



December 23, 2022

Re: Toronto Police Service Seeks Input on Artificial Intelligence Procedures

We would like to start by acknowledging the valuable process Toronto Police Service (TPS) is undertaking by requesting public feedback on the draft artificial intelligence Procedure. Such consultations are critical to promoting policing that satisfies communities. The comments provided herein are offered from an academic perspective by Dr. Alana Saulnier and Daniel Konikoff.

Dr. Alana Saulnier is a criminologist with a specialization in policing research, particularly police use of data collection and management technologies. She has worked with police services and relevant partner agencies (e.g., Information and Privacy Commissioner of Ontario, Canadian Association of Chiefs of Police) to promote standardization in police use of data collection and management technologies across Canada, member wellness, and community satisfaction. She advocates for policy and procedure standardization as necessary to promote high quality, consistent Canadian law enforcement.

Daniel Konikoff is a PhD Candidate at the University of Toronto's Centre for Criminology & Sociological Studies and a Graduate Fellow at the Schwartz Reisman Institute for Technology & Society. He is currently completing his dissertation on the governance of police technology in Canada, and has been conducting research on how stakeholders—including police services—develop and implement policy surrounding police use of artificial intelligence (AI).

AI technology is poised to play a critical role in the future of law enforcement. Collectively, we offer general remarks on the utility of the draft Procedure for the acquisition and use of AI technology. In preparing our remarks, we reviewed the draft Procedure and the Toronto Police Services Board's (TPSB) Use of Artificial Intelligence Technology Policy, among other materials.

We agree with the TPSB's position that "AI applications hold the promise of improving the effectiveness of policing services and increasing public safety," and agree with the Board that these outcomes are only possible if careful attention is paid to addressing the concerns that accompany the use of AI technologies. Central concerns include that AI predictions may be informed by inaccurate and/or biased data; that the outputs may conceal racial discrimination; that the practices used will be opaque rather than transparent (compromising public trust and police legitimacy); and that the use of AI technologies may inhibit or infringe upon rights guaranteed by the *Charter of Rights and Freedoms*.

The lack of national or provincial guidelines on the use of AI technologies in policing creates an environment in which these concerns might become realities. In the absence of such guidelines, we commend the TPS's commitment to create a procedure for the thoughtful acquisition and use of AI technologies.

We believe the draft procedure is developing well: it engages with many of the key ideals of transparent police practice, it is clear and concise, and it appears implementable. Having acknowledged the well-developed state of the draft, we will draw attention to ways in which we believe it would be beneficial for the Procedure to continue to evolve. Our comments are presented categorically below, addressing minor recommendations before moving to those that are more substantial ones.

Reference the appendices where appropriate in the Procedure

The combination of the Procedure and Appendices do an excellent job of clearly and concisely stating key content, but on some points, the Procedure is vague until the Appendices are reviewed. It is our opinion that it is fine to present more general content in the Procedure and more specific content in the Appendices but that referencing the reader to appropriate points in the Appendices (including the provision of bi-directional hyperlinks) would make the Procedure clearer and more readable.

Specifically, we recommend that references to relevant sections of the Appendices be embedded at the following points in the Procedure:

- Procedure: “For the purpose of this Procedure, Artificial Intelligence refers to any and all technology within the AI spectrum of applications.”
 - Reference the reader to the Definitions section of the Appendices where a specific definition of AI is provided.
- Review and Approval Process: “The review will address the intended benefit that an AI technology will deliver...”
 - Reference the reader to the Artificial Intelligence Technology Acquisition Approval Process flow chart in the Appendices.

Specifying the guiding priorities of the Privacy Impact Assessment

The minimum content to be included in the Artificial Intelligence Assessment (AIA) is outlined in the “Manager: Analytics & Innovation” section, while the same level of detail is not provided for the Privacy Impact Assessment (PIA) in the “Manager: Information, Privacy & Security” section. We recommend similarly summarizing the minimum content to be included in the PIA.

Building on the flow chart and incorporating relevant content into the Procedure

Conceptualizing the “idea” phase

While the flow chart in the Appendices outlines a clear path for acquiring and approving AI technology, the chart’s starting point—“Idea”—should be more clearly defined. We recognize that the process of idea creation is a nebulous one, but the “Idea” label does not appropriately capture the complexity of the first steps in a police technology’s lifecycle.



For example, inspiration can strike in the form of “Wouldn’t it be great if we could automate x process?,” but can also take the shape of “Wouldn’t it be great if we had *this particular technology?*” Technology vendors may actively advertise their tools to police, certain technologies may spread through word of mouth between different departments, and officers may receive free trials of tools at trade shows or conferences. Sometimes these tools are solutions in search of a problem, rather than the other way around.

Relatedly, the procedure does not state whose ideas can initiate the adoption and approval process. As it stands, it is not clear if this is a process open to all members of the TPS or a select few.

We recommend reframing the “Idea” phase as an “Identifying a Problem” phase, to highlight the social or fiscal issue the technological solution aims to remedy. Relatedly, we recommend that the Procedure highlight some of the many possible starting points for how a technology might come to be suggested. This may help facilitate member suggestions while raising public awareness about the starting point of the acquisition process. In addition, we recommend clarifying whether all members of the TPS are encouraged to generate ideas. Outrightly stating that any member of TPS can initiate the process is a good way to flatten the organizational hierarchy and empower all TPS members to participate in the Service’s modernization efforts.

