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## Crossing the Line:

# The Indiscriminate Disclosure of Attempted Suicide Information to U.S. Border Officials via CPIC

## *A Special Investigation Report*

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**April 14, 2014**

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## Crossing the Line:

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## *A Special Investigation Report*

## Executive Summary

In today's highly mobile world, the ability to freely cross the border into the U.S. (United States) for a variety of purposes – business or pleasure – is something that can easily be taken for granted. I was reminded of this in November 2013, upon learning that a Toronto woman had been denied entry to the U.S. by U.S. Customs and Border Protection Officials (U.S. border officials) on the basis of a mental health issue, namely an attempted suicide in 2012.

It was the knowledge of this woman's experience at the border and similar stories of others who later contacted my office, that prompted me to immediately launch this investigation – I needed to find out how the sensitive personal information of Ontarians was ending up in the possession of U.S. border officials.

Within days of launching my investigation, I was very pleased to receive unequivocal confirmation from the Ontario Ministry of Health and Long-Term Care that this information was not being disclosed to U.S. border officials by the Ministry of Health. I did learn, however, that the most likely source of this information flowing into the hands of U.S. border officials was through the Canadian Police Information Centre (CPIC), a national law enforcement and

public safety repository, maintained by the Royal Canadian Mounted Police (RCMP). As a result, my investigation focused on personal information collected by the police as a consequence of interactions with individuals who had attempted suicide and the subsequent recording of that information in the federal CPIC database.

As part of my office's investigative process, we conducted extensive interviews, engaged in a thorough review of relevant documentation, and consulted with the Police Services in Toronto, the Region of Waterloo, Hamilton, and Ottawa, as well as the Ontario Provincial Police (OPP), and the RCMP. We also conducted interviews with leading mental health professionals and organizations, including the Centre for Addiction and Mental Health, the Canadian Mental Health Association - Ontario, and the Mental Health Commission of Canada. Further, we invited the Police Services, mental health professionals and organizations, as well as the Canadian Civil Liberties Association, to submit representations on the issues under investigation. After carefully considering their comments, we prepared and circulated a draft Report and invited these organizations to submit their comments. This Report includes a consideration of all the representations and comments submitted during this investigation.

CPIC contains a vast array of public safety information, including personal information related to criminal activity, warrants for arrest, missing persons, suicide attempts or threats, and apprehension warrants under the *Mental Health Act*. I learned that there is currently a Memorandum of Cooperation between the RCMP and the U.S. Federal Bureau of Investigation (FBI), providing the FBI with access to CPIC. I also learned that the FBI grants access to the CPIC database to the U.S. Department of Homeland Security, which includes U.S. border officials.

According to the RCMP, local Police Services have complete discretion as to whether information related to a suicide attempt is recorded on CPIC. However, there are significant variations in the way that police in Ontario treat this information. Police Services in Hamilton, the Region of Waterloo, Ottawa, and the OPP all exercise some degree of discretion in determining whether to include such information on CPIC. As a result, information related to suicide attempts in these Police Services may be added to CPIC in some, but not all circumstances. The Toronto Police Service, on the other hand, exercises no discretion – their policy requires that police officers upload information related to every threat of suicide or suicide attempt to CPIC.

All the mental health professionals and organizations that I consulted were opposed to such a “blanket” rule requiring the automatic disclosure of all suicide-related information via CPIC. There was a consensus among these groups regarding the extreme sensitivity of mental health-related information, the significant potential for stigma flowing from access to and use of that information, and the risk that the very information collected may be inaccurate or incomplete – all pointed to the need for this information to be treated with great discretion and considerable caution.

After a careful analysis of the representations and comments received, I have found that the recording or uploading of information relating to suicide attempts or threats of suicide to CPIC results in disclosures under the *Municipal Freedom of Information and Protection of Privacy Act* and the *Freedom of Information and Protection of Privacy Act*. Such disclosures will only be permitted in those limited cases where the criteria set out below are met. This approach will require Police

Services to consider the unique circumstances of each individual encounter and to exercise discretion before making a decision whether to disclose any personal information via CPIC.

As a result of my investigation, I have made the following recommendations directed to all Police Services in the province:

1. Immediately cease the practice of automatically uploading or disclosing personal information relating to threats of suicide or attempted suicide via CPIC, by default. Before disclosing personal information via CPIC relating to a threatened suicide or attempted suicide, the Mental Health Disclosure Test (outlined below) must be met. This test requires that one of the following four circumstances exists before any suicide-related information is recorded in the SIP repository of CPIC:
  1. The suicide attempt involved the threat of serious violence or harm, or the actual use of serious violence or harm, directed at other individuals;
  2. The suicide attempt could reasonably be considered to be an intentional provocation of a lethal response by the police;
  3. The individual involved had a history of serious violence or harm to others; or
  4. The suicide attempt occurred while the individual was in police custody.
2. Base any consideration as to the renewal of a Special Interest Police entry on the Mental Health Disclosure Test. In addition, the Police Service involved should take into account any available new information about the circumstances of the individual in question and the length of time since the last attempted suicide.
3. Develop a clear and transparent process to enable individuals to seek the removal of any information on CPIC related to a threat of suicide or attempted suicide. The Mental Health Disclosure Test must be considered when processing a request for removal. In addition, the individual affected should be entitled to volunteer for serious consideration, information provided from his or her health-care provider regarding the individual's health and any potential risk to public safety. This process shall be developed by **April 16, 2015**.
4. Conduct an audit of CPIC to identify all current suicide-related Special Interest Police entries that originated with the service involved. Entries not meeting the Mental Health Disclosure Test should be removed. This audit shall be completed by **April 16, 2015**.
5. Conduct a review of CPIC entries for specific individuals whose names will be provided by my office. In conducting this review, consideration should be given to the unique circumstances of the individuals and the Mental Health Disclosure Test. This review shall be completed by **July 16, 2014**.

# Background

I decided to initiate this investigation upon hearing the stories of several Ontarians who had tried to cross the border into the United States and were denied access, apparently on the basis of their mental health history. More specifically, these individuals believed that previous incidents of attempted suicide were known to U.S. border officials and had resulted in refusals of entry. Understandably, the individuals involved were shocked that U.S. border officials were able to gain access to information about their mental health. Their stories, four of which are set out below, are very similar, and raised serious privacy issues regarding the sharing of one's sensitive health information. On learning of these events, including hearing of the pain and embarrassment caused by the denials of entry, I decided to conduct an investigation to determine exactly how and why this was happening. I kept wondering – how could this be happening in my jurisdiction, where personal health information is so strongly protected?

## Ellen Richardson<sup>1</sup>

In late November 2013, Ellen Richardson, a paraplegic who was about to embark on a much anticipated cruise, was stopped by U.S. Customs and Border Protection (U.S. border officials) at Toronto Pearson International Airport. Ms. Richardson was told that she could not enter the U.S. without medical clearance because of a mental health episode for which she had been hospitalized in 2012. She had previously attempted suicide in 2001, and in 2012, while suffering from depression, she made what she considers to be a “half-hearted” attempt to take her own life. In relation to the 2012 incident, 9-1-1 was called in order to seek assistance for Ms. Richardson, and the Toronto Police Service was the first responder. At the airport, Ms. Richardson's photo was taken and she was fingerprinted by U.S. officials. She was told that she would need medical clearance from one of three approved doctors in Toronto in order for her to be able to enter the U.S., despite offering to have her own psychiatrist speak to them. Ms. Richardson was not allowed to go on her cruise and was left baffled as to how the U.S. border officials had obtained access to her sensitive mental health information.

## Another Ontario Resident

Subsequent to learning of Ms. Richardson's story, another woman's experience came to my attention by way of press reports. In September 2013, this woman went to Toronto Pearson International Airport planning to travel to the U.S. for personal reasons. When clearing U.S. Customs, a border official looked at his computer screen and mentioned something about “mental health issues.” She was then asked if she had attempted suicide in the spring. She told the agent that she had attempted suicide 20 years earlier and that in the spring, she had had suicidal thoughts during a period of depression caused by stress relating to housing problems. Although she stated that she was now feeling quite stable, she was told that she was “considered a flight risk” and was not allowed to clear

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<sup>1</sup> Ms. Richardson provided my office with her positive consent to use her name and personal story in this Report.

customs without having a form filled out by one of three approved doctors in Toronto. She was fingerprinted, her photo was taken, and she was not permitted to board her flight.

## An Ontario-based Lawyer

We received a complaint from an Ontario-based lawyer who had tried to cross the Canada-United States border at the Peace Bridge in Fort Erie, Ontario, to go shopping in Buffalo, New York in July 2012. He was pulled aside by U.S. border officials in what appeared to be a random check. He was then questioned as to why police had attended his residence earlier that month. This individual was disturbed to learn that the border officials had gained access to this information. He explained to my staff that weeks earlier he had mistakenly taken an overdose of pills and 9-1-1 had been called for assistance. Officers from the Toronto Police Service attended at his residence and he was taken to the hospital. I learned that, from time to time, this individual is invited to attend client meetings and speaking engagements in the U.S. but is now afraid to try to cross the border again in the event that he will be denied access. He is fearful that this might occur in the presence of his clients, colleagues, or supervisors, placing him in an untenable position where he would be forced to reveal highly sensitive information about his health, in order to explain why he was being denied entry.

## Lois Kamenitz<sup>2</sup>

The story of yet another Toronto woman, Lois Kamenitz, was also brought to my attention. In November 2010, Ms. Kamenitz went to Toronto Pearson International Airport to travel to California in order to visit her family. After showing her passport to a U.S. border official, she was asked to go to a secondary screening. There, another U.S. border official made reference to police attending at her home in 2006, in response to a 9-1-1 call for a suicide attempt. Ms. Kamenitz was advised that she would need to obtain medical clearance from a U.S. Department of State-approved physician before being allowed to enter the U.S. She explained to the media that she suffered from depression and chronic pain and had attempted suicide in 2006 by taking an overdose of pills. After missing her initial flight in 2010, she subsequently submitted her medical records and received clearance from a designated doctor in Toronto. Four days later she was allowed to board a plane to Los Angeles. In January 2011, Ms. Kamenitz retained a lawyer to determine how the information went from the Toronto Police Service to U.S. border officials. With the assistance of the Canadian Civil Liberties Association and the Ministry of Health and Long-Term Care's Psychiatric Patient Advocacy Office, she subsequently retained another lawyer and sued the Toronto Police Service and the Royal Canadian Mounted Police (RCMP). In that suit, she claimed that the police had violated her *Charter* rights and she sought damages for harms resulting from the disclosure of her personal information to U.S. authorities. The case settled out of court, with the details of the settlement remaining confidential.

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<sup>2</sup> Ms. Kamenitz provided my office with her positive consent to use her name and personal story in this Report.



# Entry into the United States

## *U.S. Immigration and Nationality Act*

The *U.S. Immigration and Nationality Act*<sup>3</sup> (*USINA*) governs who may enter the United States. This act applies to individuals wanting to immigrate to the U.S. as well as individuals who seek to travel through or to the U.S. for business or pleasure. Section 212(a) of the *USINA* sets out the classes of individuals who may be ineligible for admission for health-related reasons. These classes include individuals who are determined:

- i. to have a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of themselves or others, or
- ii. to have had a physical or mental disorder and a history of behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of themselves or others and which behavior is likely to recur or to lead to other harmful behavior...

It appears that the Ontarians who were denied entry to the U.S. were denied pursuant to section 212(a) of the *USINA*, on the basis that they had attempted suicide, and as such, were deemed to fall within one of these categories.

I was appalled to learn that, in the case of Ellen Richardson, the U.S. border official would not accept Ms. Richardson's offer to contact her treating psychiatrist to discuss Ms. Richardson's mental health before denying her entry to the U.S. on the basis of a previous suicide attempt. This struck me as the height of absurdity. How could current information from a medical professional about the mental health status of an individual be ignored by U.S. border officials? The practice of denying a person entry to the U.S. without first considering information from his or her treating psychiatrist, psychologist, or physician, should, in my view, be reconsidered.

## U.S. Customs and Border Protection

When a U.S. border official encounters an individual at a port of entry, such as during pre-clearance at Toronto Pearson International Airport, or at one of the international road bridges, and decides to deny that individual entry on the basis of section 212(a) of the *USINA*, the border official may refer the individual to a list of panel physicians located in Canada. These physicians are authorized by the U.S. Embassy or Consulate to conduct medical assessments and to determine if the health-related grounds of inadmissibility in the *USINA* are actually present. Should the individual decide to attempt to obtain medical clearance, he or she must make an appointment and present him/herself at the panel physician's office. The panel physician will give the individual the results of his or her medical assessment in a sealed envelope, which the individual may then provide to U.S. border officials. Even

<sup>3</sup> 8 U.S. Code § 1182, section 212(a)(1)(A)(iii)(I) and (II)

if an individual has previously received medical clearance from a panel physician, a new examination would likely be necessary if more than a year had passed since the previous clearance.

