



Office of the Victorian
Information Commissioner

t 1300 00 6842
e enquiries@ovic.vic.gov.au
w ovic.vic.gov.au

PO Box 24274
Melbourne Victoria 3001

Our ref: D19/8852

31 January 2020

The Executive Officer
Economy and Infrastructure Committee
Parliament House
Spring Street
EAST MELBOURNE VIC 3002

By post and email to
tramzoneinquiry@parliament.vic.gov.au

Dear Economy and Infrastructure Committee

Submission in response to Inquiry into Expanding Melbourne's Free Tram Zone

The Office of the Victorian Information Commissioner (OVIC) is pleased to provide a submission addressing the Terms of Reference of the Legislative Council's Economy and Infrastructure Committee's (**the Committee**) Inquiry into Expanding Melbourne's Free Tram Zone.

OVIC is the primary regulator for information privacy, information security and freedom of information in Victoria, and administers the *Privacy and Data Protection Act 2014 (PDP Act)* and the *Freedom of Information Act 1982 (Vic)*. As Information Commissioner, one of my functions under the PDP Act is to make public statements in relation to any matter affecting personal privacy. As such, I have a strong interest in matters relating to government collection, use and disclosure of personal information.

Given this remit, this submission focuses on point 4 of the Terms of Reference, which is 'new technologies that enable intelligent transport systems that improve the performance of the networks'. The purpose of this submission is to highlight important privacy considerations relating to intelligent transport systems that collect, or have the potential to collect, personal information.

Personal information in intelligent transport systems

Intelligent transport systems are able to collect and use large amounts of high-quality data to generate considerable public value. This could potentially include data that may constitute personal information,¹ such as the travel histories of individuals, concession eligibilities, WIFI usage or biometric data.² While OVIC supports the use of data to inform decision making and improve services for Victorians, the collection and use of such data must be done responsibly to ensure that positive outcomes can be achieved without weakening human rights, including the right to privacy.

¹ 'Personal information' is defined in section 3 of the PDP Act.

² See, for example, Naaman Zhou and Josh Taylor, 'NSW suggests facial recognition could replace Opal cards in "not too distant future"', *The Guardian* (11 July 2019), available at: <https://www.theguardian.com/australia-news/2019/jul/11/nsw-suggests-facial-recognition-could-replace-opal-cards-in-not-too-distant-future>.

The PDP Act contains Information Privacy Principles (IPPs) which govern how the Victorian public sector collects, uses and handles personal information.³ IPP 1.1 requires organisations to not collect personal information unless it is necessary for one or more of their functions or activities. This means that personal information should not be collected simply because it is possible for an intelligent transport system to do so; there must be a clearly defined and justified purpose for the collection. This also means that personal information should not be collected for use in an intelligent transport system if non-personal information – such as anonymous or aggregated data that cannot be associated with individuals – would serve the same purpose.

However, we also note that it may be difficult to de-identify or collect anonymous data relating to public transport usage in a manner that does not significantly reduce the value of the data. Longitudinal unit-record level data, such as records of journeys taken through public transport networks, usually reveal unique characteristics. This uniqueness can make it relatively easy to associate seemingly anonymous journeys with identified individuals, meaning that data could fall within the definition of personal information, and therefore be subject to the IPPs.⁴ Organisations using intelligent transport systems should carefully consider if data they are collecting constitutes personal information, especially when relying on the data being non-personal in order to make it widely available.

How personal information is collected

If an intelligent transport system must collect personal information, IPP 1.2 requires the collection to be done in a fair and not unreasonably intrusive way. It is likely that such a system would be able to collect personal information through a range of different methods with varying degrees of intrusiveness. For example, information about the occupancy of a train station could be non-invasively determined via gates or other sensors counting the number of people who enter and leave the station (without collecting any of the characteristics of those people). Conversely, it could also be determined through seemingly more intrusive methods such as public transport applications on smartphones that monitor the locations of public transport users. An organisation developing or using an intelligent transport system should give consideration to the intrusiveness of collection methods when deciding what methods to use.

Similarly, consideration should be given to whether an intelligent transport system's collection of personal information is fair. Requiring the collection of personal information as an unavoidable condition of using public transport may be unfair to individuals who do not want their information collected but have no other means of transportation. A fair intelligent transport system would ideally provide an option for individuals to use public transport without having their personal information collected.

