



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

INVESTIGATION REPORT

INVESTIGATION PC-990033-1

Ministry of Consumer and Commercial Relations

December 20, 2000



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INTRODUCTION:

Background of the Complaint

The Office of the Information and Privacy Commissioner received a complaint that information from Ontario's land registration system was being sold in bulk and for profit to commercial mortgage lenders by the Ministry of Consumer and Commercial Relations (the Ministry). Specifically, the complainant was concerned about the disclosure of information relating to mortgage renewal dates. The complainant thought that banks and other lending institutions were using this information to target consumers when their mortgage terms were about to expire. The complainant believed that this disclosure practice was an invasion of privacy and was contrary to the *Freedom of Information and Protection of Privacy Act* (the *Act*).

After completing an investigation, I issued a report concerning this complaint (Investigation PC-980049-1). Some of the conclusions I reached were:

- The information in question was "personal information," as defined in section 2(1) of the *Act*.
- There was no basis to conclude that the Ministry disclosed this personal information 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* did not apply to these individual records.

During the course of that investigation, the Ministry also confirmed that copies of microfilmed records, which contain a compilation of the individually registered documents, were being provided to the Ontario Property Assessment Corporation (OPAC). The Ministry argued that section 37 of the *Act* also applied to this disclosure.

In addressing this issue, I stated:

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 [OPAC] 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 [OPAC], 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.

Accordingly, I found that section 37 of the *Act* did not apply to the bulk disclosure of microfilm records, and that Part III of the *Act* continues to apply. In view of this finding, I advised the Ministry that it was necessary to determine whether its disclosure of personal information to OPAC was in accordance with section 42 of the *Act*.

The current investigation file was opened for this purpose, and the Ministry was asked to make submissions with respect to the application of section 42 of the *Act* in this regard. Because OPAC also could have an interest in the outcome of this investigation, I provided OPAC with an

opportunity to make submissions as well. The Ministry and OPAC (whom I will refer to collectively as “the institutions” for the purposes of this report) provided a joint submission.

In addition to making submissions on the application of section 42, the institutions also took the position that one of the land registration documents included on the microfilm, the Affidavit of Residence and Value of Consideration (the Affidavit), does not contain information about an identifiable individual. Instead, the institutions argue, the Affidavit contains information about the taxable value of the property and does not qualify as “personal information” as defined in section 2(1) of the *Act*.

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Is the information contained on the microfilm, and in particular in the Affidavit, “personal information”, as defined in section 2(1) of the *Act*?
- (B) Is the personal information contained on the microfilm being disclosed in compliance with section 42 of the *Act*?

RESULTS OF THE INVESTIGATION:

The institutions’ submissions include some helpful background information on the relationship between the land registration and property taxation systems in Ontario and the various uses made of the Affidavit. They explain:

The *Land Transfer Tax Act* requires that every person registering a conveyance of land in Ontario must file a land transfer tax affidavit with the conveyance. The tax owing on the transfer is calculated on the amount of consideration paid for the land as set out in the affidavit. The Land Registrar collects the tax on behalf of the Ministry of Finance and forwards copies of the affidavits for verification purposes. The Minister of Finance has approved the *Land Transfer Tax Act* Affidavit form for use under the *Land Transfer Tax Act* and under the *Assessment Act* as described below.

...

The [Affidavit] is a source for collecting information used in the administration of the *Assessment Act*. In fact the [Affidavit] advises the transferee that the mailing address shown on the form will be used for future Notices of Assessment under the *Assessment Act*. The [Affidavit] also indicates how information contained on the form will be used to determine school support designation.

Under section 14 of the *Assessment Act*, [OPAC] is required to prepare an assessment roll for each municipality. This includes a number of mandatory components, such as: a description of the property, the names and surnames of those to be assessed, number of acres or other measures showing the extent of the

land, current value of the parcel of land, whether the person is French-language rights holder, religion if Roman Catholic, and the type of school board the person supports under the *Education Act*, to name a few.