According to the U.S. Citizenship and Immigration Services website, a panel physician is a medically trained and licensed physician practicing overseas who is appointed by the local U.S. Embassy or Consulate. The panel physician receives U.S. immigration-focused training in order to provide examinations as required by the U.S. Centers for Disease Control and Prevention and U.S. Citizenship and Immigration Services.

There are currently three panel physicians in Ontario, all of whom are located in Toronto. If barred individuals decide to undergo a medical examination in order to be considered for admission into the U.S., they are required to be assessed by one of these three panel physicians – an examination or medical clearance provided by their own family doctor or treating psychiatrist will not suffice. The cost of the medical examination is determined by the U.S. Embassy or Consulate and each panel physician, but generally amounts to hundreds of dollars. This cost is not covered by the Ontario Health Insurance Plan and is the responsibility of the individual seeking admission into the U.S.

## Ministry of Health and Long-Term Care

At the beginning of this investigation, concerns were reported in a number of newspaper articles that the sensitive personal health information of Ontarians was being disclosed to U.S. border officials by the Ontario Ministry of Health and Long-Term Care (MOHLTC). This conjecture was based on the fact that border officials were clearly aware of previous mental health-related incidents, such as attempted suicides.

Since this struck me as untenable, I took immediate steps to investigate the allegation. My staff and I had a number of meetings and consultations with senior staff at the MOHLTC. I received immediate confirmation from the MOHLTC that the health records of Ontarians were **not** being disclosed to any officials or agencies in the U.S. Given the importance of this issue and the potential consequences should this allegation be well-founded, I took an unprecedented step. I requested a sworn affidavit from the Minister of Health and Long-Term Care, the Honourable Deb Matthews, confirming that Ontarians' personal health information was not being provided to U.S. border officials pursuant to any past, or existing, arrangement or agreement. I was grateful to Minister Matthews for agreeing to do this. Shortly thereafter I received a sworn affidavit to that effect from the Minister.

Based on my discussions and my review of other correspondence received, including the Minister's affidavit, I am satisfied that the personal health information of Ontarians at issue in this Report is not being provided to U.S. border officials by the MOHLTC.

While I was relieved to receive these assurances, it was clear that information relating to attempted suicides was being made available to U.S. border officials. Where was it coming from? As will be outlined in detail below, this information was being made available to U.S. border officials by the RCMP, through access to the Canadian Police Information Centre database, commonly referred to as CPIC.

# Police and Mental Health

## Police Encounters with Mental Health

Given that in at least three of the cases referred to above, the Toronto Police Service was the first responder to 9-1-1 calls for service, it was critical to look into the collection, use and disclosure practices of Police Services in Ontario in relation to their encounters with individuals who had threatened or attempted suicide.

All Police Services in Ontario are governed by various pieces of provincial and federal legislation, including the Ontario *Police Services Act*. In accordance with section 1 of that Act, police have a duty to ensure the safety and security of all persons and property in Ontario. This includes individuals in distress and those who may be suffering from mental health issues. Under section 17 of the Ontario *Mental Health Act*, where the police believe that an individual has been behaving in a disorderly manner and suffers from mental health issues that will likely result in serious harm to the person, the police officer involved may take the person into custody to be examined by a physician.

With the policy and legislative changes that have occurred over the past 30 years, and the shift towards providing community-based mental health services, the role and authority of the police in their interactions with individuals with mental disorders and the mental health system have expanded.<sup>4</sup> In Ontario in 2007, over 40,000 police encounters involved people with mental health issues, with 16,000 of them involving apprehensions under the *Mental Health Act*.<sup>5</sup>

A crisis response, such as a call being made in relation to a suicide attempt, is a significant part of the role of a Police Service. Police may encounter individuals with mental health illnesses as a result of a variety of situations. Police may be asked to provide assistance with individuals who appear to have a mental disorder who are in non-criminal or non-offence situations. For instance, family members or the public may seek assistance for a person with a mental disorder or police may be asked to make an apprehension under the *Mental Health Act*. In addition, police may arrest a person who appears to have a mental disorder, or may respond to allegations of a minor disturbance that involves a person with a mental disorder. Police may also be called upon to assist a victim of crime who appears to suffer from a mental disorder.

The maintenance of accurate and complete records of these encounters is an important component of policing. While the records management processes used by Police Services in Ontario varies, the federal CPIC database is used by, and is accessible to, all Police Services in Canada, and is accessible to some law enforcement agencies in the U.S., including U.S. border officials.

Of relevance to this investigation is one particular policy approach in effect in Toronto. The Toronto Police Service has a policy that information relating to every suicide attempt must be routinely

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4 *Police and Mental Health, A Critical Review of Joint Police/Mental Health Collaborations in Ontario*, Provincial Human services and Justice Coordinating Committee, January 2011, online at: [http://www.ofcmhap.on.ca/sites/ofcmhap.on.ca/files/PHSJCC\\_Police-MH\\_Final\\_Report\\_January\\_31\\_2011\\_0.pdf](http://www.ofcmhap.on.ca/sites/ofcmhap.on.ca/files/PHSJCC_Police-MH_Final_Report_January_31_2011_0.pdf), page 2.

5 *Mental Health and Criminal Justice Policy Framework*, Centre for Addiction and Mental Health, October 2013, online at: [http://www.camh.ca/en/hospital/about\\_camh/influencing\\_public\\_policy/Documents/MH\\_Criminal\\_Justice\\_Policy\\_Framework.pdf](http://www.camh.ca/en/hospital/about_camh/influencing_public_policy/Documents/MH_Criminal_Justice_Policy_Framework.pdf), page 3.

recorded and retained in the Special Interest Police (SIP) repository of the CPIC database. This policy was clearly set out in representations provided to me by the Toronto Police Service as part of my investigation:

...in cases of confirmed attempt suicide, the Toronto Police Service uses CPIC for the purpose of law enforcement and the protection of the public and its members...In cases of an attempted suicide, once officers have completed their reports, a Toronto Police Service CPIC operator is notified. The operator will ensure that the report meets the RCMP's criteria for SIP [Special Interest to Police] entries and will then manually enter the subject's information to CPIC.

Based on the information received during the course of my investigation, I am satisfied that this process of entering information into CPIC about encounters with individuals who have attempted suicide results in such information being readily available to U.S. border officials.

## Canadian Police Information Centre (CPIC)

The RCMP reports to Parliament through the Minister of Public Safety. One of its mandates is to provide operational support to other Police Services and law enforcement agencies in Canada. In fulfilling this mandate, the RCMP stewards the Canadian Police Information Centre and is the custodian of the CPIC database. CPIC is a national repository to which various police jurisdictions within Canada enter law enforcement and public safety operational information. CPIC contains a vast array of public safety information, including personal information related to criminal activity, suicide attempts or threats, missing persons, warrants for arrest, and apprehension warrants under the *Mental Health Act*.

The operation of CPIC is governed by the National Police Information Services Advisory Board. The Advisory Board is comprised of senior police representatives from jurisdictions across Canada and is mandated to provide strategic advice to the Commissioner of the RCMP on matters relating to the National Police Information systems.

The CPIC database is divided into four sections: Investigation, Intelligence, Identification, and Ancillary. At issue in this investigation is information relating to suicide threats or attempts stored in the SIP repository of the Investigation section.

Information related to a suicide attempt may also appear as a "caution flag" under an individual's name in CPIC in circumstances where that individual already has a CPIC entry under his or her name for some other reason. For example, an individual may be the subject of a missing person investigation, a criminal investigation, an outstanding warrant for arrest or apprehension under the *Mental Health Act*, or charges may have been laid as a result of an alleged criminal offence. This entry may include a "caution flag" about a suicide attempt.

"Caution flags" on existing CPIC files engage different considerations from SIP entries that result from 9-1-1 calls for assistance made by, or on behalf of, individuals with no active files on CPIC. I accept that there **may be** circumstances that would support the inclusion in an active CPIC file of

information relating to a suicide attempt even where the suicide attempt did not involve a threat to public safety. Where the individual is the subject of a missing person investigation or a warrant, in some circumstances it may be important for the police to be aware of a previous suicide attempt to assist them in the investigation. The appropriate use of a “caution flag” and the length of time that the “caution flag” remains in place will not be considered in this investigation.

To ensure compliance with the terms and conditions under which access is granted to CPIC, the RCMP oversees a quality assurance program. The Police Services that we consulted, including the RCMP, all agree that the agency which adds, modifies or removes information from the system is the “owner” of the information recorded in CPIC and is accountable for the accuracy and timeliness of the information.

The RCMP has established policies and procedures regarding access to, and use of, CPIC, which are included in a document, entitled the *CPIC User Manual*. This manual provides users with instructions on the use of the system. Once the user, for example the Toronto Police Service, determines that it will enter information into CPIC, the manual directs where the information is most appropriately placed.

The *CPIC User Manual* states that the SIP section is used to record various data, including data on a person who is known to:

- be dangerous to police, himself/herself or other persons (this includes...a person who suffers from an apparent emotional or mental health disorder (TYPE: MH) and there are reasonable grounds to believe that the person is, or is likely to be, a threat to himself/herself or someone else as a result of that disorder); or
- have threatened or attempted suicide either when in or out of police custody.

It is a regular procedure among law enforcement agencies in Canada to search for information on CPIC prior to responding to a call for assistance. All Police Services that were consulted during this investigation have described CPIC as an important public and officer safety tool.

According to the RCMP, at any given time, there are approximately 2.5 million primary records on CPIC. Based on 2013 statistics, the RCMP states that there were over 240 million queries to the system. There are approximately 40,000 points of access and 300 agencies which have access to CPIC. The RCMP state that only “law enforcement agencies” have access to the entirety of the CPIC system. There are other federal and provincial “non-law enforcement agencies,” such as the courts and parole boards, Correctional Services, and Canada Border Services Agency, which have been granted limited access to some CPIC information, based on their legislated mandate.

Access rights to CPIC are set out in memoranda of understanding (MOUs) between the RCMP and each individual agency. These MOUs set out the terms and conditions under which CPIC is to be used.

Significantly, there is currently a Memorandum of Cooperation (MOC) between the RCMP and the U.S. Federal Bureau of Investigation (FBI), providing the FBI with access to CPIC. This MOC also gives the RCMP access to the U.S. equivalent, the National Crime Information Center (NCIC).

A determination as to which Canadian organizations have access to NCIC is made by the RCMP. The determination as to which U.S. organizations have access to CPIC is made by the FBI. ***The FBI has granted access to the CPIC database to the U.S. Department of Homeland Security, which includes U.S. border officials.***

## Sensitivity of Information Related to Mental Health

While reviewed in detail later in this Report, it is important to emphasize early on that mental health-related information should be treated as among the most sensitive of personal health information. Although efforts have been made by the mental health community to increase the awareness of mental health issues and reduce the stigma associated with it, we are long way from seeing it eliminated.

The disclosure of police records that include information about an individual's mental health may create barriers to accessing employment opportunities, educational placements, volunteer positions, and to securing professional qualifications. As the incidents outlined above indicate, the disclosure of these records may also pose barriers to those seeking to travel to the U.S. for business, pleasure, or family purposes.

# The Investigative Process

As noted above, upon learning of the stories of Ontarians who had been denied access to the U.S. on the basis of an earlier suicide attempt, and having confirmed that this information had not originated with the Ministry of Health and Long-Term Care, my office launched an investigation into the collection, use and disclosure practices of Ontario Police Services. While police may record information about a range of mental health illnesses, episodes, or disorders, the focus of this investigation is on information collected in relation to threats of suicide or suicide attempts, which are subsequently recorded in the SIP repository of CPIC. For simplicity, any reference to suicide attempts that appear in this Report shall be treated as a reference to both suicide attempts and threats of suicide.

As part of my office's investigation, we received and reviewed relevant documents, including the *Police Services Act*, the *Mental Health Act*, police policies and procedures relating to mental health, Memoranda of Understanding between the RCMP and local Police Services, and the Memorandum of Cooperation between the RCMP and FBI.

We also conducted numerous interviews and consulted with local Police Services in Toronto, Waterloo Region, Hamilton and Ottawa, as well as the OPP, the RCMP, and the Ontario Association of Chiefs of Police (OACP). Our consultations with these Police Services included knowledgeable records management staff and other senior staff, including chiefs of police and deputy chiefs of police. I received their complete cooperation along with valuable input from these individuals, for which I am very grateful.

