



February 3, 2023

Michelina Longo
Director, External Relations Branch, Public Safety Division
Ministry of the Solicitor General
George Drew Building, 12th Floor
25 Grosvenor Street
Toronto, ON M7A 1Y6

Dear Michelina Longo:

RE: Regulation Registry Proposals 22-SOLGEN013, 22-SOLGEN029, Proposal 22-SOLGEN021, and 22-SOLGEN011

On December 21, 2022, the Ministry of the Solicitor General (the Ministry) posted seven regulatory proposals under the *Community Safety and Policing Act, 2019 (CSPA)* for public input with a deadline of February 4, 2023, for comments. The *CSPA* will repeal and replace the *Police Services Act*, the legislation currently governing the standards and framework of policing in Ontario.

The Ministry consulted with the Office of the Information and Privacy Commissioner of Ontario (IPC) on the privacy and access to information implications of the *CSPA* and several earlier *CSPA* regulatory proposals, including in the summer of 2021. While we were not consulted in the lead up to the December 2022 postings, we are pleased to provide you with these high-level comments on four proposals that, on their face, relate to the IPC's mandate:

1. Proposal 22-SOLGEN013 – Disclosure of Personal Information
2. Proposal 22-SOLGEN029 – The Collection of Identifying Information in Certain Circumstances – Prohibition and Duties
3. Proposal 22-SOLGEN021 – Matters Respecting the Appointment and Functions of Special Constables and the Authorization of Special Constable Employers
4. Proposal 22-SOLGEN011 – Code of Conduct for Special Constables

In addition, we would like to meet with you and your team to learn more about all seven proposals, including to better understand whether any of the other proposals raise privacy and access to information issues and to provide the Ministry with further comments on the four proposals discussed in this letter.

The December 2022 postings indicate that the *CSPA* is designed to “modernize policing and enhance community safety in Ontario.” As the office with the mandate to protect the privacy and access to information rights of Ontarians within the public sector, the purpose of our comments and recommendations is to help ensure that these regulations include measures to support good governance of personal information, and promote transparency, while protecting the privacy of Ontarians. In



addition, we believe that these recommendations will support consistent, effective, and accountable policing across Ontario, in relation to both police officers and special constables.

1. Proposal 22-SOLGEN013 – Disclosure of Personal Information

The regulation advanced in *Proposal 22-SOLGEN013* aligns very closely with the *Disclosure of Personal Information* regulation in force under the *Police Services Act*. In essence, the regulation provides police with critical instructions when it comes to the disclosure of defined classes of personal information about individuals under investigation or accused, convicted or found guilty of various offences under the *Provincial Offences Act* and *Criminal Code*. Provided these disclosures are made in accordance with the provisions of the regulation — including the requirement that disclosures must be reasonable in the circumstances and consistent with the law — the *CSPA* deems that these disclosures comply with section 32(e) of the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)* or section 42(1)(e) of the *Freedom of Information and Protection of Privacy Act (FIPPA)*.

In this context, section 8 of the regulation permits the disclosure of personal information to one of three listed classes of recipients related to individuals who are under investigation or charged with, convicted of or found guilty of an offence under any federal or provincial statute to a listed recipient. The three classes of recipients are:

- a police service in Canada;
- a correctional or parole authority in Canada; or
- a person or agency engaged in the protection of the public, the administration of justice or the enforcement of or compliance with any federal or provincial statute, regulation or government program.

The regulation further provides that to comply with section 8, the contemplated disclosure must be “required for the protection of the public, the administration of justice or the enforcement of or compliance with any federal or provincial Act, regulation or government program.”

The IPC recommends that the Ministry amend the regulation in relation to the third listed recipient by either adding clarifying terms or including a definition of persons or agencies “engaged in the protection of the public.” The amendment should make it clear what is meant by “protection of the public” and what might constitute sufficient engagement with relevant protective activities, functions, or mandates. It is essential that the scope not be so broad that it permits disclosures to address trivial or minor harms or disclosures to persons or agencies with an insufficient connection to the protection of the public or a segment of the public.

2. Proposal 22-SOLGEN029 – The Collection of Identifying Information in Certain Circumstances – Prohibition and Duties

Proposal 22-SOLGEN029 speaks to a regulation commonly known as the *Police Services Act Street Check regulation* and proposes to “preserve the content” of this regulation “overall.” The IPC is supportive of the preservation of the current street check regulation subject to two caveats. First, we note that it does not appear that the Ministry’s proposed approach has addressed any of recommendations in Justice Tulloch’s December 2018 [*Report of the Independent Street Checks Review*](#) (the “*Tulloch Report*”). In addition, it does not appear that the public has been provided any information

related to how or whether the government's approach amounts to an adequate response to the *Tulloch Report*. Accordingly, we recommend that the Ministry re-post its street check focused regulatory proposal alongside further information reflecting how its proposal responds to the *Tulloch Report*.

