions are numerous and invaluable. I am very grateful for everything they have done during the consultations under the Review and for the completion of this report.

Third, I would like to acknowledge and thank all of the stakeholders we met with

during our extensive police, community, and public consultations throughout the province. Consultations with a wide range of community members, experts, organizations, police services, and the public were a core component of this Review and of central importance to my approach. I will never forget the powerful contributions and submissions stakeholders made during these meetings and in a range of written submissions. These contributions and submissions informed my analysis and the recommendations in this report.

Fourth, I was fortunate to rely on a number of individuals to test ideas and approaches and review certain portions of my report. They know who they are. Their comments were so helpful in this process and I thank them.

Finally, and closest to my heart, is my family. Thank you for your unyielding support and belief in me and for dealing with my many absences and schedule under this Review over the past 18 months. I could not have undertaken this work without you and I am so grateful for you. You are my everything.

MICHAEL H. TULLOCH

Letter to the Minister of Community Safety and Correctional Services

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December 11, 2018

The Honourable Sylvia Jones
Minister of Community Safety and Correctional Services
25 Grosvenor Street
Toronto, ON M7A 1N8

Dear Minister Jones:

RE: The Independent Street Checks Review

I am pleased to provide you with my report in response to the terms of reference dated May 19, 2017.

Within this report, I have answered the questions outlined in the terms of reference. My answers and recommendations follow a broad consultation process and reflect the invaluable input of all of the various stakeholders and members of the public with whom I met.

Thank you for the opportunity to conduct this Review. I trust that you will find my recommendations helpful in moving forward to ensure that police-public interactions promote public confidence and keeps our communities safe.

Yours very truly,

A handwritten signature in blue ink, appearing to read "Michael H. Tulloch".

The Honourable Justice Michael H. Tulloch
Independent Reviewer of O. Reg. 58/16

Letter to Participants and Stakeholders

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December 11, 2018

Dear Participants and Stakeholders:

RE: The Independent Street Checks Review

My consultation process is complete and I have now produced a report reflecting your submissions.

I want to take this opportunity to personally thank all of you for your participation in this process. Your contributions have been invaluable to my team and me. I am very hopeful that your input will result in police-public interactions that promote public confidence and keep our communities safe.

Yours very truly,

A handwritten signature in blue ink, appearing to read "Michael H. Tulloch".

The Honourable Justice Michael H. Tulloch
Independent Reviewer of O. Reg. 58/16

Executive Summary



1. On June 7, 2017, I was appointed by the Government of Ontario to lead an independent review of Regulation 58/16 (O. Reg. 58/16) and its implementation. Regulation 58/16, introduced in 2016, outlines Ontario's new rules on the collection of identifying information by police in certain circumstances, a practice that is commonly known as street checks (and sometimes referred to as carding).
2. In my capacity as the Independent Street Checks Reviewer, I reviewed the content of the Regulation and assessed whether police officers, chiefs of police and police services boards are complying with it. More specifically, the Review has looked at whether the Regulation reflects the government's goal of ensuring that police–public relations are consistent, bias-free and done in a way that promotes public confidence and protects human rights.
3. This report seeks to answer certain critical questions and provide recommendations on how to improve the Regulation and ensure that it serves the original intent and purposes for which it was enacted. In this Executive Summary (Part I of my report), I summarize: the background of this Review (Part II), the legal context (Part III), and my findings and recommendations (Parts IV and V).

Summary of Part II: Background

4. Crime prevention is essential to the maintenance of public safety, and the police must have proper tools in order to undertake this work. However, the public's trust in police is the bedrock on which police legitimacy is built: without it, police lose authority and the ability to do their jobs. This is the lens through which any analysis of street checks and carding must be done.
5. Street checks were originally intended as an investigative tool to capture the information of people who police had reason to suspect of being involved in criminal activity. Over time, however, it grew into a much less focused practice. Some police services began collecting and storing personal identifying information of many citizens without any belief that they were involved in criminal activity, and without much evidence that such databases were particularly useful in solving crime.

6. Many of the issues surrounding carding and street checks stem from a misunderstanding of the terms themselves. A street check is where information is obtained by a police officer concerning an individual, outside of a police station, that is not part of an investigation. This is a very broad category of police information gathering, and much of it is legitimate intelligence gathering of potentially useful information. Carding, as referred to in this report, is a small subset of street checks in which a police officer randomly asks an individual to provide identifying information when the individual is not suspected of any crime, nor is there any reason to believe that the individual has information about any crime. This information is then entered into a police database.

The public's trust in police is the bedrock on which police legitimacy is built.

7. In Chapter 2 of this report, I go over the history and evolution of street checks, as well as the impact of random street checks, including their benefits and costs. While proponents of random street checks argue that such stops can help deter crime and assist in criminal investigations, the many costs include: the negative effects on the physical and mental health of those carded; potential negative impacts on their employment and other opportunities; the loss of public trust and cooperation; and a reduction

in the perception of police legitimacy. These impacts are felt disproportionately by certain races and groups, particularly Indigenous, Black and other racialized communities, as well as youth and people from lower socioeconomic groups.

8. These issues ultimately led the Government of Ontario to file Regulation 58/16, which I am mandated to review. In Chapter 2, I also outline the history and purpose of the Regulation, and salient issues around the understanding, interpretation and application of the Regulation in Ontario. Within this context, I recommend that the Government of Ontario immediately proceed to implement or amend the Regulation in accordance with the recommendations I make in Chapters 5 to 12 of this report. I note that all recommendations and amendments must take into account the time and resources necessary for police services to ensure effective, proper training and implementation of the revised Regulation. The government should allocate additional resources to police services specifically for this purpose (Recommendation 2.1).

9. Under the terms of reference, the Government of Ontario asked me to answer a number of questions about a) the content of the Regulation and b) the implementation of the Regulation.

10. Regarding the content of the Regulation, I was asked to answer the following questions:

- Does the Regulation ensure that po-

lice–public interactions are consistent?

- Does the Regulation ensure that police–public interactions are conducted without bias or discrimination?
- Does the Regulation ensure that police–public interactions are done in a manner that promotes public confidence and keeps our communities safe?
- Does the Regulation appropriately reflect the principle that Ontario takes the protection of human rights very seriously and has zero tolerance for racism or any form of discrimination based on the prohibited grounds set out in section 1 of the *Human Rights Code*?
- Does the Regulation appropriately reflect the principle that Ontario stands opposed to arbitrary, random stops that do not have a clear policing purpose, and which are done solely for the purpose of collecting identifying information?
- Are there any recommendations that should be made regarding the content of the Regulation in light of the preceding questions?

11. On the implementation of the Regulation itself, I was asked to answer the following questions:

- Are there any challenges, operational or otherwise, in applying the Regulation and, if so, what are the recommendations as to how they could be addressed?
- Are the accountability and oversight mechanisms in the Regulation appropriate to ensure compliance with the Regulation and, if not, what are the recommendations as to how the mechanisms could be improved?
- Are there any amendments, policy and/or procedural changes recommended to improve the implementation of the Regulation?
- Are police officers and police chiefs generally in compliance with the Regulation?
- Are police officers and police chiefs specifically in compliance with the Regulation regarding:
 - the data retention and management requirements;
 - the elimination of performance targets;
 - the delivery of training;
 - the development of procedures; and
 - the provision of reports?
- Have police services boards developed policies that comply with the Regulation?
- Do the curriculum and related training materials developed by the Ontario Police College ensure compliance with the Regulation?
- Are there any recommendations to be made regarding the effectiveness of the training developed by the Ontario Police College?
- What are the approaches police services have adopted to implement the Regulation?
- Are there any recommendations regarding the approaches police services boards should take with regard to the

document to be provided to individuals following a regulated interaction, and is consistency required in that regard?

- Are there any recommendations regarding the approaches police services boards should take with regard to the retention of information collected pursuant to the Regulation, and is consistency required in that regard?
- Are there any recommendations regarding the approaches police services boards should take with regard to the establishment of age groups and racialized groups when reporting on the collection of data, and is consistency required in that regard?

12. These questions are numerous and complex, and they required in-depth analysis, research, consultations and outreach in order to answer them.

13. At this stage, I wish to outline the Review's consultation process. It was very important to me to hear from as many people as possible in order to develop recommendations that would make a tangible impact.

14. The terms of reference required that I consult with the Minister Responsible for Anti-Racism and the Independent Police Review Director. I was also required to conduct an independent survey of civilians to address certain issues around police compliance with the Regulation, and police-public interactions. This survey was conducted as part of the Review and a summary of its findings are threaded throughout the report and included in

Appendix E.

15. The overall consultation process under the Review took over 11 months, during which time I met with more than 2,200 people and received over 100 written submissions. Many stakeholders were consulted, including police services, community groups and organizations, public interest groups, individuals and academics.

16. I met with officials from 34 police services in Ontario, including police chiefs, members and police services boards, in order to understand their perspectives and the impact of the Regulation on their work.

17. There were 12 public consultations held throughout the province during which members of the public expressed their views, concerns and feedback on street checks and the Regulation, and made recommendations.

18. I met with Indigenous, Black and other racialized communities throughout the province. Hearing directly from these communities highlighted the historic and current issues these communities face with respect to the practice of street checks.

19. Consultations with all of these groups were essential to me, as they provided valuable context, information and insight into the issues I was asked to address under the Review. Their contributions shaped my recommendations in this report. I am deeply grateful to everyone I

met for their openness and willingness to share their knowledge, experiences, lived realities and expertise with me.

20. In addition to the consultations, I undertook extensive research on the legal issues implicated in the Review of the Regulation to answer the questions asked of me. I conducted a comparative analysis of other countries' approaches to these issues, with a view to identifying approaches or analytic frameworks that would be of particular relevance to the situation in Ontario.

The overall consultation process under the Review took over 11 months, during which time I met with more than 2,200 people and received over 100 written submissions.

21. In Chapter 4 of this report, I provide important contextual information on key legal concepts, statutes and constitutional provisions that underpin the analysis and recommendations in this report. My recommendations are set out in Parts IV and V, namely Chapters 5 to 12. I have included the full list of recommendations in Appendix A. In the following sections, I briefly summarize each chapter, and highlight the key recommendations made in Chapters 5 to 12.

Summary of Part III: The Context for the Independent Review

Chapter 4: Policing – Powers and Limits

22. In Chapter 4, I provide a summary of certain civil liberties and fundamental rights of individuals, as well as the applicable duties and powers of police officers and the limits on those powers that currently exist in our law. This summary serves as the legal context for the Regulation and my recommendations set out in later chapters.