Under section 19 of the *Assessment Act*, the assessment of land is required to be based on its current value. The [Affidavit] is the only public source for obtaining the value of the property at the time of transfer. Other details such as the amount paid in cash, value for chattels, value attributed to good will etc., are aspects of the sale which are analysed as part of determining a value for assessment purposes.

All information contained on the [Affidavit] is required to meet the mandate of the *Assessment Act*. However, the [Affidavit] does not contain all the information needed to meet other responsibilities such as information on all occupants in the property needed for planning purposes by municipalities and school boards, and information such as citizenship, and year of birth used in the preparation of the Jurors Lists and Preliminary Lists of Electors. In these cases, the [Affidavit] is used as a “trigger” for mailing out questionnaires under section 11 of the *Assessment Act*.

Issue A: Is the information contained on the microfilm, and in particular in the Affidavit, “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 Microfilm

As part of Investigation PC-980049-1, I examined whether the information contained in certain land registration records was “personal information,” as defined in section 2(1) of the *Act*. Although the information in each type of land registration record varies, I examined two documents, namely, the Charge/Mortgage of Land and the Deed/Transfer of Land, and found that they contain information relating to individuals, including their names, addresses, their financial transactions, as well as other personal information about them which meets the requirements of paragraphs (a), (b), (d) and (h) of the definition of “personal information” in section 2(1) of the *Act*. I concluded that the information in question was “personal information,” as defined in section 2(1) of the *Act*.

As noted earlier, the microfilmed records contain a compilation of all individually registered documents. Because I have already concluded that the information contained in some of these land registration documents qualifies as “personal information,” I find that the microfilm itself contains “personal information,” as defined in section 2(1) of the *Act*.

The Affidavit

The institutions submit that the information contained in the Affidavit represents information about the taxable value of the property, not information about an identifiable individual. They argue that the details of that value, how much was paid in cash, how much represents assumed mortgages or vendor-take-back mortgages, still relate to the property, being the total consideration for the transaction.

In this regard, the institutions rely on Order 23. This order dealt with a request for the estimated market values of all properties in Metropolitan Toronto for a given year. Former Commissioner Sidney B. Linden considered the issue of whether assessment information which contains the name of the assessed individual is personal information. In that order he determined that information concerning the municipal location of a property and its estimated market value was information “about a property” and not “about an identifiable individual.”

I agree with the position taken by former Commissioner Linden, but I do not accept its application to the circumstances of this investigation.

The Affidavit asks for the following information:

- brief description of the land;
- the name(s) of the transferor(s) and the transferee(s);
- information concerning the capacity of the deponent(s);
- information about any “non-resident person[s]” or any “non-resident” corporation[s]”;
- information concerning the total consideration for the transaction, including: monies paid or to be paid in cash; mortgages (assumed and/or given back to vendor); property transferred in exchange; securities transferred; liens, legacies, annuities and maintenance charges to which transfer is subject; other valuable consideration subject to land transfer tax; value of land, building, fixtures and goodwill, etc.;

- relationship between transferor and transferee and purpose of conveyance, if consideration is nominal;
- address of the property being conveyed;
- mailing address(es) for future Assessment Under the *Assessment Act* for property being conveyed; and
- information concerning school tax support.

In Order 23, the information at issue was a list of municipal addresses and the corresponding estimated market value of these properties. Commissioner Linden relied on the fact that the municipal location of a property cannot automatically be equated with the address of its owner in concluding that the requirements of paragraph (d) of the definition of personal information had not been established, and went on to find that even when the names of the property owners are added to the municipal address and market value, this is not sufficient to bring the information within the scope of paragraph (h) of the definition. His conclusion was based on a determination that the information in question was “about a property” and not “about an identifiable individual” as required in order to qualify as “personal information.”

In contrast to the record at issue in Order 23, the Affidavit contains more detailed information concerning the purchaser of a property. For example, it breaks down the total purchase price into categories such as monies paid in cash, mortgages, property transferred in exchange, securities, etc., which are “financial transactions” and therefore fall within the scope of paragraph (b) of the definition. Similarly, the names and addresses of purchasers contained in the Affidavit, when combined with information concerning school tax support, is sufficient to bring the contents of the Affidavit within the scope of paragraph (h) of the definition of “personal information” in section 2(1) of the *Act*.

