

Information and Privacy Commissioner,
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

ORDER MO-4762

Appeal MA23-00389

Toronto Transit Commission

February 10, 2026

Summary: A grassroots organization sought access under the *Municipal Freedom of Information and Protection of Privacy Act* to records related to the Wheel-Trans program. The TTC granted partial access to the responsive records but withheld the eligibility key and the related instructions. It argued that the withheld information constitutes advice or recommendations and should be withheld under section 7(1). It also claimed that disclosure of the withheld information would result in harm to its financial interests, engaging section 11(d). The grassroots organization raised the possible application of the public interest override in section 16 to argue that the withheld information should be disclosed.

In this order, the adjudicator upholds the TTC's decision that the withheld information is exempt under section 11(d) and finds that the public interest override does not apply to it.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 11(d) and 16.

OVERVIEW:

[1] This order considers whether records about how Wheel-Trans determines eligibility for its services should be disclosed under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*).

[2] Wheel-Trans is a specialized transportation service operated by the Toronto Transit Commission (the TTC). It provides pre-arranged door-to-door service and service to and

from conventional transit¹ for registered customers. Wheel-Trans offers three categories of eligibility: unconditional, conditional and temporary.² To qualify for Wheel-Trans, an individual must complete an eligibility application. In addition to Wheel-Trans, the TTC operates a Family of Services program (FOS), which allows customers to combine Wheel-Trans with accessible conventional transit.

[3] The appellant, a grassroots organization, submitted a three-part request under the *Act* to the TTC for records related to the Wheel-Trans program. The TTC granted full access to the records responsive to parts 2 and 3 of the request and partial access to the eligibility records responsive to part 1 of the request. The TTC withheld the eligibility key to the Wheel-Trans eligibility application and the instructions for the eligibility key under the discretionary exemptions in sections 7(1) (advice or recommendations) and 11(d)³ (economic and other interests) of the *Act*.

[4] The appellant was dissatisfied with the TTC's decision and appealed it to the Information and Privacy Commissioner of Ontario (the IPC). As mediation did not resolve the appeal, it moved to adjudication, where an IPC adjudicator decided to conduct an inquiry under the *Act*. The adjudicator received the parties' representations and shared them in accordance with the IPC's *Code of Procedure* and *Practice Direction Number 7*.

[5] During the inquiry, the appellant argued that the public interest override in section 16 of the *Act* applied, and the TTC was provided with an opportunity to address the appellant's argument. The appeal was then transferred to me to continue the inquiry. After reviewing the appeal file and the parties' complete representations,⁴ I decided that I did not need further representations from the parties to make my decision.

[6] For the reasons that follow, I find that the eligibility key and the related instructions are exempt from disclosure under section 11(d) because their disclosure could reasonably be expected to be injurious to the TTC's financial interests, and I find that the public interest override does not apply.

[7] Given my finding that the withheld information is exempt under section 11(d), I do not need to address the TTC's section 7(1) claim.

RECORDS:

[8] There are three records at issue: records 1, 3 and 6. In all three records, the TTC

¹ Conventional transit is fixed route service on TTC buses, streetcars and subways.

² An individual qualifies for unconditional eligibility if their disability prevents them from using conventional transit. An individual qualifies for conditional eligibility if environmental and physical barriers limit their ability to consistently use conventional transit. Such individuals qualify for specialized transportation services under specific conditions. An individual qualifies for temporary eligibility where their disability prevents them from using conventional transit for a period of time.

³ The TTC also claimed section 11(c) in its decision but later withdrew that claim during the inquiry.

⁴ Including documents attached to or hyperlinked in the parties' representations.

withholds the eligibility key to the Wheel-Trans eligibility application. In record 3, it also withholds the instructions for the key.

ISSUES:

- A. Does the discretionary exemption in section 11(d) for economic and other interests of the institution apply to the withheld information?
- B. Did the TTC exercise its discretion under section 11(d)?
- C. Is there a compelling public interest in disclosure of the withheld information that clearly outweighs the purpose of the section 11(d) exemption?

DISCUSSION:

Issue A: Does the discretionary exemption in section 11(d) for economic and other interests of the institution apply to the withheld information?

[9] The TTC claims that the eligibility key and the related instructions are exempt under section 11(d). The purpose of section 11 is to protect certain economic and other interests of institutions. The section 11(d) exemption states:

A head may refuse to disclose a record that contains,

(d) information whose disclosure could reasonably be expected to be injurious to the financial interests of an institution[.]