23. People enjoy many individual rights, one of which is the right to walk about freely without state interference. Faced with police questioning on the street, a person is generally free to decline to answer and walk away. This, of course, does not prevent a police officer from being able to speak to people but, unless a police officer has grounds to arrest or detain a person, they cannot prevent someone from leaving an interaction.

24. The duties of police officers form an important part of the discussion in this chapter. Certain powers are granted to police officers in order to enable them to discharge their duties. These powers come from both statute (e.g. the *Criminal Code*) and from common law. Police duties include the preservation of peace, the prevention of crime and the protection of life and property. To discharge these duties, police officers may need to engage with members of the public, including

stopping and questioning them. But their ability to do so is not unlimited: a balance must be struck between protecting individual liberties and properly recognizing certain police functions.

25. To discharge their duties, police have certain limited powers to interfere with the ability of citizens to walk freely down the street. These powers include powers of arrest, statutory powers of detention and common law powers of detention.

26. Police officers can arrest a person with or without a warrant. When they are arresting a person without a warrant, they must find the person committing a criminal offence or have reasonable grounds to believe the person has committed or is about to commit an offence. Police also have some powers of arrest derived from other statutes. When individuals are arrested, police must advise them of the reasons for the arrest as well as their right to counsel, and individuals then have an obligation to identify themselves.

27. Police have a number of statutory authorities for stopping or detaining individuals, such as legislation regulating access to courthouses and airports, or providing for certain types of warrants (e.g. a warrant for DNA).

28. The main detention power that police have at common law is the power to detain for investigative reasons. Police have the power to briefly detain an individual for investigation if the police have objectively reasonable grounds to suspect that the individual is connected to a particu-

lar crime and that the detention is reasonably and objectively necessary. This reasonable suspicion must be based on something more than a *mere* suspicion or a “hunch” but can be something less than a belief based on reasonable and probable grounds that would justify an arrest. When an individual is subject to an investigative detention, the police must advise them of the reasons for the detention as well as their right to counsel. In these circumstances, individuals do not have to speak to police.

29. Detention does not automatically occur as soon as police engage an individual for investigative purposes; it only arises when a person is either physically detained (e.g. through handcuffing) or psychologically detained. Psychological detention occurs when a reasonable person in the person’s position would feel obligated to comply with a police direction or demand. Courts have outlined a number of factors to be considered when determining whether there has been a psychological detention, which I outline in Chapter 4. Ultimately, whether someone is psychologically detained is determined by taking into account all of the circumstances of the encounter and the conduct of the police.

30. In situations falling short of a “detention”, individuals have other protections against arbitrary conduct provided by statute, such as those provided by the Ontario *Human Rights Code* and Ontario’s *Anti-Racism Act, 2017*.

31. With this legal context in mind, I will

now summarize each of the following chapters, highlighting key recommendations.

Summary of Part IV: Collecting and Managing Identifying Information - Findings and Recommendations

Chapter 5: Application and Interpretation of the Regulation

32. In this chapter, I examine the circumstances in which the Regulation applies to an interaction between a police officer and an individual. I consider the general application of the Regulation, the meaning of identifying information, the categories of collections to which the Regulation applies and areas where the Regulation does not apply. I identify gaps in the Regulation's operation, based on concerns that the Regulation was intended to address, and I make recommendations to address those gaps.

33. At the outset, I recommend that the Regulation expressly stipulate that its purpose or objective is to prevent arbitrary or random stops of individuals (Recommendation 5.1).

34. The Regulation applies to attempts to collect identifying information from individuals by police officers if the attempt is done for the purpose of: inquiring into offences that have been or might be committed; inquiring into suspicious activities to detect offences; or gathering information for intelligence purposes. I have recommended that officers be instructed that it also applies whether or

not an officer decides to ultimately discard the information (Recommendation 5.2). I have also made recommendations about standardizing the definition of what constitutes identifying information across jurisdictions. (Recommendations 5.3 and 5.4).

I recommend that the Regulation expressly stipulate that its purpose or objective is to prevent arbitrary or random stops of individuals

35. The Regulation specifically does not apply to a number of situations, including instances where a person is legally required to provide the information to a police officer. These instances arise where legislation, such as the *Highway Traffic Act*, the *Liquor License Act*, or the *Trespass to Property Act* enable police to obtain identifying information from individuals. I have recommended that the Province of Ontario consider the possibility of revising such Acts to include similar protections as those contained in the Regulation (Recommendation 5.5). I have also made recommendations regarding the application of the Regulation to vehicle stops and to passengers in vehicles (Recommendations 5.6 and 5.7).

36. I have explored and made recommendations about the circumstances to which the Regulation ought not to apply, including: where an individual appears to

match the description of a missing person, human trafficking victim, or other victim of crime; or where an officer is simply chatting with members of the community to build relationships (Recommendations 5.8 and 5.9). I also recommend that procedures developed by chiefs of police ensure that identifying information collected in such situations is not recorded in any regulated interactions database (Recommendation 5.10).

37. A key aspect of the Regulation is the distinction between *investigating* an offence, which is exempt from the Regulation, and *inquiring* into suspicious activities and general criminal activities, which fall under the Regulation's purview. I explain that, in the latter case, there should be some suspicion based on objective and credible grounds justifying an inquiry, albeit short of the reasonable grounds for suspicion required for an investigation. I make recommendations designed to ensure that this distinction is clear and that identifying information collected under this provision of the Regulation is collected in a manner and spirit in line with the Regulation's purpose (Recommendations 5.12, 5.13, and 5.14). I also recommend that regulated interactions should take no longer than reasonably necessary (Recommendation 5.11).

38. Next, I discuss the collection of information for intelligence purposes, which is the final category of collection to which the Regulation applies. This information gathering can be specific or random in nature. It is *specific* in nature when there is

a specific reason to believe the identifying information would be valuable police intelligence. In my view, these interactions are proper and should be subject to the Regulation.

39. Random gathering of information for intelligence purposes, however, amounts to the practice traditionally known as carding: people are being identified simply to create a database of individuals in the area. Two fundamental questions central to this Review are: *do random street checks actually work* and *should random street checks or carding ever be allowed?*

40. In contemplating whether random street checks work, I consider Canadian and international experiences and research, as well as my own observations from the many consultations conducted over the course of this Review. I conclude that random street checks, which take considerable time and effort for a police service to conduct, have little to no verifiable benefits relating to the level of crime or even arrests. In fact, even before the Regulation, many police services had already discontinued the practice because of its lack of effectiveness.

41. I also consider emergency situations and threats to public safety, and find that the tools police already have, without random street checks, allow them to effectively address such circumstances. I thus recommend discontinuing the use of random street checks altogether (Recommendation 5.15).

Chapter 6: Prohibition on the Collection of Certain Information

42. In this chapter, I address the question of when police officers are *not* authorized to collect identifying information.

43. Under section 5 of the Regulation, police officers are prohibited from collecting identifying information if “any part” of the reason for the attempted collection is because the officer perceives the individual to be part of a racialized group or the attempted collection is done in an “arbitrary way”. I recommend that other prohibited grounds of discrimination under the Ontario *Human Rights Code* and the individual’s socioeconomic status also be included in this section (Recommendation 6.1).

44. The collection of identifying information is, thus, considered to be improper if part of the reason for the collection is the person’s membership in a protected group (i.e. they are part of a group protected by a prohibited ground of discrimination under the Ontario *Human Rights Code* or on the basis of their socioeconomic status). That said, membership in a protected group, such as racial identity, is often a necessary component of a suspect description. As such, an officer can attempt to collect identifying information from individuals on the basis that they appear to be part of a protected group as long as the officer is seeking a particular individual and the officer has additional information regarding the individual other than their membership in a protected group.

45. The purpose of this requirement is to prevent people from being stopped and questioned for improper reasons or based on a vague description. The solution is to require a credible, reasonably specific description relating to the individual and their circumstances before a request is made for identifying purposes. I have made a recommendation on the phrasing of this section of the Regulation to assist with this issue (Recommendation 6.1).

46. As I mentioned above, police officers are also prohibited from collecting identifying information in an arbitrary way. A collection is considered to be arbitrary unless the police officer can articulate a proper reason for the attempted collection. I have made a recommendation to expand the section of the Regulation that specifies what those reasons can and cannot include (Recommendation 6.2). I also explore and give examples of circumstances in which police officers should and should not obtain identifying information from members of the public.

47. Finally, I close this chapter by addressing an issue that the Regulation currently does not canvass: the need for *all* police–public interactions to be conducted without bias or discrimination. I therefore recommend that: officers should be trained and have articulable reasons for initial inquiries and gathering information regardless of whether identifying information is requested; and that no part of the reasons for these interactions may be a ground prohibited by the Regulation (Recommendation 6.3).

Chapter 7: Duties Relating to Collection of Information

48. Chapter 7 focuses on the duties of police officers relating to the collection of identifying information. I begin the chapter by underscoring the importance of procedural justice and civility, noting that public confidence in the police is promoted when the police are perceived to be acting legitimately and they treat members of the public in a polite, respectful, open and dignified manner. When police are seen to be acting in a legitimate manner, people are more likely to follow police directives, report crime and cooperate in investigations.

49. When it comes to requests for identifying information, police have a duty to inform individuals of certain things before attempting to collect the identifying information. In this chapter, I outline the importance and timing of these notifications and what these notifications should include. I explain why there is a compelling reason to let people know the reason the information is being requested and how it will be used.

50. In this chapter, I recommend that requests for identifying information be made in a professional, civil manner (Recommendation 7.1). I make recommendations on what must be included in the rights notification that officers provide before requesting identifying information, the tone and manner that officers should use when notifying people of their rights and, finally, officer requests for supporting documentation (Recommendations

7.2, 7.3, and 7.4).

51. I pay close attention to requests for identifying information involving children under the age of 12. I make a recommendation about when officers can request identifying information from children and the special rules that apply in these situations (Recommendation 7.5).

Public confidence in the police is promoted when the police are perceived to be acting legitimately and they treat members of the public in a polite, respectful, open and dignified manner.

52. I then turn to a review of the document of interaction (also known as the “receipt”) and the importance of this document in promoting public confidence. I make recommendations on the province-wide standardization of the receipt, including details on the format of the receipt and the information to be contained on the receipt (Recommendations 7.6, 7.7, and 7.8).

