

**KINGSTON POLICE SERVICES BOARD
POLICY UNDER REGULATION 58/16 OF THE *POLICE SERVICES ACT*
COLLECTION OF IDENTIFYING INFORMATION IN CERTAIN CIRCUMSTANCES—
PROHIBITION AND DUTIES**

WHEREAS the Province of Ontario has filed Regulation 58/16 under the *Police Services Act*, Collection of Identifying Information in Certain Circumstances—Prohibition and Duties;

AND WHEREAS section 12 of Regulation 58/16 requires police services boards to develop policies on specified aspects of the regulation;

NOW THEREFORE the Kingston Police Services Board enacts as follows.

1. Definitions

1.1. In this policy the following definitions apply.

- (a) “Act” refers to the Ontario *Police Services Act*.
- (b) “Annual report” refers to the report from the Chief of Police to the Board required by section 14 of the Regulation and pursuant to section 31 of Ontario Regulation 3/99, Adequacy and Effectiveness of Police Services, made under the Act.
- (c) “Board” means the Kingston Police Services Board, the governing authority for the police force of the city of Kingston.
- (d) “Chief of Police” means the Chief of Police for the Kingston Police.
- (e) “Collection of identifying information” refers to interactions and the documentation of such by an officer with respect to, as described in the Regulation, “an attempt by a police officer to collect identifying information about an individual from an individual,” i.e., an attempt to collect identifying information by asking individuals, in a face-to-face encounter, to identify themselves or to provide information for the purposes of identifying themselves. This includes such an attempt whether or not identifying information is collected as governed by the Regulation.
- (f) “Community interactions” refer to on-duty police contacts with members of the community meant to:
 - (1) foster positive relationships; or
 - (2) assist members of the public without gathering personal information for an investigative or intelligence purpose.

- (g) “Database” refers to a paper or electronic records system under the control of the Chief of Police containing identifying information about an individual collected by an officer of the police force from the individual, provided, however, that this does not include a database of intelligence information or other criminal/intelligence-based databases.
- (h) “Document” refers to the document contemplated by section 7 of the Regulation.
- (i) “Officer” refers to a sworn police officer of the police force.
- (j) “Police force” refers to the Kingston Police.
- (k) “Prohibited grounds,” under the Ontario Human Rights Code, include race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status, or disability.
- (l) “Racial/biased profiling” means the practice of linking a person or persons to an unlawful incident or incidents or to public safety concerns based primarily or predominantly on prohibited grounds or stereotypes related to those prohibited grounds.
- (m) “Regulation” refers to Regulation 58/16, Collection of Identifying Information in Certain Circumstances—Prohibition and Duties, under the *Police Services Act*.

2. Application

2.1. This policy provides direction to the Chief of Police regarding compliance by the police force with the Regulation.

2.2. This policy does not apply to community interactions (as described in section 1.1(f) herein) or lawful interactions in which a person is either detained or required to provide personal information (as described in sections 1(1) and 1(2) of the Regulation).

3. General

3.1. The Chief of Police shall ensure that the collection of identifying information is undertaken in a manner consistent with the Regulation and the Ontario *Human Rights Code* and is not based on racial/biased profiling or done in an arbitrary way as described in section 5(4) of the Regulation.

3.2. The Chief of Police shall develop procedures complying with the duties and obligations imposed by the Regulation and this policy, to ensure that direction and assistance are provided to officers in the collection of identifying information.

3.3. The Chief of Police shall ensure that every officer who attempts to collect identifying information about an individual from the individual or who acts as a designate of the Chief of Police under section 9 of the Regulation has successfully completed the prescribed training under section 11 of the Regulation within the previous 36 months.

3.4. The Chief of Police shall ensure that, in situations covered by section 1 of the Regulation, a document is offered by officers to each individual from whom identifying information is attempted to be collected and given to such individuals if they want it, unless officers believe that continuing to interact with an individual will compromise the safety of the individual or might delay their response to another matter that should be responded to immediately, as provided in section 7(2) of the Regulation. Should section 7(2) of the Regulation apply, officers must be able to articulate the reason and must include details relating to the particular circumstances, in accordance with section 7(3) of the Regulation.

