

Police, Policy and Privacy: a Commentary on Mental Health Information Disclosures by the Toronto Police Service

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The relationship between the public good and an individual's civil liberties has been the subject of much philosophical and political discourse over the past century. Proponents and opponents of dying with dignity, firearm registration, abortion, and recreational drug policy, among many others, have continually debated the extent to which civil liberties can be trumped by protection of public interest. As society navigates through the information age, a burgeoning focus has appeared around the concept of privacy as a civil liberty and the proposed rights of individuals to retain control over the body of information that is known, publicly and institutionally, about them.¹ It is at the intersection of privacy and public health that medical students at the University of Toronto investigated and subsequently advocated around a practice of mental health information disclosure by the Toronto Police Service (TPS).

Since 2011, news outlets have reported on stories of Canadians who have been refused entry into the United States for reasons related to mental health.^{2,3} Student interest was initially piqued in November 2013 by a news story of a woman who had been denied entry to the United States with the stated reason being a 2012 hospitalization following a suicide attempt.³ An investigative report on the incident, and others like it, by the Information and Privacy Commissioner (IPC) of Ontario, established that it was the TPS who had collected the data during emergency responses and entered it into a federally operated database called the Canadian Police Information Centre (CPIC).⁴ This database is shared with and among United States federal agencies, which have the discretion to refuse entry into the country based on an individual's history of mental illness.^{4,5} Information from this database, including mental health reports, may also appear in background searches conducted by TPS for an individual's application for employment, education, volunteer positions, or other purposes.⁴ The IPC concluded that the current disclosure policy of this personal information violates section 32 of the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA) and filed an ongoing application for judicial review of the policy.⁶ Yet despite this pres-

sure, and pressure from mental health advocates, the TPS has indicated that they will not be changing their disclosure policy.⁷

The implication of this policy for accessibility to the health system is profound for persons with mental illness. There is an absence of literature on the effects of this policy, but embarrassment, perception of stigma, and concern about what others will think are well-documented barriers to accessing mental health services.⁸⁻¹⁰ As an example, it may not be possible for an individual to prove that he or she was illegally refused employment due to the mental health report on their police record check, and the perception that this discrimination is a possibility could prevent an individual from accessing emergency care for fear of the consequences. Inability to enter the U.S.A. can also impact an individual's ability to work in many fields that require cross-border travel. The sociological impacts of these barriers could result in delay of access for mental health services or emergency services during a crisis, a problem that may compound the already low proportion of Canadians with mental illnesses who access mental health services.¹¹

In order to appreciate why the TPS is resistant to changing this policy, it is important to first understand that law enforcement officers (LEOs) are often the first responders to mental health crises.¹²⁻¹⁴ Due to the frequency of encounters between LEOs and persons undergoing a mental health crisis, there is a significant incentive to educate and train officers and implement effective mental health response protocols.^{13,15} These changes may also benefit patients by providing more favorable outcomes when the responding officer is trained in mental health.^{15,16}

The public statements from the TPS for maintaining their current policy can be summarized in two main points: the policy is needed "to protect the person they're called to deal with, to protect anyone else and to protect police officers," and that "the issue is not the recording of this information in CPIC, but the disclosure of this information to U.S. authorities, an issue for the federal government."^{4,6,7,17} The first point stems from a need for LEOs to have an broad understanding of a situation, including mental health issues, when responding to crises in order to effectively manage them.¹⁸

The TPS argue that in order to have this context, LEOs need access to a database with previous encounters with persons in crisis that includes mental health history.^{4,18} The second point defers the responsibility to change the policy. TPS does not control CPIC; rather, it is operated through the RCMP by the National Police Services (NPS) program.¹⁹ The TPS has argued

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that it is beyond their responsibility to modify what enters the database, because concerns about its usage should be addressed by the NPS program.⁶ However, the TPS has publicly stated (and the IPC has confirmed) that entry of mental health data into CPIC is done on a discretionary, not mandated, basis.^{4,20}

In order to address the public safety concern of the TPS, the IPC created a set of recommendations that recognizes the need for LEOs to have a situational understanding when responding to suicide attempts, while safeguarding the public from deleterious uses of this information.⁴ These recommendations include: limiting suicide attempt data entered into CPIC to attempts that could be broadly characterized as endangering the public, creating a clear and transparent system to review the mental health files, and developing a process by which an individual with information in the database may have it removed.⁴ In response to the IPC report, 215 medical students at the University of Toronto signed a petition endorsing these recommendations for amending the TPS policy. These students' voices joined those of the Ontario Medical Association, the Mental Health Commissioner of Canada, and Centre for Mental Health and Addiction in supporting the recommendations.^{4,21,22}

The responsibility for changing the way CPIC is used resides with the NPS, but in lieu of a federal level policy change, the petitioning student body believes that the TPS has an obligation to ensure that this sensitive information is protected. Given that entry of data into CPIC is discretionary, this group does not believe that it is acceptable for the TPS to defer their duty to uphold the MFIPPA and the privacy rights it guarantees to the NPS.^{4,20} The IPC recommendations create a compromise between the needs of the TPS to effectively respond to mental health crises and the civil rights of the public to have mental health information kept private.

Future work must be done to better understand the impacts of the current policy on emergency service use and mental health crisis response across Canada. Students at the University of Toronto continue to pursue change to the disclosure policy by advocating at all levels of government and consulting with the TPS and experts in mental health and public policy.

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