53. I outline and explore the duty of officers to record the reason for collecting identifying information, including an examination of the other information that should be specifically recorded during and after a request for identifying information under the Regulation. I make recommendations on what a police offi-

cer must record during a regulated interaction (Recommendations 7.9 and 7.10).

54. I also recommend a format for and province-wide standardization of the form for police officers to input information obtained from these regulated interactions into their databases (Recommendations 7.11 and 7.12).

Chapter 8: Inclusion of Collected Information in Databases

55. This chapter is divided into two parts.

56. The first part looks at the inclusion of data collected from requests for identifying information after the Regulation came into force on January 1, 2017. I address when identifying information collected by a police officer may be entered into a database on a restricted and a non-restricted basis, depending on compliance with the terms of the Regulation, and the role of the chief of police and their designate in making this determination. To this end, I make a recommendation on the role of the chief of police and their designate in ensuring compliance with the Regulation (Recommendation 8.1). I also recommend when information should be included in a restricted versus a non-restricted database (Recommendation 8.2).

57. In this first part, I also outline situations where police can access restricted information, and make recommendations related to: the rules for accessing this information, documenting the access and the restrictions on the use of the informa-

tion (Recommendations 8.3, 8.4 and 8.5). When it comes to the retention of identifying information in police databases, I note that there is currently no consistent, province-wide time limit on retention. I recommend a definite time limit for the retention of data (five years), after which time it should automatically be destroyed unless needed for a specific, listed purpose in the Regulation (Recommendation 8.6). I further recommend that a police service may choose to destroy identifying information earlier than five years after it was collected (Recommendation 8.7).

58. Regarding the analysis of the identifying information in police databases, I outline the requirements for an annual, detailed review by the chief of police (or their designate) of an appropriately sized random sample of entries in the non-restricted database, with a recommendation about the need for clarity in what constitutes an appropriately sized random sample (Recommendation 8.8). When the chief of police's review determines that there was not proper compliance with the Regulation when identifying information was collected, this information must be kept in a restricted database. The chief of police must consider the results of the review and take appropriate actions to ensure that data is collected pursuant to the requirements of the Regulation. I also make a recommendation on the use of the collected, de-identified data for research purposes (Recommendation 8.9).

59. In the second part of Chapter 8, I address the retention of, access to and dis-

closure of data collected before January 1, 2017, to which the Regulation would have applied (also referred to as historical data). More specifically, the Regulation requires police services boards to develop policies and chiefs of police to develop procedures, respectively, regarding the retention of, access to and disclosure of historical data to which the Regulation would have applied.

60. The challenge I faced here is that identifying information collected before January 1, 2017, was not separated into different types of interactions. The pre-Regulation computer modules for street checks in the police databases included what are now considered regulated interactions and other, non-regulated interactions (e.g. tickets, observation checks). A reason for the sharp decline in the numbers of what are commonly referred to as street checks post-Regulation is that the numbers outlined pre-Regulation, which often were in the thousands, included both regulated and non-regulated interactions grouped together under the street checks module.

61. At present, the Regulation does not require identifying information collected before January 1, 2017, to be deleted after a certain time nor does it require information collected contrary to the Regulation's terms to be placed in a restricted database. These decisions are left to the respective policies and procedures, which I described above.

62. I noted that many communities and organizations in my consultations re-

quested that all historical data be destroyed, while other stakeholders indicated that historical data could be useful in future litigation or for possible missing persons investigations.

63. Given these considerations and to balance these perspectives, I recommend that historical data be destroyed five years after it was collected (Recommendation 8.12). I also make recommendations about storing historical data in restricted databases and the circumstances under which historical data can be accessed and used (Recommendations 8.10 and 8.11). Finally, I note that a police service may choose to destroy historical data earlier than five years after it was collected (Recommendation 8.13).

Summary of Part V: Operational, Policy and Procedural Challenges – Findings and Recommendations

Chapter 9: Training of Police and Public Education

64. As part of my mandate, I was asked to review the curriculum and related training materials on the Regulation prepared by the Ontario Police College and to make recommendations on the training provided to police officers across the province. The Regulation mandates that training be provided to any police officer who attempts to collect identifying information.

65. In outlining the origins and development of the training and determining whether the training provided complied with the Regulation, I review in detail

both the in-person training sessions and the online training modules that police officers were required to complete. I also outline the complexities in the initial delivery of the training in the fall of 2016, noting the rushed development and delivery of the training and the fact that police services only finalized procedures for the implementation of the Regulation after the training was delivered.

66. I find that the training failed to give adequate attention to the reason for the Regulation and, as such, failed to get strong buy-in from police officers who often viewed street checks as a Toronto-centric issue rather than a province-wide one. In my view, the training also failed to spend sufficient time on the Regulation itself and the legal bases for police stops.

67. While the training focused on front-line police officers who collect identifying information and the designates of the chiefs of police, there was no specific training for the data verifiers on their roles and responsibilities, nor was there training for police chiefs or their deputies on the reporting, data retention and oversight requirements of the Regulation. I make recommendations on expanding the training to supervising officers and ensuring that there is strong buy-in from supervisors (Recommendations 9.1 and 9.2). I also recommend that trainers be selected based on their credibility with other officers and support of the Regulation (Recommendation 9.3).

68. In my meetings with police services

in Ontario, I noticed that there was a lack of consistency in the training provided. Some services reported that the training was excellent while other services noted that the training was problematic and raised concerns among officers. Some officers felt that the training on implicit bias was founded on the incorrect assumption that all police officers are racist. However, I note that unconscious bias training is provided across many sectors. Unconscious bias is an issue that impacts all actors in the criminal justice system and everyone within society more generally. As such, I make observations and recommendations on how anti-bias and implicit bias training should be designed and implemented (Recommendations 9.4, 9.5, 9.6, 9.7, 9.8, and 9.9).

The training failed to give adequate attention to the reason for the Regulation and, as such, failed to get strong buy-in from police officers who often viewed street checks as a Toronto-centric issue rather than a province-wide one.

69. I highlight the importance of police and community cooperation in the development and delivery of training to police officers. I recommend that the training include: a consideration of adolescent development; specific segments regarding the geographic area and local realities of the police service; the application of the

Regulation in real-world scenarios; and a special focus on the ability to articulate reasons for a regulated interaction (Recommendations 9.4, 9.5, 9.6, and 9.10). I recommend that the training include testing (Recommendation 9.9). Given the complexity of the Regulation, I recommend that there be regular, periodic refresher training on the Regulation (Recommendation 9.11). Further, when a police officer transfers from one police service to another, I recommend that they receive training about the specific communities being served and their particular issues (Recommendation 9.12). In my view, the Ministry of Community Safety and Correctional Services should fund the ongoing training on the Regulation for all police services in Ontario.

70. I recommend the creation of a Code of Practice, similar to those used in the United Kingdom (UK), which would provide officers with clear, coherent, comprehensive instructions on the implementation of the Regulation. The Code of Practice would include: definitions of key terms and legal concepts; information on when the Regulation applies; protocols and procedures; and the importance of civility and professionalism (Recommendation 9.15). I recommend that the Code of Practice be made publicly available so that people have information on the Regulation and its application (Recommendation 9.18).

71. As outlined in my report on the Independent Police Oversight Review, I recommend again here that consideration

be given to establishing a College of Policing as the professional body for policing, and to modernizing the policing curriculum (Recommendation 9.13). A degree program or an expanded educational requirement would go a long way to ensuring that officers have the full suite of tools to undertake their critical work. I recommend developing a task force or working group to evaluate existing post-secondary programs in police studies or law enforcement issues, with a view to modernizing these programs and to updating the Ontario Police College curriculum to develop a full, stand-alone post-secondary degree in policing (Recommendation 9.14).

72. In addition, in this chapter I review the limited public information and lack of public education provided on the Regulation. The failure to properly inform the public has resulted in mass confusion regarding the Regulation, its specific terms and its operation in practice. I recommend that the Ministry of Community Safety and Correctional Services work with community groups, youth advocacy groups, legal aid clinics and school boards to develop and launch public education materials (Recommendation 9.16). I recommend that the Ministry create a full, cross-platform advertising and social media strategy on the Regulation (Recommendation 9.17).

Chapter 10: Performance Targets, Policies and Procedures

73. In Chapter 10, I outline the current requirements under the Regulation regarding the policies and procedures de-

veloped by police services boards and chiefs of police, respectively. My recommendations in this chapter are made to ensure clarity and consistency across the province.

74. I note at the outset of this chapter that the Regulation prohibits police services from imposing on its police officers performance targets for the collection of identifying information. This restriction was intended to prevent unnecessary and improper street checks and it is a good one.

The failure to properly inform the public has resulted in mass confusion regarding the Regulation, its specific terms and its operation in practice.

75. All policies and procedures must be consistent with the Regulation. The current Regulation requires policies and procedures to be developed regarding: the form of the receipt; the content of the annual report; and the retention, access and disclosure of information collected.

76. Police services and police services boards across the province are very different, and so are their policies and procedures. To address this issue, I recommend that there should be a minimum, consistent, province-wide policy to implement the Regulation that is binding on all police services boards (Recommendation 10.1).

77. To ensure the accuracy and consistency of information stored by police, I recommend that inaccurate information be restricted and eventually purged from the regulated interactions database (Recommendation 10.2).

78. I recommend that the policies seek to eliminate interactions based, even in part, on grounds of discrimination prohibited by the Ontario *Human Rights Code* (Recommendation 10.3). Police services boards may also develop policies that expand on the content of the Regulation for the purpose of protecting human rights and preventing discrimination (Recommendation 10.4).

79. Another major issue I heard about during my consultations is how police use the information they collect. Many individuals expressed the concern that they would be labelled a “usual suspect” or “known to police”, which would lead to further stops and negative treatment, and affect their employment prospects and travel. This is especially significant because there is no way to guarantee that information collected during a street check is reliable (e.g. someone could pretend to be someone else). I have made a recommendation aimed at addressing this issue (Recommendation 10.5).

80. Chiefs of police must develop procedures that are consistent with the policies developed by the police services boards. This has not always been the case, particularly where a police services board makes a policy that goes beyond the basic requirements of the Regulation. I recom-

mend that chiefs of police ensure their procedures are in line with their police services boards' policies (Recommendation 10.6). I also make a recommendation regarding the substance of the procedures: that they should seek to eliminate regulated interactions that are based, even in part, on a prohibited ground of discrimination under the Ontario *Human Rights Code* (Recommendation 10.7). The procedures can, of course, go beyond the requirements of the Regulation for the purposes of protecting human rights and preventing discrimination, as long as they meet the minimum standard set out in the Regulation (Recommendation 10.8). Finally, I recommend that the procedures be binding on chiefs of police (Recommendation 10.9).

