



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
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PRIVACY COMPLAINT REPORT

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Municipality of Bayham

February 25, 2002

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PRIVACY COMPLAINT NO. **MC-010006**

MEDIATOR: **Warren Morris**

INSTITUTION: **Municipality of Bayham**

SUMMARY OF COMPLAINT:

The complainant owned property in the Municipality of Bayham (the Municipality) and was allegedly in arrears of property taxes. The Municipality initiated formal proceedings to collect the arrears owing. The complainant claims that in December of 2000 she became aware that a Final Notice of Registration of Tax Arrears Certificate (final notice) and Tax Arrears Certificate – Document General (certificate) was sent to a law firm that had formerly acted for the complainant and her husband. The final notice and certificate (which I will refer to collectively as the “notice”) contained information pertaining to the property, including the address, a legal description of the property, the assessment roll number and the amount allegedly owing in tax arrears. The notices do not contain the complainant’s name. Upon further inquiry, the complainant discovered that the Municipality had sent out notices to 13 addressees. The addressees consisted of parties that the Municipality believed had an interest in the property including the complainant, the complainant’s spouse, mortgagees, mortgage guarantors and various law firms. Of these, the complainant contends that only five had any interest in the identified property, and would thereby be entitled to receive such notices under section 11(1) of the *Municipal Tax Sales Act (MTSA)*. The complainant alleges that her personal information was inappropriately disclosed to the remaining eight addressees, contrary to the *Act*. Of the eight, six addressees were various law firms that have represented interested parties and the remaining two addressees consisted of a corporation that allegedly no longer had an interest in the property, and the law firm that represented them.

The mediator and the Municipality corresponded on a number of occasions in regard to the complaint. It was acknowledged that the Municipality did in fact send the 13 notices alleged by the complainant. The Municipality had hired an outside consultant to handle its tax sales. This consultant sought and obtained a legal opinion in regard to the legality of sending the notices to persons other than those who have an interest in the property – namely solicitors who prepared documents registered on title. The Municipality indicated that the legal opinion advised that, although the Municipality is not required to do so, it would be a good practice to notify these other parties given that a common objection to property tax sales is the allegation of no notice being provided to the interested parties. Despite the legal opinion, the Municipality agreed that it would alter its policy, and would now send notices only to those who had an interest in the property.

Notices would be sent to lawyers listed on the registered documents only if the interested parties' addresses were unknown.

The Municipality's position in regard to the privacy complaint is threefold. Firstly, the Municipality contends that the information contained in the Notices does not meet the definition of "personal information" as set out in the *Act*. The Municipality claims that none of the notices contained the name of the complainant except those that contained the complainant's name as addressee (i.e. notices sent to her directly, or sent to her in "care of" a law firm). Therefore, the Municipality asserts that the information in the notices is information about the property. They claim the notices do not disclose a financial transaction involving the individual complainant since the individual's name did not appear in conjunction with the other personal information. Secondly, the Municipality claims that the information is generally available to the public for a fee. They rely on section 415(1) of the *Municipal Act* which states that the Municipal Treasurer is obligated "on demand" to give a written certified statement of the arrears due on any land to any person. The Municipality also notes that *MTSA* proceedings are open to the public. The Municipality asserts that there is nothing confidential about these records and that the records are truly available to the general public. Thirdly, it is the Municipality's position that the *MTSA* does not prohibit the sending of the Notices to the solicitors, and that it may, in fact, be a prudent practice. The Municipality claims that the Notices were sent to the solicitors in good faith to ensure that those parties with an interest in the property did in fact receive notice. It is the Municipality's agent's normal practice to conduct a search of title for the purpose of identifying all registered interests against title and then proceeds to issue Notices to all interested parties at every address, including their solicitor's address as shown in the most recent addition of the Ontario Lawyer's Phone Book.

The Municipality's arguments raise the possible application of section 27 of the *Act*, which indicates that the privacy rules in Part II of the *Act* do not apply to information maintained for the purpose of creating a record that is available to the general public. If section 27 does not apply, it will be necessary to consider whether a disclosure occurred, and if so, whether it was authorized by section 32 of the *Act*.

