

NON-CONVICTION RECORDS

What is a non-conviction record?

POLICE SERVICES COLLECT and retain a wide range of information about the people they come in contact with, including records of contact, allegations, withdrawn charges, acquittals and mental health apprehensions, just to name a few. These records are not criminal “convictions” and therefore should not be included as part of a person’s formal record of criminal convictions. This does not mean, however, that they will never be released by the police in a background check. Non-conviction police records may appear in more detailed police record checks, including record checks that involve a search for “local police contact,” “police information checks” or vulnerable sector record checks. Depending on where you live in Canada these more detailed police checks may have different names. Here we will call them a “detailed record check” or a “police information check.”

How do I know if I have a non-conviction record?

Non-conviction records can result from a wide range of interactions with the police, including:

- having informal interactions with the police where you give an officer your name
- having mental health–related interactions with the police
- calling 911 or being present when the police responded to a 911 call
- being involved in a police investigation as a witness, victim or suspect
- being charged with an offence but never convicted of the crime (for example, the charge was withdrawn, you were found not guilty, the charge was stayed, you received a conditional or absolute discharge, etc.)

Although all of these situations could result in a non-conviction record, not all this information is recorded in every case. If you were charged with an offence, this information would almost certainly be recorded in a police database. Even if the information is kept by the police, however, that doesn’t mean that it will necessarily end up on a detailed police information check.

Generally speaking there are two ways to find out whether this information might appear on a detailed police check:

Option 1: Request a detailed information check directly from the police division(s) that you originally interacted with

You should be able to go to your local police station and request your own record check. If you want to see what non-conviction records might show up, you should ask for the most detailed record check they provide. You can try to ask for a vulnerable sector check, but legally the police should conduct this level of check only if you need it for a specific position working with the vulnerable sector; they may refuse to process the request simply for your own information.

Different police forces might have different policies about what records should be released on various levels of checks, and so may give you different results. Different local police services may also have different recorded information about you that is not directly available to other police services. Frequently, however, you will be asked for your past addresses, and police services may contact the police in areas where you used to live to determine if there is relevant information on the local police databases. If you are worried about a specific charge or police interaction, it is important to request the record directly from the police division that you think originally interacted with you.

There is typically a fee associated with requesting your record.

Option 2: File an access to information request

You should also be able to get access to your own information that the police are holding through an access to information request. However, this process can take a long time.

Again, it will be important to make the request to the local police force that you had contact with. For a provincial or municipal police force you will want to use your provincial access to information legislation. For the RCMP you should use the federal access to information laws. The police force you want records from may have a specific form or webpage you can fill out to make an access to information request. There is usually a fee you have to pay in order to file and complete the access request.

There are exceptions to your right to access to information. One common exception, for example, is where there would be an unjustifiable disclosure of another person's personal information. Depending on the specific circumstances of your situation, the police may decide to withhold some parts of your record. Usually there is a process to challenge these decisions – to find out more about this process, you can contact your provincial access to information commission or the federal commission, if you are dealing with the RCMP.

Getting access to your record this way may not tell you what will be in your actual police check. If the police decide to include reference to an allegation or charge, they will usually process the information and take out a lot of details. The police may also decide not to release the information they have in your file. For example, police in some provinces will not release mental health information.

How do I purge or suppress the non-conviction information from my record?

Some – but not all – police services have established procedures that you can use to request the purge or suppression of your non-conviction record. *Suppression* of a record will remove a specific entry from your record check; it will not remove it from police databases. *Purging* a record will remove it from the databases and, as a result, it should not be disclosed on record checks. These are two different processes.

Unfortunately, many police forces have different procedures for people who want to purge or suppress their non-conviction information. You should do your best to find out the specific policy or procedure at the local police station that holds your information, either by phoning for more information or by searching on the internet. Police forces' websites are good places to start, as they may set out what steps you need to take to have this information purged or suppressed.

Purge requests

Generally, only the police force that created the non-conviction record can decide whether to remove (purge) the information from the local and national databases. This means that you should ask the police force that investigated, arrested or charged you to purge the non-conviction record. If you have had interactions with different police forces, you will probably need to make separate applications to each one in order to make sure all the local information is removed. The RCMP, which manages the National Repository of Criminal Records, the database that holds information collected by police forces across Canada, may also maintain non-conviction information about you.

When you find out what the procedure is and who to make the request to, make sure to ask that all your non-conviction records, photographs and fingerprints be removed from both the local police force's database as well as national police databases (i.e., the RCMP's National Repository).