Chapter 11: Reports and Compliance

81. In this chapter, I focus on the annual reports that, according to the Regulation, must be prepared by chiefs of police and reviewed by police services boards to ensure compliance with the Regulation.

82. The annual reports must include the following information regarding attempted collections of identifying information: the number of attempted collections; the number of individuals from whom identifying information was collected; the number of times specific sections of the Regulation were relied upon to exempt officers from certain rights notifications or from providing a receipt; the age, race and gender of the individuals from whom attempts to collect identify-

ing information were made and whether there was any disproportionate collections; the neighborhoods or areas where collections were attempted; instances of non-compliance with the Regulation; and the number of times members of a police service were allowed to access restricted information in the police service's database.

83. In reviewing the annual reports required under the Regulation from various services, I have noted that these reports have ranged in length anywhere from a paragraph in a police service's overarching annual report to a 20-page stand-alone report. The reports include different age ranges, racial categories and approaches to the number of compliant vs. non-compliant requests. These variations make it difficult to compare the implementation and impact of the Regulation across Ontario. I also note that some services have included the number of complaints and requests for information they have received with respect to regulated interactions while others have not. I recommend that a template annual report be developed for use by police services across the province (Recommendation 11.1).

84. The timeliness of annual reports is a concern. As of the time of writing, only 13 police services had made their reports publicly available. Currently, the Regulation does not include a timeline for submission of annual reports. I recommend that annual reports be made publicly available within the first six months of

the following calendar year (Recommendation 11.2).

85. I recommend that the annual report list the number of complaints and requests for information made with respect to regulated interactions (Recommendation 11.3). Furthermore, I recommend that the age groups of those requested to provide identifying information be standardized and that the information distinguish between children and adults, including a clear list of recommended age groups (Recommendations 11.4, 11.5 and 11.6). Similarly, I recommend that the racial groups of those requested to provide identifying information be standardized, including a list of recommended racial group categories (Recommendations 11.7 and 11.8).

86. At present, the Regulation requires that the data be analyzed to determine if identifying information is being collected from people disproportionately, but it does not define what “disproportionately” means. The result is that each police service could have a different interpretation of disproportionate. I canvass various jurisdictions including the United States and the United Kingdom, as well as practices within certain police services in Ontario, to bring clarity to the concept of disproportionate collections of information. I have made recommendations to address this issue and ensure consistency among police services, including defining the term disproportionate and making the analyzed, de-identified data publicly available (Recommendations 11.9, 11.10,

11.11 and 11.12).

87. In the context of disproportionate collections of identifying information, I underscore the importance of chiefs of police reviewing the practices of their police services and preparing reports summarizing their review as well as any proposals to address issues of concern. I recommend that: collected identifying information be monitored for compliance as it is received to ensure that it was properly obtained; and an early warning system be put in place to ensure officer compliance and to correct any unintentional mistakes (Recommendations 11.13, 11.14 and 11.15). Identifying concerns early ensures that officers not complying with the Regulation can receive instruction or retraining as required (Recommendation 11.16). I recommend that officers who persist in collecting identifying information in breach of the Regulation be subject to discipline (Recommendation 11.17).

88. Finally, in this chapter, I address the issue of disciplinary charges, noting that police officers could be sanctioned for obtaining information improperly but chiefs of police would not be sanctioned for using the improperly obtained information as long as the use of that information is allowed under the Regulation. I note that the disciplinary measures should not be limited only to those who are attempting to collect the identifying information contrary to the Regulation but should also include those who authorize or allow such conduct, including supervisors or chiefs of police. I recommend that the

Code of Conduct be amended to include both groups (Recommendation 11.18).

89. During my consultations, I also heard about repeated instances where officers refused to provide their name or badge number to members of the public when requested. I make a recommendation to address this concern by noting that it should be considered misconduct for officers who are not engaged in covert operations to refuse to provide their name and badge number if requested (Recommendation 11.19).

Chapter 12: Other Policy and Procedural Recommendations to Improve the Implementation of the Regulation

90. This Review focuses on Regulation 58/16 and its specific terms and provisions. However, the terms of reference for the Review ask me to consider any overarching amendments and policy and/or procedural changes to improve the implementation of the Regulation.

91. Within these parameters, I have considered some ways in which the issues regarding street checks intersect with police practice more generally. To this end, I have made some observations and recommendations in the areas of community policing, partnerships with Indigenous communities, locally-based policing, youth education, and diversity and inclusion in police services.

92. Community policing is a vital part of policing in Ontario and goes a long way

to establish and maintain the strong police–community relations essential for building public trust in police. After outlining some examples of strong, positive community policing programs in Ontario, I recommend that police services in Ontario receive adequate funding for greater community involvement (Recommendation 12.1).

93. I heard during my consultations with police and Indigenous communities that the relationship between police and many Indigenous peoples throughout Ontario is a complex one. Respectful relationships between police and Indigenous communities takes time and commitment. I recommend that police services increase outreach to establish meaningful and equitable partnerships with Indigenous communities (Recommendation 12.2).

94. Throughout my consultations, I heard from many stakeholders that they were concerned that police officers did not live within the communities they served, resulting in a lack of strong direct links to or deep knowledge of the communities they police. Given the emphasis on community-based policing, I believe it is beneficial to have police officers hired to work in the community in which they live, and I make a recommendation that efforts be made by police services to hire people who live within the city or region they will serve (Recommendation 12.3).

95. Seeing the vital role that community police officers serve, I recommend that they should be engaged in a local community for a sufficient period of time to

form meaningful relationships within that community (Recommendation 12.4).

96. Further, based on my consultations with youth across the province and my review of Saskatchewan’s K-12 rights education program, I recommend that there be a similarly robust curriculum in Ontario schools to teach youth about: their rights and responsibilities; Indigenous and Black history; and information about the Regulation and its operation (Recommendation 12.5).

Community policing is a vital part of policing in Ontario and goes a long way to establish and maintain the strong police–community relations essential for building public trust in police.

97. Finally, part of the perception of discrimination in regulated interactions may result from the fact that the police officer requesting identifying information may be of a different racial background than the person to whom the request is made. I believe that a diverse, inclusive police service, at all ranks, will address this concern and make a valuable difference.

98. I know that diversity and inclusion has a range of tangible benefits in policing, including dispelling myths and stereotypes, bringing in new perspectives, building connections to diverse communities and engendering a deep-

er understanding of the communities served. Current statistics demonstrate a noticeable lack of diversity in policing at all levels, and I believe more must be done to ensure that the profession is representative of Canadian society.

99. Having a diverse police service alone will not ensure stronger police–community relations or automatically solve all the concerns raised in this report. It should be recognized that police culture is a powerful force that can have a strong impact on all officers – regardless of racial identity, sexual orientation, gender or Indigeneity – compelling them to adopt the prevailing, hierarchical norms of the organization.

100. I make a range of recommendations to address this issue, including conducting periodic surveys and reviews, and developing diversity and inclusion strategies (Recommendations 12.6, 12.7, 12.8, 12.9, 12.10, 12.11, 12.12, 12.13 and 12.14).



Appendix A Recommendations

Chapter 2

Recommendation 2.1

The Government of Ontario should immediately proceed with amending the Regulation in accordance with the recommendations made in this report. All amendments must take into account the time and resources necessary for police services to ensure effective, proper training and implementation of the revised Regulation. The government should allocate additional resources to police services specifically for this purpose.

Chapter 5

Recommendation 5.1

The Regulation should expressly state that no police officer should arbitrarily or randomly stop individuals to request their identifying information.

Recommendation 5.2

Officers should be instructed that the requirements of the Regulation apply when a police officer requests identifying information in a regulated interaction, whether or not the officer retains and records the identifying information.

Recommendation 5.3

The term “identifying information” should be defined in the Regulation in a way that is similar to the definition adopted by the Toronto Police Service, such as:

“Identifying information” means any information which, alone or in combination with other information, can be used to identify an individual. Identifying information includes information about an individual’s race, age, sex, sexual orientation, gender identity, marital or family status, socioeconomic circumstances, and education, medical, psychiatric, psychological, criminal or employment history.

Recommendation 5.4

The definition of identifying information should not include video surveillance or the incidental photographing or recording of an individual during a regulated interaction, such as could occur when an officer wears a body-worn camera.

Recommendation 5.5

The Province of Ontario should consider revising other Acts empowering police to obtain identifying information to contain similar protections as those contained in this Regulation.

Recommendation 5.6

The Regulation should apply to vehicle stops that are not otherwise exempt from the Regulation.

Recommendation 5.7

The Regulation should specifically apply when identifying information is requested from passengers of vehicles during vehicle stops when the passenger is not in violation of the *Highway Traffic Act*, the *Criminal Code*, or any other Act of Parliament or Legislature.

Recommendation 5.8

The Regulation should state expressly that it does not apply to attempts to confirm the identity of an individual who matches the description of a missing person, human trafficking victim or other victim of crime.

Recommendation 5.9

The Regulation should state expressly that it does not apply to interactions that have a community-building purpose, meaning on-duty police contact with members of the community meant to foster positive relationships and/or assist members of the public without gathering identifying information for an investigative or intelligence purpose.

Recommendation 5.10

The procedures developed by chiefs of police should ensure that identifying information requested by police officers in social situations or for the purpose of fostering community relations or assisting members of the public is not recorded and stored in any regulated interactions police database.

Recommendation 5.11

The Regulation should specify that a regulated interaction should take no longer than is reasonably necessary to satisfy the purpose of the interaction, and that police officers should not prolong a regulated interaction in the hope of acquiring reasonable suspicion to detain.

Recommendation 5.12

Remove subsection 1(2) of the Regulation and replace with:

Despite subsection (1), this Regulation does not apply with respect to an attempted collection made by a police officer for the purpose of investigating an offence the officer

reasonably suspects has been, is being or will be committed, and the person from whom the identifying information is requested appears to have some connection to the offence whether as a suspect or as someone who has helpful information about the offence.

Recommendation 5.13

“Suspicious activity” should be defined in the Regulation to mean an activity where, under all of the circumstances, there are objective, credible grounds to request identifying information.

