

Wheel-Trans is Watching

An Investigation into the
Toronto Transit Commission's Use of
Video Surveillance on Wheel-Trans Vehicles

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1.0 Executive Summary

1. Through its Wheel-Trans service, the Toronto Transit Commission (TTC) provides transportation services for riders unable to use conventional transit because of mobility challenges. A one-way Wheel-Trans trip is the same price as a regular TTC fare.
2. In 2006 and 2007, the TTC installed video surveillance cameras in all of its vehicles for the specific purposes of improving public safety and security and deterring crime. The use of video surveillance was later expanded to include the Wheel-Trans vehicles.
3. In January 2013, the Ombudsman opened an investigation into the TTC's use of video recordings on Wheel-Trans vehicles for purposes of reassessing riders' eligibility.
4. The investigative findings demonstrate that the TTC did not follow due process in the development and implementation of its video surveillance policy. It did a poor job of informing riders that video recordings could be used to confirm eligibility for Wheel-Trans services.
5. The TTC ignored the basic tenets of procedural fairness in assessing and reassessing Wheel-Trans eligibility. The investigation found that the TTC did not disclose the video surveillance to riders selected for reassessment. In those cases where a rider's eligibility was terminated, the TTC did not adequately reveal the reasons for its decision.

Wheel-Trans Eligibility Criteria

6. When assessing eligibility for Wheel-Trans, the TTC says it focuses on an individual's level of physical mobility in the home, the area immediately surrounding the home, and the community at large, as well as the permanency of their disability.
7. The TTC's procedure for assessing eligibility relies on a "physical functional test" requiring applicants to answer questions and perform a physical test during an in-person interview.
8. A rider's eligibility is based on the total number of points received from questions asked during an interview by independent assessors.
9. Neither the application process, nor the application, are posted on the TTC's website.

10. Even though there is an appeal process if eligibility is denied, the TTC provides no information about it to the applicant, either in person or on its website.

The TTC's Questionable Rider Program

11. When a Wheel-Trans operator, telephone agent, or member of the public reports that a Wheel-Trans rider may not be entitled to use the service, the TTC initiates a "Questionable Rider" investigation.
12. TTC staff begin the investigation by identifying the rider and requesting a copy of the video recordings from recent Wheel-Trans trips. They then review the recordings to reassess the rider's mobility. If the surveillance supports doubts about the rider's eligibility, the TTC will notify the rider that he or she must appear before an independent panel for reassessment. The third-party panel gets a copy of the video for viewing but the rider does not, neither are they told about it.
13. The form letter notifying the rider about the reassessment interview, includes information about the TTC's eligibility criteria, and the fact that the TTC has a "program" to monitor Wheel-Trans riders to ensure they meet the eligibility criteria.
14. No additional information is provided, apart from the time and place of the interview. No information about the Questionable Rider Program is posted on the TTC's website.
15. Before the interview, members of the third-party panel view the surveillance video in private. They do not use a scoring guideline to assess the video.
16. Seventy-five riders were called in for reassessment interviews in 2012. Fifty-four of them, or just over 70%, were deemed ineligible for future Wheel-Trans services.

TTC Video Recording Policy

17. In 2008, following a review by the Information and Privacy Commissioner (IPC), the TTC completed and released its Video Recording Policy.
18. The Policy expressly states that the TTC's video surveillance system, including the cameras on Wheel-Trans buses, is meant to ensure the safety and security of customers, TTC employees, and property. It also states that, prior to expanding the TTC's use or location of surveillance cameras the TTC will hold appropriate public consultations.

19. The Policy also contains guidelines for providing public notice of video surveillance, and the length of time the video recordings are retained.

Right to a Fair Hearing

20. This investigation revealed that the TTC ignored the basic tenets of procedural fairness when reassessing riders' eligibility. The TTC did not provide riders with the right to a fair hearing, namely: the right to full disclosure of the information given to and considered by the decision maker; the right to a full and fair opportunity to present one's case to the decision maker; the right to be given adequate reasons for the decision; and the right to receive a decision with reasons. These principles are essential for providing due process and ensuring a fair hearing.
21. Wheel-Trans riders do not know the criteria they must meet when being reassessed, and so are denied a fair opportunity to respond. They do not have the chance to challenge the information provided exclusively to the panel.

Inadequate Public Consultation and Notification

22. This investigation found the public was neither sufficiently consulted, nor adequately notified about the use of video surveillance recordings for eligibility assessments.
23. There was no evidence the TTC conducted any public consultation about the use of video surveillance systems on TTC Wheel-Trans vehicles for eligibility assessments.
24. In its "Welcome to Wheel-Trans" booklet, the TTC informs all new riders that they may be required to attend a "post-assessment eligibility interview" to determine if they are still entitled to the service. No additional information about the "post-assessment eligibility interview" is provided in the booklet, or on the TTC's website.
25. Following an IPC review of the TTC's video surveillance policy in 2011, the TTC amended the Notice of Collection decals on their Wheel-Trans vehicles. The new decals included a sentence in small type stating that video surveillance could be used to assess riders' eligibility.
26. Riders who were interviewed for the purpose of this investigation did not know that video recordings were being used to reassess eligibility. Most thought the decals only referred to issues of public safety and security.

Reasons for Ineligibility are Inadequate

27. In order to effectively appeal the decision, Wheel-Trans riders need to know the reasons behind the decision finding them ineligible. After notifying them of their ineligibility, the TTC does not automatically provide riders with a copy of their scored application.
28. Riders generally receive standard decision letters that are brief and vague, with inadequate reasons for the decision. The letter does not mention that video recordings were used to reassess the rider's eligibility, nor does it explain how the decision was reached.

Ombudsman Recommendations

29. The Ombudsman made eleven recommendations to ensure the TTC follows due process, should it continue to use video surveillance to assess the eligibility of riders for Wheel-Trans services. The recommendations concern public consultation, notification, and an amendment of their video recording policy.
30. The TTC has agreed to immediately suspend the reassessment program until the proper safeguards have been put in place.
31. The TTC agreed with the Ombudsman's recommendations, and will implement all of them within the prescribed timelines.

2.0 The Complaint

32. In January 2013, my office received a complaint about the use of video surveillance on Toronto Transit Commission's (TTC) Wheel-Trans vehicles. The issues focused on the TTC's collection of information through video recordings on Wheel-Trans vehicles and its use of the information to reassess riders' eligibility for Wheel-Trans services.
33. The complaint raised questions of procedural fairness relating to privacy, notice to riders, and public consultation.
34. The investigation considered the TTC's use and authority to employ video recordings on Wheel-Trans vehicles in reassessing riders' eligibility.

3.0 The Investigation

35. Our office conducted preliminary inquiries with TTC staff about its use of video surveillance on Wheel-Trans vehicles.
36. Notice of a formal investigation was issued on February 14, 2013.
37. The investigator interviewed TTC staff, Wheel-Trans riders, staff of various advocacy organizations on accessibility/disabilities, management of the health company that provides the TTC with independent assessors, and the Complainant.
38. The investigator reviewed various legislation, case law, policies, privacy reports, TTC rider files and related documents. Our office also conducted comparative research looking at other cities' practices with respect to the use of video recordings to reassess riders' eligibility for para-transit.

4.0 Background and Context

4.1 History of TTC Wheel-Trans Vehicles

39. The TTC began to provide transportation as a pilot program in 1975 for "non-ambulatory" persons.¹ In 1979, the Wheel-Trans service grew with the assistance of public funding.
40. Since then, Wheel-Trans expanded with the provision of para-transit services to riders whose mobility challenges prevent them from using conventional transit.² Door-to-door service is provided. The cost of a one-way trip is the same price as a regular TTC fare.

¹ For additional information, see the TTC's 2012 Accessible Service Transit Plan.

² Conventional transit includes the subway, streetcars and buses.

41. In 2012, Wheel-Trans had 46,800 registered riders, which included 2.9 million trips.³
42. Wheel-Trans services are available to persons who are deemed eligible based on its criteria.

4.2 Wheel-Trans Eligibility Criteria Prior to 1996

43. Prior to 1996, the TTC's criteria to qualify for Wheel-Trans services corresponded to the provincial government's funding requirement that the "service be provided to riders who were physically unable to climb or descend the steps used in the conventional transit system, or were physically unable to walk a distance of 175 meters."⁴
44. From 1989 to 1996, the application process to register for Wheel-Trans services was by paper only. Applicants were required to submit a short form including a description of their disability and attach a doctor's certificate stating the applicant's need for Wheel-Trans services.⁵

4.3 Wheel-Trans Eligibility Criteria Introduced in 1996

45. In 1996, as a result of reduced funding and increased demand for services,⁶ the TTC replaced the former criteria with new and more restrictive criteria for assessing eligibility.
46. The TTC implemented a "physical functional test," requiring applicants to attend an in-person interview and answer established questions relating to their ability to travel independently. The new criteria were intended to "restrict the Wheel-Trans service to those who needed it most."⁷
47. The TTC's Advisory Committee on Accessible Transportation (ACAT) was responsible for developing the new criteria and a process for implementation. ACAT's general principle for assessing Wheel-Trans eligibility included the following:

An individual's need for accessible transit is based upon an individual's level of physical function mobility in the home, within the area immediately surrounding the home,

³ TTC's Accessible Transit Services Plan – 2012 Status Report.