You will probably have to write to the police to request that the information be removed from your record. Some considerations that the police might have when deciding whether to retain non-conviction information include the following:

- Are there circumstances to help explain the interaction or allegation?
- Were you formally charged by the police?
- If you were not charged, what were the circumstances of the interaction with police?
- If you were charged, how did the case end, and what was the result (e.g., withdrawn by prosecutor, acquitted after trial, etc.)?
- What was the nature of the interaction or allegation? For example, was it not very serious or was it non-violent?
- How long ago did the alleged event take place?
- How old were you at the time?
- Have there been other allegations or police contact since then?
- How is retaining this record impacting your life?
- How could the release of this information record have a negative impact on your life (e.g., if you want to volunteer in your child's school, if you want to work with children or others in the vulnerable sector, etc.)?
- Are there human rights considerations (especially relevant where the information is related to physical or mental health) and how the release of this information could result in discrimination against you?

Much of this information will be available in the police file itself. They may also talk to the officers who were in charge of the investigation.

Remember, you do not have to tell the police anything about your prior contact with them, and any information you do decide to give to the police might be used as evidence against you! However, you should never lie to the police. If you have concerns that what you might say to the police could be detrimental to you, should speak with a criminal lawyer before contacting the police.

Suppression requests

Most police services will release your record check directly to you. If you see a non-conviction entry on your record check, there may be process in the police service allowing you to request that the police suppress that particular entry. As with a purge request, you will probably have to write directly to the police to request that suppress a particular entry. See the section above on purge requests for some examples of what you can include in such a request.

What if the police refuse to purge or suppress my non-conviction information?

Depending on the police force, there may be an appeal procedure if they won't agree to purge or suppress the information. You should ask the specific police agency you are dealing with. You may need to write to the "appeal panel" to tell them why you think your record should be purged or suppressed.

What if there is no internal appeal process, or my appeal is rejected by the police?

If you are not successful after talking with the police directly and/or pursuing the appeal (or if there is no means of appeal) there are independent oversight bodies that may be able to assist you. You can try appealing the police decision to the relevant police commission, police services board or independent civilian oversight agencies. Again, you should set out why you think the police made the wrong decision in your case. You can also complain about the police policy and process in general.

After you have exhausted all these avenues of possible appeal, you can start a judicial review of the final decision in your case. It can be difficult to launch a successful judicial review without a lawyer's help.

What about crossing the US border?

Many people with non-conviction records experience harassment or questions from US border officials. Some people have been denied entry to the United States because of their non-conviction records.

The United States Department of Homeland Security, and therefore US Customs and Border Protection (CBP) officials, have full access to the national Canadian Police Information Centre (CPIC) database. Local Canadian police forces are responsible for deciding what non-conviction information gets uploaded to CPIC. Officers who access CPIC can access criminal records as well as non-conviction records, including cases under investigation, intelligence information, motor vehicle and driver information and the Alzheimer Wandering Registry. CBP is authorized to access CPIC for law enforcement purposes, including securing and facilitating immigration, drug, trade and travel laws and regulations. A Memorandum of Cooperation between the US and Canada does not permit CPIC information to be shared with unauthorized agencies or individuals without prior written consent from Canada.

Asking your local police to remove non-conviction information from their local and national databases should remove the information from CPIC. It is hard to tell, however, whether that information has been copied into American databases. If, for example, you were questioned or denied entry to the United States previously because of a non-conviction record, that information may still be in American databases. If you continue to have problems entering the United States even after your non-conviction record is removed from CPIC you may want to apply for a US waiver of inadmissibility. You can read more about this process here: https://help.cbp.gov/app/answers/detail/a_id/760/~/_entry-into-the-u.s.—canadian-with-criminal-record-or-overstay,-waiver.

What is the Canadian Civil Liberties Association doing about this issue?

CCLA is actively advocating for significant changes in the way that police, employers, volunteer agencies, etc., deal with non-conviction records. We believe that this issue directly prejudices the presumption of innocence, individual privacy, dignity and equality. You can read more about our reports and advocacy efforts at www.ccla.org.

About this document

This document was produced by the Canadian Civil Liberties Association in May 2014. The research that informed this document was supported by a grant from the Office of the Privacy Commissioner of Canada. Please note that this is legal information, not legal advice. If you need advice about your individual circumstances, please consult with a lawyer. For more information about the Canadian Civil Liberties and our work on police record checks please visit www.ccla.org.