

BIAS-FREE POLICING

DATE APPROVED	April 1, 2016
DATE(S) AMENDED	
DATE REVIEWED	
REPORTING REQUIREMENT	Annual
LEGISLATION	<ul style="list-style-type: none"> • <i>The Police Services Act</i>, C.C.S.M. c. P94.5, particularly subsection 22(2), paragraphs 28(1)(b) & (c), paragraph 28(2)(c), and subsections 28(3) & (4) • <i>The Canadian Charter of Rights and Freedoms</i>, and particularly sections 7, 8, 9, 10 & 15 • <i>The Human Rights Code</i>, C.C.S.M. c. H175, particularly sections 9 & 13 • <i>The Law Enforcement Review Act</i>, C.C.S.M c. L75, particularly clause 29(a)(vii) • <i>The Freedom of Information and Protection of Privacy Act</i>, C.C.S.M. c. F175
ASSOCIATED POLICIES	

PREAMBLE

The Winnipeg Police Board is committed to the principle that every person has a right to the provision of police services in a fair and equitable manner that respects the inherent worth and dignity of all persons and provides equal treatment to all persons, without discrimination or harassment.

The Board recognizes that despite significant progress, differential treatment arising from the attribution of prejudicial group stereotypes to individuals continues to be a serious problem in Canadian society. Implicit or unconscious biases as well as unexamined prejudices can lead to discriminatory actions.

The Board recognizes that differential treatment in policing can cause tremendous harm to those who experience it and to a police service's relationship with the community. This harm includes, but is not limited to, psychological harm, alienation, loss of trust and confidence in the police and criminal justice system, unwillingness to contribute to police investigations, and the disproportionate criminalization of racialized groups.

DEFINITIONS

1. In this Policy,

“characteristic” means one or more of the characteristics of persons listed in subsection 9(2) of the Code or section 15 of the Charter;

“Charter” means the Canadian Charter of Rights and Freedoms;

“Chief” means the Chief of the Service;

“Code” means *The Human Rights Code*, C.C.S.M. c. H175;

“directive” includes an operational policy, practice, procedure or guideline, established and maintained by the Chief for the proper and effective management, administration and operation of the Service;

“law enforcement action” means the lawful exercise by a police officer of a power that he or she has as a peace officer and constable at common law respecting the enforcement of law, the maintenance of the public peace and the prevention of crime, including the power to carry out a traffic stop, investigative detention, arrest, search, or property seizure;

“Member” means a person employed by the Service;

“Service” means the Winnipeg Police Service;

“subject stop” means an interaction between a Member and an individual during which

- (a) the individual is not under arrest or being detained by a Member or is not otherwise under a legal obligation to comply with a demand or direction made by a Member; and
- (b) the Member attempts to collect from the individual personal information or information that may be useful for crime prevention, maintenance of the public peace, or criminal intelligence or investigative purposes, or requests the individual to consent to a search of his or her person or property,

but does not include an informal or casual interaction where the Member attempts to collect personal information only and has no intention, at the time of the attempt, of recording the information.

PURPOSES:

2. The purposes of this policy are:

- (a) to express the Board's commitment to ensuring bias-free policing that respects and adheres to the principles contained in the Charter and the Code, enhances public trust in the Service, and promotes an environment in which citizens continue to voluntarily cooperate and work closely with the Service to solve community safety problems together;
- (b) to reflect the Board's understanding of community needs, values and expectations with regard to equitable treatment and respect of human rights in the delivery of police services;
- (c) to provide direction and guidance to the Chief in the establishment of directives and training for the Service that:
 - (i) ensure police officers in the performance of their duties exercise discretion in a way that reflects the values of equality, individual dignity, respect, and fairness,
 - (ii) improve public confidence in the Service's ability to provide bias-free policing, and
 - (iii) assure the public that police services are being delivered in an equitable and non-discriminatory manner.

DIRECTION TO THE CHIEF:

3. The Chief is directed to implement this Policy and to manage, administer and operate the Service in accordance with this Policy. The Chief is accountable to the Board for implementation of this Policy, and ongoing compliance with the requirements of this Policy in a manner that upholds its spirit and intent, through performance reviews to be conducted in accordance with the Board's Rules of Practice and Procedure.