⁴ *Cannella v. Toronto Transit Commission*, [1999] O.J. No. 2282. Ontario Superior Court of Justice, June 18, 1999 at para. 4. Leave to appeal to the Ontario Court of Appeal was denied and a further request for leave to appeal to the Supreme Court of Canada was also denied.

⁵ *Ibid.* at para. 5.

⁶ A government subsidy was eliminated and usage increased.

⁷ *Cannella* at para. 6.

and in the community at large, as well as permanency of disability. Eligibility is not based on particular disabilities.

48. In implementing the new criteria, the TTC decided to reassess all registered riders (approximately 11,300).⁸ It thought that in order to be fair, it needed to apply the TTC's review process consistently and have it completed within a reasonable period of time.⁹ The reassessment was accomplished by requiring all riders to participate in an in-person interview, based on a standard questionnaire relating to the new criteria.¹⁰
49. Each answer to the questionnaire was allotted points. Depending on the final score, the rider either passed or failed.¹¹ No additional information from the rider, such as medical documentation, was accepted or considered. The decision was made based only on the information received during the interview.
50. Riders were invited to attend interviews by letter. The letters advised riders of the purpose of the interview, which was to reassess their level of physical functional mobility, based on the TTC's new eligibility criteria.
51. Upon request, riders were provided copies of the completed questionnaire after their interview. If unsuccessful, riders could appeal the decision to a three-person panel provided by Medisys.¹² The panel consisted of an occupational therapist or occupational physiotherapist, a Wheel-Trans rider and a member of the public.¹³ Medical documentation was accepted and considered on appeal.

4.4 *Cannella v. Toronto Transit Commission*

52. In 1999, a group of Wheel-Trans riders applied for judicial review after failing the TTC's physical functional test.
53. The group alleged that the TTC's eligibility process was: unfair and, by failing to consider cognitive disabilities, it violated section 15 of the *Canadian Charter of Rights and Freedoms*.

⁸ Approximately 10,200 applicants were accepted. *Cannella* at para. 16.

⁹ It took Wheel-Trans approximately two years to complete the re-registration process.

¹⁰ *Cannella* at para. 18.

¹¹ Originally, the threshold for passing the test was set at 80 points out of 140, but was later adjusted to 60 points. *Cannella* at para. 11.

¹² Medisys is a private health care company that the TTC has retained to provide them with independent assessors for conducting Wheel-Trans application assessments, questionable rider reassessments and appeals.

¹³ The public panel member was required to have "knowledge and experience in the area of accessible transportation." *Cannella* at para. 13.

54. The court examined the TTC's eligibility guidelines and process. It held that the process was procedurally fair. On the basis that only information from the application and interview was used to make a determination, the court found that it was adequate for the TTC to provide riders with only notice of the purpose of the interview. Procedural fairness was not denied to riders not receiving the questionnaire in advance.
55. The court also held that provision of the application's scoring to the unsuccessful applicant was sufficient and the TTC was not required to provide further reasons for its decision.
56. The court dismissed the group's application and held:

The Commission was justified in revising its eligibility criteria. The procedure used was consistent with the statute under which the Commission acted and there was no procedural unfairness that would justify quashing the decisions that were made. Persons requiring an attendant were not being denied Wheel-Trans because of mental disability, but because they did not need the service.¹⁴

5.0 The Facts

5.1 Current Wheel-Trans Eligibility Criteria and Application Process

57. The TTC's current application process for assessing eligibility has not changed significantly since the new criteria and process were introduced in 1996.
58. The Manager of Transportation for Wheel-Trans (Wheel-Trans Manager), advised my investigator that the process continues to be based on in-person interviews that focus on the applicants' "physical functional need for accessible transportation." The initial in-person application includes the same standard questions developed in 1996.
59. The interview is conducted by independent assessors and decisions are based on whether the applicant meets the eligibility test, based on accumulated points received from each question.
60. My investigator was advised that no information, including the application, is provided to applicants in advance of the interview. Neither the application nor the application process is posted on the TTC's website.

¹⁴ The Divisional Court concluded that the TTC's policy did not "constitute discrimination contrary to section 15 of the Charter."

61. Wheel-Trans advises applicants of the results by regular mail within seven to ten days following the interview. Upon request only, Wheel-Trans will share the applicant's score and details of how the decision was reached.
62. In the event that the application is denied, a right to appeal is provided, which continues to include a physical step-test.¹⁵ Neither the TTC's appeal process nor the appeal application is posted on the TTC's website.

5.2 History of Video Surveillance on Conventional TTC Vehicles

63. In 2006, the TTC initiated its video surveillance system on conventional TTC vehicles. By November 2007, roughly 1,200 video recording cameras were installed throughout the TTC's 69 subway stations. By the end of 2008, 7,000 cameras were installed on surface vehicles.

5.3 Public Consultation

64. TTC staff provided my investigator with information about three public consultations that took place with respect to the use of video surveillance systems on TTC vehicles.
65. The first consultation referred to by the TTC was in 2004, when it conducted a survey of 26 transit agencies in North America.¹⁶ The survey examined each transit agency's objectives for video surveillance, the number of cameras installed on vehicles and the results of the surveillance. No information with respect to how the TTC consulted the public was included in the survey.
66. The second public consultation took place from June to July 2006, and related to the new subway trains.¹⁷ The public was invited to visit a mock-up of a train and complete a questionnaire based on the design features. 1,404 questionnaires were completed. One of the design features displayed the use of closed circuit television cameras. The relevant questions related to public safety and security and the efficacy of cameras in deterring crime.
67. In June and July 2007, the TTC engaged in a third public consultation. This was about its purchase of new light rail vehicles (LRV study).¹⁸
68. The TTC had a media launch, invited the public to attend four events and provided the public access to an "interactive website" that permitted them

¹⁵ The step-test involves the panel assessing the rider ambulate up and down a series of steps. The panel will consider how much assistance the rider requires and the length of time it takes for the rider to complete the test.

¹⁶ The title of the survey was, "CCTV on Vehicles Research."

¹⁷ "New Subway Train Mockup Visitor's Survey," Senior Management Presentation, August 2006.

¹⁸ "Let's Talk LRVs - the new streetcars. What we heard," September 2007, TTC.

to participate in a "virtual tour" of streetcar designs from around the world.

69. Results from the LRV study indicated a "general consensus" that video surveillance systems should be installed on new LRVs.

5.4 Special Investigation Report from the Information and Privacy Commission of Ontario: "Privacy and Video Surveillance in Mass Transit Systems."

70. In October 2007, Ann Cavoukian, Commissioner of the Information and Privacy Commission of Ontario (IPC) received a complaint about the TTC's use of video surveillance.¹⁹ The complainant expressed concerns that the TTC's use of video surveillance contravened sections of the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA).²⁰
71. The two main issues raised by the complainant were that the TTC's stated reasons for video surveillance were not "necessary" within the meaning of MFIPPA; and that the TTC's use of video surveillance did not adequately consider privacy legislation. The complainant contended that video surveillance had little or no impact on crime prevention and investigation and the TTC had failed in its legal obligation to consult the public and disclose and establish a "public interest case for its video surveillance system."²¹
72. The Commissioner examined the importance of protecting privacy and the related issues surrounding video surveillance. She noted that:

While the expectation of privacy in public spaces may be lower than in private spaces, it is not entirely eliminated. People *do* have a right to expect the following: that their personal information will only be collected for legitimate, limited and specific purposes; that the collection of their personal information will be limited to the minimum necessary for the specified purposes; and that their personal information will only be used and disclosed for the specified purpose.

¹⁹ The complaint was from Privacy International, a United Kingdom-based organization.

²⁰ RSO 1990, c M56. See Appendix A for the relevant MFIPPA sections.

²¹ Privacy and Video Surveillance in Mass Transit Systems: A Special Investigation Report, Information and Privacy Commissioner of Ontario, Ann Cavoukian, March 3, 2008 at page 1.

