

# *If you wanted to know...*

## *What is involved if you are asked to provide a Police Background Check?*

*... Read on ...*

What right do employers, volunteer recruiters, regulators, landlords and educational institutions (“organizations”) have to demand a police report about your past activities?

What responsibilities do police and organizations have in relation to the conduct and use of information in police records?

What are your rights when you are requested to provide a police records report or to agree to the employer or others obtaining such a report?

### **A word about terminology**

Police background checks are also sometimes called police reference checks, criminal records checks, criminal reference checks, criminal background checks, or police records checks. We use the term “background check” rather than “records check” or “criminal records check” because these latter terms may lead people to believe that the police only provide information about a person’s criminal record. In fact, a police report may also include other information about an individual.

### **What is a police background check (PBC) and what does it involve?**

When you apply for some jobs, to participate in some volunteer activities, to rent an apartment,

to enroll in some educational programs, or to obtain a licence to engage in certain businesses and professions, you may be asked to agree to have the police check their records for information about you and provide a report on their findings to the employer, volunteer agency, landlord, school, or regulator.

The purpose of this check is to assist an organization in determining whether you have engaged in any past conduct that would suggest that you are not a suitable candidate because of concerns about your honesty and integrity or the safety of others in your care. Typically, the PBC forms part of an organization’s screening process that also includes other methods of assessing suitability such as interviews and reference checks.

### **What information do police records contain?**

Everyone knows that police databases will contain an individual’s “criminal record”; that is, a record of crimes for which the individual has been convicted. However, police databases often contain a wide variety of other information as well. This may include information about complaints made by, or about an individual, information about an individual’s mental





health, information about pending charges and charges that resulted in an acquittal or other non-conviction disposition, and allegations of child or spousal abuse. In fact, if you have had any contact with the police or have come to the attention of the police for any reason, this may be recorded in police records.

## **What records will the police search as part of a background check?**

If your local police force is requested to do a background check, they will search their own records and they may also contact other local police departments in Canada and the United States. They will usually contact the Canadian Police Information Centre (CPIC), operated by the RCMP. CPIC maintains several databases containing a variety of information about individuals, including those who:

- Have a criminal record for any Criminal Code or other federal statute offence;
- Have been judged not criminally responsible for an offence because of mental disorder;
- Have federal or provincial charges pending; or
- Are on probation or subject to a Prohibition Order.

The police may also request information about you from a U.S. national crime database and U.S. state crime databases.

As indicated above, the range of information in police databases may vary considerably.

## **Under what circumstances will a PBC be requested?**

It is becoming standard practice for a PBC to be requested whenever an individual is

applying for a job, an educational opportunity, or volunteer position that gives the individual access to vulnerable individuals such as children, the elderly or the disabled, a security-sensitive position, or where the individuals will have access to large amounts of money.

In addition, various statutes and municipal licensing bylaws state that before an individual can be licensed to practise a profession, trade or business, the regulatory agency must obtain a PBC. For example, this kind of screening is required for teachers, taxi cab drivers, and staff of nuclear power plants.

## **What information will the police provide?**

Although the police may have a great deal of information in their records, they will not necessarily provide all of it as part of a background check. On the other hand, they may not limit their disclosure to records of criminal convictions.

Where the PCB is required by statute or bylaw, the law often states specifically what information the police are required to provide.

In most other cases, what the police provide in response to a request for a background check will depend on the policies of the individual police department as well as what is requested by the organization. In some cases, police departments have agreements with individual employers and volunteer agencies setting out what information they will provide to each of them.

The police will generally provide information about convictions for criminal offences. However, except in certain circumstances where the law or police department policies restrict the information that the police may provide, the police may provide any other information



they consider relevant to the request. This could include information about you as a complainant, witness, victim of an offence, subject of an open or closed investigation, or subject of surveillance or intelligence gathering

## **Can a PBC check be conducted without my knowledge and consent?**

Ontario's *Police Services Act* allows police to disclose information about individuals without their knowledge and consent under some circumstances; for example, where the police have a reasonable belief that the information will reduce the risk of the individual harming others.

However, generally the police will not conduct a PBC or notify a prospective employer or other person of the results of a PCB unless you apply to the police yourself or you consent in writing to the employer or other person applying to the police.

