



**Information and Privacy  
Commissioner/Ontario**

**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

# **ORDER M-1089**

**Appeal M-9800059**

**Town of Oakville**



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## **BACKGROUND:**

In 1997, the Fair Municipal Finance Act (Nos.1 and 2) was passed, introducing changes to the way properties in Ontario are taxed. This legislation created the Ontario Fair Assessment System (OFAS), under which all properties are reassessed with a current value assessment. This new assessment is to be used by municipalities to determine municipal property taxes.

In January/February 1998, the Ministry of Finance (the Ministry) provided requesting municipalities with information on preliminary draft current value assessments on a Phase-in/Property Impact File tape (Phase-in Tape). This document could be obtained in various formats, including CD ROM.

In February, the Ministry also sent a Notice of Property Assessment to all property owners, giving them the current value assessment of their property. Property owners were also provided with a guide to the OFAS and information on what to do if they disagreed with the new assessment.

## **NATURE OF THE APPEAL:**

The Town of Oakville (the Town) requested and received a CD ROM version of the Phase-in Tape from the Ministry. The appellant submitted a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for a CD ROM copy of this record.

The Town denied access to the Phase-In Tape in its entirety, claiming the exemptions found in sections 9, 10, 11, 14 and 15 of the Act. The appellant appealed the Town's decision on March 2, 1998. The appellant also raised the possible application of section 16 of the Act, the so-called "public interest override."

The Town then issued a revised decision in which it denied access to the record, based on the following exemptions:

- received in confidence from Government of Ontario - section 9(1)(b)
- expected to be injurious to financial interests - section 11(d)
- expected to result in premature disclosure - section 11(g)
- presumed unjustified personal privacy - section 14(1)(f)

The Town informed the appellant that it was also relying on section 30(2) of the Act to deny access to the record.

A combined Confirmation of Appeal/Notice of Inquiry was sent to the Town and to the appellant. Because it might be affected by the release of the record, our office also notified the Ministry.

Representations were received from all three parties. In its representations, the Town withdrew the sections 11(d) and (g) exemption claims.

## **DISCUSSION:**

## RELATIONS WITH OTHER GOVERNMENTS

Section 9(1)(b) of the Act states:

A head shall refuse to disclose a record if the disclosure could reasonably be expected to reveal information the institution has received in confidence from,

the Government of Ontario or the government of a province or territory in  
Canada;

In order to deny access to a record under section 9(1)(b), the Town must demonstrate that disclosure of the record could reasonably be expected to reveal information which it received from one of the governments listed in the section, **and** that this information was received by the Town in confidence.

There is no dispute that the record was received by the Town from the Ministry.

As to whether the record was received in confidence, the request form for the Phase-in Tape sent by the Ministry to various municipalities includes the following statement:

THE PROPERTY ASSESSMENT DIVISION IS HEREBY AUTHORIZED TO DELIVER THE TAPE COPY AS REQUESTED ABOVE AND AT THE SAME TIME THE REQUESTER WILL CONTINUE TO ASSUME COMPLETE RESPONSIBILITY FOR THE SECURITY AND CONFIDENTIALITY OF THE TAPE AND ITS CONTENTS.

The Town states that the tape was ordered by telephone following receipt of the order form and, although the form itself was not used, the Town understood that the tape contained confidential information.

The Town further states that the record was provided by the Ministry pursuant to the assessment commissioner's obligation under section 53(3) of the Assessment Act, and that section 53(4) of that statute prohibits the use of information contained in the record for any other purposes. These two sections read as follows:

53(3) Subject to subsection (1), the assessment commissioner shall make available to all municipalities and school boards within the assessment region for which the assessment commissioner is appointed, information sufficient to meet their planning requirements.

(4) The information provided under subsection (3) shall not be used by the municipalities or school boards for any other purpose.

The Town indicates that following receipt of the appellant's request, it sought clarification from the Ministry, and received additional cautions regarding disclosure of the Phase-in Tape. The Town states that it has not received the consent of the Ministry to disclose the record.

The Ministry's representations support the Town's position. The Ministry states that the purpose of the Phase-in Tape is to assist municipalities in tax rate planning and in making various analyses of the impact of the preliminary value assessments. According to the Ministry, the current value assessment on the Phase-in Tape is the same as that sent individually to property owners to review and confirm the fairness of their assessment.

The Ministry confirms that the authority for disclosure of the record to the Town comes from section 53(3) of the Assessment Act, and that section 53(4) prohibits the use of the record for any purpose other than planning. In the Ministry's view, disclosure of the record to the appellant would not be for the Town's tax planning purposes, and therefore, not in compliance with section 53(3).