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*?
- (B) If so, does section 27 of the *Act* apply to the personal information?
- (C) If not, did the Municipality disclose the complainant's personal information and, if so, was this disclosure in accordance with section 32 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 that "personal information" means recorded information about an identifiable individual, including:

- (b) information relating to... financial transactions in which the individual has been involved,
- ...
- (d) the address ... of the individual,
- ...
- (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The records in question do not disclose the complainant's name, however they do disclose the legal description of the property as well as the amount of tax arrears owing on the property at a specified date.

The question is whether the information in the record is information about an identifiable individual or whether the information is about a property. The distinction between information about an individual and information about a property has been dealt with in a number of circumstances. Order MO-1392, which sets out a detailed review of the Commissioner's treatment of this subject, states the following:

Previous orders of this office have drawn a distinction between information which is "about" a property, which does not qualify as "personal information" under section 2(1) of the *Act*, and information which is "about" an individual, which does meet the definition. In Reconsideration Order R-980015, Adjudicator Donald Hale stated:

"Personal information" means recorded information about an "identifiable individual". The Commissioner has interpreted this term to mean a natural person; it does not apply to information about other entities such as corporations, partnerships, sole proprietorships or business organizations (Order 16). The Commissioner has also recognized that some information relating to a business entity may, in certain circumstances, be so closely related to the personal affairs of an identifiable individual as to constitute that individual's personal information (Orders 113, P-364, M-138). Nonetheless, in order to qualify as "personal information", the fundamental requirement is that

the information must be "about an identifiable individual" and not simply associated with an individual by name or other identifier. It is apparent, therefore, that while the meaning of "personal information" may be broad, it is not without limits.

The words "about an identifiable individual" was first discussed in Order [23] by former Commissioner Sidney B. Linden. *That case raised the question of whether a Ministry of Revenue record containing the municipal locations of certain properties and their estimated market values would constitute the property owners' personal information when associated with the names of the property owners. Former Commissioner Linden found that it did not. The location of a property and its estimated market value was found to be information about the property, not information about an identifiable individual. If the name of an individual property owner were added to this information, it could not be said that the individual's name "appear[ed] with other personal information relating to the individual" or "would reveal other personal information about the individual" within the meaning of paragraph (h) of the personal information definition in section 2(1) of the Act. [emphasis added]*

More recently, in Order PO-1786-I, involving a request for information including the names of purchasers of property and the amounts paid, Assistant Commissioner Tom Mitchinson stated:

The appellant submits that the records do not contain personal information. In support of his position, he relies on the findings in Orders P-23 and M-188 where it was found that a listing of properties/municipal addresses, in the absence of any other information, was not about "identifiable individuals" and therefore did not qualify as personal information.

The circumstances of the current appeal are quite different from those in Orders P-23 and M-188. In this appeal, the records indicate that a particular individual purchased a specific property from the government and what the individual paid for that property. I agree with the ORC and the individual purchasers that this would, in fact, reveal information about the individual purchasers. Therefore, I find that the records contain the personal information of the individual purchasers. (See also Orders M-536, M-800, P-559, PO-1631 and PO-1754).

In another recent order, Adjudicator Katherine Laird found that appraisal figures, as well as the actual purchase price, respecting a property owned

by an identifiable individual constitute "personal information" [see Order PO-1847].

In the circumstances, following Orders PO-1786-I and PO-1847, I find that the appraisal figures as well as the purchase price figures in Records 1, 2 and 3 qualify as the affected person's personal information under the definition in section 2(1) of the *Act*. This finding also applies to information which would substantially reveal such figures. However, the remaining information withheld from the records does not qualify as personal information, since it is about the property, and cannot be said to be about the affected person.

In Privacy Investigation I94-079M, in deciding whether a municipal work order against a property was the personal information of the owner, the then Assistant Commissioner Ann Cavoukian stated the following:

The Municipality took the position that "... the information that was provided respecting the infractions against the property and outlining the municipal address of the property, does not constitute personal information, but rather property information ..." The Municipality cited a number of Orders issued by this Office in support of its position, including Orders M-15 and M-176.

