

Information and Privacy Commissioner,  
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,  
Ontario, Canada

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## ORDER MO-4530

Appeal MA23-00242

City of Toronto

June 7, 2024

**Summary:** The City of Toronto (the city) received a request for the property addresses and amounts owing of everyone who owed municipal tax arrears to the city. The city denied access to the records in full, stating that the records were publicly available through a process established under section 317(1) of the *City of Toronto Act, 2006*, and therefore exempt under section 15(a) (information published or available to the public) of *MFIPPA*. The city also claimed that the records were exempt from disclosure under section 14(1) (personal privacy) of *MFIPPA*.

In this order, the adjudicator finds that although a system for accessing the records exists under the *City of Toronto Act, 2006*, the cost of the appellant accessing the specific records he requested is so high as to be prohibitive, and section 15(a) does not apply. He finds that records relating to properties owned by individuals are exempt from disclosure under section 14(1), but records relating to properties not owned by individuals are not. He orders the city to issue an access decision for records relating to properties that are not owned by individuals.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1) (personal information), 14(1), and 15. *City of Toronto Act, 2006*, S.O. 2006, c. 11, Sched. A, section 317.

**Orders Considered:** Orders MO-1573, PO-2849, M-800, MO-1627, and P-1144.

### OVERVIEW:

[1] The City of Toronto (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)* for the following records:

... the property addresses of all people who, as of December 31, 2022, owed municipal tax arrears in the City of Toronto. If possible, I would also like the amounts owing. I require the property address and arrears amounts only – the same info that the city will supply to any person under s.317(1) of the *City of Toronto Act*.

[2] The city issued a decision denying access in full to the responsive records under section 14(1) (personal privacy) of *MFIPPA*. The requester (now the appellant) appealed the decision to the Information and Privacy Commissioner of Ontario (IPC).

[3] During mediation, the appellant clarified that he was pursuing access to information contained in tax certificates issued under section 317(1) of the *City of Toronto Act, 2006*<sup>1</sup> and further clarified that he is not distinguishing residential properties from business properties. The city issued a revised decision denying access in full to the records under section 15(a) (information published or available to the public) of *MFIPPA*. The city stated that it was no longer claiming section 14(1) of *MFIPPA*.

[4] No further mediation was possible, and the appeal was moved to the adjudication stage of the appeal process. I decided to conduct an inquiry and sought and received representations from the city and the appellant, as well as clarification from the city about its understanding of the scope of the request. Representations were shared in accordance with the IPC's *Code of Procedure*.

[5] Although the city claimed at mediation that it was no longer relying on the mandatory exemption in section 14(1), it relies on this exemption in its representations, and it was added as an issue in the appeal.

[6] For the reasons that follow, I partially uphold the city's decision. I reject the city's claim that the records at issue are publicly available within the meaning of section 15(a). I uphold the city's decision that records related to properties owned by individuals are exempt under section 14(1) but order them to issue an access decision for records related to properties that are not owned by individuals.

## **RECORDS:**

[7] The records at issue consist of the information in tax certificates for properties in municipal tax arrears within the city. The city provided a sample of tax certificates to the IPC for the purposes of the appeal. The appellant stated that he is only seeking access to the property addresses and amounts owing.

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<sup>1</sup> S.O. 2006, c. 11, Sched. A. Section 317(1) states: "The city treasurer shall, upon the written request of any person, give to that person an itemized statement of all amounts owing for taxes in respect of any separately assessed rateable property as of the day the statement is issued."

## **ISSUES:**

- A. What is the scope of the request for records?
- B. Does the discretionary exemption at section 15(a) for published information or information available to the public apply to the records?
- C. Do the records contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?
- D. Does the mandatory personal privacy exemption at section 14(1) apply to the records?

## **DISCUSSION:**

### **Issue A: What is the scope of the request for records?**

[8] During the inquiry, there appeared to be a disagreement between the parties about the scope of the request and the format of the records the appellant was seeking. Accordingly, I address the scope of the request below.