Interviews were also conducted with leading mental health professionals and organizations, including the Centre for Addiction and Mental Health (CAMH), the Canadian Mental Health Association - Ontario (CMHA), and the Mental Health Commission of Canada (MHCC). I am indebted to all of the mental health professionals and service providers with whom I consulted for their valuable contributions to the issues under consideration. Together, these organizations brought a wealth of knowledge and subject matter expertise to the table. I was delighted to learn that the senior staff and advisors of MHCC involved in this process had significant experience in policing in Canada – one individual had previously served as the chief of police in another province, and a second is a psychologist working with a large Police Service. Both individuals were able to speak to the issues under investigation, from both a policing perspective and that of an organization working to change attitudes, behaviours and government policy around mental health issues.

We also consulted with the Canadian Civil Liberties Association (CCLA), a non-profit organization that advocates for fundamental freedoms and democracy through public education, research, civic engagement, and litigation. The CCLA has been aware of the travel-related consequences of mental health information on CPIC since 2011. It also has received “hundreds of inquiries” from members of the public who are concerned about the general disclosure of non-conviction police records.

During the course of my investigation, Police Services, mental health professionals and organizations, and the CCLA were invited to submit written representations on the relevant

issues. I would like to commend all of these organizations for providing my office with timely, thoughtful and thorough responses.

In addition, given the role played by CPIC in facilitating border officials' access to information related to attempted suicides, I contacted the Interim Privacy Commissioner of Canada to share my concerns and to advise her that my office would be conducting this investigation. The Interim Privacy Commissioner indicated that her office would also launch an investigation into the practices of federal government organizations, including the RCMP, relating to the disclosure of Canadians' personal information to authorities in the U.S. I understand that the federal investigation may comment on the MOC between the RCMP and the FBI, and the disclosure of data stored in CPIC by the RCMP to the FBI and the U.S. border officials.

In mid-February, I released a draft copy of this Report to the organizations consulted in this investigation. These organizations were invited to comment on the facts, findings and recommendations contained in the draft Report. Consistent with previous submissions received by my office, the comments on the draft Report were thoughtful and valuable.

Municipal Police Services in Ontario are governed by the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*. The OPP are governed by the *Freedom of Information and Protection of Privacy Act (FIPPA)*. For simplicity, throughout this Report, any reference to the *Act*, and its provisions, will be a reference to *MFIPPA*, although these provisions are mirrored in *FIPPA*.



# Issues

The issues raised by this investigation are:

1. Does the information at issue qualify as “personal information”?
2. What is the purpose for which the personal information at issue was obtained or compiled?
3. Do the police have the authority under the *Act* to disclose the information at issue to other law enforcement agencies within Canada, and to border officials in the United States?
4. How long do the police maintain the SIP record of a suicide attempt on CPIC? How, when, and on what basis should it be removed?

## Discussion

### Issue 1: Does the information at issue qualify as “personal information”?

The Police Services consulted during this investigation have described how they may be called upon to respond to calls dealing with attempted suicides. In the course of these responses, information relating to individuals is recorded. As described above, in various circumstances this information will be added by a Police Service to the SIP repository of CPIC.

If a local Police Service decides to enter the information on CPIC, the information inputted would include the name, sex, date of birth, address, and the fact that the individual had attempted suicide. It may also include information about the circumstances surrounding the attempt. For example, in the case of an overdose of medications, the SIP entry would note “overdose.” If the individual had a family member or other support services, a name and contact details for that person may also appear on the SIP entry. The entry will include the name of the agency responsible for the entry and a contact number for an individual within that agency.

In some cases, the information may also include what the RCMP describes as “type.” There are four possible types that can appear on a SIP record: DO (dangerous offender), MH (mental health), SO (sex offender), and HR (high risk offender). Further information about the significance of the mental health type of SIP records is set out below.

As the provisions of the *Act* that relate to collection, use and disclosure only apply to “personal information,” I must determine whether the information collected meets the definition of that term as set out in section 2(1). The definition states, in part:

“personal information” means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.<sup>6</sup>

I am satisfied that the information recorded in the SIP section of CPIC by Police Services relating to an individual's attempted suicide qualifies as the personal information of the individual pursuant to paragraphs (a), (b), (d), (g) and (h) of the definition. The Police Services consulted did not dispute this view.

## Issue 2: What is the purpose for which the personal information at issue was obtained or compiled?

The authority of Police Services to collect information related to suicide attempts is not at issue in this investigation. This authority is found in section 28(2) of the *Act* which states:

No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or necessary to the proper administration of a lawfully authorized activity.

Police Services generally require that their officers record information gathered at the scene of a call for service in the officers' notebooks or memorandum books. Additional information may be recorded in an occurrence report if some form of police action or intervention is required, such as an apprehension under the *Mental Health Act*, or where there is an issue of officer safety. Some services may also require that an officer prepare forms specifically designed for special circumstances, such as the *Contact with Emotionally Disturbed Persons* or *Police Observation/Transfer of Care* forms.

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<sup>6</sup> Information and Privacy Commissioner of Ontario Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)

Regardless of how the information is recorded, I am satisfied that the collection of information about an attempted suicide is authorized under the *Act*. It would be unreasonable to expect police officers to respond to a call for assistance in the performance of their duties or functions and not create a record of that incident. Such collections of personal information are permitted on the basis that the information is used for the purposes of law enforcement.

The Canadian Mental Health Association and the Mental Health Commission of Canada agree that the collection of personal information about individuals who have attempted suicide, in addition to other relevant mental health information, is good police practice. Further, CMHA and MHCC agree that the personal information may be helpful when used internally. MHCC explained:

Overall, what police record in their respective RMS [Records Management System] is good and necessary business practice; it is defensible from the perspective of being responsible and accountable. It is the inappropriate direct or indirect release of this information that is the problem, not the generation and maintenance of the records(s).

While there is general agreement on the need for Police Services to collect this information and record it in their own local records management systems, the focus of this investigation is the authority of police to disclose this information, initially to CPIC, and as a consequence, to U.S. border officials and other law enforcement agencies. The authority to disclose to border officials turns, in part, on the purpose for which the information is obtained or compiled.<sup>7</sup> Therefore, before I consider the authority to disclose, I must first turn my mind to the purpose for which this information has been obtained or compiled.

All Police Services indicated that the collection of this type of information was done for officer and public safety. They explain that it is critical for responding officers to understand the mental state of an individual in order to respond to a call for service appropriately and safely (for both the individual and the officers). In particular, officers need to be aware of potentially violent or unsafe situations so they may use the appropriate caution and communicate effectively with someone who may be known to have special needs or concerns. In this regard, the Toronto Police Service stated that several coroners' inquests have acknowledged the "critical nature this information can play in preventing future deaths in police or custodial settings." I acknowledge that, in some cases, having information about an individual's mental state may be of assistance to responding police officers.

The Toronto Police Service referred us to guidelines developed by CAMH, St. Joseph's Health Care in London, Ontario, and the Ontario Police College, entitled *Not Just Another Call*.<sup>8</sup> In their view, these guidelines stress the importance of responding police officers having as much information as possible concerning the mental state of the individuals they encountered. The Toronto Police Service relies on the recommendations in the guidelines to the effect that a Police Service's procedures for responding to persons who may be emotionally disturbed, or may have mental health issues or a developmental disability, should require communications or dispatch operators to inform officers whether the police have had prior contact with the individuals.

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7 Section 32(c) of the Act allows disclosures if they are for the same purpose as the purpose for which they were obtained or compiled.

8 *Not just another call...police response to people with mental illnesses in Ontario – a practical guide for the frontline officer*, Centre for Addiction and Mental Health, 2004, online at: [http://www.pml.ca/webpages/reports/Not\\_Just\\_Another\\_Call.pdf](http://www.pml.ca/webpages/reports/Not_Just_Another_Call.pdf)

Mental health professionals and organizations take the position that not all suicide attempts involve circumstances that pose a risk of danger to police officers or others. In 2011, CMHA produced a paper on mental health and violence,<sup>9</sup> which reported that people living with mental health conditions are no more likely to engage in violent behaviour than the general population. CMHA found that public misperceptions contributed to negative attitudes and fears, which have a significant impact on the lives of people living with mental health conditions. In fact, they found that people with serious mental health issues were more likely to be victims of violence than the general population. Indeed, in the four cases that I referred to above, there was no suggestion that another individual's safety was at risk or that the suicide attempt involved criminal behaviour or any wrongdoing.

I recognize that there may be circumstances where a suicide attempt involves the use of weapons or occurrences of violence, where the safety of police officers and other members of the public may be at risk. In these limited circumstances, I acknowledge that one of the purposes of the collection is for officer and public safety. However, I do not agree that in **all** cases of attempted suicide the purpose of the collection is for officer and/or public safety reasons. The exercise of discretion will need to enter into the decision-making process. This will be of the utmost importance when my analysis turns to the question of whether the disclosure of this information via CPIC, once collected, is authorized.

The Police Services have identified attempted suicides that occur while individuals are within police custody as requiring special consideration. Another situation that has been identified as requiring special consideration is, what the police refer to as “police assisted suicide.” “Police assisted suicide” is the term used to describe a situation where a suicidal individual deliberately acts in a threatening way, provoking a lethal response from a police officer. In this Report, I will refer to this circumstance as an “intentional provocation of a lethal response by police.”

Specifically, reference has been made to a number of inquests where findings have been made about the sharing of information relating to the mental health of individuals who are within police custody. I will be reviewing the findings made in those inquest reports below. It is sufficient to note here that I accept that special considerations may apply where an individual attempts suicide within police custody or the suicide attempt could reasonably be considered to be an intentional provocation of a lethal response by the police. In those circumstances, one of the purposes of the collection of the information relating to that incident is to ensure that other law enforcement agencies, as well as corrections facilities which may assume custody of or otherwise encounter the individual, are aware of the risk posed by the individual.

In response to the draft Report, some of the Police Services and the OACP have emphasized that suicide-related information is entered on CPIC for the safety of the individual in question. For example, the Toronto Police Service stated:

[Y]our draft report does not give enough weight to the role that information regarding an attempted suicide plays in ensuring a proper response to an incident

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<sup>9</sup> *Violence and Mental Health: Unpacking a Complex Issue*, Canadian Mental Health Association – Ontario, September 2011, online at: [http://ontario.cmha.ca/public\\_policy/violence-and-mental-health-unpacking-a-complex-issue/](http://ontario.cmha.ca/public_policy/violence-and-mental-health-unpacking-a-complex-issue/)

and thereby also addresses, in a very significant way, the safety and well-being of the individual in question.

While I acknowledge that information about prior incidents may, at times, be relevant in determining an appropriate response, I do not consider that to be true in all cases. As I discuss in detail below, the mental health professionals and organizations that I consulted with stated that a police officer responding to a 9-1-1 call for assistance in relation to a suicide attempt or threat may not know the outcome of his/her involvement with the call. Therefore, the information collected may not be accurate or complete, and may be of little assistance in determining the appropriate response to the individual, in the event of another encounter with the police. In addition, mental health professionals have advised that a suicide attempt may not be indicative of future behaviour or of a serious or ongoing risk of harm to the individual. A suicide attempt may represent a “snapshot” of an individual’s state of mind at a particular point in time, and is not necessarily predictive of a future attempt. As a result, in my view, it cannot be said that in **all** cases of a suicide attempt or threat, the collection of information relating to that incident is necessary to ensure the future safety of the individual in question.

Having considered all of the representations submitted during this investigation, I find that the purposes for which attempted suicide-related information may be obtained or compiled will vary depending on the circumstances of the incident. In all cases, one of the overriding purposes for which the information is obtained or compiled is to have a record of the incident. In other circumstances, one or more of the following additional purposes **may be** engaged:

- assisting officers in determining the appropriate response and actions to be taken when responding to a call for service;
- determining appropriate responses and actions in relation to individuals who may be in the custody of the police; and
- protecting the public, police officers, and the individual.

As I indicated previously, the purpose of the collection of information in any particular case is relevant to the extent to which the eventual disclosure to other Canadian law enforcement agencies and to U.S. border officials is authorized under the *Act*.

### Issue 3: Do the police have the authority under the *Act* to disclose the information at issue to other law enforcement agencies within Canada, and to border officials in the United States?

I have found that the collection of information about suicide attempts is authorized on the basis that the information is used for law enforcement purposes. In the words of MHCC, it is a, “good and necessary business practice.” I agree that the collection and the storage of that information in the Police Services’ own records management systems is a valid information management practice, and is therefore in compliance with the *Act*.

I note that the Toronto Police Service characterizes the recording or uploading to CPIC as a “use” of information. For example, the Toronto Police Service stated:

In the cases of confirmed attempted suicide, the Toronto Police Service **uses** CPIC for the purpose of law enforcement and the protection of the public and its members. [Emphasis added.]

