



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-2421

Appeal MA08-13

Town of Whitchurch-Stouffville



Tribunal Services Department
2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

Services de tribunal administratif
2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel: 416-326-3333
1-800-387-0073
Fax/Téloc: 416-325-9188
TTY: 416-325-7539
<http://www.ipc.on.ca>

BACKGROUND:

This order addresses records relating to the municipal tax sales process. This process is set out in Part XI of the *Municipal Act, 2001*, which is entitled “Sale of Land for Tax Arrears”.

Under section 373(1) of the *Municipal Act, 2001*, a municipality may register a tax arrears certificate against title to land where realty taxes have not been paid for two years. Certain people who have an interest in the land must be notified of the registration of the tax arrears certificate (section 374(1)). The amount owing is called the “cancellation price”. If the cancellation price is paid within one year following the registration of the certificate, the certificate is cancelled (section 375(1)). However, if the cancellation price remains unpaid at the end of the one-year period following the date of the registration of the tax arrears certificate, the municipality may offer the land for sale by public auction or public tender (section 379(1)).

When a property is sold for non-payment of taxes pursuant to section 379(1), the proceeds of the sale that remain after the municipality has subtracted the cancellation price, are paid into the Superior Court of Justice together with a statement of facts. The statement of facts must outline whether the land was vested in the Crown at the time the tax certificate was registered, identify the date the payment is being made and include a notice that any person claiming entitlement to the proceeds of sale must apply to the Superior Court of Justice within one year of the payment into court (section 380(2)).

Under section 380(3), within 60 days after making a payment into court, the municipality shall send a copy of the statement to the Public Guardian and Trustee as well as to the people who were notified of the registration of the tax arrears certificate and of the public sale.

Any person claiming entitlement to any of the proceeds of the sale may apply within one year for payment out of court of the amount to which the person is entitled (section 380(4)). After one year has passed from the day the payment was made into court, the court determines all of the entitlements to receive payments out of the proceeds of the sale (section 380(5)).

If no one makes an application under section 380(4) within the one-year period (in other words, if no one claims entitlement to any of the proceeds of sale), the amount paid into court is deemed to be forfeited (section 380(6)). If the land to which the proceeds of sale relate was vested in the Crown at the time of the registration of the tax arrears certificate, because of an escheat or forfeiture under the *Business Corporations Act* or the *Corporations Act*, the amount paid into court forfeits to the Public Guardian and Trustee. In any other case, the amount paid into court forfeits to the municipality. Once the money has forfeited to either the Public Guardian and Trustee or the municipality, under section 380(7), the entity to which it has forfeited may apply to the Superior Court of Justice for payment out of court of the amount that was paid in. The Superior Court of Justice will then issue an order for the money to be paid out to either the Public Guardian and Trustee or the municipality.

NATURE OF THE APPEAL:

The Town of Whitchurch-Stouffville (the Town) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the Act) for access to information related

to the sale of properties for the non-payment of taxes and where the unclaimed payments were made to the Superior Court of Justice, the Public Guardian and Trustee or other authority. The request specifically stated:

Under the Freedom of Information Act please be so kind as to provide us with copies of documentation or information relating to unclaimed property and payments made to the Superior Court of Justice; the Public Guardian and Trustee or other authority, which contain the name of the property owner, the address of the property in question and the value of payment made for properties that were sold due to non payment of taxes and where such payments were made on or after January 1, 1970 up to January 1, 2000.

The requester submitted the identical request to the Township of King which resulted in Appeal Number MA08-50. I have disposed of the issues on appeal related to that request in Order MO-2422.

The Town denied access to the responsive records in accordance with section 15(a) (information published or available) of the *Act* on the basis that the information contained in the records is published or is currently available to the public. The Town advised that the information that was requested is available through the Superior Court of Justice or the Public Guardian and Trustee.

In the alternative, the Town denied access to the property owners' names pursuant to section 14(1) (personal privacy) as they qualify as "personal information" within the meaning of the definition of that term in section 2(1) of the *Act*.

The requester, now the appellant, appealed the Town's decision.

During mediation, an attempt was made to narrow the request. The Town advised that it is of the view that the request is too broad as it covers 30 years and does not identify specific documents. The appellant advised that he is looking for funds transferred to the Superior Court of Justice but given that he does not know what specific documents are involved, he can not be more precise. Accordingly, the request was not narrowed.

Also during mediation, the Town advised that because the responsive records are publically available through the Superior Court of Justice it had not completed a search for responsive records; therefore no records were sent to this office. Subsequently, at the request of the Mediator, the Town provided this office with copies of the records related to the municipal tax sale of two different properties to demonstrate the type of records that are under its custody and control.

As this appeal was not resolved in mediation it was transferred to the adjudication stage of the appeal process. I began my inquiry by sending a Notice of Inquiry, to the Town. The Town responded with representations. I then sent the same Notice of Inquiry to the appellant, along with a copy of the Town's representations, in their entirety. The appellant provided

representations in response. As the appellant's representations raised issues to which I believed the Town should be given an opportunity to reply, I sent a copy of the appellant's complete representations to the Town. The Town provided representations by way of reply.

