



STAFF REPORT ACTION REQUIRED

Police Reference Check Process

Date:	October 10, 2012
To:	Employee and Labour Relations Committee Executive Committee
From:	City Manager
Wards:	All
Reference Number:	

SUMMARY

This report provides information on the current status of pre-hire Police Reference Checks in the Toronto Public Service. A Police Reference Check is either a Criminal Record Check or a Vulnerable Sector Police Reference Check.

The City is in compliance with the current legislative requirements for Vulnerable Sector Police Reference Checks in designated positions in Children's Services, Long-Term Care Homes and Services, and Emergency Medical Services. In addition, City Council has previously approved the use of Vulnerable Sector Police Reference Checks for designated positions in Parks, Forestry & Recreation, and Shelter Support & Housing Administration. Each of these divisions has established processes to receive and review the Police Reference Checks from selected applicants.

New applicants for positions which require a Police Reference Check are not allowed to commence employment until the Police Reference Check has been submitted for review to the hiring division.

A city-wide Police Reference Check Policy has recently been implemented which outlines the process to be followed when a division believes there is a bona fide requirement for conducting pre-hire police reference checks for designated positions. The City needs to renew the memorandum of understanding with the Toronto Police Service to continue to provide Vulnerable Sector Police Reference Checks at no cost to selected applicants and volunteers who live in the city.

RECOMMENDATIONS

The City Manager recommends that:

1. City Council authorize City staff to enter into a renewal of the memorandum of understanding between the Toronto Police Service Board and the City to provide Vulnerable Sector Police Reference Checks in a timely manner and at no cost for employment purposes and volunteer placements.

Financial Impact

The adoption of this report will have no financial impact beyond what has already been approved in the current year's budget.

The memorandum of understanding between the City and Toronto Police Service establishes that there is no cost to the City or the applicant for a Vulnerable Sector Police Reference Check for employment or volunteer placements. The RCMP cost for finger printing services, if required, is waived for volunteer applications.

There is a cost of \$22.60 for the online request for Clearance Letters (Criminal Record Checks) by the Toronto Police Service. This cost is paid by the applicant via the on-line request tool.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

On June 6, 2012, City Council adopted Member Motion 24.27 requesting that the City Manager undertake a review of the Police Record Check Policy and procedures, and other hiring practices related to staff working with vulnerable populations and report to the appropriate committee in September 2012.

<http://www.toronto.ca/legdocs/mmis/2012/mm/bgrd/backgroundfile-48195.pdf>

Previously Council has adopted the following reports:

During the August 25-27, 2010 City Council Meeting, item EX 46.71 from the Executive Committee, titled "*Police Reference Checks for Prospective Employees for Shelter, Support and Housing Administration Division*" was adopted. This report granted authority to implement a process of pre-employment Police Reference Checks for all qualified applicants selected for employment with the Division; and all selected applicants for volunteer or student placements whose work involves unsupervised contact with, or in proximity to, vulnerable clients.

<http://www.toronto.ca/legdocs/mmis/2010/ex/reports/2010-08-16-ex46-cr.htm#EX46.71>

During the April 12 – 14, 2005 City Council meeting, Clause No. 8 of Report No. 3 of the Community Services Committee, titled "*Police Reference Checks, Homes for the Aged*" was adopted. This report granted authority to implement a process of pre-employment Police

Reference Checks for all applicants for employment with Homes for the Aged and a process of pre-placement Police Reference Checks for all applicants for volunteering with Homes for the Aged.

<http://www.toronto.ca/legdocs/2005/agendas/council/cc050412/cms3rpt/cl008.pdf>

During the November 23-25, 1999 City Council meeting, Clause No. 9 of Report No. 9 of the Community Services committee, titled "*Police Reference Checks for Staff, Volunteers and Home Child Care Providers Associated with Toronto's Directly Operated Child Care Services*" was adopted. This report granted authority to obtain police reference checks on prospective new child care staff, volunteers and home child care providers.

<http://www.toronto.ca/legdocs/1999/agendas/council/cc/cc991123/cms5rpt/cl009.pdf>

During the June 9-11, 1999 City Council meeting, item number 6.57 - Clause No. 6 of Report No. 8 of the Economic Development Committee, titled "*Police Reference Checks and the hiring process*" was approved. This report granted authority to obtain police reference checks for employees in the Parks and Recreation Services Division as the final stage in the hiring process where primary employment or volunteer duties involved working directly with children, youth and/or other vulnerable populations.

<http://www.toronto.ca/legdocs/1999/agendas/council/cc/cc990609/ed8rpt/cl006.htm>

ISSUE BACKGROUND

City Council has previously recognized the inherent responsibility for safeguarding the community and ensuring that no individual employed by, or volunteering with the City, has been convicted of a crime which would call into question their ability to work directly with children or vulnerable persons as a regular part of their job or volunteer duties.

Through the period 1999 – 2010, City Council adopted several staff reports that provided the authority to implement pre-hire Vulnerable Sector Police Reference Checks in a number of City divisions with designated positions working with children and other vulnerable populations.