In representations submitted in response to the draft report, both the RCMP and OPP disputed that the uploading of personal information to CPIC qualifies as a disclosure under the *Act*. They said that a disclosure only occurs when the record is queried or accessed by another agency.

The recording and uploading of personal information about a suicide attempt to CPIC is not only a “use” of information – it is clearly a “disclosure” of personal information to an external entity, at the very least, whenever the information is accessed or queried. As noted in the discussion on CPIC above, access to the information in the SIP repository has been granted to all Police Services in Canada, as well as the FBI and U.S. border officials, through the Department of Homeland Security. To characterize the recording or uploading of this personal information as merely a “use” overlooks the consequences and impact of the decision to place that information on CPIC, namely, the “real-time” accessibility of highly sensitive personal health information to many organizations, including foreign government agencies. By recording or uploading personal information to the CPIC database, Police Services in Ontario are making this information available to these external agencies on an ongoing and “real-time” basis.

I note that, as indicated by the RCMP, in 2013, there were over 240 million queries to this system. Therefore, there is no question that this personal information is being accessed and queried as was the case in the specific examples referred to in this Report. Consequently, I find that the personal information at issue has been, and is being, disclosed.

Section 32 of the *Act* contains a general prohibition on the disclosure of personal information subject to a series of exceptions. Therefore, in order to determine whether a given disclosure is permissible under the *Act*, it is necessary to assess whether the disclosure fits within any of the exceptions set out in section 32. Sections 32(c) and (f) state:

An institution shall not disclose personal information in its custody or under its control except,

- (c) for the purposes for which it was obtained or compiled or for a consistent purpose;
- (f) if disclosure is by a law enforcement institution,
  - (i) to a law enforcement agency in a foreign country under an arrangement, a written agreement, or treaty or legislative authority, or
  - (ii) to another law enforcement agency in Canada;

Having carefully considered the other paragraphs within section 32, I find that the above-noted sections are the only paragraphs that are relevant here.

## Police Disclosure Practices and CPIC

Before I turn to an analysis of the exceptions in section 32, I note that there is some variation among the practices of Police Services in Ontario in relation to CPIC. For example, the Hamilton Police Service (HPS) stated that its officers and staff exercise discretion before recording attempted suicide-related information on the SIP repository in CPIC. HPS officers and staff will consider the past history of the individual, the severity of the incident and the danger that the individual may pose to themselves or others. The HPS will also take into consideration the need to avoid “criminal sanctions for behaviour that may best be dealt with as a health issue.” Finally, the HPS recommended that in instances where there is reason to believe that an individual wants to die by means of “an intentional provocation of a lethal response by the police,” relevant information will be entered on CPIC.

The Waterloo Regional Police Service also stated that discretion is exercised by officers when determining whether to add a SIP entry for an attempted suicide. In the case of an individual who has attempted suicide by taking an overdose of pills, for instance, it states that a SIP entry would not generally be created, unless “extenuating or violent circumstances exist.” A SIP entry would, however, be created in the event that a suicide attempt was made in custody, involved violence toward the police, or if the suicide attempt could reasonably be considered to be an attempt at “an intentional provocation of a lethal response by the police.”

The Ontario Provincial Police stated that the investigating officer exercises discretion by considering all the circumstances of the occurrence and the state of the affected individual in determining whether a SIP entry is warranted for a suicide attempt. If the officer concludes that the entry is warranted, a signed authorization form is provided to CPIC personnel located in the OPP Provincial Communications Centres. Factors to be considered in exercising discretion include whether a charge was laid, whether there was a threat to officer or public safety, and the privacy rights of the individual as balanced against the need to protect the safety of officers, the public or the individual.

The OPP provided my office with copies of Police Order 2, *Emotionally Disturbed/Mentally Ill/Developmentally Disabled*, which guides officers concerning the exercise of discretion and factors to be considered. In addition, they referred us to Police Order 2.53.8 entitled, *CPIC*. Together, these Police Orders instruct officers on the collection and use of mental health information, generally, and the authorization process for the use of SIP and CPIC. They do not specifically deal with the treatment of personal information collected about suicide attempts.

The OPP also stated that the guidelines entitled, *Not Just Another Call*, that I referred to above, provide direction to its officers concerning the exercise of discretion and the factors to consider before adding personal information about individuals with mental health illnesses to CPIC. While these guidelines support the exercise of discretion, they do not specifically address how information related to suicide attempts should be treated. I consider the implications of these guidelines in greater detail below.

## Toronto Police Service Practice

In contrast to these Police Services, the Toronto Police Service (TPS) stated that in cases of “confirmed attempted suicide,” information related to the suicide is routinely entered into the SIP repository of CPIC, regardless of the circumstances of the attempt. I was advised that this is TPS policy and that individual officers are not permitted to exercise their own discretion.

The TPS takes the position that this practice is recommended by “leading mental health-care professionals and the Province.” Reliance is also placed on RCMP requirements and recommendations made by a number of coroner inquest reports. I will address each of these claims in turn.

### CPIC Requirements

The TPS stated that CPIC *requires* that it post information relating to all suicide attempts on the database. In order to test this claim, my staff met with a number of senior staff at the Canadian Police Information Centre in Ottawa, including the Director General of CPIC, Chief Superintendent P. M. Dionne. Chief Superintendent Dionne indicated that CPIC policies and protocols do not mandate that **all** suicide attempts must be recorded in CPIC. She stated that the decision to enter a suicide attempt on CPIC is a **discretionary** one, which requires thoughtful consideration by the front line officer. There may be reasons for which an officer will decide that entry onto CPIC is not required in a particular circumstance. However, Chief Superintendent Dionne stated that the underlying principles behind the CPIC system will only function as intended if all public safety information is properly entered by the CPIC user community. Therefore, while the front line officer has discretion, the entire user community holds the expectation and counts on the fact that all public safety-related records have been properly uploaded onto CPIC. Chief Superintendent Dionne stated that if the suicide attempt information, in the opinion of the officer, would be relevant to the safety of that person or other persons, the information should be entered. Once a Police Service uploads information to CPIC, the *CPIC User Manual* provides guidance as to where within CPIC the information should reside. Subsequent decisions to alter or remove information from CPIC remain with the originating Police Service.

The RCMP also advised my staff that they were aware of circumstances where Police Services in Ontario exercised discretion before recording or uploading personal information relating to suicide attempts to CPIC, and that this practice was certainly acceptable to them.

### Provincial Requirements

The TPS stated that there are provincial rules governing the recording of suicide-related information on CPIC. They submitted that the Ministry of Community Safety and Correctional Services (MCSCS), which is the ministry responsible for policing, conducts audits of municipal Police Services to ensure compliance with CPIC policies. They referred to a 1983 bulletin issued by the Ontario Police Commission (now the Ontario Civilian Police Commission) which states:



It has historically been unofficial OPC policy to encourage all forces to enter a record in the Observation category of all subjects who attempt suicide while in police custody. As a result of their discussions, we would therefore direct that provincial policy be established to make it mandatory for all forces to enter a record in the Observation category of all suspects who attempt suicide while in police custody. In addition, since suicide, in any place, comes within the definition of the Observation category, all forces are encouraged to enter these subjects on the system, at their discretion.

The TPS also stated that MCSCS has a policy that requires Police Services to enter SIP information in CPIC concerning individuals who attempt suicide in police custody, and that Police Services are encouraged to enter records on CPIC concerning all those who attempt suicide. It also stated that MCSCS treats a failure to enter an attempted suicide into CPIC “as an error to be corrected.”

In order to verify these assertions, my staff met with the Director, External Relations Branch, Public Safety Division of MCSCS, the ministry responsible for policing policy in Ontario. While the Director was familiar with the bulletin referred to above, he was unaware of any **mandatory** directives having been developed. Further, I was advised that **MCSCS does not currently have any directives in place that would require the recording of suicide-related information on CPIC by Police Services in Ontario**. I was also advised that MCSCS is no longer responsible for conducting audits on Ontario Police Services’ use of CPIC.

## Leading Mental Health Professionals

The TPS takes the position that the disclosures via CPIC are supported by leading mental health professionals. They pointed to the guidelines co-authored by the Centre for Addiction and Mental Health, called *Not Just Another Call*, referred to previously. The RCMP also pointed to these guidelines, stating that “leading mental health organizations support the placement of attempted suicide information on CPIC.”<sup>10</sup>

My staff raised this question directly with senior staff at CAMH. CAMH stated **unequivocally** that the guidelines do not support “the blanket requirement that this information should be recorded in CPIC.” Having read the guidelines, I note that they appear to have been developed to assist Police Services in fulfilling their roles under the *Mental Health Act* – which may relate to encounters with individuals for a variety of reasons. These guidelines do not specifically focus on police responses to attempted suicides. I also note that they use the language of **discretion** – for example, stating that the police “should consider” recommending that information about an individual be entered on SIP. In my view, the guidelines do not support, let alone require, the indiscriminate disclosure of suicide-related information via CPIC, in all cases.

The TPS also referred to a report prepared by the Canadian Centre for Justice Statistics (2009), entitled *An Investigation into the Feasibility of Collecting Data on the Involvement of Adults and*

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<sup>10</sup> [http://www.thestar.com/news/gta/2013/12/04/rcmp\\_collect\\_suicide\\_reports\\_and\\_share\\_details\\_with\\_us\\_officials.html](http://www.thestar.com/news/gta/2013/12/04/rcmp_collect_suicide_reports_and_share_details_with_us_officials.html)

*Youth with Mental Health Issues in the Criminal Justice System*<sup>11</sup>, which identified five possible objectives for the collection of data:

- Improve public awareness,
- Assist those in the field and in policy to make information-based decisions regarding responses,
- Measure workload, performance and outcome,
- Establish baseline information, and
- Work toward consistent data recording practices.

The TPS also stated that CAMH's report entitled *Mental Health and Criminal Justice Policy Framework*<sup>12</sup>, encourages the integration of responses between the criminal justice and mental health systems. In the TPS's view, this report implies that police record keeping and information sharing are important to this integration of responses.

I have read and carefully considered both papers in detail. In my view, these papers do not support the position that information related to suicide attempts should **automatically** be disclosed via CPIC to every law enforcement agency in Canada. Further, there is nothing in any of these reports to support the disclosure of this information to foreign government agencies.

The first paper is a review of data collection methodologies. It notes that information in police records about mental health is based on observations (as opposed to a mental health diagnosis) and is collected in different ways across various Police Services. The paper recommends the use of surveys or standardized forms to address these inconsistencies. The paper does not recommend a broader sharing of information between law enforcement agencies across Canada or with external government agencies.

The *Mental Health and Criminal Justice Policy Framework* paper makes recommendations for a comprehensive approach to the improvement of the interactions between the mental health and criminal justice systems. For example, it states that improved police training and the use of pre-charge diversion options such as the referral of affected individuals to hospitals or other mental health services would diminish the level of involvement of the criminal justice system. While the paper recommends an integrated response and may imply that police record keeping practices are important, it does not support the broad propositions suggested by the TPS.

As noted above, I invited a number of leading mental health professionals and mental health organizations to submit representations on this issue, as part of this investigation. Every single one of these organizations all opposed, rather than supported, the automatic disclosure of suicide-related information via CPIC.

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11 <http://www.statcan.gc.ca/pub/85-561-m/85-561-m2009016-eng.htm>

12 *Mental Health and Criminal Justice Policy Framework*, Centre for Addiction and Mental Health, October 2013, online at: [http://www.camh.ca/en/hospital/about\\_camh/influencing\\_public\\_policy/Documents/MH\\_Criminal\\_Justice\\_Policy\\_Framework.pdf](http://www.camh.ca/en/hospital/about_camh/influencing_public_policy/Documents/MH_Criminal_Justice_Policy_Framework.pdf)

CAMH acknowledged that it may not be familiar with the totality of disclosure practices of all Police Services in Ontario, including disclosures to U.S. border officials. However, it expressed a number of general concerns about the broad disclosure of this type of information. It stated that recipients of information relating to suicide and mental health may not have the clinical knowledge or familiarity with the factual circumstances to fully understand the importance (or lack thereof) of the information at issue. It added that information lacking in this important context could easily lead to misinterpretation, misuse and stigma for their clients. CAMH also stated:

Hopefully, through your investigation and our opportunity to contribute, we will have a clear understanding of police practices and the ability to bring about change to those practices that are stigmatizing and unjust for those citizens with mental illness.

The Mental Health Commission of Canada echoed these concerns and stated:

The information in police databases is often discretionary, opinionated, incomplete, and potentially inaccurate. While necessary for safe and efficient police operations, when such possibly flawed information is used for internal police purposes, the impact falls primarily on the user. When this personal information is then shared with potential employers, volunteer agencies, government departments, and foreign governments, the impact of the flaws and inconsistencies falls primarily on the individual.

