



Information and Privacy  
Commissioner of Ontario

Commissaire à l'information et à la  
protection de la vie privée de l'Ontario

**VIA ELECTRONIC MAIL**

November 10, 2022

Chief Commissioner Patricia DeGuire  
Ontario Human Rights Commission  
180 Dundas Street West, 9th Floor  
Toronto, ON M7A 2G5

Dear Chief Commissioner DeGuire:

**RE: The Information and Privacy Commissioner of Ontario's submission regarding the Ontario Human Rights Commission's public inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service**

On behalf of my office, I am pleased to provide input into the Ontario Human Rights Commission's (the Commission's) public inquiry into the racial profiling and racial discrimination of Black persons by the Toronto Police Service (the Service).

As you are aware, the Information and Privacy Commissioner of Ontario (the IPC) acts independently of government to protect and promote access to information and privacy rights in Ontario, including in relation to the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)* and the *Anti-Racism Act (ARA)*. Both of these statutes contain rules designed to protect the privacy of individuals with respect to their personal information and to promote transparency and accountability of institutions, including policing agencies.

The Service and the Toronto Police Services Board (the Board) are subject to *MFIPPA*. In addition, the Service is responsible for providing specified race-related information to the Ministry of the Solicitor General pursuant to the regulation promulgated under the *ARA*. Currently, this race-related information pertains to use of force reporting required under the *Police Services Act*. Furthermore, the Board and the Service have undertaken a more expansive race-based data collection, analysis and public reporting program as part of an effort to address systemic racism associated with their delivery of police services. Initiatives like Toronto's race-based data collection program, while modeled on the *ARA* and its associated data standards, arise from responsibilities under Ontario's *Human Rights Code* and the *Police Services Act* and are subject to *MFIPPA*.

Earlier this year, the Commission invited the IPC to participate in a May 30-31, 2022 policy roundtable. The purpose of the roundtable was to assist the Commission in completing its public inquiry into racial profiling and racial discrimination of Black persons by the Service (the inquiry). The Service and the Board are both parties to the inquiry. Roundtable sessions focused on the Commission's proposed approach to eliminating racial profiling and racial discrimination. During the roundtable, I committed to providing written comments into the Commission's inquiry process. Stephen McCammon, Legal Counsel with the IPC, met with Commission staff on July 6, 11, 14, 18, and 21, 2022 to provide preliminary staff level feedback.

At this time, I am pleased to provide the IPC's formal written submission into the Commission's inquiry process. I plan to publish this letter, subject to any timing or confidentiality concerns the Commission may have.



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## Overview of the IPC's submission

The subject matter of the Commission's inquiry aligns closely with my office's strategic priorities which include:

- **Next Generation Law Enforcement:** Contributing to building public trust in law enforcement by working with relevant partners to develop the necessary guardrails for the adoption of new technologies and community-based approaches that protect both public safety and Ontarians' access and privacy rights; and
- **Privacy and Transparency in a Modern Government:** Advancing Ontarians' privacy and access rights by working with public institutions to develop bedrock principles and comprehensive governance frameworks for the responsible and accountable deployment of digital technologies.

As we work to achieve our strategic priorities, the IPC has committed to a number of cross-cutting approaches, including a commitment to consider accessibility and equity issues to help reduce disparate outcomes on marginalized communities. For these reasons, we are keenly interested in the process and outcome of the Commission's inquiry and appreciate the opportunity to provide our perspective in relation to privacy and transparency matters that arise in this context.

The present submission builds on and is consistent with the police-related work that the IPC has done over the last fifteen years, often in collaboration with the Commission. Policing issues our two offices have collaborated on include:

- police record checks;
- street checks;
- race-based data collection under *MFIPPA* (for example, in relation to traffic stops in Ottawa);
- the development and implementation of the *ARA* (for example, in relation to use of force reporting); and
- the use of body-worn cameras and facial recognition.