Accordingly, I find that the information in the Affidavit is “personal information.”

Conclusion: The information contained on the microfilm, including the information in the Affidavit, is “personal information,” as defined in section 2(1) of the *Act*.

Issue B: Is the personal information contained on the microfilm being disclosed in compliance with section 42 of the *Act*?

Under the *Act*, an institution is prohibited from disclosing personal information in its custody or under its control except in the specific circumstances outlined in section 42. The institutions submit that sections 42(c) and (e) permit disclosure in the circumstances of this case.

Section 42(c)

Section 42(c) of the *Act* states:

An institution shall not disclose personal information in its custody or under its control except,

for the purpose for which it was obtained or compiled or for a consistent purpose;

Section 43 further provides that:

Where personal information has been collected directly from the individual to whom the information relates, the purpose of a use or disclosure of that information is a consistent purpose under clauses 41(b) and 42(c) only if the individual might reasonably have expected such a use or disclosure.

Where information is collected *indirectly*, a disclosure would be for a consistent purpose where it is reasonably compatible with the purpose for which it was collected. (Investigation I93-016M)

The institutions submit:

The [Affidavit] is a form required to be attached to a conveyance under section 5 of the *Land Transfer Tax Act*. The form contains a declaration of the "value of the consideration" on which land transfer tax is levied. [The Ministry's] land registrars are agents for the Ministry of Finance to collect the tax upon registration and forward the forms to the Ministry of Finance.

As well, the form permits a person to declare his or her school support for education tax purposes. If completed, the form must be forwarded to [OPAC], which is responsible for maintaining school support lists under section 16 of the *Assessment Act*. The form also contains Property Information, including the Assessment Roll Number, that is used by [OPAC] to update the assessment roll that it is required to maintain under section 14 of the *Assessment Act*.

Accordingly, the provisions of section 42(c) of [the Act] apply so as to permit disclosure to [OPAC], since the form was obtained for that very purpose. The individual who swears the affidavit can reasonably anticipate that the form, or the information in it, will be forwarded to [OPAC] for use in keeping property information and school support up to date.

As noted earlier, the microfilm records contain all land registration documents, not just Affidavits. The institutions make the following submissions regarding disclosure of the entire microfilm:

All of the information on the microfilm is necessary to permit [OPAC] to meet the statutory obligations described above. The [Affidavit] is the primary document in determining the fair value of the property. However, in some cases, [OPAC] must review the other registration documents, the deed, discharges, mortgages and other encumbrances, in support of the analysis of fair value. Much of the personal information is gathered exclusively and specifically for use in meeting these obligations.

In the context of Investigation PC-980049-1, the Ministry provided our Office with information about the overall purpose of keeping a registry of records relating to land transfers. However, we have not been provided with any submissions in the current or previous investigation which deal with the specific purpose of each of the various types of records contained on the microfilm, nor whether each category of personal information was collected directly or indirectly from the individual to whom it relates. Therefore, my analysis will relate to the microfilm as a whole, rather than to each category of personal information in each document (with the exception of the Affidavit, which will be addressed separately), and this analysis will consider both the section 42(c) and section 43 tests in determining whether the information on the microfilm is being disclosed for a consistent purpose. In this regard, I will determine whether the individual to whom the information relates might reasonably have expected such a disclosure, and whether such a disclosure is reasonably compatible with the purpose for which the information was collected.

The purpose of collection by the Ministry

The overall purpose of collecting the information contained on the microfilm, according to the submissions made by the Ministry in Investigation PC-980049-1, is to fulfil a statutory obligation to maintain a land registration system for Ontario. The Ministry also states that the purpose of making these documents available to the public is “to enable people to search title or obtain information relating to the ownership of and interests in real property.”

