



September 15, 2020

Chris Murray
City Manager
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Dear Mr. Murray,

On September 14, 2020, the General Government and Licensing Committee of Toronto City Council passed a motion directing you to investigate the feasibility of installing the COVID Alert app on all City of Toronto managed mobile devices (GL15.24). The Canadian Civil Liberties Association is writing to object to any action by the City of Toronto that would turn the voluntary exposure notification app into a *de facto* mandatory one for city employees.

When CCLA wrote to the Prime Minister and all First Ministers across Canada in April 2020, we stressed that technological interventions intended to support public health during the pandemic must be voluntary and accord with constitutional principles of due process, liberty, equality and privacy. When Privacy Commissioners from across Canada issued their joint statement on contact tracing in May, the first principle they list, under the heading “Consent and trust” is that the use of apps must be voluntary. When the government of Canada announced the availability of the app, Prime Minister Trudeau stressed that the app would be “completely voluntary.” When the federal Privacy Commissioner’s office issued their review of the COVID Alert app they explicitly note that one factor that contributed to their positive assessment of the app is that “the FPT statement includes the principle that in order for the application to be trusted, the app’s use must be voluntary and therefore based on meaningful consent.”¹ And here in Ontario, our own Information and Privacy Commissioner’s Office stressed the necessity of “strong public messages encouraging businesses and employers to respect the voluntary nature of COVID Alert by not compelling individuals to use the app or to disclose information about the use of the app.”²

¹ Privacy Review of the COVID Alert exposure notification application, Office of the Privacy Commissioner of Canada, available at https://priv.gc.ca/en/privacy-topics/health-genetic-and-other-body-information/health-emergencies/rev_covid-app/.

² Information and Privacy Commissioner of Ontario, COVID Alert and Your Privacy, available <https://www.ipc.on.ca/covid-alert-and-your-privacy/>.



There is a clear consensus, as reflected in the statements above and many more by privacy and policy experts across Canada, that the voluntary nature of the app is a necessary part of the privacy safeguards around it. Indeed, while the COVID Alert app has been well designed to be privacy protective, it tentatively passed the necessity and proportionality analysis applied by the Privacy Commissioner of Canada in part due to its voluntary nature and the federal government's commitment to an upcoming efficacy audit. The results of such an analysis would quite likely change if the app were to have been mandatory from the outset, and of course, it would be incumbent on the City to conduct such an analysis and demonstrate the necessity of app use prior to mandating installation on all city-managed devices, taking into account the lack of meaningful consent in such a situation.

Perhaps the greatest risk in mandating the use of the app comes from the erosion of public trust that such a move would create. Canadians, Ontarians, and Torontonians care about their privacy, and a willingness to download and use the app is widely acknowledged to be contingent on public trust that the privacy protections in place are meaningful, consistent, and effective. Great care has been taken by COVID Alert's creators to promote such trust. Giving people a genuine choice as to whether this tool is one they wish to use is a fundamental component of that effort; mandating the app's use on city-managed devices may slightly increase its user base, but at the cost of public trust across the population at large.

There is data to suggest that the app's utility might be enhanced by greater public uptake. But encouraging that uptake is the appropriate course to take, not forcing it. If the City of Toronto wishes to support the use of the application while upholding the spirit in which it was created and launched, it could consider engaging in an educational campaign for employees and ensure that those staff members wishing to download the COVID Alert app on city-managed devices have the access permissions or IT support they need to do so. But under no circumstances should the COVID Alert app be made mandatory.

Should you wish to discuss our objections further I am at your disposal.

Yours truly,

Brenda McPhail, Ph.D.

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cc. Mayor John Tory (Mayor_Tory@toronto.ca)

Deputy Mayor Stephen Holyday (Councillor_Holyday@toronto.ca)