73. In considering the TTC's use of video surveillance, the Commissioner referred to guidelines developed by her office to address similar situations,²² which include the following five principles:
- A video surveillance system should only be used as a last resort, after other tools to protect safety and security of the public have been rejected;
 - Use of video surveillance recordings should be supported through reports of incidents of crime or concerns for safety;
 - Consideration should be given to the "effects that the proposed video surveillance may have on personal privacy" and how to mitigate adverse affects;
 - Stakeholders should be consulted as to the "necessity of the proposed video surveillance program and its acceptability to the public"; and,
 - Organizations should "minimize privacy intrusions" in their proposed use of the video surveillance system.
74. Prior to considering the TTC's proposed video surveillance program, the Commissioner considered the effectiveness of video surveillance for purposes of safety and security.
75. She concluded in her report that video surveillance arguably enhances public safety and may help to prevent crime and assist the police in conducting criminal investigations.
76. After determining that the information collected by the TTC's video surveillance system constituted personal information, the Commissioner considered whether the TTC complied with s. 28(2) of MFIPPA:²³

28(2) No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or necessary to the proper administration of a lawfully authorized activity.²⁴

²² "Guidelines for the Use of Video Surveillance Cameras in Public Places." The guidelines are based on Ontario's *Freedom of Information and Protection of Privacy Act* and MFIPPA.

²³ The Commissioner explains in her report that to "satisfy the necessity condition, the institution must first identify the "lawfully authorized activity" in question, and second, it must demonstrate how the collection of personal information is "necessary," not merely helpful, to the achievement of this objective. In addition, this justification must be provided for all classes of personal information that are collected." At page 21.

²⁴ The TTC's "operation of a public transit system" was considered the "activity" in question.

77. As the Commissioner deemed that the TTC was lawfully authorized to operate a public transportation system in the city of Toronto, she concluded that it, "must demonstrate that its collection of personal information through use of video surveillance cameras is necessary to the proper operation of a public transportation system with the city of Toronto."²⁵
78. In demonstrating this necessity, the TTC advised the Commissioner that the primary purpose for its video surveillance system for both conventional and Wheel-Trans vehicles was to "act as an aid to law enforcement."²⁶
79. In explaining primary purpose for installing video cameras on Wheel-Trans vehicles, the TTC stated the following:
- The requirement for a camera system within each Wheel-Trans vehicle has arisen based on the unique nature of the operations...and the increased number of allegations being made by customers against operators of criminal activity (i.e. assault, sexual assault etc.) while on the vehicle. In most cases, there were no witnesses to the allegations of illegal activity other than the customer and the operator. In order to address this issue, the TTC has elected to install video cameras in order to aid an investigation of law enforcement with respect to any allegation of criminal activity onboard a Wheel Trans vehicle.
80. When the Commissioner asked the TTC to provide "all potential uses" of recorded images, the TTC advised that it was not possible. It did, however, note that its intended uses were limited to the following:
- Criminal, safety, or security investigations; and
 - Evidentiary purposes.
81. After reviewing common security goals when using video surveillance for properly running mass transit systems,²⁷ the Commissioner concluded that

²⁵ IPC March 2008 Report, at page 22.

²⁶ The TTC relied on the following reports to support its argument for needing a video surveillance system installed on all TTC vehicles: "Operator Assault Task Force - Report of Findings 2005"; National Center for Transit Research - Cops, Cameras and Enclosures: A synthesis of the effectiveness of methods to provide enhanced security for bus operators," May 2001; and "Security Commission - Public Transport Security in Stations: Prevention, Responding and Recovery in the face of terrorism", October 2006.

²⁷ These included preventing accidents by "monitoring overcrowding," organizing movement to "avoid bottlenecks", preventing "crime, public disorder and terrorist acts," and "assisting in the investigation of incidents." She noted that to maintain the safety and security of the system, the TTC not only consider issues relating to assaults, crime committed on the TTC and terrorism threats, but its daily challenge of safely and expeditiously transporting passengers.

"safety and security are essential components to the proper functioning of the Toronto public transit system," and video surveillance, among other safety and security options, "is necessary to the proper administration of the TTC."²⁸

82. In reaching this decision, the Commissioner stressed the importance for the TTC to protect its passengers' privacy:

While TTC passengers may accept a certain degree of surveillance, they should not expect that their images or personal information will be improperly recorded or misused for purposes that are secondary to the purposes of safety and security.

83. The Commissioner then concluded that the TTC had complied with its obligation in providing riders with adequate notice, by way of a Notice of Collection, in accordance to s.29(2) of MFIPPA, which includes the following:

29(2) If personal information is collected on behalf of an institution, the head shall inform the individual to whom the information relates of,

- (a) the legal authority for the collection;
- (b) the principal purpose or purposes for which the personal information is intended to be used; and
- (c) the title, business address and business telephone number of an officer or employee of the institution who can answer the individual's questions about the collection.²⁹

84. The Commissioner noted, however, that the TTC did not adequately follow all protocols before implementing its video surveillance program. In reference to the *Guidelines*, she held that although the TTC engaged in some public consultations "on certain elements of its video surveillance systems", the consultations did not fulfill the *Guidelines'* requirements and were insufficient in that they were not "specific to the TTC's overall video surveillance program."

²⁸ Upon additional review, she also concluded that that the TTC's collection of information through video surveillance is also permitted under the law enforcement condition.

²⁹ See Appendix B to view a copy of the TTC's previous and current Notice of Collection decals.

85. The unfulfilled portion of the *Guidelines* included:
- An assessment of privacy implications should be conducted on the effects that the proposed video surveillance system may have on personal privacy, and the ways in which any adverse effects can be mitigated by examining the collection, use, disclosure and retention of personal information.
 - Consultations should be conducted with relevant stakeholders as to the necessity of the proposed video surveillance program and its acceptability to the public. Extensive public consultation should take place.
86. The Commissioner recommended that "as the TTC expands the use of video surveillance cameras in the public transit system, it must take additional steps to inform the public, by publishing general information on its website and by holding more extensive consultations, possibly in the form of town hall meetings."
87. The TTC agreed to adopt and implement all thirteen recommendations outlined in the Commissioner's report.
88. On March 26, 2008, the TTC presented the IPC's report on its use of video surveillance to a Commission meeting.³⁰ The Commission approved the TTC's request for funding the implementation of the thirteen recommendations.³¹

5.5 TTC Video Recording Policy

89. In 2008, with the Commissioner's review and approval, the TTC completed and released its Video Recording Policy (Policy).³² The Policy sets out the TTC's purpose for using video recording cameras, roles and responsibilities, guidelines to follow prior to using a video surveillance system, equipment, audit, and access.

³⁰ At this meeting, the impact of some of the recommendations was discussed and the effect of the reduced retention period of video recordings for cameras installed on Wheel-Trans vehicles was noted. Staff outlined the complaint made to the IPC and its conclusions.

³¹ Action Item is posted online under Board Meetings dated March 26, 2008. Commission meeting highlights for March 26, 2008, included information on video surveillance cameras, "Digital Surveillance Cameras: Commissioners adopted 13 recommendations made by the Ontario Privacy Commissioner pertaining to the use of video surveillance cameras in TTC vehicles and subway stations. The recommendations were adopted to strike a balance between the individual's right to privacy and the TTC's objective to ensure the safety and security of its customers and employees."

³² On March 24, 2010, the Commission adopted a more recently amended "Video Recording Policy." The changes related to the retention periods for collecting video recordings from Wheel-Trans vehicles. A copy of the updated Video Recording Policy can be found online on the TTC's website.

90. The Policy sets out, under the heading “Purpose”, that video cameras are installed to ensure the “safety and security” of customers, TTC employees and property.
91. It expressly states that the TTC’s video surveillance system “shall include Wheel-Trans vehicles.”³³
92. The Policy states that, prior to expanding the TTC’s use or location of video cameras, the TTC will ensure that appropriate public consultation has taken place.³⁴
93. Before installing or using a video surveillance system, the Policy requires the following factors be considered:³⁵
 - The use of video recording cameras should be justified on the basis of verifiable, specific reports of incidents of crime or significant safety concerns;
 - A video recording system should only be considered after other measures of deterrence or detection have been considered and rejected as unworkable;
 - An assessment must be conducted on the effects that the proposed video recording system may have on personal privacy, and the ways in which any adverse effects can be mitigated;
 - The proposed design and operation of the video recording systems should minimize privacy intrusion.
94. The Policy also specifies how notice of video surveillance is to be provided to the public:
 - The TTC shall post signs, visible to members of the public, at all entrances and/or prominently displayed on the perimeter of the location being video recorded; and
 - The notification requirements of this sign must inform the individuals of the legal authority for the collection of personal information; the principal purpose(s) for which the personal information is intended to be used; and the title, business address, and telephone number of

³³ Found under s.3.3 of the Policy, “Responsibilities of the Deputy General Manager – Bus.”

³⁴ Found under s.3.8 of the Policy, “Responsibilities of the CCTV Steering Committee.”

³⁵ Found under s.4.0 of the Policy, “Guidelines to follow prior to the Implementation of a Video Surveillance System.”

someone who can answer questions about the collection.

95. If video recordings are used by the TTC or a “law enforcement agency” as part of a “criminal, safety or security investigation or for evidentiary purposes,” the recorded information collection will be retained for at least one year.

