VANCOUVER POLICE DEPARTMENT

REPORT TO THE VANCOUVER POLICE BOARD

REPORT DATE: May 27, 2016
BOARD MEETING DATE: June 16, 2016
BOARD REPORT # 1606P02
Regular

TO: Vancouver Police Board

FROM: Drazen Manojlovic, Director, Planning, Research and Audit Section

SUBJECT: Response to City of Vancouver's Access Without Fear Policy and proposed revisions to Regulations and Procedures Manual 1.12.3 *Detention Pursuant to the Immigration Act*

RECOMMENDATION:

That the Vancouver Police Board approves the proposed amendments to Regulations and Procedures Manual 1.12.3 *Detention Pursuant to the Immigration Act.*

SUMMARY:

There are many legitimate reasons why Vancouver Police Department (VPD) officers may contact the Canada Border Services Agency (CBSA) during police investigations. The most common situation occurs when police officers arrest a person for a criminal offense and coincidently that person is in Canada illegally. It is uncommon for VPD officers to contact CBSA when dealing with a victim, witness, or complainant. In the vast majority of cases, contact is initiated when the police officer is investigating a suspect.

With the primary goals of ensuring public safety, the VPD will not, in a prescriptive manner, limit officers from contacting CBSA. Rather, the VPD encourages lawful discretion, where appropriate, during police investigations that involve individuals with no immigration status or uncertain status. The enforcement of immigration is not our central focus; rather, the VPD's priority is maintaining public safety and preventing and responding to crime. As such, it is recommended that the current policy be prefaced with a policy statement to provide VPD officers with an understanding of the VPD's position when dealing with undocumented migrants during police investigations.

POLICY:

- Regulations and Procedures Manual 1.12.3 *Detention Pursuant to the Immigration Act*
- Jail Manual of Operations 4.1 *Immigration Arrests*

DISCUSSION:

Over the course of its growth into a globally lauded city, Vancouver has attracted - in large part due to its openness and celebration of diversity - immigrants and refugees, some of whom have uncertain immigration status or lack it altogether. An individual may have "no status" in cases such as expired educational or employment visas and "uncertain" status may refer to cases where individuals are in the process of seeking permanent residency or refugee status. Further, some individuals may be in Vancouver having entered the country through illegal circumstances. Illegal entry may consist of a spectrum of reasons; at one end of the spectrum are families seeking a better life in Canada and on the other end are individuals who have been deemed a public safety risk and deported multiple times but have found an illegal means of re-entry into Canada.

Challenges Faced by Uncertain/Non-Status Migrants

The challenges faced by immigrants with uncertain or no status ('undocumented migrants') have been well-documented in the literature and referenced in the course of "sanctuary city" discussions across North America. It has been widely acknowledged that undocumented migrants are limited from accessing municipal government services due to a fear of discovery and deportation (Affiliation of Multicultural Societies and Services Agencies of BC, 2014, p. 1). Further, undocumented migrants who are victims of crime may, in many cases, remain in a position of victimization or refrain from reporting crimes.

Potentially exacerbating the problem, these individuals may have migrated from countries with corrupt or inept police; this may create a general fear of police and a barrier to access beyond simply the fear of deportation (Deshman, 2009, p. 213). Alternately, undocumented migrants may come from a culture where social structure, beliefs, or fear of stigma may prevent certain individuals from seeking access to services (Deshman, 2009, p. 214). The literature demonstrates that a lack of access, whether through fear of deportation or other more explicit barriers such as a requirement of status for services, can also reinforce social isolation in these individuals (Magalhaes et al., 2010, p. 135).

The City of Vancouver's Access to City Services Without Fear Policy

In recognition of the issues undocumented migrants face, the City of Vancouver (CoV) began exploring the concept of an "access to CoV services without fear" (ACSWF) policy in 2014. In April 2016, CoV Council unanimously passed the ACSWF policy, which provides access to certain CoV services without fear that immigration status (or potential lack thereof) will be uncovered by CoV employees and disclosed to Canadian immigration authorities, namely the CBSA – unless there is a legal requirement to do so (such as a warrant).