[9] Section 17 of *MFIPPA* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

(1) A person seeking access to a record shall,

(a) make a request in writing to the institution that the person believes has custody or control of the record, and specify that the request is being made under this Act;

(b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record;

...

(2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[10] To be considered responsive to the request, records must "reasonably relate" to the request.<sup>2</sup> Institutions should interpret requests liberally, in order to best serve the purpose and spirit of *MFIPPA*. Generally, if there is ambiguity in the request, this should

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<sup>2</sup> Orders P-880 and PO-2661.

be resolved in the requester's favour.<sup>3</sup>

### ***Positions of the parties***

[11] In the appellant's initial request, he stated that he was seeking access to the property addresses of all people who, as of December 31, 2022, owed municipal tax arrears to the city, as well as the amounts owing. He specified that he was seeking the same information that is released to any person under section 317(1) of the *City of Toronto Act, 2006*, and that he is not distinguishing between properties owned by individuals or businesses.

[12] In the mediator's report provided to both parties following mediation, it states that the appellant was seeking access to tax certificates for properties for which there are municipal arrears that are issued by the city under section 317(1) of the *City of Toronto Act, 2006*.

[13] In the inquiry, the city's representations characterized the appellant's request as a request for the tax certificates of individual properties (without any addresses specified), while the appellant's representations, provided to the city for reply, characterized the request as seeking an aggregate list of all properties for which there are tax arrears, as well as the amounts owing.

[14] I sought clarification from the city regarding its understanding of the scope of the request and the appellant's submission during the inquiry that he was seeking aggregate information. In response, the city reiterated that it considered the appellant's request to be for tax certificates.

### ***Findings***

[15] I have reviewed the original request, the city's access decision, and the representations of the parties, and I find that the appellant's request, as stated in the original request and confirmed in his representations, provided enough detail to identify records responsive to the request.

[16] As stated above, if there is ambiguity in the request, it should generally be resolved in the requester's favour. Here, although there appears to be some disagreement about the specific format of the information being requested, the content of the information sought is clear. Whether the appellant is seeking access to a compilation of individual tax certificates for properties for which there are tax arrears, with only the property addresses and amounts owing shown (the appellant stated that he is not seeking access to names or other information on the certificates), or a list containing this same information, it is clear that the appellant is seeking the addresses and amounts owing for all properties in the city that owe municipal tax arrears, in aggregate – or summary – form. Below, I consider the city's exemption claims on the basis of information about the properties for

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<sup>3</sup> Orders P-134 and P-880.

which there are municipal property tax arrears and the amounts owned.

**Issue B: Does the discretionary exemption at section 15(a) for published information or information available to the public apply to the information at issue?**

[17] As discussed above, the city claimed simultaneously that the records at issue are publicly available (and therefore exempt from disclosure under section 15(a) of *MFIPPA*) and exempt from disclosure under the personal privacy exemption (section 14(1)) of *MFIPPA*.

[18] Section 15(a) of *MFIPPA* allows an institution to withhold records if the information in the records has been published or is already available to the public, or if it is soon to be published. This exemption is intended to allow an institution to refer a requester to a publicly available source of information, and to protect information that has not yet been published. The city has claimed the application of section 15(a):

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;

[19] Section 15(a) is intended to provide an institution with the option of referring a requester to a publicly available source of information where this is a more convenient way to access the information. It is not intended to be used in order to avoid an institution's obligations under *MFIPPA*.<sup>4</sup>

[20] In order to rely on the section 15(a) exemption, the institution must take adequate steps to ensure that the record that they allege is publicly available is the same record that was requested.<sup>5</sup>

[21] 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.<sup>6</sup>

[22] To establish that a regularized system of access exists, the institution must show that:

- a system exists,
- the record is available to everyone, and

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<sup>4</sup> Orders P-327, P-1114 and MO-2280.

<sup>5</sup> Order MO-2263.

<sup>6</sup> Orders P-327, P-1387 and MO-1881.