Likewise, if consent were to be used as the legal basis for an organisation to use or disclose personal information collected as part of an intelligent transport system, an individual's ability to use public transport should not be conditional on them providing consent. Valid consent requires, among other things, a voluntary choice.⁵ If an individual must choose between consenting to the use or disclosure of their personal information, or not using public transport, then that individual would likely not have a meaningful choice and would therefore be unable to provide valid consent. For this reason, an organisation using an intelligent transport system should not rely on consent to use or disclose personal information if refusing to consent requires or results in individuals not using public transport.

³ The IPPs are contained in Schedule 1 of the PDP Act.

⁴ OVIC has explored this issue in greater detail in its report *Disclosure of myki travel information: Investigation under section 8C(2)(e) of the Privacy and Data Protection Act 2014 (Vic)*, 15 August 2019, available here: <https://ovic.vic.gov.au/wp-content/uploads/2019/08/Report-of-investigation-disclosure-of-myki-travel-information.pdf>.

⁵ For more information on the elements of consent, see OVIC's *Guidelines to the Information Privacy Principles*, available here: <https://ovic.vic.gov.au/privacy/guidelines-to-the-information-privacy-principles/>.

In addition, IPP 1.3 requires organisations collecting personal information to take reasonable steps to ensure individuals are aware of a range of matters concerning the collection.⁶ However, ensuring individuals are properly informed may be difficult in the context of a public transport system. For example, individuals may not see or have time to read notices of collection posted at train station entrances or at the door of a bus or tram. An organisation collecting personal information for an intelligent transport system should carefully consider how best to notify individuals of the collection, as the most appropriate method is likely to depend on the context of the collection. This will be crucial to promoting transparency and garnering the public's trust.

Community expectations

Intelligent transport systems have the potential to collect sizeable bodies of rich information about Victorians. Such data would likely be useful for a range of purposes by different organisations. However, some uses may not align with community expectations of what the purpose of an intelligent transport system, and the data it collects, should be. For example, the community may expect public transport user data to be used and disclosed for fines management and optimising scheduling, but would almost certainly not expect the same data to be used and disclosed for targeted advertising purposes.

Community expectations around what such a system should be or achieve would likely fall into a diverse range of views. To ensure the expectations of the community are met, any development or use of an intelligent transport system should involve broad community consultation. This may also serve to promote public acceptance of such systems.

It is possible to introduce intelligent transport systems that improve the performance of transport networks while also upholding Victorians' right to privacy. A well-established approach that could be used to accomplish this is privacy by design,⁷ which aims to embed privacy into the design and implementation of programs such as intelligent transport systems. OVIC also recommends that any development of such a system involve a privacy impact assessment early on,⁸ which will assist in identifying, understanding and mitigating potential privacy risks before the system commences operation. OVIC would also be happy to consult on the proposed development or use of any such systems used in Victoria.

Thank you for the opportunity to provide a submission on the terms of reference of the Committee's Inquiry into Expanding Melbourne's Free Tram Zone. I have no objection to this letter being published by the Committee without further reference to me. I also propose to publish a copy of this letter on the OVIC website but would be happy to adjust the timing of this to allow the Committee to collate and publish submissions proactively.

If you have any questions regarding this submission, please contact me or my colleague Asher Gibson, Policy Officer at asher.gibson@ovic.vic.gov.au.

Yours sincerely



Sven Bluemmel
Information Commissioner

⁶ For more information on notifying individuals under IPP 1.3, see OVIC's *Collection Notices information sheet*, available at: <https://ovic.vic.gov.au/resource/collection-notice/>.

⁷ For more information on privacy by design, see OVIC's predecessor – the Commissioner for Privacy and Data Protection's background paper *Privacy by Design: Effective Privacy Management in the Victorian public sector*, available here: <https://ovic.vic.gov.au/resource/privacy-by-design-effective-privacy-management-in-the-victorian-public-sector/>.

⁸ OVIC has a privacy impact assessment template and guide available here: <https://ovic.vic.gov.au/privacy/for-agencies/privacy-impact-assessments/>.

