



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

INVESTIGATION REPORT

INVESTIGATION PC-980049-1

Ministry of Consumer and Commercial Relations

June 22, 1999



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning the Ministry of Consumer and Commercial Relations (the Ministry).

The complainant was concerned that certain information from Ontario's land registration database was being sold in bulk to commercial mortgage lenders, for profit. Specifically, the complainant was concerned about the disclosure of information relating to mortgage renewal dates of property owners. She asserted that banks and other lending institutions were using this information to target consumers when their mortgage terms were about to expire, by offering their own mortgage services.

The complainant believed that such a disclosure practice was an invasion of privacy, contrary to the Freedom of Information and Protection of Privacy Act (the Act).

Before proceeding to discuss the issues arising from the investigation, we feel it would be helpful to provide some background information concerning Ontario's land registration system.

The Real Property Registration Branch of the Ministry manages and operates 55 Land Registry Offices throughout Ontario. According to the Ministry, the main function of the Land Registry Offices is to register, store and preserve documents, deeds, mortgages and plans of survey.

The registration of real property is done under either the Land Titles system or the Registry system. Both systems allow registration of notice of interests relating to a specific property in the province. These notices of interests are registered for the purpose of disclosing to third parties a claim or interest with respect to a given property.

The Acts which govern land registration in the province of Ontario are the Registry Act, Land Titles Act, and Land Registration Reform Act. These Acts, as well as the regulations which are prescribed under them, specify the registration requirements, including various forms of documents which may be registered.

The Ministry indicates that initially, all documents registered at the registry offices were created on paper and were later stored on microfilm for security purposes. However, in the early 1980's, the Ministry began an automation process of its land registration records. In 1991, a partnership was undertaken between the Ministry and a private-sector consortium, which formed Teranet Land Information Services Inc. ("Teranet"). The Ministry is a shareholder in Teranet.

According to the Ministry, Teranet is responsible for the automation of the province's land registration records. This automation process is not yet complete.

The automated land registration database is entitled the Province of Ontario Land Registration Information System (POLARIS). According to the Ministry, this system creates an individual land registration database for each of the 55 land registration jurisdictions in the province. The Ministry explains that each property comprises an individual record in the POLARIS database, which mirrors the organization of the manual Land Titles System.

The Ministry also explains that access to the automated registration records is available on-site in land registry offices, or remotely, via Teraview software, which provides electronic access to the automated POLARIS land registration database. In both instances, these records are available on an individual property basis only, upon payment of the appropriate fee.

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question “personal information”, as defined in section 2(1) of the Act? If yes,
- (B) Did the Ministry disclose the personal information in bulk to banks or any other lending institutions?
- (C) Does section 37 of the Act apply to the personal information within the land registration records?
- (D) If section 37 did not apply, was the personal information disclosed in compliance with section 42 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question “personal information”, as defined in section 2(1) of the Act?

Section 2(1) of the Act states, in part:

"personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, **age**, sex, sexual orientation or **marital or family** status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to **financial transactions** in which the individual has been involved,
...
- (d) the **address**, telephone number, fingerprints or blood type of the individual,
...
- (h) the individual's **name** where 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 information in each land registration record varies. However, the information relating to mortgage renewal dates can be found in a document entitled Charge/Mortgage of Land. This document contains the names of both the borrower and the lending institution, the amount of the mortgage, the interest rate, the amount of the monthly payment and the **date on which the mortgage matures**. This record also contains a statement regarding the age of majority and spousal status of the borrower, as well as the address of service for each party to the transaction.

Other land registration documents, such as Deed/Transfer of Land, include information, such as the name and date of birth of the owner(s) of the property, the name of the individual(s) who previously owned the property, the address of the property, the date the property was purchased and the amount the property was purchased for.

It is our view that information relating to individuals including their names, addresses, their financial transactions, as well as other personal information about them would meet the requirements of paragraphs (a), (b), (d) and (h) of the definition of "personal information" in section 2(1) of the Act.

Conclusion: The information in question is "personal information", as defined in section 2(1) of the Act.

Issue B: Did the Ministry disclose the personal information in bulk to banks or other lending institutions?