Recommendation 5.14

Police officers should be directed and trained that when there is a suspicious activity and it is feasible to do so, a police officer should first make inquiries of an individual to confirm or dispel the officer’s suspicion without requesting identifying information.

Recommendation 5.15

No police service should randomly stop people in order to collect and record identifying information and create a database for general intelligence purposes.

Chapter 6

Recommendation 6.1

Remove subsections 5(1), (2) and (3) of the Regulation, and replace with:

5 (1) A police officer shall not attempt to collect identifying information from an individual if:

- (a) any part of the reason for the attempted collection is a prohibited ground of discrimination under section 1 of the Ontario *Human Rights Code*, R.S.O. 1990, c. H.19, or is due to the individual’s socioeconomic status, or
- (b) the attempted collection is done in an arbitrary way.

(2) A police officer may consider if an individual is part of a group protected by a prohibited ground of discrimination under section 1 of the Ontario *Human Rights Code* or the individual’s socioeconomic status (“protected group”) if:

- (a) the officer is seeking a particular individual;
- (b) being within a protected group(s) forms part of a credible, reasonably specific description relating to the individual or is evident from a visual representation of the individual; and
- (c) the description consists of more than the individual’s membership in a protected group(s).

Recommendation 6.2

The wording of clause 5(4)(1) should be changed to “details about the individual and/or the circumstances” that cause the officer to reasonably suspect that identifying the individual may contribute to or assist in an inquiry.

Recommendation 6.3

Officers should be trained and informed that they should have articulable reasons for initial inquiries and gathering of information. No part of the reasons for the initial inquiry or gathering of information may be a ground prohibited by the Regulation.

Chapter 7

Recommendation 7.1

Requests for information should be conducted in a professional and civil manner that respects the individual and inspires confidence in the police and their interactions with the public.

Recommendation 7.2

Before identifying information is requested, individuals should be informed of the following:

- (a) the reason for the request to provide identifying information;
- (b) that, if the individual provides identifying information, the information may be recorded and stored in the police records management system as a record of this interaction;
- (c) that participation is voluntary; and
- (d) that, if they chose to provide information, some of the identifying information that may be requested, such as the person’s religion, is being requested by law to help eliminate systemic racism.

Recommendation 7.3

Officers should be trained to inform individuals of the above-noted rights in a tone and manner that does not convey the message that compliance is required.

Recommendation 7.4

If an individual is requested to produce an identification document in a regulated interaction and the individual voluntarily complies, the identifying document should be retained for no longer than is necessary to verify the information that had been provided, and should then be immediately returned to the individual.

Recommendation 7.5

(a) Where it appears the individual stopped in a regulated interaction may be under the age of 12 years old, the individual should be asked their age before they are asked to

provide other identifying information. If the individual is under 12 years old, a request should be made as to whether there is a readily available parent or guardian who can attend during the regulated interaction.

(b) If there is a readily available parent or guardian, the regulated interaction should take place in the presence of that person.

(c) If there is no parent or guardian readily available, and the individual is under the age of 12, the police officer should not request any identifying information from the individual.

(d) Subsections (a) to (c) do not apply if the police officer is conducting a well-being check, confirming the identity of a missing or runaway child, human trafficking victim or other victims of crime, or in a situation of urgency.

Recommendation 7.6

The information required to be on the receipt should be standardized across Ontario and set out in both official languages.

Recommendation 7.7

The receipt should contain only: the name and badge or identification number of the police officer; the date, time and location of the regulated interaction; and include an area for the officer to record the reason for the regulated interaction.

Recommendation 7.8

The receipt provided to the individual should be a numbered carbon copy or identical copy of what is retained by the police officer.

Recommendation 7.9

A police officer in a regulated interaction should record the following:

- (a) the officer's specific reason for the stop or the attempt to collect identifying information;
- (b) whether the individual refused to provide identifying information;
- (c) any relevant suspect profile or intelligence report relied upon to make the request for information;
- (d) the time, date and duration of the stop;
- (e) the location of the stop;
- (f) the name and religion of the person stopped, if it is voluntarily provided;
- (g) the age group, gender, race and ethnic origin of the person stopped, as perceived by the police officer – if the person stopped voluntarily provides this information, it also should be recorded;

- (h) whether the person was requested to provide a document confirming their identity, and if so, why the request was made;
- (i) an indication if any frisk or search was conducted and, if so, the reason for the frisk or search and whether the person consented to the frisk or search;
- (j) an indication as to whether any force was used and, if so, the reason why force was used;
- (k) an indication if any person was injured or any property damaged or confiscated as a result of the regulated interaction and, if so, the reasons;
- (l) any further action taken as a result of the regulated interaction, such as a warning or arrest;
- (m) an indication as to whether there were any other people accompanying the person stopped and, if so, an indication as to the number of people, their perceived racial or ethnic background and an indication if they also were required to provide identifying information;
- (n) an indication if the regulated interaction was successful in obtaining information needed to satisfy the purpose for conducting the regulated interaction;
- (o) the officer's name, identification or badge number and unit;
- (p) if the individual appears to be under 12 years old, whether the child was asked if a parent or guardian was available to attend and whether the regulated interaction was conducted with a parent or guardian;
- (q) whether the individual was informed of the information as required by section 6 of the Regulation or, if informing the individual was not required, the reason why that was not required; and
- (r) whether the individual was offered or given the receipt as required by section 7 of the Regulation or, if offering or giving the receipt was not required, the reason why that was not required.

Recommendation 7.10

For requests for identifying information made from passengers of motor vehicles, the following information should also be recorded:

- (a) the traffic violation or other violation precipitating the stop;
 - (b) the reasons why the passenger was requested to provide identifying information;
- and

(c) an indication whether the passenger was required to leave the vehicle and, if so, the reason why.

Recommendation 7.11

There should be a standardized, province-wide form on which the street check data is recorded either physically or electronically.

Recommendation 7.12

The forms should include checkboxes, to record the reasons for making the stop and require commentary in free text to articulate those reasons.

Chapter 8

Recommendation 8.1

The Regulation should state that chiefs of police should ensure that every police officer on their police service who attempts to collect identifying information does so in compliance with this Regulation.

Recommendation 8.2

Identifying information should be included in a restricted database until it has been confirmed that it is in compliance with the Regulation and may be included in a non-restricted database.

Recommendation 8.3

There should be limited types of ongoing police investigations for which access to restricted information may be obtained.

Recommendation 8.4

Whenever a person views information in the restricted database, a record should be made of who viewed the information and the reason for viewing the information.

Recommendation 8.5

Information obtained during a regulated interaction should not be shared with any other government agency for any purpose other than as set out in subsection 9(10)(2) of the Regulation.

Recommendation 8.6

Identifying information should be destroyed no later than five years after it is first entered into a police database unless it is being used for a purpose set out in subsection 9(10)(2) of the Regulation, in which case it should be destroyed once it is no longer required for that purpose.

Recommendation 8.7

A police service may elect to destroy identifying information earlier than five years after it was collected.

Recommendation 8.8

Define and standardize an “appropriately sized random sample” needed for data analysis by chiefs of police/designates across the province.

Recommendation 8.9

The collected and de-identified data should be made available to reputable independent organizations for research purposes.

Recommendation 8.10

Identifying information collected before January 1, 2017 to which this Regulation would have applied had the information been collected after January 1, 2017 (“historical data”) should be stored in a restricted database and only be used for a purpose set out in subsection 9(10)(2) of the Regulation.

Recommendation 8.11

The authorization required under subsection 9(10)(1) of the Regulation should apply to historical data.

Recommendation 8.12

Historical data should be automatically destroyed five years after it was collected unless it is being used for a purpose set out in subsection 9(10)(2) of the Regulation, in which case it should be destroyed once it is no longer being used for that purpose.

Recommendation 8.13

A police service may elect to destroy historical data earlier than five years after it was collected.

Chapter 9

Recommendation 9.1

The training should be provided to those who supervise the police officers who attempt to collect identifying information as well as to those who verify the submitted regulated interactions and the collected identifying information for compliance with the Regulation.

Recommendation 9.2

Police services should ensure that supervising officers support the operation of not only the Regulation, but also the direction of police leadership.

Recommendation 9.3

Police services should select trainers who are supportive of the Regulation, and who are seen by police officers to be credible.

Recommendation 9.4

The training should be standardized and include the following topics:

- (a) The reason for the Regulation and the legal framework under which requests for information may be made, including the meaning of articulable cause, reasonable suspicion and investigative detention;
- (b) How to take proper notes of the reasons for the interaction;
- (c) Rights of individuals under the Canadian *Charter of Rights and Freedoms* and the Ontario *Human Rights Code*;
- (d) The initiation of interactions with members of the public;
- (e) 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;
- (f) 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;
- (g) Bias awareness, including recognizing and avoiding implicit bias, as well as how to avoid bias and discrimination;
- (h) Promoting public trust and public confidence by recognizing the social cost of some historic police practices;
- (i) Indicating how the use of respectful language, tone and demeanour during regulated interactions benefits the community, individuals, officers and police services;
- (j) Strategic disengagement and conflict de-escalation techniques, as well as de-personalization techniques particularly when an individual is disrespectful during a regulated interaction;
- (k) Training on the specific communities being served and their particular issues;
- (l) Adolescent development as it may relate to a regulated interaction and the specific requirements and limitations related to collecting identifying information from children;
- (m) The impact of technology such as mobile phones and body-worn cameras;
- (n) The rights that individuals have to access information about themselves that is in the custody or under the control of a police service; and
- (o) The Regulation and its application.

Recommendation 9.5

The training should consist of more than video presentations. The training should include realistic real-world scenarios and role playing.

Recommendation 9.6

The training should be prepared and delivered with the assistance of members of police services who understand the challenges of regulated interactions and the realistic scenarios police officers might encounter.

Recommendation 9.7

The training should be prepared and delivered with the assistance of racialized groups and Indigenous peoples who understand the effect of regulated interactions.

Recommendation 9.8

Anti-bias training should be provided to all police officers and not just those who are most likely to be involved in a regulated interaction.

Recommendation 9.9

The training should involve testing.

Recommendation 9.10

The training should have a special focus on the ability to articulate the reasons for a regulated interaction.

Recommendation 9.11

There should be annual refresher training on the Regulation for all police officers.

Recommendation 9.12

When a police officer transfers from one police service to another, they should be required to receive training about the specific communities being served and their particular issues.

Recommendation 9.13

Consideration should be given to establishing a College of Policing.

