



**SOUTH COAST BRITISH COLUMBIA  
TRANSPORTATION AUTHORITY  
POLICE SERVICE**

## **FINGERPRINTING**

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### **POLICY**

#### **Definitions**

Young Person – Means, as defined in the Youth Criminal Justice Act (YCJA), a person who is or, in the absence of evidence to the contrary, appears to be twelve years old or older, but less than eighteen years old and, if the context requires, includes any person who is charged under this Act with having committed an offence while he or she was a young person or who is found guilty of an offence under this Act.

#### **Authority**

1. The Identification of Criminals Act (ICA) allows for the fingerprinting of all persons arrested and charged with an offence, which may be proceeded by way of indictment, which includes all indictable and dual procedure offences. Fingerprints are necessary in order to register a criminal conviction against an accused.

#### **General**

2. The South Coast British Columbia Transportation Authority Police Service (SCBCTAPS) will ensure that all persons charged with an indictable or dual procedure offence are properly fingerprinted and photographed, and that these records are retained in a manner consistent with legal procedures.
3. SCBCTAPS will maintain procedures for the processing of requests to destroy fingerprints and photographic records collected pursuant to the provisions of the ICA.
4. SCBCTAPS procedures will be guided by the ICA, Criminal Code of Canada (Criminal Code) and YCJA but must additionally consider the policy and procedures of the Jurisdictional Police Department (JPD).
5. Fingerprints and palmprints will only be taken by SCBCTAPS staff qualified to do so.
6. No force will be used by SCBCTAPS police officers (Members) to obtain fingerprints prior to an Information being sworn.

## PROCEDURES

### General

7. When a person is charged (an Information sworn before a Justice) with an indictable or dual procedure offence, whether an adult or young person, they will be fingerprinted and photographed in the first instance, whenever possible.
8. Fingerprints may be obtained from an adult prior to an Information being sworn if the arrested party has provided informed consent to have their fingerprints taken. In such cases, Members will utilize the SCBCTAPS consent form (Form OZ290), or in absence of the SCBCTAPS form, the consent form provided by the JPD in the jurisdiction the Members are conducting the investigation.
9. Under ss. 501(3) and 509(5) of the Criminal Code, a person who is alleged to have committed an indictable offence, but not yet charged, may be directed to appear at a specific time and place for fingerprints and photographs.
  1. S. 2(1)(c) of the ICA permits fingerprints and photographs to be taken if a person has been directed to appear for the purposes of the ICA by an Appearance Notice, Promise to Appear (PTA), Recognizance or Summons.
  2. The processes issued by a peace officer, named in s. 9.1 above, must be confirmed by a Justice before:
    - a. charges under s. 145 CCC can be laid; or
    - b. requesting a warrant to arrest should the accused fail to appear as directed for fingerprinting and photographing.
10. Prior to taking fingerprints or photographs under the ICA, the Member will ensure that:
  1. an Information has been laid charging an indictable (dual procedure) offence, or
  2. the person is in custody and has been convicted of the indictable offence for which he/she is being fingerprinted/photographed; or
  3. the person has been directed to appear for fingerprinting/photographing by an Appearance Notice, PTA, Recognizance or Summons, where an Information has been sworn prior to the date returnable; or
  4. the allegations against the person support a charge for an indictable (dual procedure) offence:
    - a. and the person has provided informed consent; or
    - b. if the fingerprints form part of the Crown's case against the person for the offence currently under investigation obtain written consent; or
    - c. if the person explicitly refuses to provide their fingerprints and the Information has not been formally laid, direct the person by way of an Undertaking to Appear, PTA, Recognizance or Summons at a later date and /or time subsequent to the swearing of an Information.

11. When a person objects to being fingerprinted and an Information has been sworn, the Member will discuss with their Supervisor the appropriate action to be taken, such as use of any force, pursuant to s. 12 of this policy chapter.
12. A peace officer is authorized by the ICA to use as much force as is necessary to obtain fingerprints from a person who has been directed to appear for the purposes of the ICA in accordance with the Criminal Code.

### **Release - Appearance Notice**

13. When a Member is releasing a subject from custody, having issued an Appearance Notice, PTA, Recognizance or Summons and directed that person to attend a specific location for the purposes of having their fingerprints and photograph obtained, the Member will consult with their issued reference card to ensure that the subject appears at the Jurisdictional Police Department (JPD) at the appropriate location and required time.
14. When an arrested person is released to appear in New Westminster, and is to be fingerprinted and photographed at a later date, the Member will attempt to have the person come back at a later date on the Member's own shift or make arrangements for someone on another shift to fingerprint the person.
15. When an arrested person is released to appear in jurisdictions other than New Westminster, and is to be fingerprinted and photographed at a later date, the usual practice is that JPD personnel will do the fingerprinting and photographing, unless otherwise notified by the JPD.
16. Unless otherwise required by law, a Release Appearance Notice should be used as a last resort; the arrested person should be fingerprinted in the first instance.
17. In the case where the accused fails to attend for the purpose of fingerprinting, the investigating Member will, in consultation with Court Liaison, review the file, including the following actions:
  1. ensure that Crown has not already elected to proceed summarily;
  2. ensure that SCBCTAPS can definitively prove that the accused did not attend for processing when required to do so;
  3. conduct database queries (CORNET, JUSTIN, PRIME, CPIC) to ensure that the accused wasn't in custody or deceased, which would have precluded them from complying with the direction to have their prints obtained;
  4. physically match the General Occurrence (GO) with the PTA or Appearance Notice issued;
  5. document the time and location of the Failure To Appear offence; and
  6. print out a copy of the accused's 10-29, CNI and Level II.
18. If a determination is made to proceed, the Member will complete a supplemental Report to Crown Counsel (RTCC) and forward to Court Liaison in the regular manner.

