



TORONTO POLICE SERVICES BOARD

REGULATED INTERACTION WITH THE COMMUNITY AND THE COLLECTION OF IDENTIFYING INFORMATION

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REPORTING REQUIREMENT	Refer to sections 17, 18, 25, 33, 35, 36, 37, 38, 39, 40 and 45	
LEGISLATION	<i>Police Services Act</i> , R.S.O. 1990, c.P.15, as amended, s. 31(1). Ontario Regulation 58/16, under <i>Police Services Act</i> , R.S.O. 1990, c. P.15 <i>Canadian Charter of Rights and Freedoms</i> <i>Ontario Human Rights Code</i> <i>Municipal Freedom of Information and Protection of Privacy Act</i>	
ASSOCIATED POLICIES	Race and Ethnocultural Equity Human Rights Collection, Use and Reporting of Demographic Statistics	
DERIVATION		

Preamble

The Board recognizes that the practice known as ‘carding’ or ‘street checks’ has had a negative impact on public trust. This policy seeks to address that legacy and replace it with a process that will enhance public trust concerning the collection of identifying information, promote police-community engagement and improve community relations. Enhanced public trust increases police legitimacy and, in turn, improves public safety.

This policy should be read with Ontario Regulation 58/16 and the Board’s Race and Ethnocultural Equity Policy.

The Board recognizes that conversations between police officers and members of the public are an integral part of community-based policing. The policy is intended to support proactive policing, to ensure that stops are not arbitrary or based on biased policing and to promote professional interactions between police officers and

individuals. It permits informal greetings and interactions, observations and undercover activities. It permits interactions between police officers and individuals who actively assist the police in the performance of their duties. It does not regulate interactions between police officers and individuals who actively enlist the help of the police, such as victims of offences, individuals reporting lost property or individuals engaged in educational efforts.

The policy intends that identifying information associated with 'carding', 'street checks' and Regulated Interactions should be retained, accessed, or disclosed in a manner consistent with section 9(10)(2) of the Regulation. Data collected contrary to the Regulation or this policy will be restricted and accessible only with the permission of the Chief or a senior officer appointed by the Chief. The choice of appointee should reflect the importance of the role and responsibility being delegated.

The goals and objectives of this policy are to:

- a. acknowledge that the collection of Historical Contact Data has disproportionately affected some communities and encourage the Chief to create procedures that acknowledge this history and the social costs and impact of this activity on police legitimacy;
- b. ensure that the Chief understands that the Board does not expect or require Service members to attempt or conduct Regulated Interactions;
- c. ensure the Chief's procedures acknowledge that the effective delivery of police services does not obligate officers to conduct Regulated interactions;
- d. ensure that Regulated interactions are evaluated in conjunction with, and sensitive to, the potential social cost associated with such interactions;
- e. ensure that the Chief's procedures consider the need to collect and record the information and the potential social cost of Regulated interactions;
- f. ensure that Regulated Interactions are only conducted when necessary and, if conducted, carried out in a manner consistent with the requirements in the Regulation and this policy;
- g. ensure that considerations of social costs associated with the collection of Historical Contact Data are not intended to prevent officers from engaging positively with the community;
- h. prevent arbitrary or discriminatory Regulated Interactions;
- i. ensure that police officers do not attempt to gather identifying information in a Regulated Interaction or prepare a Regulated Interaction Report solely for the purpose of:
 - i. Building a body of general intelligence information;
 - ii. Investigating an unsupported suspicion;
 - iii. Prolonging an interaction in the hope of acquiring the reasonable suspicion necessary to detain;
 - iv. Meeting a quota or performance target; or

- v. Raising awareness of police presence in the community.
- j. respect the individual's decision about whether to freely participate in a Regulated Interaction;
- k. ensure that police officers can explain why they initiated a Regulated Interaction and, if relying on an exemption under the Regulation, why they could not tell an individual (i) that he or she is not required to provide identifying information and/or (ii) about the reasons for the Regulated Interaction;
- l. in the context of the Regulation, provide strategic direction to the Chief consistent with the Board's expectations of transparency and accountability as integral components of the effective delivery of police services;
- m. ensure the delivery of police services is fair, impartial, and free from both individual and systemic biases; and
- n. provide strategic direction to the Chief on the areas of the Regulation for which the Board has the ability, and is required by law, to address, including:
 - i. the content of the Receipt;
 - ii. retention, access, and disclosure of Historical Contact Data and Regulated Interaction Data; and
 - iii. reporting requirements that ensure transparency and accountability.