There are three directives resulting from this policy:

1. Access to CoV services will not be dependent on immigration status. CoV staff will not ask for, or otherwise seek out, an individual's immigration status as a condition of service (unless there is a legal requirement to do so).
2. Privacy of information will be protected in that all personal information concerning immigration status is not to be requested or gathered whilst providing CoV services (unless required by law).

3. Enforcement of immigration status is not within the scope of CoV services or responsibility, thus there will be minimal communication with CBSA (unless there is a lawful requirement such as a warrant).

This CoV policy applies to services directly provided by the CoV; while it does not specifically apply to services by the respective Police, Parks, or Library Boards, the policy (and therefore CoV Council) asks that the Vancouver Police Board (VPB) "adopt a policy which supports, within their respective mandates, the spirit and objectives of this policy" (CoV ACSWF Policy, 2016, p. 1)

The VPD's General Philosophy on ACSWF

The protection of the public is without question the central objective of the VPD, one which applies equally to all people regardless of status. As an organization which has made advocacy for the city's marginalized and vulnerable residents a dedicated priority, the VPD remains committed to social responsibility (2012-2016 Strategic Plan, 2012, p. 13) and recognizes the importance of making its services and protection equally accessible to all members of the public. In addition, it is the vision of the VPD "to be the safest major city in Canada" (2012-2016 Strategic Plan, 2012, p. 7), a vision of safety which extends to the protection of all people regardless of immigration status.

Further, the VPD strives, as part of its stated principles, to ensure that all police actions are: "necessary, legitimate, and legally justifiable"; "proportional to the priority and the severity of the situation in need of intervention"; and "the least intrusive required to ensure public safety" (2012-2016 Strategic Plan, 2012, p. 8). Officer decision-making is grounded in these principles.

The VPD encourages all people to seek police services without fear. The VPD serves all people equally, while balancing the requirements set forth in federal and provincial legislation and the Canadian Charter of Rights and Freedoms. VPD services are provided to all people regardless of immigration status. To that effect, then, the main concerns regarding the VPD's implementation of a similar ACSWF policy relate to the complexity of police investigations that may require inter-agency cooperation.

Inter-Agency Cooperation: The VPD and CBSA

In the course of conducting investigations and fulfilling their central obligations, including (but not limited to) crime prevention, preservation of the peace, and the protection of the public, police officers often rely on information that is provided by other sources including witnesses, complainants, informants, pre-existing agency information and other law enforcement agencies. The willingness of other parties to share potentially useful information is often instrumental to an organization's ability to respond to events, proactively prevent future crime, apprehend dangerous offenders, or identify and question persons of interest.

The importance of sharing information between law-enforcement agencies has also been well-documented in the literature. As Plecas, McCormick, Levine, Neal, and Cohen (2011) note, information sharing between law enforcement agencies facilitates effectiveness and efficiency, optimizes the use of diminished resources, and provides a quicker and deeper understanding of the circumstances surrounding an event (p. 121). Further, information sharing between agencies "has the ability to improve law enforcement agencies' ability to detect and prevent/respond to criminal activity" (Plecas et al., 2011, p. 121), helping officers and agencies become better able to fulfill their obligations of duty as stated above. There are several notable

examples in recent Canadian and international law enforcement history evidencing these benefits, wherein the sharing of information within and between agencies facilitated investigations, apprehensions, and convictions of dangerous offenders that would otherwise not have been possible.

One prominent case which highlights this is the 2012 arrest of Steven Dyer, a United States of America citizen who fled to Canada following child molestation charges. Police were unaware that this dangerous fugitive, one of "America's Most Wanted", was hiding in Vancouver under an assumed identity, until CBSA discovered and shared this information. Inter-agency cooperation facilitated Dyer's eventual arrest and provided new information and avenues of investigation for unsolved VPD sex crimes cases, wherein Dyer (who, as mentioned, was previously unknown to VPD) might fit the offender profile for other crimes against children.

