



Information and Privacy  
Commissioner/Ontario  
Commissaire à l'information  
et à la protection de la vie privée/Ontario

# **ORDER M-800**

**Appeal M\_9600050**

**City of Ottawa**

## **NATURE OF THE APPEAL:**

The City of Ottawa (the City) received a request from a local newspaper reporter under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The requester sought access to a list of all properties whose municipal taxes are in arrears, as well as the amounts owing, the term, the property owner, and any other information about arrears that would be recorded on title. The requester asked that the request remain open and updated until December 31, 1996.

The City advised the requester that no tax arrears had been registered on title, but identified one responsive record. The City denied access to this record based on the following exemptions contained in the Act:

- invasion of privacy - sections 14
- economic interests of the City - section 11(d)

The requester (now the appellant) appealed the City's decision, and also raised the possible application of the so-called "public interest override" (section 16).

This office sent a Notice of Inquiry to the appellant and the City. Representations were received from both parties.

## **THE RECORD:**

The record consists of three computer print-outs listing properties on which arrears are owed; one list for vacant land (15 pages), one for developed land reflecting arrears over \$5,000 (384 pages) and one for developed land reflecting arrears under \$5,000 (18 pages).

The City provided this office with 27 pages of print-outs which are representative samples of the three types of listings. With the agreement of the parties, my decisions with respect to these representative samples will apply to the record as a whole.

The computer print-outs contain several categories of information for each property referred to on the respective list. Not every listed property has information entered in each category. Two of the categories are notes on the particular account, and collection correspondence. These entries contain references to communications with the property owner about the reasons for the arrears and payment arrangements. The appellant has indicated that he is not interested in receiving the type of information contained in these entries.

Taking into account the wording of the appellant's original request and his subsequent clarification, I find that of the following categories of information contained in the print-outs only those in **bold** type are responsive to the request and at issue in this appeal.

- Property Assessment Roll Number
- Code numbers assigned to agents or mortgage companies
- **Registered owner of the property**
- **Property address**
- Date of the first memo on the account
- logon user
- Memo - notes on account
- **Balance - actual arrears as of Nov. 30, 1995**
- **CY - current year**
- **Prin/pen - Principal Penalty**
- **Figures for current year minus 1, minus 2 and prior to 1993**
- **Accounts receivable charges**
- Action Pending - collection correspondence

## **PRELIMINARY ISSUE**

In his representations, the appellant states that some of the information in the record was disclosed to members of council without any caution regarding confidentiality. According to the appellant, one member of council passed the information on to reporters. The appellant also refers to comments allegedly made by a city official that the publication of this information resulted in one property owner, a numbered company, paying over \$1 million in tax arrears. The appellant argues that the City is being inconsistent in providing access to members of council and denying him access to the same information.

In my view, the actions of the City are not necessarily inconsistent. The appellant made a request for access under Part 1 of the Act, and the City applied the various provisions of that Part in responding to the request. There is nothing to indicate that members of council made a request for this same information under Part 1, nor is that likely to have been the case.

To the extent that the record contains personal information, which I will discuss below, section 32 of the Act outlines a number of circumstances where disclosure is permitted outside the context of a request under Part 1. Section 32 falls under Part II of the Act and is not governed by the access procedures outlined in Part 1. In my view, any disclosure of personal information to members of council would most likely have been made under Part II, rather than Part 1, and would be subject to the various personal information management practices outlined in that Part of the Act.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

The record in this appeal is a series of computer print-outs which identify, by name, the owners of particular properties on which tax arrears are owing. On the face of the record, in some cases, the owner of the property is clearly an individual or individuals; in other instances the owner is a business, corporation or other organization.

“Personal information” is defined in section 2(1) of the Act, in part, as follows:

“personal information” means recorded information about an identifiable individual, including,

...

(d) the address, telephone number, fingerprints or blood type of the individual,

...