MHCC is also concerned that information collected by the police may be incomplete or inaccurate and that this information will then be used to make decisions about employment, volunteer work and the crossing of international borders. The police may also be completely unaware of the outcome of any particular mental health apprehension or involvement. For example, when the police respond to a 9-1-1 call regarding an attempted suicide, they may not know whether the individual was later released by medical professionals with no diagnosis or determination reflecting an immediate threat. Indeed, the occurrence may not even indicate a serious or ongoing risk of harm to the individual. The police records will simply show a mental health apprehension and/or a suicide attempt – crucial meaningful details may be entirely missing or inaccurately recorded.

With respect to the specific disclosure via CPIC, MHCC stated:

[W]ith one exception, we see no good reason to enter [mental health] information and suicide attempts on CPIC. The exception is when a judge/justice of the peace grants an order/warrant to apprehend a person under a provincial *Mental Health Act* who might be mentally ill and that order/warrant is not executed in, for example, 8-10 hours, then it is good practice to enter that order/warrant on CPIC. This enables other police officers to execute the order/warrant should they encounter that person after the initial police officers, for example, have gone off shift. As is required practice by CPIC, that order/warrant should be removed from CPIC once the order/warrant has been executed.

With respect to the disclosure of suicide-related information to other Police Services, MHCC stated:

While it might be useful internally to a local police organization, we cannot see any reason why it would be appropriate to be on CPIC. The marginal potential benefit (e.g. it is conceivable that a person with a suicide history might move from one jurisdiction to another) is far outweighed by the possible detrimental effects.

MHCC made the important point that “the continuum of suicide-related and/or attempts” encompasses a broad range of activities that require varied responses. There is a need to focus on the individual circumstances of each case. In their view, this is particularly true given that “stigma and misunderstanding is alive and well in police organizations,” despite the additional education and training that has occurred over the past 12 years or so.

Significantly, an experienced clinical director at CAMH who was interviewed during this investigation, stated that the “phenomenon of suicidality” is a temporary state. After treatment, it may no longer be present and may completely disappear. As he indicated, the fact that an individual may have attempted suicide at one point in the past is not an accurate indicator of that individual’s current state of mind.

The Canadian Mental Health Association stated that while it supports the collection of mental health information by the police internally and believes that this information is helpful when used internally to assist a person experiencing a mental health crisis, and to support a coordinated effort to provide mental health services, it is opposed to its disclosure externally. It believes that the disclosure of this information for other purposes, to other entities, is discriminatory and increases the stigma and discrimination associated with mental health issues – particularly when the sharing results in the creation of barriers for that person. CMHA takes the position that disclosure can negatively impact a person’s mental health, for the following reasons:

- Police records may create barriers to accessing employment, volunteer opportunities and professional qualifications;
- The records often prevent people from accessing housing, services, facilities and travel; and
- A mental health police record increases the public’s fear and negative stereotypes that the person may be dangerous or violent, and these in turn contribute to stigma, discrimination and social exclusion.

Having carefully considered all the representations submitted by these leading mental health professionals and organizations, I find that there is no support for an indiscriminate disclosure-by-default policy, as it relates to suicide attempts. There was a clear consensus among those I consulted regarding the devastating effects that the disclosure of this highly sensitive information may have on the individuals affected. There was also a clear consensus on the need to consider the unique circumstances of each individual case and the need to recognize that the information collected by the police may not be accurate, up to date, or complete.

## Inquests

The TPS also relies on recommendations made in several Ontario coroner's inquests in support of their broad policy of placing information related to attempted suicides on CPIC. I have carefully reviewed the verdicts referred to by the TPS and believe that the circumstances that resulted in those deaths can easily be distinguished from the types of incidents that resulted in the individuals described earlier in this Report who were denied entry into the U.S.

First, the one inquest that is highlighted by the TPS is that of Evan Thomas Jones<sup>13</sup>. As set out in the inquest verdict, police were called to Mr. Jones' home. On arrival, they encountered him outside the house, brandishing what appeared to be a knife in one hand and a meat cleaver in the other. The police perceived a significant threat to their safety and one officer discharged his firearm, striking Mr. Jones several times, resulting in his death. Mr. Jones was eighteen years old and had repeated encounters with the health and criminal justice systems in the two years prior to his death, including an apprehension under the *Mental Health Act* and a suicide attempt by way of an overdose. Recommendations made by the inquest jury included ensuring that the appropriate level of response be known in advance of police attendance, appropriate training be provided to police officers, and suicide risk/mental health issues be flagged in the SIP portion of CPIC.

As noted above, the facts of the *Jones* inquest differed from those under consideration in this investigation. Specifically, Mr. Jones had a history of encounters with the police and had previously been arrested as a result of allegations of violence and wrongdoing. Previous mental health-related violent behaviour may well have indicated the need to record information on CPIC. However, I do not accept that this stands for the proposition that, absent any violence or indications that an individual presents a threat to others, attempted suicides, for example by overdose, should be automatically recorded on CPIC as a matter of course.

The other inquests referred to by the TPS are ones in which individuals had long psychiatric histories and previous involvement with the police, in both Canada and the U.S. (*Maltar*<sup>14</sup>), or involved in-custody suicides by way of hanging (*Kesselring*<sup>15</sup>, *Mitten*<sup>16</sup>), and homicide (*DeBassige*<sup>17</sup>). I take particular note of the jury's recommendation in the *Maltar* case:

We recommend that the OPP initiate discussions with the RCMP and MCSCS concerning the criteria for inclusion of particular codes on the Canadian Police Information Centre database (CPIC). Specifically, we recommend that both police agencies and the Ministry review the criteria currently in place for entry of information concerning issues of mental illness or mental instability. **This review should take into account the potential benefit for police officers and members of the public by providing as much information as possible about an individual, while balancing and being sensitive to the privacy concerns of individuals, as**

13 Jones (Re) 2012 CanLII 66783 (ON OCCO)

14 Maltar (Re), 2009 CanLII 92002 (ON OCCO)

15 Kesselring (Re), 1999 CanLII 20031 (ON OCCO)

16 Mitten (Re), 2003 CanLII 71801 (ON OCCO)

17 Debassige (Re), 2010 CanLII 99920 (ON OCCO)

**well as applicable legislation concerning the protection and sharing of personal health information.** [Emphasis added]

I consider it significant that this jury recognized that placing mental health information on CPIC could impact the privacy of individuals. Contrary to the position taken by the TPS, this verdict does not stand for the proposition that all suicide attempts should be placed in CPIC. The jury clearly was of the view that the sensitivity of the information and the impact on the privacy interests of the individual should be factored into the decision-making process.

Further, none of the inquest verdicts indicated that they had considered the full consequences of disclosing information via CPIC – namely, that information related to an individual’s mental health would be accessible to U.S. border officials. In my view, the recommendations made in these inquests do not amount to a blanket requirement or recommendation that attempted suicide information in *all* cases should be added to CPIC.

In response to the draft Report, the OACP stated that police in Ontario are under pressure as a result of recommendations made in inquest jury verdicts that conflict with the recommendations set out in our draft Report. However, the OACP did not identify any specific verdicts to support this concern. In considering these comments, I have carefully reread the verdicts cited by the TPS in its representations. In my view, the recommendations in these verdicts do not conflict with the recommendations made in this Report. On the contrary, in the *Maltar*<sup>18</sup> inquest, referred to above, the verdict recommended that any review of the criteria for entry of information onto CPIC should consider “the potential benefit for police officers and members of the public by providing as much information as possible about an individual, while balancing and being sensitive to the privacy concerns of individuals. [Emphasis added.]” In my view, the *Maltar*<sup>19</sup> inquest verdict is consistent with the findings and recommendations made in this Report.

I have considered the reasons given by the TPS in support of their policy of automatically recording all attempted suicides on CPIC. I have also considered the representations of the OACP, suggesting that a conflict exists between the recommendations in this Report and those found in inquest verdicts. I am satisfied that none of these reasons or arguments supports such a rigid policy. In fact, greater support can be found for a more nuanced and privacy-protective policy that takes into account the context of each incident, and the potential impact of a CPIC entry on the individual involved.

I will now consider the question of whether police practices are in compliance with section 32 of the *Act*.

## Compliance with Section 32 of the *Act*

As indicated earlier, section 32 contains a general prohibition on the disclosure of personal information, subject to a series of exceptions. In order to determine whether the disclosure of attempted suicide-related information to other Canadian law enforcement agencies and to U.S.

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<sup>18</sup> *Supra* note 14

<sup>19</sup> *Ibid.*

border officials is permissible, it is necessary to determine whether any of the exceptions in section 32 are applicable. I will consider the possible application of section 32(c) initially and will then turn to the possible application of section 32(f).

## Section 32(c)

Section 32(c) permits the disclosure of the personal information at issue for the purposes for which it was obtained or compiled, or for a consistent purpose. It states:

An institution shall not disclose personal information in its custody or under its control except,

for the purpose for which it was obtained or compiled or for a consistent purpose;

As indicated above, the collection of information relating to attempted suicides by the police when responding to calls for service is appropriate. The purpose of the collection is to properly document the incident in the local services' own records and, in some of these cases, to ensure that the Police Service has this information in order to respond appropriately to a future call for service relating to the same individual and thereby ensure the safety of the individual in question. In certain other circumstances, I have found that there may also be public or officer safety concerns at play.

When considering the possible application of section 32(c), it should be noted that where information has been collected directly from an individual, a "consistent purpose" is defined in section 33 of the *Act* as follows:

The purpose of a use or disclosure of personal information that has been collected **directly** from the individual to whom the information relates is a consistent purpose under clauses 31 (b) and 32 (c) only if the individual might reasonably have expected such a use or disclosure [Emphasis added].

In this case, however, the personal information about individuals may also be collected indirectly, that is, from other individuals. Where personal information is collected indirectly, a consistent purpose is one where the purpose for the disclosure is "reasonably compatible" with the purpose for which it was obtained or compiled.<sup>20</sup>

## Disclosure to Canadian Law Enforcement Agencies

It is important to note that all Police Services in Canada have access to CPIC. As a result, any information related to attempted suicides will be accessible to them, in the same way that it is accessible to U.S. border officials. I will therefore consider whether disclosure of this information by Ontario Police Services to other Canadian law enforcement agencies is permissible under section 32(c) of the *Act*.

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<sup>20</sup> See, for example, Ontario Information and Privacy Commissioner, Privacy Complaint Reports MC-010032-1 and MC-010036-1

In analyzing this question, I have considered the evidence provided by mental health professionals and organizations. There is an acknowledgement that attempted suicide-related information may be beneficial in some limited circumstances, such as when there is an indication of violence. However, the significant stigma attached to this information is such that a blanket policy of recording all attempted suicides on CPIC, by default, is simply not supportable. It is clear from their evidence that many incidents of attempted suicide do not present a risk of violence to others, or pose a threat to officer or public safety. Given that police officers are not generally in a position to determine whether or not an individual poses an ongoing threat to themselves, the only purpose for which the information is obtained or compiled is to have a record of the incident. In these circumstances, the disclosure of the information to other Canadian law enforcement agencies via CPIC would not be for the same purpose.

Additional support for the view that the focus of any section 32(c) disclosure should be on the impact on public and officer safety comes from the practices of several Police Services that we have reviewed during this investigation. These services do, in fact, exercise discretion in recording attempted suicides on CPIC. The common thread in exercising this discretion is an indicator that the individual may be violent, or pose a threat to an officer or to public safety.

After reviewing the draft Report, the Hamilton Police Service confirmed that its practice is to exercise discretion before uploading attempted suicide-related information to CPIC. It also stated that it supports the implementation of clear criteria for determining when this information should be uploaded to CPIC. However, the HPS made a convincing argument that limiting the criteria to instances of “serious violence” was too restrictive. They explained that they have had experience with attempted suicides in circumstances that might not be considered “violent” but still posed the real possibility of harm to first responders and to the public. Specific and detailed examples of such cases were provided. They recommended that the criteria should capture incidents involving not only violence or the threat of violence, but also harm or the threat of harm to police officers and to the public. Having considered their representations, I agree that the criteria should be broadened to this limited extent.

Based on all of the evidence, I find that there are limited circumstances where a disclosure of suicide-related information to other law enforcement agencies in Canada would be appropriate under section 32(c). These circumstances include suicide attempts where there has been a threat of serious violence or harm, or the actual use of serious violence or harm directed at other individuals; the suicide attempt could reasonably be considered to be an intentional provocation of a lethal response by the police; the individual involved had a history of serious violence or harm to others; or the suicide attempt occurred while the individual was in police custody.

