



**Dr Ann Cavoukian  
Information and Privacy Commissioner/Ontario  
2 Bloor Street East  
Suite 1400  
Toronto, Ontario  
M4W 1A8**

October 24, 2007

Dear Dr. Cavoukian

We are filing this complaint regarding the practices of the Toronto Transit Commission and its program for implementing a closed-circuit television (CCTV) system across its infrastructure.

We are filing this complaint under the Municipal Freedom of Information and Protection of Privacy Act R.S.O. 1990, CHAPTER M.56, as it applies to institutions. Under the Act, an institution means:

(b) a school board, municipal service board, city board, transit commission, public library board, board of health, police services board, conservation authority, district social services administration board, local services board, planning board, local roads board, police village or joint committee of management or joint board of management established under the Municipal Act, 2001 or the City of Toronto Act, 2006 or a predecessor of those Acts,

(c) any agency, board, commission, corporation or other body designated as an institution in the regulations; ("institution")

Therefore the TTC's activities fall within the jurisdiction of this Act.

In this complaint we will argue that the collection principles are not being sufficiently attended to in that the collection is not necessary, that the scheme is being deployed without consideration to privacy and associated protocols, and with insufficient consideration regarding access powers.

We understand that this is arguably a law enforcement activity and therefore legal exemptions exist for some data privacy principles, as under s.28(2) of *MFIPPA*. Recently the Ontario Court of Appeal

ruled, in *Cash Converters Canada Inc. v. Oshawa (City)*, 2007<sup>1</sup> that where identifiable information is made available to the police it must first meet the necessity condition "where the institution must show that each item or class of personal information that is to be collected is necessary to properly administer the lawfully authorized activity".<sup>2</sup> When it is possible to find other ways of achieving the stated lawful goals then the institution must choose another route. We do not believe that the TTC has adequately addressed the necessity of this information collection and has not considered access policies.

## **Background**

This complaint has been prepared by Privacy International following reports that the Toronto Transit Commission is planning a mass installation of surveillance cameras on its network.

Recent news reports have quoted the TTC Chairman describing plans that have been executed to install around 12,000 cameras on every bus, streetcar, subway car and at each station. All 1.5m TTC customers will be photographed on a daily basis. We understand that the cameras will also have audio capability enabling TTC staff or police to view live video or hear audio from any of the security cameras.

The program has been undertaken on the basis on crime prevention and crime detection.

## **Summary**

- Privacy International is aware of no criminological evidence in any country that supports TTC's claim that visual and audio surveillance on public transport systems significantly reduces the level of crime or the threat of terrorist attacks.
- Numerous criminological studies over the past fifteen years have established that the beneficial effects of such surveillance are marginal and that camera systems are handicapped by endemic problems of technology and management. These reports include a 2007 independent study of surveillance on the Berlin Underground and a 2007 United Kingdom Government report on camera effectiveness.
- On the basis of international experience, between eighty and ninety-five percent of all camera images will have no detection or evidential value. Technical and management failure is likely to result in up to fifty percent of potential images being unavailable.
- TTC has failed to respect legal requirements for public consultation, disclosure and establishment of a public interest case for the proposed surveillance system.

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<sup>1</sup> ONCA 502 DATE: 20070704 DOCKET: C45055

<sup>2</sup> *ibid*, paragraph 40.

- Privacy International believes that the installation of cameras on the scale proposed by TTC fundamentally violates privacy law. In the absence of a compelling case for public safety the program is unnecessary and disproportionate. It also appears to be an inappropriate and poorly considered use of resources.

## 1. Criminological basis

The TTC believes that the creation of a network-wide surveillance system will reduce the incidence of crime while also improving counter-terrorism measures. As quoted in the Toronto Sun on October 21, 2007, TTC chair Adam Giambrone stated:

"We believe the cameras will help solve crimes and act as a deterrent. We want to ensure the safety of the public travelling on the TTC."<sup>3</sup>

We dispute this claim.