5.6 Further Public Consultation in Response to IPC Recommendations

96. The TTC advised that despite the Commissioner's recommendations in her 2008 report, no further public consultations took place with respect to the TTC's video surveillance system.
97. A senior solicitor for the TTC (Solicitor) explained to my investigator that his interpretation of the Commissioner’s recommendations was that further public consultation was only required if use and installation changed. As the TTC did not change the type or location of its video surveillance system, additional public consultation was not required.

5.7 Introduction of Video Surveillance on Wheel-Trans Vehicles

98. In late 2007, the TTC began installing video surveillance cameras on TTC Wheel-Trans vehicles. Around May 2010, the TTC started using video recordings to reassess rider eligibility as part of its Questionable Rider Program.
99. TTC officials informed my investigator that no public consultations took place prior to the TTC using video cameras to reassess eligibility.

5.8 Notification to Riders on Uses of Video Surveillance on Wheel-Trans Vehicles

100. TTC staff told my investigator that no notification was provided to riders prior to using video surveillance to reassess eligibility.
101. Although riders are not provided documentation from the TTC regarding the use of video surveillance on Wheel-Trans vehicles, the Solicitor told my investigator that the TTC informs all new riders, in its “Welcome to Wheel-Trans” booklet, that eligibility is based on physical mobility and that if a rider’s mobility improves after being qualified, this fact should be communicated to the TTC. The booklet also informs riders that they may be required to attend a “post-assessment eligibility interview” to determine ongoing eligibility.

5.9 Complaint to Information and Privacy Commission about the TTC's use of Video Surveillance on Wheel-Trans Vehicles

102. In June 2011, the IPC received a complaint with allegations that the TTC "engaged in two processes of collection and retention of personal information in contravention of MFIPPA."
103. The main concerns related to the TTC's collection and use of information obtained through video recordings. The complainant contended that the information was being used to "disqualify" riders from Wheels-Trans services.
104. The IPC conducted inquiries into this complaint. In doing this, it presented the TTC with written questions and requested a documented response.
105. One of questions the IPC raised was whether the TTC's use of video recordings to reassess eligibility qualified as a permitted use of personal information under s. 31 of MFIPPA. The TTC responded that it did, as the images they collected were used to investigate riders' "improper use of its assets," including "fraud" and "illegal access to Wheel-Trans services."
106. The TTC explained that in some circumstances, after receiving information questioning a rider's eligibility, it will review images of video recordings from Wheel-Trans vehicles to determine whether a rider "has provided misleading information to gain access to Wheel-Trans services."³⁶
107. The TTC noted that its "current use is expressly permitted by the TTC's Video Recording Policy which provides that video images may be used for criminal, safety, security investigations or evidentiary purposes."
108. In response to whether it is "reasonably necessary" to use video recordings to investigate eligibility complaints, the TTC confirmed that it was. The TTC added that it required the use of video images to "properly and effectively investigate all complaints" and it is "almost impossible to investigate customers without the use of images." The TTC explained that video images are not only reviewed to determine "whether a mobility device is being used but also how the customer ambulated on and off the vehicle."
109. With respect to the public consultations that took place, TTC officials advised that additional consultation was not necessary according to the IPC Commissioner's 2008 report and its own policy. The TTC explained that its use of video recordings to "investigate allegations of

³⁶ The TTC advised that videos are not reviewed randomly and the process is "entirely complaint driven."

fraud/impropriety by an individual is not a “new” or “expanded” use of the TTC’s video surveillance system.

110. The TTC elaborated that the use of video recordings on Wheel-Trans vehicles was included in its response to the Commissioner’s 2008 investigation and its policy expressly provides that “information collected from video recordings may be used as part of a criminal, safety, or security investigation or for evidentiary purposes.” As such, the TTC concluded that it was not required to consult further with the public about its use of video recordings as the use relates to investigating allegations that a rider improperly or fraudulently used Wheel-Trans services.
111. After reviewing the TTC’s written response, the IPC did not object to the TTC using video surveillance to reassess riders’ eligibility, but did raise concerns with respect to riders not being adequately notified.
112. The IPC recommended that additional information be added to the TTC’s Notice of Collection decal on Wheel-Trans vehicles.³⁷
113. In keeping with the IPC’s recommendation, the TTC agreed to amend the decal, to include the additional sentence:

Images may be used for the purposes of confirming eligibility for Wheel-Trans services.
114. When my investigator inquired how notification was provided to Wheel-Trans riders who are blind or have low vision, the Solicitor agreed that it was a valid question, and could not comment as to how these people were notified.
115. When my investigator inquired whether the TTC specifically considered the use of video surveillance to reassess eligibility in 2007, when it responded to the first IPC complaint and drafted the Policy, the Solicitor advised that it had not. It had neither been considered by the TTC nor brought to the Commissioner’s attention. The TTC had told the Commissioner in 2007 that it was not possible for the TTC to specify all potential uses.
116. The Solicitor explained that at that point in time they had tried to craft the policy broadly enough to cover more than what was being specifically contemplated. He said the use of video recordings on Wheel-Trans vehicles to reassess eligibility could fall within both a criminal and a security investigation.

³⁷ TTC staff held that the notification issue could be “addressed through the notice of collection statements that appear inside and outside TTC vehicles.” Email to the TTC’s senior solicitor on October 24, 2011.

5.10 The TTC's Questionable Rider Program

117. The TTC does not randomly review videos of riders to reassess for eligibility. Instead, it receives information questioning a rider's eligibility from three sources:
- i) Operator (driver): includes a report from a Wheel-Trans vehicle operator who has personally observed the rider's mobility entering on and leaving a Wheel-Trans vehicle and whether a mobility device was used;³⁸
 - ii) Telephone agent: includes a report from a Wheel-Trans telephone agent who received information from a rider while scheduling a trip; and
 - iii) Member of the public: includes a complaint from a member of the public concerning an individual that is using Wheel-Trans services with no appearance of mobility issues.
118. The Wheel-Trans Manager stated that upon receiving a report or complaint, the TTC initiates a "Questionable Rider" investigation, which includes the following process:³⁹
- i) Identify the rider, add the rider's name to the "Questionable Rider" database and request a download of the video recording(s) from the Wheel-Trans vehicle(s) on which the rider has recently travelled;
 - ii) TTC staff will review recorded images to reassess the rider's mobility, which involves staff considering whether the rider is displaying any "obvious physical functional limitations" and whether a mobility device was used while travelling;⁴⁰
 - iii) If doubt is raised, the TTC will send a letter to the rider, requesting that he/she attend a reassessment interview; and
 - iv) Provide a copy of the video to a third party independent panel⁴¹ for viewing and, thereafter, conduct a reassessment interview and

³⁸ Wheel-Trans operators are provided a form which lists 15 different items, including one titled, "Questionable Rider". Below the check off area is space for the operator to include comments relating to relevant observations.

³⁹ Wheel-Trans Operations Standard Operating Procedures – Managing Questionable Riders.

⁴⁰ Wheel-Trans Operations Standard Operating Procedures – Video Download Steps.

⁴¹ The panel consists of three people, each trained to be a Wheel-Trans assessor. One is either an Occupational or Physical Therapist, one is a Wheel-Trans rider and the third is a member of the public with knowledge about para-transit services. Assessors are routinely rotated. Fifteen persons are presently trained to act as Wheel-Trans assessors.

make the determination as to whether the rider meets the eligibility requirements.⁴²

119. My investigator reviewed the standard letter from the TTC notifying Wheel-Trans riders of an in-person interview to reassess eligibility. It includes the following:
- Information relating to the TTC's eligibility criteria; and
 - That the TTC has implemented a "program" to monitor riders to ensure those using Wheel-Trans services are meeting the eligibility requirements.
120. Besides the time and date of the requested interview, no additional information is provided. Information about the Questionable Rider Program is not posted on the TTC's website.⁴³
121. The Supervisor of Client Services for Medisys (Medisys Supervisor) told my investigator that prior to conducting the in-person interview, third-party panel members review the video in private. She said that no standard scoring or guidelines are provided or used for assessing the video.
122. The Wheel-Trans Manager stated that panel members only review the video to confirm whether the rider used a mobility device, which is a requirement for passengers to receive service. The Medisys Supervisor added that the panel will also compare the rider's presentation on the vehicle to his/her presentation in person, as well as analyze how the rider walked on and off the vehicle.
123. The Wheel-Trans Manager said that riders being reassessed do not receive a copy of the video in advance and are not told during the interview that video recorded images of them were viewed by the panel for the purpose of reassessing their mobility and analyzing inconsistencies.
124. When my investigator asked the Solicitor to comment about the fairness of the process described above, he expressed concern. He considered that for reasons of transparency and to allow the rider the opportunity to

⁴² The senior manager of Wheel-Trans, however, makes the final decision as to who is accepted or denied.

⁴³ Although use of video recordings on Wheel-Trans vehicles to assess eligibility was raised at the TTC's 2011 Public Forum on Accessible Transit by the Complainant, no reference was made to it on the TTC's online posted summary of the 2011 Public Forum. The TTC's policy "Accessible Customer Service" does not refer to the TTC's use of video recordings on Wheel-Trans vehicles to assess eligibility. The TTC's implementation or use of video recordings on Wheel Trans vehicles are not included in any of the TTC's Accessible Transit Service Plan Status Reports.

respond to the video as part of the process, it would be beneficial for the rider to receive a copy of the video in advance.