- there is a pricing structure applied to all who wish to obtain the information.<sup>7</sup>

[23] Examples of the types of records and circumstances that have been found to qualify as a “regularized system of access” include property sale data<sup>8</sup> and police accident reconstruction records.<sup>9</sup>

[24] The exemption may apply despite the fact that the alternative source includes a fee system that is different from the fees structure under *MFIPPA*.<sup>10</sup> However, the cost of accessing a record outside *MFIPPA* may be so prohibitive that it amounts to an effective denial of access, in which case the exemption in section 15(a) would not apply.<sup>11</sup>

## **Representations**

### ***City representations***

[25] The city submits that it has an established process by which individuals seeking tax arrears information may obtain it by providing the address for the property for which the information is sought. They state that disclosure requests for tax certificates under section 317(1) of the *City of Toronto Act, 2006* are routine requests for specifically identified properties, and that a fee of \$76.43 per certificate, per property is charged. It states that anyone who wishes to request a tax certificate to determine the status of tax arrears owing to the city may do so, by first providing the address of the property for which the information is sought, and then paying the applicable fee for the tax certificate. It refers to Order MO-1411, where the adjudicator upheld a municipal health unit’s decision to charge a \$75.00 fee for documents relating to the septic system and well of the appellant’s property.

[26] The city submits that the process outlined above constitutes a regularized system of access for individuals to request a tax certificate. It states that the freedom of information process cannot be used to circumvent an existing process which provides this information, nor should it be allowed to circumvent the payment of an existing fee for a service.

[27] It references Order MO-2668, where the adjudicator found that a township exercised its discretion appropriately as it considered and sought to protect personal privacy, as well as the Municipal Property Assessment Corporation’s economic interests in disallowing the photocopying, scanning, or filming by still or video cameras of the assessment roll. In that situation, the township had argued that pursuant to section 39(2) of the *Assessment Act*,<sup>12</sup> which permits a municipality to determine how access to

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<sup>7</sup> Order MO-1881.

<sup>8</sup> Order PO-1655.

<sup>9</sup> Order MO-1573.

<sup>10</sup> Orders P-159, PO-1655, MO-1411 and MO-1573.

<sup>11</sup> Order MO-1573.

<sup>12</sup> R.S.O. 1990, c. A.31. Section 39(2) states: “Immediately upon receiving the assessment roll for the municipality, the clerk shall make it available for inspection by the public during office hours.”

assessment rolls is granted, and the township had adopted a written policy prohibiting the reproduction of the roll by means of scanner, photocopier, or camera.

[28] The city states that section 317(1) of the *City of Toronto Act, 2006* allows individuals to proactively determine if there are tax arrears on a property by going through a specified process and paying the required fee, and that section 317(1) permits the city to determine how to provide access to tax certificates. The city further submits that individuals' owing taxes are sent a notice at the end of the year, advising them of the amount of taxes owed. The city states that they do not believe the costs of the above process are prohibitive.

### ***Appellant representations***

[29] The appellant does not dispute that the information requested is publicly available under the section 317(1) process outlined by the city, but states that it is not available in a manner or format that is practicable because the costs of going through the process is prohibitive. He submits that this situation is distinguishable from that in Order MO-1411 because he is requesting aggregated information contained in thousands of such records, which at \$76.43 per certificate, would cost a prohibitive amount of money. He states that such an expenditure is plainly contradictory to the principles and intentions of *MFIPPA* and effectively bars access to what is, in the normal course, publicly available information.

### ***City reply representations***

[30] In response to the appellant's representations, the city states that the costs of the request are not prohibitive, explaining that the appellant operates a business related to residential home purchases. It submits that part of offering such services is to determine if there are tax arrears related to a potential property for purchase or sale. The city states that the appellant appears to be trying to evade paying for the \$76.43 fee per certificate, which is intended for use in assisting potential clients in transactions, and that the city would be subsidizing the appellant's business at a cost to the city and its taxpayers. The city states that this would be circumventing the established section 317(1) process for economic gain.

