



OFFICE OF THE
INFORMATION &
PRIVACY COMMISSIONER
for British Columbia

Protecting privacy. Promoting transparency.

January 9, 2014

COMMISSIONER INVITES PUBLIC COMMENT ON POLICE INFORMATION CHECKS

*B.C.'s Information and Privacy Commissioner Elizabeth Denham invites public submissions on her investigation into the use of police information checks. Interested citizens or groups are welcome to answer the questions the Commissioner has posed in this consultation letter. In addition, or alternatively, the public can provide our Office whatever views they may have on the subject including any particular experiences they have had with police information checks. We would appreciate receiving these responses by email to info@oipc.bc.ca no later than **February 21, 2014**.*

Re: OIPC Investigation of Police Information Checks—OIPC File F13-55121

I am writing to seek your comments regarding the issue of police information checks. As you may be aware, my office is investigating the use of police information checks in British Columbia in order to gain a better understanding of how these checks are used and to evaluate their compliance with the privacy and security requirements of the *Freedom of Information and Protection of Privacy Act* ("FIPPA") and the *Personal Information Protection Act* ("PIPA").

As part of this investigation, we are consulting with interested stakeholders to assist in our evaluation of the privacy implications of police information checks for British Columbians. A public report will be issued when our investigation is complete.

Background

There is an increasing trend towards the use of police information checks as a screening tool for employers to assist in determining the suitability of a prospective employee or volunteer. While these individuals consent to the conduct of the check before it takes place, it is unlikely that an individual who refuses a check will still be considered for an employment or volunteer position. As a result, it is important that the process for background checks achieves the correct balance between an individual's right to privacy and a desire for background information about an applicant.

In the employment context, FIPPA requires public bodies to limit the collection of personal information to that which relates directly to and is necessary for a program or activity of the public body. Similarly, under PIPA, organizations are required to limit the collection of employee personal information to that which is reasonably required to establish, manage or terminate an employment relationship between the organization and the individual. Under BC human rights law, it is illegal to refuse to employ, or refuse to continue to employ, someone because they have been convicted of an offence that is unrelated to their employment.

The scope of this investigation does not include the process undertaken by government, pursuant to the *Criminal Records Review Act* ("CRRRA."), for individuals working with children or vulnerable adults. In that process an individual will first receive a criminal record check for convictions and outstanding charges. If the individual has a conviction or outstanding charge, the CRRRA provides that a risk assessment will be conducted to determine whether the individual is suitable for hiring. This risk assessment could include such things as looking at police files, conducting a police information check (see description below) or interviews of the individual or victims.

Government has also provided authority for prospective employers to conduct criminal record checks and police information checks in other enactments such as the *Gaming Control Act* and the Security Services Regulation. However, the majority of British Columbians are not covered by legislation explicitly prescribing rules about record checks.

Types of Checks

The breadth of personal information involved in record checks offered by municipal police departments and the Royal Canadian Mounted Police ("RCMP") is often misunderstood.

For the most part, municipal police departments and the RCMP no longer offer **criminal record checks**, but this type of check is important to understand. A criminal record check is a search of an RCMP database to determine whether an individual has prior criminal convictions. The search is performed by checking information such as an individual's name, date of birth and gender against the national repository of criminal records maintained by the RCMP. Summary conviction offences¹ are not included within the scope of a criminal record check.

In contrast, a **police information check** is a search of a local police agency's records management system as well as the national repository of criminal records maintained

¹ Summary conviction offences are considered less serious than indictable offences. As per s. 787 of the *Criminal Code of Canada*, summary conviction offences can be punished by a maximum of six months imprisonment, a \$5,000 fine, or both. Some examples of summary conviction offences include causing a disturbance, shoplifting and trespassing. Fingerprints are not taken for those convicted of a summary offence.

by the RCMP. In BC, this includes the Police Records Information Management Environment ("PRIME"). It might also include a search of court records and records management systems in jurisdictions outside of BC.

In addition to showing whether an individual has prior convictions or outstanding charges, a police information check also includes non-conviction records such as:

- warrants for arrest;
- peace bonds or restraining orders in effect;
- information about adverse police contact;
- charges approved by Crown Counsel that do not result in convictions;
- investigations that do not result in charges;
- information related to the *Youth Criminal Justice Act*; and
- information about an individual's mental health.

Information about an individual being a witness or a victim to an incident is included in PRIME, but at present is not released as part of a police information check.

Municipal police and the RCMP also offer a **vulnerable sector check** which is distinct from the CRRA process. The vulnerable sector check includes everything in a police information check as well as a search of criminal convictions for sexual offences for which a pardon has been granted.

Questions

- 1) Do you believe that employers and non-profit agencies require the amount of personal information about potential employees and volunteers that is included as part of a police information check?
 - i) If your answer depends on the type of position, please break down the types of jobs and volunteer positions for which you believe collecting this amount of personal information is reasonable.
 - ii) If yes (or for the positions that you believe require a police information check), please explain why you believe employers need this amount of personal information.
 - iii) If no (or for the positions that you do not believe require a police information check), please explain why you do not believe employers need this amount of personal information and what elements of personal information you believe are not required.

- 2) In some instances, employers and non-profit agencies require re-checks of an individual's criminal record every five years. Would your answer to question #1 change if instead of potential employees we were considering police information checks on individuals who were already employed or volunteering? If yes, how would it change?
- 3) What type of guidance is needed for employers, non-profit agencies and citizens to inform them about when it is appropriate to do an employment-related record check and the appropriate type of check to choose in any particular circumstance (*i.e.*, policy, legislation, etc.)?
 - i) Who do you believe should provide this guidance? The police? The provincial government? The Privacy Commissioner?
- 4) Do you have any other thoughts on police information checks that we should consider as part of our investigation?

I wish to make it clear that I have not formed any final views on what, if any, public policy recommendations should be made on the use of police information checks, and will not do so until after the period for comment is closed.

Please provide your comments to my office by **February 21, 2014**. We welcome your referral to other potentially interested parties and invite you to forward them a copy of this consultation letter, as posted on our website (www.oipc.bc.ca). Thank you for your time and your interest in this important matter.

Sincerely,



Elizabeth Denham
Information and Privacy
Commissioner for British Columbia