



February 16, 2010

Deputy Commissioner Policing Support Services / Sous-commissaire Soutien aux services de police

GIT-1850-4-2

Mr. Brian Young
OASIS Board President
399 Centre Street, PO Box 1210
Petrolia, ON N0N 1R0

Dear Mr. Young,

Thank you for your letter dated December 17, 2009 to Minister Van Loan concerning the Canadian Police Information Centre's (CPIC) recent directive to police agencies engaged with third party companies conducting name-based criminal record verifications.

We understand from your correspondence, that for very legitimate reasons, background, criminal record and vulnerable sector checks are an integral part of your suitability pre-screening practices. As a result, you have engaged private sector companies to facilitate this process by acting as an intermediary.

The Royal Canadian Mounted Police (RCMP), as the national police force and the steward of Canada's CPIC system, is aware that these practices are in direct contravention of applicable federal legislation and CPIC policies. Because of this, the RCMP has had to intervene with an interim policy to address significant liability and integrity issues. This breach of statute and policy may have serious civil or criminal ramifications to you and/or your organization should sensitive personal information be inappropriately used or disclosed.

To date, questionable business practices, including a lack of identity verification and informed consent for individuals undergoing criminal record checks have been identified. Furthermore, instances of criminal record information being disseminated without confirming identity by means of a fingerprint comparison have taken place. Private sector companies have also undertaken vulnerable sector checks which potentially conflict with the Criminal Records Act and the CPIC Reference Manual policy.

The level of detail for a vulnerable sector check was established following the revision of the Criminal Records Act and the Criminal Records Act Regulation in 2000/2001 through intensive consultation with the provincial/territorial public safety and police authorities. CPIC policy requires a police agency, when screening a person for a position working with the vulnerable sector, to query both the **Identification** and **Investigative / Intelligence** data banks. The

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Identification data bank provides information on a criminal record. With the Vulnerable Sector flag engaged, it will provide an indication to police if fingerprints are required due to the existence of a possible pardoned conviction. The **Investigative** data bank provides information on things such as:

- Records of persons charged with child sex offences and/or family violence.
- Records of persons placed on a peace bond, including issuance under Section 810.1 CC, when it is feared that the subject will commit a sexual offence against a child.
- Records of:
 1. Persons convicted of a Summary Conviction offence or offence under provincial legislation, relating to a child sex offence or family violence, including any notice of a "Publication Ban"; or
 2. Persons, formerly placed on a Peace Bond relating to a child sex offence or family violence, whose Peace Bond has expired.

CPIC strongly suggests that agencies and employers work with local police services, ideally through a memorandum of understanding (MOU) outlining their respective obligations in providing and seeking a police records check (including, for example, the type of screening response to be released by the police; an accepted consent to disclosure form; to whom the response would be released; and the obligations of the volunteer agency/employer to protect the privacy of the volunteer/employee by implementing records maintenance procedures).

The records check industry has frequently used police services which are, in most cases, far removed from the location where the individual works or resides and where they will be dealing with children or members of the vulnerable sector. Local records checks are not done and the **Investigative** data bank of the CPIC system is not typically consulted since the release of information contributed by other police agencies requires their consent.


The RCMP, through CPIC and the Canadian Criminal Real Time Identification Services, has taken immediate steps to review and clarify policy. Pending a more comprehensive review, interim policy has been implemented to allow police agencies to determine what role third party service providers can appropriately play in the criminal/background check process. We encourage Canadian police agencies and private sector service providers to enter into agreements that comply with Canadian law and applicable policies. Where such arrangements are not in place, criminal records checks can still be processed through your local police service. At this time, youth and vulnerable sector checks cannot be processed through a third party company due to potential conflict with the *Criminal Records Act* and CPIC policy.

A common trend raised within the letters that we have received on this issue pertains to the timely response to a vulnerable sector check. It has been a widely stated view that a name based check can take up to 120 days for a response. The 120 days refers to a fingerprint criminal records check where there is a "hit" and verification using fingerprints is required. A survey of major police services in Canada undertaken by CPIC indicates that a name based check for the vulnerable sector ranges from an immediate response to 10 working days.

The RCMP is working towards a harmonized approach for conducting criminal record verifications. We have established a working group composed of police agencies, public safety partners and third party service providers as appropriate, which met in mid-January, 2010. Their goal was to develop consistent and appropriate practices in accordance with CPIC policy, regulations and directives and applicable legislation.

Please know your comments and concerns are appreciated and were part of our discussions during this working group meeting .

Regards,



Tim Killam,
Deputy Commissioner,
Policing Support Services,
Royal Canadian Mounted Police