Secondly, the IPC recommends that the regulation be amended to establish a schedule for the secure destruction of the personal information associated with legacy street check records collected by Ontario police services prior to the date the regulation came into effect, being January 1, 2017. The IPC has consistently made this recommendation since the government first consulted the public about a street check regulation in 2015. Our position, which is further detailed in a number of public submissions (e.g., [here](#) and [here](#)), is consistent with recommendations of Justice Tulloch and the Ontario Human Rights Commission. It is also consistent with what police leaders have acknowledged, namely, that legacy street check records have a limited and depreciating intelligence value, but an ongoing and heightened impact on privacy and dignity.

Proposal 22-SOLGEN029 goes on to indicate that the government intends to make three specific changes to the *Street Check regulation* in the current *Police Services Act*. First, the "categories for the collection of race data under this regulation will [be] align[ed] with Ontario's Anti-Racism Data Standards." Secondly, "provisions within the regulation related to training will be moved into a separate *CSPA* regulation dealing with training." Thirdly, "to avoid duplication within the *CSPA*, the section in the *Police Services Act* regulation related to the [Solicitor General's] authority to compel information from police services will be removed from the *CSPA* version of the regulation as an equivalent power already appears in s. 4 (2) of the *CSPA*."

Subject to one caveat, the IPC has no objections to the three specific changes described by the Ministry in *Proposal 22-SOLGEN029*. With respect to that caveat, the IPC simply wishes to remind the Ministry that the IPC continues to believe that the data integration initiative associated with section 4 of the *CSPA* should be repealed altogether and replaced by a data integration program conducted under the comprehensive suite of protections and controls provided for under Part III.1 of *FIPPA*.

3. *Proposal 22-SOLGEN021 – Matters Respecting the Appointment and Functions of Special Constables and the Authorization of Special Constable Employers*

The *CSPA* and the regulation in *Proposal 22-SOLGEN021* permit:

- police service boards and the Commissioner of the Ontario Provincial Police (OPP) to appoint special constables; and
- the Minister of the Solicitor General to approve entities listed in paragraph 1 of section 7 of the regulation to act as special constable employers.

With respect to the latter, while it is clear that several of these entities are subject to provincial public sector access and privacy legislation (e.g., ministries, municipalities, local boards, and universities), in other cases it is not clear what if any such legislation applies (e.g., in relation to an entity that employs police officers or peace officers "in another jurisdiction"). In this context, we recommend that the regulation be amended to explicitly state that no entity will be eligible for approval as a special constable employer unless the entity is subject to *MFIPPA* or *FIPPA*, or substantially similar Canadian public sector access and privacy legislation.

In addition, we recommend that the regulation be amended to require that the OPP Commissioner, police service boards, and special constable employers provide the public with annual reports about their special constable appointees, including the number of special constables they employ or appoint, and the functions, powers, and other conditions attached to their certificates of appointment, including in relation to the weapons and equipment they are entitled to use.

4. Proposal 22-SOLGEN011 – Code of Conduct for Special Constables

The *CSPA* requires special constables to comply with the *Code of Conduct* prescribed by regulation (the *Code*). The *Code* establishes duties and expectations, including a provision that sets limits on the information that a special constable can disclose to the public. In particular, section 16(1) provides that “a special constable shall not disclose to the public information obtained or made available in the course of their duties as a special constable except as authorized by their employer or as required by law.” This section appears to prohibit officers from disclosing information to the public that would otherwise be permitted under *MFIPPA* or *FIPPA*. We recommend that the *Code* be amended to ensure special constables are not barred from disclosing information to the public in compliance with *MFIPPA* or *FIPPA*, including personal information the disclosure of which is necessary to prevent serious harm or which meets the compelling public interest disclosure test.

The *Code* indicates that a special constable will be in contravention of the *Code* if they:

- are found guilty of an offence under legislation such as the *Criminal Code* and the *Controlled Drugs and Substances Act*;
- knowingly infringe or deny a person’s rights or freedoms under the *Canadian Charter of Rights and Freedoms*; or
- treat any person in a manner that would contravene the *Ontario Human Rights Code*.

No comparable provisions exist in the *Code* in relation to contraventions of *MFIPPA* and *FIPPA*. We recommend that the *Code* be amended to provide that a special constable will be in contravention of the *Code* if they are found guilty of an offence as defined in section 48 of *MFIPPA* or section 61 of *FIPPA*.

Conclusion

We look forward to re-engaging with the Ministry on the privacy and access to information related matters associated with bringing the *CSPA* into force, including the regulatory proposals posted on December 21, 2022, and any subsequent regulatory proposals that raise access or privacy implications.

In the interest of transparency, we will be making this submission available on our website.

Sincerely,



Sandra Ferguson
Director of Policy