[10] In order to establish that disclosure “could reasonably be expected to” cause the harm contemplated by section 11(d), the TTC must provide detailed evidence about the risk of harm. The TTC must show that the risk of harm is real and not just a possibility.⁵ However, it does not have to prove that disclosure will, in fact, result in harm. How much and what kind of evidence is needed to establish the harm depends on the context of the request and the seriousness of the consequences of disclosing the information.⁶

The parties’ representations

[11] The TTC submits that disclosure of the eligibility key and the related instructions could reasonably be expected to compromise the integrity of the Wheel-Trans application process resulting in significant financial impact on Wheel-Trans. The TTC says that it has a responsibility to provide accessible service to those who require it, as prescribed by

⁵ *Merck Frosst Canada Ltd. v. Canada (Health)*, [2012] 1 S.C.R. 23.

⁶ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4; *Accenture Inc. v. Ontario (Information and Privacy Commissioner)*, 2016 ONSC 1616.

relevant legislation, and to taxpayers to ensure that taxpayer funds are spent in a responsible manner with the goal of maintaining a sustainable transportation system.

[12] The TTC says that Wheel-Trans is in high demand, and virtually all applicants are found to qualify for one of the eligibility categories. The TTC argues that if the key and the related instructions, which it says are not shared outside the TTC, are disclosed, applicants and their health care providers could use the information to determine what answers need to be provided to qualify for the unconditional eligibility category and then provide those answers in the Wheel-Trans eligibility application. The TTC says that Wheel-Trans trips are expensive and Wheel-Trans fares cover only a very small portion of the program's budget, with the majority of the budget being covered by municipal, provincial and federal funding. The TTC explains that the budget is designed based on expectations about the program growth and expected revenues. It argues that an unexpected increase in Wheel-Trans customers will lead to significant costs, potentially resulting in cuts to services provided to conditional and temporary customers and compromising the financial stability of the program. Further, the TTC argues that due to the significant amount of public money used to fund Wheel-Trans, there is heavy scrutiny on how the funds are spent.

[13] The TTC also says that even if a health care provider responds to questions in the Wheel-Trans eligibility application with no knowledge of the eligibility criteria, inconsistencies between answers of an applicant and their health care provider will lead to more functional assessments and appeals, which are costly.

[14] The appellant disputes the TTC's assertion that disclosure of the eligibility key and the related instructions could reasonably be expected to compromise the integrity of the application process. First, the appellant argues that the application process has several safeguards that would prevent the abuse. The appellant points to the fact that the application process requires supporting documentation from a regulated health care provider who must confirm that the information they provide is current and accurate. The appellant also says that TTC employees reviewing Wheel-Trans eligibility applications are tasked with determining whether an applicant and their health care provider's responses align, and the TTC may choose to administer a functional assessment test to assess an applicant's eligibility. Second, the appellant argues that Wheel-Trans is not the appealing program that the TTC describes it to be because Wheel-Trans trips are often not available on short notice and are long.

[15] The appellant also disputes the TTC's assertion that an increase in customers could reasonably be expected to have financial impact on the TTC. The appellant submits that all public transit systems, not only accessible systems, require public funding. The appellant further submits that the TTC is already seeking to cut spending on Wheel-Trans by aiming to reduce the number and average trip length of Wheel-Trans trips through FOS. The appellant relies on a number of TTC documents (either public or obtained through an access request) to assert that the TTC has adopted "an internal diversion target of 50%." The appellant says that the TTC seeks to transition up to 50% of

unconditional customers to conditional customers and make FOS, whenever possible, mandatory for the conditional eligibility category.⁷

[16] In response to the appellant's statement that all public transit systems receive public subsidies, the TTC reiterates that Wheel-Trans trips are significantly more expensive than trips that use conventional transit or a combination of conventional and specialized transit (such as FOS). The TTC disagrees with the appellant's statement that Wheel-Trans trips are not available on short notice and are long. Regarding the appellant's assertion that the TTC is reducing the average length of Wheel-Trans trips, the TTC says that it is trying to make Wheel-Trans trips more efficient, and the reduction of the average length of Wheel-Trans trips would ensure more availability to unconditional customers who can only use Wheel-Trans. Regarding FOS, the TTC notes that the program applies only to conditional customers when their conditions are not present and that, at present, it is optional.

