

Disclosure of Police Occurrence Reports to the Ontario Parole Board

PREAMBLE

WHEREAS the Parties identified herein wish to establish a best practice protocol relating to the “Purpose” set out below to be shared with all interested parties (including all Police Services in Ontario);

AND WHEREAS the Parties previously entered into a protocol in 2021 that contained interim provisions that the Parties now wish to resolve and make those provisions and other changes a part of a long-term, transparent process;

AND WHEREAS this protocol replaces all previous protocols (including the 2021 protocol) and understandings regarding the sharing of police occurrence reports for the purpose of parole hearings and decisions;

AND WHEREAS the Ontario Association of Chiefs of Police is the voice of Ontario Police Leaders and provides a channel for police leaders to share ideas and cooperatively create solutions to meet the challenges facing police leadership in Ontario;

AND WHEREAS the Ministry of the Solicitor General is responsible for and provides oversight of policing and correctional services (including probation and parole officers who prepare Pre-Parole Reports) in Ontario and have the ability to assist in ensuring that this Protocol is shared with all relevant and necessary organizations;

AND WHEREAS the Ontario Parole Board, a constituent tribunal of Tribunals Ontario, is an independent statutory entity that considers applications for supervised conditional release of offenders sentenced to Ontario provincial correctional institutions in accordance with the federal *Corrections and Conditional Release Act*, the federal *Prisons and Reformatories Act*, the Ontario *Ministry of Correctional Services Act*, and its Regulation 778

NOW THEREFORE, the Parties to this Protocol agree as follows:

PURPOSE

- Establish a transparent information-sharing protocol between the Ministry of the Solicitor General (SOLGEN), the Ontario Parole Board (OPB) and the Ontario Association of Chiefs of Police (OACP) (collectively, the Parties) regarding police occurrence reports (PORs) in order to support OPB decision-making.

CONTEXT

- The OPB requires a range of information to discharge its mandate and make informed risk-based decisions on applications for conditional release. The OPB is obliged to ensure procedural fairness. This includes disclosing relevant information to parole applicants, subject to the OPB’s screening of sensitive information prior to its disclosure.

- In 2019, the OPB announced a change in practice which included providing disclosure of relevant information upon request to parole applicants and their legal representatives. This change was implemented to ensure consistency with s. [44\(2\)\(d\)](#) of Regulation 778, and also to address recommendations made in the 2017 Sapers Report, which examined correctional practices in Ontario. Specifically, the report noted that procedural fairness requires that an administrative decision-maker (such as the OPB) disclose the information relied upon so that the individual knows the case that they need to meet. This is a key element of procedural fairness.

Ministry of Correctional Services Act Reg. 778 s. 44. (2)

Where the Board conducts a hearing to determine whether or not an inmate is a suitable inmate to be granted parole,

(d) the Board shall, in the form and manner that it considers appropriate, inform the inmate of any information in the Board's possession that may affect its decision. R.R.O. 1990, Reg. 778, s. 44 (2); O. Reg. 69/20, s. 8 (1).

Ontario Parole Board Practice Guidelines

PART X: Disclosure

A. Statutory obligation to provide disclosure

1. Ontario Regulation 778 requires the Board to inform an applicant of any information that may affect the Board's decision before a parole hearing. The Board has broad discretion about what it provides and how it is provided. The Board provides disclosure upon request [Reg 778, s. 44(2)(d)].

- In compliance with Regulation 778, [s. 44 \(1\)](#), Probation and Parole Officers (PPO) prepare Pre-Parole Reports (PPRs) for provincially sentenced offenders who are scheduled for a parole hearing.
- Police services share PORs with PPOs; however, the information received may or may not be redacted and is typically marked confidential. Further, redaction criteria, and the extent to which redactions are supported with explanation, may differ across police services. For PPOs, this information sharing is essential to inform risk assessments, case management, victim safety, etc. A November 17th, 2009 All Chiefs Memorandum 09-0074 (ACM) provides guidance on the disclosure of police records to correctional authorities. The ACM does not reference disclosing/releasing PORs to parole applicants or their legal representatives.
- The police are not contacted by OPB or SOLGEN when a request for disclosure is submitted and therefore have no involvement in the current POR redaction process.