If none of these circumstances apply, the information should not be recorded in the SIP repository of CPIC.

In each of these cases, the purpose of the disclosure is the same as the purpose for which the information was obtained or compiled – public safety and officer safety. I recognize that the Police Service may need to alert other Police Services, and, in some cases, correctional facilities, of the circumstances surrounding a suicide attempt, as a matter of public and officer safety. In



addition, in these public safety circumstances, the disclosure of the information to other Police Services may facilitate or instruct other police officers as to the appropriate response to the individual concerned, whether as a result of the transfer of custody, or as a result of a subsequent separate encounter with the individual.

However, absent these public safety circumstances, the purpose of the disclosure is not the same as the purpose for which the information was obtained or compiled, nor can it be said to be for a consistent purpose.

In summary, I find that the disclosure of information relating to suicide attempts to other Canadian law enforcement agencies via CPIC is permissible under section 32(c), but only in the limited circumstances set out above. I will review these circumstances and criteria in greater detail below.

### Disclosure to U.S. Border Officials

Access to CPIC is provided to U.S. border officials, who use it, in part, to facilitate the screening of individuals pursuant to section 212(a) of the *USINA*. That section engages a consideration of whether or not an individual has a behaviour or history of behaviour that poses a threat to the property, safety or welfare of others and to that extent, involve considerations of public safety.

I have found that the purpose of the collection of suicide-related information varies with the circumstances surrounding the incident. In all cases it is to document the event. In some cases, the purpose of the collection may be related to public safety and officer safety issues. Those circumstances include cases where there has been a threat of serious violence, or the actual use of serious violence directed at other individuals; where there has been a suicide attempt in police custody, there is reason to believe that an individual seeks an intentional provocation of a lethal response by the police, or where the individual had a history of violence to others.

I am, therefore, satisfied that the disclosure of attempted suicides to U.S. border officials in those limited cases is for the same purpose for which it was obtained or compiled – public safety. Therefore, in those limited circumstances, the disclosure of this information is permissible under section 32(c) of the *Act*.

However, I have found that not all cases of attempted suicide involve a threat to public or officer safety. In those cases, the purpose of the disclosure to U.S. border officials is not the same as the purpose for which it was obtained or compiled – therefore, it is not permissible under the *Act*.

As set out above, a disclosure may also be permitted under section 32(c) where the disclosure was for a purpose that is consistent with the purpose for which it was obtained or compiled. In the case of personal information collected directly from the individual to whom it relates, a consistent purpose is one that *the individual might reasonably have expected*. Where the information is collected indirectly, a consistent purpose is one that is *reasonably compatible* with the purpose for which it was obtained or compiled. Therefore, I must now determine whether the disclosure of information that was collected for purposes other than public or officer safety is permissible on the basis that it was disclosed for a consistent purpose.

With respect to any information that may have been collected *directly* from the individual, I find no basis for concluding that anyone in Ontario would reasonably expect that, as a result of an emergency 9-1-1 call for assistance in relation to a suicide attempt, the police would disclose their personal information about the suicide attempt to U.S. border officials via CPIC. This would especially be the case where the suicide attempt did not involve the threat of serious violence, or use of violence against others.

In fact, we know that in each of the four cases described at the outset of this Report, the individuals involved were completely shocked to find that this information was made available to U.S. border officials. There is no information before me to suggest that these individuals were ever involved in any wrongdoing, criminal activity, or acts of violence that threatened others such that they would reasonably expect their personal information to be recorded in CPIC, and as a result disclosed to U.S. border officials.

With respect to any information that was collected indirectly, in my view, the purpose of the disclosure is not reasonably compatible with any of the various purposes of collection that have been articulated by the police.

For these reasons, I find that the disclosure to U.S. border officials and other Canadian law enforcement agencies is only in compliance with section 32(c) of the *Act* in limited circumstances including where there has been a threat of serious violence or harm, or where the actual use of serious violence or harm was directed at other individuals; where the suicide attempt could reasonably be considered to be an intentional provocation of a lethal response by the police; where the individual involved had a history of serious violence or harm to others; or where the suicide attempt occurred while the individual was in police custody. Absent these circumstances, I find that a disclosure to U.S. border officials or Canadian law enforcement agencies to be in breach of section 32(c) of the *Act*.

## Section 32(f)

Section 32(f) of the *Act* permits the disclosure of personal information in some circumstances to law enforcement agencies. It provides that:

An institution shall not disclose personal information in its custody or under its control except,

if disclosure is by a law enforcement institution,

- (i) to a law enforcement agency in a foreign country under an arrangement, a written agreement or treaty or legislative authority, or
- (ii) to another law enforcement agency in Canada;

In addressing whether the disclosure of suicide-related information by law enforcement institutions in Ontario via CPIC complies with section 32(f) of the *Act*, I will first consider section 32(f)(ii).

## Section 32(f)(ii)

Under section 32(f)(ii), a “law enforcement institution” may disclose personal information “to another law enforcement agency in Canada.” Here, the question is whether Ontario Police Services may disclose suicide-related information to other Canadian law enforcement agencies.

In Investigation I94-057M, I determined that, under section 32(f), the disclosing institution must be a “law enforcement” institution within the meaning of section 2(1) of the *Act*. I also determined that, in view of the definition of “law enforcement,” to qualify as a “law enforcement agency” under section 32(f)(ii), the receiving entity must either be a policing agency or a body responsible for administering a law, the violation of which could result in a proceeding leading to the imposition of a penalty or sanction.<sup>21</sup>

In Privacy Complaints MC07-23 and MC07-24, my office clarified that to be in compliance with section 32(f)(ii), the receiving entity must be “engaged in law enforcement as a primary function.” The fact that it may sometimes “be engaged in activity that falls within the definition of ‘law enforcement’ under section 2(1) of the *Act* does not make [it] a ‘law enforcement agency’ as described under section 32(f)(ii) of the *Act*.”<sup>22</sup>

In Privacy Complaint MC-040012-1, my office further clarified that to be in compliance with section 32(f)(ii), “the purpose of allowing transfers of personal information between law enforcement agencies is to further law enforcement purposes, rather than to allow unfettered, discretionary exchanges of information for any purpose.”<sup>23</sup>

In summary, in order to comply with section 32(f)(ii), each of the following three conditions must be met:

- The disclosing institution must be a “law enforcement” institution;
- The receiving entity must be “engaged in law enforcement as a primary function;” and
- Both the purpose(s) of the disclosure and the purpose(s) underlying the receipt of the same information must be to further a “law enforcement” purpose(s) within the meaning of section 2.

With respect to the first condition, it is well established that the OPP and municipal Police Services are “institutions” within the meaning of the *Act*. It is equally clear that they are “law enforcement institutions” given that, at section 2(1), the *Act* defines “law enforcement” to mean:

- (a) policing,

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21 Ontario Information and Privacy Commissioner, Privacy Investigation Report I94-057M, *A Police Services Board*, [1995] O.I.P.C. No. 144

22 Ontario Information and Privacy Commissioner, Privacy Complaint Report Nos. MC07-23 and MC07-24, *Peel Regional Police Services Board and Regional Municipality of Peel*, [2008] O.I.P.C. No. 181

23 Ontario Information and Privacy Commissioner, Privacy Complaint Report No. MC-040012-1, *Sarnia Police Service*, February 8, 2005. Also, see Ontario Information and Privacy Commissioner Order PO-2826, *Excessive Background Checks Conducted on Prospective Jurors: A Special Investigation Report*, October 5, 2009.

- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, or
- (c) the conduct of proceedings referred to in clause (b);

Regardless of whether the receiving entity is engaged in law enforcement as a primary function, I find below that the third condition has not been met.

With respect to the third condition, law enforcement practices that allow the disclosure of personal information for a purpose that cannot reasonably be said to be “law enforcement” will not comply with this condition and thus, will not comply with this section of the *Act*. As indicated, in determining compliance with this condition, it is necessary to consider both the *purposes of the disclosure and the purposes underlying the receipt of the information*. It must be demonstrated that both purposes are for “law enforcement,” rather than to “allow unfettered, discretionary exchanges of information for any purpose.”

In this context, I acknowledge that the term “law enforcement” as defined in section 2(1) of the *Act* encapsulates a broad range of functions and duties, and includes policing responsibilities. Nonetheless, in my view, it cannot be said that all suicide attempts raise either “law enforcement” or public safety concerns, at least in the context of the disclosure of information related to such an incident after the incident has been resolved (e.g. after the person has been taken to hospital or otherwise been dealt with). In some cases, the circumstances of the suicide attempt may not pose a risk to the safety of officers or others. In many other cases, there may be no objective basis to conclude that the individual will pose a risk to the safety of officers, themselves, or the public in the future.

Of course, as discussed in previous privacy complaint reports<sup>24</sup> and as mentioned above, such mental health-related incidents may properly be documented by the police (e.g. in a police officer’s notebook or a Police Service’s records management system) to record the performance of a police function or duty. The documentation of such an incident is itself a valid “law enforcement” purpose underlying the proper collection and use of such information. Police must be able to document their activities in performing their duties and functions. Performing *Mental Health Act*-related duties, as well as responding to 9-1-1 calls, clearly falls within police duties and functions. In addition, the relevant police documents may subsequently be used by the Police Service to assist in providing appropriate services to these individuals in the future, should any such service be required.

However, the police authority to collect and use information does not translate into the authority to automatically disclose that same information in all cases. In those circumstances where the distinct character of the personal information is non-criminal in nature, a cautious approach is required. As discussed in *Privacy Complaint Report MC-050045-1 and MC-050047-1*:

Individuals who have previously been detained by the police under the *Mental Health Act* may have been detained for a myriad of reasons, and in many cases, such detainments are not necessarily indicative of the person posing a risk. (At least, the individual may pose no greater risk than other members of the public).

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<sup>24</sup> Ontario Information and Privacy Commissioner, Privacy Complaint Report No. MC-050045-1 and MC-050047-1

In the above privacy complaint report, my office recommended that the police “reconsider its policy of automatic disclosure of records of a non-criminal detainment under the *Mental Health Act* pursuant to Police Reference Checks.” In my view, a similar approach is required in the present case with respect to the disclosure of the non-criminal records containing information about suicide attempts, including to other police agencies in Canada and to U.S. border officials, in those circumstances where the purpose of the disclosure and the purpose for which the other agencies or officials receive the information is not a law enforcement purpose.

In particular, I must conclude that in some circumstances there is no law enforcement purpose to justify the disclosure of information in relation to suicide attempts to other law enforcement agencies. In other words, suicide-related information will not, absent limited circumstances, such as public or officer safety concerns, be relevant to the policing duties of other Police Services or relevant to the investigatory aspect of the definition of law enforcement in section 2(1) of the *Act*.

Viewed in this light, a practice of automatically recording all such incidents in the CPIC database and the consequent disclosure to Canadian law enforcement agencies is a disclosure practice that does not comply with section 32(f)(ii) of the *Act*. Equally, it is not sufficient to suggest that, because a receiving entity has, as its primary function, law enforcement duties, one Police Service may routinely disclose the information via CPIC on the basis that it may one day be relevant to the receiving entity’s performance of some unspecified law enforcement purpose. To conclude otherwise would, in effect, “allow unfettered, discretionary exchanges of information, for any purpose.”

Accordingly, I find that the third condition set out above is not met in those circumstances where Police Services in Ontario are disclosing to other Canadian law enforcement agencies via CPIC information relating to suicide attempts that **do not** provide an objective basis to conclude that there exists a public safety or officer safety concern.

As all three conditions must be met in order to satisfy the exception in section 32(f)(ii), I find that the disclosure to other Canadian law enforcement agencies, absent public or officer safety concerns, is not permissible under section 32(f)(ii).

### Section 32(f)(i)

Under section 32(f)(i) of the *Act*, a law enforcement institution may disclose personal information “to a law enforcement agency in a foreign country under an arrangement, a written agreement or treaty or legislative authority.” Here, the question to be examined is whether Ontario Police Services may disclose suicide-related personal information to U.S. border officials who have access to CPIC.

Compliance with section 32(f)(i) requires compliance with each of the three conditions discussed under section 32(f)(ii), as well as a fourth condition. The four conditions are:

- The disclosing institution must be a “law enforcement” institution;
- The receiving foreign entity must be “engaged in law enforcement as a primary function;”

- Both the purpose(s) of the disclosure and the purpose(s) underlying the receipt of the same information must be to further a “law enforcement” purpose(s) within the meaning of section 2; and
- The disclosure must be made “under an arrangement, a written agreement or treaty or legislative authority.”

Consistent with my analysis under section 32(f)(ii), I find that the OPP and municipal Police Services are “law enforcement” institutions. I now turn to consider whether the disclosure to U.S. border officials satisfies condition three.