Analysis and findings

[17] The issue before me is whether the disclosure of the eligibility key and the related instructions could reasonably be expected to be injurious to the TTC's financial interests. I am satisfied by the TTC's evidence that the withheld information is exempt under section 11(d) because its disclosure could reasonably be expected to be injurious to the TTC's financial interests.

[18] Having reviewed the eligibility key and the related instructions, I confirm that they contain information about how to qualify for each Wheel-Trans eligibility category. The eligibility key and the instructions describe the factors that a TTC employee assesses when reviewing Wheel-Trans eligibility applications, considerations relevant to each factor, question numbers in the application relevant to each factor, a range of possible answers to each question, examples of circumstances that apply or do not apply to the answers, the assessment process, and eligibility outcomes flowing from each answer. I accept the TTC's submission that this information reveals what answers to give in a Wheel-Trans eligibility application to qualify for the unconditional eligibility category, the category that permits customers to use Wheel-Trans for all trips. I also accept that the disclosure of this eligibility information could reasonably be expected to result in the withheld information being used in Wheel-Trans eligibility applications with the purpose of qualifying for the unconditional eligibility category, undermining the integrity of the application process and resulting in an increase in unconditional customers.

[19] The appellant asserts that the Wheel-Trans application process contains safeguards that ensure the integrity of the process. While I accept the appellant's assertions that a TTC employee reviewing Wheel-Trans eligibility applications considers

⁷ The appellant also makes arguments about the inadequacy of the Wheel-Trans eligibility application, barriers Wheel-Trans applicants face to appeal an eligibility decision, and issues faced by Wheel-Trans customers regarding FOS and Wheel-Trans trips. However, these arguments do not address the section 11(d) exemption.

inconsistencies between the answers of an applicant and their health care provider, and that the TTC may refer an applicant for a functional assessment to further assess eligibility, I also accept the TTC's submission that functional assessments are costly. Therefore, I am satisfied that an increase in the number of functional assessments required would also be injurious to the TTC's financial interests.

[20] I accept the TTC's evidence that it designs Wheel-Trans budget around expectations of the program's growth and expected revenue. I also accept the TTC's evidence that the Wheel-Trans budget relies, for the most part, on government funding because Wheel-Trans fares cover only a small portion of the budget. Further, I accept the TTC's evidence that Wheel-Trans trips are costly. Given the Wheel-Trans budgetary restrictions and the high cost of Wheel-Trans trips, I am satisfied that an unexpected increase in customers in the unconditional eligibility category (resulting in an increase in Wheel-Trans trips) will lead to costs not anticipated by the Wheel-Trans budget.

[21] I understand the appellant to argue that any unexpected costs would be offset by the savings generated through FOS. In response, the TTC says that FOS only applies to conditional customers when their condition is not present.⁸ There is no evidence before me that supports the appellant's submission that the TTC intends to transition 50% of unconditional customers to conditional customers. While the TTC's documents on which the appellant relies support the appellant's assertion that the TTC has a FOS "diversion target of 50%," I accept the TTC's evidence that FOS is only used for customers in the conditional eligibility category when their condition is not present. In my view, even if the use of FOS results in some savings to the TTC, considering the cost of Wheel-Trans trips as compared to FOS trips, I am satisfied that the unexpected increase in unconditional customers (with the resulting unexpected increase in Wheel-Trans trips) could reasonably be expected to increase the cost of the Wheel-Trans program.

[22] The TTC argues that the unexpected costs would significantly impact the financial stability of the Wheel-Trans program. Given that the Wheel-Trans budget relies mostly on government funding, I am satisfied that the unexpected increase in costs could reasonably be expected to be unsustainable in the long-term.

[23] The TTC also argues that the unexpected increase in the Wheel-Trans costs could have significant negative impact on the service it provides to Wheel-Trans customers. It says that to accommodate the increase of unconditional customers, services to conditional and temporary customers might be cut. It is not clear to me from the TTC's evidence why Wheel-Trans trips to conditional or temporary customers, as opposed to all customers who require Wheel-Trans trips, would be cut. However, I am satisfied that disclosure of the eligibility key and the related instructions could reasonably be expected to injure the financial interests of the TTC because it would increase the number of individuals eligible for Wheel-Trans services – by disclosing exactly how to establish the

⁸ The TTC explains that, at present, customers in the conditional eligibility category can book Wheel-Trans trips even when their condition is not present.

unconditional eligibility whether individual applicants legitimately meet the eligibility criteria or not – thereby increasing the demand for Wheel-Trans services and the overall cost of the Wheel-Trans program. Accordingly, I find that the withheld information is exempt under section 11(d), subject to my consideration of the TTC’s exercise of discretion.