The Ministry submits that any individual or other entity can, upon payment of the prescribed fees, examine both the abstract indices, which summarize registrations pertaining to a particular property, and the individual registered documents. The individual registered documents are available in either a paper format, on microfilm, and/or electronically within the POLARIS databases.

The Ministry explains that each microfilmed record is a compilation of a number of individually registered documents. According to the Ministry, these records were initially created as backup for the paper documents. As with the paper documents, the Ministry allows members of the public to examine these microfilmed records at the Land Registry Offices.

In its response to our draft report, the Ministry clarified that individuals need not pay a fee to view the microfilms. However, the Ministry also explained that payment of a prescribed fee is required before copies of individually registered documents can be obtained. The Ministry also confirmed that before a microfilm relating to a particular property can be located, specific information must be provided by the individual conducting the search, such as a unique property identifier, owner's name, street address and individual instrument number.

The Ministry explains that all information contained in the land registration documents, plans and records is available for review on a record-by-record basis. As far as electronic access is concerned, the Ministry also submits as follows:

As Teraview access, as well as access in the manual or paper system, is based on an individual property basis, **it is not possible to obtain a listing of all mortgages, or any document type**, registered in a particular area. The search criteria in Teraview, as with the on-site automated system, are limited to unique property identifier, owner's name, street address and individual instrument number. [emphasis added]

The Ministry indicates, however, that the Land Registry Offices are aware of lending institutions which employ individuals who compile data from the land registry records. However, the Ministry explains that those individuals, like all other members of the public, obtain data on a record-by-record basis, upon payment of the appropriate fee. The Ministry submits that it does not compile data for any lending institution.

Based on the information provided to us by the Ministry, there is no basis to conclude that the Ministry disclosed the personal information in question in bulk to any lending institutions. It also does not appear to be possible to retrieve such information in bulk from POLARIS.

Conclusion: There is no basis to conclude that the Ministry disclosed the personal information in question in bulk to banks or any other lending institutions.

Issue C: Does section 37 of the Act apply to the personal information within the land registration records?

Section 37 of the Act states:

This Part does not apply to personal information that is maintained for the purposes of creating a record that is available to the general public.

“This part” refers to Part III of the Act which sets out provisions for the protection of individual privacy.

In order to satisfy the requirements of section 37, the Ministry must establish that the information in question is “personal information”, that the personal information is being maintained by the institution, and that the purpose of maintaining the personal information is to create a record that is available to the general public.

It has already been determined that the information in question is “personal information” for the purposes of section 2(1) of the Act.

It is our view that under section 37 of the Act, personal information that is maintained by an institution may be excluded from the application of Part III of the Act only if the personal information is maintained by that institution specifically for the purpose of creating a record which is available to the general public. Other institutions cannot claim the exclusion unless they also maintain the personal information for this purpose.

The Ministry submits that section 37 applies to the information within the land registry records. The Ministry indicates that it collects the personal information in question in order to fulfill its

obligations in providing a land registration system for Ontario, and that the Registry Act, the Land Titles Act and the Land Registration Reform Act provide the statutory authority for the collection and disclosure of this information. The Ministry submits that the information that is collected forms part of a public record, which is available to any member of the public, including lenders, on an individual record-by-record basis.

Having reviewed the above-mentioned legislation we concur that they contain a number of provisions which make it clear that the Ministry has a duty to make land registration records available to the public. One example of such a provision is section 15(1) of the Registry Act which reads as follows:

Upon receipt of a request in writing and the prescribed fee, a land registrar,

- (a) shall produce for inspection in his or her office during office hours any instrument registered in the land registrar's office or any book of the office relating to any such instrument; and
- (b) shall supply a copy of the whole or a part of any instrument registered in his or her office.

Section 166 of the Land Titles Act also contains similar provisions.

The above-mentioned legislation also places no restrictions on who may have access to this information or in what manner. The only requirements are to pay a prescribed fee, make a written request in some cases, and obtain access during office hours. Thus, because there is a legal duty to make certain records available to the general public, a demonstrated practice of actually making these records available, and a standardized price applied to all users of the land registration system, it is our view that the personal information in question is maintained at the Land Registry Offices specifically for the purpose of creating a record that is available to the general public.

The only remaining issue is the definition of "record" for the purposes of this finding.