RECORDS:

The information sought by the appellant relates to unclaimed property and payments made to the Superior Court of Justice, the Public Guardian and Trustee or other authority, for properties that were sold due to non-payment of taxes between January 1, 1970 and January 1, 2000. The information sought includes the name of the property owner, the address of the property in question, and the value of the payment made for the property that was sold.

The Town provided this office with two sample tax files related to two different properties; one where the tax sale was started but redeemed prior to completion and the other where the tax sale was finalized. The files include the following types of information:

- Assessment roll information, legal description and interested parties
- Notice of Application filed with the Superior Court of Justice
- Form 2 under the *Municipal Tax Sales Act* – “Notice of Registration of Tax Arrears Certificate”
- Form 5 under the *Municipal Tax Sales Act* – “Final Notice”
- Form 6 under the *Municipal Tax Sales Act* – “Statutory Declaration Regarding the Sending of Notice”
- Form 8 under the *Municipal Tax Sales Act* – “Tender to purchase”
- Form 10 under the *Municipal Tax Sales Act* – “Transfer/Deed of Land”
- Form 12 under the *Municipal Tax Sales Act* – “Payment into Court – Statement of Facts”
- Tax bill and invoice
- Application for the adjustment of realty taxes
- Assessment Review Board Decision
- Statement of Account

- Notice of Tax Arrears
- Letters and invoices between the Town and lawyers with respect to the tax sale and the above noted records.

DISCUSSION:

INFORMATION AVAILABLE TO THE PUBLIC

Section 15(a) states:

A head may refuse to disclose a record if,

the record or the information contained in the record has been published or is currently available to the public;

For this section to apply, the institution must establish that the record is available to the public generally, through a regularized system of access, such as a public library or a government publications centre [Orders P-327, P-1387].

To show that a “regularized system of access” exists, the institution must demonstrate that

- a system exists
- the record is available to everyone, and
- there is a pricing structure that is applied to all who wish to obtain the information

[Order P-1316]

Examples of the types of records and circumstances that have been found to qualify as a “regularized system of access” include

- unreported court decisions [Order P-159]
- statutes and regulations [Orders P-170, P-1387]
- property assessment rolls [Order P-1316]
- septic records [Order MO-1411]
- property sale data [Order PO-1655]
- police accident reconstruction records [Order MO-1573]

The exemption may apply despite the fact that the alternative source includes a fee system that is different from the fee structure under the *Act* [Orders P-159, PO-1655, MO-1411, MO-1573]. However, the cost of accessing a record outside the *Act* may be so prohibitive that it amounts to an effective denial of access, in which case the exemption would not apply [Order MO-1573].

Representations

The Town submits that the records that the appellant seeks “are available in the form of a ‘regularized system of access’ from the Superior Court of Justice of Ontario, located at 50 Eagle Street West, Newmarket.” The Town submits that, to the best of its knowledge, as advised by its solicitor, to access these records the appellant must take the following steps:

- Call 905-853-4809, extension 5 and describe the information requested (at a minimum, one party name is required for the search, namely the Town of Whitchurch-Stouffville). The telephone search is free of charge;
- The search is then conducted by Court staff using an automated database of court records which will result in Court file names and numbers applicable to the request once narrowed; and
- Applicable Court files may be accessed and photocopied (nominal fees apply).

The appellant submits:

The Town of Whitchurch-Stouffville alleges that the information sought is available to the public by means of distribution or “availability” at either or both the Superior Court of Justice and the OPGT [Office of the Public Guardian and Trustee]. However, the Town of Whitchurch-Stouffville provides no supporting evidence of their allegation.

In my communications with the Superior Court of Justice and the OPGT, it is my understanding that the former requires a file name or file number in order to release information on a given unclaimed property matter and that the latter is not willing to release such information for various reasons it cites. Accordingly, the information, although possibly housed at the Superior Court of Justice is not “available” to the public unless the public is made aware of the court file number or other means to allow the Superior Court of Justice to pull a given file.

...

The Appellant further submits that the Town of Whitchurch-Stouffville admits in its letter of June 9, 2008 that at least the name of one party must be made available to the Superior Court in order to access a given file. Accordingly, the Appellant is unable to access any such files as it does not possess such information at present.

On reply, the Town submits:

To my knowledge, no “supporting evidence” in written form is available in connection with searching Court files; anyone wishing to do so must simply attend at or telephone the Court office in order to carry out the search as indicated in my previous correspondence. It is incorrect that the Court office must be provided with a Court file number or file name; this is the purpose of the search. As long as the name of one party to the Court proceeding is known (which is obviously the case here being the “Corporation of the Town of Whitchurch-Stouffville” or the “Town of Whitchurch-Stouffville”), Court proceedings involving that party will be revealed by the search. Once the Court files involving that party are identified, the files themselves must be reviewed to ascertain their nature and content. Since the Town is not involved in a large number of Court matters, this should not be an unduly onerous task.