Recommendation 9.14

Working with post-secondary institutions, a task force or advisory group should be created to evaluate, modernize and renew police studies and law enforcement-related course offerings across post-secondary institutions. Consideration should be given to updating the Ontario Police College curriculum, including the creation of a post-secondary degree in policing.

Recommendation 9.15

A Code of Practice similar to those used in the United Kingdom should be developed to explain how the Regulation operates and the circumstances under which it is to be applied.

Recommendation 9.16

The Province of Ontario should make efforts to raise public awareness about the content of the Regulation, and the circumstances under which people are and are not required to provide identifying information to the police. These efforts should involve collaboration with community groups, youth advocacy groups, legal aid clinics and school boards.

Recommendation 9.17

The MCSCS should launch a full, cross-platform advertising and social media campaign to inform the public about the Regulation and its operation.

Recommendation 9.18

The Code of Practice should be made publicly available on the internet and in print, in all accessible formats.

Chapter 10**Recommendation 10.1**

There should be a minimum, consistent, province-wide policy to implement the Regulation that is binding on police services boards, similar to the policing standards provided for other policing activities.

Recommendation 10.2

If it is determined that the information contained in the street checks database is incorrect, then that information should be restricted and eventually purged.

Recommendation 10.3

The policies should seek to eliminate regulated interactions that are based, even in part, on a prohibited ground of discrimination under the Ontario *Human Rights Code*, absent a reason such as is currently allowed by the Regulation for an individual's racialized background.

Recommendation 10.4

Police services boards may develop further policies that expand on the content of the Regulation for the purpose of protecting human rights and preventing discrimination.

Recommendation 10.5

No information collected in a regulated interaction, including identifying information obtained prior to January 1, 2017, to which this Regulation would have applied had the information been collected after January 1, 2017, should be used as a basis to classify a person as being "known to the police" or result in an entry on an individual's clearance letter, police reference check, vulnerable sector check or any police record check required by the *Police Record Check Reform Act*.

Recommendation 10.6

Chiefs of police should review the procedures they developed in order to ensure that the procedures are consistent with the policies developed by the local police services boards, including any requirements that go beyond the Regulation.

Recommendation 10.7

The procedures should seek to eliminate regulated interactions that are based, even in part, on a prohibited ground of discrimination under the Ontario *Human Rights Code*, absent a reason that is allowed by the Regulation.

Recommendation 10.8

Chiefs of police may develop procedures that expand on the content of this Regulation for the purpose of protecting human rights and preventing discrimination.

Recommendation 10.9

The procedures should be binding on chiefs of police.

Chapter 11

Recommendation 11.1

The MCSCS, in consultation with the Ontario Association of Chiefs of Police, should develop a template annual report.

Recommendation 11.2

Annual reports should be made publicly available within the first six months of the following calendar year.

Recommendation 11.3

The annual report should list the number of complaints and requests for information related to regulated interactions.

Recommendation 11.4

The potential age groups of those requested to provide identifying information should be standardized.

Recommendation 11.5

The age groups should distinguish between children and adults.

Recommendation 11.6

The recommended age groups are:

0-11

12-17

18-29

30-39
40-49
50-59
60-69
70-79
80 and over

Recommendation 11.7

The potential racial or ethnic groups of those requested to provide identifying information should be standardized.

Recommendation 11.8

The recommended racial or ethnic groups are:

Indigenous including: First Nations (North American Indian), Inuit, Métis

- White
- Black
- Latin American including: Central American, South American, Mexican, Cuban, Puerto Rican, etc.
- East Asian, Southeast Asian including: Chinese, Japanese, Filipino, Korean, Southeast Asian, Vietnamese, Cambodian, Malaysian, Laotian, etc.
- South Asian including: East Indian, Pakistani, Sri Lankan, etc.
- Middle Easterner including: Arab, Iranian, Afghan, etc.
- Other including: Visible minorities not included elsewhere and multi-racialized individuals

Recommendation 11.9

The term “disproportionately” as contained in section 14(2)(9) of the Regulation should be defined so as to be applied consistently.

Recommendation 11.10

When determining whether there was a disproportionate number of street checks, the collected data should be compared to the local census data to determine if there is a statistically significant difference.

Recommendation 11.11

The number of regulated interactions in each neighbourhood or area should also indicate the age, race and gender of the person stopped compared to the census data for that area.

Recommendation 11.12

The collected, de-identified data provided by a chief of police to a police services board under section 14 of the Regulation should be made publicly available.

Recommendation 11.13

The identifying information received should be monitored as it is received to ensure compliance with the Regulation.

Recommendation 11.14

There should be an early indication system to identify, correct and warn officers who unintentionally collect identifying information contrary to the Regulation.

Recommendation 11.15

If it is determined that identifying information was unintentionally collected contrary to the Regulation, the officer who collected the information must be notified as soon as possible of the reason why the collection was found not to have been obtained in compliance with the Regulation.

Recommendation 11.16

In appropriate circumstances, an officer who collects identifying information in breach of the Regulation should receive additional training. If necessary, the officer should not conduct regulated interactions until the retraining has been completed.

Recommendation 11.17

An officer who persists in collecting identifying information in breach of the Regulation without reasonable excuse should be subject to discipline.

Recommendation 11.18

The Code of Conduct should be amended to state

2(1) Any chief of police or other police officer commits misconduct if he or she engages in,

(g) UNLAWFUL OR UNNECESSARY EXERCISE OF AUTHORITY, in that he or she,

(i.1) without good and sufficient cause *authorizes, condones or* makes an unlawful or unnecessary physical or psychological detention,

* * *

(iii) collects or attempts to collect identifying information about an individual from the individual *or authorizes or condones such activity* in the circumstances to which Ontario Regulation 58/16 (Collection of Identifying Information in Certain Circumstances – Prohibition and Duties) made under the Act applies, other than as permitted by that regulation.

Recommendation 11.19

It should be considered misconduct for police officers who are not engaged in covert operations to refuse to provide their name and badge number if requested.

Chapter 12**Recommendation 12.1**

Police services should be provided with adequate funding to allow for greater community involvement and to support other models of community policing that enable police officers to spend some time each day in the community.

Recommendation 12.2

Police services should increase outreach to and establish meaningful and equitable partnerships with Indigenous communities.

Recommendation 12.3

Efforts should be made by police services to hire police officers who live within the city or region they will serve.

Recommendation 12.4

Community police officers should serve in community neighbourhoods for a sufficient period of time to form meaningful local relationships.

Recommendation 12.5

Efforts should be made to ensure that youth are taught about their rights and responsibilities, as well as Black and Indigenous history, as part of the school curriculum. Information on the Regulation and its operation should be included in the curriculum.

Recommendation 12.6

The MCSCS should work in conjunction with police services and the Ontario Association of Chiefs of Police to design and launch public surveys to seek input from Indigenous, Black and other racialized communities on policing in Ontario.

Recommendation 12.7

The Ontario Association of Chiefs of Police should survey the experiences and views of diverse members in police services throughout the province.

Recommendation 12.8

Police services should hold regular consultations with the public and members of diverse communities to obtain feedback on police diversity initiatives and to improve police–public relations.

Recommendation 12.9

Police services should develop local strategies to improve diversity and inclusion at all levels of the service. The MCSCS should work on the development of a model strategy on diversity and inclusion for adoption, adaptation (to local concerns and realities) and implementation by services throughout Ontario.

Recommendation 12.10

Police services should undertake a systemic review of their recruitment and promotional processes, including a focus on examinations, interviews and assessment tools to ensure that they are inclusive and bias-free.

Recommendation 12.11

Each police service in Ontario should have a diversity officer (or, for smaller police services, an officer whose duties include diversity) or a diversity bureau dedicated to establishing a constructive link between the police and diverse communities.

Recommendation 12.12

The Ontario Police College should review its curriculum, teaching methods and evaluation techniques to identify and eliminate barriers to success for recruits from diverse and marginalized communities.

Recommendation 12.13

The MCSCS should establish selection criteria for police services board appointees with a specific focus on recruiting applicants who reflect the diversity of the communities they serve.

Recommendation 12.14

Police services boards should be responsible for developing relevant board policies on diversity within the police service, overseeing efforts of the police service to recruit and promote diverse members, and reviewing and approving the service's diversity plan.

Appendix B

Order in Council and Terms of Reference



Ontario

Executive Council of Ontario Order in Council

On the recommendation of the undersigned, the Lieutenant Governor of Ontario, by and with the advice and concurrence of the Executive Council of Ontario, orders that:

WHEREAS by Order in Council numbered O.C. 1994/2016, dated December 14, 2016, the position of Independent Reviewer of Ontario Regulation 58/16 was established to conduct an independent review of Ontario Regulation 58/16 (Collection of Identifying Information in Certain Circumstances – Prohibition and Duties) made under the *Police Services Act*;

THEREFORE PURSUANT TO the prerogative of Her Majesty the Queen in Right of Ontario to appoint persons to serve Her Majesty's Government of Ontario in the discharge of its executive obligations and responsibilities, the Honourable Michael Tulloch, a Justice of the Ontario Court of Appeal, is hereby appointed as the Independent Reviewer of Ontario Regulation 58/16, to conduct an independent review of Ontario Regulation 58/16 in accordance with the Terms of Reference determined by the Minister of Community Safety and Correctional Services from time to time, to serve at the pleasure of the Lieutenant Governor in Council for a period effective from the date this Order in Council is made and ending on March 31, 2019.

ATTENDU QUE le poste d'examineur indépendant du Règlement de l'Ontario 58/16 a, en vertu du décret numéro 1994/2016, daté du 14 décembre 2016, été créé pour que soit effectué un examen indépendant du Règlement de l'Ontario 58/16 (Collecte de renseignements identificatoires dans certaines circonstances – Interdiction et obligations) pris en application de la *Loi sur les services policiers*;

PAR CONSÉQUENT, EN VERTU de la prérogative de Sa Majesté la Reine du chef de l'Ontario de nommer des personnes pour servir le gouvernement de l'Ontario de Sa Majesté dans le cadre de ses obligations et responsabilités de direction, Monsieur le juge Michael Tulloch de la Cour d'appel de l'Ontario, est par les présentes nommé au poste d'examineur indépendant du Règlement de l'Ontario 58/16 afin de procéder à un examen indépendant du Règlement de l'Ontario 58/16 conformément au mandat confié de temps à autre par la ministre de la Sécurité communautaire et des Services correctionnels. Il occupera son poste à titre amovible, pour une période commençant le jour de la prise du présent décret et se terminant le 31 mars 2019.



