



*Guardian of Public Trust*

January 6, 2022

**BRIEFING NOTE:**

Purpose:     Action    Information

TO:           Commissioners

FROM:         Matt Barker, Executive Director

**SUBJECT:** Draft Reconsideration Policy

**DECISION REQUESTED:** EPC review proposed policy on reconsideration in the event an individual fails an Enhanced Security Check (ESC) to become a Commissioner.

**January 6, 2022 UPDATE:** This item was approved in principle at the December EPC meeting and appears now on the consent agenda to formalize it as an EPC policy item. All EPC policies need to be approved at a public meeting.

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**BACKGROUND:**

There is currently a legislative and policy gap with respect to security checks on potential Commissioners that are mandated by the Government of Alberta (GOA). The GOA indicates that a security and background check must be completed but sets out no guidelines on what is considered a pass or fail.

The ESC is conducted by the EPS and a pass/fail result is provided to EPC who notifies the COE. There is currently no reconsideration process of a 'fail' result which is contrary to the rules of natural justice.

Only the GOA can address the legislative gap, however EPC can address the policy gap to ensure alignment with GOA standards for police commissions and to ensure a fair and transparent process.

Set out below is a draft policy for EPC's consideration.

This is being brought forward as the issue surfaced in another jurisdiction in a manner that was public and embarrassing to all involved. Having a policy like this will ensure, in the exceedingly rare event this happens, EPC will have a process to follow.

## **DRAFT POLICY:**

### Preamble:

Under section 3.1 of the Alberta *Police Act* the Province of Alberta has established standards for Municipal Police Commissions with respect to background checks of individuals to be appointed as Commissioners under the Police Act as follows:

RR2 Preamble: Once a municipal police service has been established, the second requirement is an oversight agency that will oversee the police service. To fulfill this requirement, the municipality **shall** select and appoint qualified oversight agency members through a process sensitive to the principles of openness and equity.

RR 2.3 Security checks: The municipality shall conduct a background check/security clearance of each successful candidate (including those appointed as a member of the council or an employees of the municipality) before confirmation of his/her appointment to the oversight agency, including at a minimum:

- a. Criminal record check;
- b. Character / Reference checks;
- c. Interview of applicant (including an assessment of overall suitability)

In Edmonton, the criminal record check is done by the police service in the form of an Enhanced Security Check and pass/fail results provided to the City of Edmonton. City Council and their employees are responsible for items (b) and (c) above.

### Legal References:

- Police Act – section 3.1
- GOA Policing Oversight Standards (The Policing Oversight Standards (Standards) were created under the authority of Section 3.1 of the Alberta Police Act)
  - [https://open.alberta.ca/dataset/da0608ad-a5b4-4c23-a550-2292ca0b4915/resource/e4785183-bf39-4746-bb7d-ff865afac332/download/policecommissionoversightstandardsauditversion\\_dec\\_2014.pdf](https://open.alberta.ca/dataset/da0608ad-a5b4-4c23-a550-2292ca0b4915/resource/e4785183-bf39-4746-bb7d-ff865afac332/download/policecommissionoversightstandardsauditversion_dec_2014.pdf)
- City EPC bylaw
- EPC policy

### Policy Intent:

The intent of the Enhanced Security Clearance (ESC) is to gather information held by police services to assess the suitability to be appointed as a Commissioner. An Enhanced Security Clearance upon application is the primary method through which potential risk can be managed and the level of risk is assessed by reviewing data held by police in relation to an applicant's past interactions with law enforcement.

The ESC process is a pass/fail with notification from the police service being sent to the Edmonton Police Commission who advises the candidate via City of Edmonton staff.

In the event of a 'fail' notification the applicant will be notified that they may request a reconsideration of the decision.

#### Reconsideration process:

An individual may request reconsideration of a 'fail' result through the following process:

- Applicant needs to agree, in writing, to release all details of the ESC to designated members of EPC and City Council for the purpose of reconsidering the ESC decision.
- A private meeting will be scheduled to review the information and allow all affected parties to speak to the findings.
- The private meeting will be comprised of the following individuals:
  - EPC
    - Chair
    - Vice Chair
    - Staff member to take confidential notes
  - City Council
    - Two members of Council, designated by Council and holding the authority to make a decision on the matters under review
    - Staff member to take confidential notes
  - EPS
    - Chief and/or designate
  - Applicant
    - The applicant
    - Representative (if desired)
- The private meeting will provide:
  - Opportunity for the applicant to speak to the results of the ESC and provide any additional information or evidence as to why those findings are not a barrier to appointment as a Commissioner.
  - Opportunity for the EPC to discuss the results of the ESC and provide any additional information or evidence as to why those findings **may or may not** present a risk in appointing the applicant as a Commissioner. (EPC position on this matter will be independent of the police service's)
  - Opportunity for the police service to discuss the results of the ESC and provide any additional information or evidence as to why those findings present a risk in appointing the applicant as a Commissioner.