Vulnerable Sector Police Reference Checks are conducted as a final step in the hiring process for new employees in certain positions in the following divisions in the Toronto Public Service: Parks, Forestry & Recreation, Long-Term Care Homes and Services, Children's Services and Shelter, Support and Housing Administration. Under the legislative authority of the Ambulance Act, R.S.O. 1990, c.A.19 and Ontario Regulation 257/00 Police Reference Checks are also required for all new Paramedics.

The City Manager has implemented a policy on Police Reference Checks (attached as Appendix 1). The policy outlines the process a division follows when it believes the pre-hire Police Reference Checks are required as one part of the final decision making process for hiring new employees in designated positions or selecting volunteers for placement. The Executive Director of Human Resources will determine which positions have a bona fide justification for requiring this highly sensitive personal information from applicants.

All divisions which are currently conducting Police Reference Checks as the final step in the hiring process have developed procedures to collect and review the highly sensitive information that is contained in an individual's criminal record.

Processes are in place to ensure that no employee in a designated position working with children or vulnerable adults will start their employment prior to them submitting the results of their Police Reference Check to the hiring division. Parks, Forestry and Recreation has previously allowed some recreation workers to commence employment conditionally while Toronto Police Services was completing the police background check. This was done to ensure that recreation programs could be started as scheduled when the processing of police reference checks was delayed. This practice is no longer permitted and all recreation workers must now provide their police reference check prior to their first day of employment. The Ontario Human Rights Code, R.S.O. 1990, c. H.19 prohibits discrimination in employment due to an individual's record of offences. This applies to any indictable criminal code offence for which a pardon has not been granted and all provincial offences. Exceptions to this clause are allowed if the requirement is a reasonable and a bona fide qualification due to the nature of the employment. The Supreme Court of Canada has established specific criteria to identify if a bona fide justification exists for denying employment based on an individual's criminal record.

A hiring decision for a new employee is made using many pieces of information. The applicant's resume is reviewed to ensure that they have demonstrated that they have experiences or skills related to the key qualifications of the job. An assessment is done of the employee through an interview and/or tests to demonstrate their skills and experiences as they relate to the position. Previous employment references are then confirmed to ensure that the information provided is accurate and to obtain additional background information on the applicant from previous employers. For certain designated positions a request for the applicant's police reference check can be made. It should be noted that the results of the Police Reference Check provide information that is available at a distinct point in time.

The Criminal Records Act, R.S.C., 1985, c.C47 and the Municipal Freedom of Information and Protection of Privacy Act, R.S.O, 1990, c.M56 protect and control the release of an individual's record of criminal offenses. The Information and Privacy Commissioner of Ontario had determined that if consent is obtained from an individual before a police reference check is performed then releasing the police data is not a violation of the Municipal Freedom of Information and Protection of Privacy Act. Subsequently, the Ontario Human Rights Commission has ruled that a criminal record can only be provided directly to the applicant. The applicant can then determine if they wish to provide their record to an employer.

The Toronto Public Service currently requests about 2000 vulnerable sector police reference checks per year from the Toronto Police Service. There has historically been an agreement signed between the City and the police service to provide this service at no cost to the applicants or the City. This memorandum of understanding needs to be renewed under similar terms.

Legislative Authority

Provincial statutes have created some legislative authority or requirements for Police Reference Checks for designated positions in a number of service areas of the City. In addition, the City

has required the vulnerable sector checks for other designated positions where it has been determined that the employee will work directly with, or in the vicinity of children or vulnerable persons.

Division	Statute
Children's Services	Day Nurseries Act, R.S.O. 1990, c.D2
Long-Term Care Homes & Services	Long-Term Care Homes Act, S.O. 2007, c.8 Ontario Regulation 79/10
Emergency Medical Services	Ambulance Act, R.S.O. 1990, c.A.19 Ontario Regulation 257/00

COMMENTS

Police Reference Checks

A Police Reference Check is a summary of a person's record of indictable criminal code offences and their disposition at the time that the report is produced. A criminal record may identify a single occurrence of a criminal activity or it may demonstrate a pattern of behaviour. There were approximately 2.8 million criminal records in the RCMP national repository in 2010, with more than 550,000 records updated or added each year. Approximately 10% of the adult Canadian population has a criminal record.

There are two types of Police Reference Checks available in Canada. A Criminal Record Check (or Clearance Letter) is a search of the RCMP national repositories of criminal records. A simple search can be made based on the applicants name and date of birth. If a national database has a record of the individual, or an individual with a similar name, then a fingerprint comparison must be made to verify the identity of the applicant and the record. Toronto Police Service will not provide fingerprint services for a simple Criminal Record Check. The RCMP has accredited a number of private fingerprinting companies to complete this work and submit the fingerprints electronically to them. There is a fee for this service in addition to the RCMP charge of \$25.00. These fees range from \$50 to \$100 and are established by the vendor providing the service to the public.