The effectiveness of surveillance cameras as a crime deterrent depends on a number of conditions, none of which have been successfully achieved in any camera system:

- Cameras must be placed in a location and at an angle that clearly captures and identifies a face.
- The camera resolution must be of sufficiently high quality to ensure that evidential value is achieved.
- Cameras must be installed in such a way that people intent on commissioning a crime are unable to hide their face from view. This would require multiple cameras converging on a single location.
- The technology must be supported by robust and continuous technical and management support. In practice, budgetary constraints have severely limited this level of support.

We are concerned that the TTC is intent on deploying a large-scale surveillance system without having undertaken sufficient research in advance. Two recent (2007) reports have underlined the failure of surveillance camera systems.

### The Berlin case.

Heise Online reports that in April 2006, a pilot project was launched in Berlin, in which train operators on three lines of the Berlin underground aimed to test the extent to which 24-hour video surveillance could reduce criminality. The pilot project included the U2, U6 and U8 lines. The Social Democratic Party, which strongly supported the project in the state parliament, anticipated a "general preventive effect."<sup>4</sup>

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<sup>3</sup> 'Every rider on TTC will be on camera', Tim Godfrey, Toronto Sun, October 21, 2007, available at <http://torontosun.com/News/TorontoAndGTA/2007/10/21/4593292-sun.html>

<sup>4</sup> See Heise Online report, 'Study shows video surveillance on the Berlin underground has not improved safety', October 10, 2007, available at <http://www.heise.de/english/newsticker/news/97168>

The company responsible for public transport in Berlin, BVG, stated that the pilot project had proved its worth in the detection of assaults and criminal damage and decided to extend the project to all 170 underground stations in Berlin by the end of the year.<sup>5</sup> Yet an evaluation of the project commissioned from the Büro für angewandte Statistik was surprisingly cancelled after receipt of an interim report looking in to the effectiveness of the scheme.<sup>6</sup>

A German human rights group, The Humanist Union, then took action to force the BVG, which had previously decline to do so,<sup>7</sup> to release the report.<sup>8</sup> According to the report, video surveillance on the three underground lines did not reduce the incidence of criminality, but in fact led to a small increase.

Of a total of many thousands of criminal incidents, video material was available in only 78 cases. In only a third of these was the recording of sufficient quality to allow suspects to be identified. In particular, the cameras were not able to contribute to a higher detection rate regarding prevention of vandalism. The report suggests that in this case the reason no usable video recordings were obtained was that criminals were taking the cameras into account in planning their malfeasance.

### **The United Kingdom experience.**

TTC has cited camera surveillance in the United Kingdom as a justification for establishing a similar project in Toronto. Privacy International believes that in fact the UK experience establishes the failure of this technology to perform to expectation.

Numerous criminological studies, including those commissioned by the Home Office, the interior ministry responsible for policing, and by independent groups such as the National Association for the Care and Resettlement of Offenders (NACRO) have consistently concluded that the impact of surveillance cameras is marginal and largely illusory. Their chief benefit, according to researchers, is in deterring some types of low level “opportunistic” crime, a benefit that could be more inexpensively and effectively achieved through other means.

The most recent of these reports, the 2007 study on the national CCTV strategy concludes that eight images out of ten supplied to the police from closed-circuit television do not help to identify criminals. The report, compiled by the Home Office and the Association of Chief Police Officers, said:

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<sup>5</sup> Videoüberwachung soll in Berlin deutlich erweitert werden, Heise Online, February 28, 2007, available at <http://www.heise.de/newsticker/meldung/86013>

<sup>6</sup> c.f. ‘Study shows video surveillance on the Berlin underground has not improved safety’, Heise Online, October 10, 2007, available at <http://www.heise.de/english/newsticker/news/97168>

<sup>7</sup> Berliner Verkehrsbetriebe verweigern Einsicht in Begleitstudie zur Videoüberwachung, Sven Luders, July 2, 2007, available at [http://berlin.humanistische-union.de/themen/videoueberwachung/videoueberwachung\\_detail/back/videoueberwachung-1/article/berliner-verkehrsbetriebe-verweigern-einsicht-in-begleitstudie-zur-videoueberwachung/](http://berlin.humanistische-union.de/themen/videoueberwachung/videoueberwachung_detail/back/videoueberwachung-1/article/berliner-verkehrsbetriebe-verweigern-einsicht-in-begleitstudie-zur-videoueberwachung/)