Positioning a legal review as a phase in the process

While Legal Services (LSV) is listed as holding a position on the Artificial Intelligence Technology Committee (AITC), we found it surprising that the process does not include a legal review that ensures new technologies comply with existing legislation. We appreciate that some of this can be embedded in the production of a PIA and, if so, describing the minimum expectations of the PIA may clarify where this task is placed in the acquisition and approval process. More generally, we suggest that LSV be documented as playing a greater role in the Procedure. We recommend that the Procedure should include a section explaining who is responsible for conducting a legal review, what that output should consist of, and where the legal review will be positioned in the process and flow chart. Legality is a guiding principle outlined in the Board Policy and, in our opinion, needs to be explicitly positioned as a step in the Procedure—ideally before the solution gets sent to the AITC.

Add a community education phase in the process

We recommend that the Procedure explicitly incorporate a community education phase and that this also be represented in the flow chart. We appreciate that stakeholder consultations factor into the acquisition and approval process, but we suggest taking this further. Community education is an important aspect of promoting public awareness of the activities of police, which can engender feelings of confidence and legitimacy. In addition, we suspect that it will likely be the responsibility of some member or unit of TPS to knowledgeably describe new AI technology and its function for the Service through varied media outlets. As such, community education is both important and likely already expected to be undertaken. For both these reasons, it seems



important that the AITC include a community education phase into the process for onboarding new AI technologies, and that the person responsible for leading that initiative either be an existing member of the AITC or that the TPS member responsible for such an activity should be added to the AITC. This would make the TPS' approach to AI governance consistent with that of the Royal Canadian Mounted Police's (RCMP) National Technology Onboarding Program, which explicitly includes public messaging about technology into its intake and assessment processes.

Ethics and transparency section expansion

We appreciate the inclusion of the Ethics and Transparency section in the Procedure, but its contents are very general and brief. It is our opinion that this section can be enhanced by commenting on how the Board Policy's guiding principles (i.e., legality, fairness, reliability, justifiability, personal accountability, organizational accountability, transparency, privacy, and meaningful engagement) are operationally realized through the Service's Procedure. Providing these more concrete demonstrations of the link between the Policy's guiding principles and the technical functioning of the Service's Procedure allows the Procedure to commit more specifically to the ethical and transparent use of AI technologies.

Reflections on the covert exemption

At the end of the Procedure, it states "Note: Where the product is covert in nature the product and vendor may be omitted. Where public disclosure of the product or details of the product may impact economic, intellectual property, or other interests, such information may be omitted pursuant to sections 10 and 11 of the Municipal Freedom of Information and Protection of Privacy Act."

In general, the Procedure suggests a strong commitment to a transparent process of scrutinizing prospective AI technologies to promote public confidence that these technologies are acquired and used in ways that are fair and accountable (and, more specifically, that they align with the Board Policy's guiding principles). However, this closing statement suggests that very broad rationales may be used to withhold information from the public regarding the acquisition and use of AI technologies by the Service.

We recognize that this is a complicated issue, and that tactical operations and the norms of private industry occasionally justify this stance, but we also wish to flag our concerns associated with this position. One is the issue of omitting information on the basis that is proprietary in nature. While private industry does invest money in the research and development of technology to which they understandably wish to maintain proprietary rights, this private interest becomes harmful to police services (and other public organizations) when it manifests as secretive or opaque technologies. It is not the responsibility of the TPS to individually rectify this problem, but it is a problem that needs to be addressed. The public has a right to know how technologies purchased with public funds operate though the matter of covert operations adds complexity to this issue.



The second issue is omitting information about technologies used for covert operations. Opinions on this issue are affected by the relative weight assigned to outcomes such as crime reduction, public safety, public trust in police, and interpretations of *Charter* rights. We recognize that there are tactical practices that, when rendered fully transparent, may compromise the effectiveness of the strategy (which does include tackling serious issues related to organized crime), which can in turn jeopardize public and officer safety. The legal right of such practices to be omitted in public disclosures is outlined in the *Freedom of Information and Protections of Privacy Act* (s. 14) and the *Municipal Freedom of Information and Protection of Privacy Act* (s. 8). However, there is also substantial public concern with government use (particularly law enforcement's use) of invasive surveillance technologies that are employed with little to no public disclosure. These circumstances can amount to the secret use of AI technologies operating without appropriate regulation or oversight, and possibly contravening public expectations of appropriate use of authority. It is worth noting that controversial scandals regarding police use of technology in Canada have centered around instances where a technology was employed covertly (e.g., IMSI catchers, Clearview AI). As these controversies suggest, withholding information about technology on covert grounds can negatively impact police legitimacy and public trust—two things this Procedure aims to bolster.

It is our opinion that the current wording is insufficient and unsatisfying, but also that these are complex issues. At a minimum, we believe that it is necessary for the Procedure to describe the specific reasons that an AI technology used by the Service would not be publicly disclosed (e.g., revealing an investigative technique that would compromise its effective use, endangering public or officer life) and the particular processes that will be used to evaluate a technology as being categorized accordingly. The point at which such a determination will be made should also be illustrated in the flow chart in the Appendices. In addition, a more robust solution may be to include persons external to TPS on the AITC who can serve as community representatives on such determinations. Members of the TPSB may be a viable option here as persons who are independent from TPS but who have clear motivations to ensure the Service serves the public.

Determining the acceptable use of AI technologies in policing is, in part, a product of the expectations we set now. We applaud the TPS for undertaking this initiative and hope that the comments we have made are of assistance to the production of the final product.

Sincerely,

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