Thus, one of the purposes of creating such a system is to make this information available to the public. One obvious reason for compiling the information is to facilitate transfers of land and lending of money with property as a security and, as the Ministry states, the records contain notices of interests that “are registered for the purpose of disclosing to third parties a claim or interest with respect to a given property.”

Although the Ministry did not elaborate on what is meant by a “claim or interest,” it would appear to refer to the fact that:

- purchasers want to be sure that: (a) they are getting clear title, (b) there will be no unexpected restrictions on their use of the property, and (c) they will not inadvertently assume any liabilities such as unpaid taxes or debts; and
- lenders want to know whether there are any debts or interests that may interfere with their repayment.

The KWIC Index to Services 2000 published by the Ontario Government sheds some further light on the purpose of the land registry system. The description of the functions of the Registration Division of the Ministry states:

The division records land ownership and transfer ... Clients are dependent on the availability, accuracy and timeliness of these records, which validate ... land title to real property.

...

The Real Property Registration Branch [of the Registration Division] manages and operates 55 Land Registry Offices throughout Ontario which register, store and manage documents, deeds, mortgages and plans of survey. All registered and deposited records are available to the public (for a fee) to search title or obtain information about the ownership of real property. ...

Based on this information, I find that the purpose for which the Ministry obtains and compiles the records contained on the microfilm is to maintain a land registration system for Ontario, and to make this information available to members of the public to enable them to conduct proper and adequate title searches or to obtain information relating to the ownership of and interests in real property.

Is disclosure of the entire microfilm to OPAC consistent with this purpose?

In order to assess whether disclosure of the entire microfilm to OPAC is consistent with the purpose of the collection of the personal information by the Ministry, it is useful to examine the various roles and responsibilities assigned to OPAC by statute.

OPAC's 1999 Corporate Report states the following:

[OPAC] came into being on December 31, 1997, when the staff, facilities and responsibilities of the Property Assessment Division of the Ministry of Finance were transferred to it under the Ontario Property Assessment Corporation Act, 1997. OPAC's first year of operation as an independent corporation responsible for the assessment of all property in Ontario was 1999.

OPAC is a not-for-profit, non-share capital corporation whose principal responsibility is to provide its customers – the property owners and municipalities of Ontario – with fair and equitable property assessments. OPAC is not a Crown agency, nor is it a part of the Ontario Government or owned by municipalities. It is composed of its members and every municipality in Ontario is a member of the Corporation. OPAC is managed by a 14-member Board of Directors – 12 are elected municipal or appointed officials – two are appointed by the Province. OPAC's first Board of Directors was constituted in April 1998, with the members appointed by the Ontario Minister of Finance from a list provided by the Association of Municipalities of Ontario. The Board manages the affairs of the Corporation, with all directors having a fiduciary responsibility to do so in the best interests of all members. The directors' primary duty is to the Corporation. They do not represent their municipalities, nor do they operate under the direction of their municipal councils.

The institutions submit that the information on the microfilm is used by OPAC in discharging its responsibilities in the following manner:

1. establishing a value for all Ontario properties as a base for the levy of municipal and school taxes, notifying the property owners of changes in value, and creating municipal assessment rolls that contain this information;
2. identifying education rights holders to support their constitutional right to direct their education taxes to Roman Catholic or French-language schools; and
3. preparing preliminary lists of electors for municipal and school board elections.

In assessing the application of sections 42(c) and 43, I must determine whether the disclosure made by the Ministry to OPAC qualifies as a “consistent purpose.” In instances where the information is collected directly from the individual to whom it relates, the “reasonable expectation” of the individual is an important factor in determining whether the two purposes are consistent. If, on the other hand, the information is collected indirectly, the appropriate test is whether the disclosure is reasonably compatible with the original purpose of the collection.