3.5. The Chief of Police shall ensure that the document contains the information mandated by section 7(4) of the Regulation and that the document and any amendments thereto are provided to the Board for approval prior to use, in keeping with section 12(1)1 of the Regulation.

3.6. The Chief of Police shall ensure that a database is created or adapted that allows for the recording, analysis, and reporting required by the Regulation.

4. Reporting and Analysis Requirements

4.1. As outlined in section 14(5) of the Regulation, the annual report does not require the inclusion of information about anything that occurred before January 1, 2017.

4.2. For the purpose of reporting to the Board as part of the annual report or for other analytic reasons as directed by the Board and/or the Ministry of Community Safety and Correctional Services, the Chief of Police shall establish:

- (a) age groups;
- (b) racialized groups;
- (c) neighbourhoods or areas; and
- (d) an appropriately sized random sample of entries of identifying information for the purposes of section 9(6) of the Regulation.

4.3. When establishing racialized groups as set out in section 4.2(b) herein, the Chief of Police shall do so in a manner that allows the information required by section 14(2)8 of the Regulation (i.e., the number of attempted collections from individuals perceived by a police officer to be within a racialized group) to be comparable to the data noted below, as released by the Government of Canada on the basis of its most recent National Household Survey preceding the period covered by the report:

- (a) for each derived visible minority group set out in the National Household Survey, the number of individuals who identified themselves as being within that group; and
- (b) the number of individuals who claimed Aboriginal identity.

4.4. The Chief of Police shall ensure that an annual report as required by the Regulation and this Board policy is presented to the Board in March of each year to cover the previous calendar

year. In addition, the Chief of Police shall ensure that semi-annual reports are presented to the Board on the collection of identifying information. Such reports on the collection of identifying information shall include, at a minimum:

- (a) the number of attempted collections;
- (b) the number of attempted collections in which identifying information was collected;
- (c) the number of individuals from whom identifying information was collected;
- (d) the number of times under each of the following provisions that a police officer did not inform an individual as required under section 6(1) of the Regulation (that the individual was not required to provide identifying information and the reason for attempting to collect identifying information) because the officer had reason to believe that informing the individual:
 - (1) might compromise the safety of an individual;
 - (2) would likely compromise an ongoing police investigation;
 - (3) might allow a confidential informant to be identified; and
 - (4) might disclose the identity of a person contrary to law, including a young person contrary to the *Youth Criminal Justice Act*;
- (e) the number of times individuals were not given a document because they did not indicate that they wanted it;
- (f) the number of times each of the following provisions was relied upon for an officer not to offer or provide a document:
 - (1) the officer had reason to believe that continuing to interact with the individual might compromise the safety of an individual; and
 - (2) the officer had reason to believe that continuing to interact with the individual might delay the officer from responding to another matter that should be responded to immediately;
- (g) the number of attempted collections from individuals who are perceived by the police officer to be:
 - (1) males;
 - (2) females;
 - (3) within each age group as identified by the Chief of Police and in accordance with the Regulation; and