Inter-agency cooperation is also in line with VPD's commitment to the British Columbia Police Code of Ethics, which guides police officer conduct and relationships with the public and police partners. In particular, the code emphasizes the importance of police partnerships in order to develop "an open, just, and impartial justice system". The BC Police Code of Ethics is specifically relevant to our partnership with CBSA, as it states:

> *…we must always strive to cooperate with other public service professionals in order to advance the public good. This involves the sharing of information in a relationship-building manner that celebrates the interdependent nature of professionals in promoting the goals of the justice system. This information sharing must balance confidentiality needs and due process with the needs of professionals, who are working for justice and the common good.*
>
> Ethics Committee of the BC Association of Chiefs of Police, '*British Columbia Police Code of Ethics'.*

Generally, the cooperation between CBSA and VPD is congruent with the separate and distinct goals of both agencies.

How Often Does VPD Enforce the Immigration and Refugee Protection Act (IRPA)?

While VPD and CBSA have a collaborative working relationship, it is neither an obligation nor an operational priority for VPD officers to check the immigration status of undocumented migrants. This view is supported in the data; a review of 2015 police files highlights that immigration enforcement action by the VPD is a miniscule proportion of overall VPD police activity. The majority of these cases are those in which a VPD officer is dealing with a suspect of a criminal offense and they are also wanted on an immigration warrant. To illustrate, in 2015:

- There were 226,992 calls for service in 2015; and
- VPD officers made 15,063 arrests; only 40 individuals were arrested under the IRPA, which accounts for a mere 0.27% of all arrests or .0018% of all calls for service in 2015.

Operational Necessities: Contact with CBSA for Additional Investigative Purposes

While the above mentioned data shows how relatively infrequently that the VPD have arrested individuals in violation of IRPA, the VPD may, in infrequent circumstances, contact CBSA for other investigative purposes. One common reason that VPD officers contact CBSA is to confirm identity because verifying identification is required for investigations and subsequent court proceedings.

Even in cases without a warrant, order, or subpoena, immigration status may be relevant depending on the nature of the police investigation. While in the majority of cases this is regarding a suspect, this contact may, in rare circumstances, extend to victims, witnesses, or complainants. For example, the following case study highlights why police may contact CBSA regarding individuals who are victimized and showcases why a restrictive policy similar to the ACSWF policy would limit the VPD's efforts to ensure the safety of victims:

Case Study: Bawdy House Investigation

Investigators received intelligence that a massage parlour was in fact operating as a bawdy house. Upon an investigation, search warrants were executed. During the search, police found the "employees" of the bawdy house were underage girls trafficked against their will from South Korea, when the girls informed the officers that they were brought into the country illegally. In the course of the investigation, and a result of information voluntarily provided by the underage girls, officers determined that the girls were victims of a human smuggling ring. Officers contacted the CBSA since the nature of human smuggling typically requires a cross-border investigation to be conducted.

This case study is merely one example that outlines the variability of police investigations. Since no police situation is exactly the same, the exercise of police discretion is an essential and legally well-established component in our criminal justice system. Further, since police are called upon to deal with such a wide and complex variety of issues, implementing a restrictive policy may disable officers from preventing and investigating public safety issues.

Proposed Policy Amendments

In light of the CoV ACSWF policy, we have reviewed our current policy and procedures relevant to this issue, reflected in RPM section 1.12.3. It is recommended that the current policy be prefaced with a policy statement to provide VPD officers with a better understanding of the VPD's position when dealing with undocumented migrants during police investigations. Modifications to language are also recommended (see pages 7 and 8 for current and proposed policy). In addition to the RPM policy, the VPD Jail Manual of Operations will be updated to be consistent with this policy and to update out-dated language and reflect practices under the current provisions of the IRPA.