It is, therefore, the policy of the Toronto Police Services Board that:

Definitions

1. The following definitions apply:
 - a. Abstracted Data is a simplified representation of a larger body of data that includes only relevant *non-identifiable* data.
 - b. Annual Report means the annual report provided by the Chief of Police to a Board under section 31 of Ontario Regulation 3/99 (Adequacy and Effectiveness of Police Services) made under the *Police Services Act*.
 - c. Historical Contact Data refers to all Person Investigated Card (Form 172), Field Information Report (Form 208), Community Inquiry Report (Form 306), and Community Safety Note (Street Check) records submitted into the Service's records management systems prior to January 1, 2017 and may include any such submitted record whether or not it would have been categorized as a Regulated Interaction Report had it been submitted on or after January 1, 2017.
 - d. Identifying Information is any information that, alone or in combination with other information, can be used to identify an individual. It may include information about an individual's race, age, sex, sexual orientation, gender identity, marital or family status, economic circumstances, and education, medical, psychiatric, psychological, criminal or employment history.

- e. Regulated Interaction is an attempt by a police officer to collect identifying information by asking an individual, in a face-to-face encounter, to identify himself or herself or to provide information for the purpose of identifying the individual, and includes such an attempt whether or not identifying information is collected,
 - i. if that attempt is done for the purpose of,
 - a) inquiring into offences that have been or might be committed;
 - b) inquiring into suspicious activities to detect offences; or
 - c) gathering information for intelligence purposes;
 - ii. but does not include an attempted collection made by a police officer for the purpose of investigating an offence the officer reasonably suspects has been or will be committed;
 - iii. and does not include an attempt by a police officer to collect identifying information from an individual if,
 - a) the individual is legally required to provide the information to a police officer;
 - b) the individual is under arrest or is being detained;
 - c) the officer is engaged in a covert operation;
 - d) the officer is executing a warrant, acting pursuant to a court order or performing related duties; or
 - e) the individual from whom the officer attempts to collect information is employed in the administration of justice or is carrying out duties or providing services that are otherwise relevant to the carrying out of the officer's duties.
- f. Regulated Interaction Report is the electronic record of a Regulated Interaction submitted into the Service's record management system, whether or not identifying information was collected during the Regulated Interaction.
- g. Restricted is a classification which applies to Historical Contact Data and may apply to Regulated Interaction Reports for which the Service will institute constraints that prevent access to the record unless:
 - i. approved by the Chief or, in his absence, a designate; and
 - ii. consistent with the Regulation, access to the record is required:
 - 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 described in subsection 14(1) of the Regulation or the report required 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.

General

2. The Chief shall establish procedures regarding Regulated Interactions that:
 - a. ensure compliance with Ontario Regulation 58/16, Board policy, the *Police Services Act*, the Canadian *Charter of Rights and Freedoms*, the Ontario *Human Rights Code*, and the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*;
 - b. ensure Regulated Interactions are not conducted on the basis of biased policing, including racial profiling, or in an arbitrary manner;
 - c. acknowledge that collecting “identifying information” includes collecting any “information for the purpose of identifying the individual” as defined by this policy;
 - d. ensure police officers approach all attempts to collect personal information in the same way, regardless of whether the police officer intends to identify the individual; and
 - e. emphasize both the individual’s right to disengage from a Regulated Interaction and that an officer’s disengagement from a Regulated Interaction is an acceptable, valued and sometimes necessary policing practice.
3. The Chief shall ensure that Service members understand the importance of police-community engagement and proactive policing and that this shall be reflected in training.

Attempts to Collect Identifying Information

4. 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.
5. Without limiting what might constitute the additional information required under subparagraph 4(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.
6. The additional information required under subparagraph 4(a)(iii) may not consist only of the sex of the individual, the approximate age of the individual or both.
7. For the purpose of subparagraph 4(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 explain that complies with all of the following:
- a. 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 into offences that have been or might be committed or into suspicious activities to detect offences or the gathering of information for intelligence purposes;
 - b. 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; and
 - c. the reason is not only that the individual is present in a high crime location.

Rights Notification

8. A police officer shall not attempt to collect identifying information about an individual from the individual without first informing the individual:
- a. 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;
- unless the police officer is exempt from a requirement to notify the individual because of a specific exemption in section 6 of the Regulation or paragraphs 9 and 10 of this policy.
9. A police officer is not required to inform the individual under paragraph 8(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.
10. A police officer is not required to inform the individual under paragraph 8(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).

