



WEST GREY POLICE SERVICE

PROCEDURE

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Expires: Indefinite

Rescinds

WGPSSP-027 Destruction of
Fingerprints

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1. Policy:

a) It is the policy of this Police Service that, upon written request, the Police Service will destroy adult fingerprints, photographs and records of dispositions associated with non-conviction disposition(s) after the expiration of all applicable appeal processes, or, in the case of a stay of proceedings, after a period of one year unless:

- I. The individual's records on file contain an alleged offence(s) listed as a primary designated offence or secondary designated offence as defined in section 487.04 of the *Criminal Code*, R.S.C., 1985, c. C-46, as amended; or

- II. There are compelling reasons in the public interest to refuse destruction.
- b) In applying criteria (I) and (II) as listed above, give consideration to mitigating factors;
- c) This Police Service will establish a process of appeal for those cases in which destruction has been refused;
- d) Where destruction has been approved, this Police Service will make a recommendation to the R.C.M.P. for the destruction of records in its possession associated with the individual's non-conviction disposition(s).

Note that this is a recommendation only, and the R.C.M.P. may deny the application for destruction;

- e) The R.C.M.P. defines non-conviction dispositions as:
 - I. Charges are withdrawn, acquitted, dismissed, quashed, or discharged;
 - II. A finding of not guilty by a court;
 - III. A stay of proceedings;
 - IV. A finding of not criminally responsible by a court; and
 - V. Peace Bond entered into.

<http://www.rcmp-grc.gc.ca/en/compelling-reasons-deny-request-destroying-non-conviction-information>

2. **Procedure:**

- a) An application can be made for the destruction of fingerprints, photographs, and records of disposition in relation to an arrest by this Police Service which did not result in conviction. There is a five-month waiting period from the date of the last court appearance before an application will be accepted. This is to ensure that all pertinent documents are accessible for recall. The following conditions must also apply before the request is granted:
 - I. The applicant must be an adult (18 years of age or older at date of arrest);
 - II. The applicant cannot have any criminal convictions;

- III. The applicant cannot have outstanding charges before the courts;
 - IV. The alleged offence(s) cannot be listed as a primary designated offence or secondary designated offence as defined in section 487.04 of the *Criminal Code*, R.S.C. 1985, c. C-46 to view copy, go to <http://laws.justice.gc.ca>;
 - V. Any Peace Bond must have expired before applying for destruction;
 - VI. Disposition of all charges must fall into one of the following categories: withdrawn, acquitted, dismissed, quashed, discharged, or stayed (Judicial or Crown Attorney Stay – 1 year waiting period);
 - VII. Absolute Discharge – 1 year expiry must have passed prior to application; and
 - VIII. Conditional Discharge – 3 year expiry must have passed prior to application.
- b) This process only allows for the destruction of fingerprints, photographs and records of disposition held by this Police Service. Any associated reports maintained on in-service databases are subject to retention in accordance with this Police Service's Record Retention Schedule;
 - c) Destruction of fingerprints, photographs and records of disposition does not guarantee the applicant access to the United States – this is solely at the discretion of U.S. authorities. To obtain information on travel waivers and cross border travel, the applicant can log onto the Department of Homeland Security at www.DHS.gov or contact the Consulate General of the United States of America located at 360 University Avenue, Toronto, Ontario M5G 1S4, or contact the R.C.M.P. at www.rcmp-grc.gc.ca;
 - d) Reasons for Refusal provides specific reasons why this Police Service may not accede to a request for destruction of fingerprints, photographs, and records of disposition; and
 - e) This Procedure came into effect November 14, 2018. If the applicant has been denied a fingerprint destruction under a previous policy or procedure but meet the current eligibility requirements, they may reapply.

3. **Application Form:**

- a) Application forms are available from the administration office at 153 George St West , Durham ON N0G 1R0. The applicant can call 519-369-3046 and request to have an application form emailed to them.
- b) The completed form can be faxed to 519-369-5474 or sent via mail to:

West Grey Police Service
Attn: Criminal Records
153 George St W, PO Box
676 Durham ON N0G 1R0

4. **Appeal Process:**

- a) Eligibility for destruction of fingerprints, photographs and records of disposition is governed by policy and procedure.
- b) An applicant will be notified in writing should their request for destruction be denied and supplied with the reason for refusal.
- c) The applicant then has the right to request a review of this decision by submitting a written appeal, within sixty days of the date of refusal, to the Records Manager at the below-noted address. Further information to support an appeal requiring this Police Service to give consideration to mitigating factors must be supplied, along with any court transcripts considered appropriate to substantiate the position.
- d) Mitigating factors may include, but are not limited to:
 - I. The seriousness or triviality of the alleged offence;
 - II. Mitigating or aggravating circumstances; and
 - III. The age, intelligence, physical or mental health or infirmity of the applicant.
- e) Consideration will be given to each appeal request and a decision will be rendered within sixty days of receipt of all documents required to complete the appeal process. Delays in responding within the 60-day period indicated may occur as a result of mitigating circumstances. The applicant will be notified of the outcome in writing. Should the appeal be denied, an individual may seek redress through the Courts.
- f) Submit appeal requests to the address above.

