

Police Carding in Calgary: The Police Response to RMCLA's Request

Rocky Mountain Civil Liberties Association Background Article

Policing in Canada has traditionally relied on knowing people in the community. Who hangs around the local watering holes? Who is new in town? Who might cause trouble? And while police today gather information about the neighborhood in the same ways as decades ago — by talking to shopkeepers and local residents, and then passing that information along to their law enforcement colleagues — modern technology has provided police with the ability to capture and retain that information in new and potentially invasive ways.

As we learned from commentary by Ontario's current and former Information and Privacy Commissioners, privacy advocates and media reports, police now go well beyond stopping citizens and asking for identifying information. Leaving aside the question of whether or not carding is constitutional, the commonplace practice of police randomly and arbitrarily detaining people to ask for the identification and an explanation of what they are doing has morphed to become much more than a way of gathering and collecting personal information about individuals and their associates. The information gathered is now routinely collected and kept by police in databases to be used at any point in the future — by police or whomever the police choose to share the information with, under the authority of myriad laws that provide hidden avenues for individuals' personal information to be shared by the Calgary Police Service with a wide range of entities, both inside and beyond Canada's borders.

Police can share information contained in databases through the operation of various provincial and federal statutes whose combined authority permits the collection and broad distribution of personal information. For instance, Alberta's *Safer Communities and Neighbourhoods Act* (SA 2007, cS-0.5) — which was promulgated as the tool that authorities need to shut down marijuana “grow” operations, methamphetamine labs, and club houses of outlaw motorcycle gangs — permits the collection of information, including personal information, from 30(1)(a) a public body; (b) any source about the ownership of property; (c) about the occurrence of activities; and to (d) “make and maintain written, recorded, electronic or videotaped records of any information received pursuant to clause (a), (b) or (c) or of the occurrence of activities with respect to which an application pursuant to this Part may be made.” Thus the *Safer Communities and Neighbourhoods Act* permits the transfer of personal information obtained by the Calgary Police Service, which is a public body.

In addition, personal information may be collected by the federal government through the Financial Transactions and Reports Analysis Centre of Canada established by section 41 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17) from any database (s 54), shared (s 56(1)), and disclosed (s 53) without notice or reporting, as long as it can be construed as relating to a terrorism matter; and information may be disclosed to specified agencies or the Minister, or kept secret.

Whether or not Albertans' personal information is retained by local law enforcement agencies is unlikely a topic of much debate across the province. Citizens randomly questioned by police are seldom aware of their rights under these circumstances, and are rarely (if ever) advised as to how

any information they provide might be used. The Edmonton Police Service has acknowledged that “police do not inform people they have the right to walk away” and take the position that “some of the responsibility should be on individuals to know their rights.”

In addition, many people feel obligated to answer a request by police, and that result in people divulging a wealth of information that is dutifully recorded and retained. For most people, being questioned by a police officer is a kind of psychological detention, with the person believing that they have no choice but to provide the information. They are not certain whether:

- It is mandatory or voluntary in nature – whether they have to talk to the police or have the right to walk away;
- It is “detention” *per se* (detention may require that some information be provided);
- The police will do something with their personal information and, if so, what;
- They have rights over personal information provided to the police;
- There is anything they can do if there is an error in the information recorded or how it is recorded;
- One gets a written record of any interactions with the peace officer;
- The police will keep that information for a long time, or forever; and/or
- The information provided to police gets reviewed at any point, among other issues.

The uncertainty about how to respond when stopped by police might be linked to the changing name of the practice. In Toronto, it has been referred to as *intervention*, *street checks*, and is now euphemistically labelled as “*community engagement*”. Regardless what the popular reference might be, though, the “Community Contacts Policy” is an intelligence gathering policy of the Toronto Police Service that involves the stopping, questioning, and documenting of individuals when no particular offence is being investigated.

In Ontario, *carding* became the focus of heated debate. Critics — including Ontario’s former Information and Privacy Commissioner Ann Cavoukian and the Canadian Civil Liberties Association — expressed concern that police carding is used to disproportionately target minorities and people from low income groups. Critics charge that the carding practice itself puts innocent people at risk of, among other things, increased scrutiny by police. After all, when the personal information of a person is entered into the contact card database, the person becomes “known to police”. Each time the person — or anyone she associates with who is carded — is carded, their file expands — even without any crime, charge or arrest.

Figures provided by Edmonton police show that, between 2011 and 2014, officers carded an average 26,000-plus people per year, and a total of 105,306 over four years. Anecdotal evidence suggests that some officers write checkup slips on drivers who have been stopped and ticketed for traffic infractions.

In response to the *carding* debate, Ontario recently introduced a new regulation “*Collection of Identifying Information in Certain Circumstances – Prohibition and Duties* Ontario Regulation 58/16”.