The records at issue in M-15 were copies of work orders which had been issued by a municipality against various residential rental properties. Commissioner Tom Wright concluded that "... the municipal addresses of the properties in question as well as information concerning repairs do not constitute personal information as defined in the Act."

In M-176, Inquiry Officer Holly Big Canoe stated: "I find that the fact of being identified as responsible for the alleged unlawful condition of a property is 'other personal information' for the purposes of subparagraph (h) of the definition ..."

Based on the above, we concur with the Municipality that the municipal address of the complainant's property and the infractions against it did not constitute "personal information", as defined in section 2(1) of the Act.

However, it is also our view that the complainant's name together with the fact that he owned the property in question, that he had allegedly requested that the order for non-compliance with the zoning by-law be delayed because of his upcoming candidacy, and that he was identified as being responsible for the alleged unlawful condition of the property met the requirements of paragraph (h) of the definition of personal information in section 2(1) of the Act.

In Privacy Investigation I94-079M, it was determined that a work order against a property by itself, without the name of the person responsible for the unlawful condition of the property, is not personal information about an individual because it does not necessarily suggest personal information about its owner.

I am satisfied that the information contained in the Notice of Registration of Tax Arrears does reveal financial information of the complainant despite the fact that her name does not explicitly appear in it. Land registry and assessment roll information can easily be connected to property owners through public registries, and in this case undoubtedly from the recipient's own files. I am satisfied this information, which is about the complainant personally, meets the definition of personal information as defined in paragraph (h) of in the *Act*.

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

Issue B: Does section 27 of the *Act* apply to the personal information?

Section 27 of the *Act* states:

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

The reference to "this Part" means Part II of the *Act*, which encompasses section 32, the section that prohibits the disclosure of personal information unless one of the enumerated exceptions applies.

The Municipality was required to collect, maintain and disclose tax information under a number of different statutory provisions. Under section 39(2) of the *Assessment Act*, the municipal clerk is required to make the assessment roll available for inspection by the public. Section 14 of the *Assessment Act* indicates that the assessment roll, prepared by the Ontario Assessment Corporation, must contain the following information:

- a description of the property sufficient to identify it;
- the amount assessable against each person who is liable to assessment opposite the person's name;
- number of acres, or other measures showing the extent of the land.

In addition, section 415(1) of the *Municipal Act* requires the municipal treasurer to provide a written certified statement of the arrears due on any land, on payment of the prescribed fee. Section 415(4) provides that the certificate may be in Form 8, which includes the aforementioned information, but not the owner's name.

As well, section 3 of the *MTSA* permits the Municipality to register a tax arrears certificate on title, indicating that the property will be sold by public sale if the cancellation price is not paid within one year following registration. This registration takes the form of the certificate, which is one of the documents included in the notice that was sent to the 13 parties.

It might appear that these requirements, taken together, indicate that the information in the notice falls under section 27 of the *Act*. However, none of these provisions requires that the particular combination of information contained in the notice be made available to the “general public” by the municipality. The certificate contains most of the information, but not the owner’s name. In addition, the certificate is made available to the general public by the Registry or Land Titles Office (part of the Ministry of Consumer and Business Services) and not by the municipality. Previous Investigation Reports have indicated that in order to satisfy section 27, the information must be maintained for this purpose by the institution in question, not some other institution (see, for example, the Investigation Report in Complaint PC-980049-1). In the circumstances of this case, different information is maintained by different institutions (i.e. the Ministry of Consumer and Business Services and the Municipality) in connection with public access, a situation to which section 27 clearly does not apply.

The Municipality also has an obligation to notify various parties that the certificate is being registered. These requirements are set out in section 4 of the *MTSA*, which states, in part:

4. (1) Within sixty days of the registration of a tax arrears certificate, the treasurer shall send or cause to be sent a notice in the prescribed form of the registration of the certificate to the following persons:
 1. The assessed owner of the land.
 2. In the case of improved land, the assessed tenants in occupation of the land.
 3. Where the land is registered under the Land Titles Act, every person appearing by the parcel register and by the index of executions to have an interest in the land as of the time of closing of the land registry office on the day the tax arrears certificate was registered other than a person who has an interest referred to in clause 9 (5) (a) or (b).
 4. Where the Registry Act applies to the land, every person appearing by the abstract index and by the index of writs received for execution by the sheriff for the area in which the land is situate to have an interest in the land as of the time of closing of the land registry office on the day the tax arrears certificate was registered other than a person who has an interest referred to in clause 9 (5) (a) or (b).

