Information and Privacy
Commissioner of Ontario
Commissaire à l'information et à la
protection de la vie privée de l'Ontario

VIA ONLINE SUBMISSION

September 1, 2023

Michelina Longo
Director, External Relations Branch, Public Safety Division
Ministry of the Solicitor General
25 Grosvenor Street
George Drew Building, 9th Floor
Toronto, ON M7A 1Y6

Dear Ms. Longo:

RE: Regulation Registry Proposals 23-SOLGEN016, 23-SOLGEN017, and 23-SOLGEN018

On July 18, 2023, the Ministry of the Solicitor General (the Ministry) posted three regulatory proposals under the *Community Safety and Policing Act, 2019* (*CSPA*) for public input with a deadline of September 1, 2023, for comments. The *CSPA,* once in force, will repeal and replace the *Police Services Act*, the legislation currently governing the standards and framework of policing in Ontario.

We are writing with respect to all three of the proposals:

1. 23-SOLGEN016 - Adequate and Effective Policing (General) Regulation
2. 23-SOLGEN017 - Major Incident Response Plan
3. 23-SOLGEN018 - Response to Active Attacker Incidents (Adequacy Standard)

We appreciate the opportunity to provide comments on these proposals. Some of our feedback builds on prior IPC comments dated July 20, 2021 and February 3, 2023.

As the office with the mandate to protect the privacy and access to information rights of Ontarians within the public sector, the purpose of our submission is to help ensure these regulations include modernized measures to support good governance of personal information, promote transparency, and protect the need for confidentiality of sensitive policing information. Our recommendations aim to support consistent, effective and accountable policing across the province.

In this submission, we first offer comments and recommendations in relation to standards and safeguards for criminal intelligence activities in the Adequate and Effective Policing Regulation, followed by comments on the Response to Active Attacker Incidents and Major Incident Response Plan.

1. **Proposal 23-SOLGEN016 - *Adequate and Effective Policing (General) Regulation***

The Adequate and Effective Policing regulation sets out standards and requires chiefs of police to develop procedures in relation to certain policing functions, including crime prevention, law enforcement and emergency response.

Section 5(2) of the proposed regulation sets out general standards for police services' criminal intelligence processes. Intelligence activities generally involve the collection, use and disclosure of personal information, and must therefore comply with *FIPPA* and *MFIPPA*.

We recognize that police services require intelligence capacity and standards, and that the collection, processing, analysis, evaluation, dissemination, and maintenance of intelligence are key areas to manage. However, it is our view that as drafted, the proposed approach to modernized criminal intelligence standards does not adequately address, let alone require privacy, transparency and accountability related standards.

Intelligence work, by its nature, is generally invisible to the public, including Ontarians who may be subject to intelligence-gathering activities without their knowledge. In addition, many intelligence activities will never be subject to any judicial oversight or made available to any independent oversight officials. Therefore, ensuring that intelligence standards adequately address privacy, transparency and accountability is critical.

Accordingly, the IPC recommends that the standards should require chiefs of police' processes and procedures to include effective privacy, transparency and accountability controls, including those that define and limit the purposes for which intelligence may be undertaken, collected, retained, used and disclosed. The standards should also include requirements related to information sharing MOUs or agreements, retention and record-keeping rules, audit procedures, and certain public reporting regarding the collection, analysis, and disclosure of intelligence information, as appropriate, to ensure general transparency of intelligence activities, without compromising their effectiveness or capability.

2. **Proposal 23-SOLGEN018 - *Response to Active Attacker Incidents (Adequacy Standard)***

The Response to Active Attacker Incidents Regulation sets out the standards and duties of police services in responding to, and reporting on, active attacker incidents. We understand the ministry is proposing to make amendments to the draft regulation posted in 2021 (21-SOLGEN013 "Responses to Active Attacker Incidents"). These amendments address a number of response priorities arising from recent commission report recommendations and stakeholder feedback, including, arrangements with external service providers to facilitate coordinated responses in assisting victims, public communication of non-urgent information, and reviews/reports following active attacker incidents.

IPC provided comments to the Ministry in July 2021 on the prior regulatory proposal 21-SOLGEN013 related to chief of police reporting obligations following an active attacker incident and the issuing of public alerts. We are pleased to see the adoption of the IPC's recommendations related to reporting obligations reflected in this new proposal – in particular, the requirement of the police service board or minister to publish an incident report publicly, as this enhances transparency and accountability related to police services' response to an incident, and helps promote trust and confidence.

Properly understood and applied, privacy legislation does not prevent the disclosure of personal information to help prevent serious harm. We recommend that the Active Attacker Incidents Regulation identify a pathway to help police make clear and privacy compliant decisions when it comes to information sharing related to assistance to victims (item 6), and public communication of non-urgent information (item 8). For example, developing clear data minimization requirements with respect to appropriate disclosure of victims' personal information will assist chiefs of police in protecting victims' privacy when disclosing information to external service providers to facilitate and coordinate aspects of their victim assistance functions and duties. Similarly, clear data minimization requirements should guide police in disclosing no more personal information than is necessary to communicate non-urgent information to the public.

3. Proposal 23-SOLGEN017 - *Major Incident Response Plan*

We understand that the Major Incident Response Plan (MIRP) will be incorporated by reference into the Adequate and Effective Policing Regulation and will replace the current Provincial Counter Terrorism Plan (PCTP). The MIRP proposal includes requirements on planning for a major incident, operational responses including notification protocols, inter-agency cooperation and information/intelligence-sharing, and public communications and media relations, including public alerts. Some of our comments raised above related to the Active Attacker regulation are also relevant to the MIRP proposal.

Section 5.0 of the MIRP addresses public communications and public alerts relating to a major incident. It speaks to a chief of police releasing "appropriate" information to media and the public. It also directs a chief of police to ensure public alerts (via social media and emergency alert systems) are made as required. Recognizing the importance of making critical information about a major incident public on an urgent basis, we recommend that the MIRP include clear data minimization requirements to support timely and confident decisions by police with respect to what personal information can be disclosed.

Section 6.0 does not adequately address requirements to share information with the public and does not mirror the reporting requirements in relation to an active attacker response discussed above. Specifically, there does not appear to be an explicit requirement to share a major incident report with the public. We recommend section 6.0 be amended so that the reporting requirements mirror those in the Active Attacker regulation to make it clear that the report should be shared with the public.

In conclusion, the IPC remains committed to ongoing participation in consultations related to the *CSPA* and its associated regulations, recognizing the significant impact that the modernization of policing legislation can have not only on individuals' safety, but their access and privacy rights as well.

We look forward to continuing to engage with the Ministry on privacy and government transparency-related matters associated with bringing the *CSPA* into force. Please do not hesitate to reach out to our office with any questions or for further engagement.

In the interest of transparency, we will be making this submission available on our website.

Sincerely,

Sandra Ferguson
Director of Policy