(h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

In Order 16, former Commissioner Sidney B. Linden canvassed the meaning of personal information as it relates to individuals and business entities. He stated that:

The use of the term "individual" in the Act makes it clear that the protection provided with respect to the privacy of personal information relates only to natural persons. Had the legislature intended "identifiable individual" to include a sole proprietorship, partnership, unincorporated associations or corporation, it could and would have used the appropriate language to make this clear. The types of information enumerated under subsection 2(1) of the Act as "personal information" when read in their entirety, lend further support to my conclusion that the term "personal information" relates only to natural persons.

I adopt this reasoning for the purposes of this appeal.

Where a listing indicates that the property is owned by an individual or individuals, I find that the names, property addresses and associated entries for these listings qualify as personal information for the purposes of section 2(1) of the Act. Unlike other circumstances where the owner of a property may not be responsible for activities involving a property, municipal property taxes are the responsibility of the property owner, and if there are arrears it is always the owner whose name would appear on any arrears listing.

Where a listing indicates that the owner of a property is a sole proprietorship, partnership, unincorporated associations or corporation and not a natural person, I find that the information contained in these listings does not qualify as personal information within the meaning of section 2(1) of the Act.

#### **EXCEPTIONS TO THE MANDATORY EXEMPTION IN SECTION 14(1)**

Once it has been determined that a record contains personal information, section 14(1) of the Act prohibits disclosure of this information to any person other than the individual to whom the information relates, except in certain circumstances listed under the section.

In its representations, the City addresses the circumstances found in sections 14(1)(c), (d) and (f).

In his appeal letter, the appellant states that the current arrears of municipal tax payments by corporations and/or individuals is a matter of public record. Although the appellant does not refer to a specific section of the Act, he appears to be raising the exception to the exemption found in section 14(1)(c).

Sections 14(1)(c), (d) and (f) read as follows:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

- (c) personal information collected and maintained specifically for the purpose of creating a record available to the general public;
- (d) under an Act of Ontario or Canada that expressly authorizes the disclosure;
- (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

With reference to sections 14(1)(c) and (d), the City states that neither the Municipal Tax Sales Act (the MTSA) nor the Municipal Act require municipalities to create a record available to the general public which would list all properties on which tax arrears are owing. The City points out that it is authorized to provide a statement of arrears to potential purchasers of specific properties, but that this statement is only available to parties who have an interest or potential interest in a particular property. The City also submits that because the MTSA includes a provision for making tax arrears information available to the public through a tax arrears certificate registered on title, there is no public interest in an earlier release of unofficial information.

Having reviewed the print-outs and the representations, in my view, sections 14(1)(c) and (d) do not apply in the circumstances of this appeal. I find that the print-outs themselves were not created to be made available to the general public, nor does any "Act of Ontario or Canada" expressly authorize the disclosure of lists such as the ones at issue in this appeal.

Therefore, the only exception to the mandatory personal information exemption which has potential application in the circumstances of this appeal is section 14(1)(f). In order for this section to apply, I must find that disclosure of the personal information would **not** constitute an unjustified invasion of personal privacy.

## **INVASION OF PRIVACY**

Sections 14(2) and (3) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. Where one of the presumptions found in section 14(3) applies to the personal information found in a record, the only way such a presumption against disclosure

can be overcome is where the personal information falls under section 14(4) or where a finding is made that section 16 of the Act applies to the personal information.

If none of the presumptions contained in section 14(3) apply, the City must consider the application of the factors listed in section 14(2) of the Act, as well as all other considerations that are relevant in the circumstances of the case.

The City submits that disclosure of the information is presumed to be an unjustified invasion of privacy pursuant to sections 14(3)(e) and (f) of the Act, which read:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

- (e) was obtained on a tax return or gathered for the purpose of collecting tax;
- (f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;

As far as section 14(3)(f) is concerned, the City states that the computer print-outs clearly provide information about individual property owners' finances, in that they indicate that the individual is in arrears and the amount of their financial obligations.

The appellant argues that the information is available for individual properties as a matter of public record, and should not be protected under the Act.

I agree with the City's position. The fact that the name and address of an individual appears on one of the lists indicates that the person owes money to the City for municipal property tax arrears. In my view, this constitutes a description of that individual's finances and identifies a liability, two terms specified in section 14(3)(f).