At the same time that the Ontario government announced it would change regulations to limit *carding* Alberta’s Justice Minister acknowledged that street checks are routinely carried out in Alberta but there have been no formal complaints about the practice.

Rocky Mountain Civil Liberties Association (RMCLA) maintains a history of leadership in advancing issues related to human rights and civil liberties in Alberta, including access to information and the protection of privacy rights. In pursuance to our objective, RMCLA took the initiative to examine the CPS claim on checkup slips in Calgary.

When RMCLA asked the Calgary Police Service (CPS) about *carding*, CPS claimed that although there is a practice of police checkups (similar to *carding*), it does not target minorities and/or low income people. The CPS claims remain to be tested on real facts.

The Authority and Purpose for Police Checkups

Section 38(1) of the *Police Act* authorizes every police officer as a peace officer, and empowers officers to perform all duties that are necessary to carry out their functions as a peace officer; encourage and assist the community in preventing crime; foster a cooperative relationship between the police and the community; and lawfully apprehend persons into their custody, and to execute all warrants and perform all related duties and services. In addition, section 25(2) of the *Interpretation Act* provides “ancillary powers” to officers that they need in performing their duties. Moreover, section 33 (b) of the *Freedom of Information and Protection of Privacy Act (FOIP Act)* permits personal information to be collected for the purposes of ‘law enforcement’, which is a defined term under s 1(h) the *FOIP Act* that includes gathering of criminal intelligence as part of law enforcement. The purpose for police checkups is provided in section 2 of the Contact Information Form (CIF) /checkup slip (See: a copy of the CIF in Appendix below). The provision states that police checkups assist police in “*discharge of their mandatory legal duties to preserve the peace, investigate offences, prevent crime, apprehend offenders, execute warrants, and protect life and property*”. The information collected through checkups can provide intelligence and might assist in preventing crimes; however, as noted by Lewis Cardinal, vice-chair of the Aboriginal Commission for Human Rights and Justice, “There’s no evidence that really demonstrates that doing all this street checking is really preventing crime in any way,”

The foregoing suggests that police checkups stand on a fair authoritative ground. However, the main concern is not about the authority, but for the execution of this power to collect information for purposes not prescribed under the law.

RMCLAs FOIP Request

In order to examine whether the CPS is using its authority for police checkups for the legislated purpose and not for targeting minorities and low income peoples, RMCLA made a ten-point information request under the *FOIP Act* to the Calgary Police Service (CPS) on November 26, 2015 asking for the following: (See: RMCLA FOIP request in the Appendix below)

1. The number of field checkup slips completed per district, per day, per sworn officer and the length of service with the CPS of each of those officers;
2. The number of individuals checked in the course of field checkup slips per district, per day, per sworn officer;
3. The number of tickets written and charges laid as a result (direct or indirect) of information obtained during field checkups, as well as the number of prosecutions and the success of those prosecutions arising out of the information gleaned during field checkups;
4. The expected level of performance that each officer is/was expected to achieve during each shift, each month, and each year;
5. A list of information fields noted on printed field checkup slips, or a copy of a blank sample checkup slip;
6. A copy of the CPS and, if any, City of Calgary policy guideline, or other specific authority that directs field checkup slips to be completed and submitted;
7. The number of field checkup slips entered into the Police Information Management System (PIMS);
8. Whether and under what circumstances information from field checkup slips is made available (in any format or manner) by or on behalf of CPS to Canadian Police Information centre (CIPC) or to organizations, individuals, bodies or agencies; a list of those entities and individuals; and how often information from field checkup slips is provided to or accessed by organizations, individuals, bodies or agencies;
9. The number of individual names now in PIMS as a result of field checkup slips; and
10. The length of time that information from field checkup slips is retained by or on behalf of CPS and a copy of the retention policy/guidelines relevant to field checkup slips.

The Calgary Police Service Response

The CPS - FOIP Section replied it could not provide all the information requested, but could provide certain information upon payment of a fee — which is permitted under s 93 of the *FOIP Act*. RMCLA pointed out that it is a non-profit public interest organization and the information is purely for public interest and educational purposes, and the CPS then provided some information without charge. The points below explain how the CPS sorted our requested information.

- a. Information that is not available. According to the CPS response, it could not provide any per-day statistics for checkup slips, or the total number of persons checked per day; they could only provide annual numbers. Furthermore, CPS claimed that it neither kept a record of the number of charges laid on the basis of information obtained from the checkup slips, nor kept records about the number of prosecutions (successful or failed) arising from the information gathered from the field checkups. The CPS response seems to belie the ‘purpose’ of field checkups mentioned in section 2 of the CIF. In addition, CPS they denied having any records to determine the number of individual names that were entered into the CPS *Police Information Management System* (PIMS) as a result of field checkups.
- b. Information that comes with a high cost (over CAD \$14,000). Although CPS was unable to provide much of the requested information, it did agree to provide the remaining information after it received payment of \$14,713.00.

c. Information received (without any extra fee). In response to RMCLA’s further request to CPAS for any information that CPS could provide without charging any extra fee, RMCLA received:

- (1) A blank sample of Checkup sheet / CIF;
- (2) Relevant provisions of the Calgary Police Service Policy on checkup slips, performance standards and the record retention policy; and
- (3) Annual data (2010-2015) for the police checkups per district along with the number of sworn officers per district for the year 2016.

