

Classification **PUBLIC**

Meeting **February 18, 2020**

Agenda Item **Monitoring Report:
Collection of Identifying Information in
Certain Circumstances – Prohibition and
Duties**



Recommended Motion:

THAT the Board receive the Collection of Identifying Information in Certain Circumstances – Prohibition and Duties annual monitoring report.

I hereby submit my monitoring report on your policy regarding the Collection of Identifying Information in Certain Circumstances according to the schedule set out. I certify that the information contained in this report is accurate.

I report compliance on eight of the nine provisions of this policy, with the exception being policy provision #2.

Signed: _____

Chief of Police

Date: _____

BOARD POLICY STATEMENT

The Durham Regional Police Services Board is committed to enhancing trust and confidence in police services and to ensuring that they are delivered without bias or discrimination. Interactions between members of the public and members of the DRPS are undertaken to advance community safety and are intended to inspire confidence and build positive relationships. The practices and procedures of the DRPS in respect of the collection of identifying information shall not be arbitrary or based upon any racial profiling, and shall reflect a commitment to professionalism, accountability and transparency.

Interpretation of the Chief of Police:

It is my interpretation of this policy that the Durham Regional Police Service must ensure that the collection of identifying information is done in a bias free manner that demonstrates a commitment to transparency and accountability.

Policy Provision #1

A procedure is adopted to ensure compliance with all requirements stated in Regulation 58/16 of the Police Services Act, "Collection of Identifying Information in Certain Circumstances – Prohibition and Duties" (the Regulation).

Interpretation of the Chief of Police:

It is my interpretation of this policy provision that I will ensure that policies and procedures are in place that will ensure compliance with the Regulation, and that these policies and procedures will be adequately communicated to members of the Service such that it is reasonable to expect that they will be carried out properly. Based on this interpretation, I report compliance on this policy provision.

Data Support:

The *Collection of Identifying Information* directive was drafted in 2016 in accordance with Ontario Regulation 58/16 and came into effect on January 1, 2017. This directive outlines the policies and procedures that members shall follow when collecting, or attempting to collect, identifying information in certain circumstances. The directive is scheduled to be reviewed annually by the Deputy Chief of Policing Operations. This directive is available to all members through the DRPS' internal website 'MediaOne'.

Policy Provision #2

Beginning January 1, 2017, a document is offered to each individual from whom identifying information is attempted to be collected and given to each individual if he or she wants it, unless the officer believes that continuing to interact with the individual will compromise the safety of an individual or might delay the officer from responding to another matter that should be responded to immediately.

Interpretation of the Chief of Police:

It is my interpretation of this policy provision that an individual, from whom an officer attempts to collect information whether that attempt was successful or not, will be offered a receipt of the transaction unless the officer attempting the collection believes that providing such a receipt will cause a delay in response to an emergency situation. Based on this interpretation, and given the information outlined below, I cannot report compliance with this policy provision.

Data Support:

Data regarding compliance with this policy is discussed below under policy provision 4 subsections *l, m and n*, and under subsection *r(i)*. Specifically, there is one (1) instance where a receipt was either not issued or the officer conducting the street check did not indicate that a receipt was issued.

Policy Provision #3

3.0 The document given to the individual includes:

- a. The officer's name, identification number, and the date, time and location of the attempted collection;*
- b. Information about how to contact the Independent Police Review Director should the individual wish to inquire about making, or make a public complaint;*
- c. An explanation that an individual can request access to information about himself or herself that is in the custody or control of the DRPS, under the Municipal Freedom of Information and Protection of Privacy Act.*

3.1 Any amendments to the document be shared with the Board for information and input.

Interpretation of the Chief of Police:

It is my interpretation of this policy provision that the receipt provided to an individual pursuant to Policy Provision 2 shall contain, at a minimum: the information outlined in the provision and that any changes to the receipt will be shared with the Police Services Board. Based on this interpretation, I report compliance with this policy provision.

Data Support:

The receipt document provided to an individual contains the information specified in this policy provision. Specifically, one side of the document contains a pre-printed receipt number, fields for the officer's name, badge number, the date and time of the attempted collection, and the location of the attempted collection. The reverse side includes a brief description of the mandate of the Office of the Independent Police Review Director along with the relevant contact information, directions on how to access a provincial website with details regarding Ontario Regulation 58/16, instructions on how to file a freedom of information request through the DRPS, as well as general contact information for the DRPS, including a toll-free phone number, and directions to the DRPS website.