125. When asked what recommendations he would make to resolve issues raised in the complaint, the Solicitor suggested:

...allowing the person who is the subject of the complaint to be able to respond in some fashion to the video evidence. Make the system, give them the evidence, so they can prepare a proper response to it as part of their evaluation. Or at least tell them ahead of time that it's there, so that at the assessment they can watch it and then be able to provide comments and produce any medical information they need to provide...You are asking them to respond, and so let them properly respond. So, I guess at the end of the day, I look at this as saying, you are using the evidence, using the camera to determine eligibility, both for people based on a complaint. So make sure the investigation is proper and that you get all the information available and on the table to make a properly informed decision, so that people who are eligible stay on, people who aren't get removed, for someone else who meets the criteria. So, as part of that, they should be able to give a full response to the allegations.

126. My investigator noted, in reviewing the standard letter to riders notifying them that a decision has been made to terminate their Wheel-Trans services, no reference is made about the panel having viewed video recordings. Rather, it informs the rider that the decision is based on "information collected through observations as well as a review of the results of an Eligibility Assessment interview." No additional information is included except that of providing the rider with the Wheel-Trans eligibility criteria and information relating to other transportation options.⁴⁴
127. When my investigator asked for a sample of information shared with riders before attending a reassessment in which video recordings are used to reassess eligibility, she was advised that none is provided.⁴⁵

5.11 Questionable Rider Program Statistics

128. In 2011, the TTC investigated 101 riders for improper use of services. Of those, 80 were asked to attend reassessment interviews after videos were

⁴⁴ In another sample letter provided, the rider is also advised of the right to appeal the decision and where to send additional documentation if so desired.

⁴⁵ The TTC added that at the beginning of the interview process, riders are provided the Wheel-Trans Welcome booklet and a Wheel-Trans FAQ sheet.

viewed of their movement on Wheel-Trans vehicles. Of the 80 riders investigated, 45 were deemed ineligible for future Wheel-Trans services.

129. In 2012, the TTC investigated 122 riders for improper use of services. Of those, 75 were asked to attend reassessment interviews. Of the 75 riders investigated, 54 were deemed ineligible for future Wheel-Trans services.
130. None of the riders deemed ineligible as a result of a reassessment have been referred by the TTC for criminal/fraud investigations.
131. When my investigator inquired why the TTC did not proceed with criminal charges against the riders who were deemed ineligible, the Solicitor advised that it would be difficult getting the police to lay charges. He added: "If I knew I could get charges laid and I knew that we would get the support, if I were asked I would, in certain cases, probably be recommending someone to pursue that avenue."
132. In response to that same question, the Wheel-Trans Manager advised the following:

Although Wheel-Trans takes its responsibility seriously to protect its assets from misuse, we do not automatically presume customers are intent on fraud. Their condition may simply have improved from the level which initially made them eligible for Wheel-Trans service. In addition, at this time we do not believe based on information available and the required standard of proof for criminal charges that any investigation to date has supported the laying of a criminal charge.

6.0 Comparative Research on Video Surveillance in other Canadian Cities using Para-Transit Vehicles

133. My investigator conducted comparative research of ten major Canadian cities, looking at the use of video surveillance generally and on para-transit vehicles specifically.⁴⁶ The analysis included examining information the transit service provides to the public based on its video surveillance usage and its application process.

⁴⁶ The selection was made based on the largest population centres in Canada, which included: Calgary, Edmonton, Hamilton, Kitchener, London, Montreal, Ottawa, Quebec City, Vancouver and Winnipeg.

134. Although half of the cities contacted had video surveillance systems on their vehicles,⁴⁷ none of the ten cities surveyed used video surveillance to reassess eligibility.
135. My staff was advised that the primary purpose for using video surveillance was that of public safety and security. Other uses included investigating accidents and assisting with processing claims for physical or property damage.
136. Most transit providers provided notice of video surveillance by posting signage in their vehicles; five cities posted additional information about their use of video surveillance and its benefits on their websites.⁴⁸
137. All ten cities surveyed posted their para-transit eligibility, application process, and eligibility applications on their websites.

7.0 Wheel-Trans Riders Speak Out about Video Surveillance and the Questionable Rider Program

138. My investigator reviewed the files of all 75 “Questionable Riders” from 2012 who had video recordings used by the TTC to reassess eligibility. The information reviewed included the initial in-person application (completed by the assessor) and the second in-person application (completed by the third-party panel), which included a description of the video, analysis and the scoring of both applications.
139. In reviewing the files, my investigator noted that, in general, video descriptions were brief, relaying how the rider walked on and off the vehicle and how the rider moved within the vehicle. No additional assessment or points were allotted to the video, except occasional notes of inconsistencies when comparing the rider's presentation to the in-person interview.
140. My investigator noted that the difference between the initial application and the reassessment application was that there was additional space in the reassessment application for panel members to assess and comment on the rider's step-test and presentation and to compare inconsistencies.
141. In selecting a sampling of riders to contact, my investigator considered the following information: whether the file was complete (some files were missing information); the initial date of application; the medical condition to be able to assess riders with a range of medical conditions; the number of

⁴⁷ Calgary, Hamilton, Kitchener, Winnipeg, and Vancouver. Most of these cities do not have plans to add video surveillance to their para-transit vehicles.

⁴⁸ Edmonton, Hamilton, London, Kitchener, and Winnipeg.

times the applicant was assessed and/or videotaped; and the capacity of the applicant to be interviewed (some riders required representatives because of cognitive disabilities).

142. Twenty four individuals were contacted and twelve agreed to be interviewed.
143. Other than being told about the date and time of the reassessment interview, none of the twelve individuals said that the TTC provided them with information about the re-assessment process in advance of it happening.
144. The majority of the individuals stated that they did not feel as though they had enough information to prepare for the reassessment.
145. As for the reassessment interview, out of those who could remember, all the individuals said that no information about the reassessment process was provided to them during the interview. With the exception of one person who could not remember, all of the riders that we spoke to about the reassessment experience advised that they received no information about their performance directly after the interview.
146. It was not clear to any of the reassessed individuals what information the panel relied on in determining their eligibility and no one received a copy of the panel's completed application to see how they scored.
147. No participants knew prior to the reassessment interview that the panel had viewed a video recording to reassess their eligibility.
148. One woman, Ms. X, a 60-year-old with diabetes, diagnosed with neuropathy in both her feet and hands, said she found out that a video recording had been made after she received a letter from the TTC. When she called and spoke with a supervisor about the results, she discovered the video recording played a part in the reassessment.
149. Ms. X expressed discomfort at being videotaped. It had been her understanding that the video cameras were intended only for passenger safety, "not for snooping." To her, the process was not fair. She explained that if she had been video recorded during the winter, when she experiences more difficulty walking, the panel would have seen her challenges. Conversely, if the video recording was taken during the summer, it would not accurately reflect the degree of her disability. It was a "shock" to Ms. X that the TTC would rely on video recordings in this fashion.

150. Ms. X explained that if she had known about the video in advance, she could have clarified any inconsistency between her walking in the recording and her more typical experiences. She said with that knowledge, she could have properly defended herself at the reassessment. Without it, she felt “defenceless.” She stated that she did not think the process was fair. She explained that there could be “extenuating circumstances” which would require the rider’s explanation.
151. In her video, the panel observed Ms. X walk without the use of her mobility device. Based on the video and her presentation at the interview, the panel determined that Ms. X no longer required accessible transportation.
152. When my staff inquired how the participants felt about the TTC video recording them for the purpose of reassessing eligibility, one 82 year-old woman, who is dependent on a rollator walker for moving, stated that she felt “disgusted.” After reassessing her eligibility, the TTC deemed her eligible.
153. Almost all of the reassessed riders reported that they would have liked to have viewed the video in advance of the interview to know what the panel was relying on.
154. One person, Mr. Y, stated that if he had known that a video was being used to reassess his eligibility, he would have arranged to see his doctor and a specialist to provide the TTC with supplementary information, explaining his unpredictable pain due to his medical condition. Mr. Y, a 66 year-old man, was deemed eligible for Wheel-Trans services in 2007, after fracturing his pelvis and knee and also damaging his other knee in a car accident.
155. Mr. Y noted that although he supported having video surveillance, he did not believe it was fair that the TTC used video recordings to reassess eligibility. He thought that people should be encouraged to improve their mobility and not be “punished” for making attempts at improvement. He stated that the TTC should not be relying on videos to reassess eligibility and instead should be assessing each individual independently at the interview.
156. After being reassessed in 2012, using the video recordings, the panel deemed Mr. Y ineligible for further Wheel-Trans services. In response, Mr. Y said that although he knew he could reapply after six months, he was too frustrated from the reassessment process to do so. He said, he “just doesn’t want to think about it.” He added that he now has to spend \$50.00 each time he has to go to the hospital and feels “depressed” because he no longer has transportation to which he feels entitled.