CONCLUSION:

The VPD acknowledges that undocumented migrants may not contact the police out of fear that their immigration status may be discovered in the course of an investigation. In pursuit of our policing objectives, the VPD emphasizes that we do not discourage any individual to come forward to report crime or to seek police assistance, regardless of their immigration status. Therefore, our philosophical view is aligned with the spirit of the CoV ACSWF.

While the philosophy of the CoV ACSWF is supported, there is a crucial necessity in distinguishing policing services from other CoV services. It is important to note that the VPD deals with unique and distinct criminal investigations and public safety issues that the CoV would never be engaged in. A policing organization, by nature of its mandate and operations, is bound to legal obligations and legislation that sometimes requires the sharing of information with other law enforcement partners. In addition, there are potentially serious public safety implications when police do not act on information that they become aware of. For example, failing to ensure the correct identification of a person in an attempted murder or sexual assault investigation has very different and complex public safety ramifications, when compared to incorrect identification for an individual using almost any type of CoV service (e.g. signing out library books, access to a recreation centre, or applying for a building permit, etc.).

The protection of the public is without question the primary objective of the VPD, one which applies equally to all people regardless of any factor, including but not limited to age, gender, race, religion, sexual orientation, or citizenship status. The enforcement of immigration is not our central focus; rather, the VPD's priority is ensuring public safety and preventing and responding to crime.

Author: Dr. Jennie Gill Telephone: 604-717-2685 Date: May 27, 2016

Submitting Executive Member:

Chief Constable Adam Palmer Date: June 7, 2016

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Current Policy

1.12 Prisoners and Jail Operations

1.12.3 Detention Pursuant to the Immigration Act

(Effective: 2006.12.07)

1. There are occasions when a detainee will be arrested by a member under Section 103(2) of the Immigration Act without a warrant. Before any such person is detained at the Vancouver Jail, an Immigration Officer will be contacted, and authorization will be obtained to hold that person as an Immigration detainee. The Immigration Officer will forward, as soon as possible, the Immigration detention form – 412, to the Jail NCO.

2. Detainees are not to be fingerprinted unless under the direction of an Immigration Officer, and are not required during their confinement, to be placed before a Justice, or appear in Criminal Court unless charged with a criminal offence.

3. Members who arrest a person under the Immigration Act must contact 6 INDIA through the Central Dispatcher, or, after 6 INDIA's duty hours, contact Immigration Canada at Douglas Border Crossing (24 hours per day).

4. Any disagreement as to the acceptance of a detainee will be resolved by the Jail NCO.

Proposed Policy

1.12 Prisoners and Jail Operations

1.12.3 Detention Pursuant to the Immigration and Refugee Protection Act

The VPD's core law enforcement priority is to ensure public safety. In line with this priority, the VPD will not limit officers' discretion from contacting the CBSA during police investigations. As police investigations vary on a case-by-case basis, the VPD encourages, where appropriate, its police officers to apply discretion when investigating incidents. This discretion is rooted in the VPD's organizational principle of proportionality when encountering people with no or uncertain immigration status.

1. There are occasions when a person will be arrested by a member under Section 55(2) of the Immigration and Refugee Protection Act (IRPA) without a warrant. Before any such person is detained at the Vancouver Jail, CBSA Inland Enforcement Section will be contacted and authorization will be obtained to hold that person as an Immigration detainee. The CBSA Officer will forward, as soon as possible, the Immigration Order for Detention – BSF 304 to the Jail NCO.

2. Detainees are not to be fingerprinted unless directed by a CBSA Officer and are not required during their confinement, to be placed before a Justice, or appear in Criminal Court unless charged with a criminal offence.

3. Members who arrest a person under IRPA must contact the Immigration Unit (SIERRA 90 to SIERRA 99) through the Central Dispatcher or, after SIERRA 90s' duty hours, contact the CBSA Warrant Response Centre at XXX-XXX-XXXX (24 hours per day).

4. Any disagreement as to the acceptance of a detainee will be resolved by the Jail NCO.