



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-1627**

**Appeal MA-020156-1**

**Corporation of Municipality of Red Lake**



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## **NATURE OF THE APPEAL:**

The appellant submitted a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the Corporation of the Municipality of Red Lake (the Municipality) for access to:

...information relating to Municipal Tax Arrears and provide a complete list of all properties in Tax Arrears as of December 31, 2001.

As a Second List please provide the list of Properties which have been in Arrears for at least three years as of December 31, 2001, and the amount of Tax and Interest owing on each such property.

The Municipality issued a decision denying access to the requested record pursuant to sections 11 (economic and other interests), 14 (invasion of privacy) and 17(1.1) (frivolous and vexatious) of the *Act*. The appellant appealed the Municipality's decision.

During mediation, the Municipality withdrew its reliance on section 17(1.1) of the *Act* and this section, therefore, is no longer at issue. Further mediation could not be effected and the appeal was forwarded to adjudication.

I first decided to seek representations from the Municipality, and sent it a Notice of Inquiry setting out the facts and issues at adjudication. The Municipality submitted representations in response. Upon review of them, I decided to seek representations from the appellant, but only with respect to the issues relating to whether or not the records contain personal information and if so, whether their disclosure would constitute an unjustified invasion of personal privacy. I sent the appellant a copy of the Notice of Inquiry that was sent to the Municipality along with the complete representations of the Municipality. The appellant submitted representations in response.

## **RECORDS:**

The record at issue is a computer printout, 19 pages in length and is comprised of a listing, by roll number, of all properties in tax arrears for three or more years as of December 31, 2001.

The printout contains a number of categories of information: Jurisdiction, Roll, As of Date, 3+ Arrears, 3+ Interest, 2 Arrears, 2Arrears Interest, 1 Arrears, 1Arrears Interest, Current, Current Penalty.

For the purpose of assessing the issues in this inquiry, the Municipality provided another copy of this record to me listing the names of the property owners, as opposed to the roll numbers. There is a slight variation in the names of the categories although the information recorded in each category is the same. In addition, this copy contains two additional categories: Miscellaneous and Total.

## DISCUSSION:

### PERSONAL INFORMATION

Personal information is defined in section 2(1) of the *Act*, in part, as “recorded information about an identifiable individual”, and includes:

(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.

The appellant points out in its representations that it is only seeking information that is identified by Roll Number and submits that “the record as described contains no names or associated identifying personal information...”. Relying on Orders 80 and P-1538.rec (cited as R-980015), the appellant argues that: “the Association between a Name and a Tax Roll Number of a publicly available Municipal Tax Assessment Roll or on the Municipal Tax Arrears List does not constitute personal information”.

The Municipality submits that the record at issue contains the personal information of both individual and commercial property owners, apparently because “[the Municipality] is a small community and the release of this information, even if the list relates to property location only, would be identifiable to the individuals and commercial owners”.

The record at issue does not contain the names of any individual since the properties are identified by roll number only. Looking at the version of this record that the Municipality provided with its representations, which identifies the property by owner name, it is apparent that some of the properties on the list are owned by individuals, and some are owned by businesses.

Former Commission Sidney B. Linden first canvassed the meaning of “personal information” as it relates to individuals and business entities in Order 16. 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.

Orders 80 and R-980015 both contain additional discussions on the distinction between personal versus professional capacity. Neither of the appeals, which resulted in these orders, concerned municipal taxation and/or tax roll information. Accordingly, although they provide general guidance with respect to the issue, they do not support the appellant's conclusions that none of the information in the records can qualify as personal information.

In Order R-980015, however, Adjudicator Donald Hale refers to Order 13, in which former Commissioner Linden discussed the meaning of the words "about an identifiable individual" in the context of information about municipal properties:

That case raised the question of whether a Ministry of Revenue record containing the municipal locations of certain properties and their estimated market values would constitute the property owners' personal information when associated with the names of the property owners. Former Commissioner Linden found that it did not. The location of a property and its estimated market value was found to be information about the property, not information about an identifiable individual. If the name of an individual property owner were added to this information, it could not be said that the individual's name "appear[ed] with other personal information relating to the individual" or "would reveal other personal information about the individual" within the meaning of paragraph (h) of the personal information definition in section 2(1) of the *Act*.

Again, the record and therefore, the findings in this order (relating to the market value of property) are distinguishable from the record at issue in the current appeal (relating to arrears in municipal taxes). As Assistant Commissioner Mitchinson noted in Order M-800 (which also pertained to a list of properties whose municipal taxes were in arrears):

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.

However, consistent with previous orders that have made a distinction between information about an individual and information about a "business entity", he concluded:

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*.

