

## STREET LAW SMARTS #25

### ADULT RECORDS

There are different types of records or background checks that you may request. Which request you make depends on your own reasons for requesting it - i.e. for personal or employment purposes, or for a position as a volunteer.

For employment or volunteer situations, the depth of the record check will depend upon the type of job that you are applying for, and each police service has a different procedure for disclosing records they have. Employers may ask for your consent to do a background check during a job application process. Your **consent** is required for the police to disclose these records to your employer.

Below are the procedures to request access and disclosure of some types of records held by either the RCMP or your local police service, specifically the Toronto Police Service.

#### **Types of Records and Background Checks**

##### **Police Records**

Police officers keep records of their interactions with you. A Police Record is not necessarily a "Criminal Record." Police Records contain information about contact you have had with the police, which can include:

- ◆ information about any arrests
- ◆ suspected criminal activity
- ◆ findings of guilt (youth) and convictions (adults)
- ◆ fingerprints and photographs
- ◆ 911 calls
- ◆ interviews
- ◆ witnesses and victim reports, and
- ◆ other non-criminal activity based information (for example: incidents or detainments under the *Mental Health Act* where police were involved)

##### **Accessing your Police Record**

To obtain access to records about you that are kept by the police, contact your local police service and ask for their procedures.

In Toronto, the Toronto Police Service's Access and Privacy Section manages all personal information requests. You will be asked to fill out a form that is available on the website listed below. It costs \$5 for an initial request. The cost for copies of the record is \$.20 per page. The Toronto Police will inform you of the costs associated with your

request. This information request will cover all involvement with the Toronto Police Service, and is not a 'Criminal Record Check' as required for some employment purposes.

You must present identification in order to make a request through this section. Some information from the request may be taken out of the record you are given for the protection of other individuals' privacy. For more information and for a copy of the form you must fill out, see <http://www.torontopolice.on.ca/aps>.

### **Criminal Record**

There is no set definition of "Criminal Record". The term is confusing, and the *Criminal Records Act* does **NOT** define what a criminal record is.

Many people use the term "Criminal Record" to describe the record of conviction received after you have been convicted of a criminal offence as an adult. However, the term may also be described as other information a law enforcement agency has collected about you, including both conviction and non-conviction incidents and offences.

### **Accessing a "Criminal Record Check"**

You may request a copy of your record of conviction from the Royal Canadian Mounted Police (RCMP). To obtain a Criminal Record Check from the RCMP you must submit a full set of all ten fingerprints. As of July, 2014 you must submit these fingerprints electronically for any civil matters.

To get a copy of your electronic fingerprints, you may go to your local police service or to an accredited company (note: these companies will charge a fee to take your fingerprints, so best to check with your local police service first to see if they can do this at a lesser cost).

Once you have your fingerprints the local police service may submit the Criminal Record Check Application for you. You should check with them when you are obtaining your fingerprints.

There may or may not be a cost to the Criminal Record Check itself, on top of any local service fees required for fingerprinting. Some Criminal Record applications are processed for free (for example, if you require the check for a volunteer position) while others are subject to a \$25 CAN fee.

For more information see: <http://www.rcmp-grc.gc.ca/cr-cj/steps-etapes-eng.htm>

## Other Types of Records and Background Checks

### a) Toronto Police Service - Clearance Letters

You may request a Clearance Letter from the Toronto Police Service. A Clearance Letter will be issued if you have no record of criminal conviction on the National Repository of Criminal Records, as maintained by the RCMP, or any outstanding criminal charges before the courts.

A Criminal Conviction includes a finding of guilt for which you were put on probation, served a sentence, paid a fine, or a combination of. The Toronto Police Service does not release “non-conviction” findings as part of a record of conviction release. Non-convictions, which will not appear on a Clearance Letter, include court dispositions such as: withdrawn, dismissed, not guilty, stayed, acquittal, discharge, diversion or absolute/conditional discharges when all conditions have been met.

If you have any criminal history, you may be required to submit fingerprints in order to verify that you do not have a criminal conviction on record.

Clearance Letter requests cost \$20.00. See the Toronto Police Service website for more information: <http://www.torontopolice.on.ca/recordsmanagement/clearance.php>

### b) Vulnerable Sector (VS) Check

If you are seeking employment or volunteering opportunities working with a vulnerable population, then you may require a “Vulnerable Sector Check”. A vulnerable sector of the population includes children and other young persons, the elderly, or any other group that are at a higher risk than the general population of being harmed by a person in a position of authority or trust.

The Vulnerable Sector Check will include any record of criminal conviction, outstanding charges, probation information (including peace bonds, restraining orders, and reporting conditions), any prohibition you may have (for example, prohibition to have weapons), and information on whether you are suspected of committing a criminal offence. The VS Check will include information on contacts you have had with the police under the Mental Health Act, namely, if you have been transported to a medical facility due to a mental illness.