Receipts

11. The Chief shall establish procedures that require police officers conducting Regulated Interactions to comply with the Receipt requirement in section 7 of the Regulation, including the exemptions described in the Regulation.
12. The Chief shall ensure that the Receipt contains:
 - a. the name and badge number of the police officer and any partner or supervisor who is present at or assists in conducting the Regulated Interaction;
 - b. the date, time and location of the Regulated Interaction;
 - c. information about how to contact the Office of the Independent Police Review Director;
 - d. an explanation that the individual can request access to information in the Service's custody or control under *MFIPPA* and information about how to make such a request; and
 - e. an explanation of the reason for the Regulated Interaction.

Retention, Access, Use and Disclosure of Historical Contact Data

13. The Chief shall develop procedures that ensure all Historical Contact Data is Restricted in a manner that prevents Service members from accessing it without authorization.
14. Historical Contact Data must be stored in a way that leaves an auditable technological trail. All Historical Contact Data stored in hard copy report forms generated before January 1, 2017, (i.e. Person Investigated Card (Form 172), Field Information Report (Form 208), or Community Inquiry Report (Form 306)) should be digitized, as soon as possible if not already digitized, with the hard copy report form retained only as required by law (e.g. evidence in a matter before the courts).
15. Access to Historical Contact Data under paragraph 13 of this policy shall be authorized by the Chief, in accordance with the constraints imposed on records classified as Restricted, and only when access is required for a substantial public interest or to comply with a legal requirement.
16. The Chief shall develop procedures that control access to Historical Contact Data in accordance with paragraphs 13 to 15 of this policy. The procedures shall ensure the Chief provides the Board, on a quarterly basis, with a public report on:
 - a. the number of requests, submitted to the Chief by Service members, for access to Historical Contact Data;

- b. the number of approvals, by the Chief, for access to Historical Contact Data;
 - c. the purpose(s) of the requests and approvals identified in subparagraphs 16a and 16b;
 - d. whether or not accessing the Historical Contact Data fulfilled the purpose(s) for which it was accessed; and
 - e. when hard copy report forms generated before January 1, 2017 are digitized, the number of records digitized and the records management system to which the records were added.
17. The Board will establish a Regulated Interactions Review Panel composed of three persons: a Board member, a retired judge and a community member, with the mandate to:
- a. review the quarterly report for compliance with paragraphs 13 to 16 of this policy;
 - b. identify and track any significant trends;
 - c. summarize its review of the Chief's quarterly report, in a report to the Board including, if necessary, suggestions or recommendations for consideration by the Board; and
 - d. make its summary review of the Chief's quarterly report available to the public by submitting it to the Board at the same time that the Chief's quarterly report is submitted to the Board.
18. At least two weeks in advance of submitting the quarterly report to the Board, the Chief will make the quarterly report available to the Board's Regulated Interactions Review Panel to enable it to conduct its review.
19. If, as part of its review, the Regulated Interactions Review Panel requires additional information, it will submit, through the Board, any request(s) for additional information required to assist with fulfilling its mandate.
20. The Service must not use Historical Contact Data as a basis for classifying an individual as "known to police".
21. The Chief shall ensure Historical Contact Data does not result in an entry on an individual's Clearance Letter, Police Reference Check, Vulnerable Sector Check, or any other police record check required by the *Police Record Check Reform Act*.

Retention, Access, Use and Disclosure of Regulated Interaction Reports – Compliant

22. The Chief shall establish procedures dealing with the retention, access, and disclosure of Regulated Interaction Data collected on or after January 1, 2017, that provide:
- a. the Chief or his or her designate shall determine whether identifying information collected during Regulated Interactions complies with the Regulation and this policy by reviewing Regulated Interaction Reports upon their entry into the

Service's records management system(s) or within thirty days of their entry, in accordance with sections 9(4) and (5) of the Regulation;

- b. any Regulated Interaction Report which has not been reviewed shall contain an indication that the report has not been reviewed for compliance with the Regulation and this policy; and
 - c. Regulated Interaction Reports shall not result in an entry on an individual's Clearance Letter, Police Reference Check, Vulnerable Sector Check, or any other police record check required by the *Police Record Check Reform Act*, S.O. 2015 C.30.
 - d. The Service must not use Regulated Interaction Reports as a basis for classifying an individual as "known to police".
23. Access to any Regulated Interaction Report collected in compliance with this policy and the Regulation shall be Restricted five years after the date it was submitted to the Service's record management system.

