



April 28, 2021

Delivered online

Dear Mayor Tory and Members of the Executive Committee,

I am the Director of the Privacy, Technology and Surveillance Program at the Canadian Civil Liberties Association, and I am writing to express my concern regarding the PayIt Project, coming before Executive Committee tomorrow (agenda item EX23.2).

Providing convenience to residents (a term I prefer to “customer” as used in the recommendation before your Committee) is a reasonable goal, but too often in our modern times, convenience comes at a privacy cost. The concerns regarding such costs increase in a project which is, at its core, essentially one based on embedding a single vendor’s proprietary offerings into systems requiring public accountability and transparency. Particularly after Toronto’s failed Sidewalk Labs experiment, where vendor capture of technological infrastructure and the accompanying policies, and a shifting of public accountabilities for privacy policies to a private sector actor were two (of many) concerns residents rallied around, this deal deserves a sober second look by this Committee.

There are two claims in the recommendation before you that I would ask you to consider carefully. The first is the statement that the PayIt “relationship moves the City away from traditional approaches to technology builds where the City bears the risk, and shifts it to a cloud-based Software-as-a-Service (“SaaS”) model where the supplier bears the risk of investment, as well as accountability for sustainment, ongoing innovation, and adherence to Canadian data requirements and the City’s privacy and security standards.” With respect, the accountability for adherence to Canadian law and City standards ultimately vests with the City, and with members of Council as our democratically accountable representatives. This is not a risk to be shuffled to a vendor, it is a responsibility to be acknowledged and respected by the City. Diminished public accountability is not a feature, it’s a bug in this project.

This is particularly important from a privacy perspective in light of the second claim, which is that the PayIt deal will “decrease the volume and frequency of credit card numbers that will be in [the City’s] possession.” But let’s be clear that the volume of such data will increase, rather than decrease if this service is adopted; it is simply that the vendor, not the City, will be holding residents’ financial information. This pushing of resident information to a third party vendor, characterized only in terms of its potential savings to the City for compliance and processing, needs to also be looked at from the privacy and security perspective of residents. It is insufficient to simply note that “PayIt is required to adhere to the privacy, information, and data security policies set by the City.” I respectfully encourage your Committee to interrogate how such requirements will be realistically, consistently, transparently, and accountably enforced, and to

acquire and publicly discuss the Privacy Impact Assessment that has presumably been conducted as part of the assessment of such a significant technology service.

It was not so long ago that the City engaged in public consultations regarding a Digital Infrastructure Plan for Toronto. Another important perspective for this Committee to engage with is an assessment of how the PayIt project align with that plan, and in particular, with the Plan's principles of equity, privacy, security, democracy and transparency?

Questions should include: has PayIt's offering been looked at in relation to the principles of equity and inclusion, and democracy and transparency? The former, using the language of the draft principles, requires digital infrastructures to be adaptive and responsive to the needs of all Torontonians, including equity seeking groups, Indigenous people, those with accessibility needs and vulnerable populations. How are the needs of these groups met by this proposal and what risks does it raise? The latter requires decisions about digital infrastructure to be made in ways that are ethical, accountable, and subject to oversight. How is accountability built into a deal whose primary advantage as touted in the recommendations seems to be divesting the City of responsibility for legal compliance, data handling, and infrastructure development, all to be the purview of the vendor? This question becomes more pointed in light of the recommendation that Council delegate away their authority to establish "policies and guidelines regarding payment methods for fees and charges to be accepted by the City," thus taking these decisions out of the democratically accountable hands of Councilors.

I look forward to seeing a full, granular, and principled debate of this proposal at your Committee, in light of the significant privacy, equity, and accountability issues that the PayIt project engages.

Sincerely,



Brenda McPhail, Ph.D.
Director, Privacy Technology and Surveillance
Canadian Civil Liberties Association