
To: All Municipal Police Chief Constables

And to: All Professional Standards Officers

From: Office of the Police Complaint Commissioner

Date: April 4, 2012

Re: **Service Records of Discipline - Expungement**

PURPOSE

The purpose of this Information Bulletin is to provide police agencies guidance when applying the expungement provisions of the *Police Act*, to ensure consistency amongst agencies.

BACKGROUND

One of the significant revisions to the *Police Act* was the introduction of s. 180(8) as it relates to the expungement of records contained on the member's Service Record of Discipline. The legislation is not clear on how to implement the new expungement formulas.

RECOMMENDED PROCESS

- In terms of a Member's Service Record of Discipline the expungement of records are postponed if, prior to the effective date of expungement, the Member is the subject of an admissible complaint or an ordered investigation. In the event that the admissible complaint is withdrawn (and the investigation is not ordered to continue), informally resolved or mediated, or the Part 3 investigation is discontinued or found to be unsubstantiated, the expungement provisions will take effect forthwith.
- If the admissible complaint or ordered investigation is substantiated, then the existing record will remain on the Service Record of Discipline until the time specified for expungement has once again elapsed, without the intervention of a new admissible complaint or new ordered investigation.
- An informally resolved or successfully mediated complaint where there are no associated disciplinary and/or corrective measures does not appear on a member's Service Record of Discipline.

- The date of commencement in terms of calculating the expungement period for any substantiated complaint is the date of the OPCC’s concluding document confirming the decision reached at the Prehearing Conference or confirming the Discipline Authority’s decision following a discipline proceeding, or the date of the final decision of an Adjudicator in terms of a Public Hearing or Review on the Record.
- In the event that the admissible complaint or ordered investigation against the Member is substantiated and is recorded on the Service Record of Discipline, the time period in which the earlier record will once again become eligible for expungement will be the shorter eligibility period of either record as prescribed by the Act.

Below is a chart outlining the expungement periods as proscribed by the *Police Act* in terms of corrective measures and discipline.

If there are no open admissible complaint investigations that were initiated within the last 2 year period for records resulting in:	If there are no open admissible complaint investigations that were initiated within the last 3 year period for records resulting in:	If there are no open admissible complaint investigations that were initiated within the last 5 year period for records resulting in:
<ul style="list-style-type: none"> • Written reprimand • Verbal reprimand • Advice as to future conduct 	<ul style="list-style-type: none"> • Direction to work under close supervision • Undertake specified training or re-training • Undertake counselling or treatment • Participate in a program or activity 	<ul style="list-style-type: none"> • Reduction in rank • Suspension • Transfer or re-assignment

Example:

A Discipline Authority determines that an allegation of misconduct appears to be substantiated against a Member. At the prehearing conference the Member accepts a written reprimand. The OPCC confirms the decision and the discipline on April 1, 2010. The record is placed on to the Member’s Service Record of Discipline and is eligible for expungement on April 1, 2012.

Two months prior to the expungement date, the Member is the subject of an admissible complaint. The expungement of the record is now postponed until such time as the new matter is withdrawn (in the absence of an investigation being ordered), informally resolved, mediated, discontinued or unsubstantiated.

As stated above, if the new allegation against the Member is substantiated and is recorded on the Service Record of Discipline, then the time period for the earlier record will be extended and will once again become eligible for expungement at the conclusion of the shortest eligibility period of either record as prescribed by the Act.

It is my hope that the government will provide greater clarity when the *Police Act* is reviewed and concerns regarding expungement provisions are examined. However in the interim, I have tried to strike a balance between the intent of the legislation and fairness in recommending this process. I remain open to any suggestions for improvement of this process.



Stan T. Lowe,
Police Complaint Commissioner