The term "record" is defined in section 2(1) of the Act as follows:

"record" means any record of information however recorded, whether in printed form, on film, by electronic means or otherwise, and includes,

- (a) correspondence, a memorandum, a book, a plan, a map, a drawing, a diagram, a pictorial or graphic work, a photograph, a film, a microfilm, a sound recording, a videotape, a machine readable record, any other documentary material, regardless of physical form or characteristics, and any copy thereof, and

- (b) subject to the regulations, any record that is capable of being produced from a machine readable record under the control of an institution by means of computer hardware and software or any other information storage equipment and technical expertise normally used by the institution;

The information in question is found in “instruments” and other “documents” registered under the various land registration statutes. The term “instrument” is defined in the Registry Act as:

“Instrument” includes every instrument whereby title to land in Ontario may be transferred, disposed of, charged, encumbered or affected in any other way...”.

The Registry Act definition of “instrument” does not state how the information in instruments must be recorded. However, the Registry Act makes it clear in section 16 that registered instruments, documents deposited under Part II (called “deposits”), and “written records” may all be “recorded electronically or on a magnetic medium”. There is a similar provision (s. 166) in the Land Titles Act. Therefore, these documents do not lose their character as instruments, deposits or written records because they are recorded electronically. That is, even though they are not defined as such, instruments, records and documents in these registry systems include electronic records.

Section 15 of the Land Registration Reform Act states that “Where land is designated for the purpose of Part I, the Lieutenant Governor in Council may by regulation designate all or any part of the land for the purpose of implementing a **system of automated information recording and retrieval...**”. [emphasis added]

Therefore, it is our view that all individual land registration documents constitute “records” for the purposes of paragraph (a) of the definition of “record” contained in section 2(1) of the Act, regardless of whether they exist on paper, microfilm or electronically, and regardless of whether they are retrieved manually or electronically.

The situation is more complex when it involves “bulk” access to this personal information, or when an institution is considering the disclosure of information such as the operating system or the software programs relating to a particular database. Previous orders of this office articulate these complexities.

In Order P-1144, which involved the Ministry of Transportation, Assistant Commissioner Tom Mitchinson dealt with a request for bulk access to the names and driver’s licence numbers of all Ontario drivers, found in the Ministry’s driver license database. The Assistant Commissioner decided that although the names of vehicle drivers and their licence numbers are individually available to the public under section 21(1)(c) (information available to the general public), a list of all names and numbers did not meet the requirements of this exception to the mandatory personal information exemption claim. For the bulk information to fit within this section, it would have to be routinely released **in the form requested**, which it was not, and the Assistant Commissioner found that the bulk information was not “collected and maintained specifically for the purpose of creating a record available to the general public.”

Although there is no evidence to suggest that Teranet makes the POLARIS database itself available, if it did, it does not necessarily follow that it too would satisfy the requirements of section 37.

In Order P-1281, Assistant Commissioner Mitchinson examined a different database administered by the Ministry, the Ontario Business Information System (ONBIS). ONBIS is a computerized registry of all business entities in Ontario. In that Order, Assistant Commissioner Mitchinson commented on this database as follows:

The ONBIS database consists of a number of components which, when combined, comprise this record. These components are:

- the data elements
- the database management system
- the software programs and reports

In interpreting whether the database itself was “available to the public” under section 22(a) of the Act, the Assistant Commissioner found that it was not, for two reasons:

Not only is the public access limited to searches by individual business identifiers to specific pieces of information, as opposed to the collection of the relational data elements, but it is also clear from the Ministry’s submissions that the third component part of the database, the software programs, has never been publicly available.

[See also Order P-1114, which dealt with bulk access to microfilm copies of forms registered under the Business Names Act.]

In view of the above, we have restricted our finding under section 37 of the Act in the present case to the personal information within the individual land registration records which are maintained at the Land Registry Offices, including records in paper format, on microfilm, or electronically within the POLARIS database. The issues involving access to the operating system or the software programs relating to the POLARIS database are more complex. They are not raised in the context of this complaint, and do not have to be determined at this time.

The issues involving bulk access to microfilmed records are identified below under the heading of “Other Matters.”

Application of section 37 of the Act

Conclusion: The personal information contained in individual land registration records, either in paper, microfilm or electronic format, are maintained at the Land Registry Offices for the purposes of creating a record that is available to the general public, thus falling under section 37 of the Act. Accordingly, Part III of the Act does not apply to these individual records.