### **Analysis and finding**

[31] Based on the representations of the parties, it is not disputed that there is a regularized system of access in place to access the tax certificates. Through the process that the city established under section 317(1) of the *City of Toronto Act, 2006*, tax certificates are available to everyone and there is a pricing structure that applies to all who wish to obtain the information. At issue in this appeal is whether the costs of accessing the records in the manner requested by the appellant are so high as to be prohibitive.

[32] As discussed above, the fact that the alternative source includes a fee system that is different from the fee structure under *MFIPPA* does not necessarily mean that the

section 15(a) exemption does not apply. Order MO-1573 addressed the circumstances where the costs to be charged under an alternative fee structure were so high to be prohibitive, leading to an “effective denial of access,” where applying the exemption leads to an outcome that is inconsistent with the exemption’s purpose.

[33] In Order PO-2849, the adjudicator considered whether certificates of approval, which are permits granted by the Ministry of the Environment related to environmental protection regulations, were properly withheld under the provincial equivalent of section 15(a) of *MFIPPA*.<sup>13</sup> There, the appellant had requested all certificates of approval for the year 2005 and the ministry responded stating that, while they were available for individual, specific addresses upon request outside of the freedom of information process (for a fee of \$10 per certificate), they were not available in a comprehensive bulk list format that the appellant was requesting.

[34] The adjudicator found that the ministry’s system for providing the certificates constituted a regularized system of access and considered whether the costs of accessing the information requested by the appellant were so high as to be prohibitive. A total of 6,970 certificates were issued in 2005, resulting in a fee of \$69,700 for the records under the ministry’s process. The adjudicator determined that, while accepting that the cost of the request was significant, it was the scope of the request (the number of certificates sought), and not the actual fee per certificate that resulted in the high amount.

[35] I adopt and apply this reasoning to the present appeal. However, I find that this appeal’s circumstances are sufficiently distinct so as to produce a different result. I accept that, although different from the structure in *MFIPPA*, the section 317(1) process contains a pricing structure that is available to all who wish to access the information, and that records are available to everyone. However, in the present appeal, the city has not explained how the appellant could use the section 317(1) process to access the requested information.

[36] Based on the representations of the city, the section 317(1) process requires individuals to submit requests for each individual property, and fees are charged for each individual certificate.<sup>14</sup> If the appellant were requesting information for individual properties, or if he knew which properties owe tax arrears, he would be able to request this information using the 317(1) process, and the situation would arguably be analogous to Orders MO-1573 and PO-2849, where the fee structure did not result in an effective denial of access.

[37] In this case however, based on the information before me, the appellant does not know which specific properties he is requesting information for, namely the properties for

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<sup>13</sup> Section 22(a) of the *Freedom of Information and Protection of Privacy Act*, which contains the same language as section 15(a) of the *Act*.

<sup>14</sup> The applicable fee structure is available online at: <https://www.toronto.ca/services-payments/property-taxes-utilities/property-tax/property-tax-rates-and-fees/> (accessed June 7, 2024). While at the time of the city’s representations the fee was \$76.43, as of May 22, 2024, the fee for each certificate is now \$85.15.



which there are tax arrears owed. As such, in order to receive the requested information, based on the city's representations, he would potentially be required to make a request for all properties in the city, and pay the prescribed fee for each certificate for each property in order for him to identify the specific information he is looking for. Considering the number of properties in the city, this would be an enormously high fee.<sup>15</sup> I find that the amount of this fee, which is difficult to calculate without knowing the specific number of properties in the city, is sufficiently high to result in an effective denial of access, as articulated in Order MO-1573. In the alternative, I also find that the information responsive to the appellant's request, the properties for which tax arrears are owed, is not information that is publicly available through the section 317(1) process that the city has relied on. Accordingly, I find that the information is not publicly available within the meaning of section 15(a) of *MFIPPA*, and the exemption does not apply.

