

To: Board of Directors

From: Mary Martin
Executive Vice President, General Counsel and Corporate Secretary, Chief Privacy Officer

Date: December 7, 2017

Re: **PRESTO Privacy Review & Recommendations**

Executive Summary

Metrolinx is recommending revisions to provide greater clarity and transparency on PRESTO's information-sharing practices.

The changes are a result of public concerns, leading to a review of the privacy policy and protocols related to receiving and responding to requests for PRESTO information from law enforcement. Metrolinx consulted with the public on proposed revisions and sought input from key privacy advocates and experts, law enforcement, transit operators, and the Information and Privacy Commissioner (IPC).

Metrolinx's commitment to public safety has led to its conclusion that, in certain situations, a court order will still not be required from law enforcement. These situations include: where there are immediate concerns for a person's health or safety, such as a lost or missing person; in emergencies, such as where a person has been injured or is ill; or where a transit operator is investigating a safety or security incident, such as theft or vandalism, or for the prevention or detection of crime on or in relation to the transit operator's property or services.

However, a court order will generally be required in most cases where the information requested relates to a crime or incident committed outside of the transit system. These situations will now be described in PRESTO's privacy policy.

Revisions to Metrolinx's law enforcement request form will provide more clarity on what information is needed and why, and whether Metrolinx can notify the individual of the request. Metrolinx will also require an additional layer of oversight on requests for PRESTO information by requiring the requester to obtain signed approval from his or her supervisor.

To provide additional transparency to its process, Metrolinx has also finalized its proposal for publicly reporting PRESTO information-sharing requests. A new report will

disclose the number and types of requests Metrolinx receives per year, and how Metrolinx responds to these requests.

The IPC is currently reviewing Metrolinx's proposed revisions as described in this report, and has committed to providing its comments within the next few weeks. In order to respond to the IPC's recommendations, staff are asking that the Board approve the revised policy and protocols described in this report, and grant staff the authority to revise the policy and protocols based on the IPC's advice, provided that any amendments are minor in nature and align with the general strategy or directions described in this report. Any other amendments will return to this Board for approval before implementation.

Recommendation

RESOLVED:

THAT the PRESTO privacy policy revisions, and recommendations relating to receiving, responding to and reporting on law enforcement requests as described in the Executive Vice President, General Counsel and Corporate Secretary, and Chief Privacy Officer's December 7, 2017 report be approved (the "Report");

AND THAT staff be authorized to further revise the policy and protocols described in the Report based on comments received from the Information and Privacy Commissioner, provided that such revisions are minor in nature and do not impact the general strategy or directions described in this Report;

AND THAT subject to additional revisions as described above, staff proceed to implement the policy revisions and recommendations, with the first annual report back on PRESTO law enforcement statistics to be provided at the February 2018 Board meeting.

Background

In June 2017, Metrolinx committed to reviewing its practices on how it responds to law enforcement requests for PRESTO information. That commitment included consultation with the public and key stakeholders, and review by the Information and Privacy Commissioner (IPC).

While Metrolinx's practices comply with the law, feedback from customers and privacy experts suggested there were opportunities to improve transparency and accountability. To do this, Metrolinx proposed:

- clarifying PRESTO's privacy policy to describe how and when Metrolinx may share information with law enforcement;

- reviewing and improving its practices for receiving, reviewing, and recording requests from law enforcement;
- reporting annually on the number of requests received and responded to, including how many cases in which information was provided.

Public consultations on metrolinxengage.com took place from Oct. 10, 2017, to Nov. 3, 2017. Schedule “A” describes the information that was presented for public input. Two hundred and fifty-six (256) individuals participated in this forum, with 74 per cent of respondents supporting the recommended changes.

A stakeholder session moderated by a third party was held on Oct. 20, 2017. The session was well attended and included representatives from local police, transit agencies, municipal freedom of information officers, privacy experts and advocates, and the IPC.

Proposed Revised Policies and Protocols

Based on consultation results, Metrolinx is recommending further revisions to the proposed policies and protocols to responding to law enforcement requests for PRESTO information. These revisions have also been shared with the IPC for its review and comment.

1. PRESTO Privacy Policy - Information Sharing Practices and Court Orders

Comments Received:

- Describe who qualifies to make law enforcement requests.
- Further clarify when information might be shared as a result of “immediate concerns about an individual’s health or safety” and what constitutes an “emergency.”
- Describe when Metrolinx will require a court order before information is disclosed.
- Clarify when Metrolinx will notify individuals that their information has been disclosed to law enforcement.