Policy Provision #4

An annual report, each calendar year, at a time determined by the Board, in consultation with the Chief, be presented to the Board that includes all information to be reported as required by this policy and in section 14 of the Regulation. The annual report on the collection of identifying information shall be included as part of the DRPS annual report under section 31 of the Adequacy and Effectiveness of Police Services Regulation.

Interpretation of the Chief of Police:

It is my interpretation of the policy that the Board be presented with an annual monitoring report pursuant to this policy and section 14 of the Regulation, outlining the attempted collections of identifying information that occurred between January 1 and December 31 of the preceding year. It is my understanding that attempted collections of identifying information refers to instances where the identifying information of one or more persons was collected, or an attempt to collect occurred. Furthermore, it is my interpretation that the information specified in section 14 of Ontario Regulation 58/16 will be included as part of the Service's Annual Report made under section 31 of Ontario Regulation 3/99. Based on this interpretation, I report compliance on this provision pending publication of the DRPS 2019 Annual Report, scheduled to be presented to the Police Services Board in June 2020.

Data Support:

As per Ontario Regulation 58/16 of the *Police Services Act*, new regulation surrounding the Collection of Identifying Information in Certain Circumstances (CIICC) came into force on January 1, 2017. As of year-end 2019, there was one (1) street check within the meaning of Regulation 58/16 based on the circumstances articulated in the street check narrative.

- a. *An assessment of the utility of the information collected pursuant to the Regulation to achieving positive community safety outcomes.*

A thorough assessment of the utility of the information collected pursuant to the Regulation to achieving positive community safety outcomes cannot be conducted for 2019 due to the limited number of attempted collections.

- b. *Approximate costs for adhering to the Regulation, including all training and administrative costs.*

There were no costs incurred by the Durham Regional Police Service for adhering to the Regulation in 2019.

- c. *The number of public complaints resulting from or relating to information collected pursuant to the Regulation, and the number of such complaints that were substantiated.*

The Durham Regional Police Service did not receive any public complaints resulting from or relating to information collected pursuant to the Regulation.

- d. *The number of requests made to the Police Service under the Municipal Freedom of Information and Privacy Act relating to information collected pursuant to the Regulation.*

There were no general information requests or personal record information requests made to the Durham Regional Police Service from January 1, 2019 to December 31, 2019 under the *Municipal Freedom of Information and Privacy Act* relating to information collected pursuant to the Regulation.

- e. *The number of attempted collections.*

In 2019, there was one (1) incident in which an attempt to collect identifying information was made.

- f. *The number of attempted collections in which identifying information was collected.*

Identifying information was collected from the individual in the one (1) instance.

- g. *The number of individuals from whom identifying information was collected.*

From the one (1) attempted collection, identifying information was collected from one (1) individual.

- h. *The number of times a police officer did not inform the individual under 6(1) because the officer had reason to believe that informing the individual might compromise the safety of an individual.*

There were no instances in which a police officer did not inform the individual under 6(1) because the officer had reason to believe that informing the individual might compromise the safety of an individual.

- i. *The number of times a police officer did not inform the individual under 6(1) because informing the individual would likely compromise an ongoing police investigation.*

There were no instances in which a police officer did not inform the individual under 6(1) because informing the individual would likely compromise an ongoing police investigation.

- j. *The number of times a police officer did not inform the individual under 6(1) because informing the individual might allow a confidential informant to be identified.*

There were no instances in which a police officer did not inform the individual under 6(1) because informing the individual might allow a confidential informant to be identified.

- k. *The number of times a police officer did not inform the individual under 6(1) because informing the individual might disclose the identity of a person contrary to the law, including a young person contrary to the Youth Criminal Justice Act.*

There were no instances in which a police officer did not inform the individual under 6(1) because informing the individual might disclose the identity of a person contrary to the law, including a young person contrary to the *Youth Criminal Justice Act*.

1. *The number of times an individual was not given a receipt document because the individual did not indicate that he or she wanted it.*

There were no instances where an individual was not given a receipt because the individual indicated that they did not want a receipt document.

- m. *The number of times an officer did not provide a receipt as the officer believed that continuing to interact with the individual might compromise the safety of an individual.*

There were no known instances where an officer did not provide a receipt as the officer believed that continuing to interact with the individual might compromise the safety of an individual.

- n. *The number of times an officer did not provide a receipt as the officer believed that continuing to interact with the individual might delay the officer from responding to another matter that should be responded to immediately.*

There were no known instances where an officer did not provide a receipt as the officer believed that continuing to interact with the individual might delay the officer from responding to another matter that should be responded to immediately.

- o. *The number of attempted collections from individuals who are perceived by the police officer to be:*

- i. *Males;*

There was one (1) attempted collection from individuals who were perceived by the police officer to be male.