In my view, the purpose for the original collection of the various pieces of personal information contained in the records collected and compiled by the Ministry is quite different from the purpose for which this information is provided by the Ministry to OPAC. The institutions’ arguments focus primarily on the Affidavit, which I will consider separately later in this report, yet the microfilm contains many other records and personal information concerning aspects of land registration that have nothing to do with transfer tax payment or property assessment. Among the reasons for registering the various records contained on the microfilm are to ensure that purchasers are protected from bad title, interference with use and enjoyment of property and third party liabilities, and to provide guarantees to lenders that their loans are secured through registration on title. The Ministry’s purpose of assisting and facilitating private transactions and protecting private proprietary and financial interests has, in my view, little commonality to OPAC’s responsibilities for facilitating the collection of property taxes, allocating funds for education support, and gathering information for election purposes.

For these reasons, I find that, subject to my discussion of the Affidavit below, individuals providing personal information to the Ministry in the context of various transactions involving their real property – vendors, purchasers, mortgagees and persons with liens on property – would not reasonably expect that this information would be provided to OPAC, a corporation whose mandate is quite separate and much narrower in scope than the Ministry’s. I also find that disclosing the microfilm, containing this broad range of records and different types of personal information, to OPAC is not reasonably compatible with the purpose for which the information was originally collected by the Ministry.

Accordingly, I find that the disclosure of the personal information contained on the microfilm as a whole is not in accordance with section 42(c) of the *Act*.

The Affidavit

Under the *Land Transfer Tax Act*, the property registrar employed or retained by the Ministry is designated as a tax collector for the purpose of collecting land transfer tax on behalf of the Ministry of Finance and sending the money to that Ministry. Under section 5 of the *Land Transfer Tax Act*, the Minister of Finance has authority to approve the form of affidavit to be

used for this purpose. Section 16(3) of the *Assessment Act* also authorizes the Minister of Finance to approve the forms to be used when individuals apply to have their names included or altered in the assessment roll as a supporter of a type of school board under the *Education Act*. The institutions submit that the Minister of Finance has approved the form of affidavit for use under both the *Land Transfer Tax Act* and the *Assessment Act*, and that it is the same Affidavit.

Regulation 156/91 under the *Assessment Act* states that the Affidavit may be used for applying to OPAC to be included on the assessment roll as a separate school supporter. Part of the Affidavit is completed for this purpose, and the rest appears to deal with unrelated purposes. I accept that personal information contained in the portion of the Affidavit completed for school tax support designation was collected for the purpose for which it is being disclosed to OPAC, and this portion of the Affidavit satisfies the requirements of section 42(c). However, the remainder of the Affidavit is not related to school tax support. It is prescribed under the *Land Transfer Tax Act* and appears to be created for the purposes of calculating land transfer tax.

As stated above, the Minister of Finance has approved the Affidavit for use under the *Assessment Act*. One of the primary purposes of the *Assessment Act* is to set out the framework for municipal property taxation, which involves the compilation of an assessment roll by OPAC. Section 14(4) of the *Assessment Act* makes a linkage between the preparation of the assessment roll and the identification of school supporters, one of the designated uses of the Affidavit. This section states:

In the preparation of the assessment roll, [OPAC], in determining the names and school support of persons, shall be guided by the applications received and approved by the assessment corporation under section 16 of this *Act* and by the notices received under section 237 of the *Education Act*.

Therefore, because the Affidavit has been specifically approved for use under the *Assessment Act*, I find that one of the purposes for which the personal information contained in the Affidavit is collected by the Ministry is the purpose for which it is disclosed to OPAC, and this disclosure satisfies the requirements of section 42(c) of the *Act*.

Section 42(e) of the Act

Section 42(e) of the *Act* states:

An institution shall not disclose personal information in its custody or under its control except,

for the purpose of complying with an *Act* of the Legislature or an *Act* of Parliament or a treaty, agreement or arrangement thereunder;

In Investigation I-94-023P, former Compliance Review Officer Susan Anthistle found that for section 42(e) to apply, the statute in question must impose a duty on the institution to disclose the individual's personal information; a discretionary ability to disclose is not sufficient. She stated:

It is our view that the word 'complying' in section 42(e) indicates that the requirement in question must be **mandatory** in nature. [emphasis added]

This interpretation has been adopted and consistently applied in many investigations since that time (see for example, Investigations I94-095P and I94-057M).