Metrolinx Response: Taking these comments into account, Metrolinx recommend that the PRESTO privacy policy be revised as follows (underlined/strikethrough text indicates changes made to the policy proposal issued for public consultation):

Under the Freedom of Information and Protection of Privacy Act (FIPPA), Metrolinx may share personal information on request by law enforcement police, special constables, or transit safety officers. In some cases, we may share information without requiring a warrant or court order. These cases include:

1. where there are immediate concerns about an individual's health or safety, such as a lost or missing person, and there may be no other way to obtain the information requested;
2. in an emergency, to facilitate contact with a spouse or relative, such as where a person has been injured or is ill, and where the delay in providing the information could be harmful to someone's health or safety; or
3. where ~~we are a~~ PRESTO transit operator is investigating a safety or security incident, such as theft, vandalism or an assault, a breach of ~~our~~ its rules or regulations, ~~or~~ for the prevention or detection of crime, on or in relation to ~~Metrolinx's~~ the transit operator's property or services, ~~and~~
4. ~~in other cases, where we are satisfied it will aid in an investigation from which a law enforcement proceeding may be undertaken or is likely to result.~~

In other cases Metrolinx may require a court order such as a warrant or production order. This would include circumstances where:

- the incident giving rise to the request is not related to Metrolinx's property or services;
- the request relates to information for multiple cards or accounts; or
- the request relates to information over several weeks or more.

All such requests will be reviewed by Metrolinx's Privacy Office staff. Metrolinx will also notify individuals that their information has been disclosed in cases relating to their individual health or safety, such as a lost or missing person request. In all other cases, Metrolinx will notify individuals that their information has been disclosed where law enforcement has authorized us to do so.

2. Receiving, Recording, Reviewing and Responding to Law Enforcement Requests

Comments Received:

- Notify individuals whose information has been provided to law enforcement.
- Clarify when individuals can or cannot be notified that their information has been disclosed.
- Describe who at Metrolinx will receive, review and respond to requests.

Metrolinx Response: Metrolinx's protocol for receiving, reviewing, and responding to law enforcement requests is described below. Modifications to reflect the comments received are indicated as "new":

- Staff from Metrolinx's Privacy Office (PO) contact the requesting law enforcement agency to verify the identity of the requester and the authority of the agency.
- Privacy Office staff ask questions to determine if the request is permitted under FIPPA.

- Privacy Office staff work with the requestor to understand what specific information is required to ensure it is only disclosing information that is relevant to the issue.
- The law enforcement agency must complete and submit Metrolinx's request form before any information is provided. This form requires the following information:
 - requestor's name, enforcement agency, badge number, file/case number
 - requestor's contact information
 - description of information required
 - description of the law enforcement proceeding to which the requested information relates
 - signature and date
- NEW: The law enforcement request form will be revised to include:
 - requesting officer and supervisory sign-off, for the requesting agency;
 - an additional section clarifying the purpose of the request, e.g.: due to an emergency, in order to facilitate contact with an individual, or other circumstance affecting the individual's immediate health or safety;
 - a statement on whether the individual to whom the information relates may be notified of the disclosure to law enforcement and, if not, an explanation as to why this is not the case.
- NEW: Metrolinx will require that the request form be completed in all cases, including emergencies or missing people.
- Privacy Office staff review the form, and review any information before it is disclosed
- NEW: Staff will clarify Metrolinx's internal protocol to require receipt and review of requested information by Metrolinx's Privacy Office staff or legal counsel before release (e.g., information can only be released by Metrolinx's Privacy Office staff or legal counsel).
- The Privacy Office staff member who authorized the disclosure is also logged as part of the request.
- NEW: The PRESTO privacy policy will be revised to clarify when individuals may or may not be notified of the disclosure to law enforcement (see 1 above).

3. Reporting

- Identify the law enforcement entities which have requested information.
- Explain why requests were rejected.
- Ensure the report and related information is easy to find on its website.

Metrolinx Response: Metrolinx proposes to report annually on how many law enforcement requests it receives and responds to. Metrolinx's report will measure:

- disclosures at the request of an external law enforcement agency without a court order, including;
 - disclosures in emergencies or circumstances where there are concerns about an individual's health or safety (such as missing persons);

- disclosures made in compliance with federal or provincial law, such as where a statute expressly requires disclosure upon request; and
- court-ordered disclosures.

In each case, Metrolinx will set out:

- the number of requests received;
- the number of disclosures made, divided further by those fully or partially disclosed (i.e., information provided was less than what was requested);
- the number of disclosures made with or without a warrant;
- the number of requests contested or rejected (includes those modified or reduced by Metrolinx);
- the number of persons or accounts with data disclosed (due to the fact that some requests may seek information from multiple accounts);
- the type of information disclosed (such as account information, travel history, cardholder information, etc.).

