

[HOME PAGE](#) / [LAWS](#)
/ O. REG. 58/16: COLLECTION OF IDENTIFYING INFORMATION IN CERTAIN CIRCUMSTANCES - PROHIBITION AND DUTIES



[Français](#)

Police Services Act

ONTARIO REGULATION 58/16

COLLECTION OF IDENTIFYING INFORMATION IN CERTAIN CIRCUMSTANCES - PROHIBITION AND DUTIES

Consolidation Period: From January 1, 2017 to the [e-Laws currency date](#).

No amendments.

This is the English version of a bilingual regulation.

CONTENTS [-]

PART I

APPLICATION AND INTERPRETATION

- | | |
|-----------|---|
| <u>1.</u> | Application — attempts to collect |
| <u>2.</u> | Application — information collected |
| <u>3.</u> | Non-application — person appointed under the Interprovincial Policing Act, 2009 |
| <u>4.</u> | Interpretation — attempt to collect identifying information |

PART II

PROHIBITION — CERTAIN COLLECTIONS OF INFORMATION

- | | |
|-----------|--|
| <u>5.</u> | Limitations on collection of certain information |
|-----------|--|

PART III

DUTIES RELATING TO COLLECTIONS OF INFORMATION

OFFICER DUTIES

- | | |
|-----------|---|
| <u>6.</u> | Duties to inform before attempting to collect information |
| <u>7.</u> | Document for individual |
| <u>8.</u> | Police officer must record reason and other information |

INCLUSION OF COLLECTED INFORMATION IN POLICE DATABASES

- | | |
|-----------|---|
| <u>9.</u> | Collected information in police databases |
|-----------|---|

RESTRICTIONS ON PERFORMANCE TARGETS

- | | |
|------------|---|
| <u>10.</u> | Performance targets not to be used in evaluating work performance |
|------------|---|

PART IV

OTHER MATTERS

TRAINING

| | |
|------------|---|
| <u>11.</u> | Chiefs of police must ensure training |
| | <u>POLICIES AND PROCEDURES</u> |
| <u>12.</u> | Boards and Minister must develop policies |
| <u>13.</u> | Chiefs of police must develop procedures |
| | <u>REPORTS, REVIEWS AND COMPLIANCE</u> |
| <u>14.</u> | Annual report |
| <u>15.</u> | Chiefs of police must review practices and report |
| <u>16.</u> | Chiefs of police must make records available |
| <u>17.</u> | Review of Regulation |

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 subsection 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).

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