Retention, Access, Use and Disclosure of Regulated Interaction Reports – In Violation

24. Subject to paragraph 26 of this policy, access to any Regulated Interaction Report determined to have been collected in violation of this policy or the Regulation shall be Restricted immediately upon such determination, whether;
- a. upon initially being reviewed by the Chief or his or her designate;
 - b. during the course of an internal or external complaint investigation; or
 - c. as a result of a finding by the judiciary, a tribunal or other governing body.
25. As required by section 12(2) of the Regulation, this policy provides that identifying information collected on or after January 1, 2017, contrary to the Regulation shall not be retained longer than is reasonably necessary to ensure the information is available
- 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 described in subsection 14(1) of the Regulation or the report required 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.
26. Where identifying information has been identified as being required under paragraph 25 of this policy, it may be retained only as long as reasonably necessary for the specific purpose(s) for which it was retained and, when no longer required for that purpose(s) or otherwise by law, shall be deleted.

27. The Service must not use Regulated Interaction Reports as a basis for classifying an individual as “known to police”.
28. The Chief shall ensure Regulated Interaction Reports do not result in an entry on an individual’s Clearance Letter, Police Reference Check, Vulnerable Sector Check, or any other police record check required by the *Police Record Check Reform Act*.

Training

29. The Chief shall ensure that all police officers, prior to conducting Regulated Interactions or acting as the Chief’s designate under section 9 of the Regulation, have successfully completed:
 - a. the training required under section 11 of the Regulation within the previous 36 months; and
 - b. additional training on the Service’s procedures, as developed in accordance with this policy, within the previous 12 months.
30. The Chief shall ensure that, the training referred to in paragraph 29 includes the mandatory training required by section 11 of the Regulation on the topics of:
 - a. the right of an individual not to provide information to a police officer, the limitations on this right and how to ensure that this right is respected;
 - b. the right of an individual to discontinue an interaction with a police officer, the limitations on this right and how to avoid an unlawful psychological detention of an individual;
 - c. bias awareness, discrimination and racism and how to avoid bias, discrimination and racism when providing police services;
 - d. the rights that individuals have to access information about themselves that is in the custody, or under the control, of a police force;
 - e. the initiation of interactions with members of the public;
 - f. the Regulation and its application; andadditionally includes, at a minimum, instruction on the topics of promoting public trust and public confidence by recognizing:
 - g. the social cost of historic police practices; and
 - h. how the use of respectful language, tone and demeanour, during Regulated Interactions benefits the community, individuals, officers, and the Service.
31. The Chief shall ensure that police officers who are reassigned or temporarily assigned to a new neighbourhood or Division communicate and cooperate with community-based liaison officers and receive any other support, training and resources necessary to familiarize themselves with the new assignment and community.
32. The Chief shall ensure that police officers responsible for supervising the initiation of Regulated Interactions and the creation of Regulated Interaction Reports

receive the training necessary to ensure all police officers comply with this policy and the Regulation.

33. The Chief shall provide to the Board copies of all training modules on Regulated Interactions for review upon request from the Board.

Supervision

34. The Chief shall establish procedures regarding Regulated Interactions to ensure that:
- a. supervisors understand that the Regulation and this policy do not impose an obligation on officers, implicitly or explicitly, to conduct Regulated Interactions;
 - b. supervisors understand that Regulated Interactions should occur only when necessary and, if conducted, are carried out in compliance with both the Regulation and this policy;
 - c. police officers receive effective supervision related to Regulated Interactions;
 - d. supervisors are trained to critically examine the circumstances leading to a Regulated Interaction and any resulting Regulated Interaction Reports to determine compliance with this policy and the Regulation and are held accountable for any failure to do so;
 - e. supervisors consider using a variety of Service technological resources, if available, to effectively review for compliance leading up to, during and after, Regulated Interactions; and
 - f. where discipline is justified, police officers are subject to the full range of disciplinary measures in s. 85 of the *Police Services Act* in relation to Regulated Interactions.

Reports to the Board

35. As part of the Annual Report required under Adequacy Regulation 3/99, the Chief shall include a section relating to Regulated Interactions.
36. The annual report relating to Regulated Interactions shall include, at a minimum:
- a. the number of attempted collections and the number of attempted collections in which identifying information was collected;
 - b. The number of individuals from whom identifying information was collected;
 - c. The number of times a police officer chose not to tell an individual that he or she was “not required to provide identifying information to the officer” and/or the reason “why the police officer is attempting to collect identifying information” as otherwise required under subsections 6(2) and (3) of the Regulation, and the reason(s) for making the choice;
 - d. The number of times a police officer chose not to give an individual a Receipt and the reason(s) for making the choice;