**Issue C: Do the records contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?**

[38] Having found that the section 15(a) exemption does not apply to the information at issue, I will next consider if the information contains "personal information." "Personal information" is defined in section 2(1) of *MFIPPA* as "recorded information about an identifiable individual."

[39] Information is "about" the individual when it refers to them in their personal capacity, which means that it reveals something of a personal nature about the individual. Information is about an "identifiable individual" if it is reasonable to expect that an individual can be identified from the information either by itself or if combined with other information.<sup>16</sup>

[40] The section 2(1) definition of personal information in *MFIPPA* gives a list of examples of personal information. Generally, information about an individual in their professional, official or business capacity is not considered to be "about" the individual.<sup>17</sup> In some situations, even if information relates to an individual in a professional, official, or business capacity, it may still be "personal information" if it reveals something of a personal nature about the individual.<sup>18</sup> Sections 2(2.1) and (2.2) provide additional clarity about what is and is not personal information:

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<sup>15</sup> Considering residential properties alone, the city of Toronto's website states that the city has over 1.25 million homes: <https://www.toronto.ca/city-government/data-research-maps/toronto-housing-data-hub/toronto-housing-data-book/> (accessed June 7, 2024)

<sup>16</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

<sup>17</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

<sup>18</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

(2.1) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

(2.2) For greater certainty, subsection (2.1) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

### ***Representations***

[41] The city submits that the records at issue contain the names and addresses of the persons owing taxes to the city, as well as the amounts of taxes owed and when they are due to be paid. It states that because of the wording of the appellant's request, whether the record relates to someone in their personal capacity can only be determined on the face of the record. The city states that, based on the appellant's request, it could "only presume that there will be many residential property owners included in this category."

[42] The appellant states that since the addresses of properties are part of the requested information, the records at issue would contain personal information. However, he states that he is not requesting the names of the individuals, and is content with receiving the requested information without the names of individuals included. He notes that the name of a property owner can be identified by the address of a property alone through the Land Registry Office, but he submits that this is a feature of statutory creation, with access enabled by the province and such searches facilitated "as a matter of course." He states that Land Registry documents do not, in the normal course, categorize ownership into personal, professional, or business capacities, nor does it speak to whether the land-owner is alive or dead, but submits that he is not requesting this information.

### ***Analysis and finding***

[43] In Order M-800, Assistant Commissioner Tom Mitchinson considered a similar situation where a request was made for a list of all properties whose municipal taxes were 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 Assistant Commissioner considered whether the information at issue in that appeal constituted personal information and found that where the record indicated that a property is owned by an individual or individuals, the names, property addresses, and associated entries for the listing qualify as personal information for the purposes of section 2(1) of *MFIPPA*. However, with respect to records where the owner of a property is a sole proprietorship, partnership, unincorporated association, or corporation and not a natural person, he found that the information contained in the records before him did not qualify as personal information.

[44] I adopt and apply this reasoning to the present appeal. Based on the city's representations and the sample of records they provided, some of the records would identify individual property owners in a personal capacity, while others would only identify various business entities that would not qualify as individuals, as outlined in Order M-800. For the records that refer to individuals, I find that the information within them would qualify as personal information with the meaning of section 2(1).

[45] The appellant does not seek the names of the property owners. However, even with the names severed, I find that that addresses and amounts owing of these properties would still qualify as personal information. As the appellant states, it is not difficult to obtain the name of a property owner based on the address, and the amount of taxes that these individuals owe would, outside of a business information context, reveal something of a personal nature about them. This approach is consistent with Order MO-1627, where the adjudicator found that tax roll numbers, even if they do not necessarily identify individuals, can be used to obtain information that does so, and as such were considered to be personal information.

[46] With respect to the properties that are not owned by individuals, I find that the addresses and amounts owing do not constitute personal information within the meaning of section 2(1) of *MFIPPA*. As such, I will order the city to issue an access decision for this information.