Outcome:

- After all parties have spoken to the matter City Council representatives may make a decision on the matters and if the results of the failed ESC are a barrier to appointment as a Commissioner.
- Council has the authority to appoint Commissioners in the face of failed background check and if they feel the standards for Municipal Police Commissions with respect to appointment of Commissioners has been met.
- However, the EPC and EPS have a responsibility to ensure the protection, privacy and security of police information, deliberations, investigations, and all other matters of law enforcement.
  - Should Council appoint an individual as Commissioner that, in the **opinion of the EPC** is unsuitable, EPC will craft provisions and processes for the individual that limit the risk to the Commission and police service. These provisions and processes will be crafted to the unique circumstances of each individual and may include, but are not limited to, the following restrictions and limitations:
    - Access to police buildings and facilities.
    - Receiving documents related to ongoing or historical police investigations that are normally submitted to EPC in the regular course of business.
    - Receiving documentation considered sensitive.
    - Exclusion from EPC meetings in which any of the above are discussed or presentations by the police service are delivered.
    - Exclusion from discussions of a sensitive law enforcement nature.

EPC may also choose to notify the Minister of Justice of the situation and seek direction.

**(NEW)**

<b>Effective:</b>	<b>Revised:</b>
<b>Repealed:</b>	

### **3.1.8 ENHANCED SECURITY CLEARANCE RECONSIDERATION FOR COMMISSIONERS**

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Under section 3.1 of the Alberta *Police Act* the Province of Alberta has established standards for Municipal Police Commissions with respect to background checks of individuals to be appointed as Commissioners under the *Alberta Policing Oversight Standards for Municipal Police Commissions* as follows:

RR2 Preamble: Once a municipal police service has been established, the second requirement is an oversight agency that will oversee the police service. To fulfill this requirement, the municipality **shall** select and appoint qualified oversight agency members through a process sensitive to the principles of openness and equity.

RR 2.3 Security checks: The municipality shall conduct a background check/security clearance of each successful candidate (including those appointed as a member of the council or an employees of the municipality) before confirmation of his/her appointment to the oversight agency, including at a minimum:

- a. Criminal record check;
- b. Character / Reference checks;
- c. Interview of applicant (including an assessment of overall suitability)

In Edmonton, the criminal record check is done by the police service in the form of an Enhanced Security Check and pass/fail results provided to the City of Edmonton. City Council and their employees are responsible for items (b) and (c) above.

This policy outlines the process to be used in the event an individual fails an ESC to become a Commissioner.

#### **Definition(s):**

Enhanced Security Clearance – means the submission of the Service’s Enhanced Security Clearance Form for processing through the Enhanced Security Clearance Unit (ESCU).

## **Procedures:**

1. In the event an applicant for an Enhanced Security Clearance comes back as classified “unable to clear” by the Service then the applicant will be notified by the City of Edmonton’s Recruitment Team that they may request a reconsideration of the decision.
2. If an applicant decides they wish to proceed with the reconsideration process then a private meeting shall be called by the Commission’s Executive Director which will include the following individuals:
  - Chair of Commission
  - Vice Chair of Commission
  - Executive Director (who attends to take notes on behalf of the Commission)
  - Two members of City Council, designated by Council with the authority to make a decision on matters under review
  - City staff member (who attends to take notes on behalf of Council)
  - Chief of Police or designate
  - Applicant and representative, if desired
3. The applicant needs to agree, in writing, to release all details of the ESC to designated members of EPC and City Council for the purpose of reconsidering the ESC decision.
4. The applicant may provide information and/or additional evidence at the reconsideration meeting in support of their appointment to the Commission including that the findings of their ESC is not a barrier nor that they pose a risk to either the Commission or Service.
5. The Commission and/or the Service will provide additional information or evidence as to why the findings of the ESC may or may not present a risk in appointing the applicant as a Commissioner.
6. City Council representatives will make a decision on the matters including whether or not the failure to clear an ESC creates a barrier to appointment as a Commissioner. Their decision will be shared with Council who will make the final decision on the appointment of the applicant as per *City of Edmonton Bylaw 14040*.
7. All information provided during the reconsideration meeting will be collected and retained in a secure manner in accordance with regulations under the *Freedom of Information and Protection of Privacy (FOIPP) Act*.
8. In the event Council appoints an individual as a Commissioner that, in the opinion of the Commission poses a risk to the organization, then the Commission’s Executive Director shall craft provisions and processes for Commission approval related to this specific individual that limit the risk to both the Commission and the Service. These provisions will

be unique to the circumstances of each individual and may include, but are not limited to the following:

- Access to Commission and Service's buildings and facilities;
  - Restricted access to receipt of sensitive documents including, but not limited to, historical and/or ongoing police investigations;
  - Exclusion from all or portions of Commission meetings in which sensitive information or presentations are being discussed.
9. The Commission may also choose to notify the Minister of Justice and seek direction on a case by case basis.

**References:**

1. *Police Act, RSA 2000, cP-17*
2. *Freedom of Information and Protection of Privacy (FOIPP) Act*
3. *Alberta Policing Standards for Municipal Police Commissions*
4. *City of Edmonton Bylaw (No 14040), Edmonton Police Commission Bylaw, December 15, 2015*
5. *EPC Policy # 3.1.2 – Security Clearances*