In addition, the VS Check will include information on any past allegations or charges related to sexual offences, even if you were a minor when those allegations took place. If you are concerned about this, or have had such an occurrence appear on a VS Check, contact Justice for Children and Youth for assistance.

You must seek the Vulnerable Sector Check through your local police service. In Toronto, a Vulnerable Sector Check report is available through the Police Reference Check Program. You must consent to the disclosure of any record.

Importantly, you must give your consent to mental health records being divulged to a potential employer specifically indicating if you agree to have such records included. For more information, see the Toronto Police Service website: <http://www.torontopolice.on.ca/prcp> **How do I ask for my records to be destroyed?**

### Suspending Records of Conviction

If you have been convicted of a criminal offence as an adult you can get your record of conviction suspended by applying to the Parole Board of Canada. For more information, see: **Street Law Smarts #26: Record Suspensions (previously pardons)**.

### All other records - Destruction

Non-conviction criminal records related to your interactions with the criminal justice system or law enforcement agents may be held by local police services and/or the RCMP databases. You can request the destruction of your records at both the local police service and/or directly with the RCMP. If your request is denied, you can usually ask for the service to review or appeal the decision. Procedures are different for each police service.

If you are having problems getting your records destroyed, contact a lawyer for more information. Contact the Street Youth Legal Services lawyer at JFCY or see: **Street Law Smarts #1: Where to get Legal Help?**

### Toronto Police Service Fingerprint, Photograph, and Record of Disposition Destruction

The Toronto Police Service provides a policy and procedure to request for fingerprint and photograph destruction for adult non-conviction dispositions. See the Toronto Police Service website [www.torontopolice.on.ca](http://www.torontopolice.on.ca) for the forms required to make the request.

The following conditions generally apply before your request is granted:

- a) you must be at least 18 years of age at the date of arrest
- b) you cannot have any criminal convictions
- c) you cannot have any outstanding criminal charges
- d) the alleged offence cannot be a primary designated offence, outlined at s. 487.04 of the Criminal Code
- e) any peace bond must be expired at the time of request
- f) disposition of all charges must be either: withdraw, acquittal, quashed, stayed (Crown attorney stay = 5 months expiry must have passed prior to application, Judicial stay = 1 year), or discharged (Absolute discharge = 1 year must have passed prior to application, Conditional discharge = 3 years)

The Toronto Police Service will request that the RCMP destroy the fingerprint and photographs they have on record in the national database. You have a right to appeal if your destruction request is denied.

Obtaining a destruction of fingerprints and photographs does not automatically erase all police information held by the police about you. Destruction of local police records follows local municipal file retention schedules. For the Toronto Police Service Records Retention Schedule, see the *City of Toronto Municipal Code, Chapter 219, Article 1* at [www.toronto.ca/legdocs/bylaws](http://www.toronto.ca/legdocs/bylaws).

Below is a sample letter requesting destruction of photographs and fingerprints. Please note that this letter is to be submitted with the Toronto Police Service application form for destruction of fingerprints and photographs.

### Sample Fingerprint Destruction Letter

XXXXXXXX, XX, XXXX	WITHOUT PREJUDICE
<p>Toronto Police Service - Criminal Records 40 College Street Toronto, Ontario, M5G 2J3</p>	
<p><b>Attn: CRIMINAL RECORDS</b></p>	
<p><b>Re: Name - [REDACTED]</b> <b>DOB – XXXXX, XX, xxxx</b> <b>Suspected offence – xx</b> <b>Date of withdrawal – xxxxxxx at Old City Hall Courthouse</b></p>	
<p>Please find enclosed the completed Fingerprint and Photograph Destruction Application form for _____</p>	
<p>This letter requests the timely destruction of _____'s fingerprints and photographs. _____ meets the criteria required for fingerprint and photograph file destruction, as outlined in the Toronto Police Service Fingerprint and Photograph Destruction Policy.</p>	
<p>_____ is XX years of age and does not have any criminal convictions or outstanding charges before the courts. <b>**Insert some explanation here**</b></p>	
<p>_____ is a friendly and conscientious young woman, who takes her life responsibilities seriously. _____aspires to work in XXXXXXXXXXXX <b>**Insert relevant background/current life updates here**</b></p>	
<p>_____is concerned that having her fingerprints and photographs on the police system may cause her difficulty for present or future employment screenings.</p>	
<p>In light of _____'s personal circumstances and qualifications under the Toronto Police Service Policy, please grant their request for destruction of their fingerprints and photographs.</p>	
<p>Please inform me at your earliest convenience of the status of _____'s request.</p>	
<p>Regards,</p>	