

Sidewalk Labs

Sidewalk Labs and the case for public sector data governance

By David Young



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(April 24, 2019, 9:27 AM EDT) -- The Google subsidiary, Sidewalk Labs, is proposing to create an “innovative urban district” on Toronto’s waterfront to be called Quayside. The goal is to overlay the “physical layer” of the urban environment (buildings, streets, vehicles) with a “digital layer” of *information* reflecting the dynamic activities and interactions within the physical layer.

Essential to the creation of this digital information layer is the collection of data, both public and private, reflecting these activities and interactions. The ultimate objective is to obtain a greater understanding of the nature of dynamic activities within the community, and thereby achieve insights and enhance planning of the urban environment — addressing energy efficiencies, economic efficiencies, quality of life and sustainability.

Sidewalk Labs’ proposal involves not only the utilization of significant “private space” data stores obtained through existing technologies such as connected devices, but also significant new data collection reflecting the dynamic interactions of people and things within the neighbourhood. This new data would to a great extent be collected from “public spaces,” not within the scope of private space data stores, and would serve to fill in many of the gaps within the existing “physical layer” of the neighbourhood with dynamic digital data. Furthermore, much of this new data collection would involve identifiable personal information.

How to characterize and treat the personally identifiable data collected in public spaces? Should this data be considered publicly available and therefore accessible to and usable by any person who wishes to collect it? Or is it personal information that should be governed by the full rigour of applicable privacy laws?

If the data is personal information, what privacy laws would, or should, apply? Answers to these questions inform not only determination of the entities that should be collecting and managing the data but also the oversight regime that should regulate these activities

Sidewalk Labs is proposing that it would collect the data, and in certain instances de-identify it. However, a significant amount of data would remain personally identifiable as collected, in the first instance at least, by Sidewalk Labs.

Any such collection by Sidewalk Labs also would require authorization of the governmental authorities having jurisdiction over the public spaces where collection would occur — the federal, provincial and municipal governments. They are interacting with Sidewalk Labs through Waterfront Toronto, a public sector entity governed by a tripartite board.

It is clear that Quayside will involve at least municipal jurisdiction (e.g. over streets, etc.) as well as land ownership by one or more public sector entities. Consequently, it is reasonable to assume that authority to collect data within Quayside's public spaces must be granted (or at least not prohibited) by some or all of the public sector entities involved. Rules regarding collection of personal data by public sector organizations are found in the public sector privacy laws such as the Ontario *Freedom of Information and Protection of Privacy Act* (FIPPA).

Does the Sidewalk Labs proposal mean that the data would be subject to public sector privacy laws as well as any application of the private sector privacy law, the *Personal Information Protection and Electronic Documents Act* (PIPEDA), even if collected by a private sector entity such as Sidewalk Labs?

Personal information collected in public spaces is only subject to public sector protection if it is collected by an "institution" designated under the public sector privacy laws. Waterfront Toronto currently is not designated as an institution. Furthermore, if the governments involved, including Waterfront Toronto, simply authorize that collection by a private sector entity such as Sidewalk Labs, there may be no public sector privacy oversight.

However, if the private sector entity collects the information *on behalf of* the public sector entity, the privacy law will apply. In such case the private sector law, PIPEDA, would have more limited application — essentially only with respect to any data independently collected by Sidewalk Labs for its own purposes.

Does it make sense from an accountability perspective to grant rights to a private entity such as Sidewalk Labs for what will be pervasive data collection in public spaces, without any public sector privacy oversight? Clearly, public sector entities are integral to authorizing this data collection. However, as currently proposed, they will not just be delegating the collection to Sidewalk Labs, they will be transferring usage rights to that data to Sidewalk.

Sidewalk Labs' current proposal is for this new data collection to be conducted by it, with a "Civic Data Trust" regime to provide rules guidance and to manage the data. However, this proposal does not recognize or provide for any public sector privacy oversight.

A logical step would be to designate either Waterfront Toronto or, if Sidewalk's proposal is adopted, the Data Trust, as an institution under FIPPA on whose behalf all personal information in public spaces would be collected and to provide statutory authority for such collection.

This approach would establish clear public sector oversight for the data collection and could articulate within the statutory authorization key principles of data governance that must be complied with, both by the public sector data collector(s) as well as private sector entities such as Sidewalk Labs.

This is part one of a two-part series. Next week: Sidewalk Labs — options for public sector data governance.

David Young is principal at David Young Law, a privacy and regulatory counsel practice in Toronto.

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