



BY-LAW NO. 360-2016

A BY-LAW RESPECTING THE COLLECTION OF IDENTIFYING INFORMATION ("COII") IN CERTAIN CIRCUMSTANCES – PROHIBITION AND DUTIES

1. PREAMBLE

- 1.1 WHEREAS subsection 31(1) of the *Police Services Act* provides that a Board is responsible for the provision of police services and for law enforcement and crime prevention in the municipality and, among other things, shall:
- b. generally determine after consultation with the Chief of Police, objectives and priorities with respect to police service in the municipality;
 - c. establish priorities for the effective management of the police service; and
 - e. direct the Chief of Police and monitor his or her performance.
- 1 AND whereas subsection 31(6) of the *Police Services Act* provides that the Board may, by by-law, make rules for the effective management of the police service;
- 1.2 AND whereas Ontario Regulation 3/99 prescribes standards for the adequacy and effectiveness of police services;
- 1.3 AND whereas section 12 of Ontario Regulation 58/16 requires a police services board to have a policy with respect to the "Collection of Identifying Information in Certain Circumstances – Prohibition and Duties" that is consistent with the Regulation;
- 1.4 AND whereas section 13 of Ontario Regulation 58/16 requires the Chief of Police to establish procedures for the police service on the "Collection of Identifying Information in Certain Circumstances – Prohibition and Duties" that is consistent with the Regulation;
- 1.5 AND whereas the said Board deems it expedient to enact this By-law to ensure that the Board and the Service adhere to the *Police Services Act* and Ontario Regulation 58/16 and directives and guidelines received from the Ministry of Community Safety and Correctional Services.

NOW THEREFORE THE REGIONAL MUNICIPALITY OF NIAGARA POLICE SERVICES BOARD ENACTS AS FOLLOWS:

2 DEFINITIONS

- 2.1 "Act" means *Police Services Act*, R.S.O. 1990, c.P.15, as amended;

- 2.2 "Annual Report" means the annual report provided by the Chief of Police to a Board under Section 14 of Ontario Regulation 58/16 (Collection of Identifying Information in Certain Circumstances – Prohibition and Duties) made under the *Police Services Act*;
- 2.3 "Board" means the Regional Municipality of Niagara Police Services Board;
- 2.4 "Chief" means the Chief of Police of the Niagara Regional Police Service;
- 2.5 "Community Interactions" means on-duty police contact with member(s) of our community meant to:
- (i) foster positive relationships; and/or
 - (ii) assist members of the public (without gathering personal information for an investigative or intelligence purpose);
- 2.6 "Database" means the paper or electronic filing system under the control of the Chief of Police where identifying information about an individual collected by a police officer from the individual within a *Regulated Interaction* (but does not include a database where *Intelligence Notes* information is stored or other criminal/intelligence based databases);
- 2.7 "Member" means a member of the Niagara Regional Police Service;
- 2.8 "Police Officer" is defined in accordance with the *Act*;
- 2.9 "Prohibited Grounds" under the Ontario Human Rights Code include race, creed, colour, ancestry, place of origin, ethnic origin, language or dialect spoken, citizenship, sex, sexual orientation, age, marital status, family status, gender identity, gender expression, physical or mental disability;
- 2.10 "Racial/biased Profiling" means the practice of a member linking a person or persons to an unlawful incident or incidents and/or relating to public safety concerns, based primarily or predominately on *Prohibited Grounds* or stereotypes relating to those *Prohibited Grounds*;
- 2.11 "Receipt" means the document contemplated in Section 7 of the Regulation;
- 2.12 "Regulation" means Ontario Regulation 58/16 – Collection of Identifying Information in Certain Circumstances – Prohibition and Duties;
- 2.13 "Regulated Interaction" means the interactions and documentation of such by an officer regarding an "attempt to collect identifying information about an individual from the individual by asking the individual"; that is, 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 as governed by Regulation; and
- 2.14 "Service" means the Niagara Regional Police Service.

3 BOARD POLICY

- 3.1 The Board recognizes that public trust is essential to effective policing and that all interactions between Service and community members must be done in a manner that enhances public trust and co-operation with the police and fully respects citizens' rights and dignity. It is therefore the policy of this Board that the practices and procedures of the Service shall be dealt with in a professional and accountable manner to enhance positive relationships between the community and the Service in accordance with the "Collection of Identifying Information in Certain Circumstances – Prohibition and Duties" (Street Checks) – Regulation 58/16 of the *Police Services Act* (the Regulation) and in accordance with procedures established by the Chief as directed in this By-law.

4 DIRECTION TO THE CHIEF OF POLICE

GENERAL

- 4.1 The Chief of Police shall ensure that all Regulated Interactions are conducted in a manner that is consistent with the Regulation and, particularly, shall not be based on racial/biased profiling or conducted in an arbitrary way.
- 4.2 The Chief of Police shall have a procedure that complies with the duties and obligations imposed by the Regulation and this Board By-law to ensure there is direction and assistance provided to officers regarding Regulated Interactions.
- 4.3 The Chief of Police shall ensure that there is a database created or adapted that allows for the recording, analysis and reporting required by the Regulation.
- 4.4 For the purpose of reporting to the Board as part of the Annual Report and 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) appropriately sized random sample of entries of identifying information for the purposes of Section 9(6) of the Regulation or if the Chief believes it would be assistive and feasible, the entire dataset.
- 4.5 When establishing racialized groups as set out in 4.4(b), the Chief of Police shall do so in a manner that allows the information required by paragraph 14(2)8 of the Regulation (that is, the number of attempts to collect information from individuals perceived by a police officer to be within a racialized group) relating to the racialized groups to be comparable to the data referred to below in (a) and (b), 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:
- (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.
- 4.6 This Board By-law does not apply to community interactions or lawful interactions in which a person is either detained or required to provide personal information.

