



RIGHT TO PRIVACY RELATED TO MENTAL HEALTH INFORMATION CONTAINED WITHIN POLICE RECORDS

PUBLIC POLICY POSITION

- **The Canadian Mental Health Association (CMHA) is very concerned with the disclosure of mental health information, such as suicide attempts and apprehensions under various provincial *Mental Health Acts*, to law enforcement officials and third parties through police information or background checks.** Disclosing otherwise private (medical or treatment seeking) information undermines people's ability to seek appropriate care.
- **Everyone has a right to privacy when seeking treatment for addictions, mental health issues or mental illnesses in a confidential setting, just like with any other health issue.** Respect for people's reasonable expectation of privacy in health promotes engagement in treatment.
- **CMHA believes that all police forces must follow a single, common standard for the collection, use, disclosure and retention of non-criminal, non-conviction and personal health information contained in police records and databases, including within the Canadian Police Information Centre (CPIC) database.** This standard could be developed in collaboration with the Canadian Association of Chiefs of Police (CACP), Solicitors General, Justice Ministers/Attorneys General of Canada, the Canadian Civil Liberties Association, CMHA, the Mental Health Commission of Canada and people with lived experience.
- **Mental health information contained within police databases (e.g. 911 calls, mental health apprehensions or mental health diversion programs) not connected with a criminal conviction (i.e. non-conviction information) should not be disclosed by police and used by third parties (e.g. employers; media; transportation companies; security agencies; other countries), except for in clearly specified and limited circumstances in**

accordance with relevant privacy legislation to protect public safety or pursuant to a warrant received from a judge.

- **Privacy Commissioners and/or Auditors General should conduct regular reviews of the disclosure of non-criminal, non-conviction and personal health information** by federal, provincial and municipal police departments and security agencies with other police departments or security agencies (domestic and foreign). This would ensure ongoing compliance with individual rights and relevant Canadian privacy and mental health legislation.

BACKGROUND

Canadians living with a mental illness have been denied access to the United States based on private medical information contained in police databases related to their illness, hospitalization or past suicide attempts.

One such database, the Canadian Police Information Centre (CPIC) database, is maintained by the Royal Canadian Mounted Police (RCMP). Domestic, federal and international police forces and security agencies (e.g. Canadian Security Intelligence Service, Communications Security Establishment, Canada Border Services Agency) have access to this database. The CPIC facilitates the sharing of police record information across all jurisdictions in Canada and to foreign police forces, such as the United States National Crime Information Center (NCIC).

CMHA recognizes that law enforcement may require access to private information, including medical information, in rare circumstances that pose a significant threat to public safety. We also recognised that if we were to develop a position that spoke about the protection of privacy rights, that we could play a role in supporting the adoption of a common, standardized protocol for the collection, use, disclosure and retention of information contained with police record databases across Canada, including in the RCMP CPIC database.

CURRENT CONTEXT

Canadians and several organizations across Canada, including, the Canadian Civil Liberties Association, CMHA BC, CMHA Ontario, John Howard Society and various privacy and information commissioners are considering the following key questions to develop clear guidance in this area:

- What must be kept private?
- What may be collected, retained and shared?
- What do Health Information and Privacy Acts say?
- Who may share, with whom and for what purpose?
- What sanctions exist for violation of protections or prohibitions against sharing?
- Is there discretion to disclose non-criminal, health-related information?
- Is consent required prior to disclosure?
- Who can I complain to if I feel my privacy rights have been violated?
- What policies exist regarding document retention and information retention (i.e. length of time non-criminal information remains in police databases)?

We also take note of the April 2014 order issued by the British Columbia Information and Privacy Commissioner stating that information related to an individual's mental health not be included in police information checks¹. Recent investigations by both the Ontario and British Columbia Privacy Commissioners revealed that some disclosures were inaccurate or incomplete, and had the effect of stigmatizing individuals or affecting their ability to travel or

¹ "Government and municipal police boards should immediately mandate that police apprehensions collected under the authority of s. 28 of the *Mental Health Act* should never be included in a police information check." *Investigation Report F14-01*, p. 35.

obtain employment, educational placements, professional qualifications and volunteer positions. Recommendations² of the Canadian Civil Liberties Association (CCLA) aim to implement tighter controls on the disclosure of non-conviction information.

Ultimately, there appears to be a need for consistent standards regarding the:

- collection of personal information;
- keeping private of personal information;
- sharing of personal information; and
- length of retention of personal information

BALANCING PEOPLE'S RIGHTS TO PRIVACY AND THE PUBLIC INTEREST

A number of voices, including CMHA, have expressed serious concerns over the collection and retention of private information within police databases and the sharing of this private information between law enforcement agencies (within Canada and internationally). This theory of strict confidentiality of medical records for certain conditions, such as mental illnesses and substance use (which is incorporated into some provincial legislation) is based on a patient-centred view of harm reduction: preserving patients' rights to treatment in confidential settings promotes engagement in treatment.

Proponents of sharing non-health information and even health information via police databases believe that certain parties, such as law enforcement, may require access to this private information in rare circumstances. This is usually accomplished through the application for a warrant before a judge. However, we understand that warrants are not obtained in many cases, as they are generally not required (by law enforcement) to access information contained with various police databases.

Others, still, suggest that there must be a balance struck between these competing interests. Under this theory, only certain conversations are "privileged" (i.e. safeguarded from legal disclosure).

² <http://ccla.org/our-work/public-safety/police-background-checks-and-non-conviction-records/>