



- SPECIAL PUBLIC MEETING -
- AGENDA -

**Auditorium
2nd Floor, Police Headquarters
Toronto, Ontario**

**Thursday,
April 24, 2014
at 6:00 PM**

Report to be Approved:

1. April 16, 2014 from Alok Mukherjee, Chair
Re: Community Contacts Policy – Approval, Implementation and Related Expenditures

Next Regular Meeting:

Date: Thursday, May 15, 2014
Time: 1:30 PM

Members of the Toronto Police Services Board:

Dr. Alok Mukherjee, Chair	Dr. Dhun Noria, Member
Councillor Michael Thompson, Vice-Chair	Councillor Frances Nunziata, Member
Councillor Michael Del Grande, Member	Mr. Andrew Pringle, Member
Ms. Marie Moliner, Member	

1. April 16, 2014 from Alok Mukherjee, Chair
Re: Community Contacts Policy – Approval, Implementation and Related Expenditures

April 16, 2014

To: Members
Toronto Police Services Board

From: Alok Mukherjee
Chair

Subject: COMMUNITY CONTACTS POLICY – APPROVAL,
IMPLEMENTATION AND RELATED EXPENDITURES

Recommendation:

It is recommended that:

1. The Board approve the appended Community Contacts policy;
2. The Board authorize me to develop an implementation plan and communications strategy with respect to the Community Contacts policy;
3. As a component of the implementation plan, the Board authorize me to invite proposals to design and conduct a community-based community satisfaction survey during 2014 using Participatory Action Research methodology in accordance with item 9 in the Community Contacts policy;
4. The Board authorize me, as an exception to its Special Fund policy, to expend an amount not to exceed \$75,000 from the Special Fund to cover the cost of designing, conducting, analysing and reporting results to the Board of the community satisfaction survey;
5. The Board approve the inclusion of a new program request in the Board's 2015 operating budget in an estimated amount of \$250,000 arising from item 10 in the Community Contacts policy;
6. The Board request the Chief of Police to provide a report within three (3) months on the disposition of contact information gathered prior to July 1, 2013 through the former Form 208, otherwise known as "Contact Cards," that served no public safety purpose as defined in the policy and the procedures; and also report on the development of a retention and destruction protocol consistent with the policy; and,
7. The Board receive the update on the costs of development of the Community Contacts policy outlined in this report.

Financial Implications:

The Board will have expended \$174,847 as of April 24, 2014, for the work of the Addario Group in developing the Board's Community Contact policy. It is anticipated that a further \$75,000 will be expended bringing the total costs of the policy development to \$250,000. Funds for this unbudgeted expenditure are available in the Legal Services Reserve Fund.

The inclusion of the data collection and analysis project in the Board's 2015 operating budget will result in an estimated 3.1% increase over the 2014 budget. More details of the impact on the budget request will be reported to the Board during the development of the 2015 proposed operating budget.

My recommendations No. 3 and 4, with respect to a community satisfaction survey, if approved, will result in the Special Fund being reduced by \$75,000. The Special Fund balance was \$1,792,410.96 as of April 16, 2014.

Background/Purpose:

In December 2013, on behalf of the Board, I retained Mr. Frank Addario of the Addario Group to develop the Board's Community Contacts policy. Mr. Addario has provided the Board with legal advice and assistance on all aspects of the policy including its implementation.

The Board designated Board member, Ms. Marie Moliner, and me as its liaison with Mr. Addario. Ms. Moliner and I have worked closely with him, with regular consultation with and direction from the full Board.

Approximately two years ago, the Board recognized that there were significant and long-standing concerns with the nature of contacts between police officers and members of the community, in particular, young people from racialized backgrounds and with the retention of information derived from these contacts in the police database. This practice has come to be known popularly as "Carding" and its impact on racialized youth has been termed "racial profiling." It was the Board's view that this practice had implications for public trust in and legitimacy of policing insofar as it was perceived to be undefined and to disproportionately single out young people of colour, especially the Black youth.