- The OPB also has its own rigorous disclosure process to ensure that no information is disclosed that could jeopardize the safety of any person, the security of a correctional institution or the conduct of any lawful investigation. It may also withhold any information that OPB determines should not be disclosed on the grounds of public interest. This protocol reflects the criteria in [s. 141\(4\)](#) of the *Corrections and Conditional Release Act* (Canada).
- To standardize the information-sharing process, SOLGEN worked with OPB and Legal Services to prepare a disclosure ready PPR document that summarizes third-party information contained within the SOLGEN file: Pre-Parole Report Template Instructions, as amended from time to time and:
 - OPB has indicated that the disclosure-ready PPR does not replace critical source documents in the SOLGEN file. Access to the POR in addition to the summary provided in the PPR is critical to public safety.
- To preserve information-sharing practices as outlined in the 2009 Memorandum of Understanding between Police and SOLGEN and to support full transparency to police services that PORs may be further shared with potential parole applicants and their legal representatives, SOLGEN has requested that the OACP communicate OPB requirements and share this Protocol as an endorsed best practice.
- The Parties agree on the importance of ensuring procedurally fair conditional release proceedings. The Parties also agree that public safety and existing stakeholder relationships may be jeopardized if sensitive information is inappropriately disclosed.

PROTOCOL

- SOLGEN will provide OPB with a copy of the POR as received from police services and OPB will not release/share a copy of the POR with legal representatives/applicants; this report would only be used by the parole board members.
- The PPO will provide to OPB a POR summary in the PPR.
- OPB will not provide a POR to a parole applicant or their legal representative in response to a disclosure request. The OPB will instead provide the POR summary that is included in the PPR directly to a parole applicant or their legal representative upon receiving a disclosure request.
- OPB may forward PORs for the purposes of facilitating parole transfers under the *Transfer of Parole Jurisdiction Agreement* as amended or replaced from time to time (*Parole Transfer Agreement*), which governs provincial and territorial transfers of parole supervision. The OPB may provide the POR to the receiving Service or receiving Board within the meaning of the *Parole Transfer Agreement* without the need for further permission from or notice to the providing Police Service, so long as OPB makes it clear in writing when the POR is sent that it is being provided subject to the following conditions:
 - The use of the information is restricted to the purpose for which it is provided;

- The information shall only be used by the receiving Service or the receiving Board; and
 - The receiving Service or Board shall not remove any redactions or other privacy protections that have been applied to the POR, or use the POR for any purpose other than the purpose for which it was provided, without the permission of the relevant police service. Any request for permission in this regard shall be made through the OPB.
- The sharing of information with OPB by police is pursuant to the lawful authority to do so by virtue of deemed compliance with Ontario privacy legislation governing police services - currently pursuant to [s. 41\(1.4\)](#) of the *Police Services Act* and paragraph 5(1)(b) of its [Regulation 265/98](#):

5. (1) A chief of police or his or her designate may disclose any personal information about an individual if the individual is under investigation of, is charged with or is convicted or found guilty of an offence under the *Criminal Code* (Canada), the *Controlled Drugs and Substances Act* (Canada) or any other federal or provincial Act to,

...

(b) any correctional or parole authority in Canada.

- In the event of any formal requests for access to OPB case file documents specific to PORs, including by a parole applicant or their legal representative, the OPB will direct the requester to relevant police service
- OPB will provide notice to the applicable police service as soon as is practicable upon receiving:
 - Notice of an application for judicial review or other court proceeding that may require production of the POR;
 - A court or tribunal order requiring production of the POR or other similar order.
- Should any issues or disagreements arise regarding this Protocol, or the processes set out herein, the relevant police service and the OPB shall first attempt to reach a resolution, if applicable, having reference to this Protocol as a best practice. If that does not resolve the issue or disagreement, the Parties will attempt to reach a resolution.

This Protocol shall come into force on the date of the last signature of the Parties set out below.



Chief Nishan Duraiappah
President, Ontario Association of Chiefs of Police

2023/03/26

Date



Richard Stubbings
Assistant Deputy Minister, Public Safety Division

March 20, 2023

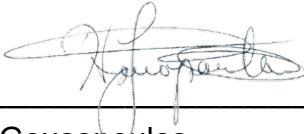
Date



Mercedes Watson
Assistant Deputy Minister, Community Services Division

March 20, 2023

Date



Harry Gousopoulos
Executive Director, Tribunals Ontario

March 22, 2023

Date



Simon Chapelle
Associate Chair, Ontario Parole Board

March 20, 2023

Date