POLICY REQUIREMENTS:

4. The Chief must establish and maintain directives in accordance with this Policy.
5. The directives must implement and promote the following principles:
 - (a) In the performance of all their duties, Members must respect and act in a manner that does not infringe or deny the rights of individuals as guaranteed by the Charter;
 - (b) All individuals, regardless of their characteristics, are entitled to equitable treatment by all Members in the performance of all their duties, in accordance with the Charter and the Code;
 - (c) A Member may not unlawfully consider, to any degree, a characteristic of an individual, or a stereotype about offending or dangerousness, or a common trait associated with a group that shares a characteristic, in determining
 - (i) to carry out a law enforcement action or a subject stop, or
 - (ii) the manner in which a law enforcement action or a subject stop is carried out;
 - (d) A Member may consider a characteristic of an individual in determining to carry out a law enforcement action or a subject stop only when the Member is seeking to apprehend, detain, locate, or obtain information from a specific subject in connection with a specific crime who has been identified or described in part by the characteristic and the individual matches the description of the specific subject;
 - (e) A Member must be able to articulate the specific facts, circumstances and conclusions that support the public safety purpose and lawful nature of a determination to carry out a law enforcement action or a subject stop.
6. The directives must include provisions that reinforce and encourage positive and professional practices that aim to promote and protect human rights and equitable treatment, to build trust with the community, and to prevent inappropriate perceptions of biased law enforcement.

7. Without restricting the generality of paragraph 6, the Chief should in particular include in the directives that a Member should consider, when carrying out a subject stop, other than in the course of a covert operation, the value for the purposes set out in paragraph 6 of
 - (a) informing the subject individual of the reason that he or she has been approached by the Member, as soon as practicable;
 - (b) providing the subject individual with answers to relevant and reasonable questions, unless providing the information would
 - (i) compromise the safety of a Member or an individual,
 - (ii) compromise a police investigation of a particular offence, or
 - (iii) allow a confidential informant to be identified;
 - (c) informing the subject individual in unambiguous terms that he or she is under no obligation to answer questions and is free to go, in those situations where the Member is uncertain whether his or her conduct is having a coercive effect on the individual, in order to preclude the possibility of a psychological detention; and
 - (d) providing an explanation toward eliminating a misperception of bias.
8. The directives must also include the following:
 - (a) provisions to ensure that information arising from a subject stop will only be recorded, retained, used or disclosed
 - (i) when it is material to a valid public safety purpose, such as investigating a specific offence or a series of offences, preventing a specific offence or ensuring the subject individual is not at risk; and
 - (ii) in compliance with *The Freedom of Information and Protection of Privacy Act* C.C.S.M. c. F175;
 - (b) requirements for reporting by Members of contraventions of directives established in accordance with this Policy;

- (c) requirements for training materials and programs that address bias-free policing and human rights issues, including science-based training in understanding and preventing implicit or unconscious bias in policing, to be delivered to all Members;
- (d) a process to thoroughly investigate and deal with public complaints received by the Service about bias-based policing, that is demonstrably bias-free and fair to all parties, clear and accessible in its explanation of how to file a complaint and the steps that will be followed, and effectively communicated to the public.

MONITORING REQUIREMENTS:

9. The Chief must ensure that

- (a) an administrative review is conducted every two years, or earlier if an annual report or a serious incident indicates the need for an immediate review, of all measures to implement this Policy and to manage, administer and operate the Service in accordance with this Policy; and
- (b) appropriate data is collected on an ongoing basis to support this review.

REPORTING REQUIREMENTS:

10. The Chief must submit an annual report to the Board on the implementation and effectiveness of this Policy that includes:

- a) information on the directives developed to implement and support this Policy and an assessment of their effectiveness throughout the Service;
- b) reporting and other mechanisms relied upon by the Chief to ensure accountability by all levels of management; and
- c) performance measures that provide quantitative results to demonstrate compliance with the requirements of this policy.

LEGAL CONTEXT

Section 7 of the *Canadian Charter of Rights and Freedoms* provides that everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice. Sections 8 and 9 of the Charter guarantee the right to be secure against unreasonable search or seizure and the right not to be arbitrarily detained or imprisoned. Section 10 provides (among other things) that everyone has the right on arrest or detention to be informed promptly of the reasons therefor, and to retain and instruct counsel without delay and to be informed of that right. Section 15 provides that every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Section 9 of *The Human Rights Code*, C.C.S.M. c. H175 defines “discrimination” (in part) as differential treatment of an individual or group on the basis of the following characteristics: ancestry, including colour and perceived race; nationality or national origin; ethnic background or origin; religion or creed, or religious belief, religious association or religious activity; age; sex, including sex-determined characteristics or circumstances; gender identity; sexual orientation; marital or family status; source of income; political belief; political association or political activity; physical or mental disability or related characteristics or circumstances; and social disadvantage. Section 13 of the Code prohibits discrimination with respect to any service, accommodation, facility, good, right, licence, benefit, program or privilege available to the public, unless a bona fide and reasonable cause exist for the discrimination.

Paragraph 29(a) of *The Law Enforcement Review Act* provides that a member of a police service commits a disciplinary default where he affects an individual by means of an abuse of authority, which includes under clause (vii) “differential treatment without reasonable cause on the basis of any characteristic set out in subsection 9(2) of *The Human Rights Code*”.