Since then the Board has been actively engaged in consideration of appropriate measures to ensure that contact between police and members of the community was legitimate, free from any discriminatory impact and promoted trust since such contact is fundamental to community-based policing. To this end, the Board established a "Streetchecks Sub-Committee" comprised, initially, of three Board members, Ms. Marie Moliner (Chair), Vice Chair Michael Thompson and Mr. Andy Pringle to steer the Board's work on this issue.

The Sub-Committee held consultations with the community and had regular discussions with the Chief and the Command on actions that were required. On its recommendation, the Board directed the Chief to provide, with immediate effect, a receipt after each community contact.

In November 2013, the Board turned its mind to the need to establish a policy. At a special public meeting where the Board heard public submissions on the elements of such a policy, it made a commitment to develop one as soon as it could.

The retention of Mr. Frank Addario was the culmination of this extended process. Since his retention, Mr. Addario has provided a legal opinion to the Board, carried out wide ranging consultation, held extensive discussions with the Chief, senior members of the police service as well as the Toronto Police Association, and given advice to the Board on an appropriate course of action consistent with its responsibilities as defined in the *Police Service Act*.

This proposed draft policy is the result of work carried out by Mr. Addario on behalf of, and in consultation with, the Board.

Discussion:

I recommend that the Board approve the proposed draft policy and authorize the development of an implementation plan and communications strategy.

Over the past approximately two years, a considerable amount of work has been done to address public concerns related to police community contacts both by the Board and the Toronto Police Service ('the Service').

In 2013, after significant community consultation and research, and based on legal opinions commissioned by the Chief of Police from three lawyers, Mr. Alan Gold, Mr. Don McLeod and Mr. Murray Segal, the Service prepared its report on police and community engagement ("PACER") containing thirty one (31) recommendations on how it proposed to deal with the issues through measures that included training, procedures, supervision and use of technology. The Service has also established a PACER Community Advisory Committee to assist in the implementation of the report's recommendations.

While the Service continues with the rolling out of the PACER recommendations, it has been understood that the Board will be establishing a policy. Indeed, this is one of the responsibilities of the Board under s. 31 of the *Police Services Act*, which states:

31. (1) A board is responsible for the provision of adequate and effective police services in the municipality and shall,

(c) establish policies for the effective management of the police force;

In keeping with this responsibility, the focus of work has been on the development of an effective Board policy governing police community contacts and it has involved a high level of engagement with the Chief of Police, members of the Command and members of the community. It should be recognized that the Chief has conveyed his full support for the policy being developed and the Service has participated in a collaborative effort with Mr. Addario.

A draft of the policy was released to the public in March 2014, and a special Board meeting was held on April 8 to receive response and suggestions. The final draft policy being proposed now has taken into consideration the input we have received.

It must be stated unequivocally here that the Board does not condone and explicitly condemns any police practice that may have a discriminatory impact on any member or section of the community, including, specifically, racial profiling. This is not only a matter of Board policy but also of law. Policing must be carried out in a manner that fully respects and implements obligations under the *Canadian Charter of Rights and Freedoms* (“the *Charter*”) and the *Ontario Human Rights Code* (“the *Code*”). It is believed, further, that practices consistent with this understanding are essential to promote legitimacy of policing as well as public trust and confidence in it.

The proposed policy, therefore, seeks to ensure that there is a proactive rights-based approach to the way in which members of the Toronto Police Service interact with members of the public. Such interaction is fundamental to community-based policing. Our officers must get to know the neighbourhoods they serve and they must be able to enter into conversations with residents of these neighbourhoods in order to provide effective service. They must be able also to gather and retain legitimate information. However, they must do so, and be trained and supervised to do so, within a clear framework, following an explicit definition of public safety, and in strict accordance with procedures that support this policy. As a rights-based policy, it also places an obligation to proactively inform members of the public of their rights under the *Charter* and the *Code*. As well, retention and use of information must be consistent with rights under the privacy laws.