Analysis and finding

I have reviewed the records provided by the Town as examples of records related to the municipal tax sale process and note that the majority of them cannot reasonably be considered to be responsive to the appellant’s request. As he confirmed during mediation, the appellant seeks records related to properties sold for the non-payment of taxes where the proceeds of sale were paid into the Superior Court of Justice. All of the sample records that relate to the property where the tax sale was started but redeemed prior to completion are not responsive to the appellant’s request as no money was paid into court, the Public Guardian and Trustee, or any other authority.

With respect to the sample records related to the property where the tax sale was finalized, the majority of the records relate to the stages of the tax sale process that occur prior to the payment into court of any funds. In my view, the only records that are responsive to the appellant’s request are those that are filed with the Superior Court of Justice either when the Town pays the proceeds into court pursuant to section 379(1) of the *Municipal Act, 2001*, following the sale of the property due to the non-payment of taxes or when the Town applies for the payment out of court of any money that forfeits to it pursuant to 380(6) section of the *Municipal Act, 2001*. Accordingly, in my view, all records responsive to the appellant’s request would also be held by the Superior Court of Justice.

Pursuant to section 137(1) of the *Courts of Justice Act*, on payment of a prescribed fee, a person is entitled to see any document filed with the court unless an Act or an order of the court provides otherwise. Additionally, prior orders of this office have found that court documents filed with or issued by identified courts, including factums, appeal books, case books, court notices, court forms, endorsements, judgements and transcripts of court proceedings, are publicly available, within the meaning of section 15(a) of the *Act*, or its provincial equivalent, section 22(a) of the *Freedom of Information and Protection of Privacy Act* [see, for example Orders P-159, P-191, P-368, P-775, PO-2297, PO-2440, PO-2757, PO-2769].

The appellant argues that because he does not have the requisite file name or number that the Superior Court of Justice requires to release information on a given unclaimed property matter, he is unable to access the information he seeks. However, I accept the Town's submission that given that the Town is necessarily listed as a party on such files, the appellant does have access to the information he needs to provide to the Superior Court of Justice in order to obtain access to the records that are responsive to his request.

A number of previous orders have stated that an institution that wishes to rely on section 15(a) has a duty to inform the requester of the specific location of the publicly available records [see Orders P-123, P-124 and P-191]. In the circumstances of this appeal, not only has the Town advised the appellant that the records are held by the Superior Court of Justice, in its representations, the Town has outlined the process that the appellant should undertake in order to request access to the records that he seeks. In my view, the Town has satisfied its obligation to inform the appellant as to the specific location of the records.

Accordingly, I find that the Town has established that the records that are responsive to the appellant's request are available to the public, generally, through a regularized system of access, as is required by section 15(a). In this case, the records can be accessed at the Court Office of the Superior Court of Justice by inquiring of the Registrar. This system of access is available to anyone and a pricing structure exists for any member of the public who wishes to obtain access to these documents. In my view, this is an instance where the balance of convenience favours this method of access as an alternative to the *Act*. As a result, I find that the records qualify for exemption under section 15(a).

EXERCISE OF DISCRETION

The section 15(a) exemption is discretionary, and permits an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

In addition, the Commissioner 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
- it fails to take into account relevant considerations

In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations [Order MO-1573]. This office may not, however, substitute its own discretion for that of the institution [section 43(2)].

Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant [Orders P-344, MO-1573]:

- the purposes of the *Act*, including the principles that
 - information should be available to the public
 - individuals should have a right of access to their own personal information
 - exemptions from the right of access should be limited and specific
 - the privacy of individuals should be protected
- the wording of the exemption and the interests it seeks to protect
- whether the requester is seeking his or her own personal information
- whether the requester has a sympathetic or compelling need to receive the information
- whether the requester is an individual or an organization
- the relationship between the requester and any affected persons
- whether disclosure will increase public confidence in the operation of the institution
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person
- the age of the information
- the historic practice of the institution with respect to similar information

The Town submits that some of the factors that it considered when exercising its discretion to apply section 15(a) to the records include:

- Efficiency/customer service – Ease of access through a regularized system of records;
- Cost – to the Town and to the requestor in satisfying the request, particularly given the scope; and

- Practicality – Personal information may be severed from the requested records which may be available through the Court.

The appellant did not provide submissions on the Town's exercise of discretion.

I have considered the Town's submissions on the factors that it took into consideration in exercising its discretion to not disclose the records for which it has claimed section 15(a). I am satisfied that the Town exercised its discretion within appropriate parameters, and that it considered relevant factors in doing so. Additionally, in my view, this is an instance where the balance of convenience favours this method of access as an alternative to the *Act*. As a result I find that the records qualify for exemption under section 15(a). I find that the Town properly exercised its discretion in this appeal, and I will uphold it.

ORDER:

I uphold the Town's decision to deny access to the responsive records on the basis that section 15(a) applies to them and dismiss the appeal.

Original Signed By: _____

Catherine Corban

Adjudicator

_____ May 25, 2009