

Solicitor General Sylvia Jones
Ministry of the Solicitor General
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Thursday April 22, 2020

Dear Solicitor General Jones,

We are writing on behalf of the Canadian Civil Liberties Association, the HIV & AIDS Legal Clinic Ontario, the Black Legal Action Centre and Aboriginal Legal Services to outline our concerns regarding the government's decision to provide a range of first responders, including police services, with the names, addresses and dates of birth of individuals who have tested positive for COVID-19.

We appreciate that first responders are on the front lines of a public health crisis. Protecting the health of communities and first responders is rightly a priority.

Providing personal health information directly to law enforcement, however, is an extraordinary invasion of privacy. Such a measure should only be taken when clearly authorized by law and absolutely necessary given the particular circumstances. It is our understanding that the Information and Privacy Commissioner of Ontario was opposed to the emergency order authorizing this disclosure because the government was not able to demonstrate that the order was necessary to enhance public safety. The regulation was passed despite their objections.

Based on the information provided to date we are also concerned about the legality of the decision to give all first responders access to COVID-19 health information.

The government's emergency regulation O. Reg. 120/20 authorizes the disclosure of COVID-19 status information only to the extent “necessary in order to prevent, respond to or alleviate the effects of the emergency.”¹ We have not found sufficient explanation of how providing this information to first responders, and police in particular, is useful, much less necessary, in responding to the present emergency.

First, any database listing individuals who have tested positive for COVID-19 in Ontario will be underinclusive. The government currently has restrictive testing criteria, and many individuals who have COVID-19 may not have received a COVID-19 test. Police officers, like all first responders, must operate under the assumption that everyone they come into contact with is a potential active carrier. Infection control measures targeting only individuals who have tested positive for COVID-19 will be ineffective at protecting frontline workers. Universal precautions are necessary, and it is not clear what – if any – additional protective measures police officers and other first responders could or would take based on Ontario’s incomplete COVID-19 testing information.

Second, according to the regulation and government statements the information that will be provided does not include the date that an individual tested positive.² This means that old, outdated test results could incorrectly identify people as having COVID-19 when they have already recovered and are no longer contagious.

It is difficult to understand how first responders will effectively use testing information that is both incomplete and out of date. Indeed, there is a real risk that using this database will create a false sense of security when first responders are interacting with individuals who have not been flagged, thus serving to create rather than mitigate danger.

We therefore ask for responses to the following questions:

- (i) What is the intended purpose or objective of providing first responders in general, and police and fire services in particular, with the COVID-19 diagnosis information?
- (ii) What information from any database used to store COVID-19 diagnosis information will be available to first responders, including police services?
- (iii) How will the COVID-19 diagnosis be used by first responders in the execution of their duties? In particular, what additional precautions is it anticipated that police and firefighters will take upon receipt of the information?

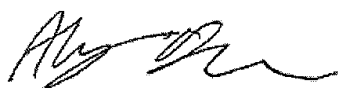
¹ <https://www.ontario.ca/laws/regulation/200120?search=emergency+management>.

² <https://news.ontario.ca/mcscs/en/2020/04/ontario-takes-additional-measures-to-protect-first-responders-during-the-covid-19-outbreak.html>.

- (iv) What measures will be taken to ensure that the intrusion upon the privacy of people diagnosed with COVID-19 will be as minimal and constrained as possible?
- (v) Will first responder access to this data be contingent upon local policies and procedures that adequately protect individual privacy? If so, please address the standards that local policies and procedures must meet, including:
 - a. Safeguards to ensure there are no secondary uses of personal medical information;
 - b. Limitations on who within police, fire and paramedic services will have access to this information;
 - c. The storage of health data, and the secondary recording of this data in other databases that first responders may maintain or have access to; and
 - d. Continued access to this database once the emergency measures are lifted and the deletion of any locally-recorded data.
- (vi) What oversight and complaint measures have been put in place? Specifically:
 - a. Is the province tracking use of this data, for example through a log kept each time a first responder accesses the data regarding COVID status, including when the information was requested, why and by whom?
 - b. Will there be an audit process at the conclusion of the emergency to ensure no data is inappropriately retained?
 - c. What recourse will individuals have if they believe their health status was inappropriately or illegally accessed, disclosed or used?

We appreciate your attention to this matter and look forward to your response.

Sincerely,



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