157. Another individual, Ms. W, explained that knowing about the video recording would have been helpful for her to explain her mobility patterns, because occasionally she can walk, and the video may have been taken at a time when she was able to walk without a cane. Ms. W, a 60 year-old woman with sciatic nerve problems, explained to my investigator that her doctor advised her to occasionally walk without a cane to increase blood circulation. She stated that if she had known about the video recording, she would have explained the doctor's recommendation. After being reassessed, the panel found her ineligible.
158. No individual my investigator interviewed could recall at any point being consulted about the use of video recordings for purposes of reassessing eligibility.
159. One individual, Mr. T, a 66 year-old man with diabetes, neuropathy, heart problems, peripheral vascular disease and an amputated leg, stated that the TTC's practice, "rubs me the wrong way. When you see someone on camera, for such a short time, it might not appear that he is having difficulty, when really the person is. A camera gives you a superficial impression." Mr. T continued to qualify for Wheel-Trans services after his re-assessment.
160. Another rider, Ms. Q, described feeling intimidated by the process, stating that it was "scary" knowing that a video recording had been made of her and viewed by the panel. She said: "I think that if someone is recording you, it's a little scary. The government could hear you, control you. It is that kind of feeling."
161. The 83 year-old woman, diagnosed with arthritis and neuropathy, explained she would have liked to have known about the video in advance and felt it had affected the fairness of the process, as she was denied the opportunity to "defend" herself. She explained: "It's like going to a trial, and you have a chance to be guilty or not guilty. I didn't know what they wanted. They told me I didn't use the cane too often. I don't remember anything else. I am 83 years old. I do forget things. I didn't do it on purpose." Although the panel observed a video recording of Ms. Q walking without a mobility device, they found her eligible based on her presentation at the reassessment interview.
162. My investigator discovered that none of the individuals were aware that the TTC had amended the Notice of Collection decal in 2011 and that it now notified riders' video recordings could be used to reassess eligibility. Most thought it was for public safety and security reasons. Mr. Y explained that he experiences so much pain when walking, that he would not have noticed the decals. He did not think the decals were adequate for notifying people with accessibility issues.

163. Another individual interviewed stated that the print was so small that he had to get close enough to read it. He was able to see it as he was exiting the bus, but he thought it was just for safety purposes.
164. The majority of individuals expressed a desire for additional communication from the TTC informing them about the purposes of video surveillance.
165. One individual interviewed suggested to my investigator that riders ought to be advised in advance that video recordings are used to reassess their eligibility and be given the opportunity to defend themselves. She added that riders have a right to know what information the panel is relying on at the reassessment.
166. Mr. Z stated that after being denied eligibility, he called the TTC for more information, but the person he spoke with refused to provide him with a copy of the video recording that the panel had used to reassess his eligibility. He said that the official told him the video was for the safety of passengers and that the TTC was not obligated to provide copies.
167. Mr. Z, a 31 year-old man with cerebral palsy, also struggled with mild epilepsy, a hip deformity and a writing and speech impediment. He had undergone many operations in his life and spent periods using a wheelchair. He informed my investigator that TTC staff told him the decision deeming him ineligible was based on the video and the fact that he was recorded not using a mobility device. He felt as though the hearing was “unfair” and that the TTC was “entrapping” him:

They're biased to look at a video of someone being able to stand up or walk, rather than knowing the full extent or overall medical history. Someone can look healthy, but have life threatening illnesses. A video would assist, but would not make the full decision. This is what bothered me, because [TTC staff] constantly said the video was used as the decision maker, which didn't make sense to me. If that was the case, why didn't they consider my overall health issues?

168. At his re-assessment interview, Mr. Z felt “judged” negatively based on his “normal” appearance. He said that at the re-assessment interview, he was not provided the opportunity to explain how his medical conditions affected him. He added that it “depends on the day” whether he needs his mobility device and that the decision was unfair as he was not provided the opportunity to explain this to the panel.

169. Mr. Z told my investigator that after he received the decision letter, he called the TTC to appeal the decision. A staff person told him that he was the decision maker. When Mr. Z requested to speak with someone else, his request was refused.

8.0 Organizations' Comments on Video Surveillance

170. My investigator interviewed a number of staff from advocacy organizations.⁴⁹
171. With the exception of one person, they were surprised to hear about the TTC's practice and had not known that video recordings were being used to reassess eligibility. The one person who had known had only recently been informed by a client who had participated in the "Questionable Rider" process.
172. Other concerns raised included how riders with vision difficulties were notified; how easily readable the decals are with respect to where they are posted and their fine print; whether riders with episodic physical challenges issues are fairly assessed; and what kind of consent the TTC received from riders to record them in the first place.
173. One person stated that he thought the TTC's practice "to spy on customers" was "outrageous" and that the "practice reflected viscerally prejudicial attitudes." He stated that "there is a greater level of scrutiny. The TTC is treating people with disabilities differently."
174. Another individual stated that "if this was going to be implemented, users should be given adequate notice and given an opportunity to share their views about it."
175. All individuals contacted believed that additional and more accessible information, along with greater transparency about the TTC's eligibility processes and Questionable Rider Program would benefit Wheel-Trans riders.⁵⁰

⁴⁹ ARCH Disability Law Centre; T.A.N (Transportation Action Now); AODA Alliance; ERDCO (Ethno-Racial People with Disabilities Coalition of Ontario); Epilepsy Toronto.

⁵⁰ Concerns were also raised about the TTC's general eligibility criteria and process. In 2012, the Auditor General released the report, "Review of Wheel-Trans Services – Sustaining Level and Quality of Service Requires Changes to the Program." His recommendations in the report include that the TTC "review and enhance the Wheel-Trans eligibility assessment process and criteria to ensure that applicant's abilities to use conventional transit system are objectively and credibly appraised."

9.0 Ombudsman Findings

9.1 Right to a Fair Hearing and Overview

176. Accessible transportation is an essential service for people with physical disabilities.
177. Transportation barriers can fundamentally limit the lives of people with mobility issues. Inaccessible transportation translates into barriers to employment, education, and an array of services, from attending medical appointments to purchasing groceries.
178. In light of the grave consequences of being denied accessible transportation, there is an even greater imperative for the TTC to ensure the process is accessible and scrupulously fair.
179. A fundamental principle of procedural fairness is the right to a fair hearing. This right involves additional principles, which include: the right to full disclosure of information that is provided to and considered by the decision maker; the right to full and fair opportunity to present ones case to the decision maker; the right to be provided with adequate reasons for the decision; and the right to receive a reasonable decision. These principles are essential to due process and for ensuring a fair hearing.
180. This investigation revealed that the TTC overlooked these basic tenets of procedural fairness when reassessing riders' eligibility.

9.2 Insufficient Public Consultation

181. Consultation is an essential means of engaging the public. It provides an opportunity for citizens and residents to learn about and provide feedback regarding changes that might affect them.
182. The TTC referred to three public consultations about video surveillance. Although the second study involved research relating to video surveillance, the TTC provided no information as to how the public was consulted.
183. None of the consultations referred to installing video surveillance for purposes of assessing riders' eligibility.
184. Clearly there was no public consultation on a matter of obvious public interest.
185. In her 2008 report, the IPC Commissioner expressly stated that the TTC failed to fulfill all the requirements of public consultation noted in her

Guidelines. She said that the TTC's attempts at public consultation were insufficient. Further, as the TTC expanded the use of video surveillance, the Commissioner recommended that it should take additional steps to inform the public, by providing information and engaging in public consultations.

186. I note that the TTC adopted the Commissioner's recommendation as a requirement in policy yet no further attempt at informing the public about a new or expanded use took place.
187. The TTC is using video recordings to reassess eligibility without properly informing the public. It is the case that the new decal specifies in very fine print that "images may be used for the purpose of confirming eligibility for Wheel-Trans Services."
188. While one might argue that the technicality has been met, the spirit certainly has not been achieved.
189. The fact that ten other cities in Canada do not use video recordings to reassess their riders' eligibility is relevant and raises doubts about the TTC's purported requirements and stated rationale. However, I make no judgement as to whether the TTC should or should not engage in this practice. What must be done is to properly notify the public and provide individual riders who are being reassessed the full information being relied upon.
190. It is fundamental to good government that the public be consulted about this practice.
191. It strikes me that it would also be important to ascertain what consideration was given to the effects of this practice on "personal privacy" and what the TTC has done to "mitigate adverse effects."
192. The Commissioner's statement in her 2008 report is instructive:

While TTC passengers may accept a certain degree of surveillance, they should not expect that their images or personal information will be improperly recorded or misused for purposes that are secondary to the purposes of safety and security.
193. Until such time as the process is examined, the current practice must be suspended.