Finally, the policy seeks to ensure transparency and accountability. To this end, there is a provision for an annual community-based assessment of impact of community contacts on public trust and confidence, an annual quantitative analysis of contacts using anonymized data using categories being developed with the assistance of the Information and Privacy Commission and regular public reporting.

It is a measure of the importance that the Board attaches to this policy that it will have direct oversight of these evaluation components.

One issue that needs to be addressed is that of the existing records. It is recommended that the Board request the Chief of Police to provide a public report to the Board within three (3) months on how he proposes to review, identify and dispense with records that do not meet the definition of public safety contained in the policy and the procedures.

Considerable work and thought has gone into the development of this critical policy. As the objectives and principles articulated in the proposed policy indicate, its overall intent is to promote positive police community interactions that assist with effective policing and public safety and to ensure that these interactions do not have a discriminatory impact based on any of the prohibited grounds.

Conclusion:

Therefore, it is recommended that:

1. The Board approve the appended Community Contacts policy;
2. The Board authorize me to develop an implementation plan and communications strategy with respect to the Community Contacts policy;
3. As a component of the implementation plan, the Board authorize me to invite proposals to design and conduct a community-based community satisfaction survey during 2014 using Participatory Action Research methodology in accordance with item 9 in the Community Contacts policy;
4. The Board authorize me, as an exception to its Special Fund policy, to expend an amount not to exceed \$75,000 from the Special Fund to cover the cost of designing, conducting, analysing and reporting results to the Board of the community satisfaction survey;
5. The Board approve the inclusion of a new program request in the Board's 2015 operating budget in an estimated amount of \$250,000 arising from item 10 in the Community Contacts policy;
6. The Board request the Chief of Police to provide a report within three (3) months on the disposition of contact information gathered prior to July 1, 2013 through the former Form 208, otherwise known as "Contact Cards," that served no public safety purpose as defined in the policy and the procedures; and also report on the development of a retention and destruction protocol consistent with the policy; and,
7. The Board receive the update on the costs of development of the Community Contacts policy outlined in this report.

Respectfully submitted,

Alok Mukherjee
Chair

AM
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TORONTO POLICE SERVICES BOARD

COMMUNITY CONTACTS

DATE APPROVED	mm/dd/yy (spelled out)	Minute No: PXXX/00
DATE(S) AMENDED		
DATE REVIEWED		
REPORTING REQUIREMENT		
LEGISLATION	<i>Police Services Act, R.S.O. 1990, c.P.15, as amended, s. 31(1)(c).</i> <i>Canadian Charter of Rights and Freedoms</i> <i>Ontario Human Rights Code</i> <i>Municipal Freedom of Information and Protection of Privacy Act</i>	
ASSOCIATED POLICIES	Race and Ethnocultural Equity Policy Human Rights Collection, Use and Reporting of Demographic Statistics	
DERIVATION		

Independent civilian oversight has always been necessary to maintain public trust in the police. The reform of police-community interactions needs to be public, transparent and Board-controlled.

The Board acknowledges that members of the Toronto Police Service are legally entitled to have conversations with members of the public. The Board recognizes that the way in which some conversations have been conducted and recorded has adversely affected individuals and communities and has had a demonstrated negative impact on public trust.

Public trust in the police is essential to effective policing. Creating a policy that governs interactions between Service and community members will enhance public trust and cooperation with the police. The collection, retention, use and disclosure of information gathered in ways consistent with this policy and for a valid public safety purpose can be a legitimate and effective policing tool.

In this policy, “Contacts” are non-detention, non-arrest interactions between Service and community members that involve the eliciting and/or recording of personal information. This policy is not intended to prohibit or guide informal greetings or conversations. “Community Safety Notes” (“CSNs”) are investigative records of information that will be generated by some Contacts.

