



INFOGUIDE

December 2008

Police Records Searches and Vulnerable Person Screenings

Disclaimer: This material is prepared by the Psychiatric Patient Advocate Office with the intention that it provide general information in summary form on legal and advocacy topics which is current when first published. The contents do not constitute legal advice or recommendations and should not be relied upon as such. Appropriate legal advice should be obtained in actual situations. While every care has been taken in the preparation of this material, the Psychiatric Patient Advocate Office cannot accept responsibility for any errors or omissions in the material, including those caused by negligence. The Psychiatric Patient Advocate Office is not responsible for the accuracy of information contained on other websites accessed by links from this website.

What is a police record?

- A police record, also known as a “vulnerable persons check” or screening form, is different from a criminal record. A criminal record will show any convictions a person has received. A police record may show much more information. For example, a police record is created any time you are actively involved with the police. Even if you have never been charged or convicted of an offense but were questioned by the police there may be a police record.
- If the police take you to a hospital or if they transfer you between hospitals, there may be a police record.

Police Record Searches for Employment and Volunteering

- An employer or a volunteer agency may want you to complete a police and/or criminal record search at the time you are applying for a position. Even if you have been in a position for some time, you may be asked to agree to a records search.
- The checks are completed for safety reasons, particularly where the agency works with children or other vulnerable persons.
- Your employer or volunteer agency must have your consent to complete a police record check. A search cannot be done without your consent.

The police have taken me to the hospital. Will it show up on a police record check?

- Any involvement with the police, including transfer to the hospital, may be recorded in police files. Generally, the police will complete an "incident report" whenever they take someone to a hospital or transfer the person between hospitals. An incident report may show up on a police check.

What information does my employer/ volunteer agency receive from the police?

- If a person has no history with the police, the record check will be returned to the employer as "clear". If there is a history, the employer or volunteer agency will be notified that the record shows a history. Depending on the police service, details of the record may or may not be provided.
- If an employer or volunteer agency receives a report from the police that the record is not clear, they will probably ask you for details.

What do I tell my employer?

- You are not required to tell your employer or a volunteer agency anything about the circumstances of the incident if you do not wish to do so. However, not explaining the circumstances may affect whether you get the job, placement or continued employment.
- Many employers do not know that a police record discloses information that is non-criminal. You may wish to explain that police acting under the *Mental Health Act* merely take persons to an appropriate place for examination by a physician; that police likely have no further information about the incident or the illness; and that the police involvement is non-criminal.
- The Ontario *Human Rights Code* provides guidance to employers or volunteer agencies by clarifying that they may not discriminate based on a disability including mental health. Where they are informed of the circumstances, it may be discriminatory for an employer to choose not to hire based on non-criminal information disclosed through a vulnerable person screening.

How long will the police record last?

- Different police forces have different rules as to the retention of records. Generally records are kept for 5 years.

Can I have the police record destroyed or altered?

- You should ask the police service in the municipality where you reside for their policy on the collection, use, disclosure and retention of information in

police records and for vulnerable person screenings. This will help you understand their practices and indicate whether they have procedures for correcting, excluding, or destroying information on record.

- Currently, there is no specific province-wide standard for these police information practices. Nevertheless, you may request that the police:
 - remove information about non-criminal involvement under the *Mental Health Act* from your record;
 - correct any inaccurate or discriminatory information contained in the record;
 - use their discretion to exclude your medical information from a vulnerable person screening on the basis that it is irrelevant.

What can I do if the police will not destroy or exclude my medical information?

- Make a police complaint about the inclusion of your personal health information in the police records check. Complaints should be made in writing and directed to the Ontario Civilian Commission on Police Services (OCCOPS). You can call them toll free at: 1-888-515-5005 or in Toronto at: 416-326-1189. You can also visit their website at: www.occps.ca/ . The complaint is usually investigated by the division that holds your records.
- File a human rights application with the Ontario Human Rights Tribunal. The Tribunal can consider whether the conduct of the police violates the Human Rights Code for disability-based discrimination. You can either file an application directly with the Human Rights Tribunal or seek the assistance of the Human Rights Legal Support Center. For more information, refer to our InfoGuide “Human Rights Complaints” available at www.ppaio.gov.on.ca/inf-hrc.html .
- You may also wish to make a complaint to the Office of the Information and Privacy Commissioner of Ontario under the *Personal Health Information Protection Act* if your personal health information has been included in the search. You can contact the Commissioner toll free at: 1-800-387-0073 or within Toronto at: 416-326-3333.

How do I know what is included in my police record?

- You may request a copy of the record from the police service in the municipality where you reside. You may have to file separate requests with other police services if you have lived or had contact with the police in other areas.
- Most police stations have pre-printed forms to fill out and you may have to pay a small fee.

- However, some police services will not release the information unless you are applying for an employment or volunteer position that has signed an agreement with the police service.

Questions?

- The Mental Health Police Records Check Coalition, a group of stakeholders, believes that the disclosure of non-criminal mental health information is discriminatory. More information about the Coalition and its work can be found at: www.ppao.gov.on.ca/sys-pol.html.
- The Information and Privacy Commissioner has prepared a document about police records checks which can be found at: www.ipc.on.ca/images/Resources/up-1policebkg.pdf.
- If you have questions about your rights as a psychiatric client, contact your local Patient Advocate or call the central office of the Psychiatric Patient Advocate Office at 1-800-578-2343.