9.3 Improper Notification

194. Notification is a process by which specific information is shared with a person potentially affected by a specific situation. Regardless of the type of notification, content should minimally include, relevant details to provide the person with an overall view and understanding of the situation.
195. The method through which notification occurs is as important as the content of the notice itself. As an example, the location of a sign or its font size will affect the sign's ability to provide proper notification.
196. TTC policy explicitly sets out that signs should be visible to members of the public. My investigation revealed that the TTC gave little consideration to its notification requirement. Proper notification includes a requirement to make public information available and accessible in meaningful ways.
197. The decals limit notification to those who are literate, read English and have no vision difficulties.
198. The public was not notified about the change in the decal. The TTC simply replaced the old decal with a new one. In fact, the new decal looks almost identical to the old one, but for one additional line.
199. My investigation disclosed that riders we interviewed did not know that video recordings were being used to reassess eligibility. None knew that the decals had changed, and all who commented, stated that they thought the notification decals referred only to issues of public safety and security.
200. Given that the decals were specifically designed to convey information to people with accessibility issues, it is disappointing to see how poorly this was done by the TTC.

9.4 Incomplete Disclosure

201. The eligibility process has not changed, despite the introduction of new criteria in 1996. What has changed, however, is that riders are being reassessed based on "questionable conduct" without their knowledge or consent. This is unfair.
202. While the TTC provides riders with notice and the purpose of the eligibility reassessment by letter, the information communicated about the reassessment process is inadequate.
203. Procedural fairness dictates that information being used to reach a decision must be disclosed to all relevant persons affected by the decision.

204. Neither the public nor individuals personally affected are told about the use of video recordings to reassess eligibility, who views the video, how it is assessed, or the weight given to the recording when reassessing a rider's eligibility.
205. Reassessed riders do not know the case they must meet and are denied a fair opportunity to respond. As a result, they have neither the chance to present their own evidence, nor the opportunity to challenge the additional information provided exclusively to the panel.
206. The TTC's failure to properly disclose such critical information in advance affects the rider's ability to effectively respond to the case against them, which could result in the panel making decisions based on incomplete information because they are unaware of potentially relevant and material evidence.
207. This practice threatens potentially eligible riders from receiving accessible transportation.

9.5 Inadequate Reasons for Decision and Appeal Process

208. Unless riders are advised of all the information that is used to reassess their eligibility, there will be few grounds for them to challenge the panel's decision.
209. The TTC does not voluntarily provide riders with detailed reasons of the panel's decision. In support of this practice, the TTC relies on the process it created in 1996, which the Ontario Court of Appeal upheld as fair. However, the court at that time considered that further reasons were not necessary because the TTC was not relying on any information beyond that which was included in the questionnaire and received during the interview. This is no longer the case.
210. Despite the fact that assessors now consider additional information in the reassessment process, riders are not provided with any additional reasons for the panel's decision.
211. Riders generally receive standard decision letters that are brief and vague. The reasons given are inadequate. The TTC does not mention that video recordings were used to reassess the rider's eligibility, or articulate how the decision was reached.
212. Only if requested, do riders receive additional information from the TTC about their reassessment.

213. In cases where riders are no longer deemed eligible, they need to know the reasons in order to effectively appeal the decision. The TTC should automatically provide riders with a copy of their scored application after receiving notification of their ineligibility
214. Prior to exercising their right to appeal, riders need to understand the TTC's appeal process.
215. As many other para-transit service providers post their appeal process information online and make it accessible to the public through other means, it is only reasonable and fair for the TTC to do the same.

10.0 Ombudsman Conclusions

216. The Toronto Municipal Code Chapter 3, 3-36 provides that the Ombudsman, in undertaking an investigation, shall have regard to whether the decision, recommendation, act or omission in question may have been:
 - A. Contrary to law;
 - B. Unreasonable, unjust, oppressive or improperly discriminatory;
 - C. Based wholly or partly on a mistake of law or fact;
 - D. Based on the improper exercise of a discretionary power; or
 - E. Wrong.
217. I have considered those definitions in reaching my conclusions.
218. The TTC's public consultation and notification was inadequate.
219. Its reliance on notifying the public through its vehicle decals was insufficient.
220. The actions of the TTC may have had an adverse impact on people with physical disabilities.
221. The TTC did not consider riders who would be unable to view or read the decal.
222. The Questionable Rider Program in its current form lacks due process.
223. The TTC's failure to provide adequate information to riders in advance of the reassessment interview denies them the opportunity to properly prepare and severely affects the fairness of the process.
224. The panel's reassessment decisions are insufficient. Without full reasons, riders are unable to effectively appeal.

225. The TTC's reassessment processes for eligibility are not transparent. Little information is posted on its website or provided in alternative ways to accommodate people with physical disabilities.

11.0 Ombudsman Recommendations

226. Taking into account all the evidence gathered in this investigation, I recommend the following:
1. That the TTC cease using video recordings for reassessment purposes until such time as it has completed the ensuing recommendations.
 2. That the TTC review and re-develop its processes for the Questionable Rider Program by January 1, 2014. If it wishes to continue using video recordings for reassessment purposes, the process must include, but not be limited to:
 - i. advising and providing riders with all information upon which the reassessment is based in advance of the reassessment;
 - ii. creating a standard process with guidelines for panel members to view and score video recordings and/or additional complaint information;
 - iii. providing riders at the reassessment interview the opportunity to present their own evidence before the panel;
 - iv. amending all correspondence to riders to ensure that full and fair disclosure is provided before and after the reassessment interview; and,
 - v. briefing panel members properly on the new process.
 3. That pursuant to its policy, the TTC engage in meaningful public consultation with respect to its use of video surveillance on Wheel-Trans vehicles to reassess eligibility.
 4. That should the TTC continue to deem video recordings as a necessary part of the Questionable Rider Program, by January 1, 2014, notification be sent from the CEO or a senior executive to all Wheel-Trans riders informing them about the TTC's use of video surveillance on vehicles to reassess eligibility. In providing this notification, the TTC will take into consideration riders with accessibility issues who require accommodated communication based on their disabilities.

5. That the TTC amend its decal to ensure that it is clearly visible and legible, with a reasonable font size.
6. That by January 1, 2014, the TTC will post the following information on its website.
 - i. Wheel-Trans application process;
 - ii. Wheel-Trans application;
 - iii. Wheel-Trans Questionable Rider Program and process;
 - iv. Wheel-Trans appeal process;
 - v. Wheel-Trans use of video recordings on vehicles to reassess eligibility, including how information is received.
7. That assuming the TTC continues to use video recordings to reassess eligibility, it amends the policy.
8. That by January 1, 2014, the TTC updates its "Welcome to Wheel-Trans" booklet to include all relevant information in relation to the Questionable Rider Program and process, use of video surveillance to reassess eligibility and its appeal process.
9. That the TTC ensure all future changes be properly communicated to its riders, taking into consideration riders who require accommodated communication based on their disabilities.
10. That the TTC will communicate with all riders who have been determined to be ineligible using the Questionable Rider policy since January 1, 2011, to advise them of the policy and related processes and to invite them to reapply for Wheel-Trans service.
11. That all draft protocols and documents referenced in the above recommendations be provided to my office for review prior to finalizing and publishing them.

12.0 TTC's Response

227. Pursuant to s. 172(2) of the *City of Toronto Act, 2006*, I provided the TTC with an opportunity to review a draft of my investigation report, so that TTC officials could respond to the tentative findings and recommendations.
228. My office met with TTC officials to receive their feedback and clarification on a variety of points. Following these discussions, the CEO responded by letter dated July 5, 2013 (Appendix C).

229. The TTC agreed to implement all of my recommendations and to do so by January 1, 2014. In the interim, they have ceased using video recordings for reassessment purposes.
230. The TTC has committed to determine the most appropriate means for public consultation by working with its Advisory Committee on Accessible Transit.
231. The CEO added the following comment:

We greatly appreciate that we were able to meet and discuss this report with you and are committed to making the changes you have recommended.

(Original signed)

Fiona Crean
Ombudsman
July 9, 2013

Appendix A: Relevant Sections of MFIPPA
(Municipal Freedom of Information and Protection of Privacy Act, 1990)

Part II: Protection of Individual Privacy
Collection and Retention of Personal Information

Application of Part

27. This Part does not apply to personal information that is maintained for the purpose of creating a record that is available to the general public. R.S.O. 1990, c. M.56, s. 27.

Personal information

28. (1) In this section and in section 29, “personal information” includes information that is not recorded and that is otherwise defined as “personal information” under this Act.

Collection of personal information

(2) No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or necessary to the proper administration of a lawfully authorized activity. R.S.O. 1990, c. M.56, s. 28.