As far as the appellant's arguments that this information is a matter of public record are concerned, Commissioner Tom Wright considered a similar issue in Order 180, and I feel that some of his comments are relevant and applicable in the current appeal. In that order, Commissioner Wright quoted from the decision in United States Department of Justice, et al., v. Reporters' Committee for Freedom of the Press et al. 109 S.Ct. 1468(1989), where the Supreme Court of the United States considered the question of access to criminal identification records or "rap sheets" which contain descriptive information as well as history of arrest, charges, convictions and incarcerations. Much of the rap sheet information is a matter of public record. In that decision, Justice Stevens, speaking for the majority, made the following statements at page 1477:

.. [T]he issue here is whether the compilation of otherwise hard\_to\_obtain information alters the privacy interest implicated by disclosure of that information. Plainly there is a vast difference between the public records that might be found after a diligent search of courthouse files, county archives and

local police stations throughout the country and a computerized summary located in a single clearing house of information.

At page 1480, Justice Stevens referred to an earlier decision of the Supreme Court in Whalen v. Roe 97 S.Ct 869 at page 872 where the Court stated:

In sum, the fact that 'an event is not wholly private' does not mean that an individual has no interest in limiting disclosure or dissemination of the information.

I agree with the comments made by Justice Stevens. I am aware that the information about tax arrears owing on any particular property can be obtained upon request by members of the public, including the appellant. I also agree, as the appellant points out, that through diligence and investigation someone might be able to compile a list of properties on which tax arrears are owed. However, in my view, it does not necessarily follow that an easily retrievable computerized record of the names and addresses of all individuals with tax arrears owing should be disclosed.

Having considered the representations of both parties in this appeal, I find that the information contained in the listings for properties owned by individuals satisfies the requirements of a presumed unjustified invasion of privacy of the named individuals under section 14(3)(f) of the Act. I also find that the information which qualifies for exemption under section 14(3)(f) does not fall under section 14(4).

Before finalizing my discussion of section 14, I want to turn to the issue of severability. If it is possible to remove all personal identifiers from the listings which I have found to satisfy the requirements of section 14(3)(f), then these listings would no longer qualify as "personal information" and therefore no longer meet the requirements for exemption under section 14(1) (Order 43). In my view, this can be achieved in the circumstances of this appeal, by separating the names and addresses of individual property owners from the remaining information associated with these listings. Once the names and addresses are severed, the remaining information is no longer personally identifiable and does not qualify for exemption under section 14(1) of the Act.

## **FINANCIAL INTERESTS OF AN INSTITUTION**

I will now consider the application of section 11(d) to the information in the remaining parts of the record which do not qualify for exemption under section 14(1) of the Act. This information is the name and addresses of properties owned by a sole proprietorship, partnership, unincorporated associations or corporation, and the financial information of all property listings contained in the record.

Section 11(d) of the Act states:

A head may refuse to disclose a record that contains,

information whose disclosure could reasonably be expected to be injurious to the financial interests of an institution

To establish a valid exemption claim under section 11(d), the City must demonstrate a reasonable expectation of injury to the financial interests of the City.

The City states that the MTSA provides a process for municipalities to collect property tax arrears and, in the City's view, once this process is implemented, the bulk of arrears will be paid. The City believes that access to the requested information would jeopardize the financial arrangements made for payment of arrears by the various property owners.

The appellant, on the other hand, argues that it is in the public interest to disclose the information as it provides landowners in arrears with an extra incentive to pay their taxes in a timely manner.

I agree with the City's position that property tax information is properly characterized as a "financial interest", but that is not sufficient to bring this information within the scope of section 11(d). The City must also establish that disclosure of this information could reasonably be expected to be "injurious" to these interests, and I find that the City has failed to do so. In my view, the potential injuries identified by the City appear to focus on the impact of disclosure of individual re-payment arrangements, which I have determined are outside the scope of the appellant's request.

Therefore, I find these parts of the record do not qualify for exemption under section 11(d) of the Act.

I have also reviewed the record to determine if the mandatory exemption found in section 10 of the Act would apply to any parts of the record. This exemption relates to information provided to the City by third parties in confidence. Because the information contained in the record was in no way supplied to the City, I have concluded that section 10 is not applicable in the circumstances of this appeal.