The objectives of this policy are to:

- a. Improve police-community interactions and eliminate the collection, retention, use and disclosure of irrelevant personal information;
- b. Identify the circumstances in which it is appropriate to initiate a Contact or create a CSN;
- c. Eliminate discrimination from Contacts;
- d. Collect, retain, use and disclose information only to:
 - i. Ensure accountability in the initiation of Contacts and the creation of CSNs, and
 - ii. Fulfill policing duties under s. 42 of the *Police Services Act*;
- e. Improve community confidence in the Service's ability to provide non-biased policing;
- f. Enhance awareness of human rights and civil liberties under the *Canadian Charter of Rights and Freedoms* ("the *Charter*"), the *Ontario Human Rights Code* ("the *Code*") and Board policies;
- g. Ensure the provision of effective training on how to conduct Contacts in a way that promotes community trust; and
- h. Ensure effective oversight of Contacts by the Board through periodic, independent evaluation and public reporting of Contact-related data.

It is therefore, the policy of the Toronto Police Services Board that:

Principles

1. The Chief of Police will establish procedures regarding Contacts that:
 - a. Minimize the potential negative effects of Contacts on the community;
 - b. Reflect the goal of police legitimacy by ensuring Contacts are conducted in the spirit of trust building with the community and are directed toward effective policing;
 - c. Ensure compliance with the *Charter* generally and, in particular, the s. 9 protection against arbitrary detention and the s. 15 right to equal treatment under the law;

- d. Ensure compliance with the *Code* generally and, in particular, the s. 1 freedom from discrimination based on race, place of origin, age, colour, ethnic origin, gender identity or gender expression; and
- e. Ensure compliance with the *Municipal Freedom of Information and Protection of Privacy Act* (“MFIPPA”) generally and in particular, with Part II of MFIPPA.

Definition of Public Safety Purpose

2. Service members may only initiate and record Contacts that serve a valid public safety purpose.
3. The Chief will include in procedures a definition of public safety purpose that is consistent with this policy. The procedure will acknowledge the potential negative impact of Contacts on the community and prohibit the collection, retention, use or disclosure of irrelevant information.
4. Until the Chief prepares a policy-compliant definition of public safety purpose, the following applies:
 - a. Valid public safety purposes justifying the initiation or recording of Contacts are:
 - i. Investigating a specific offence;
 - ii. Preventing a specific offence;
 - iii. Ensuring the community member who is the subject of the Contact is not at risk; and
 - iv. Collecting intelligence relating directly to an identifiable, systemic criminal problem and pursuant to a Service or Division-approved initiative.
 - b. Purposes that do not justify the initiation, continuation or recording of Contacts are:
 - i. Gathering personal information for use in unspecified future investigation;
 - ii. Investigating an unsupported suspicion;
 - iii. Prolonging an interaction in the hope of acquiring the reasonable suspicion necessary to detain;
 - iv. Meeting a quota or performance target; and
 - v. Raising awareness of police presence in the community.

Initiating Contacts: Data Collection for Investigative Purposes

5. The Chief will establish procedures regarding the initiation of Contacts to ensure that:
 - a. Service members only initiate Contacts where they can articulate the public safety purpose of the information sought;
 - b. Service members do not consider race, place of origin, age, colour, ethnic origin, gender identity or gender expression in deciding whether to initiate a Contact unless one or more of these factors form part of a specific suspect, victim or witness description;
 - c. Community members know as much as possible in the circumstances about their right to leave and the reason for the Contact;
 - d. Service members understand that disengagement from a Contact is an acceptable, valued and sometimes necessary policing step; and
 - e. Contacts do not lead to the collection of irrelevant personal information.
6. A Contact is not in compliance with this policy if:
 - a. The community member does not freely participate in the Contact; or
 - b. The Service member elicits or attempts to elicit personal information without an articulable basis to believe the information will serve a public safety purpose.