Metrolinx will also identify the law enforcement agencies that have issued requests for information, and provide a summary of the reasons why requests were rejected. Metrolinx will make the report available on the PRESTO website.

Next steps

Subject to the Board's recommendations, staff will proceed to:

- receive the recommendations of the IPC and incorporate them, as described in this report
- following IPC review and provided no material changes are required, post the revised PRESTO privacy policy on PRESTO's website
- update the law enforcement request form
- train staff based on the revised protocols
- modify request recording criteria for the purposes of the annual report

Staff have been tracking law enforcement requests since January 2017. The first annual law enforcement request statistics report will be prepared for the February, 2018 Board meeting.

Respectfully submitted,

Mary Martin

Executive Vice President, General Counsel and Corporate Secretary, Chief Privacy Officer

Attachments:

Schedule "A" Information Presented for Public Input

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Change #1: PRESTO's Privacy Policy

When you register for PRESTO we tell you why we are collecting your personal information, as required by FIPPA. We also direct you to PRESTO's Privacy Policy.

Currently PRESTO's Privacy Policy states:...PRESTO may disclose your personal information to third parties without your further consent in circumstances where:...c. it is required or permitted by law or pursuant to a court order...

What we propose: Metrolinx will clarify PRESTO's Privacy Policy to specifically note:

Under FIPPA, Metrolinx may share personal information on request by law enforcement. In some cases, we may share information without requiring a warrant or court order. These cases include:

1. where there are immediate concerns about an individual's health or safety, such as a lost or missing person;
2. in an emergency, to facilitate contact with a spouse or relative, such as where a person has been injured or is ill;
3. where we are investigating a safety or security incident, such as theft, vandalism or an assault, a breach of our rules or regulations, or for the prevention or detection of crime, on or in relation to Metrolinx's property or services; and
4. in other cases, where we are satisfied it will aid in an investigation from which a law enforcement proceeding may be undertaken or is likely to result.

Questions:

1. Does this clearly explain when we'll share information with law enforcement?
2. Could we improve the proposed in anyway?

Change #2: Responding to Law Enforcement Requests - Logging and Validating

Currently all law enforcement requests are validated and logged as follows:

1. Staff from the Privacy Office contact the law enforcement agency to verify the identity of the requester and the authority of the law enforcement agency.
2. Staff also ask questions to determine if the request falls within the permitted grounds of FIPPA.

3. Finally, staff work with the requestor to understand specifically what information is required. Staff work to minimize the information disclosed to only that which is reasonably related to the circumstances at hand.
4. The law enforcement agency must complete and submit Metrolinx's form before any information is provided.
5. Privacy Office staff review the form, and review any information before it is disclosed.
6. Since January, staff log the request, noting when the request was received, by whom, and what was provided in response.

What we propose: We will be updating our law enforcement request form to require requesting officer and supervisor sign-off. This will provide an increased level of oversight at the law enforcement agency. It will also prevent against potential misuse by staff.

We will complete the form in all cases, including in emergencies or where there are concerns about an individual's health or safety. This will provide a record of all requests received, including who made the request, on what date, and whether any information was provided. We will notify cardholders of requests for their information where we are able.

We will continue to log requests and include information on requests that have been limited or narrowed by Metrolinx, and when a court order has been required.

Questions:

1. Do you think this provides a sufficient level of additional oversight?
2. Do you have any other ideas for how we could improve this process?

Change #3: Reporting Law Enforcement Requests & Responses

Metrolinx does not currently report how many law enforcement requests it receives and responds to.

What we propose: Using Industry Canada's Transparency Reporting Guidelines as a reference, Metrolinx will begin reporting annual statistics on how many law enforcement requests it receives and responds to.

Metrolinx's report will measure the following information:

1. Voluntary disclosures at the request of an external law enforcement entity (such as criminal investigations)

2. Disclosures in emergency or exigent circumstances (such as missing persons)
3. Disclosures made in compliance with federal or provincial law
4. Court ordered disclosures

In each case Metrolinx will set out:

5. number of requests
6. number of disclosures made, divided further by those fully or partially disclosed, and with or without a warrant
7. number of requests contested or rejected (includes those modified or reduced by Metrolinx)
8. number of persons or accounts with data disclosed
9. type of information disclosed (such as account information, travel history, cardholder information etc.)

Question:

1. Would you add anything to or change this reporting process in any way?