



**METROPOLITAN
TRANSPORTATION
COMMISSION**

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Memorandum

TO: Operations Committee

DATE: April 5, 2013

FR: Executive Director

W.I.: 310-2700

RE: Proposed Changes to Clipper® Privacy Policy

This item is to request approval to amend the Clipper® Privacy Policy set out in Attachment A of MTC Resolution No. 4040 (adopted in November 2011 and amended in June, July, and October 2012) to shorten the period for which personally identifiable information (PII) is retained from seven years to four years and six months. The proposed changes, in revision text, can be found in Attachment A. This action would strengthen our commitment to actively protecting the privacy of Clipper® customers' PII and would align with the FasTrak® data retention period.

Background

At the January Operations Committee meeting, staff committed to exploring the cost and technical implications of: (a) reducing the Clipper® and FasTrak® program PII data retention policies to three years and (b) exploring the removal of the Clipper® card serial numbers from retained data used for program planning and analysis.

On January 23, 2013, AB 179 (Bocanegra) was introduced to require electronic toll and fare payment systems including Clipper® and FasTrak® programs to:

- Delete account information considered PII¹ no later than six months after the date an account is closed or terminated, and
- Require deletion after six months of PII not needed "to perform account functions such as billing, account settlement, or enforcement activities."

The bill also would extend to Clipper® the statutory requirement applicable to FasTrak® limiting the disclosure of PII in response to legal processes served on MTC, to search warrants issued by law enforcement agencies. Accordingly, Clipper® customer account information would not be disclosable pursuant to civil subpoenas.

¹ PII is defined in AB 179 as "any information that identifies or describes a person including, but not limited to, travel pattern data, address, telephone number, e-mail address, license plate number, photograph, bank account information, or credit card number."

Current Privacy Policies & Proposed Changes

Existing Clipper[®] and FasTrak[®] Privacy Policies strictly limit the sharing of PII to (1) partner agencies participating in FasTrak[®] and transit agencies participating in Clipper[®], (2) contractors managing the programs, (3) the California Department of Justice or Better Business Bureau when necessary to respond to consumer complaints under the Clipper[®] Program, and (4) to others when necessary to comply with laws and legal processes. Both programs have options for using Clipper[®] cards or FasTrak[®] toll tags anonymously.

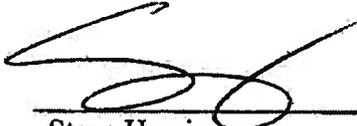
In accordance with existing privacy policies, Clipper[®] data is retained by the contractor for seven years and FasTrak[®] data is retained for four years and six months. The six-month timeframe proposed in AB 179 is unworkable for a number of reasons. It would undermine our ability to respond to customer inquiries or disputes that arise outside a six-month timeframe — something that has occurred on a number of occasions. It would also limit our ability, and the ability of our vendors and agency partners, to defend against claims and lawsuits. Most relevant statutes of limitation range from one year to four years.

Clipper[®] and FasTrak[®] staff have concluded that operationally, a minimum data retention timeframe for these programs of three years would be feasible. This provides a balance between the competing needs to respond to users' account-management needs and queries, ensure accurate collection of fares and tolls, meet accepted financial record keeping requirements, and protect customers' privacy. However, given that the statutes of limitation can be as long as four years for most causes of action, we believe 4.5 years is the best option for a data retention period until the law can be changed to reduce the statute of limitations for claims relating to toll systems and transit fare card systems to three years.

Shortening the data retention period could limit the ability of MTC and the region's transit operators to use travel pattern data to improve our understanding of how the region's transit system is being used, as well as how to improve it. In response to this concern, staff is researching options to remove PII from data older than 4.5 years so that remaining data can be retained indefinitely to support analysis.

Recommendation

Staff recommends that the Committee refer to the Commission a request to amend MTC Resolution No. 4040 to reduce the Clipper[®] data retention period to four years and six months, similar to the FasTrak[®] program. In addition, staff is recommending that the Legislation Committee take an "oppose unless amended" position on AB 179 at its April 12 meeting. Details regarding specific requests for amended language are in Attachment B.



Steve Heminger

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