However, these requirements relate to the notification of specific persons, rather than a record “available to the general public”.

In my view, section 27 of the *Act* does not apply.

Conclusion: The personal information is not information to which section 27 of the *Act* applies.

Issue C: Did the Municipality disclose the complainant's personal information and, if so, was this disclosure in accordance with section 32 of the *Act*?

The Municipality has acknowledged that the notice was sent as alleged by the complainant, and I conclude that this constitutes "disclosure" within the meaning of the *Act*. Section 32 prohibits disclosure of personal information unless the disclosure falls within one of the enumerated exceptions listed in its subsections. Section 32(c) states:

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

(c) for the purpose for which it was obtained or compiled or for a consistent purpose.

The purpose for which the complainant's personal information was obtained or compiled must therefore be determined in order to establish whether the Municipality's disclosure of the complainant's personal information is in compliance with section 32(c) of the *Act*.

As noted in the preceding section, the municipality is required to collect, maintain and disclose the information in question under several different statutory provisions, specifically, sections of the *Assessment Act*, the *Municipal Act* and the *Municipal Tax Sales Act*. In my view, one of the purposes for which the information was collected was to meet these statutory obligations. As well, I have concluded that the municipality collected this information in order to permit the orderly and timely collection of municipal property taxes, including tax arrears, in a manner consistent with the public interest. I have already referred to the municipality's submission that "... a common objection to property tax sales is the allegation of no notice being provided to the interested parties". In my view, if a tax sale occurred without notice to an interested party, it would be unfair and contrary to the public interest.

The complainant takes issue with the fact that a corporate entity appearing in the land registry abstract index as well as the law firm representing them, were sent the notice despite the fact that the corporation no longer had an interest in the property. Paragraph 3 of section 4(1) of the *MTSA* states that the prescribed notice shall be sent to "...every person **appearing** by the register of title and by the index of executions to have an interest in the land as of the time of closing of the land registry office on the day the tax arrears certificate was registered..."(emphasis added). It is my view that the Municipality need only be held to a reasonable standard, and not an absolute legal certainty, when assessing which parties hold an interest in the property. Although the corporate entity may not have continued to hold an interest in the property, it was reasonable for the Municipality to send them a notice since they did appear on the register of title.

Section 11(1) (b) of the *MTSA* requires that notice to an interested party be served on that person's solicitor where an address "has not been furnished" for that party. In this case, the municipality had addresses for the interested parties, but served their solicitors in any event. The purpose for taking this extra step was clearly to provide the interested parties an additional opportunity to receive notice of the tax arrears, and thereby protect the integrity of a future tax sale from a possible allegation of unfairness for lack of notice. In my view, in assessing this further notification, it is relevant to consider the rule of strict confidentiality between a solicitor and his or her client, as stipulated in Rule 2.03 of the *Rules of Professional Conduct* of the Law Society of Upper Canada.

Despite the fact that disclosure to the solicitors was not specifically required in the circumstances of this case, I have concluded that the purpose of this disclosure is precisely the purpose for which the information was originally obtained or compiled (i.e. collection of property taxes and tax arrears in a fair manner, consistent with the public interest). I am therefore satisfied that the disclosure was in compliance with section 32(c).

Conclusion: The personal information sent in the Notices to various parties was disclosed for the purpose for which it was obtained or compiled, or for a consistent purpose, and therefore the disclosure was in accordance with section 32 (c) of the *Act*.

SUMMARY OF CONCLUSIONS:

- The information in question is personal information as defined by section 2(1) of the *Act*
- The personal information is not information to which section 27 of the *Act* applies in the circumstances.
- The Municipality's disclosure of personal information to various parties was disclosed for the purpose for which it was obtained or compiled, or for a consistent purpose, and therefore was in accordance with section 32 (c) of the *Act*.

Warren Morris
Mediator

February 25, 2002