

Police Information Checks and Vulnerable Sector Checks

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What is a police record?

- A “police record” is information created or gathered by police. It may include criminal information, such as charges and convictions, as well as non-criminal contact with police. For example, a police record is created any time you are actively involved with the police. Even if you have never been charged or convicted of an offense, but interacted with police in some way, a police record may be created.
- A police record may include information related to a person’s mental health. This is because police often play a role in the provision of mental health care, such as transferring persons to hospital for assessment or responding to persons who are in crisis.

What is a police record check or background check?

- A “police record check” or “police background check” may be conducted as a condition of employment or volunteer placement. It is the last step in the pre-employment process, and should be conducted only after the job offer is made and with consent of the applicant.
- A “police record check” or “police background check” typically refers to one of three different levels of background checks:
 - A **criminal record check** will show any **criminal convictions** a person has received. This is the most commonplace type of background check.

- A **police information check** shows the same information as a criminal record check, and additionally includes **non-conviction criminal information** such as charges, warrants, probation orders, peace bonds, and dispositions of Not Criminally Responsible on account of Mental Disorder (NCR). It may also show other police contact, including contact that involved the use of weapon or behaviour which was violent, threatening or harmful.
- A **vulnerable sector check** shows the same information as a criminal record check and a police information check, and additionally may show more non-criminal information, including a **history or profile of police contact** unrelated to any criminal act. Until recently, some police forces disclosed mental health information in a vulnerable sector check. This exposed persons to discrimination based on their disability.

Do police disclose mental health information in a background check?

- In July of 2011, the Ontario Association of Chiefs of Police (OACP) approved a province-wide “Guideline For Police Record Checks” (the “OACP Guideline”). It defines how the three levels of background checks – criminal, police information, and vulnerable sector – are to be conducted.
- The OACP Guideline prohibits the disclosure of information collected by police that is related to mental health in almost all circumstances, and notes the discriminatory effect that the release of information can have on persons with mental health illness and addictions who come into contact with police.
- The Guideline also describes a procedure for suppressing information from being disclosed, and recommends limits on the length of time a record should be available for review.
- The person conducting the background check should ensure that they meet the minimum standard set by the OACP Guideline.

Who conducts a police record check?

- Each individual municipal police force in Ontario conducts police record checks. The municipal police force will look for records in national and provincial databases containing criminal convictions and charges. In the case of a police information check or vulnerable sector check, the police will also check their own local database containing non-criminal police contact.
- Each municipal police force sets their own procedures and policies for conducting police record checks. This can lead to considerable variation between jurisdictions.
- The recent approval of the OACP Guideline creates the first province-wide standard for conducting police record checks. It recommends that each police force in Ontario achieves a minimum standard and procedural protections set in the Guideline, especially around mental health information.

Who asks for a police record check?

- An employer, volunteer agency, professional college or other organization may want you to complete a police record check at the time you are applying for a position. Even if you have been in a position for some time, you may be asked to agree to a records check.
- The checks are completed for safety reasons, particularly where the applicant will be responsible for the well-being of one or more children or vulnerable persons, such as persons who are vulnerable because of their age or disability.
- Your employer or volunteer agency must have your consent to complete a police record check. A search cannot be done without your consent. You may consent to one level of record check (such as a criminal record check) but not another (such as a vulnerable sector check).
- The vast majority of employers or agencies should only require a criminal record check or police information check. Police should not conduct a vulnerable sector check unless satisfied that the job directly relates to the vulnerable sector, or where required to conduct

a vulnerable sector check by law.

What information does my employer/volunteer agency receive from the police?

- If a person has no history with the police, the record check will be returned to the employer as "clear". If there is a history, the employer or volunteer agency will be notified that the record shows a history.
- If an employer or volunteer agency receives a report from the police that the record is not clear, they will probably ask you for details.

The police have taken me to the hospital, or diverted me to a crisis support centre. Will it show up on a police record check?

- The OACP Guideline specifies that any contact with police related to a mental health incident or formally under the *Mental Health Act* should not be disclosed on a criminal record check, a police information check, or a vulnerable sector check.
- The OACP Guideline also specifies that no terminology related to mental health incidents should ever appear in a record search, including terms such as "*Mental Health Act* apprehension", "diversion to a mental health crisis facility", "taken to hospital on a Form 1" or other such language.
- However, if an employer or volunteer agency has specifically requested a vulnerable sector check and specifically requested information related to mental health, police may exercise their discretion and release information related to a mental health incident under two exceptional circumstances:
 - Where the person acted in a way that was "violent, threatening or harmful." To determine if this is the case, the OACP Guideline specifies that such incidents are where the event: put the applicant or others at risk; caused physical harm to others; involved the use of a weapon; and how long ago the incident occurred (i.e., whether it is part of a recurring pattern or a very recent event).
 - Where the person attempted suicide and in doing so caused harm to self or placed others at risk of harm (such as minors), but

only if the incident is less than a year old. Verbal threats of suicide where no action was taken are exempt from disclosure.