As discussed above, the practice of automatically disclosing all suicide-related incidents via CPIC on the basis that it may one day be relevant to the performance of an unspecified law enforcement purpose is a disclosure practice that does not comply with the third condition. Equally, it is no answer to suggest that, because a receiving entity has, as its primary function, law enforcement duties, Police Services in Ontario may routinely disclose personal information via CPIC on the basis that it may one day be relevant to the receiving entity’s performance of an unspecified law enforcement purpose. As I found above, to conclude otherwise would, in effect, “allow unfettered, discretionary exchanges of information, for any purpose.”

In the context of this investigation, I am very mindful that the purpose to which the receiving entity is putting the suicide-related information at issue is, in part, to screen individuals who seek to travel to or through the U.S. As a result, in most cases of attempted suicide, the U.S. border officials are not using the information for a *policing* purpose within the meaning of paragraph (a) of the definition of law enforcement in section 2(1) of the *Act*. In some limited cases where one of the circumstances set out in the discussion on section 32(c) are present, I appreciate that there may be public or officer safety concerns or purposes that would be encompassed by policing. However, the purpose of the disclosure in most cases, does not fall within the investigatory aspect of the definition of law enforcement in section 2(1) of the *Act*. When an individual is turned away at the border, there does not appear to be any judicial or quasi-judicial proceeding in play, let alone one that could lead to a penalty or sanction. U.S. authorities simply refer concerned individuals to a limited list of panel of physicians in Canada who conduct a medical assessment.

Regardless of whether the receiving entity is engaged in law enforcement as a primary function or whether the disclosure is made “under an arrangement, a written agreement or treaty or legislative authority,” I find that the third condition has not been met, absent the circumstances described above, and for these reasons, I find that the disclosure of suicide-related information to U.S. border officials is only permitted under section 32(f)(i) in those limited circumstances.

In the preceding analysis, I found that the disclosure to other Canadian law enforcement agencies and U.S. border officials of all information relating to suicide attempts is not in compliance with sections 32(c) or (f) of the *Act*, except in the cases that I described above. Given the access that U.S. border officials and other Canadian law enforcement agencies have to CPIC, the police should not enter information about suicide attempts into the SIP repository of CPIC, other than in those limited circumstances.

## The “Mental Health Disclosure Test”

To summarize, I have identified a set of four circumstances where I found that the disclosure of suicide-related personal information to law enforcement agencies within Canada and to U.S. border officials would be permissible under sections 32(c) and (f) of the *Act*. Those circumstances include incidents that demonstrate a threat to public safety or officer safety, incidents of attempted suicide within police custody, suicide attempts that could reasonably be considered to be an intentional provocation of a lethal response by the police, and cases where the individual had a history of serious violence to others. I note that some or all of these considerations are already part of the decision-making process that officers in the Hamilton Police Service, the Waterloo Regional Police Service and the Ontario Provincial Police undertake when they consider whether information about attempted suicide should be recorded in the SIP repository of CPIC. The Waterloo Regional Police Service should be applauded for their practices. As I noted above, this Police Service does not record personal information about suicide attempts in the SIP repository of CPIC unless “extenuating or violent circumstances exist.” I also commend the Hamilton Police Service for adding that one of the factors its officers must consider is the need to avoid “criminal sanctions for behaviour that may best be dealt with as a health issue.” I must also commend the Ontario Provincial Police who identified the privacy rights of the individual as a relevant factor in determining whether disclosure should be made via CPIC.

Information relating to our health goes to the “biographical core” of each of us and is deserving of the most sensitive treatment and highest standards of protection. The disclosure of information about our mental health can have devastating consequences, well beyond the impact of the disclosure of other medical health issues. This is particularly the case where, as in these circumstances, the information may be incomplete or open to inappropriate interpretation. Although significant strides have been made by the mental health community and others to increase the awareness of mental health issues and reduce the stigma associated with them, this stigma has not been eliminated. These circumstances justify a cautious and measured approach to any disclosure practices related to this type of sensitive personal information.

The Canadian Civil Liberties Association’s representations address the shortcomings of what it calls a “blanket approach” to disclosure practices. It notes that Justice O’Connor, in the *Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar*, “criticized blanket information-sharing policies” and made recommendations regarding the need to “evaluate the relevance of the information being shared, consider human rights and privacy considerations prior to sharing, and place strong caveats on the permitted use of this information.” The CCLA adds that if it is necessary to share information with other Canadian Police Services for public safety reasons, it should be done with “as minimal incidental disclosure as possible” in view of the consequences of doing so – disclosure to the U.S. It takes the position that absent limited circumstances, suicide-related information should be maintained on local, not national, databases.

Of significant concern in this investigation are the circumstances where an individual, who has had no history of involvement with the police, attempts suicide in a manner that does not pose a threat to the public or officer safety. Those are the very circumstances of the four individuals

whose stories are set out in this Report. The highly sensitive information relating to the 9-1-1 call for assistance in these circumstances should be treated with the utmost sensitivity, and should not be disclosed to other law enforcement agencies in Canada and to U.S. border officials. Of greatest concern to my office is the possibility that an individual who requires the assistance of police at a time of enormous difficulty may be reluctant to call for assistance because of the consequences of doing so. Deterring the seeking of much-needed help should be avoided at all costs.

Having carefully considered all of the representations and comments submitted, including the comments submitted on the draft Report, I find that one of the following four circumstances must be present before uploading to or disclosing any suicide-related information to other law enforcement agencies and U.S. border officials via CPIC:

1. The suicide attempt involved the threat of serious violence or harm, or the actual use of serious violence or harm, directed at other individuals;
2. The suicide attempt could reasonably be considered to be an intentional provocation of a lethal response by the police;
3. The individual involved had a history of serious violence or harm to others; or
4. The suicide attempt occurred while the individual was in police custody.

Unless one of these circumstances applies, attempted suicide information should not be recorded in the SIP repository of CPIC. I will refer to this test in the discussion that follows as the “Mental Health Disclosure Test.”

In its comments on our draft Report, the Canadian Mental Health Association – Ontario was supportive of the findings and recommendations made in the Report. It proposed a number of changes relating to expanding the focus of our investigation to cover not only information on CPIC for attempted suicides, but also other mental health issues, and defining some of the terms used in the Mental Health Disclosure Test, such as “serious violence.” While I commend the CMHA for its work in this area, these recommendations go beyond the scope of this investigation. Other recommendations that were made by the CMHA have resulted in changes to this final Report.

The Centre for Addiction and Mental Health accepted our Report in its entirety:

CAMH has no concerns about the content of the Report... and (is) in agreement with the Report’s findings and supports the recommendations you have put forward.

The Waterloo Regional Police Service responded to the draft as follows:

We find your draft Report very thoughtful and instructive for the future application of Special Interest Police entries applied to the CPIC system. . . . We look forward to your final Report and the implementation of a more consistent approach, among Police Services, to the management of records as it relates to individuals living with mental health issues.



In its response to the draft Report, the Ottawa Police Service did not propose any changes but did confirm that its officers do not upload to CPIC personal information collected about suicide attempts in all cases.

The OPP also supported an approach to CPIC that involves the exercise of discretion, as is their current practice. Its position on the criteria set out in the draft is that “residual discretion” should be provided to its members to disclose attempted suicide information to CPIC. It proposed the following additional criteria:

A police officer, with the approval of a supervisor, can input information to CPIC concerning an individual’s suicide threat or attempt where the police officer reasonably believes, based on his or her interaction with the individual, that the individual continues to be a potential risk to the police, the public or himself or herself.

The OPP stated that if the information about prior suicide threats and attempts is not available on CPIC, the safety of persons with mental health issues, the public and the police may be at an increased risk.

I have a number of concerns about the “residual discretion” proposed by the OPP. I have already found that police records relating to a previous suicide attempt may not contain sufficiently accurate and complete information about the event to assist a responding officer in making an assessment as to whether an individual continues to be a potential risk to himself or herself. For this reason, I would not support the addition of “residual discretion.” With respect to the potential risk to the police or to the public, my view is that the Mental Health Disclosure Test is sufficient to capture cases where an individual may pose “an ongoing risk” to police or the public.

In response to the draft Report, the RCMP stated that the Mental Health Disclosure Test is “fundamentally flawed and dangerous” and that it overemphasizes the need for violence in order to upload information about an attempted suicide to CPIC. According to the RCMP, police often need to know that a person has previously attempted suicide when responding to a call involving that individual. Without this information, there would be an increased risk to law enforcement officers, the public, and to the individual. The RCMP also stated that the criteria are too narrow, restrictive, and fail to take the safety of the individual who has attempted suicide into account.

The RCMP recommend that:

Incorporated into an IPC test, in addition to consideration of previous suicide attempts and the safety of the individuals themselves, should be a subjective determination by the attending officer as to whether the information could be of assistance to other law enforcement officers or emergency personnel in the future, or could be relevant to the safety of officers, the public or the subjects themselves.

The RCMP recommended that, in addition to the subjective component, the following factors should be added to the test: whether or not there has been a previous suicide attempt and considerations of the safety of the individuals themselves.

Having considered these submissions, I note that it is the circumstances of a particular previous attempt that are important, not simply the existence of a previous attempt. In my view, this point is captured in the Mental Health Disclosure Test.

Barring circumstances that fall within the test, I am not persuaded that the future safety of the individual attempting suicide is the sole basis for uploading highly sensitive information about the attempt to CPIC. Other than bald assertions that *knowing* this information would be of assistance, I have not been provided with any other information that would support such a finding in **all** cases. Again, I agree with the comments of mental health professionals who have stated that the fact that someone has previously attempted suicide is not indicative that this behaviour will be repeated. As we have learned from mental health professionals during the course of this investigation, mental health issues can be episodic. In my view, knowing that an individual has previously attempted suicide, for instance, by way of an overdose, is likely to be of little or no assistance to first responders who are responding to a second attempt by the same or different means.

Respectfully, more problematic is the suggestion that this should be a subjective test to be applied by the responding officer. A subjective test will likely result in the uneven application of the criteria across the province. It also fails to consider the fact that the responding officer may not have accurate or complete information about the outcome of the incident that would be necessary to make an informed decision as to whether the information may be of assistance in the future.

Staff at the Centre for Addiction and Mental Health and the Mental Health Commission of Canada have advised that an officer may collect no additional information after escorting an individual to the hospital and may be completely unaware of the outcome of his or her involvement. For example, he or she may not know whether the individual was discharged from medical care on the basis that he or she was not a threat to him/herself or others. A subjective test also fails to recognize that the “phenomenon of suicidality” is a temporary state and that one previous experience is not an accurate predictor of that individual’s current state of mind.

As discussed earlier, the Toronto Police Service takes the position that information about **all** attempted suicides may be relevant and useful with respect to future incidents, and as a result, should be added to CPIC. I have noted that this is not a position taken by other Police Services such as Waterloo, Hamilton or the OPP, who all consider the uploading of attempted suicide-related information to CPIC to be discretionary. It is also not a position that is supported by the mental health organizations with whom I have consulted, who are all of the opinion that there should **not** be an indiscriminate disclosure of attempted suicide-related information via CPIC.

The Toronto Police Service stated that they believe that our draft Report does not give “sufficient recognition to the safety and well-being of individuals who come into contact with the police, or are otherwise in crisis, who have had prior suicide attempts and are likely at a higher risk of suicide.” I respectfully disagree. In consultation with mental health professionals and organizations, careful consideration has been given to the need to ensure the safety of individuals themselves. Based on the representations received, the prevailing view is that it is the *circumstances* of a previous suicide attempt – not merely the *existence* of one – that are relevant.

The Toronto Police Service said the draft Report failed to appreciate that the information was only useful to assist police and other first responders if it was available in a timely manner and on a broader basis than just to the Police Service that had originally recorded it. They claim that CPIC is the only tool available to the police in Ontario to facilitate such timely and broader access. However, in light of the information provided by mental health professionals about the potential for the information to be both inaccurate, incomplete and not predictive of future events, their representations did not provide a sufficient basis to support the uploading to CPIC in all cases of attempted suicide.

The TPS proposed two changes to their current practice. First, to put a time limit on the retention of information on CPIC, at which point information that did not meet the criteria would be removed. In my view, time limits are insufficient given my conclusion that in many cases, information relating to suicides should not be uploaded in the first place. Time limits also do not address my basic finding that in many cases, the initial **disclosure** to U.S. border officials via CPIC is contrary to the *Act*.

