



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

June 25, 2024

VIA ELECTRONIC MAIL

Rachel Ryerson
Manager, Public Safety and Policing Policy Unit, Strategic Policy Division
Ministry of the Solicitor General
25 Grosvenor Street, George Drew Building, 9th Floor
Toronto, ON M7A 1Y6

Dear Ms. Ryerson,

RE: Regulation Registry Proposal 24-SOLGEN010

On May 24, 2024, the Ministry of the Solicitor General (the Ministry) posted a regulatory proposal under the *Community Safety and Policing Act, 2019* (CSPA) for public input. We are pleased to have had the opportunity to discuss this proposal with the Ministry on June 13, 2024, and now offer this written submission.

As an Officer of the Legislature, the Information and Privacy Commissioner of Ontario (IPC) has a statutory mandate to protect and promote the access and privacy rights of Ontarians. The IPC offers the following comments and recommendations with the goal of supporting effective, privacy protective, transparent, and accountable policing and police oversight across the province.

Regulatory proposal 24-SOLGEN010 relates to the Inspector General of Policing (IG), a new and important official responsible for providing independent oversight of police governance and police leadership across Ontario. The IG is supported by the Inspectorate of Policing, an arm's length division of the Ministry of the Solicitor General and is subject to the *Freedom of Information and Protection of Privacy Act* (FIPPA). The proposal speaks to the IG's statutory duty to publish inspection reports and IG compliance directions "on the Internet in accordance with the regulations, if any."

Background

Under Part VII of the CSPA, the IG is tasked with performing duties including:

- Appointing inspectors and having inspectors conduct inspections, including in response to public complaints, for the purpose of determining whether:
 - a member of a police service board, an O.P.P. detachment board, or a First Nation O.P.P. board has committed or is committing misconduct, or
 - a police service board, O.P.P. detachment board, First Nation O.P.P. board, chief of police, special constable employer, police service or prescribed policing provider is complying with or has complied with the CSPA and its regulations;
- Receiving inspectors' reports, which must include an inspector's findings, and assessing those reports for evidence of misconduct or non-compliance with the CSPA and its regulations;



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- Taking actions such as reprimanding, suspending or removing board members who have committed misconduct;
- Issuing directions to ensure CSPA compliant policing, as well as imposing additional measures, to remedy or prevent non-compliance, up to and including dissolving a police service board, disbanding a police service, removing a chief of police, or appointing an administrator to administer the police service; and
- Publishing inspector's reports, IG action reports, IG compliance directions, and IG additional measures reports "on the Internet in accordance with the regulations."

Consistent with the oversight and compliance regime provided for under the CSPA, the underlying matters at issue in inspectors' reports and IG compliance directions will inevitably touch on a wide range of policing activities and decisions of significant public interest, including those related to:

- Adequate and effective policing,
- The establishment and implementation of procedures such as those governing vehicle pursuits, major case investigations, and active attacker incidents,
- Training of officers, including in relation to use of force and the conduct of street checks,
- The disclosure of personal information by chiefs of police,
- Use of force reporting,
- Conflicts of interest, and
- Police based contraventions of the *Criminal Code of Canada*, or *Ontario's Human Rights Code*.

The Regulatory Proposal

Proposal 24-SOLGEN010 describes the Ministry's proposed approach to regulating the publication of inspectors' reports and IG compliance directions.¹ Notably, the proposed regulation would empower the IG to publish *redacted* reports and directions, based on existing exemptions in FIPPA that limit the general right to seek and obtain access to government held information.

More specifically, proposal 24-SOLGEN010 would permit the IG to redact any part of an inspector's report, or a direction issued by the IG that contains law enforcement information (as per section 14 of FIPPA) and would mandate the redaction of any personal information in these documents (as per section 21 of FIPPA).

