

To: Board of Directors

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

Alba Taylor  
*Senior Legal Counsel*

Date: March 8, 2018

Re: **PRESTO Privacy Update & Transparency Report**

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## Executive Summary

Ontario's Information and Privacy Commissioner has reviewed Metrolinx's policies and practices as presented to the Board in 2017 and recommended only minor changes.

For PRESTO's privacy policy, these include adding: headings, to provide clarity; additional language to better align with the text of the *Freedom of Information and Protection of Privacy Act*; and including a separate paragraph to identify that disclosures to law enforcement may include circumstances where disclosure is initiated by Metrolinx, such as where an offence has occurred on Metrolinx's property. PRESTO's revised privacy policy is attached as Schedule "A". Staff believe these revisions do not affect the general approach approved by the Board in December, 2017. Therefore, the revised PRESTO Policy reflecting these changes will be updated online as soon as possible.

As committed in December, Metrolinx is also reporting on how it received and responded to law enforcement requests for PRESTO information in 2017. This is the first of such reports for Metrolinx, as Metrolinx began regular recording of such data in January, 2017.

In 2017 Metrolinx received 64 requests from law enforcement for PRESTO customer data. Although a majority related to law enforcement investigations, such as potential criminal offences, 42% related to emergency requests, to help locate missing persons in circumstances where there were concerns for their health or safety and other methods to locate them had been unsuccessful. Overall, information was only provided 47% of the time.

As part of Metrolinx's revised protocol, staff have committed to annually reporting on these statistics. The 2017 data will form an important baseline for measuring the volume of requests received and how Metrolinx responds to them. This information will provide an opportunity to improve Metrolinx's processes and policies over time, ensuring they are appropriately calibrated between protecting privacy and maintaining the safety and security of the regional transit network.

## Recommendation

RESOLVED:

THAT the 2017 PRESTO Law Enforcement Request Data report (the "Report") attached to the Executive Vice President, General Counsel and Corporate Secretary and Chief Privacy Officers March 8, 2018 report to the Board be received, and that staff be directed to post the Report on the PRESTO website.

## 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).

In December 2017 and based on public and stakeholder input, Metrolinx proposed revisions to PRESTO's privacy policy to clarify how and when Metrolinx may disclose PRESTO information to law enforcement<sup>1</sup>. Metrolinx also reviewed and proposed revisions to its practices for receiving, reviewing and recording requests for information from law enforcement. Finally, Metrolinx committed to reporting annually on the number of requests received and responded to.

In mid-January the IPC provided its recommendations on Metrolinx policy and practices. The IPC's comments aligned with the direction and strategy approved by the Board in December 2017. Therefore, staff have proceeded to implement those practices including revising the law enforcement request form and improving data recording to facilitate annual reporting of statistics.

In December Metrolinx also committed to publishing data on how it receives and responds to law enforcement requests, including describing:

- how many requests were received;
- how many disclosures were made, with and without a court order;

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<sup>1</sup> See previous Board report here:

[http://www.metrolinx.com/en/docs/pdf/board\\_agenda/20171207/20171207\\_BoardMtg\\_PRESTO\\_Privacy\\_Review\\_EN.pdf](http://www.metrolinx.com/en/docs/pdf/board_agenda/20171207/20171207_BoardMtg_PRESTO_Privacy_Review_EN.pdf)

- how many requests were contested or rejected, including those modified by Metrolinx. These are treated as “partial” disclosures;
- the number of persons or accounts with data disclosed;
- a description of the type of information disclosed;
- what law enforcement agencies have issued requests to Metrolinx; and
- a summary of reasons why requests were rejected or modified (by disclosing less information than requested and available).

This information has been reviewed and reported in Schedule “B”.