I agree with these conclusions and adopt them for the purposes of this appeal.

Referring back to the appellant's submissions regarding the record at issue, he submits that:

The fact that any taxpayer can examine the tax rolls of the Municipality and can therefore cross-check backwards is irrelevant as the Municipality, in Responding to our request, has not released any names ... [emphasis in the original]

In Order P-230, former Commissioner Tom Wright commented on the approach to be taken in determining whether information qualifies as personal information within the meaning of section 2(1) of the *Act*:

I believe that provisions of the *Act* relating to protection of personal privacy should not be read in a restrictive manner. If there is a reasonable expectation that the individual can be identified from the information, then such information qualifies under subsection 2(1) as personal information.

In his representations, the appellant acknowledges that upon payment of the requisite fee, the Municipality will issue a Tax Certificate for an identified property containing, among other things, the name of the owner, the roll number of the property and all outstanding taxes.

It is not clear from either the appellant's or the Municipality's representations whether an interested party can obtain a Tax Certificate on the basis of the roll number alone, or whether the property address is required. However, information about individual property assessments can be obtained (for a fee) from the Municipal Property Assessment Corporation (MPAC) (on-line at [www.mpac.ca](http://www.mpac.ca)) or from a search at the municipal offices, using the assessment roll number as the identifier to begin the search.

Applying the reasoning in Order P-230 to the facts of this appeal, I am satisfied that knowledge of the tax roll number on the record at issue provides sufficient information to identify the owner of the property and the status of the owner's liability with respect to taxes. Therefore, the record, as described, contains the personal information of "individual" property owners only.

However, it is possible to sever these assessment roll numbers from the record. Once this information is severed, the remaining information is no longer personally identifiable and section 14 cannot apply to it.

The information in the record that refers to a sole proprietorship, partnership, unincorporated associations or corporation, including the assessment roll numbers for these properties does not qualify as personal information. Similarly, the mandatory provisions in section 14 cannot apply to these portions of the record.

## **INVASION OF PRIVACY**

I have found that only the Assessment Roll Numbers for individual property owners, when associated with the remaining information at issue, qualifies as "personal information". 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.

**Exceptions to the mandatory exemption in section 14(1)**

Sections 14(1)(c) and (f) provide:

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;
- (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

***Section 14(1)(c)***

The appellant states that the list of tax arrears is a matter of public record pursuant to section 14(1)(c). In support of this position, the appellant points out that outstanding taxes are part of the Municipality's "receivables". Since the Municipality's Annual Financial Statement is a public document, the appellant submits that the "supporting backup documentation" must also be public so that the public "can be assured that the Municipal Administration is acting in a fair and unbiased manner...".

In Order M-800, Assistant Commissioner Mitchinson addressed issues similar to those at issue in the current appeal, including the application of the exception in section 14(1)(c). In that case, the request was for "a list of all properties whose municipal taxes are in arrears, as well as the amounts owing, the term, the property owner ...". The appellant has not persuaded me that I should depart from the Assistant Commissioner's conclusions:

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.

Based on the reasoning in Order M-800, I find that the exception in section 14(1)(c) does not apply to the record at issue in this appeal.

***Section 14(1)(f)***

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.

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 Municipality 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 Municipality does not refer to section 14, but rather states:

Please be advised ...the Municipality also follows the current legislation, the Municipal Tax Sales Act, and through this Act any properties that have been in tax arrears for three years may have the process started for property available through tax sale ...

The Municipality received this request after the appellant’s property was in tax arrears for three years and the process noted above was started on his property. The Municipality is concerned that the appellant requested this information to ensure that the Municipality is handling all individuals/businesses in tax arrears in the same manner.

Throughout his representations, the appellant points out that this information can be obtained by way of a Tax Certificate upon payment of a fee. The appellant believes that, in refusing access under the *Act*, the Municipality is “deliberately ‘Throwing Up Roadblocks’ to access of information perhaps to enforce the collection of Certificate fees on a property by property basis.

As noted above, the appellant also alludes to the possible application of section 14(2)(a) (public scrutiny) in that he believes that disclosure of information about taxes owing permits the public to “be assured that the Municipal Administration is acting in a fair and unbiased manner without favouritism to their Friends, Political Supports or themselves”.

Finally, the appellant asserts that the Municipality has failed to satisfy its burden under the *Act* in that it has not specifically relied on any specific subsections of section 14.

I agree that the Municipality's representations on this issue are not helpful. However, section 14(1) is a mandatory exemption. I have, therefore, reviewed the record and circumstances independently, and have taken into consideration the discussion and findings in Order M-800.

Commenting on the appellant's argument in Order M-800, that this information "is a matter of public record", Assistant Commissioner Mitchinson stated:

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.