19. Upon arrest for failure to attend for fingerprinting, the accused will immediately, or as soon as practicable, be fingerprinted and forthwith released (unless detention is required for some other purpose).

### **Consent to Take Fingerprints/Palmprints**

20. Members may obtain fingerprints and palmprints from any person as an investigative aid, providing the person clearly consents in writing to providing the fingerprints, using Form OZ280 (or in absence of Form OZ280, the JPD form in which the investigation is being conducted.)
21. Members will advise the person that the fingerprints/palmprints can only be used for the purposes for which consent was given.

### **Young Persons – Fingerprints and Photographs**

22. Members will follow procedures in Policy Chapter OD180 – Young Persons regarding arrest of young persons, identification and legal parameters.
23. Members may fingerprint, palmprint and photograph all young persons aged twelve to seventeen years inclusive, charged under the YCJA with an offence which may be proceeded with by way of indictment or dual procedure under the Criminal Code.
24. Members will not fingerprint any young person subsequent to an arrest, unless an Information has been sworn. (Note: A young person cannot consent to having their prints taken).
25. Members must obtain the permission of a young person's parent or guardian prior to fingerprinting when the prints are being obtained solely for investigative purposes, and both must also sign the consent form.
26. A young person who is going to be held in custody will be fingerprinted prior to being transported to a Youth Custody Facility.
27. If the young person resists, no force will be used. The young person will be transported to a Youth Custody Facility and returned for fingerprints and photographs after the charge has been laid.

### **Destruction of Fingerprint and Photographic Records**

28. A person with no prior criminal history may request the return of their fingerprints and photographs in certain cases. A police department is not required by law to return or destroy lawfully obtained fingerprints or photographs, but may do so at their discretion based on pre-determined conditions.
29. Taking into account the totality of the circumstances, SCBCTAPS consideration of destruction will be made with regard to the public interest and, in particular, the needs of effective law enforcement. Destruction may be considered in the following circumstances:

1. the charge was dismissed, withdrawn, or the proceeding stayed and one year has lapsed since the stay has been entered, and the person is not presently, or reasonably likely to be, subject to other criminal charges;
  2. the fingerprints and photographs were taken with consent as an investigative aid elimination and their purpose is fulfilled;
  3. there was a decision to utilize alternative measures and the person has successfully fulfilled the requirements and one year has lapsed since the completion thereof, and the person is not presently, or reasonably likely to be, subject to other criminal charges; or
  4. Crown Counsel did not approve the charges and one year has lapsed since the offence date, and the person is not presently, or reasonably likely to be, subject to other criminal charges.
30. Upon an application in writing, the Deputy Chief Officer Operations may consider destruction of the applicant's fingerprints and photographs where SCBCTAPS caused the fingerprints or photographs to be taken.
1. If another police department as a result of a joint investigation took the fingerprints and photographs, the applicant will be referred to the police department that obtained the fingerprints and photographs, and Court Liaison will notify that department accordingly.
31. Written requests for destruction received by SCBCTAPS will be directed to the attention of the Deputy Chief Officer Operations, who will then forward the request to Court Liaison for investigation. The Court Liaison investigation will include:
1. an interview with the original investigating Member(s);
  2. a determination as to whether the request meets one of the conditions listed above in s. 29 of this policy chapter; and
  3. confirmation that the fingerprints were lawfully obtained.
32. Upon completion of the investigation, Court Liaison will submit a report with supporting documentation and recommendations to the Deputy Chief Officer Operations.
33. Upon review of the investigation report and, if appropriate, consultation with legal counsel, the Deputy Chief Officer Operations will recommend to the Chief Officer whether SCBCTAPS should grant or deny the request for destruction.
34. The applicant will be informed by writing of the Chief Officer's decision and the reasons for the decision.
35. If the request for destruction is granted, Court Liaison will do the following:
1. Obtain the fingerprint records, original photo negatives and any photographic prints or reproductions.

- a. If the photograph was taken at another police department for a SCBCTAPS file, Court Liaison will contact the JPD requesting destruction of the photograph.
2. Remove any fingerprint or photographic records from the Records Services Section.
3. Amend the electronic records entry on PRIME to reflect the destruction.
4. Forward a request to RCMP Identification Directorate and BC AFIS via CPIC narrative traffic message or on SCBCTAPS letterhead seeking return of the file pertaining to the request. [RCMP will send SCBCTAPS the C-216 form and the microfiche for SCBCTAPS destruction. RCMP will also automatically purge the Finger Print Section (FPS) number.]
5. Once all the documents have been received and, where circumstances are contentious, the Deputy Chief Officer Operations or designate, will contact the applicant and give them the opportunity to be present during the destruction of the documents.
6. The documents will be shredded.
7. Send a confirmation letter, via registered mail, to the applicant that the fingerprint and photographic records have been destroyed.
8. All correspondence pertaining to the request for destruction will form part of the Master File, but no copies of the fingerprints/photographs will be retained.

**Key References**

Criminal Code of Canada [RSC 1985, c. C-46]

Identification of Criminals Act [RSC 1985, c. I-1]

Youth Criminal Justice Act [SC 2002, c. 1]