In doing this work, the IPC has also:

- considered key elements of the Commission's work, including the first two inquiry reports ([A Collective Impact](#) and [A Disparate Impact](#));
- collaborated and met with civil society, academics, government bodies, and law enforcement agencies, including the Board and the Service; and
- followed and participated in public discussions regarding the role, impact, and evolution of policing.

In summary, the IPC believes that in order to address the concerns at the heart of the inquiry, policing leaders need to consider and address the privacy and transparency issues that arise in the context of policing. Specifically, police services should institute:

### **I. Robust data governance of new information technologies and community-based approaches to service delivery**

If police services are to enjoy the trust of the public, particularly marginalized communities, their use of new information technologies and community-based approaches that rely on information sharing must be

subject to robust data governance frameworks. While board policies and service procedures play an essential role, the IPC re-iterates a recommendation our office made to the government in August 2016 in association with its [Strategy for a Safer Ontario](#): “to ensure a consistent approach across the province, the provincial government should enact province-wide standards governing the use of surveillance technologies in consultation with police, privacy and access, human rights, civil liberties, and criminal law experts. This approach, followed in relation to police record checks, will ensure that privacy, access and other fundamental rights will be accorded equal treatment in communities across Ontario.”

We have had recent occasion to elaborate on the principles of robust data governance that should guide police use of body-worn cameras, artificial intelligence, and facial recognition.<sup>1</sup> We have also provided input to the Provincial Human Services and Justice Coordinating Committee on frameworks and related tools for guiding responsible sharing of sensitive data in the context of mobile crisis response teams. These teams bring together police officers, health professionals and other community-based partners to serve people experiencing a mental health, addictions, or related crisis.<sup>2</sup> It is our hope that the Commission will see value in these guidance documents and how they relate to the present inquiry, and encourage the Service to adopt and apply these data governance frameworks fairly and equitably to all citizens they serve, including among our most vulnerable and marginalized communities.

## **II. Robust governance of officers’ exercise of discretion**

Privacy-intrusive police practices, such as those associated with the discretion to conduct traffic stops and strip searches, lay charges, or stop or question individuals in non-arrest scenarios, have unfortunately been associated with racism and systemic discrimination. Privacy and human rights harms can be reduced when officers are provided with clear, practical, rights-based instructions and are subject to appropriate supervision and oversight. Progress was achieved in this respect when the provincial government enacted street check regulations. In addition, the Board and the Service have taken steps to improve the governance of and exercise of discretion with respect to the conduct of strip searches.

The IPC believes that the Board and the Service should expand these efforts to other privacy-invasive police-civilian encounters that involve the police exercise of discretion. In order to ensure a consistent approach across the province, we also believe that the province should be called upon to develop further regulations to provide the necessary instructions and oversight.

## **III. Race-based data driven accountability**

The race-related collection and use of personal information under provincial privacy legislation and the *ARA* are critical to ongoing efforts to identify, monitor, report on, and eliminate systemic racism in policing and advance racial equity. Questions have arisen as to whether, under current law, the Service can monitor and address bias in policing using race-based data to identify patterns of bias and remediate them, for example, under the Service’s early intervention systems. Based on the information available to date, it is our view that neither *MFIPPA* nor the *ARA* prevent police service boards or police services from using race-based data or employee information to supervise, discipline, train, or monitor police divisions,

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<sup>1</sup> For example, see the IPC’s June 2021 [Model Governance Framework for Police Body-worn Camera Programs in Ontario](#); the IPC’s June 2021 comments on the Government of Ontario’s [Trustworthy AI Framework](#); the IPC’s December 2021 comments on the Board’s [Use of AI Technologies Policy](#); the [joint statement](#) and accompanying [joint guidance](#) the IPC issued with our Federal, Provincial, and Territorial (FPT) counterparts in May 2022; and the October 2022 Global Privacy Assembly [Resolution on Principles and Expectations for the Appropriate Use of Personal Information in Facial Recognition Technology](#) that the IPC co-led and co-sponsored.

<sup>2</sup> We anticipate that the Provincial Human Services and Justice Coordinating Committee’s guidance for mobile crisis response teams will be published in the coming months.

platoons, units, or individual officers for signs of disproportionate police responses in an effort to help eliminate racism and advance equity.