5. Eligibility for Destruction:

a) Criminal record files, fingerprint records, and photographs may be destroyed when:

- I. The subjects have been criminally inactive (local and national repository) for twenty-five years, and have requested destruction in writing;
- II. The subject of the record is eighty (80) years of age with no criminal activity reported in the last ten years, except where the subject:
 - has been sentenced to life imprisonment;
 - has been designated a dangerous offender, and/or is still under the sentence of a court;
 - is still the subject of a prohibition order which has not expired; and/or
 - has an outstanding warrant or an interest has been expressed by an agency engaged in the execution or administration of the law.

In each of these instances, the criminal record is retained until:

- the subject complete his/her sentence and remains crime free for a period of ten years; and/or
 - the subject attains one hundred years of age
- III. The subjects' death has been substantiated by fingerprints and the current year, plus five years has elapsed; or
 - IV. A federal statute, such as the *Youth Criminal Justice Act*, provides the authority to do so

b) Eligibility to Request Criminal Record Destruction:

- I. A person may apply to have their local criminal record destroyed if any of the following periods of time have elapsed since final disposition:
 - in the case of an absolute discharge, the person may apply for destruction of the local record after one year following the date of disposition;

- in the case of a conditional discharge, the person may apply for destruction of the local record after three years following the date of disposition;
 - in the case of a finding of not guilty (other than by reason of a verdict of not criminally responsible on account of mental disorder), the person may apply to have such entries removed from their local record on the expiration of three months after the disposition date, or where an appeal is taken, on the expiration of three months after all proceedings in respect of an appeal have been completed;
 - in the case of a charge that is stayed, the person may apply to have such entry removed from their local record after one year, provided the stayed charge has not been proceeded with;
 - in a case where a charge is withdrawn by the Crown Attorney, the person may apply to have such entry removed from their local record after thirty days following the disposition date;
 - in the case of a charge being withdrawn with a resulting Peace Bond, the person may apply to have such entry removed from their local record after the expiration of the Peace Bond (normally one year); and
 - in cases where a charge is diverted by the Crown Attorney to the alternative measures program, the person may apply to have such entry removed from their local record after two years following the date of diversion.
- II. In considering whether or not to grant the request for destruction of records, any of the following factors may be taken into consideration:
- the applicant is a first-time offender with no subsequent offences;
 - the applicant has not been the subject of other criminal investigations;
or
 - the type of offence or other information on file for the applicant does not raise safety concerns. Offence types that would be of concern include but are not limited to murder, attempted murder, manslaughter, aggravated assault, robbery, sexual offences, suspicious person, break and enter, indecent act.

- c) Requests to destroy criminal records shall be in writing as per this procedure. When a request for criminal record destruction is approved, the applicant will be notified in writing after the destruction of the records.

6. Reasons for Denial of Request:

Examples of Reasons of not Destroying Fingerprints, Photographs, and Records of Disposition:

- a) There is a five month waiting period from the date of disposition in order to ensure that pertinent documents are processed and accessible for recall. An application can be resubmitted once this time frame has expired;
 - b) The applicant must be an adult (18 years of age or older at date of arrest);
 - c) The applicant has outstanding charge(s) before the courts;
 - d) The record on file contains an alleged offence(s) listed as a primary designated offence or secondary designated offence as defined in section 487.04 of the *Criminal Code*;
 - e) The applicant has a Peace Bond which has not expired. Application may be resubmitted once this time frame has expired;
 - f) Charge(s) stayed (Judicial or Crown Attorney) – 1 year wait period has not expired. Application may be resubmitted once this time frame has expired;
 - g) Absolute Discharge – 1 year wait period has not expired. Application may be resubmitted once this time frame has expired;
 - h) Conditional discharge – 3 year wait period has not expired. Application may be resubmitted once this time frame has expired;
 - i) Charge(s) not laid by this Police Service – applicant must contact the police service or agency which collected the fingerprints and photographs;
 - j) The applicant has no fingerprints, photographs, or records of disposition on file with this Police Service.
- NOTE: The relevant West Grey Police Service Record of Arrest report pertaining to this incident will be retained;
- k) There are compelling reasons in the public interest to refuse destruction (reasons would be specified);

- l) Fingerprints and photographs were taken by Canada Immigration through a federal A.F.I.S. system. Contact local Canada Immigration office for further information; and
- m) Fingerprints and photographs pertain to an Extradition Warrant are outside the scope of this Police Service's policies and procedures.

By Order

Robert Martin
Chief of Police