Recording Contacts: Data Retention for Investigative Purposes

7. The Service may record information arising from Contacts in the form of CSNs where:
 - a. The Contact was initiated and conducted in compliance with this policy; and
 - b. Recording the information would serve a valid public safety purpose.
8. The Chief will establish procedures regarding the retention, use and disclosure of personal information arising from Contacts to ensure that:
 - a. Contacts do not lead to the retention, use or disclosure of irrelevant personal information;
 - b. Service members understand they have a duty not to complete CSNs where it becomes apparent during the course of a Contact that a CSN would serve no valid public safety purpose;
 - c. CSNs only contain information that serves a valid public safety purpose and contain the minimum personal information necessary to fulfill the public safety purpose for which they are prepared;

- d. The Service will not use the quantity of CSNs prepared to measure performance and productivity of individual Service members;
- e. Categories of information in CSNs are developed in consultation with the Ontario Human Rights Commissioner and the Office of the Information and Privacy Commissioner;
- f. Personal information collected during Contacts that are not in compliance with this policy is not retained, used or disclosed for any investigative purpose and is retained in a manner consistent with *MFIPPA*; and
- g. Personal information collected and retained before July 1, 2013 in CSNs, Field Information Reports (FIRs), Form 208s, Form 172s and Form R41s that are inconsistent with this policy is not retained in the investigative database. The Chief and the Board will work collaboratively on a retention and destruction protocol consistent with this policy.

Recording Contacts: Data Retention for Accountability and Transparency Purposes

9. The Chief, in consultation with the Board, will commit to collecting data about Contacts that can be used to evaluate the effectiveness of police services in Toronto. The community's level of satisfaction with police services will be a measure of effectiveness.
10. The Chief, in consultation with the Board, will determine the type of data that will be collected, the duration of its retention and the scope of any internal or external consultation or evaluation of Contacts. The Chief and the Board will work collaboratively to identify and retain any external consultant or evaluator.
11. The Chief will ensure that any information collected for the purpose of evaluating Contacts is non-identifiable, kept separately, is held in a database accessible for performance evaluation, risk management or professional standards and is not entered into the investigative database.
12. The Chief will give the Board any internal or external report or data related to Contacts upon request from the Board.
13. The Board and the Service will only use the data collected under this part of the policy to improve the effectiveness of police services in Toronto.

Training

14. The Chief will ensure that Service members at all levels, as appropriate, receive the training necessary to conduct Contacts in accordance with the law and Board policy. This training will include:

- a. Instruction about conducting Contacts in a manner that maximizes effective policing;
 - b. Instruction about conducting Contacts in a manner that promotes public confidence. This includes training about the importance of contacts which are free of discrimination;
 - c. Instruction about the principle enunciated by the Supreme Court of Canada (e.g., in *R v. Grant*) that detention can be psychological and that restrictive police conduct can create a detention;
 - d. Instruction about the importance of telling an individual that they are free to leave if they are not detained or arrested;
 - e. Instruction about the use of respectful language, tone and demeanour during Contacts; and
 - f. Instruction that Contacts are not a tool to be used to prolong an interaction in the hope of acquiring the reasonable suspicion necessary to detain.
15. The Chief will ensure that Service members who are reassigned or temporarily assigned to a new neighbourhood or Division communicate and cooperate with community-based liaison officers and receive any other support, training and resources necessary to familiarize themselves with the new assignment.
16. The Chief will ensure that Service members responsible for creating and supervising the initiation of Contacts and the creation of CSNs receive the training necessary to assist in data collection as described in section E of this policy.
17. The Chief will provide to the Board copies of all training modules on Contacts for review upon request from the Board.

Supervision

18. The Chief will establish procedures regarding Contacts to ensure that:
- a. Service members receive effective supervision related to Contacts;
 - b. Supervisors are trained to critically examine the circumstances leading to the Contact and any resulting CSNs to determine compliance with this policy and are held accountable for any failure to do so; and
 - c. Service members are subject to the full range of disciplinary measures in relation to Contacts where discipline is justified.

Reporting

19. For the purposes of transparency, accountability and assisting the Board in assessing compliance with this policy, the Chief will submit a public report to the Board in

January, May and September of each year containing full data and statistics related to Contacts.

End.