

Record Handling Blueprint Regarding Non-Conviction Disposition Records

The Ontario Information and Privacy Commissioner recommends that the following privacy principles and practices be used by the Toronto Police Services Board (Board) to develop and implement a transparent and fair policy governing the destruction and retention of “Adult Fingerprints, Photographs and Records of Disposition” associated with non-conviction dispositions:

Responsible Record Handling

1. The Toronto Police Services (the Service) must *routinely and periodically review all* non-conviction disposition (NCD) records upon finalization of a disposition and destroy the records unless, the individual has a pre-existing criminal conviction, faces outstanding criminal charges, or, in the particular circumstances of the case, the Chief of Police or his or her delegate (hereafter “the Chief”) has reasonable grounds to believe that the individual will commit a “serious personal injury offence” as defined in section 752 of the *Criminal Code of Canada*.
2. The Service must notify all individuals that their records have been destroyed, which records have been destroyed, which records, if any, have been retained, and for what specific purposes.

Limited and Focused Retention Decisions Founded On Fair and Appropriate Procedures

3. Where the Chief asserts that s/he has a valid basis for retaining NCD records, the Chief must provide the affected individual with written notice of this preliminary finding. The affected individual must be provided disclosure of the information and evidence relied on by the police and a fair and full opportunity to reply to that information and evidence.
4. The onus is on the Chief to establish that the individual has a pre-existing criminal conviction, faces outstanding criminal charges, or, in the particular circumstances of the case, there are reasonable grounds to believe that the individual will commit a “serious personal injury offence” as defined in section 752 of the *Criminal Code*.
5. Having considered and addressed the affected individual’s reply, the Chief must provide his or her decision in writing with reasons. The decision must provide notice as to which NCD records, if any, have been destroyed, which records, if any, have been retained, and for what specific purposes.

Accessible, Independent and Impartial Review

6. In cases where the Chief continues to assert a right to retain a person’s NCD records, the affected individual must have a right to have the case reviewed by an independent impartial expert advisor hired by the Board. Having heard from the affected individual and the Chief, the independent advisor would provide a written opinion as to whether the Chief has sufficient grounds to justify the exceptional decision to retain NCD records.
7. The independent advisor must provide his or her opinion to the affected individual, the Chief, and the Board.
8. The Chief must reply to the independent advisor’s opinion in writing. Copies of the Chief’s reply must be provided to the affected person, the independent advisor, and the Board.
9. An affected individual who is unsatisfied with the Chief’s reply may seek further redress from the Courts.
10. The independent advisor will provide an annual public report to the Board regarding the functions of the advisor and any issues or individual cases that raise matters of policy or procedure that, in the opinion of the advisor, warrant the Board’s attention. The public report would not include information capable of identifying an affected individual.