

August 4, 2004

Alan Heisey  
Chair, Police Services Board  
40 College Street  
Toronto, ON  
M5G 2J3

Dear Mr. Heisey:

**RE: Revised Board Policy for the Destruction of Adult Photographs,  
Fingerprints and Criminal History**

As the Information and Privacy Commissioner of Ontario, I am writing to you to express my concerns with respect to the proposed revisions to the current Toronto Police Service practice regarding the destruction of photographs and fingerprints of individuals that have been charged with a criminal offence, but have not been convicted.

In my view, the proposed changes in policy are unwarranted, and would constitute an unreasonable infringement of the privacy rights of individuals. Such changes would also be contrary to commonly accepted principles underlying the presumption of innocence that exist in our criminal justice system.

Under the current policy, individuals that have been charged, but not convicted of a crime are able to have their fingerprints and photographs expunged from the police record by making a request in writing to the Toronto Police Service. Currently, there is no fee associated with the application, and records are destroyed in response to any application regardless of the nature of the charge.

It is my understanding that the proposed changes in policy would:

provide the Police with a discretionary power to refuse to expunge an applicant's record based on the nature of the offence giving rise to the charge; and  
create a \$50.00 application fee for the processing of such requests.

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In my view, both the creation of this discretionary power to refuse requests, as well the application fee is unreasonable. Citizens expect that once an individual has been exonerated of a charge, he or she will be free to return to society with a 'clean slate,' and should not be adversely

affected by a prior criminal charge that did not lead to a conviction. This right should apply regardless of the charge.

Likewise, these individuals should not be faced with a costly, and potentially complicated application process to have their records cleared. In many cases, these individuals may have already encountered significant legal fees in relation to these charges, and the imposition of further fees would be unjustified. I am also concerned that the amount of the proposed fee may constitute an unfair barrier to individual's ability to pursue this right.

I would also like to note that while I am generally opposed to the practice of maintaining fingerprints and photographs of individuals that have been acquitted, I do realize that there may be a limited number of exceptional cases where the retention of such records may be necessary. For instance, situations involving ongoing investigations, or cases of particularly serious crimes, may necessitate the retention of this type of information.

However, I would recommend that if such a situation were to arise, a process be developed by the Police Service that ensures that record retention occurs in a manner that is open and transparent to those involved, including a requirement to notify the affected individual that his or her records will be maintained, and providing them with the opportunity to present a case for expungement.

In addition, with respect to the current process, I recommend that it be altered so that individuals no longer have to submit an application to have their personal identifiers expunged from the record when they have been acquitted and when a charge has been withdrawn or the matter is no longer being pursued. In my opinion, the Police Service should only retain the minimum amount of personal information necessary, and should destroy extraneous information as a matter of course.

Thank you for considering my concerns. I hope that any change in policy take place with due consideration to the privacy rights of individuals involved. Please do not hesitate to contact my office if you would like to discuss these issues further.

Sincerely yours,

Ann Cavoukian, Ph.D.  
Commissioner