- ii. *Females;*

There were zero (0) attempted collections from individuals who were perceived by the police officer to be female.

- iii. *Within the age groups as identified by the Chief of Police and in accordance with the Regulation;*

A breakdown of attempted collections by age group as identified by the Chief of Police and in accordance with the Regulation is provided in the following table:

Perceived Age	Attempted Collections (#)
50-55	1
Total	1

- iv. *Within the racialized groups as identified by the Chief of Police and in accordance with the Regulation;*

A breakdown of attempted collections by racialized groups as identified by the Chief of Police and in accordance with the Regulation is provided in the following table. In accordance with Ontario Regulation 58/16 subsection 14(4), the perceived race variable in this table includes visible minority groups that are comparable with those set out in the 2016 National Household Survey released by Statistics Canada:

Perceived Race	Attempted Collections (#)
White	0
Black	0
Middle Eastern	0
East Asian or South East Asian	1
South Asian	0
Latin American	0
Unknown	0
Total	1

There were zero (0) attempted collections from individuals who were perceived by the police officer to be Indigenous.

- p. *An analysis of whether the collections were attempted disproportionately based on the sex, age, or membership in a racialized group, or a combination of these factors, and if so, any additional information that the Chief considers relevant to explain the attempted collections.*

An analysis of the data indicates that collections were not attempted disproportionately based on the sex, age, or membership in a racialized group, or a combination of these factors.

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

A breakdown of attempted collections by the neighbourhoods or areas where collections were attempted and the number of attempted collections in each neighbourhood or area is provided in the following table:

Municipality	Attempted Collections (#)
Ajax	0
Brock	0
Clarington	1
Oshawa	0
Pickering	0
Scugog	0

Uxbridge	0
Whitby	0
Total	1

- r. *The number of determinations made by the Chief as to whether the information entered into the database:*
- i. *Did not comply with limitations on collection set out in section 5 or clause 9(4)(a) of the Regulation.*

In the one (1) instance, the information entered into the database did not comply with limitations on collection set out in section 5 or clause 9(4)(a) of the Regulation, and as such, have been moved into a restricted database, meaning no person shall have access to restricted information without the permission of the Chief of Police (or designate) and such access to restricted information must be sought through the Lead Street Check Verifier and be recorded for the purpose of mandatory reporting under the Regulation.

- ii. *Did not comply with sections 5, 6 and 7 of the Regulation based on the results of the review(s), done at least once a year, of an appropriately sized random sample of entries of identifying information included in the database to estimate within a margin of error of plus or minus 5 percent, at a 95 percent confidence level.*

Of the one (1) attempted collection that occurred from January 1, 2019 to December 31, 2019, zero (0) remain in the unrestricted database.

- s. *The number of times, if any, members of the police force were permitted to access identifying information to which access must be restricted by virtue of one or more of the following:*
- i. *For the purpose of an ongoing police investigation;*

There were no instances where members of the police force were permitted to access identifying information to which access must be restricted for the purpose of an ongoing police investigation.

- ii. *In connection with legal proceedings or anticipated legal proceedings;*

There were no instances where members of the police force were permitted to access identifying information to which access must be restricted 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)(1) of the Act;*

There were no instances where members of the police force were permitted to access identifying information to which access must be restricted 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)(1) of the Act.

- iv. *In order to prepare the annual report or a report required due to disproportionate collection (under section 15 of the Regulation);*

There was one (1) instance where members of the police force were permitted to access identifying information to which access must be restricted in order to prepare the annual report.

- v. *For the purpose of complying with a legal requirement; or,*

There were no instances where members of the police force were permitted to access identifying information to which access must be restricted for the purpose of complying with a legal requirement.

- vi. *For the purpose of evaluating a police officer's performance;*

There were no instances where members of the police force were permitted to access identifying information to which access must be restricted for the purpose of evaluating a police officer's performance.

Policy Provision #5

Following an analysis of the annual report referred to in paragraph 4 of this policy, if a determination is made that identifying information was attempted to be collected disproportionately, a review of the practices of the Police Service is conducted and a report is provided to the Board that includes:

- a. The results of the review;*
- b. Any proposals the Chief determines to be appropriate to address the disproportionate attempted collection of information.*

Any such report prepared by the Police Service under section 5 of the policy be presented to the Board within 60 days of the annual report to the Board. The Board shall publish any such report it receives under section 5 of this policy on the Internet and shall make it available to the public free of charge. The Board shall consider the report and its proposals and consider whether to give direction to the Chief of Police under section 31(1)(e) of the Act.