Issue B: Did the TTC properly exercise its discretion under section 11(d)?

[24] The section 11(d) exemption is discretionary, and the institution can decide to disclose information even if the information qualifies for exemption. An institution must exercise its discretion. On appeal, the IPC may determine whether the institution failed to do so. In addition, the IPC may find that the institution erred in exercising its discretion where, for example, it does so in bad faith or for an improper purpose; it takes into account irrelevant considerations; or it fails to take into account relevant considerations.

[25] The TTC asserts that it has been transparent about Wheel-Trans and has disclosed the majority of the responsive records to the appellant. It says it withheld only the eligibility key and the related instructions due to the concern over the integrity of the Wheel-Trans application process. The TTC says that it considered that the key and the related instructions contain the “marking rubric” that provides guidelines about the acceptance into Wheel-Trans. It says that it has not previously disclosed this information to preserve its financial interests. The TTC further says that it considered the fact that the Wheel-Trans application is similar to other government applications for services and that applicants for those services are not provided with answers to applications before submitting them.

[26] The appellant did not provide representations on the TTC’s exercise of discretion.

[27] Based on the TTC’s representations, I am satisfied that it properly exercised its discretion. I accept the TTC’s evidence that it considered the nature and significance of the information, its historic practices with respect to the withheld information, and the historic practices of other institutions with respect to similar information. All these are relevant considerations. I also accept that the TTC considered the purposes of the *Act*, the wording of the exemption, and the interests it seeks to protect, as evidenced by the fact that it disclosed most of the information to the appellant. There is no evidence before me that the TTC exercised its discretion in bad faith, for an improper purpose or taking into account irrelevant considerations. As a result, I uphold the TTC’s exercise of discretion under section 11(d).

Issue C: Is there a compelling public interest in disclosure of the withheld information that clearly outweighs the purpose of the section 11(d) exemption?

[28] The appellant submits that there is a compelling public interest in disclosure of the withheld information that clearly outweighs the purpose of the exemption in section

11(d). The “public interest override” in section 16 of the *Act* provides for the disclosure of records that would otherwise be exempt under another section of the *Act*. It states:

An exemption from disclosure of a record under sections 7, 9, 9.1, 10, 11, 13 and 14 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

[29] For section 16 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption.

[30] The *Act* does not state who bears the onus to show that section 16 applies. The IPC will review the records with a view to determining whether there could be a compelling public interest in disclosure that clearly outweighs the purpose of the exemption.⁹

Parties’ representations

[31] The appellant says that, based on accounts from Wheel-Trans users, it believes that individuals with certain disabilities are automatically assigned to the conditional eligibility category without the consideration of the unique nature of their disabilities, which is contrary to the purpose of the *Accessibility for Ontarians with Disabilities Act* (the *AODA*).¹⁰ The appellant says that those Wheel-Trans applicants who are wrongly assigned to the conditional eligibility category are unable to use FOS – a program that combines Wheel-Trans with accessible conventional transit and is offered when the condition in the conditional eligibility category is not present. The appellant questions whether FOS is fully accessible and describes concerns about various aspects of FOS trips.

[32] The appellant submits that it is in the public interest to know how the TTC determines eligibility for Wheel-Trans because the predominant users of Wheel-Trans – the elderly and individuals with disabilities – are protected groups under the *Human Rights Code*.¹¹ The appellant relies on the Divisional Court decision in *Hejka v The Regional Municipality of Durham*¹² to support its submission. It says that the application key for the eligibility application for Durham’s specialized transportation services assisted the applicant to demonstrate that the eligibility criteria failed to meet the purpose of the *AODA*.

[33] The TTC denies that anyone is automatically assigned to an eligibility category: it says that the same condition can result in different eligibilities based on the individuals’ needs. It notes that the majority of the applicants are accepted into the program and are

⁹ Order P-244.

¹⁰ 2005, S.O. 2005, c.11. The appellant says that the purpose of the *AODA* is to expand access to services.

¹¹ R.S.O. 1990, c. H.19.