## **PUBLIC INTEREST IN DISCLOSURE**

I will now consider the possible application section 16 of the Act to the names and addresses of individuals which I have found qualify for exemption under section 14(1).

Section 16 reads as follows:

An exemption from disclosure of a record under sections 7, 9, 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. (emphasis added)

There are two requirements contained in section 16 which must be satisfied in order to invoke the application of the so-called "public interest override": there must be a **compelling** public interest in disclosure; and this compelling public interest must **clearly** outweigh the **purpose** of the exemption.



The Act is silent as to who bears the burden of proof in respect of section 16. The burden of proof in law generally is that a person who asserts a position must establish it. However, where the application of section 16 to a record has been raised by an appellant, it is my view that the burden of proof cannot rest wholly on the appellant, where he or she has not had the benefit of reviewing the requested record before making submissions in support of his or her contention that section 16 applies. To find otherwise would be to impose an onus which could seldom, if ever, be met by an appellant. Accordingly, I have reviewed the records with a view to determining whether there is a compelling public interest in disclosure which clearly outweighs the purpose of the section 14 exemption.

In his representations, the appellant submits that disclosure of information concerning property tax arrears "is clearly in the broad public interest as it provides landowners in arrears with an extra incentive to pay their taxes in a timely manner." The appellant makes no specific representations as to why such a public interest, if it exists and is compelling, would clearly outweigh the purpose of section 14.

The City submits that the public interest is adequately addressed through the various processes for collecting tax arrears under the MTSA and the Municipal Act, and that "the public would have no gain in the release of this information which would outweigh the privacy protection."

Having reviewed the record and the representations, I am not convinced that disclosure of the names and addresses of individuals, which I have found to constitute a presumed unjustified invasion of privacy under the Act, is necessary in order to advance the public interest in having property owners pay their municipal taxes in a timely manner. I am also not satisfied that disclosure of this information would contribute in any meaningful way to the public's understanding of the activities of government, and would be contrary to one of the central purposes of the Act, that of protecting personal privacy.

In my view, the appellant has failed to establish a compelling public interest in disclosure of the names and addresses of individual property owners which would clearly outweigh the purpose of the mandatory personal information exemption, and I find that section 16 does not apply in the circumstances of this appeal.

### **CONTINUING ACCESS**

The appellant's request asked that the "request remain open and the answers be updated until December 31, 1996".

Section 24(3) of the provincial Freedom of Information and Protection of Privacy Act permits a requester to ask that a request have effect for a specified period of up to two years. No comparable provision exists in the municipal Act, and a requester is therefore required to submit a new request to cover any records created after the date of the original request.

However, it should be noted that records may be released by institutions without formal requests under the Act. This type of routine disclosure has been encouraged by this office as a way of improving customer satisfaction while at the same time reducing costs. I would encourage the

City to consider whether the appellant's ongoing interest in receiving information similar to the information I have ordered disclosed in this appeal might be handled outside the formal request processes contained in the Act.

**ORDER:**

1. I uphold the City's decision not to disclose the registered owners and property addresses for individually-owned properties which appear on the various print-outs.
2. I order the City to disclose the registered owners and property addresses of all non-individually-owned properties which appear on the various print-outs, including properties owned by sole proprietorships, partnerships, unincorporated associations or corporations.
3. I order the City to disclose the following categories of information contained on the various print-outs for all properties:
  - Balance - actual arrears as of Nov. 30, 1995
  - CY - current year
  - Prin/pen - Principal Penalty
  - Figures for current year minus 1, minus 2 and prior to 1993
  - Accounts receivable charges
4. I order the City to disclosure the parts of the print-outs referred to in Provisions 2 and 3 by **July 24, 1996**.
5. In order to verify compliance with this order, I reserve the right to require the City to provide me with a copy of the print-outs which are disclosed to the appellant pursuant to Provisions 2, 3, and 4 of this order.

Original signed by: \_\_\_\_\_ July 4, 1996  
Tom Mitchinson  
Assistant Commissioner