## **Do I have to consent to a PBC?**

If you are asked by an organization to apply for a police check yourself, or to consent to them applying on your behalf, you are free to refuse. However, if you refuse to apply for the PBC or to consent to the organization obtaining the information, the organization may decide not to continue to consider your application (except under certain circumstances such as those discussed below relating to the *Ontario Human Rights Code*).

## **At what point might an organization request a PBC?**

The usual practice is that organizations such as employers and volunteer agencies will not ask

for a police report until they have decided that you are otherwise suitable for the position and they have made an offer to you, conditional on a satisfactory police report.

## **Is there any information about me that the employer may not obtain from the police nor use in making a decision about my suitability?**

Under the *Ontario Human Rights Code*, a prospective employer may not discriminate against an applicant because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, same-sex partnership status, family status, or handicap. Handicap may include a drug or alcohol addiction or a mental or physical illness.

In addition, employers may not discriminate on the basis of a prior criminal offence for which a pardon has been granted under the *Criminal Records Act*, or because of provincial offences (such as municipal bylaw offences or traffic tickets). Therefore, generally, employment decisions cannot be based on the fact that a person has been convicted of a criminal offence after a pardon has been granted, or the fact that a person has been convicted of a provincial offence.

Individuals with mental illness may come into contact with the police for many reasons that are not criminal in nature. For example, if an individual has been escorted by the police to a mental health facility because of a mental illness, this may appear in police records, but an employment decision cannot be based on this information.

However, there are exceptions to the rule that pardoned criminal offences, provincial



offences, and mental illness cannot be used to deny employment. An employer may obtain this information and take it into account in making an employment decision if a clean record for the particular kind of offence is a *bona fide* qualification because of the nature of the employment. For example, where a job involves contact with children, it may be permissible for the police to disclose a conviction for an offence under provincial child protection legislation, or a criminal offence involving violence, for which a pardon has been granted, and for the organization to use the information in determining suitability.

Accordingly, employers should not ask the police to provide information about pardoned criminal offences, provincial offences, or mental illness unless the offence or illness is relevant to the person's ability to perform the essential duties of the job. Similarly, the police should not provide information about pardoned criminal offences, provincial offences, or mental health unless it is relevant to the applicant's ability to perform the duties of the particular job.

For further information about your rights under the *Ontario Human Rights Code* contact the Ontario Human Rights Commission toll-free at 1-800-387-9080.

The federal *Criminal Records Act* also prohibits police from disclosing convictions for which a pardon has been granted. However, the *Act* contains an exception relating to sex offenders. If an individual convicted of a sexual offence for which a pardon has been granted applies to work with an organization responsible for the well-being of children or other vulnerable individuals, either as a volunteer or for pay, the organization may request the individual to sign a consent authorizing the police to disclose the individual's conviction for the sexual offence. If the police are provided with this consent,

they may disclose the sexual offence to the organization. The organization is not permitted to use this information for any purpose but to assess the candidate's application.

## **What is the procedure for obtaining a PBC?**

Forms to request a PBC are usually available from local police. Normally, individuals must submit the application form in person at their local police station or at police headquarters. Sometimes, police departments, employers, or volunteer agencies have an agreement permitting the employer to submit the application on behalf of the applicant. Police usually require applicants to verify their identity and residence address by providing documents such as driver's licence or other official documents.

## **Must I pay a fee for a PBC?**

Fees for preparing a background report vary from one police service to the next, but generally range from \$15 to \$60. There is no law limiting what a police department may charge. Usually, the applicant is required to pay the fee. However, some employers will cover the cost. Some volunteer agencies have an agreement with the police to waive the fee.

## **I want to rent an apartment. Can the landlord require a PBC?**

A landlord renting to a tenant is engaging in a commercial activity. Therefore, the landlord's request for information is governed by the federal *Personal Information Protection and Electronic Documents Act (PIPEDA)*. *PIPEDA* stipulates that an organization shall not, as a condition of supplying a service, require an



individual to consent to the landlord collecting personal information beyond what is necessary to protect the landlord's legitimate interests. The amount and type of information collected must be limited to what is necessary to fulfill these purposes.

If you believe that a landlord is asking the police to provide more information than is necessary to determine whether you are a suitable tenant, you may contact the Privacy Commissioner of Canada at 1-800-282-1376 or online at [www.privcom.gc.ca](http://www.privcom.gc.ca). for more information about your rights under PIPEDA.

## How can I protect my interests if I am asked to agree to a PBC?

There is always a possibility that information provided by the police will be incorrect or incomplete, or will include information that is embarrassing but not relevant to a candidate's suitability for a position.