Recommended: Minister of Community Safety and Correctional Services

Recommandé par: Ministre de la Sécurité communautaire et des Services correctionnels



Concurred: Chair of Cabinet

Appuyé par: Le président/la présidente du Conseil des ministres,

Approved and Ordered:
Approuvé et décrété le:

MAY 18 2017



Administrator of the Government
L'administrateur du gouvernement

Terms of Reference

Independent Review on O.Reg 58/16

On March 21, 2016, the province filed a new regulation, O. Reg. 58/16: Collection of Identifying Information in Certain Circumstances – Prohibition and Duties (the ‘regulation’), under the *Police Services Act* (PSA).

Section 17 of O. Reg 58/16 requires the Minister of Community Safety and Correctional Services (‘minister’) to ensure a review of the regulation is conducted, and that a report on the findings of the review is published, no later than January 1, 2019.

The regulation also requires that the individual conducting the review:

- Is not a public servant within the meaning of the *Public Services of Ontario Act, 2006*, and is not employed in the Office of the Premier or in the office of a minister, and
- Consults with the Minister Responsible for Anti-Racism.

1. Mandate

1.1 The Review

The Independent Reviewer shall review O. Reg. 58/16 and report to the minister on:

Content of the regulation

- a. Whether the regulation appropriately reflects the government’s goal of ensuring that police-public interactions should be
 - consistent,
 - conducted without bias or discrimination, and
 - done in a manner that promotes public confidence and keeps our communities safe;
- b. Whether the regulation appropriately reflects the following key principles stated by the government:
 - Ontario takes the protection of human rights very seriously and has zero tolerance for racism or any form of discrimination based on the prohibited grounds set out in the *Human Rights Code*, R.S.O. 1990, c. H. 19, s. 1,
 - Ontario stands opposed to arbitrary, random stops that do not have a clear policing purpose, and which are done solely for the purpose of collecting identifying information;
- c. Any recommendations in light of (a) and (b) above.

Implementation of the regulation

- d. Whether police officers and chiefs of police are in compliance with the regulation, including but not limited to:
 - Limitations on the collection of certain information pursuant to section 5,
 - Duties relating to the collection of information pursuant to sections 6-8,
 - Data retention and management requirements pursuant to section 9,
 - The elimination of performance targets pursuant to section 10,
 - The delivery of training pursuant to section 11,
 - The development of procedures pursuant to sections 13, and
 - The provision of reports pursuant to sections 14 and 15
- e. Whether police services boards have developed policies in compliance with section 12
- f. The curriculum and related training materials developed by the Ontario Police College to ensure compliance with section 11, and make recommendations regarding the effectiveness of the training
- g. The approaches police services have adopted and any relevant recommendations on whether consistency is required regarding the:
 - Document to be provided pursuant to section 7,
 - Retention of information to which the O.Reg. 58/16 applies, and
 - Establishment of age groups and racialized groups for the purpose of section 14
- h. Whether there are any challenges, operational or otherwise, in applying the regulation and, if so, any recommendations regarding how they could be addressed
- i. Whether the accountability and oversight mechanisms in O.Reg. 58/16 are appropriate to ensure compliance with the regulation and, if not, recommend how they could be improved, and
- j. Any potential regulatory amendments, policy and/or procedural changes recommended to improve the implementation of the regulation.

1.2 Consultation and Review Process

In conducting the review, the Independent Reviewer

- a. will determine the method, content and extent of consultations required to fulfill his mandate

- b. may request any person to provide information or records to him
- c. shall seek input from the Minister Responsible for Anti-Racism
- d. shall seek input from the Independent Police Review Director regarding complaints related to O. Reg 58/16
- e. shall conduct, or cause to be conducted, an independent survey of civilians and corresponding data collection and data analysis, in order to inform his review of whether police officers and chiefs of police are in compliance with the limitations on the collection of certain information pursuant to section 5 and the duties relating to the collection of information pursuant to sections 6-8
- f. shall review relevant human rights law, including anti-discrimination law, and law on arbitrary detention
- g. may undertake such further inquiries as the Independent Reviewer, in his discretion, deems appropriate

1.3 Interim Reporting

The Independent Reviewer may provide any interim reports to the Minister outlining:

- a. The status of the review
- b. Work that is completed, in progress and outstanding
- c. Risks or issues that are anticipated to or will impact the completion of the review
or
- d. Any findings that he or she recommends be acted on before the end of the review

1.4 Final Report and Recommendations

The Independent Reviewer shall deliver a final report to the Minister on matters identified in section 1.1 of this Terms of Reference.

The Independent Reviewer's report shall take into account engagement with community groups, police services and other stakeholders as well as input received from the Minister Responsible for Anti-Racism.

The Independent Reviewer shall deliver the report and recommendations to the Minister of Community Safety and Correctional Services by November 30, 2018, so that the Minister may publish the findings of the review by January 1, 2019 as required by the regulation.

1.5 Other

The Independent Reviewer shall perform his or her duties without expressing any conclusion or recommendation regarding potential disciplinary matters involving any person or the civil or criminal liability of any person or organization, and without interfering in any ongoing criminal, civil or other legal proceeding.

2. Publication

The Independent Reviewer shall ensure that the reports and recommendations referred to in section 1 are in a form appropriate for public release, consistent with the requirements of the *Freedom of Information and Protection of Privacy Act* and other applicable legislation. The Independent Reviewer shall also ensure that the reports are delivered to the minister in English and French at the same time, in electronic and printed forms. Compliance with these requirements will be supported by the ministry, at the discretion of the Independent Reviewer.

3. Property Rights and Confidentiality

The ministry shall be the sole owner of the reports and recommendations developed in accordance with section 1. The Independent Reviewer shall ensure that all reports and recommendations include a copyright notice in the following form: “© Queen’s Printer for Ontario,” followed by the year of publication.

Any notes, records, recollections, statements made to, and documents produced by the Independent Reviewer or provided to him in the course of the review, will be confidential. The disclosure of such information to Ontario or any other person shall be within the sole and exclusive discretion of the Independent Reviewer.

4. Resources

- a. Within a budget approved by the ministry, the Independent Reviewer may retain such counsel, staff, or expertise he considers necessary in the performance of his duties at reasonable remuneration approved by the ministry, including any experts on data collection and analysis
- b. The Independent Reviewer and his staff shall be reimbursed for reasonable expenses incurred in connection with their duties in accordance with Management Board of Cabinet Directives and Guidelines
- c. The Independent Reviewer shall follow Management Board of Cabinet Directives and Guidelines and other applicable government policies in obtaining other services and goods he considers necessary in the performance of his duties unless, in his view, it is not possible to follow them

- d. The ministry shall, in consultation with the Independent Reviewer, set a budget for the fulfillment of his mandate
- e. All ministries and all agencies, boards and commissions of the Government of Ontario shall, subject to any privilege or other legal restrictions, assist the Independent Reviewer to the fullest extent possible so that the Independent Reviewer may carry out his duties and they shall respect the independence of the review
- f. All police forces, members of a police force, police officers, and municipal police services boards in Ontario should, subject to any privilege or other legal restrictions, assist the Independent Reviewer to the fullest extent possible so that the Independent Reviewer may carry out his duties and they shall respect the independence of the review.

Appendix C

O. Reg 58/16: Collection of Identifying Information in Certain Circumstances – Prohibitions and Duties

Police Services Act ONTARIO REGULATION 58/16 COLLECTION OF IDENTIFYING INFORMATION IN CERTAIN CIRCUMSTANCES - PROHIBITION AND DUTIES

No amendments.

This is the English version of a bilingual regulation.

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**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, 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.

(2) Despite subsection (1), this Regulation does not apply with respect to 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.

(3) Despite subsection (1), 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;
- (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.

Application — information collected

2. (1) This Regulation applies with respect to identifying information collected on or after January 1, 2017 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 January 1, 2017 only as provided under paragraph 5 of subsection 12 (1) and under sub-

section 13 (1) in relation to that paragraph.

Non-application — person appointed under the *Interprovincial Policing Act, 2009*

3. This Regulation does not apply with respect to attempts to collect information by a person appointed as a police officer under the *Interprovincial Policing Act, 2009* or with respect to information collected by such a person.

Interpretation — attempt to collect identifying information

4. For the purposes of this Regulation,

“attempt to collect identifying information about an individual from the individual” means 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.

PART II PROHIBITION — CERTAIN COLLECTIONS OF INFORMATION

Limitations on collection of certain information

5. (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,

(ii) being within the racialized group forms part of a description of the particular individual or is evident from a visual representation of the particular individual, and

(iii) the officer has additional information, in addition to information about the particular individual being in a racialized group, that may help to identify the individual or narrow the description of the individual; or

(b) the attempted collection is done in an arbitrary way.

(2) Without limiting what might constitute the additional information required under subclause (1) (a) (iii), such information may consist of information about,

(a) the appearance of the individual, including information about the individual’s clothing, height, weight, eye colour, hair colour or hair style;

(b) the location where the individual might be found;

(c) the type of vehicle the individual might be found in;

(d) the associates the individual might be found with; or

(e) the behaviour of the individual.

(3) The additional information required under subclause (1) (a) (iii) may not consist

only of the sex of the individual, the approximate age of the individual or both.

(4) 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 suspect that identifying the individual may contribute to or assist in an inquiry described in clause 1 (1) (a) or (b) or the gathering of information described in clause 1 (1) (c).
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 high crime location.

PART III DUTIES RELATING TO COLLECTIONS OF INFORMATION

OFFICER DUTIES

Duties to inform before attempting to collect information

6. (1) A police officer shall not attempt to collect identifying information about an individual from the individual unless the police officer, in accordance with the procedures developed under section 13,

- (a) has informed the individual that he or she is not required to provide identifying information to the officer; and
- (b) has informed the individual why the police officer is attempting to collect identifying information about the individual.

(2) A police officer is not required to inform the individual under clause (1) (a) or (b) if the officer has a reason to believe that informing the individual under that clause might compromise the safety of an individual.

(3) A police officer is not required to inform the individual under clause (1) (b) if the officer has a reason to believe that informing the individual under that clause,

- (a) would likely compromise an ongoing police investigation;
- (b) might allow a confidential informant to be identified; or
- (c) might disclose the identity of a person contrary to the law, including disclose the identity of a young person contrary to the *Youth Criminal Justice Act* (Canada).