A Vulnerable Sector Police Reference Check combines a criminal record check with a search for pardoned sexual offences and a search of the applicant's local police service databases. A fingerprint based search may be necessary if the name of the individual and their date of birth is similar to another record or if their date of birth and gender match a record in the pardoned sexual offenses database of approximately 15,000 records. If a fingerprint comparison is required for a Vulnerable Sector Police Reference Check, Toronto Police Service will obtain an electronic copy of an individual's fingerprints and transmit them directly to the RCMP. The applicant is required to pay the \$25.00 RCMP fee for this service. Toronto Police Services will waive this fee for volunteers as per direction from the RCMP.

If a Division believes there is a need to request a police reference check for a specific position they must be prepared to justify this request using the test set out by the Supreme Court of Canada in *British Columbia (Public Service Employee Relations Commission) v. British Columbia Government and Service Employees' Union (B.C.G.S.E.U.) (Melorin Grievance)*, [1999] for assessing whether the request for a record of offences is reasonable and bona fide.

The Division must consider if the police reference check requirement:

- was adopted for a purpose or goal that is rationally connected to the function being performed;
- was adopted in good faith, in the belief that it is necessary for the fulfillment of the purpose or goal; and
- is reasonably necessary to accomplish its purpose or goal, in the sense that it is impossible to accommodate the claimant without undue hardship.

If this three point test cannot be met, then an employer cannot use the information from an individual's criminal record to deny them an employment opportunity.

The simple fact that an applicant has a record of previous indictable criminal code offences cannot be used to deny them employment under the Ontario Human Rights Code. The record of offenses must be directly related to the position that the individual is applying for and the duties that they will be performing.

City Divisions which include Police Reference Checks as part of their hiring process do not require a "clean" record (one without any criminal offenses). The content of any Police Reference Check returned "with findings" is reviewed to determine if the content is applicable and relevant to the position being applied to. The Ambulance Act and associated regulations are specific when referring to Paramedics; they must not have been convicted of any crimes of moral turpitude. No other legislation is as specific.

Applicants and Current Employees

A number of court cases and arbitration rulings have made a distinction between an external applicant applying for an employment position and an existing employee applying for a new position with the same employer. The arbitrator in *City of Ottawa and Ottawa Professional Firefighters Association (Sept 14, 2007)* stated that "there is a significant distinction between the point of initial hire and the normal course of business in an ongoing employment relationship" he went on to state that the "waiver of privacy which may be justified when a stranger is hired is substantially less compelling as applied to an employee with many months, or indeed many years of service." Arbitrator Picher limited the right of the City of Ottawa to obtain police reference checks on some existing employees, while maintaining the right to request police reference checks from new applicants to designated positions. His ruling was upheld on judicial review by the Ontario Superior Court of Justice (*file 07-DV-1380 (Ottawa)*) in 2009.

The Executive Director of Human Resources, in consultation with Legal Services, will continue to monitor case law and provincial statutes to determine when, and under which conditions, police reference checks can be requested of current employees. Employees moving into designated positions working directly with or in the vicinity of children or vulnerable persons will be required to provide a current Vulnerable Sector Police Reference Check as a condition of placement in that position.

Youth Employment

The Youth Criminal Justice Act, S.C. 2002, c.1 s.119 allows for the release of criminal records of youth between the ages of 12 and 18 to municipalities for the purpose of pre-screening for employment or volunteer service. There may be a perception that the release of this information will create a barrier to employment to individuals who were charged with criminal activities while they were minors.

The only information that can be released for a young offender is indictable offenses. Summary convictions and provincial offences are not stored in the national repository of criminal records and therefore not released during a criminal record check.

The Ontario Human Rights prohibits discrimination on the basis of record of offenses for which a pardon has not been granted. An exception to this clause can be made if it is a reasonable and bona fide qualification due to the nature of the employment. The review of a young offender's record of offenses would be the same as the review of an adult's record of offenses. As indicated earlier, the content of any Police Reference Check returned "with findings" is reviewed to determine if the content is applicable and relevant to the position being applied to.

Timeliness

Toronto Police Services are providing Vulnerable Sector Police Reference Checks anywhere between 4 – 17 weeks of the initial request, though during peak summer hiring periods it is generally closer to the higher end of this range. This response time is much higher than that provided by other large city and regional police services in Ontario, which generally range from 2 – 6 weeks.

The response time takes even longer when the RCMP request fingerprints matching of the individual. The delay in processing Vulnerable Sector Police Reference Checks for employees or volunteers greatly impacts the City's ability to hire employees into designated positions or place volunteers in a timely manner.

Third Party Providers

A number of third party service providers exist in Canada which perform Criminal Record Checks with results returned in 24-48 hours provided that fingerprints are not required. These third party service providers are able to provide a simple name-based criminal record check for a fee ranging from \$45 to \$70. This service is also available on-line from the Toronto Police Services at a cost of \$22.60 to the applicant with very quick response times. These criminal record checks do not provide a vulnerable sector police reference check.

In August 2010, The Minister of Public Safety issued a Ministerial Directive regarding the release of Criminal Records by the RCMP. As a result of this directive, the RCMP updated their policy on releasing criminal record information through the Canadian Police Information Centre. The third party service providers in Canada are not able to provide a Vulnerable Sector Police Reference Check which includes information from the pardoned sex offender database and local police indices.

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SIGNATURE

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ATTACHMENTS

Police Reference Check Policy