There are several steps that you can take to reduce the possibility of inappropriate disclosures to prospective employers and other organizations that request a PBC:

- If you are asked to sign a consent to a PBC, consider carefully what you are consenting to. If the wording of the consent form does not make it clear what information the organization is asking the police to provide, ask the organization to revise the consent to make it more specific. The organization should only ask the police for information that is relevant to whether you are suitable for the particular position. Is the organization only asking for information about criminal convictions? If so, is the request for all criminal convictions, or only certain categories of offence that are

relevant to the position you are seeking? Is the employer also asking the police to provide other information they have about you? What kinds of other information?

- Consider applying for the police report yourself so that you have an opportunity to review it before it is given to the organization and to correct inaccurate information or explain information that may be of concern to the organization.
- If you apply to the police department yourself, the police may ask you to sign a consent permitting them to forward their report to the organization. *Read this consent carefully.* It should specify what information the police will include in the report. If it is not specific, consider amending the consent form to state more specifically what information will be provided. For example, will the police only provide information about criminal convictions, or will they also provide information about other contacts you have had with the police?
- If you are consenting to the employer obtaining the report directly from the police, before you sign the consent, consider asking the employer to agree to provide you with a copy of the police report and give you an opportunity to discuss any information in the report that may be of concern before the employer makes a final decision about whether to employ you.
- If you have concerns about whether the conduct of a PBC or the use of the information disclosed in the police report may violate your human rights, you may consider contacting the Ontario Human Rights Commission.



## What can I do about inaccurate or incomplete information in a police report?

Police records may contain inaccurate or incomplete information about you. For example, the records may not reflect the fact that a criminal charge was withdrawn or a criminal conviction was overturned, or that a police investigation of you ended when another person was convicted of the offence at issue. If the police report contains inaccurate or incomplete information about you, you may request the police to correct the information or attach a statement to it explaining why you disagree with the report. You may also request that the police notify anyone to whom they have provided this information in the past year of the correction or statement of disagreement.

If the police refuse your request, you may appeal this decision to the Information and Privacy Commissioner/Ontario. The Commissioner's toll-free number is 1-800-387-0073.

## I was charged with an offence, but not convicted. Will the police records be destroyed?

In 2002, the Ontario Court of Appeal ruled that individuals without a prior conviction have the right to request that the police destroy their records relating to charges that did not result in a conviction for an offence (non-conviction dispositions), pursuant to the protections afforded to privacy under section 8 of the *Canadian Charter of Rights and Freedoms* (*R. v. Dore*, [2002] O.J. No. 2845).

This destruction of the police records, including fingerprints, is called "expungement." Expungement requests may be made to the police force that first collected the arrest records. However, you may also need to consider whether

other police forces have subsequently created or retained records referring to the arrest, the charges laid, and the disposition of the charges, since expungement by one police force may not result in expungement of the same information in the records of other police forces.

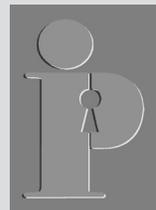
## How can I obtain a pardon?

As mentioned above, under some circumstances a person convicted of an offence can obtain a pardon. The National Parole Board (NPB) has the power to grant, refuse to grant, or to revoke a pardon. There is a cost for this, and it may take a year or longer for a pardon application to be processed and granted. To apply for a pardon, you need to obtain a "Pardon Application Guide" from the NPB. A lawyer or agent is not necessary. You can visit the Pardons Page of the NPB's website for more information at [www.npb-cnrc.gc.ca/pardons/pardon\\_e.html](http://www.npb-cnrc.gc.ca/pardons/pardon_e.html).

Pardons Canada is a federal non-profit organization separate from the NPB, which assists individuals in removing a past criminal offence from the public record. There is a charge for this service. You can phone their anonymous telephone support line at 416-929-6011 or visit their website at [www.pardons.org](http://www.pardons.org) to get more information about fees and the process of obtaining a pardon.

## Legal Advice

You may wish to discuss expungement issues, together with issues concerning your access and correction rights, with a lawyer to make the best judgement about whether and how to proceed with an expungement request or whether to file an access or correction request under municipal or provincial privacy legislation or under federal privacy law, and, if so, which requests to file and in what sequence.



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is published by the **Office of the Information and Privacy Commissioner/Ontario**.

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