Interpretation of the Chief of Police:

It is my interpretation of this policy that a review of the practices of the Durham Regional Police Service will be undertaken if it is found that identifying information was attempted to be collected disproportionately and that a report will be presented to the Board that includes the results of the review along with recommendations from the Chief, if any, as to how the disproportionate attempted collection of information will be addressed. It is my understanding that any such report prepared by the Durham Regional Police Service will be provided to the Board within 60 days of the annual report to the Board. Based on this interpretation, I report compliance on this policy provision.

Data Support:

An analysis of the data indicates that collections were not attempted disproportionately based on the sex, age, or membership in a racialized group, or a combination of these factors.

Policy Provision #6

Identifying information collected before January 1, 2017 be retained, accessed and disclosed pursuant to DRPS procedures in place at the time the information was collected. If the information was collected in violation of the law as it existed at the time of collection, its retention, access and disclosure shall be subject to the restrictions in the Regulation.

Interpretation of the Chief of Police:

It is my interpretation of this policy that all identifying information collected prior to January 1, 2017 must be retained, accessed and disclosed in accordance with the DRPS procedures that were in place at the time such information was collected. It is my understanding that the retention, access and disclosure of identifying information that was found to be collected in violation of the law as it existed at the time of collection be subject to the restrictions set out in the Regulation. Based on this interpretation, I report compliance with this policy provision.

Data Support:

Section 14 of the *Collection of Identifying Information* directive outlines the policies and procedures surrounding the retention, access and disclosure of identifying information collected before January 1, 2017 and the restrictions to the retention, access and disclosure of identifying information collected in violation of the law.

Policy Provision #7

Identifying information collected on or after January 1, 2017 be retained, accessed, and disclosed only in the following circumstances, where such reasons can be articulated:

- a. Where the requirements of paragraph 9(4) of the Regulation are satisfied;*
- b. For the purpose of an ongoing police investigation;*
- c. In connection with legal proceedings, or anticipated legal proceedings;*
- d. 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;*
- e. In order to prepare the annual report described in section 5 of this policy or the report described in section 6 of this policy;*
- f. For the purpose of complying with a legal requirement; or*
- g. For the purpose of evaluating a police officer's performance.*

Interpretation of the Chief of Police:

It is my interpretation of this policy that the retention, access and disclosure of identifying information collected on or after January 1, 2017 can only occur in the circumstances outlined in the provision and that the reasons for such retention, access and disclosure be articulated accordingly.

Data Support:

Section 14 of the *Collection of Identifying Information* directive outlines the policies and procedures surrounding the use, retention, access and disclosure of identifying information collected on or after January 1, 2017 and the circumstances for which the information can be used.

Policy Provision #8

Identifying information collected contrary to this Regulation, or information held in the database beyond five years, be restricted to the Chief and his or her designate(s). Identifying information collected contrary to the Regulation shall not be retained longer than is reasonably necessary to ensure the information is available in the following circumstances:

- a. For the purpose of an ongoing police investigation;*
- b. In connection with legal proceedings or anticipated legal proceedings;*
- c. 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;*
- d. In order to prepare the annual report or a report required due to disproportionate collection (under section 15 of the Regulation);*
- e. For the purpose of complying with a legal requirement; or*
- f. For the purpose of evaluating a police officer's performance.*

Interpretation of the Chief of Police:

It is my interpretation of this policy that identifying information collected contrary to the Regulation and/or all information retained in the database for more than 5 years be restricted to the Chief and his delegate(s). It is my understanding that identifying information determined to have been collected contrary to the Regulation not be stored in the database longer than what is deemed to be reasonably necessary with regards to ensuring that the information is available in the circumstances outlined in the provision.

Data Support:

The *Collection of Identifying Information* directive outlines the policies and procedures surrounding retention guidelines and the restrictions that must be placed on identifying information that was collected contrary to the Regulation and/or identifying information stored in the database for more than five years.

Policy Provision #9

On an annual basis, the performance of designate(s) under the Regulation is reviewed to determine whether the designate(s) is performing his or her duties effectively and if the number of designate(s) is sufficient to manage the workload associated with the Regulation.

Interpretation of the Chief of Police:

It is my interpretation of this policy that the performance of designate(s) under the Regulation be reviewed on an annual basis to identify whether designate(s) are performing their duties effectively and to ascertain whether the number of designate(s) is adequate with regards to managing the workload.

Data Support:

In May of 2018, the verification process for street checks was moved to the General Occurrence Audit Unit (GOAU). This move provides a layered quality control process beginning with the unit directly tied to occurrence auditing while ensuring the member's direct supervisor is able to perform the function as well.