**Issue D: Does the mandatory personal privacy exemption at section 14(1) apply to the information at issue?**

[47] Having found that the records that refer to properties owned by individuals contain personal information, I will next determine if this information is exempt from disclosure under section 14(1). Section 14(1) of *MFIPPA* creates a general rule that an institution cannot disclose personal information about another individual to a requester. This general rule is subject to a number of exceptions.

[48] The section 14(1)(a) to (e) exceptions are relatively straightforward. If any of the five exceptions covered in sections 14(1)(a) to (e) exist, the institution must disclose the information. The city submits that none of these factors apply to the appeal, but specifically referenced sections 14(1)(c), (d), and (e), which state:

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;

(e) for a research purpose if,

(i) the disclosure is consistent with the conditions or reasonable expectations of disclosure under which the personal information was provided, collected or obtained,

(ii) the research purpose for which the disclosure is to be made cannot be reasonably accomplished unless the information is provided in individually identifiable form, and

(iii) the person who is to receive the record has agreed to comply with the conditions relating to security and confidentiality prescribed by the regulations

[49] The section 14(1)(f) exception, referred to by the appellant, is more complicated. It requires the institution to disclose another individual's personal information to a requester only if this would not be an "unjustified invasion of personal privacy." Other parts of section 14 must be looked at to decide whether disclosure of the other individual's personal information would be an unjustified invasion of personal privacy.

[50] Section 14(2) lists several factors that may be relevant to determining whether disclosure of personal information would be an unjustified invasion of personal privacy.<sup>19</sup> Some of the factors weigh in favour of disclosure, while others weigh against disclosure. If no factors favouring disclosure are present, the section 14(1) exemption — the general rule that personal information should not be disclosed — applies because the exception in section 14(1)(f) has not been proven.<sup>20</sup>

[51] The factors outlined in section 14(2) cannot be used to rebut a presumed unjustified invasion of personal privacy under section 14(3).<sup>21</sup> In other words, if disclosure of the personal information is presumed to be an unjustified invasion of personal privacy under section 14(3), section 14(2) cannot change this presumption.

[52] The list of factors under section 14(2) is not a complete list. The institution must also consider any other circumstances that are relevant, even if these circumstances are not listed under section 14(2).<sup>22</sup> Each of the first four factors, found in sections 14(2)(a) to (d), if established, would tend to support disclosure of the personal information in question, while the remaining five factors found in sections 14(2) (e) to (i), if established, would tend to support non-disclosure of that information.

[53] The city specifically referred to the section 14(3)(e) and (f) presumptions against disclosure and the section 14(2)(e) and (i) factors:

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<sup>19</sup> Order P-239.

<sup>20</sup> Orders PO-2267 and PO-2733.

<sup>21</sup> *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).

<sup>22</sup> Order P-99.

(3) 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 a tax;

(f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness

(2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

(e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;

(i) the disclosure may unfairly damage the reputation of any person referred to in the record

## ***Representations***

### *City representations*

[54] The city submits that allowing the appellant to access all tax certificates for properties with arrears would constitute an unjustified invasion of personal privacy. It states that although there is an established process by which a tax certificate may be obtained for a fee, that process requires the person requesting the certificate to provide the address of the property for which they are seeking the information. It states that this process has safeguards in place to avoid the indiscriminate disclosure of tax information by requiring that an address be provided, and by attaching a fee. It submits that these safeguards are meant to ensure that individuals with no business related to the property are deterred from accessing such information for illegitimate purposes.

[55] The city referred to Order MO-2668, where restrictions against photographing, videoing or otherwise digitally recording municipal property assessment information was held to be similarly reasonable safeguard. It submits that section 14(1)(c) does not apply to the appeal because the information at issue was never intended to be available to the general public, nor was it collected and maintained for the purpose of creating a public record. With respect to section 14(1)(d), the city submits that the *City of Toronto Act, 2006* does not expressly authorize the disclosure of this information, but instead requires that the information be available, which it is, through the *City of Toronto Act, 2006* process. For section 14(1)(e), the city states it is not applicable because the appellant has made no indication that the information has been requested for the purposes of research, nor has he requested to enter into a research agreement with the city.