The institutions submit that this interpretation is too restrictive and, if adopted, would frustrate the intent of the section 15(5) of the *Ontario Property Assessment Corporations Act*, which reads as follows:

A minister of the Crown may give to [OPAC] any information or documents that the minister considers necessary to enable [OPAC] 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

In response to a draft version of this Report which was circulated to the institutions, OPAC points out that it has a statutory mandate under the *Assessment Act* to provide a current value estimate for every property in Ontario. "Current value" is defined in that statute to mean:

... in relation to land, the amount of money the fee simple, if unencumbered, would realize if sold at arms's length by a willing seller to a willing buyer.

In this regard, OPAC submits:

The documents contained on the microfilm include deeds, mortgages, discharges of mortgages, executions, cautions, liens, discharges of liens, wills, letters of probate, leases, rights of ways, easements, transmission applications (name changes), and executions. All of these records are related to the determination of the current value assessment. Thus it is OPAC's view that individuals would have a reasonable expectation that the information provided by the Ministry for various land registration purposes would also be used by OPAC for the related purpose of determining the current value assessment of their properties.

Applying the interpretation of section 42(e) outlined above, and subject to my discussion of the Affidavit below, I have been provided with no evidence to indicate that any statute, including the *Assessment Act*, contains a provision that imposes a duty on the Ministry or any other institution to disclose the personal information contained in these various land registration records to OPAC for the purpose of discharging its responsibility to estimate the current market value of real property. Consequently, I find that disclosure of the entire microfilm, which contains significant amounts of personal information gathered during the course of administering all of the various land registration activities in the province, is not in accordance with section 42(e) of the *Act*.

The Affidavit

The institutions submit:

In this provision, the Legislature has recognized that [OPAC] may not be able to perform its duties if [OPAC] is denied access to necessary information and documents in the custody of other institutions. For this reason, the Legislature **expressly** granted Ministers of the Crown the discretion to disclose such information to [OPAC]. This is clearly the intent of the Legislature and the [Information and Privacy Commissioner's] interpretation would fetter the Minister's discretion to do so. The Ministry is under an obligation to determine whether the information should be disclosed to [OPAC] in the circumstances. Once the Minister has exercised his/her discretion and has determined that it is appropriate to disclose, there is an obligation to disclose. Therefore, the [Ministry] submits that disclosing the information pursuant to subsection 15(5) of the *Ontario Property Assessment Corporations Act* meets the intent and meaning of section 42(e). [original emphasis]

I have determined in my discussion of section 42(c) that disclosure of the Affidavit to OPAC complies with the *Act*. For that reason, it is not necessary for me to determine whether this disclosure also falls within the scope of section 42(e). However, it should be noted that the language of section 15(5) of the *Ontario Property Assessment Corporations Act* is discretionary, not mandatory.

As has been pointed out on a number of occasions in this report, the record at issue in this investigation is the entire microfilm containing various land registration records, not simply the Affidavits. The institutions' arguments regarding section 42(e) are restricted to the Affidavit, and it is clear that the other types of records contained on the microfilm do not fall within the scope of section 42(e) or any other provision of section 42 of the *Act*.

Conclusion: Disclosure of the microfilm is not in accordance with section 42 of the *Act*.

Disclosure of the personal information contained in the Affidavit to OPAC is in compliance with section 42(c) of the *Act*.

SUMMARY OF CONCLUSIONS:

- The information contained on the microfilm, including the information in the Affidavit, is "personal information," as defined in section 2(1) of the *Act*.
- Disclosure of the microfilm is not in accordance with section 42 of the *Act*.
- Disclosure of the personal information contained in the Affidavit to OPAC is in compliance with section 42(c) of the *Act*.

RECOMMENDATIONS:

I recommend that the Ministry take steps to ensure that personal information is not disclosed except in compliance with the *Act*.

I recommend that the Ministry discontinue the disclosure of the microfilmed records in their entirety, as soon as practicable, but no later than **February 28, 2001**.

Within three 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.

Original signed by: _____
Ann Cavoukian, Ph.D.
Commissioner

December 20, 2000 _____