Due to the limited number of attempted collections, a thorough review of the performance of all designates under the Regulation, as well as a review regarding the management of the workload associated with the Regulation cannot be conducted at this time.

As a result of our experience with the CIICC Regulation to date, the Durham Regional Police are implementing several changes, to ensure improved results and compliance by:

1. Providing refresher training on the Regulation, Service-wide and on an individual basis, when necessary. The lower than expected numbers have shown that there is an opportunity for refresher training to be provided to the individual member or where necessary, unit or Organization wide where legislation may be updated.
2. In February 2019, a message was sent out to all DRPS members as a reminder of when and how the Regulation is applied and the steps that must be taken when conducting a regulated street check, such as informing the individual that they are not required to provide identifying information, informing the individual as to the reason you are attempting to collect their identifying information, and offering to give the individual a receipt as a record of the attempted collection. Messaging also included information on how to properly enter regulated street checks into Versadex, as this was identified as an area for improvement.
3. In November 2019, the Ministry of Public Safety launched refresher training for all police officers in the Province of Ontario. An internal message was sent out to all sworn members informing them of this training that is being administered through the Ontario Police Virtual Academy. The goal of the refresher training is to provide clarity and consistency in the application of the CIICC regulation in regards to when and how it is applied. This refresher training is to be completed within 36 months of the initial training.

4. Emphasizing the importance of the supervisory role in this process through increased communications. Direct supervision remains a key as the Service continues to address areas for improvement.
5. Examining the street check technology (Versadex) in order to determine areas for improvement and to assist with improving the quality of data entered into the database.
6. Introducing an auditing function that will assist with quality control and identifying key issues so that corrective actions can be taken as identified/required.

Attachments:

A. Summary of Collections of Identifying Information

Appendix A – Summary of Collections of Identifying Information

Metric	#
Approximate costs for adhering to the Regulation.	\$0
The number of public complaints resulting from or relating to information collected pursuant to the Regulation, and the number of such complaints that were substantiated.	0
The number of requests made to the Police Service under the Municipal Freedom of Information and Privacy Act relating to information collected pursuant to the Regulation.	0
The number of attempted collections.	1
The number of attempted collections in which information was collected.	1
The number of individuals from whom identifying information was collected.	1
The number of times a police officer did not inform the individual under 6(1) because the officer had reason to believe that informing the individual might compromise the safety of an individual.	0
The number of times a police officer did not inform the individual under 6(1) because informing the individual would likely compromise an ongoing police investigation.	0
The number of times a police officer did not inform the individual under 6(1) because informing the individual might allow a confidential informant to be identified.	0
The number of times a police officer did not inform the individual under 6(1) because informing the individual might disclose the identity of a person contrary to the law, including a young person contrary to the Youth Criminal Justice Act.	0
The number of times an individual was not given a receipt document because the individual did not indicate that he or she wanted it.	0
The number of times an officer did not provide a receipt as the officer believed that continuing to interact with the individual might compromise the safety of an individual.	0
The number of times an officer did not provide a receipt as the officer believed that continuing to interact with the individual might delay the officer from responding to another matter that should be responded to immediately.	0
The number of attempted collections from individuals who are perceived by the police officer to be:	
Males	1
Females	0
Within the age groups as identified by the Chief of Police and in accordance with the Regulation:	
50-55	1
Within the racialized groups as identified by the Chief of Police and in accordance with the Regulation:	
East Asian or South East Asian	1
The number of individuals who were perceived by the officer to be Indigenous.	0
The neighbourhoods or areas where collections were attempted and the number of attempted collections in each neighbourhood or area:	
Clarington	1
The number of determinations made by the Chief as to whether the	

Appendix A – Summary of Collections of Identifying Information

information entered into the unrestricted database:	
Did not comply with limitations on collection set out in section 5 of clause 9(4)(a) of the Regulation	1
Did not comply with sections 5, 6 and 7 of the Regulation based on the results of the reviews(s), done at least once a year, of an appropriately sized random sample of entries of identifying information included in the database to estimate within a margin of error of plus or minus 5 percent, at a 95 percent confidence level.	0
The number of times, if any, members of the police force were permitted to access identifying information to which access must be restricted by virtue of one or more of the following:	
For the purpose of an ongoing police investigation	0
In connection with legal proceedings or anticipated legal proceedings	0
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)(1) of the Act	0
In order to prepare the annual report or a report required due to disproportionate collection (under section 15 of the Regulation)	1
For the purpose of complying with a legal requirement	0
For the purpose of evaluating a police officer's performance	0