[56] The city submits that the sections 14(3)(e) and (f) presumptions against disclosure

apply to the information at issue. It states that the information relates to the amounts of taxes owed to the city by individuals, that this information is obtained for the purpose of collecting taxes, and that it is tied to specific individuals' names and addresses. It states that these factors establish that the disclosure of the information would be a presumed unjustified invasion of personal privacy.<sup>23</sup>

[57] The city also states that, although the section 14(2) factors cannot rebut the section 14(3) presumption, it considered all of the factors and determined that none of them support disclosure. It referenced sections 14(2)(e) and (i), stating that the disclosure of federal tax information is strictly regulated and can only be done under authorized circumstances, and there is no reason for municipal tax information to be treated differently.<sup>24</sup>

### *Appellant representations*

[58] The appellant submits that disclosure of the information at issue would not be an unjustified invasion of personal privacy. He states that the section 14(3)(e) presumption that the city claimed does not apply because the requested information does not include information obtained on a tax return or gathered for the purpose of collecting a tax. He states that, instead, it is information that is readily available to the public when requested and includes only the address of a property, if they are in tax arrears, and potentially how much they owe. He also states that the section 14(3)(f) presumption does not apply as the information provided does not disclose any personal financial history such as bank balances, creditworthiness, or income.

[59] He states that the city must be estopped from relying on their position that asking for an address under the section 317(1) process is a necessary safeguard to protect the information of homeowners because they are already providing this information through the process. He submits that any safeguard, if one exists, has already been negated by such action. He states that the city's submission that the *City of Toronto Act, 2006* requires that information be available, while not expressly authorizing its disclosure, is unreasonable, as on its face, the information at issue is already being disclosed.

### ***Analysis and finding***

[60] As I have found that only information related to properties owned by individuals is personal information under *MFIPPA*, I will only consider the parties' representations as they relate to individuals. I agree with the city's submission that the section 14(3)(e) and presumptions against disclosure apply to the information at issue. The information regarding tax arrears owed by individuals was, on its face, collected for the purposes of collecting a tax, engaging section 14(3)(e).

[61] Additionally, as was held in Order M-800, for tax information related to individual

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<sup>23</sup> The city referred to Orders M-800, MO-1627 and MO-2316-I in support of this position.

<sup>24</sup> The city referred to Section 241(1) of the Income Tax Act (R.S.C., 1985, c. 1 (5th Supp.)).

property owners, the information in the records would be linked to the individuals, even if their names are not disclosed. Even if, as the appellant submits, it does not necessarily disclose the bank balances, creditworthiness, or income of individuals, the amount of tax arrears owed by individuals is clearly financial information, engaging the section 14(3)(f) presumption.

[62] Having found that the two presumptions apply, I do not need to consider the relevance of the section 14(2) factors. However, the information at issue may still be disclosed if one of the section 14(1) exceptions applies. The appellant submitted that the information is readily available under the *City of Toronto Act, 2006*, which expressly authorizes disclosure of the information, engaging the section 14(1)(c) and (d) exceptions (although he did not specifically reference the sections in his representations). The city disputes this, drawing a distinction between section 317(1) of the *City of Toronto Act, 2006* requiring that such information be made available and expressly authorizing disclosure, and stating that the information at issue is not intended to be available to the general public.

[63] With respect to the section 14(1)(d) exception, I do not necessarily agree that the distinction made by the city exists. However, I find that there is a distinction between the form of what section 317(1) requires be made available, and what the appellant is requesting under *MFIPPA*. In Order M-800, a distinction was drawn between information about specific properties, and an "easily retrievable computerized record of the names and addresses of all individuals with tax arrears owing." I make the same distinction here. As outlined in the discussion of the scope of the request, the appellant is requesting tax information in an aggregate format. While the *City of Toronto Act, 2006* requires that information about individual properties be made available, in my view authorizing its disclosure under *MFIPPA*, it does not require that this information be provided in an aggregate format. As such, I find that the section 14(1)(d) exception is not applicable to the information requested by the appellant.