- (4) within each racialized group as identified by the Chief of Police and in accordance with the Regulation;
- (h) a statement, based on an analysis of the information, as to whether the collections were attempted disproportionately from individuals within a group based on:
- (1) the sex of the individual;
 - (2) a particular age;
 - (3) a racialized group; or
 - (4) a combination of the above factors,
- and, if so, any additional information that the Chief of Police considers relevant to explain the disproportionate number of attempted collections;
- (i) the neighbourhoods or areas where collections were attempted and the number of attempted collections in each neighbourhood or area;
- (j) the number of determinations made by the Chief of Police or designate that the information entered into the database:
- (1) did not comply with limitations on collection set out in section 5 or section 9(4)(a) of the Regulation; and
 - (2) did not comply with sections 5, 6, and 7 of the Regulation based on the results of the reviews, 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% confidence level;
- (k) the number of times, if any, members of the police force were permitted to access identifying information to which access must be restricted in accordance with sections 9(5), 9(7), and 9(9) of the Regulation, by virtue of the Chief of Police or designate being satisfied that access was needed:
- (1) for the purpose of an ongoing police investigation;
 - (2) in connection with legal proceedings or anticipated legal proceedings;
 - (3) for the purpose of dealing with a complaint under Part V of the Act or for the purpose of an investigation or inquiry under section 25(1)(a) of the Act;
 - (4) to prepare semi-annual reports, the annual report, or the report required under section 15 of the Regulation;
 - (5) for the purpose of complying with a legal requirement; or

- (6) for the purpose of evaluating a police officer's performance regarding compliance with the Regulation.

4.5. If a determination is made that identifying information was attempted to be collected disproportionately as outlined in section 4.4(h) herein, the Chief of Police shall:

- (a) review the practices of the police force; and
- (b) prepare a report to the Board setting out the results of the review and any proposals to address the disproportionate attempted collection of information.

4.6. Any report prepared by the Chief of Police pursuant to section 4.5 of this policy shall be presented to the Board within 60 days of the report to the Board. Upon receipt of such a report, the Board shall:

- (a) publish it on the Internet and make it available to the public free of charge; and
- (b) consider the report and proposals, if any, and consider whether to give directions to the Chief of Police under section 31(1)(e) of the Act.

5. Retention, Access, and Disclosure of Identifying Information

5.1. The Chief of Police shall have procedures dealing with the retention, access, and disclosure of identifying information.

5.2. Subject to the parameters of section 5.3 of this policy, the Chief of Police shall ensure that identifying information collected on or after January 1, 2017, is retained, accessed, and disclosed only for the following reasons and when such reasons can be articulated:

- (a) when the requirements of section 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 section 25(1)(a) of the Act;
- (e) to prepare semi-annual reports, the annual report, or the report required under section 15 of the Regulation;
- (f) for the purpose of complying with a legal requirement; or
- (g) for the purpose of evaluating a police officer's performance regarding compliance with the Regulation.

5.3. Pursuant to section 9(9) of the regulation, the Chief of Police shall ensure that access to identifying information is restricted after the fifth anniversary of the date on which the information was first entered into a database under the control of the police force. Pursuant to section 9(7) of the Regulation, the Chief of Police shall also restrict access to any identifying

information determined to have been collected contrary to the Regulation. With respect to restricted access to identifying information:

- (a) no person may access the information without the permission of the Chief of Police or designate; and
- (b) a member of the police force may be permitted to access the information only if the Chief of Police or designate is satisfied that access is needed:
 - (1) for the purpose of an ongoing police investigation;
 - (2) in connection with legal proceedings or anticipated legal proceedings;
 - (3) for the purpose of dealing with a complaint under Part V of the Act or for the purpose of an investigation or inquiry under section 25(1)(a) of the Act;
 - (4) to prepare semi-annual reports, the annual report, or the report required under section 15 of the Regulation;
 - (5) for the purpose of complying with a legal requirement; or
 - (6) for the purpose of evaluating a police officer's performance regarding compliance with the Regulation.

Note: Identifying information collected contrary to the Regulation shall not be retained longer than is reasonably necessary to ensure that the information is available for the purposes outlined in section 5.3(b) of this policy.

6. Commencement

6.1. This policy comes into force and effect on the day that it is passed and supersedes that passed by the Board on December 15, 2016, by Resolution No. 17-4.

6.2. Where this policy is inconsistent with Regulation 58/16, the Regulation shall apply, and any inconsistent provision shall be deemed to be modified to render it consistent.

ADOPTED AND PASSED by the Kingston Police Services Board this 17th day of May, 2018, by Resolution No. 18-23.

Chair

Secretary