5. RECEIPT/DOCUMENT

- 5.1 The Chief of Police shall have a procedure requiring, as of January 1, 2017, that all police officers engaged in Regulated Interactions shall (a) offer to give the individual a receipt/document that provides a record of the attempt; and (b) give the individual such a receipt/document if the individual indicates that he or she wants it unless one of the exemptions in the Regulation applies (i.e. might compromise the safety of an individual or delay the officer from responding to another matter that should be responded to immediately, and is able to articulate the reason with details).
- 5.2 The Chief of Police shall ensure that the receipt/document contains the mandated information required by the Regulation and that the receipt/document and any amendments thereto are provided to the Board for its information and input (if any) before use.

6 TRAINING

- 6.1 Commencing January 1, 2017, the Chief of Police shall ensure that every police officer who attempts to collect identifying information about an individual from the individual, or anyone who acts as the designate of the Chief of Police for the purpose of reviewing the database (within 30 days of data entry and/or on an annual basis pursuant to Section 9 of the Regulation), has successfully completed the required training within the previous 36 months.

7 REPORTING REQUIREMENTS

ANNUAL REPORT

- 7.1 The Annual Report as it relates to Regulated Interactions shall be provided by the Chief of Police to the Board in the first quarter (unless an extension is approved by the Board Chair) of the year commencing in 2018 and annually thereafter.
- 7.2 The contents of the Annual Report as it relates to Regulated Interactions shall include, at a minimum, the following:
- (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 each of the following provisions was relied upon to not advise the individual of his/her right that he/she is "not required to provide identifying information to the office" and/or the reason "why the police officer is attempting to collect identifying information about the individual":
 - i. might compromise the safety of an individual (subsection 6(2)),
 - ii. would likely compromise an ongoing police investigation (clause 6(3)(a)),
 - iii. might allow a confidential informant to be identified (clause 6(3)(b)), and
 - iv. might disclose the identity of a person contrary to law, including the *Youth Crime Justice Act* (clause 6(3)(c));
 - (d) the number of times an individual was not given a receipt/document because the individual did not indicate that they wanted it;

- (e) the number of times each of the following clauses was relied upon to not offer or give a receipt/document:
 - i. might compromise the safety of an individual (subsection 7(2)(a)); and
 - ii. might delay the officer from responding to another matter that should be responded to immediately (clause 7(2)(b));
- (f) the number of attempted collections from individuals who are perceived, by a police officer, to be within the following groups on the sex of an individual:
 - i. male individuals, and
 - ii. female individuals;
- (g) for each age group established by the Chief of Police, 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 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;
- (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 (a) the sex of the individual, (b) a particular age, (c) racialized group, or (d) 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 of Police (or 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 (5) 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 7 (document for individual – receipt/document, with exceptions) were complied with;
- (l) the number of times, if any, members of the police service 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, for the purpose of dealing with a compliant under Part V of the *Act* or for the purpose of an investigation or inquiry under clause 25 (1)(a) of the *Act*,
 - iii. in order to prepare the Annual Report or a report required due to disproportionate collection (under Section 15 of the Regulation),
 - iv. for the purpose of complying with a legal requirement, or
 - v. for the purpose of evaluating a police officer's performance.

DISPROPORTIONATE REPORT

- 7.3 If disproportionate collection is identified based on an analysis of the information as to whether the collections were attempted disproportionately from individuals within a group based on (a) the sex of the individual, (b) a particular age, (c) racialized group, or (d) a combination of groups, in addition to the statement required in the Annual Report, the Chief of Police shall:
- (a) review the practices of the police service, and
 - (b) shall prepare a report to the Board setting out the results of the review and his or her proposals, if any, to address the disproportionate attempted collection of information.
- 7.4 The Board, upon receipt of the disproportionate report shall:
- (a) 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 considers appropriate; and
 - (b) consider the report and the proposals, if any, set out in the disproportionate report and consider whether to give directions under clause 31(1)(e) of the *Act* to direct the Chief of Police and monitor his or her performance.

8 RETENTION, ACCESS AND DISCLOSURE

- 8.1 The Chief of Police shall have a procedure dealing with retention, access and disclosure of identifying information that provides, at a minimum, as follows:
- (a) Identifying information entered into a database five (5) or more years ago and identifying information gathered and/or entered into the database that is determined to have been collected in non-compliance with the Regulation shall have restricted access as follows:
 - i. no person shall have access to the information without the permission of the Chief of Police (or designate),
 - ii. a member may be permitted to access the information only if the Chief of Police or Regulated Interactions Verifier 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 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.
 - (b) 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, shall be restricted to the Chief of Police and Regulated Interaction Verifiers in order to comply with the Regulation and subject to the exemptions set out in Section 8.1(a) above.

(c) Notwithstanding the above, identifying information collected contrary to the 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) of the Regulation, being:

- 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 compliant 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.

8.2 The Chief of Police shall ensure identifying information and records relating thereto that was collected before January 1, 2017 shall be accessed, retained and/or disclosed pursuant to the Chief's Adequacy Standard mandated procedure on the retention of records and should any of the data be determined to have been collected in violation of the law as it existed at the time of collection, its access and disclosure shall be subject to the restrictions in the Regulation.

9 IMPLEMENTATION

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

By-law No. 360-2016 and all other By-laws, section of By-laws and related policies of the Board inconsistent with the provisions of this By-law are hereby repealed.

This By-law shall come into force on the date of its enactment.

The Chief shall implement this By-law, where applicable, through General Order.

ENACTED AND PASSED this 21st day of July, 2016.

THE REGIONAL MUNICIPALITY OF NIAGARA POLICE SERVICES BOARD

Chairperson (Signed Original on File)

Executive Director (Signed Original on File)