¹² 2022 ONSC 2233 [*Hejka*].

offered to book Wheel-Trans trips based on their needs.

[34] In response to the appellant's submissions about FOS, the TTC argues that it is outside the IPC's jurisdiction to determine whether FOS complies with the *AODA*. It also responds to the appellant's concerns about FOS and says that it has been transparent about FOS by disclosing to the appellant all records it sought about Wheel-Trans and FOS, except for the eligibility key and the related instructions. To the extent that the appellant argues that FOS does not comply with the *AODA* or the *Human Rights Code*, I agree with the TTC that the IPC does not have jurisdiction to address these issues. However, to the extent that the appellant argues that the disclosure of the eligibility key and the related instructions would allow it to determine whether the eligibility determination process is compliant with the *AODA*, thereby ensuring that applicants receive the level of service that meets their needs, I have considered these submissions.

[35] The TTC submits that it withheld the eligibility key and the related instructions because it believes that their disclosure would significantly impact the integrity and the fairness of the Wheel-Trans eligibility application and appeal process. The TTC argues that the disclosure of the withheld information cannot be in the public interest if it opens the decision-making process to potential misuse and abuse. Regarding the Divisional Court decision in *Hejka*, the TTC disputes that the decision is relevant to the public interest override issue because it deals with a decision on an individual's eligibility for specialized services.

[36] The appellant also raises concerns about the requirement to re-register for Wheel-Trans. In my view, the re-registration is not relevant to the circumstances of this appeal, and I will not address it further.

Analysis and findings

[37] I find that the public interest override in section 16 does not apply to the eligibility key and the related instructions.

[38] In considering whether there is a "public interest" in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act's* central purpose of shedding light on the operations of government.¹³ Previous IPC orders have stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing or enlightening the citizenry about the activities of their government or its agencies, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.¹⁴

[39] Wheel-Trans is a specialized public transportation service for those who cannot use conventional transit due to disability. I accept that there is a public interest in

¹³ Orders P-984 and PO-2607.

¹⁴ Orders P-984 and PO-2556.

disclosing information about how Wheel-Trans eligibility decisions are made because doing so would inform or enlighten the public about whether the application process that affects vulnerable members of our society is consistent with the requirements of relevant legislation and would enable the public to make effective use of the means of expressing public opinion or to make political choices.

[40] I am not convinced, however, that the public interest in disclosing the eligibility key and the related instructions is “compelling,” within the meaning of section 16. The IPC has defined the word “compelling” as “rousing strong interest or attention.”¹⁵ As confirmed in prior IPC orders, any public interest in non-disclosure that may exist must also be considered since a public interest in the non-disclosure of the record may bring the public interest in disclosure below the threshold of “compelling.”¹⁶

[41] In this case, there is a public interest in non-disclosure, namely, preserving the integrity of a publicly funded transportation service meant to serve individuals with disabilities, and protecting it from misuse or abuse. I accept that the eligibility key and the instructions used to determine who is eligible for Wheel-Trans is the type of information that might rouse “strong interest and attention” among members of the public because it determines access to services for vulnerable members of our society.¹⁷ However, I have found in Issue A, above, that publicly disclosing the eligibility key and the related instructions could reasonably be expected to undermine the integrity of the application process, resulting in the unexpected increase in the cost of the program to the TTC. I concluded that this could reasonably be expected to be injurious to the TTC’s financial interests. Given my findings, there is a public interest in non-disclosure of the withheld information to ensure the Wheel-Trans eligibility applications accurately capture applicants’ needs and allow for the accurate eligibility determinations, thereby ensuring the financial sustainability of the program. In my view, the public interest in non-disclosure brings the public interest in disclosure below the threshold of “compelling.”

[42] In summary, I find that the public interest override in section 16 of the *Act* does not apply to the withheld information.

ORDER:

I uphold the TTC’s decision to deny access to the eligibility key and the related instructions for the Wheel-Trans eligibility application.

Original Signed by: _____

February 10, 2026 _____

¹⁵ Order P-984.

¹⁶ *Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.) and Orders PO-2072-F, PO-2098-R and PO-3197.

¹⁷ The parties made representations on whether the Divisional Court decision in *Hejka* is relevant to the circumstances of this appeal. I have noted the parties’ arguments but, given my findings, I do not need to address them.

Anna Kalinichenko
Adjudicator