The IPC's concerns with the proposed approach

In our view, a proactive publication regime designed to empower independent, transparent, and accountable inspection and oversight of key policing organizations and leaders cannot meet the needs of Ontarians if the publication regulations simply mirror sections 14 and 21 of our province wide access to information regime. Moreover, the proposed approach risks undermining the

¹ While the CSPA also requires the publication of IG action reports and IG additional measures reports in accordance with regulations, proposal 24-SOLGEN010 is silent with respect to these reports. Should the Ministry decide to develop regulations for these reports, we believe that the present comments and recommendations should also assist you in thinking through any related proposals.

government's original [objectives](#) in creating the office of the IG in the first place, which included enhancing public trust in police governance.

Consider, for example, that under the proposed approach, the IG would be permitted to redact any inspector's report in its entirety simply on the basis that such reports fall within the reach of section 14(2)(a) of FIPPA. This provision of FIPPA permits an institution to refuse to disclose "*a report prepared in the course of ... inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law.*"

In addition, the IG would have discretion to redact information on the basis that it reveals or may reveal:

- investigative techniques and procedures currently in use or likely to be used in law enforcement (section 14(1)(c)), when the whole purpose of an inspection report and an IG's compliance direction may be to identify and put a province wide end to investigative techniques that are unlawful or even abusive;
- a record confiscated by an inspector in the course of an inspection (section 14(1)(h)), when such a record may be central to the findings of the inspector's report and an IG's compliance direction; and
- information that could reasonably be expected to expose policing entities and their leaders to civil liability (section 14(2)(c)), when the public exposure of significant wrongdoing may be essential to effective oversight by the IG, transparent and accountable policing, and public trust in law enforcement.

We accept that the IG needs some latitude to protect sensitive law enforcement information, as well as the personal privacy of, for example, members of the public whose personal information may be contained in an inspector's report. However, given the purposes of Part VII of the CSPA, we believe that the regulations must do more to protect and promote the public interest in transparent and accountable policing and police oversight. While some redactions will be justifiable, public trust in IG decision-making requires that those redactions be kept to the strict minimum necessary to achieve the transparency and accountability purposes of the Part VII.

What is needed then is a rule prohibiting the IG from redacting any information in an inspector's report or an IG compliance direction where a compelling public interest in the publication of the information clearly outweighs the purpose of the redaction. Such a rule would build on section 23 of FIPPA and the Supreme Court's reasoning in *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*.² It would also be consistent with the Ministry's acknowledgement that the IG will need to consider whether the disclosure of personal information is "desirable for the purpose of subjecting the activities of police service boards, chiefs of police and police services to public scrutiny".

² *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23 (CanLII), [2010] 1 SCR 815, at para 49.

Recommendations

Bearing the above in mind, the IPC recommends that the Ministry's approach to the proposed regulation be revised as follows:

1. Confine the permissible redactions to a power to redact information reasonably likely to cause one of the harms: identified in sections 14(1)(a), (b), and 14(1)(d) - 14(1)(g), and sections 14(1)(i) - 14(1)(l) or associated with section 14(2)(b) and (d) of FIPPA.
2. Confine the mandatory redactions to a duty to redact the names of, and any identifying information about complainants, victims and witnesses of alleged misconduct or contraventions of the CSPA, including any members of the public.
3. Prohibit the IG from redacting any information in an inspector's report or an IG compliance direction where a compelling public interest in the publication of the information clearly outweighs the law enforcement or personal privacy related purpose of the redaction.
4. Include rules requiring that inspectors' reports and IG compliance directions be published:
 - within a short and defined period of time (e.g., within 30 days of their being completed or issued), and
 - with a description of the evidence considered, the findings made, the basis for those findings, and the character of and the timelines for the completion of the actions required to achieve compliance with the CSPA (e.g, a summary).

Conclusion

We believe that our recommendations align with the functions and purposes underlying the establishment of the IG. In addition, we are confident that, if adopted, they will support Inspector General Ryan Teschner in his efforts "to improve sector performance and accountability by ensuring compliance with Ontario's policing legislation and regulations", including by "promoting effective, transparent policing."³

We look forward to seeing the IG take up his important legislative mandate under the CSPA and continuing to engage with the Ministry on privacy and transparency-related matters associated with the CSPA and its regulations. 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,



Patricia Kosseim
Commissioner

³ Ontario's Inspector General of Policing: <https://www.iopontario.ca/en>