Check-Up Slips in	District								Total
	1	2	3	4	5	6	7	8	
2010	8,115	5,381	4,163	7,498	6,756	6,706	3,368	4,094	46,081
2011	7,528	6,433	4,858	5,579	5,866	4,853	3,975	3,074	42,166
2012	6,648	5,074	4,421	4,182	5,403	3,869	4,093	2,552	36,242
2013	5,347	4,299	2,893	6,112	5,090	3,011	3,631	3,095	33,478
2014	5,060	4,247	2,852	4,656	7,100	3,904	3,458	2,993	34,270
2015	4,749	3,964	1,837	3,935	5,145	2,997	2,507	2,601	27,735
Total	37,447	29,398	21,024	31,962	35,360	25,340	21,032	18,409	219,972

Patrols	District								Total
	1	2	3	4	5	6	7	8	
2016	173	80	80	116	108	100	88	80	825

The following analysis is based solely on the limited information available.

Analysis of the Information Received from CPS

a. Data Analysis

The CPS wrote approximately 46,081 checkup slips in 2010, and 27,735 in 2015. This shows a decline of by 39.81percent in aggregate number of checkup slips from 2010 to 2015.

During the same time period, the number of checkups for District 1 dropped by 41.48%, while for District 5 dropped only by 23.85%. The greatest reduction in checkup slips was noticed in District 3 (North Haven) of 55.87%.

The number of checkup slips written per district per year in 2010 was relatively high in District 1 (Ramsay-downtown core) and District 5 (Saddle ridge NE). Districts with fewest checkup slips written were District 7 (Country Hills NW) and District 3 (North Haven NW).

In 2015, the total number of checkup slips written in District 5 (highest) was 180.08 percent greater than District 3 with the lowest number of checkup slips. As well, the average checkup

slips per patrol for District 5 (47.64) was 107.49 percent higher than the average in District 3 (22.97) and still higher than the total average per patrol for the whole city: i.e., 33.62.

Data further shows that the “monthly average” of checkup slips for Calgary in 2015 was 2311.25, and District 5 again stands on top with average 428.75 checkup slips per month; and District 3 is on the bottom with an average 153.08 checkup slips per month. The average per month for the highest district (District 5) is 180 percent more than the average per month of checkup slips written in the lowest district (District 3).

CPS did not provide data indicating total number of sworn officers in patrols, beats or bikes tasked with checkup slips during the years 2010-2015; however, 2016 saw 825 sworn officers on duty for patrols, beats and bikes who wrote checkup slips. The greatest numbers of officers were assigned in District 1 (173) and Districts 4 and 5 (116 and 108 officers respectively). The fewest officers (80) were assigned in Districts 3, 2 and 8.

According to CPS’s own records, the districts that write the greater numbers of checkups slips are the districts with high diversity and more low-income neighbourhoods. In stark contrast, District 3 — which has had the fewest assigned officers and the fewest checkup slips for 2015 — has neither high diversity nor a large proportion of low income residents. This fact raises the urgent question: Does CPS checkups more frequently, or on more people, in neighborhoods of greater diversity and lower income? While available data is insufficient to examine the likelihood of that proposition, it does raise concern about the targeting of minorities and low-income groups of the population.

b. Other Remarks

In response to RMCLA’s request for information about CPS’s “*record retention*”, CPS indicated that records of personal information gleaned and collected during field checkups are “*kept permanently*”. While the relevant provision (s 8 - Record Retention) of the CIF indicates that the retention period for keeping the information is under review, we are not aware of any timelines for the review. Hence, it would be reasonable to conclude that CPS retains the contact information records forever, subject to the outcome of the policy review.

As part of the FOIP request, RMCLA also asked about “*performance standards*” to ascertain whether sworn officers are expected to meet any performance standards for field checkups or if there is any quota to meet. In its response, CPS stated that such information does not exist and guided us to section 6 of the CIF, i.e. “*considerations when collecting information from the public*”. Section 6 (2) (b) specifically prohibits peace officers from collecting personal information through CIFs in order to satisfy a performance measure. In addition, section 7 of the CIF prescribes officers’ responsibilities while collecting information and mandates that an officer

- must articulate the policing purpose [for collecting the personal information];
- must consider the law of detention, legal limits, powers, duties and obligations that apply;
- must describe of the voluntary nature of people’s responses and indicate [at the outset] they are free to leave if they wish; and

- must be mindful of the considerations enlisted under section 6 CIF.