[64] For section 14(1)(c), I find that, on its face, tax arrears information, being an account of funds owed to the government, is not *specifically* collected and maintained to create records available to the general public. This is particularly the case when considering that the appellant is requesting the information in an aggregate format that, as discussed above, is not available to the public.

[65] A similar situation was addressed in Order P-1144, where a list of names and drivers license numbers of Ontario drivers were not considered to be collected and maintained specifically for the purpose of creating a record available to the general public, with a distinction drawn between information about specific drivers or license numbers, and bulk information. Here, I find that it has not been established that the tax information, particularly in the format requested by the appellant, was collected and maintained specifically for creating a record available to the general public, and the section 14(1)(c) exception does not apply.

[66] Having found that two of the section 14(3) presumptions against disclosure apply to the information at issue and none of the section 14(1) exceptions apply, I uphold the city's application of the section 14(1) personal privacy exemption to the records that relate to properties owned by individuals, subject to my analysis of the section 16 public interest override, below.

*Public interest override*

[67] In his representations, the appellant raised the public interest override in section 16 of the *Act*. This was not raised earlier in the appeal, but I have considered its application to the records that I have found exempt from disclosure under section 14(1).

[68] He states that there is a compelling public interest in the disclosure of the records, engaging section 16 of the *Act*. He states that the aggregate information being requested, over time, speaks to market conditions and the state of Toronto property buyers in distress. He submits that "it is a measure that directly informs the entire real estate and banking industry of the direction and speed of financial upturn and recessionary trend." He submits that if the information is made available, it will directly affect research, government policy, and private lending.

[69] The *Act* does not state who bears the onus to show that section 16 applies. The IPC will review the records with a view to determining whether there could be a compelling public interest in disclosure that clearly outweighs the purpose of the exemption.<sup>25</sup>

[70] I agree with the appellant's assertion that the information at issue, particularly in aggregate form, provides insight into the Toronto real estate market. However, I am not satisfied that the appellant has demonstrated that the public interest override is applicable in this appeal.

[71] For section 16 to apply, two requirements must be met:

- there must be a compelling public interest in disclosure of the records; and
- this interest must clearly outweigh the purpose of the exemption.

[72] The IPC has defined the word "compelling" as "rousing strong interest or attention".<sup>26</sup> A compelling public interest has been found to exist where, for example, the integrity of the criminal justice system is in question.<sup>27</sup> Other examples include where disclosure would shed light on the safe operation of petrochemical facilities<sup>28</sup> or the

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<sup>25</sup> Order P-244.

<sup>26</sup> Order P-984.

<sup>27</sup> Order PO-1779.

<sup>28</sup> Order P-1175.



province's ability to prepare for a nuclear emergency.<sup>29</sup>

[73] In order for the public interest override to apply, there must be more than a general value to the information. Even if the information would be useful to the appellant, this alone is not sufficient to negate the need to provide limited, specific exemptions to disclosure to protect the privacy of the people whose information the government holds.

[74] In my view, even if there is a public interest in disclosure of the records, it is not compelling within the meaning of section 16 and it does not outweigh the purpose of the section 14 exemption. Considering the records at issue, the purpose of the personal privacy exemption, and the representations of the appellant, I am not persuaded that the withheld records should be disclosed in spite of the section 14 exemption. As such, I maintain that the records related to individuals are exempt under section 14.

**ORDER:**

1. I uphold the city's decision to deny access to records related to properties owned by individuals.
2. I order the city to issue an access decision for records related to properties that are not owned by individuals, treating the date of this order as the date of the request for procedural purposes.

Original signed by: \_\_\_\_\_  
Chris Anzenberger  
Adjudicator

\_\_\_\_\_ June 7, 2024

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<sup>29</sup> Order P-901.