- Even if the exceptions above are invoked, the OACP Guideline specifies that mental health related terminology is not to be used. Instead, the vulnerable sector check will report “warned for violent behaviour” or “subject of caution for harmful behaviour.”

What do I tell my employer?

- You are not required to tell your employer or a volunteer agency anything about the circumstances of the incident if you do not wish to do so. However, not explaining the circumstances may affect whether you get the job, placement or continued employment.
- Many employers do not know that a police information check and a vulnerable sector check discloses information that is non-criminal. You may wish to explain that police acting under the *Mental Health Act* merely take persons to an appropriate place for examination by a physician; that police likely have no further information about the incident or the illness; and that the police involvement is non-criminal.
- The *Ontario Human Rights Code* provides guidance to employers or volunteer agencies by clarifying that they may not discriminate based on a disability including mental health. If an employer or agency requests a vulnerable sector check and mental health information but has no real need for this information (known as a “*bona fide* occupational requirement” in law), they may be in violation of the *Human Rights Code*. Where they are informed of the circumstances, it may be discriminatory for an employer to choose not to hire based on non-criminal information disclosed through a vulnerable person check.

How do I know what is included in my police record?

- You have the right to request and review a copy of the record from the police service in the municipality where you reside. You may have to file separate requests with other police services if you have lived or had contact with the police in other areas.

- Most police stations have pre-printed forms to fill out and you may have to pay a small fee.
- Generally such requests must be responded to within 30 days.

How long will the police record last?

- Different police forces have different rules as to the retention of records. The OACP Guideline specifies that for police information checks and vulnerable sector checks, reviews of local occurrence databases should be limited to the most recent five years.

Can I have the police record destroyed or altered?

- The OACP Guideline recommends that each police force implement a reconsideration and information suppression procedure. Under this policy, you may request that police:
 - Exclude information from your record check related to non-criminal involvement under the *Mental Health Act* or other incidents related to mental health needs; one such suppression application is sufficient to suppress a record forever;
 - correct any inaccurate or discriminatory information contained in the record.
- When considering a reconsideration and suppression request, police will consider the level of record check requested; how long ago the incident occurred; the age of the applicant at the time of the incident; details of the incident provided by the applicant or supporting evidence, such as a doctor's note.
- You should ask the police service in the municipality where you reside for their policy on the collection, use, disclosure and retention of information in police records and for vulnerable person screenings. This will help you understand their practices and indicate whether they have procedures for correcting, excluding, or destroying information on record.

What can I do if the police will not exclude or suppress my medical information?

- File a complaint with the local Chief of Police about the inclusion of your personal health information in the police records check. Local police detachments should provide you with the necessary forms and contact information.
- If you are unhappy with your complaint, you may also complain to the Office of the Independent Police Review Director, an independent civil oversight body with the power to investigate police complaints. More information on the OIPRD is available at <http://www.oiprd.on.ca> or by calling 1-877-411-4773 (in the GTA call 416-246-7071).
- File a human rights application with the Ontario Human Rights Tribunal. The Tribunal can consider whether the conduct of the police or your prospective employer violates the *Human Rights Code* for disability-based discrimination. You can either file an application directly with the Human Rights Tribunal or seek the assistance of the Human Rights Legal Support Center (<http://www.hrlsc.on.ca/> or call 1-866-625-5179, in the GTA (416) 314-6266). For more information, refer to our InfoGuide “Human Rights Complaints” available at www.ppao.gov.on.ca in the InfoGuide section.
- You may also wish to make a complaint to the Office of the Information and Privacy Commissioner of Ontario under the *Personal Health Information Protection Act* if your personal health information has been included in the record check, or under the *Municipal Freedom of Information and Protection of Privacy Act* if you feel your right to access information was limited. You can contact the Commissioner online at <http://www.ipc.on.ca/> or by calling 1-800-387-0073 or within the GTA 416-326-3333.

Questions?

- The Mental Health Police Records Check Coalition, a group of stakeholders, believes that the disclosure of non-criminal mental health information is discriminatory. More information about the Coalition and its work can be found on the PPAO website, <http://www.ppao.gov.on.ca> under the Systemic Issues section.

- If you have questions about your rights as a psychiatric client, contact your local Patient Advocate or call the central office of the Psychiatric Patient Advocate Office at 1-800-578-2343.