The second proposed change involves setting up a process where individuals are made aware of the possibility that information about their suicide attempt might be available to U.S. authorities and providing an avenue to request that the information be removed from CPIC if they were concerned that it might impact their ability to travel. I agree that once a decision has been made, that it is appropriate to upload information to CPIC, then a process for the removal or deletion of this information is necessary. The recommendations set out at the conclusion of this Report adequately address the need for such a process. However, having a process to facilitate the removal of this information, by itself, would not address the concerns raised by a policy that required the uploading of all cases of attempted suicide to CPIC.

I recommend that Police Services take immediate steps to ensure that their staff are fully trained to only disclose personal information relating to threats of suicide or attempted suicide via CPIC if the Mental Health Disclosure Test has been satisfied. The roles and responsibilities of the individuals who make decisions regarding disclosures via CPIC must be clearly defined and documented. Their decisions must be subject to review and audit. Police should also develop accessible and plain language guidance for use by these staff, for which there must be accountability at the most senior levels for such decisions. **It should be understood that privacy must be the default**, meaning that the highly sensitive personal information of individuals relating to a suicide attempt should not be recorded in CPIC unless at least one of the circumstances set out above has been met, thus satisfying the Mental Health Disclosure Test. This approach must be embedded into the information management processes used by Police Services in Ontario in accordance with the proactive *Privacy by Design* framework I have advocated throughout my tenure as Ontario's Information and Privacy Commissioner.

Issue 4: How long do the police maintain the SIP record of a suicide attempt on CPIC? How, when, and on what basis should it be removed?

## Retention

Once an originating agency has decided to add an entry for an attempted suicide into CPIC, the length of time that this record remains on CPIC is determined by the manner in which it was created – and specifically, whether the individual entering the information decided to enter a “SIP type.”

According to the *CPIC User Manual*, if a SIP entry on CPIC refers only to a suicide attempt, the record remains in the SIP for **two** years. Once the expiry date for those two years approaches, the originating agency has the ability to renew the record on CPIC or to let it expire. If, however, a SIP entry on CPIC for an attempted suicide is included along with a “SIP type,” such as “Mental Health,” the record will remain in SIP for **five** years, with the possibility of the originating agency renewing the record to remain on CPIC even longer.

When a SIP entry is nearing its expiration date, the RCMP will notify the originating agency so that a determination may be made either to let the record expire or to extend it. Decisions regarding whether to renew CPIC entries are at the discretion of the originating agency. If no action is taken by the originating agency to renew the entry, then the entry is automatically removed or taken down from CPIC.

While I do not disagree with this approach, what is not clear is the basis upon which a decision to renew the entry is made by the Police Service involved. In my view, the decision to renew a SIP entry for an attempted suicide must include a consideration of the Mental Health Disclosure Test and any available new information relating to the circumstances of the individual in question, and the length of time since the last attempted suicide.

## Removing Records from CPIC

During this investigation, it became apparent that it is often a very confusing process for individuals seeking to have information about a suicide attempt removed from CPIC. The individuals we have spoken with have faced serious obstacles in simply obtaining access to relevant CPIC records, let alone seeking that those records be corrected or removed. Trying to gain access to a CPIC record and then attempting to have it removed can be a long, emotionally draining, frustrating, and arduous process.

According to the Toronto Police Service, it has a process in place for expunging records from local records management systems and from CPIC in the context of its police records check program. This process may be found on its website under *Inside the TPS – Police Reference Check Program – Suppressing Non-Conviction Records for Vulnerable Sector Checks*. I was informed that a CPIC entry

will be reviewed before the expiry date when requested by an applicant as a result of a Vulnerable Sector Screening check. If the request is approved, the entry will be removed from the CPIC system. In determining whether to remove a CPIC entry, the TPS considers information such as the seriousness of the alleged behaviour, the length of time since the record was created, and other contact the applicant has had with the police. The TPS said that it would also consider a recently written letter from a physician who has been providing medical care to the person involved that clearly indicates the person no longer poses a threat to him/herself or anyone else. Unfortunately, however, although the TPS may have this process in place, the information posted on its website does not make it clear that this process could be used to remove information, other than in the context of a police reference check.

When asked about its process for having information removed from CPIC, the Hamilton Police Service explained that records are removed during the course of its normal purging cycle on the record's expiration date, or "if an investigation results in discovery or determination that this information is invalid or irrelevant." It is not clear whether an individual could request an "investigation" in an attempt to seek to have a record removed from CPIC on the basis that the information was invalid or irrelevant, or what evidence would need to be put forward in support of these claims.

A CPIC record of an attempted suicide may clearly have unintended negative consequences for an individual, such as difficulty crossing the border, for either business or pleasure. Although the originating agency may have the authority to remove a CPIC record, the process that individuals must follow should be transparent and easy to navigate. Additionally, when determining whether a CPIC record of attempted suicide should be removed, the originating agency should employ the same test set out above for determining whether that information should have been added to CPIC in the first instance. The originating agency should also consider any letters written by the individual's physician regarding his or her current health.

The implementation of a transparent process for requesting the removal of information about attempted suicide from the SIP section of CPIC and the application of the test discussed above during that process, will provide individuals with the resources necessary to challenge a Police Service's decision to disclose that information via CPIC. Thus, I will be recommending that Police Services establish such a process.

As discussed in the Background section of this Report, my office has been contacted by numerous individuals who have experienced difficulty in crossing the border based on the inclusion of information on CPIC relating to an attempted suicide. It is not apparent that the details of these incidents meet the Mental Health Disclosure Test. I will therefore be seeking the consent of these individuals to contact the appropriate Police Service involved, requesting that the decision to include information on CPIC be reviewed. I will also be asking the Police Service involved to report back to my office on the results of the review. If I am not satisfied that the police have appropriately applied the Mental Health Disclosure Test, I may, after hearing from the police and the individual involved, order the destruction of the personal information at issue, in accordance with section 46(b)(ii) of the *Act*.

# Conclusions

In summary, I have made the following conclusions in this investigation:

1. The sensitive personal health information of Ontarians is **not** being provided to U.S. border officials by the Ministry of Health and Long-Term Care pursuant to any past, or existing, arrangement or agreement.
2. Information relating to suicide attempts is recorded in the Special Interest Police (SIP) repository of the Canadian Police Information Centre (CPIC) database by Police Services in Ontario. Access to CPIC is available to U.S. border officials, through the Department of Homeland Security, and to Canadian law enforcement agencies.
3. When determining whether to deny entry to an individual seeking access to the U.S. on the basis of a mental health condition, border officials should consider information offered by that individual's treating physician, psychiatrist, or psychologist (with the individual's positive consent), regarding his or her current mental health status.
4. The personally identifiable information recorded in CPIC by Police Services that relates to an individual's attempted suicide qualifies as the "personal information" of that individual, as that term is defined in section 2(1) of the *Act*.
5. The Toronto Police Service has a policy of automatically recording all incidents of attempted suicide in the Special Interest Police repository of CPIC, by default. In contrast, the practices of the other Police Services consulted in this investigation are discretionary in nature.
6. The recording or uploading of information to CPIC results in disclosures under the *Act* to agencies that have access to the CPIC database. This includes Canadian law enforcement agencies and U.S. border officials.
7. The routine disclosure to other Canadian law enforcement agencies and to U.S. border officials of information relating to **all** suicide attempts is not in compliance with section 32 of the *Municipal Freedom of Information and Protection of Privacy Act*.
8. Only in limited circumstances is the uploading or disclosure to other Canadian law enforcement agencies and U.S. border officials of suicide-related information permitted under section 32 of the *Act*. The information at issue should not be recorded in the SIP section of CPIC, unless the Mental Health Disclosure Test has been met. This test requires that one of the following four circumstances exists, before any suicide-related information is recorded in CPIC:
  1. The suicide attempt involved the threat of serious violence or harm, or the actual use of serious violence or harm, directed at other individuals;
  2. The suicide attempt could reasonably be considered to be an intentional provocation of a lethal response by the police;

3. The individual involved had a history of serious violence or harm to others; or
  4. The suicide attempt occurred while the individual was in police custody.
9. The process for the renewal or the removal of a SIP entry in CPIC should be clarified and should be fully transparent. These processes should include a consideration of the Mental Health Disclosure Test set out above and any new information about the circumstances of the individual in question, and the length of time since the last attempted suicide.

# Recommendations

Police Services in Ontario should:

1. Immediately cease the practice of automatically uploading or disclosing personal information relating to threats of suicide or attempted suicide via CPIC, by default. Before disclosing personal information via CPIC relating to a threatened suicide or attempted suicide, the Mental Health Disclosure Test (outlined below) must be met. This test requires that one of the following four circumstances exists before any suicide-related information is recorded in the SIP repository of CPIC:
  1. The suicide attempt involved the threat of serious violence or harm, or the actual use of serious violence or harm, directed at other individuals;
  2. The suicide attempt could reasonably be considered to be an intentional provocation of a lethal response by the police;
  3. The individual involved had a history of serious violence or harm to others; or
  4. The suicide attempt occurred while the individual was in police custody.
2. Base any consideration as to the renewal of a Special Interest Police entry on the Mental Health Disclosure Test. In addition, the Police Service involved should take into account any available new information about the circumstances of the individual in question and the length of time since the last attempted suicide.
3. Develop a clear and transparent process to enable individuals to seek the removal of any information on CPIC related to a threat of suicide or attempted suicide. The Mental Health Disclosure Test must be considered when processing a request for removal. In addition, the individual affected should be entitled to volunteer, for serious consideration, information provided from his or her health-care provider regarding the individual's health and any potential risk to public safety. This process shall be developed by **April 16, 2015**.
4. Conduct an audit of CPIC to identify all current suicide-related Special Interest Police entries that originated with the service involved. Entries not meeting the Mental Health Disclosure Test should be removed. This audit shall be completed by **April 16, 2015**.
5. Conduct a review of CPIC entries for specific individuals whose names will be provided by my office. In conducting this review, consideration should be given to the unique circumstances of the individuals and the Mental Health Disclosure Test. This review shall be completed by **July 16, 2014**.



## Commissioner's Message

One can only imagine the embarrassment and anguish you would feel upon being turned away at the border, having just learned that U.S. border officials had gained access to your highly sensitive health information relating to a past suicide attempt. The utter humiliation would only be compounded by being fingerprinted, photographed and formally denied entry into the United States. The deeply disturbing stories of the four law-abiding Ontarians noted in this Report serve as graphic examples of the anguish that can result from such treatment.

The impact these situations have had on the individuals whose stories we describe is truly significant. In the case of the Ontario-based lawyer, although he managed to persuade the U.S. border officials to allow him to travel into the U.S. for the day, he continues to avoid travelling to the U.S. for fear of being denied entry, in the presence of his associates and colleagues. In the case of the other three individuals, their travel plans were aborted and much-planned-for opportunities missed – opportunities denied because of an episodic or temporary mental health experience that had no impact on the safety of any other individuals.

When police in Ontario respond to a 9-1-1 call for assistance, they understandably collect information about the incident and record it in their police databases, even where no charges are laid. In the case of 9-1-1 calls relating to suicide attempts, we learned that, depending on the practice of the responding Police Service, information may be sent to the Canadian Police Information Centre where it is recorded in the CPIC database and made accessible to other Canadian law enforcement agencies, as well as U.S. border officials. Given the extreme sensitivity of the information and the **known** adverse consequences that flow from these disclosures, much greater scrutiny of this practice is urgently required.

Ontario Police Services are accountable for the consequences of recording this information in CPIC. The untenable practice of automatic, default sharing of police information related to suicide attempts cannot continue. Full stop.

By applying the Mental Health Disclosure Test identified in this Report, I am satisfied that there will be much greater scrutiny of CPIC disclosure practices relating to attempted suicides. Applying the test will ensure that incidents of attempted suicide will only be disclosed via CPIC in limited and justifiable circumstances. If someone has attempted suicide and is in desperate need of assistance, that person needs to know they can call upon the police, and that any personal information collected as part of that process will be protected, in accordance with the legal obligations set out in the *Act*.

It would be most unfortunate if someone who has attempted suicide, or a friend or relative of that person, had to weigh the benefits of calling for police assistance against the negative consequences that might arise if the personal information collected would be added to CPIC and used by U.S. border officials to deny them entry to the U.S. One mental health professional stated he had a real concern with the “collateral damage” that could result when this highly sensitive information, that may not accurately reflect a person’s current mental health status, is disclosed to U.S. border officials via CPIC.

Through the implementation of the Mental Health Disclosure Test, there will be consistency across the province regarding the treatment of personal information relating to attempted suicides. Most important, I am confident that with the implementation of this test, the police will be in a position to both perform their vital functions and protect the privacy rights of Ontarians. More so, the public must be reassured that their sensitive health information will remain strongly protected – I would like to assure them that it most certainly will be.



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Ann Cavoukian, Ph.D.

Information & Privacy Commissioner,  
Ontario, Canada

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April 14, 2014

Date

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