In view of the above, it is not necessary to consider whether the personal information was disclosed in compliance with section 42 of the Act.

Other Matters

During the course of this investigation, the following matters were identified which we felt needed to be addressed, even though they did not directly relate to the complainant's concerns.

In its original submissions, the Ministry explained that copies of the microfilmed records, which as mentioned above contain a compilation of a number of individually registered documents, are being provided by the Ministry, on a periodic basis, to three municipalities, three real estate boards, as well as the Real Estate Council of Ontario (RECO).

In view of the above, in our draft report, the Ministry was requested to provide our office with additional submissions concerning this disclosure.

In response to our draft report, the Ministry clarified that it does not supply microfilmed documents to RECO. The Ministry further clarified that it provides microfilms to just two municipalities and two real estate boards, as opposed to three. The Ministry also advised that, "for the purposes of verifying property assessments", the microfilmed documents are also provided to the Ontario Property Assessment Corporation.

(1) Disclosure to Real Estate Boards and Municipalities

The Ministry explains that the two Real Estate Boards use the information on the microfilms to assist property assessors in determining property values based upon recent sales. The two municipalities use the information on the microfilms to update property assessment records.

The Ministry further explains that duplicate films are produced for distribution to the specific Real Estate Boards and municipalities once the master films are received from the related Land Registry Office and are processed. The microfilms contain images of the most recently registered documents in the related Land Registry Office.

The Ministry submits that no written agreements have been entered into with the Real Estate Boards or municipalities by the Ministry, and therefore, no agreement exists controlling the subsequent use, disclosure, retention and destruction of the microfilms. The Ministry explains that the data was being used for general public purposes of identifying real estate trends and conditions to assist in informed land use planning and consumer purchase decisions. The Ministry also explains that the arrangements for distribution of the duplicate microfilms were made over a decade ago in response to individual written requests and that this practice was not extended to other entities.

The Ministry then states that the distribution to Real Estate Boards and municipalities is in the process of being discontinued due to resource constraints. The Ministry explains, however, that the practice will be continuing for approximately the next six months due to the Ministry's obligation to provide a reasonable notice period before termination of the supply. It is not clear

from the Ministry's submissions, however, whether the Ministry has already given such notice to these organizations.

Given that the Ministry is in the process of discontinuing its practice of disclosing microfilmed documents to the Real Estate Boards and the municipalities, we feel that it is no longer necessary for us to make a finding concerning the Ministry's disclosure in this respect. We are, however, concerned that the Ministry does not appear to have any controls in place to regulate the handling of the personal information in question by these organizations. Therefore, we have made a number of recommendations to the Ministry in this respect, which are listed below under the heading of "RECOMMENDATIONS".

(2) Disclosure to the Ontario Property Assessment Corporation

With respect to the Ministry's disclosure of the microfilms to the Ontario Property Assessment Corporation (the Corporation) the Ministry submits as follows:

The Ministry plans to continue supplying microfilms to [the Corporation]. The Ministry submits that this practice is in accordance with section 37 and 42(e) of [the Act]. The *Ontario Property Assessment Corporation Act*, subsection 15(5) provides that "a Minister of the Crown may give to the Corporation any information and documents that the Minister considers necessary to enable the Corporation to perform its duties under this or any other Act; the Minister may impose such conditions as he or she considers appropriate when doing so." The microfilm documents are necessary for the Corporation to fulfill its duties under the *Assessment Act* sections 14 and 39, to prepare and update assessment rolls for each municipality. Other relevant parts of the *Assessment Act* provide that assessors have an obligation, under section 12, to verify information furnished in returns. The Corporation is also subject to the [Municipal Freedom of Information and Protection of Privacy Act] pursuant to the *Ontario Property Assessment Corporation Act*.

Application of section 37 of the Act

As stated previously, it is our view that under section 37 of the Act, personal information that is maintained by an institution may be excluded from the application of Part III of the Act only if the personal information is maintained by that institution specifically for the purpose of creating a record which is available to the general public. Other institutions cannot claim the exclusion unless they also maintain the personal information for this purpose.