On June 22, 2022, the Board passed a motion requiring its Chief of Police “to assess how the Service’s approach to race-based data collection and analysis can be modified to enhance the Service’s ability to identify, investigate and address specific instances of potential inequitable policing, including with respect to use of force, strip searches and other interactions.” The IPC welcomes that motion and remains available to assist the Commission, the Board, the Service, the Ministry of the Solicitor General, and other key stakeholders in a collaborative effort to achieve effective police accountability in compliance with privacy requirements.

#### **IV. Transparency through proactive disclosure**

Public trust in policing requires a strong commitment to transparency through, for example, the proactive disclosure of de-identified information and other information capable of informing the public about critical police decisions, activities, and practices, including in relation to the effectiveness of oversight and disciplinary systems. Therefore, the IPC would welcome recommendations, including any necessary legislative amendments, to increase proactive disclosure of statistical, anonymized or de-identified data, as long as it does not involve personal information. Public reporting of this nature would support the public’s ability to hold police agencies to account by helping the public better understand how policing is being conducted and the extent to which reform efforts are progressing.

#### **V. An open, effective, and credible approach to protecting and restoring rights**

Public trust in the efforts of government to assess and remedy intrusions on privacy and other fundamental rights depends on both the quality of those efforts and the manner in which those efforts and remedies are developed, instituted and evaluated. In the context of the Commission’s inquiry, it is our view that both the police and the public would benefit greatly from the use of mechanisms capable of providing periodic, transparent, and credible assessments of the Board and the Service’s progress on eliminating racial profiling and racial discrimination, including through their responsible and respectful use of data.

Recalling the Board’s previous decisions to appoint members of the judiciary and other third parties to conduct a variety of critical assessments and reviews, we believe that comparable approach should be employed to help ensure that the necessary human rights-related reforms take hold in a manner that integrates privacy protection and promotes greater transparency.

#### **Conclusion**

The IPC is supportive of the Commission’s efforts to eliminate racial profiling and racial discrimination in policing, including through the current inquiry. While the scope of the inquiry speaks to matters outside the mandate of the IPC, many of the issues have a strong relationship to the IPC’s privacy and access mandate and the associated public interest in protecting both their privacy and their right to know.

In this context, our submission is focused on assisting the Commission — and through it, the Board, the Service, the Ministry, relevant stakeholders, and the public — achieve the collective goal of eliminating racial profiling and racial discrimination in policing through greater transparency and accountability, while also complying with privacy requirements and best practices. In my view, much of that work can be advanced through the development of a privacy, transparency and human rights centric framework for the governance of policing. In taking this approach, I note that the coordinated and consolidated efforts between both our offices to address privacy and transparency issues, while being mindful of human rights

considerations, and vice-versa, is consistent with the direction the Supreme Court of Canada has provided to all administrative tribunals, namely, “bringing justice closer to the people.”<sup>3</sup>

I trust this submission will be helpful to you and your office as you complete your public inquiry into racial profiling and racial discrimination of Black persons by the Service. You can expect more detailed comments via IPC Legal Counsel, Stephen McCammon. Should you have any questions about our submission, please do not hesitate to contact Stephen directly via email at [Stephen.McCammon@ipc.on.ca](mailto:Stephen.McCammon@ipc.on.ca).

Please feel free to refer to the contents of this letter and more detailed comments by my office in both your inquiry report and related public communications.

I thank you again for the opportunity to provide input and look forward to the continued collaboration between our offices in addressing inter-related issues of privacy, transparency and human rights in the context of policing, and more generally, in the interest of all Ontarians.

Sincerely,

A handwritten signature in black ink, appearing to read "Patricia Kosseim". The signature is stylized with a large initial "P" and a long horizontal flourish at the end.

Patricia Kosseim  
Commissioner

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<sup>3</sup> See *Tranchemontagne v. Ontario (Director, Disability Support Program)*, [2006 SCC 14 \(CanLII\)](#).