



VANCOUVER POLICE DEPARTMENT

REPORT TO THE VANCOUVER POLICE BOARD

REPORT DATE: January 28, 2021
COMMITTEE MEETING DATE: February 18, 2021
BOARD REPORT # 2102C03

Regular

TO: Vancouver Police Board Service and Policy Complaint Review Committee
FROM: Drazen Manojlovic, Director, Planning, Research and Audit Section
SUBJECT: Service or Policy Complaint #2020-024 re: VPD Police Information Check Request Form

RECOMMENDATION:

THAT the Vancouver Police Board (VPB) Service and Policy Complaint Review Committee (Committee) conclude its review of the complaint based on information outlined in this report.

SUMMARY:

This Service or Policy Complaint relates to a waiver within the Vancouver Police Department (VPD) Police Information Check (PIC) request form. The complainant was required to request a PIC to maintain his employment as a youth soccer referee. The complainant feels that the waiver is 'unconscionable' and 'an abuse of the power imbalance' that exists in the situation.

The VPD uses a PIC form template that was developed based on the *BC Guideline for Police Information Checks* by the BC Police Information Check working group. This working group was created at the request of the BC Associations of Chiefs of Police to the Ministry of Public Safety and Solicitor General – Police Services. This template, which includes a Search and Disclosure Consent and the Liability Release waiver, was agreed to by all police agencies in the region for PIC request use. The VPD has approached Police Services to reconvene the working group to conduct a PIC guideline review. When the working group reconvenes, the VPD will ask that the waiver be reviewed at the Provincial level. As such, it is recommended that the Committee conclude its review of the complaint based on the information outlined in this report.

BACKGROUND:

On September 24, 2020, the VPB received a Service or Policy Complaint regarding the waiver set out on the VPD PIC request form. The complainant feels that the waiver (set out on page 3 of the above noted form), which is required in order to request a police information check, is 'unconscionable' and an 'abuse of the power imbalance' that exists in the situation. The complainant believes that as an applicant has no realistic option to not agree to the terms,

particularly the waiver of the right to sue, which creates the potential for unfairness if, for example, the VPD disclosed that a conviction existed when it did not. The complainant feels that if that error or negligence caused the applicant to suffer financial loss, the applicant should reserve the right to sue. The complainant requested that the waiver be removed from the form or in the alternative, changed to be fairer to the applicant.

DISCUSSION:

The *BC Guideline for Police Information Checks* assists police agencies to understand and apply relevant legislation, policies, procedures, and directives to the processing of PICs. These guidelines included a PIC request template with a Search and Disclosure Consent, and Liability Release waiver to be used by police agencies in the region. Through legal consultation, the VPD has confirmed that the current waiver is legally sound and appropriate.

The BC PIC working group, which developed the guidelines, included the waiver in the PIC template to address liability regarding a service that is not statutorily required. PICs are an optional service provided by police agencies that are not part of their service requirements. Thus, the position of the working group was that police agencies ought to be able to provide terms of service. One of the terms of service is that if the police agency agrees to undertake a non-required service, it should be able to set the terms for exclusion of liability. Contrast that with a criminal investigation where police cannot apply a similar waiver to a victim or suspect if an investigation is conducted negligently (because doing the investigation is not an optional service that can otherwise be withheld).

The PIC process is such that the waiver is only a very last resort. The applicant fills in the PIC form and submits it to the police agency. The agency completes the PIC and returns the completed PIC results to the applicant. The applicant is able to review the results before the applicant, if they choose to do so, forwards the results to the potential or current employer or volunteer organization. The process permits the applicant to review the PIC results and determine if there is anything that is incorrect. If there is a correction to be made to their police records, the applicant may make a correction request. The applicant may also submit a reconsideration request to the VPD's Director of Information Management Services to review the PIC results.

As the *BC Guideline for Police Information Checks* was last updated in November 2016, the VPD has approached Police Services to reconvene the BC PIC working group to conduct a PIC guideline review. When the working group reconvenes, the VPD will ask that the waiver be reviewed at the Provincial level.

CONCLUSION:

It is acknowledged that the complainant feels that the waiver contained within VPD's PIC request form is unfair to the applicant; however, the VPD uses a PIC template that was guided by the *BC Guideline for Police Information Checks* approved by the BC Police Information Check working group. This template was agreed to by all police agencies in the region for PIC request use. The applicant is also able to review the results before the applicant, if they choose to do so, forwards the results to the potential or current employer or volunteer organization. This provides the applicant the ability to be the gatekeeper to their police information.

The VPD has approached Police Services to reconvene the working group to conduct a PIC guideline review. When the working group reconvenes, the VPD will ask that the waiver be reviewed at the Provincial level. As such, it is recommended that the Committee conclude its review of the complaint based on the information outlined in the report.

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Submitting Executive Member:

DCC Steve Rai Date: February 2, 2021