Manner of collection

29. (1) An institution shall collect personal information only directly from the individual to whom the information relates unless,

- (a) the individual authorizes another manner of collection;
- (b) the personal information may be disclosed to the institution concerned under section 32 or under section 42 of the *Freedom of Information and Protection of Privacy Act*;
- (c) the Commissioner has authorized the manner of collection under clause 46 (c);
- (d) the information is in a report from a reporting agency in accordance with the *Consumer Reporting Act*;
- (e) the information is collected for the purpose of determining suitability for an honour or award to recognize outstanding achievement or distinguished service;
- (f) the information is collected for the purpose of the conduct of a proceeding or a possible proceeding before a court or judicial or quasi-judicial tribunal;
- (g) the information is collected for the purpose of law enforcement; or
- (h) another manner of collection is authorized by or under a statute. R.S.O. 1990, c. M.56, s. 29 (1).

Notice to individual

(2) If personal information is collected on behalf of an institution, the head shall inform the individual to whom the information relates of,

- (a) the legal authority for the collection;
- (b) the principal purpose or purposes for which the personal information is intended to be used; and

- (c) the title, business address and business telephone number of an officer or employee of the institution who can answer the individual's questions about the collection. R.S.O. 1990, c. M.56, s. 29 (2).

Exception

(3) Subsection (2) does not apply if,

- (a) the head may refuse to disclose the personal information under subsection 8 (1) or (2) (law enforcement), section 8.1 (*Civil Remedies Act, 2001*) or section 8.2 (*Prohibiting Profiting from Recounting Crimes Act, 2002*);
- (b) the Minister waives the notice; or
- (c) the regulations provide that the notice is not required. R.S.O. 1990, c. M.56, s. 29 (3); 2001, c. 28, s. 23 (3); 2002, c. 2, ss. 16 (3), 19 (10); 2007, c. 13, s. 45 (3).

Retention of personal information

30. (1) Personal information that has been used by an institution shall be retained after use by the institution for the period prescribed by regulation in order to ensure that the individual to whom it relates has a reasonable opportunity to obtain access to the personal information.

Standard of accuracy

(2) The head of an institution shall take reasonable steps to ensure that personal information on the records of the institution is not used unless it is accurate and up to date.

Exception

(3) Subsection (2) does not apply to personal information collected for law enforcement purposes.

Disposal of personal information

(4) A head shall dispose of personal information under the control of the institution in accordance with the regulations. R.S.O. 1990, c. M.56, s. 30.
Use and Disclosure of Personal Information

Use of personal information

31. An institution shall not use personal information in its custody or under its control except,

- (a) if the person to whom the information relates has identified that information in particular and consented to its use;
- (b) for the purpose for which it was obtained or compiled or for a consistent purpose; or
- (c) for a purpose for which the information may be disclosed to the institution under section 32 or under section 42 of the *Freedom of Information and Protection of Privacy Act*. R.S.O. 1990, c. M.56, s. 31.

Where disclosure permitted

32. An institution shall not disclose personal information in its custody or under its control except,

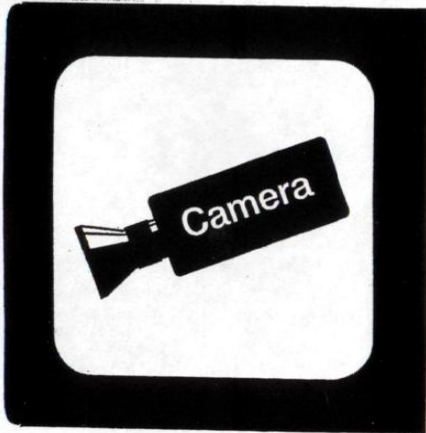
- (a) in accordance with Part I;
- (b) if the person to whom the information relates has identified that information in particular and consented to its disclosure;
- (c) for the purpose for which it was obtained or compiled or for a consistent purpose;
- (d) if the disclosure is made to an officer, employee, consultant or agent of the institution who needs the record in the performance of their duties and if the disclosure is necessary and proper in the discharge of the institution's functions;
- (e) for the purpose of complying with an Act of the Legislature or an Act of Parliament, an agreement or arrangement under such an Act or a treaty;
- (f) if disclosure is by a law enforcement institution,
- (i) to a law enforcement agency in a foreign country under an arrangement, a written agreement or treaty or legislative authority, or
- (ii) to another law enforcement agency in Canada;
- (g) if disclosure is to an institution or a law enforcement agency in Canada to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
- (h) in compelling circumstances affecting the health or safety of an individual if upon disclosure notification is mailed to the last known address of the individual to whom the information relates;
- (i) in compassionate circumstances, to facilitate contact with the spouse, a close relative or a friend of an individual who is injured, ill or deceased;
- (j) to the Minister;
- (k) to the Information and Privacy Commissioner;
- (l) to the Government of Canada or the Government of Ontario in order to facilitate the auditing of shared cost programs. R.S.O. 1990, c. M.56, s. 32; 2006, c. 19, Sched. N, s. 3 (5); 2006, c. 34, Sched. C, s. 15.

Consistent purpose

33. The purpose of a use or disclosure of personal information that has been collected directly from the individual to whom the information relates is a consistent purpose under clauses 31 (b) and 32 (c) only if the individual might reasonably have expected such a use or disclosure. R.S.O. 1990, c. M.56, s. 33.

Appendix B: TTC's Previous and Current Notice of Collection Decal

Previous



This area is being Video Recorded for Security Purposes

The personal information collected by the use of the video equipment at this location is collected under the authority of the City of Toronto Act, 2006, and the Occupiers' Liability Act.

Any questions about this collection can be directed to the Co-ordinator,
Freedom of Information/Records Management, at 416-393-4000 /
1900 Yonge Street, Toronto, ON, M4S 1Z2 / www.ttc.ca

Current



This area is being Video Recorded for Safety & Security Purposes

Images may be used for the purpose of confirming eligibility for Wheel-Trans Services.

The personal information collected by the use of the video equipment at this location is collected under the authority of the City of Toronto Act, 2006, and the Occupiers' Liability Act.

Any questions about this collection can be directed to the Co-ordinator,
Freedom of Information/Records Management, at 416-393-4000 /
1900 Yonge Street, Toronto, ON, M4S 1Z2 / www.ttc.ca

Appendix C: TTC's Response

TORONTO TRANSIT COMMISSION



KAREN STINTZ
CHAIR
MAUREEN ADAMSON
VICE-CHAIR
ANDY BYFORD
CHIEF EXECUTIVE OFFICER

MARIA AUGIMERI
RAYMOND CHO
JOSH COLLE
GLENN DE BAEREMAEKER
NICK DI DONATO

ALAN HEISEY
PETER MILCZYN
JOHN PARKER
ANJU VIRMANI



July 5, 2013

Ms. Fiona Crean
Ombudsman
City of Toronto
375 University Avenue, Suite 203
Toronto, Ontario
M5G 2J5

Dear Ms. Crean:

Re: Ombudsman Report

I have reviewed your report on "An Investigation into the TTC's Use of Video Surveillance on Wheel-Trans Vehicles". My executive team and I thank you for the thorough investigation.

We agree with and support the recommendations in your report and will implement them by January 1, 2014. In the interim we have ceased using video recordings for reassessment purposes.

As you are aware, we previously consulted with the Information and Privacy Commissioner of Ontario (IPC) policy group to develop a policy on video cameras on TTC vehicles. Following an investigation in 2008 by IPC, we adopted a number of recommendations for the use of video cameras on TTC vehicles. In 2011, IPC conducted a second investigation regarding the use of video cameras on Wheel-Trans vehicles for the purpose of addressing complaints concerning passengers' eligibility for receiving Wheel-Trans services. Following a change to the wording on the Notice of Collection decal appearing on Wheel-Trans vehicles, IPC concluded that the TTC's use of images from cameras on Wheel-Trans vehicles as a component of eligibility assessments constitutes a permitted use of personal information under the Municipal Freedom of Information and Protection of Privacy Act.

In response to your recommendation, we have initiated the process of amending the decal to ensure that it will be clearly visible and legible to our customers. In addition, our staff will continue to work with the Advisory Committee on Accessible Transit (ACAT) to determine the most appropriate means for public consultation and to seek assistance implementing the new processes for the Questionable Rider Program.

The TTC will ensure that our website and printed material, such as the "Welcome to Wheel-Trans" booklet, includes relevant information in relation to the Questionable Rider Program, the use of video surveillance to reassess eligibility, and the appeal process. We will also



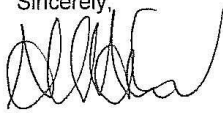
1900 Yonge Street, Toronto, Canada M4S 1Z2 Telephone: 416-393-4000 Web Site: www.ttc.ca



communicate to all customers, who have been determined to be ineligible through the Questionable Rider Program since January 1, 2011, to advise them of the revised processes and invite them to reapply for Wheel-Trans services.

We greatly appreciate that we were able to meet and discuss this report with you and are committed to making the changes you have recommended. We will consult with your office prior to finalizing and publishing documentation regarding the recommendations in your report.

Sincerely,



Andy Byford
Chief Executive Officer
5-44