The Ministry also confirms that the Town requested the Phase-in Tape by telephone, and was aware of the restrictions on use of the record at the time of the request. In subsequent conversations between the Ministry and the Town about possible disclosure of the record, the Ministry states that the Town "was loathe to release it, knowing that the province would object, as it was received in confidence under those terms."

The appellant submits that "[t]he issue should not be whether or not the Town received the information in confidence but rather should the [Ministry] have required the use of the confidentiality clause in releasing the Phase-in Tape?" In the appellant's letter of appeal, he states that the Phase-in Tape is not the same as the "Interim Year End Tax File" which was provided in a similar fashion by the Ministry to municipalities in previous years, and should not be protected from subsequent disclosure because it does not contain sensitive data.

Having considered all the representations on this issue, I do not accept the appellant's position. I am satisfied that the disclosure of the Phase-in Tape would reveal information which the Town received from the Ministry in confidence, and these are the requirements of the section 9(1)(b) exemption claim.

Both the Ministry and the Town attest to the confidential manner in which the record was received by the Town, and this status is confirmed by the wording on the order form normally used to obtain the Phase-in Tape. In my view, the Ministry and the Town have established the confidential nature of the transaction, regardless of the fact that the order form was not used in this case. Therefore, I find that the requirements of section 9(1)(b) have been established, and that the Phase-in Tape qualifies for exemption under that section. Because the Ministry has not consented to disclosure of the record, section 9(2) of the Act has no application in the circumstances of this appeal.

Having found that the record qualifies for exemption under section 9(1)(b) of the Act, it is not necessary for me to consider the possible application of sections 14(1)(f) or 30(2).

## **PUBLIC INTEREST IN DISCLOSURE**

Section 16 provides that 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.”

Two requirements must be satisfied in order to invoke the application of section 16, 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. [Order 24]

The appellant states that the Phase-in Tape contains assessment data that will eventually be a matter of public record once the assessment roll for the Town is finalized. According to the appellant, “[p]art of the process of finalizing the data is that the preliminary data be scrutinized and adjusted to correct obvious errors.” Because of the nature of the activities and interests of the organization represented by the appellant, he states that “[g]iven this data, we would maximize this process.” For this reason, the appellant submits that disclosure of the record is of a compelling public interest outweighing “any objections suggested in sections 7, 9, 10, 11, 13 and 14 of the Act.”

The Town states:

Individuals have been provided with revised assessment information regarding their own properties in the form of a notice of assessment sent out by the Province under section 31 of the Assessment Act in February 1998. Individuals also have access to the tax roll for the Town of Oakville regarding previous assessments, and the Assessment and Tax Impact Study completed by the Town of Oakville. Denial of access to the record by the [appellant] does not affect their ability to effectively challenge their assessment personally or through an agent, either before or after the assessment roll is finalized. Granting access may result in uninvited solicitation of services.

While there may be a compelling reason to provide individuals with access to information regarding their own properties, there is less reason to provide access to information regarding the assets of other individuals. To the extent that there is an interest in allowing individuals to compare their assessments with those of their similar properties, that interest is satisfied by the provision of alternate information already available from the Town through the Assessment and Tax Impact Study. Given the amount of information already available, there remains no compelling reason to provide additional information in the form requested by the [appellant].

The Ministry submits that the public interest in accurate assessments and values is served by sending assessment notices to the owners by mail, and the eventual publishing of the assessment roll. In the Ministry’s view, there is no public interest in disclosing the value of other people’s property prematurely,

since it makes the names of potential complainants available “to tax agents, creditors and the curious who may hold the owner to an erroneous value unnecessarily.”

Having reviewed all the representations, it is my view, that the appellant has failed to establish the requirements of section 16. Although I accept that there is a public interest in providing property owners with details about the impact of the new current value assessment process, I find that this interest is recognized by the processes put in place by the Ministry and the Town, including the procedures for individual property owners to challenge their current value assessments and by the availability of the Town’s “Assessment and Tax Impact Study.” I also find that because of the nature of the activities of the organization he represents, the appellant’s interest in the disclosure of the Phase-in Tape may be best characterized as a private, rather than a public interest.

Accordingly, I find that section 16 does not apply in the circumstances of this appeal.

**ORDER:**

I uphold the Town’s decision and dismiss the appeal.

Original signed by: \_\_\_\_\_  
Ann Cavoukian, Ph.D.  
Commissioner

\_\_\_\_\_ March 27, 1998