I concur.

Further, in order M-800, the Assistant Commissioner concluded that the names of individual property owners in arrears was exempt from disclosure:

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.

...

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).

Following mediation of the appeal that resulted in Order M-800, the Property Assessment Roll Number and some other information contained on the computer printout were removed from the scope of the appeal. Despite this, I find that the findings in that order are similarly applicable to the circumstances of the current appeal.

In particular, because the assessment roll number can be used to locate the property and identify the property owner, the inclusion of the number and the fact that money is owed to the Municipality for municipal property tax arrears constitutes a description of the property owner's finances and identifies a liability. Accordingly, I find that disclosure of the assessment roll



numbers for properties owned by individuals would constitute a presumed unjustified invasion of privacy under section 14(3)(f) of the *Act*.

The Divisional Court has stated that once a presumption against disclosure has been established, it cannot be rebutted by either one or a combination of the factors set out in section 14(2) [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767]. Because of my conclusion that section 14(3)(f) applies to the assessment roll numbers for properties owned by individuals, it is not necessary for me to consider the possible application of the factors raised under section 14(2).

I also find that the information which qualifies for exemption under section 14(3)(f) does not fall under section 14(4). Consequently, the assessment roll numbers for individual property owners is exempt under section 14(1) of the *Act*.

### **ECONOMIC AND OTHER INTERESTS**

In its representations, the Municipality states:

The appellant believes those tax arrears are public information under the Municipal Act. The Municipality advises that the appellant may request a tax certificate on any property to obtain this information. The appellant refused this request, possibly due to the cost. Please be advised that the Municipality concurs that this is public information, but the Municipality also follows the current legislation, the Municipal Tax Sales Act, and through this Act any properties that have been in tax arrears for three years may have the process started for property available through tax sale. Under the provisions of this Act, the Municipality has advertised properties that have been in tax arrears for three years and this is public information. The Municipality feels that the release of the requested information regarding tax arrears after one year would not only qualify as an invasion of privacy but may jeopardize the integrity of the Municipality by not following the current process for tax sales (release of information after one year, and not three).

The Municipality received this request after the appellant's property was in tax arrears for three years and the process noted above was started on his property. The Municipality is concerned that the appellant requested this information to ensure that the Municipality is handling all individuals/businesses in tax arrears in the same manner. I can assure you that the Municipality handles all individuals and businesses in the same manner, but any process commenced under the Municipal Tax Sales Act must be undertaken in the best financial interests of all taxpayers.

Please review the above information as it relates to Section 11...

Section 11 reads:

A head may refuse to disclose a record that contains,

- (a) trade secrets or financial, commercial, scientific or technical information that belongs to an institution and has monetary value or potential monetary value;
- (b) information obtained through research by an employee of an institution if the disclosure could reasonably be expected to deprive the employee of priority of publication;
- (c) information whose disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;
- (d) information whose disclosure could reasonably be expected to be injurious to the financial interests of an institution;
- (e) positions, plans, procedures, criteria or instructions to be applied to any negotiations carried on or to be carried on by or on behalf of an institution;
- (f) plans relating to the management of personnel or the administration of an institution that have not yet been put into operation or made public;
- (g) information including the proposed plans, policies or projects of an institution if the disclosure could reasonably be expected to result in premature disclosure of a pending policy decision or undue financial benefit or loss to a person;
- (h) questions that are to be used in an examination or test for an educational purpose;
- (i) submissions under the Municipal Boundary Negotiations Act, by a party municipality or other body before the matter to which the submissions relate is resolved under that Act.

Although requested in the Notice of Inquiry, the Municipality has not specified on which subsection of section 11 it relies. Nor has it addressed any of the tests that were set out in the Notice for each of the subsections.

Section 42 of the *Act* states that if a head refuses access to a record or a part of a record, the burden of proof that the record or the part falls within one of the specified exemptions in this *Act* lies upon the head.

I accept that property tax information can be characterized as “financial information” or as a “financial interest” (see: Order M-800). However, in my view, the Municipality has provided nothing of substance in its submissions regarding any of the harms envisioned by this section. Therefore, in the absence of meaningful representations on the possible application of the discretionary exemption in section 11, I find that the Municipality has failed to meet its onus under section 42. As a result, section 11 does not apply.

**ORDER:**

1. I uphold the Municipality’s decision to withhold the assessment roll numbers for properties that are owned by individuals.
2. I order the Municipality to disclose the remaining portions of the record by **April 15, 2003**.
3. In order to verify compliance with this order, I reserve the right to require the Municipality 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: \_\_\_\_\_  
Laurel Cropley  
Adjudicator

\_\_\_\_\_ March 25, 2003