- e. The number of times each of the following clauses was relied upon to not offer or give a Receipt:
 - i. might compromise the safety of an individual (subsection 7(2)(a) of the Regulation); or
 - ii. might delay the officer from responding to another matter that should be responded to immediately (subsection 7(2)(b) of the Regulation);
- f. The number of attempted collections from individuals who are perceived, by a police officer, to be within the following groups based on the sex of the individual:
 - i. male individuals;
 - ii. female individuals; or
 - iii. individuals who self-identify otherwise
- g. For each age group established by the Chief, the number of attempted collections from individuals who are perceived, by a police officer, to be within that age group;
- h. For each racialized group established by the Chief for the purpose of this paragraph, the number of attempted collections from individuals who are perceived, by a police officer, to be within that racialized group;
- i. A statement, based on an analysis of the information, as to whether the collections were attempted disproportionately from individuals within a group based on:
 - i. the sex of the individual;
 - ii. a particular age;
 - iii. a racialized group; or
 - iv. a combination of groups and, if so, any additional information that the Chief of Police considers relevant to explain the disproportionate number of attempted collections;
- j. The neighbourhoods or areas where collections were attempted and the number of attempted collections in each neighbourhood or area;
- k. The number of determinations made by the Chief or his or her designate as to whether the information entered into the database:
 - i. complied with limitations on collection set out in section 5 and 9(4)(a) of the Regulation; and
 - ii. the results of the review(s), done at least once a year, of an appropriately sized random sample of entries of identifying information included in the database to estimate within a margin of error of plus or minus five percent, at a 95 percent confidence level, whether it appears that section 5 (limitations on collection of information), section 6 (duties to inform of rights and reasons before collecting, with exceptions) or section 8 (document for individual – document, with exceptions) of the Regulation were complied

with;

- I. The number of times, if any, members of the police force were permitted to access identifying information to which access must be restricted by virtue of one or more of the following:
 - i. for the purpose of an ongoing police investigation;
 - ii. in connection with legal proceedings or anticipated legal proceedings;
 - iii. for the purpose of dealing with a complaint under Part V of the Act or for the purpose of an investigation or inquiry under clause 25(1)(a) of the Act;
 - iv. in order to prepare the annual report or a report required due to disproportionate collection (under section 15 of the Regulation);
 - v. for the purpose of complying with a legal requirement; or
 - vi. for the purpose of evaluating a police officer's performance;
 - m. The number of complaints resulting from or related to Regulated Interactions, along with their status or outcome; and
 - n. The results of any audit conducted under procedures enacted pursuant to this policy.
37. If an analysis of the Regulated Interaction data forming the basis for the annual report reveals that Regulated Interactions were conducted disproportionately in relation to individuals based on perceived sex, age, race, or a combination thereof, the Chief shall review the Service's practices and prepare a supplementary report to the Board setting out the results of the review and his or her proposals, if any, to address the disproportionality.
38. The Chief shall make the abstracted data underlying the annual report available to the Board as requested.
39. The need for and contents of any supplementary report may be determined by either the Chief or the Board after review of the data in the annual report.
40. The Board, upon receipt of the annual report and any supplementary report, shall:
- a. publish all reports and the underlying abstracted data on the Board's website so they are available to the public free of charge; and
 - b. consider the report and the proposals, if any, set out in any supplementary report and consider whether to give directions under clause 31(1)(e) of the Act to direct the Chief and monitor his or her performance.

Retention, Access, Use and Disclosure of Abstracted Data

41. The Chief, in consultation with the Board, shall compile and retain abstracted data with respect to Regulated Interactions and Historical Contact Data for the purpose of evaluating the quality and effectiveness of police services in Toronto.
42. The Chief shall ensure that any data compiled and retained for the purpose of evaluating the quality and effectiveness of police services is de-identified, stored in

a restricted database and not used for any purpose other than that of evaluating the quality and effectiveness of police services in Toronto.

43. The Chief shall give the Board, and any person designated by the Board, any de-identified data or de-identified internal or external report related to Regulated Interactions compiled and retained under paragraphs 41 and 42 of this policy upon the Board's request.
44. The Board and the Service shall only use the data compiled and retained under paragraphs 41 and 42 of the policy to evaluate the quality and effectiveness of police services in Toronto in accordance with provincial law, including the Adequacy and Effectiveness Standards in Ontario Regulation 3/99, enacted under the *Police Services Act*.
45. The Service and the Board shall disclose data compiled and retained under paragraphs 41 and 42 of the policy to the Ministry of Community Safety and Correctional Services as necessary for the preparation of the Ministry's report on the Regulation as described in section 17 of the Regulation.

Policy Consistent with Regulation

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