The IPC has recommended Metrolinx also report on how many individuals have been notified of the disclosure of their information. As reported in December, Metrolinx will notify individuals that their information has been disclosed in an emergency, such as a lost or missing person request. In other cases, Metrolinx will only notify individuals that their information has been disclosed where a law enforcement officer has authorized Metrolinx to do so. To accomplish this, Metrolinx has modified its law enforcement request form to ask whether the individual subject to the law enforcement request may be advised of the request, and if not, why not. Metrolinx will also modify its recording practices to ensure this data is collected and reported for 2018.

Finally, the IPC recommended Metrolinx review its policy and practices in a year, having regard to the nature of the requests received and any concerns expressed by the public. Staff believe Metrolinx’s commitment to annual data reporting of Metrolinx’s response to law enforcement requests for PRESTO information will facilitate this annual review. Therefore, a report on 2018 law enforcement requests will be prepared for Spring 2019.

Respectfully submitted,

Mary Martin

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

Attachments:        Schedule “A” - PRESTO Privacy Policy - Responding to Law Enforcement Requests  
                              Schedule “B” - 2017 PRESTO Law Enforcement Request Data

## Schedule "A"

### PRESTO Privacy Policy - - Responding to Law Enforcement Requests

Note: New text recommended by the IPC has been underlined.

#### DISCLOSURES IN RESPONSE TO AN OFFICIAL REQUEST

Under the Freedom of Information and Protection of Privacy Act (FIPPA), in certain circumstances, Metrolinx may share personal information of its PRESTO customers in response to a reasonable request from a police officer, special constable, or transit safety officer ("officers"). In such circumstances, Metrolinx may choose to share information without requiring a warrant or court order. These circumstances include:

1. where there are immediate and compelling concerns about an individual's health or safety, such as a lost or missing person, and there appears to be no other way for the official to obtain the requested information in a timely manner;
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 a PRESTO transit operator is investigating a safety or security incident, such as theft, vandalism, assault or other offence, on or in relation to the transit operator's property or services.

#### DISCLOSURES AT METROLINX'S OWN INITIATIVE (NEW)

At its own initiative, Metrolinx may share personal information with a police officer, special constable, or transit safety officer where Metrolinx has a reasonable basis to believe that an offence has occurred on its property. In such cases, Metrolinx will limit the amount of information it discloses to what is relevant and necessary relating to the specific offence.

#### DISCLOSURES IN RESPONSE TO A COURT ORDER OR OTHER LEGAL REQUIREMENT

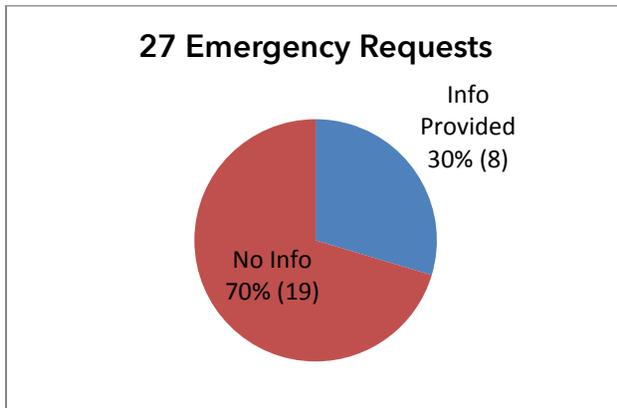
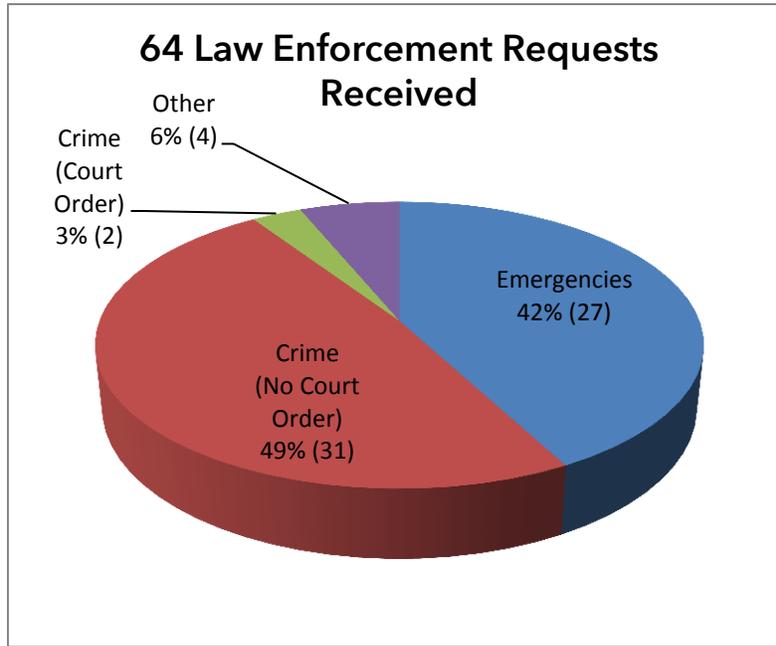
In other circumstances, Metrolinx will generally require a court order such as a warrant or production order. This would include circumstances where:

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

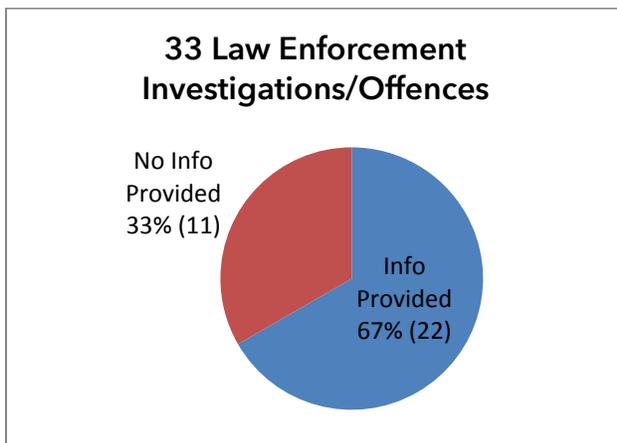
In addition, Metrolinx may be expressly required to disclose personal information pursuant to a federal or provincial law (for example, under section 5 of the proposed *Missing Persons Act, 2017* (see Schedule 7 of Bill 175)).

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.

## Schedule "B" 2017 PRESTO Law Enforcement Request Data



- ### Emergency Requests
- Requests for information relating to missing people, where there are immediate and compelling concerns about their health and safety
  - Of the 27 requests received, only part of the information requested was provided in 7 of the 8 instances (ie. last known tap information)
  - 9 requests were received in December



- ### Law Enforcement Investigations/Offences
- Of the 22 times information was provided:
    - 2 were fully disclosed under a court order (incidents occurring outside of a transit property)
    - Requests were challenged and only partially disclosed in 10 cases
  - Requests were received from Metrolinx Transit Safety, Police forces in Durham, Edmonton, Halton, Ottawa, Peel, Port Hope, Quebec, Toronto, York

## Law Enforcement Request - Additional Information:

Of the 64 Law Enforcement Requests received in 2017:

- Registered cardholder personal information, such as name and address, were disclosed 35 times (includes 9 disclosures in emergency circumstances)
- Travel information was disclosed 21 times (including 9 disclosures in emergency circumstances)
- Financial transaction information was provided 1 time, pursuant to a court order
- The 4 instances identified as “other” relate to cases where lost cards or wallets were found. In those cases customers were called by Metrolinx and asked to contact the relevant law enforcement entity.
- Law enforcement requests were rejected or modified for the following reasons:
  - request was too broad i.e. seeking travel information beyond that necessary to substantiate the incident at issue, or identify the last location of a missing person;
  - request sought information about an offence not committed on a transit operator’s property. In these cases officers were requested to obtain a court order;
  - request sought financial transaction information. Again, in this case the requestor was required to provide a court order; or
  - an alternative approach to contact the customer was agreed to, such as Metrolinx contacting the customer and asking them to contact police.