<sup>8</sup> Now available at [http://berlin.humanistische-union.de/typo3/ext/naw\\_securedl/secure.php?u=0&file=uploads/media/04\\_Evaluationsbericht.pdf&t=1192030446&hash=82beea09f9fe65e34a8ee705d6fc5573](http://berlin.humanistische-union.de/typo3/ext/naw_securedl/secure.php?u=0&file=uploads/media/04_Evaluationsbericht.pdf&t=1192030446&hash=82beea09f9fe65e34a8ee705d6fc5573)

“Anecdotal evidence suggests that over 80 per cent of the CCTV footage supplied to the police is far from ideal, especially if it is being used for primary identification or [where] identities are unknown and identification is being sought.”<sup>9</sup>

The report also said that the proliferation of CCTV cameras was presenting the police with serious problems – in particular their capacity to recover evidence and review tapes.

The police are concerned that cameras are increasingly being used to "monitor crowds, slips, trips and falls" and "patrol" rather than to detect crime.<sup>10</sup> This is compounded by an increasing tendency for camera schemes to be used as income generators.

Following the London terrorist attacks in 2005, former UK Home Secretary Charles Clarke told the BBC's Today program that he could not envision a situation where surveillance cameras would prevent a terrorist attack.

Meanwhile, recent studies show that over 90% of CCTV systems in the UK are actually operating illegally.<sup>11</sup> Another study has shown that of the over 10,000 cameras in London, costing about £200 million to establish, show that police are no more likely to catch offenders in areas with hundreds of cameras than in those with hardly any. In fact, four out of five of the municipalities with the most cameras have a record of solving crime that is below average.<sup>12</sup> Recently, senior police officials have been calling for location and national debates on the use of CCTV cameras after questionable deployment and usage patterns.<sup>13</sup>

## **2. Legal compliance and public policy concerns.**

The establishment of a network of many thousands of surveillance cameras imposes a substantial loss of privacy for all TTC customers. For such a privacy invasion on this scale to be justified the TTC must establish beyond doubt that there is a public interest justification for the project. This case has not been established.

We are not aware of any cost/benefit studies, privacy impact assessments or criminological reports that have been commissioned to assess the public interest claim.

The absence of publicly available analysis of the scheme or its potential impact is a matter of grave concern. The only information that appears to exist on the TTC website is contained in the minutes of meeting No. 1873 of Wednesday, August 30, 2006. This meeting was concerned primarily with procurement issues, as it authorised \$3.5 million in surveillance contracts, and considered the larger contract of \$14.8 million to a single firm (March Networks, 'the only acceptable submission'). The total project cost at that time was \$16.8 million.<sup>14</sup>

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<sup>9</sup> National CCTV Strategy, ACPO and the Home Office, October 2007, available at <http://www.crimereduction.homeoffice.gov.uk/cctv/cctv048.pdf>, page 12.

<sup>10</sup> Page 13 of Home Office report

<sup>11</sup> 'Almost all CCTV systems are illegal, says expert', Out-law.com, September 28, 2007.

<sup>12</sup> 'Tens of thousands of CCTV cameras, yet 80% of crime unsolved', Justin Davenport, Evening Standard, September 19, 2007.

<sup>13</sup> 'Orwellian' CCTV in shires alarms senior police officer', Rachel Williams, the Guardian, May 21, 2007.

<sup>14</sup> Available at <http://www.ttc.ca/postings/gso-comrpt/documents/minute/f187/conv.htm>

We are also surprised to hear that an earlier planned system costing \$2.8 million was rejected in 2006 by the TTC because it was 'sub-par'.<sup>15</sup> The lack of open debate and deliberation over these two different systems is surprising.

Given the international experience where legal requirements and protocols fundamentally influence outcomes, it is disquieting to note that only after the contracts were awarded did the TTC take action on protocols relating to camera data. The 2006 meeting passed a motion "That staff be requested to bring forward for the approval of the Commission a protocol for the use of the camera data."

All such protocols are of course subject to legal requirements and should in our view have been drafted before the issuing of contracts.