Above provisions provide a framework that would provide ample safeguarding of people's interests during information collection. However, it is not clear from the information obtained from CPS whether the guidelines are applied consistently and equitably or, indeed, whether they are followed at all at the time of checkup slips.

Commentary

RMCLA is a non-profit organization pursues various human rights and civil liberties issues and helps educate citizens about of their rights and responsibilities.

The purpose of RMCLA's FOIP request is to examine CPS's claim that there are no concerns about carding in Calgary. In order to examine the CPS claim, RMCLA requested information; but the CPS demand for \$14,000 to provide statistics of its operations certainly posed a barrier in exercising the right to access information.

Since the matter of *carding* and its potential abuses is a matter of public interest RMCLA maintains that the information requested should be provided without charge.

RMCLA is grateful that CPS provided some basic information without any charge, however that information remains insufficient to answer the inquiry. Section 2 of the *Freedom of Information and Protection of Privacy Act, RSA 2000, c F-25 (FOIP Act)* has two objectives:

- (i) to ensure that public bodies are open and accountable to the public by providing a right of access to records; and
- (ii) to protect the privacy of individuals by controlling the manner in which public bodies collect, use and disclose personal information.

In the same vein, section 32 (1) (b) provides mandatory disclosure of the information that is 'clearly in the public interest'. This provision maintains an overriding effect on all other provisions of the Act.

However, Section 93 (1) of the *FOIP Act* offers discretion to the head of a public body to charge fees for the services in accordance with the *FOIP Regulations* 186/2008 and 56/2009. An exhaustive list of services for which a fee may be charged is provided under Schedule 2 of *Regulation 186/2008*. Moreover, FOIP Bulletin – 1 clarifies that three guiding principles govern the fee structure under the Act. One of the principles maintains that the fee should be reasonable and fair so that it would not present a barrier to applicants in exercising their rights to access the information. (NOTE: FOIP Bulletins were prepared by Service Alberta to supplement the information on the *FOIP Guidelines and Practices 2009*.)

In addition, the Act allows for fees to be waived in certain circumstances subject to section 93 (3.1) of the *FOIP Act*. Fee waivers are intended to facilitate the objectives of the *FOIP Act*, namely, to foster openness, transparency and accountability in public bodies. Under sections 93

(3.1) and (4.1), if an applicant submits a written request for a fee waiver, the head of a public body may excuse an applicant from paying all or part of a fee for the services. In this regard section 93(4) provides grounds for permitting a fee waiver. It states:

- 93 (4)** The head of a public body may excuse the applicant from paying all or part of a fee if, in the opinion of the head,
- (a) the applicant cannot afford the payment or for any other reason it is fair to excuse payment, or
 - (b) the record relates to a matter of public interest, including the environment or public health or safety. [Emphasis Added]

FOIP Bulletin -2 (Fee Waiver) clarifies that the fee waiver provision should be read in the light of section 10(1) of the Act. This provision imposes a duty on a public body to use every reasonable effort to assist an applicant openly, accurately and completely. Within the purview of Section 93(4)(b), the Office of the Alberta Information and Privacy Commissioner developed a non-exhaustive “13 points criteria” list for determining the public interest. The issue was first discussed in Order 96-002 and was revisited in Order F2006-032 which provided 13 clear and discrete categories and considerations in which it is appropriate to waive fees when the record relates to a matter of public interest. (For details of the 13 categories see the FOIP Bulletin -2 Fee Waiver appendix.)

In Order 96-022, 1997 CanLII 15911 (AB OIPC), the Commissioner explored the bearing of an applicant’s identity in the context of public interest. He noted that the *FOIP Act* does not give any special consideration to identifiable groups such as media, elected officials or advocacy groups; however, Order 99-015, 1999 CanLII 19853 (AB OIPC), the Commissioner noted that some of the criteria for public interest are particularly relevant to some categories of applicants — like advocacy groups that serve a public education or public watchdog function and would most probably use the records to promote debate on an issue of public interest.

The reasoning in Order 99-015, 1999 CanLII 19853 (AB OIPC) fully supports RMCLA’s present FOIP application. RMCLA maintains that, as a public interest non-profit organization with an objective of promoting human rights and civil liberties, it falls within the scope of fee waiver discussed above. Additionally, RMCLA’s FOIP application is entirely consistent with the objectives of the *FOIP Act*; therefore, it is the position of the Rocky Mountain Civil Liberties Association that the Calgary Police Service is obligated to provide complete information that can fully address and illuminate the issue of carding in Calgary. In addition, a full and open response by CPS to the RMCLA freedom of information request would be an important contribution toward educating Albertans about their rights, as well as to promote and trust confidence in our law enforcement system.