We have already concluded that the personal information contained in individual land registration records, either in paper, **microfilm** or electronic format, is maintained at the Land Registry Offices for the purposes of creating a record that is available to the general public. [emphasis added] However, we have also indicated that a number of previous orders of this office have dealt with situations involving "bulk" access to personal information [Orders P-1114, P-1144 and P-1281]. Such situations are more complex and raise unique considerations.

As discussed, the reasons that the personal information contained in individual land registration records, which are maintained at the Land Registry Offices, is considered to be “maintained for the purpose of creating a record that is available to the general public” are that these records meet certain criteria of public availability, such as:

- the Land Registry personnel have a statutory duty to make this information available to the public;
- at these Land Registry Offices, there is a regularized system of access to the information on a record-by-record basis; and
- at these Land Registry Offices, a standardized fee is charged to all persons seeking access.

Since the information in question is available only one record at a time , there is also a practical limit to the ability of recipients to obtain and possibly abuse the personal information in the documents.

The Ministry has not, however, provided us with any information to suggest that the microfilms in question are being made available by the Land Registry Offices in bulk to members of the public. On the contrary, in its original submissions the Ministry explains that “all information contained in the land registration documents, plans and records is available for review on a record-by-record basis”. Therefore, it does not appear that “bulk” access is provided to users of the information.

The bulk disclosure of the personal information in the microfilms to the Corporation does not conform to the criteria set out above. The Land Registry personnel do not appear to have a statutory duty to make the microfilms available in bulk to the public, nor does there appear to be a regularized system of bulk access to the microfilms. Accordingly, it is our view that the personal information contained in the microfilmed records, which are being disclosed in bulk to the Corporation, is not maintained for the purposes of creating a record that is available to the general public. Therefore, the Ministry cannot claim the exclusion in section 37 of the Act in these circumstances.

Conclusion: Section 37 of the Act does not apply to the personal information contained within the microfilmed records which are being disclosed in “bulk” to the Corporation. Accordingly, Part III of the Act continues to apply to these records.

Given that we have found that section 37 of the Act does not apply to the personal information within the microfilmed records which are being disclosed in “bulk” to the Corporation, it will be necessary for us to determine whether the Ministry’s disclosure of the personal information in question is in accordance with section 42 of the Act.

However, as we have not yet had an opportunity to fully investigate this disclosure, we do not have sufficient information to enable us to make a finding in this respect. Accordingly, we will be undertaking a separate investigation with respect to this matter.

SUMMARY OF CONCLUSIONS

- The information in question is “personal information,” as defined in section 2(1) of the Act.
- There is no basis to conclude that the Ministry disclosed the personal information in question in bulk to banks or any other lending institutions.
- The personal information contained in individual land registration records, either in paper, microfilm or electronic format, is maintained at the Land Registry Offices for the purposes of creating a record that is available to the general public, thus falling under section 37 of the Act. Accordingly, Part III of the Act does not apply to these individual records.
- Section 37 of the Act does not apply to the personal information contained within the microfilmed records which are being disclosed in “bulk” to the Corporation. Accordingly, Part III of the Act continues to apply to these records.

RECOMMENDATIONS

If the Ministry has not yet done so, we recommend that the Ministry give the stated six months notice to the two Real Estate Boards and the two municipalities with respect to the discontinuance of the Ministry’s disclosure of the microfilmed records, as soon as practicable, but no later than December 31, 1999.

We recommend that the Ministry take steps to ensure that the two Real Estate Boards and the two municipalities protect the microfilmed records which have been disclosed to them by the Ministry. Specifically, the Ministry should ensure that controls are put in place concerning the subsequent use, disclosure, disposal and security of these records.

To assist the Ministry in complying with the above-noted recommendation, we are enclosing with this Report a copy of one of the IPC Practices entitled, “How to Protect Personal Information in the Custody of a Third Party”. Normally, we would be recommending that the Ministry consider entering into a written agreement with each of the Real Estate Boards and municipalities in order to protect the personal information in question. However, given that the Ministry is in the process of discontinuing its practice of disclosing the microfilmed documents to these organizations, we feel that a formal written agreement may not be required under these circumstances, as long as the Ministry is satisfied that sufficient controls are in place to protect the personal information in question.

Within six months of receiving this report, the Ministry should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendations.

Ann Cavoukian, Ph.D.
Commissioner

June 22, 1999