By ignoring requirements for transparency and process and by relying on surveys of public opinion as the basis for its mandate the TTC has in our view demonstrated contempt for Canadian privacy law and disregard for the privacy of its customers.

Finally, this scheme, now expected to cost \$17 million is to be funded in part by the Federal government funds under the "Transit-Secure" program. This program was developed in response to terror attacks around the world. Of the full \$80 million dollars in funding, according to Transport Canada, \$37 million in funding was designated for the six highest-volume urban transit systems – Montreal, the National Capital Region, Toronto, Edmonton, Calgary and Vancouver – for high priority security projects including risk assessments; security plans; employee training programs; public awareness; and the upgrade of security equipment such as access control technology and lighting.<sup>16</sup>

The purpose of these federal government funds is thus not limited to CCTV deployment. We are therefore surprised that the TTC plans to use such a large component of the federal funds (estimated at \$6 to \$8 million) just for CCTV systems with questionable benefits while other security programs go unfunded.

As the federal funds only go so far, we are surprised that a cash-strapped transport infrastructure is expending so many resources at deploying a system that will incur significant costs in the long term. This is at a time when the TTC board is holding special meetings to consider financial troubles.<sup>17</sup>

### **Concluding Remarks**

We respectfully request that you investigate this complaint as a matter of urgency.

Yours sincerely,

Simon Davies  
Director, Privacy International

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<sup>15</sup> 'TTC vehicles getting new security cameras', CTV News, October 31, 2006, available at [http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/20061031/ttc\\_cameras\\_061031?s\\_name=&no\\_ads=](http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/20061031/ttc_cameras_061031?s_name=&no_ads=)

<sup>16</sup> c.f. 'Canada's New Government Invests \$37 Million to Improve Transit Security in Six Urban Areas', Transport Canada, available at <http://www.tc.gc.ca/mediaroom/releases/nat/2006/06-h138e.htm>

<sup>17</sup> 'TTC to Hold Special meeting, September 6, 2007, available at <http://www.ccnmatthews.com/news/releases.Controller?action=check4Cookies&searchText=false&showText=all&actionFor=767330>

## *About Privacy International*

Privacy International (PI) is a human rights organization formed in 1990 as a watchdog on surveillance and privacy invasions by governments and corporations. PI is based in London, England, and has an office in Washington, D.C. PI has conducted campaigns and research throughout the world on issues ranging from wiretapping and national security, to ID cards, video surveillance, data matching, medical privacy, and freedom of information and expression. PI has been responsible for many of the legal actions and campaigns that have helped shape privacy at the national and international level.

We have an international advisory board with members from over 30 countries, and a board of trustees who oversee our staff.

Privacy International has been most prominent in North America, Europe and Asia, where it has liaised with local human rights organisations to raise awareness about the development of national surveillance systems.

Our network has also been used by law reform and human rights organisations in more than twenty countries to assist local privacy issues. In Thailand and the Philippines, for example, Privacy International worked with local human rights bodies to develop national campaigns against the establishment of government identity card systems. In Australia, Canada, Hungary, New Zealand, the United States, and the United Kingdom we have promoted privacy issues through national media and through public campaigns. In Central and Eastern Europe, PI has been active in promoting government accountability through legislation supporting freedom of information principles.

We also monitor the activities of international organizations, including the European Union, the Council of Europe, and UN agencies to focus international attention to policy initiatives emerging from behind closed doors.

Finally, we conduct studies, write reports, and provide expert commentary on contemporary policy and technology issues. We do this work in order to intervene in policy processes, inform debate, and shape decisions.

Privacy International has received funding and support from a range of Foundations, academic establishments and non-government organisations. These include the Open Society Institute, the Joseph Rowntree Reform Trust, the American Civil Liberties Union, the Electronic Privacy Information Center, The Fund for Constitutional Government, the Stern Foundation, the Privacy Foundation, the German Marshall Fund, and the University of New South Wales (Sydney). Our staff have written reports for a number of governments and inter-governmental institutions, including UNESCO and the Organisation for Security and Co-operation in Europe's Representative on Freedom of the Media. The organisation is also minimally financed through contributions. Privacy International an independent non-profit organization chartered in the UK. Its US organization is administered through the Fund for Constitutional Government in Washington DC.