(4) A reason required under subsection (2) or (3) must be a reason the police officer can articulate and must include details relating to the particular circumstances.

Document for individual

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

(a) offer to give the individual a document that provides a record of the attempt; and

(b) give the individual such a document if the individual indicates that he or she wants it.

(2) A police officer is not required to comply with subsection (1) if the officer has a reason to believe that continuing to interact with the individual,

(a) might compromise the safety of an individual; or

(b) might delay the officer from responding to another matter that should be responded to immediately.

(3) A reason required under subsection (2) must be a reason the police officer can articulate and must include details relating to the particular circumstances.

(4) The document required under subsection (1) shall contain 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. Information about how to contact the Independent Police Review Director.

3. An explanation that the individual can request access to information about himself or herself that is in the custody or under the control of a police force, under the *Municipal Freedom of Information and Protection of Privacy Act* in the case of a municipal police force, or under the *Freedom of Information and Protection of Privacy Act* in the case of the Ontario Provincial Police, and information about how to contact persons to whom such a request may be given.

Police officer must record reason and other information

8. A police officer who attempts to collect identifying information about an individual from the individual shall record the following:

1. The officer's reason for the attempted collection, including the details referred to in paragraph 1 of subsection 5 (4).

2. Whether the individual was informed as required under clauses 6 (1) (a) and (b) or, if informing the individual under one of those clauses was not required under subsection 6

(2) or (3), the reason why that was not required.

3. Whether the individual was offered the document as required under clause 7 (1) (a) or, if offering the document was not required under subsection 7 (2), the reason why that was not required.

4. Whether the individual was given the document offered under clause 7 (1) (a) or, if giving the document was not required under clause 7 (1) (b) or subsection 7 (2), the reason why that was not required.

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

INCLUSION OF COLLECTED INFORMATION IN POLICE DATABASES

Collected information in police databases

9. (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 (10) unless the information may be included in a database, under this section, without limiting the access of members of the police force.

(4) Identifying information may be included in a database without limiting the access of members of the police force if,

(a) the police officer who collected the information,

(i) has indicated that the attempted collection complied with section 5,

(ii) has indicated that the individual was informed as required under clauses 6 (1) (a) and (b) or, if informing the individual under one of those clauses was not required under subsection 6 (2) or (3), has indicated the reason why that was not required,

(iii) has indicated that the individual was offered the document as required under clause 7 (1) (a) or, if offering the document was not required under subsection 7 (2), has indicated the reason why that was not required, and

(iv) has indicated that the individual was given the document offered under clause 7 (1) (a) or, if giving the document was not required under clause 7 (1) (b) or subsection 7 (2), has indicated the reason why that was not required; and

(b) either,

(i) the chief of police or a person designated by the chief of police has determined, after considering the officer's reasons for the attempted collection, including the details referred to in paragraph 1 of subsection 5 (4), that it appears that section 5 was complied with and has ensured that clause (a) has been complied with, or

(ii) the database indicates that what is required under subclause (i) has not yet been done.

(5) The following apply if what is required under subclause (4) (b) (i) was not done when the identifying information was included in the database:

1. The chief of police or a person designated by the chief of police shall conduct a review, within 30 days after the information was first entered into a database under the control of the police force, to determine, after considering the officer's reasons for the attempted collection, including the details referred to in paragraph 1 of subsection 5 (4), whether it appears that section 5 was complied with and whether clause (4) (a) has been complied with.

2. If it is determined that it appears that section 5 was complied with and that clause (4) (a) has been complied with, the indication required under subclause (4) (b) (ii) may be removed.

3. If it is not determined, before the end of the 30-day period described in paragraph 1, that it appears that section 5 was complied with and that clause (4) (a) has been complied with, the identifying information shall be retained, subject to the procedures developed under section 13 in relation to paragraph 4 of subsection 12 (1), in a database under the control of the police force but access to such retained information shall be restricted in accordance with subsection (10).

(6) At least once a year, the chief of police or a person designated by the chief of police shall conduct detailed reviews of an appropriately sized random sample of the entries of identifying information included in a database under subsection (4) to estimate, within a margin of error of plus or minus 5 per cent, at a 95 per cent confidence level, whether it appears that sections 5, 6 and 7 were complied with.

(7) If, as a result of a detailed review under subsection (6), it is determined, with respect to identifying information included in a database under subsection (4), that section 5, 6 or 7 was not complied with, the identifying information shall be retained, subject to the procedures developed under section 13 in relation to paragraph 4 of subsection 12 (1), in a database under the control of the police force but access to such retained information shall be restricted in accordance with subsection (10).

(8) The chief of police shall consider the results of the detailed reviews under subsection (6) and take such actions as the chief of police considers appropriate.

(9) Access to identifying information shall be restricted in accordance with subsection (10) after the fifth anniversary of the date on which the information was first entered into a database under the control of the police force.

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

1. No person may access the information without the permission of the chief of police or a person designated by the chief of police.

2. A member of the police force may be permitted to access the information only if the chief of police or a person designated by the chief of police 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 described in subsection 14 (1) or the report required under section 15,
 - v. for the purpose of complying with a legal requirement, or
 - vi. for the purpose of evaluating a police officer's performance.

RESTRICTIONS ON PERFORMANCE TARGETS

Performance targets not to be used in evaluating work performance

10. 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

11. (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, or who acts as the designate of the chief of police under section 9, has successfully completed the training required under this section within the previous 36 months.

(2) The training referred to in subsection (1) shall include 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 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.

6. This Regulation and its application.

(3) The training referred to in subsection (1) shall be provided at the Ontario Police College or by a trainer who has been trained, at the Ontario Police College, to provide the training referred to in subsection (1).

(4) The training referred to in subsection (1) shall be based on a curriculum approved by the Director of the Ontario Police College.

POLICIES AND PROCEDURES

Boards and Minister must develop policies

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

1. The document to be given to individuals under section 7.

2. The contents, in relation to matters to which this Regulation applies, of the annual report described in subsection 14 (1).

3. The report required under section 15.

4. The retention of, 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.

5. The retention of, access to, and disclosure of identifying information collected before January 1, 2017 with respect to which this Regulation would have applied had the collection taken place on January 1, 2017.

(2) The policy developed under paragraph 4 of subsection (1) 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 under paragraph 2 of subsection 9 (10).

(3) The duties imposed by subsections (1) and (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

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

(2) The procedures developed under subsection (1) shall be consistent with this Regulation and the relevant policies developed under section 12.

REPORTS, REVIEWS AND COMPLIANCE

Annual report

14. (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 the number of attempted collections in which identifying information was collected.

2. The number of individuals from whom identifying information was collected.

3. 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):

i. subsection 6 (2),

ii. clause 6 (3) (a),

iii. clause 6 (3) (b), and

iv. clause 6 (3) (c).

4. The number of times an individual was not given a document under clause 7 (1) (b) because the individual did not indicate that they wanted it.

5. The number of times each of the following clauses was relied upon to not do something that would otherwise be required under subsection 7 (1):

i. clause 7 (2) (a), and

ii. clause 7 (2) (b).

6. 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.

7. For each age 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 age group.

8. 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.

9. A statement, based on an analysis of the information provided under this subsection, as to whether the collections were attempted 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 collections.

10. The neighbourhoods or areas where collections were attempted and the number of attempted collections in each neighbourhood or area.

11. The number of determinations, referred to in subsection 9 (5), that section 5 or clause 9 (4) (a) was not complied with.

12. The number of determinations, referred to in subsections 9 (6) and (7), that section 5, 6 or 7 was not complied with.

13. The number of times members of the police force were permitted under subsection 9 (10) to access identifying information to which access must be restricted.

(3) A chief of police shall establish age groups for the purpose of paragraph 7 of subsection (2).

(4) A chief of police shall establish racialized groups for the purpose of paragraph 8 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 January 1, 2017.

Chiefs of police must review practices and report

15. (1) If an annual report referred to in section 14 reveals that identifying information was attempted to be collected disproportionately from individuals perceived to be within a group or combination of groups, 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 of information.

(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 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; and

(b) shall consider the report and the proposals, if any, set out in the report and consider, in the case of a board, whether to give directions under clause 31 (1) (e) of the Act or, in the case of the Minister, whether to give directions to which the Commissioner would be subject under subsection 17 (2) of the Act.

Chiefs of police must make records available

16. (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, in relation to matters to which this Regulation applies, the Minister of Community Safety and Correctional Services may request a chief of police to provide any relevant information that 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) and shall do so in the manner specified by the Minister.

Review of Regulation

17. (1) The Minister of Community Safety and Correctional Services shall ensure that a review of this Regulation is conducted and that a report on the findings of the review is published no later than January 1, 2019.

Review not by a government employee

(2) The Minister shall ensure that the person who conducts the review is not a public servant within the meaning of the *Public Service of Ontario Act, 2006* and is not employed in the Office of the Premier or in the office of a minister.

Consultation with Minister Responsible for Anti-Racism

(3) The Minister shall ensure that the person who conducts the review consults with the Minister Responsible for Anti-Racism.

PART V (OMITTED)

18. Omitted (provides for coming into force of provisions of this Regulation).

Appendix D Infographic

REGULATION APPLIES

Currently



Inquiries

No reasonable suspicion but objectively suspicious conduct or potential offence

Police can request ID information

Regulation applies if request for ID information

No obligation to provide ID information

Individual is free to go

Intelligence Gathering

No reasonable suspicion or suspicious conduct or potential offence required

Police can randomly request ID information

Regulation applies if request for ID information

No obligation to provide ID information

Individual is free to go

Proposed



Focused Inquiries and Intelligence Gathering

No reasonable suspicion but objectively suspicious conduct or potential offence or focused intelligence gathering

Police can request ID information but not randomly

Regulation applies if request for ID information

No obligation to provide ID information

Individual is free to go

REGULATION DOES NOT APPLY

(Currently or Proposed)

Community Interactions



No suspicion

Police can request ID information

No obligation to provide ID information

Individual is free to go

Investigations Generally



Reasonable suspicion that offence committed or will be committed

Police can request ID information from potential witnesses and suspects

No obligation to provide ID information

Individual is free to go

Investigative Detention



Reasonable suspicion that a particular individual committed an offence

Police can request ID information

No obligation to speak to police

Individual is detained and not free to go

Arrest (or Other Lawful Authorities to Request ID Information)



Reasonable and probable grounds (or pre-conditions for the lawful authority)

Police can request ID information

Obligation to provide ID information

Individual is not free to go

