

Guidelines and Directives 006

**CSPA Notifications from the Ministry
of the Solicitor General**

Effective Date: April 1, 2024

Preamble

Pursuant to Law Enforcement Complaints Agency (LECA) *Rules of Procedure*, the Director may issue guidelines at any time as the Director deems necessary to carry out his functions under the Act, or in regard to LECA's practices and procedures. Where any guideline conflicts with the Rules or the Act/Regulation, the Rules and the Act/Regulation shall apply.

Purpose of Guideline

- The *Community Safety and Policing Act (CSPA)* 2019, S.O. 2019, c. 1, Sched. 1 and the O. Reg. 406/23: DISCIPLINE (Regulation) creates a framework whereby the Ministry of the Solicitor General (Minister), police services boards, Special Investigations Unit (SIU), the Inspector General of Policing (IG), Chiefs of Police and the Ontario Provincial Police Commissioner (Commissioner) are obligated to notify the Complaints Director of potential misconduct.
- Subsection 197(3) requires that the Minister notify the Director if they become aware that the Commissioner or a deputy Commissioner of the OPP may have engaged in misconduct that involves, impacts, or relates to a member or members of the public.
- The purpose of this Guideline is to provide the Minister with guidance with respect to issuing a notification to the Director to comply with the CSPA.
- This Guideline sets out when and how the Minister should notify the Director, and what details they should provide to assist the Director in determining what is in the public interest, including an investigation by LECA, a notification letter to Boards and the Minister under LECA Rules of Procedure, a systemic review, or a notification to the SIU or IG pursuant to CSPA.

e-Notification:

1. Pursuant to Rule 14.5 of LECA Rules of Procedure, all notifications of potential misconduct should be provided to the Director through e-Notification available online.
2. To assist the Director in determining whether it is in the public interest to initiate an investigation or take any other action, the Minister should advise the Director of the following in the e-Notification:
 - a. If the matter involves sensitive information.
 - b. Matter involves a court finding
 - c. If the matter is time sensitive.
 - d. If the matter involves youth records.
 - e. If the matter involves a Confidential Informant.
 - f. If the matter involves a whistleblower.
 - g. Matter has already been dealt with internally
 - h. Discipline has been imposed related to the incident
 - i. The Minister has any existing Directives or Protocols that address and respond to the nature of the potential misconduct
 - j. The Minister has already developed a plan of action for dealing with the potential misconduct
 - k. Previous findings of misconduct which show a pattern of similar potential misconduct
 - l. Matter engages questions about the integrity of the OPP or a detachment/region/unit as a whole
 - m. The Minister has any conflicts of interest or other challenges in reviewing and/or investigating the matter
 - n. The Minister foresees any impediments to the Complaints Director investigating the matter
 - o. There is any gap in policy or training relevant to the potential misconduct
 - p. If the matter has been the subject of a resolution between the Commissioner or a deputy Commissioner and a member of the public
 - q. Any other public interest consideration
3. In accordance with Rule 14.6 of LECA Rules of Procedure, the Minister should respond to any additional inquiries or provide any additional information required by the Director to determine whether it is in the public interest to initiate an investigation or take any other action with respect to the notification.

Types of conduct that may be reported:

4. Notifications should be provided to the Director in accordance with subsections 197 (3) and the Regulation.
5. The Minister is not responsible for notifying the Director of misconduct by officers other than the Commissioner and deputy Commissioners of OPP.
6. The Minister should only notify the Director of conduct by the Commissioner and deputy Commissioner that may constitute misconduct and that the conduct was directed at or otherwise directly affected a member of the public who would be authorized to make a complaint about the conduct to the Complaints Director.
7. The Minister is not required to notify the Director of internal employment related grievances or complaints made by members of OPP against the Commissioner or deputy Commissioner unless they directly involve a member of the public.
8. The Minister is not required to notify the Director of findings of violations of the *Canadian Charter of Rights and Freedoms* or the *Human Rights Code*, when they do not involve any misconduct by the Commissioner or a deputy Commissioner and that the conduct did not directly affect a member of the public.
9. The Minister is not required to notify the Director of administrative failures, management, or operational errors by the Commissioner or a deputy Commissioner that may not rise to the level of misconduct or do not directly involve a member of the public.
10. Complaints made by members of the public will be given priority over incoming notifications. Where the subject matter of a notification is already the subject of an ongoing public complaint or investigation, the Director will consider the public complainant's rights under the complaints process. Such that, the notification will not supersede or negate the complaint.
11. The Minister is not required to notify the Director of potential misconduct where there is an active public complaint investigation, or a public complaint has been made to the Director about the same incident and alleging the very same misconduct.
12. The Minister not required to notify the Director of potential misconduct if they are aware that the SIU or the IG has notified the Director of the same incident and the very same misconduct.

13. The Minister is not required to notify the Director of potential misconduct by the Commissioner or a deputy Commissioner if it occurred prior to April 1, 2024.

Timing of Notification:

14. The Minister should notify the Director of misconduct within 7 business days from when they become aware of conduct by the Commissioner or deputy Commissioner that may constitute misconduct. The notification can be further delayed in the following circumstances at the discretion of the Minister, where that:

- a. It may interfere with an ongoing criminal investigation or proceeding;
- b. It may interfere with or there is a need for an immediate or ongoing law enforcement response; or
- c. There is an imminent risk to the safety of the public or a member of the police service.

15. Considering that criminal proceedings and investigations have primacy over other proceedings; and in light of the risk that a misconduct investigation may interfere and/or be delayed by a criminal proceeding/investigation, the Minister may delay providing notification to the Director until the completion of the related criminal proceedings or investigations.

Preserving Evidence

16. Upon becoming aware that the Commissioner or a deputy Commissioner of OPP may have engaged in conduct that may constitute misconduct, the Minister should ensure that all the relevant evidence to the misconduct is preserved. For the purpose of this paragraph, the Minister is not required to engage in any investigative step to gather evidence. The efforts should be limited to preserving the evidence already available to the Minister at the time of becoming aware of the misconduct.

No Investigation until Complaints Director makes a determination

17. In accordance with section 208 of the CSPA, upon notifying the Director of potential misconduct in accordance with the Regulation, the Minister shall not (1) conduct an investigation into the matter; (2) impose a disciplinary measure; or (3) make an application for a hearing, until they receive a notification from the Director that:

- a. the Director will not cause an investigation of the matter to be conducted;
- or

- b. the Director will investigate the matter and
 - i. that the investigation will be discontinued; or
 - ii. that the Director does not have reasonable grounds to believe that the conduct of the Commissioner or deputy Commissioner who was the subject of the investigation constitutes misconduct.

18. Paragraph 17 does not preclude any criminal investigation or law enforcement action that may be necessary for public safety.