



Information and Privacy
Commissioner/Ontario

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

PRIVACY COMPLAINT REPORT

PRIVACY COMPLAINT NO. MC-050001-1

The Corporation of the City of London



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INVESTIGATOR: Maria Tzimas

INSTITUTION: The Corporation of the City of London

SUMMARY OF COMPLAINT:

The Office of the Information and Privacy Commissioner/Ontario (the IPC) received a privacy complaint under the *Municipal Freedom of Information and Protection of Privacy Act* (the Act) involving the Corporation of the City of London (the City).

The complainant was concerned that the City mailed a document entitled "Allocation of Taxes 2003" to all of the property owners listed in this document on two occasions. The City confirmed that a Tax Allocation schedule was distributed to affected property owners with a Public Meeting Notice dated September 12, 2004 and subsequently with a Notice of Decision dated October 28, 2004.

BACKGROUND INFORMATION

The City provided the following information by way of background to the complaint:

The Public Meeting Notice and Notice of Decision deal with the issue of condominium conversion application made under section 356 of the *Municipal Act, 2001*. That is, the division of one property into two or more parcels and the division and application of any part payment of taxes on the original property to each of the parcels. Section 356 of the *Municipal Act, 2001* requires the local municipal Council to hold a public meeting enabling the applicants and owners to make representations on the application and requires Council to make a formal decision on the application.

Section 356 also requires Council to notify the applicants and owners by mail about the meetings and to also notify them by mail about the final decision and the deadline date for appealing that decision. The schedule attached to the Notices and distributed by the City of London is entitled "Allocation of Taxes (\$776.46) 2003" and contains seven columns entitled: Roll Number, Property Address and Description, Property Owner(s), Assessed values, Taxes, Less Payments Received, Owner(s) Balance.

...

It is important to note that this process is a transitional one. Until the appeal period of section 356 is over, the Allocation of Taxes schedule shows only the recommended land division and property tax and payment allocations. The assessment roll has yet to be revised, no individual property owners on the list have been billed and therefore no individual property owner on the list is able to be in a position of tax arrears for the listed properties. The property owners listed are not yet responsible for the proposed land division and property tax and payment allocations. At this point in time it is a matter for the consideration of Council at an open meeting as required by section 356 of the Municipal Act, 2001. [Original emphasis.]

DISCUSSION:

The following issues were identified as arising from the investigation:

Issue A: Is the information “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,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except if they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and

- (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;

As indicated above, the record at issue in this complaint is a schedule entitled "Allocation of Taxes (\$776.46) 2003". Each page of this record contains seven columns of information titled: "Roll Number"; "Property Address and Description"; "Property Owner(s)"; "Assessed Values"; "Taxes"; "Less Payments Received"; and "Owner(s) Balance".

In reviewing the record at issue, it is apparent that some of the properties on the list are owned by individuals, and some are owned by businesses.

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]*

In my view, consistent with the reasoning in Order 16, where the information in the record relates to businesses, this information does not qualify as "personal information". Furthermore,

applying Commissioner Linden's reasoning in Order 23 to the circumstances of this complaint, I conclude that the information contained in the columns entitled: "Roll Number", "Property Address and Description", "Property Owner(s)", "Assessed Values" and "Taxes", is information about the properties and not about any of the individuals identified in this record. As a result, it falls outside the scope of the definition of "personal information" in section 2(1) of the *Act*. I will address the remaining two columns, "Less Payments Received" and "Owner(s) Balance", below.

The complainant's main concern with the City's disclosure of the Allocation of Taxes schedule appears to be the last column entitled "Owner's Balance". Specifically, the complainant is of the view that a positive balance in this column reflects unpaid taxes on the part of the owner, thus inferring that the owner is in a situation of tax arrears.

Previous decisions of this office have addressed the issue of whether tax arrears owing on a property qualifies as personal information. For example, in Privacy Complaint Report MC-010006-1, the complainant, who was alleged to be in arrears of taxes, asserted that her personal information had been improperly disclosed when a Final Notice of Registration of Tax Arrears Certificate and a Tax Arrears Certificate – Document General had been sent out to 13 addressees. The report summarized previous decisions of this office, including those cited above regarding when information is "personal" and when it is merely about a property, and concluded that the amount of tax arrears owing on the property at a specified date was personal information, stating:

I am satisfied that the information contained in the Notice of Registration of Tax Arrears does reveal financial information of the complainant ... I am satisfied this information, which is about the complainant personally, meets the definition of personal information as defined in paragraph (h) of in (sic) the *Act*.

The records, and therefore the findings in Privacy Complaint Report MC-010006-1, however, are distinguishable from the record at issue in the current complaint.

The City, in its submissions, explained that the Allocation of Taxes schedule which is at issue in this complaint shows *proposed* figures that are to be approved by Council and that the financial information contained in the "Owner's Balance" column is not meant to suggest that the owner is in a position of tax arrears.

Specifically, with respect to the columns entitled "Less Payments Received" and "Owner(s) Balance", the City submits as follows:

There is usually a lengthy transition period (possibly a few years) from the time the municipality approves a site plan or condominium plan application until the tax roll is adjusted to reflect the division into new parcels and the apportionment of taxes on the land among the parcels. During that transition period payments come to the municipality from a variety of sources. These payments cannot be applied to the individual properties until the outcome of the land division process is finalized and the approved adjustments have been made to the tax roll. The payments might come from the developer, the previous property owner, from a

property management company or from a mortgage company. The payments received from a developer might also include payments made directly to the developer from individual property owners. All these payments are held on account by the municipality but not applied until after the land division process is finalized and the approved adjustments have been made to the tax roll. It is important to note that during this transition period no property tax billings relating to the newly formed properties (condominium units) are mailed out.

The *Municipal Act, 2001* section 356(1)(c) requires that Council formally decide how to apply these part payments received during this period. It is the second last column (Less Payments Received) on the Allocation of Taxes list that shows Council's proposed decision on the allocation of these part payments.

...

The final column on the Allocation of Taxes list is called the Owner(s) Balance column. In one sense this is a simple calculation of the Taxes column minus the Less Taxes Received column showing the remaining amount as the Owner(s) Balance. In section 356 of the *Municipal Act, 2001* this amount is called the "unpaid taxes on the land".

Sections 356(1)(a), (b) & (c) of the *Municipal Act, 2001* require the local municipality to take certain actions which must be approved by Council decision at a public meeting. Section 356(1)(b) requires Council to "apportion the unpaid taxes on the land ... among the parcels". Section 356(5) specifically states that the applicants and owners be notified of the decision of Council. As stated above, that decision of council consists of three parts as directed by sections 356(1)(a), (b) & (c) and section 356(1)(b) specifically requires Council to "apportion the unpaid taxes on the land ... among the parcels". Therefore this Owner(s) Balance column must be apportioned by Council and must be included in the mandatory notice to all affected applicants and owners as required by section 356 of the *Municipal Act, 2001*.

...

Until the appeal period of section 356 is over, the Allocation of Taxes schedule shows only the recommended [original emphasis] land division and property tax and payment allocations. *The assessment roll has yet to be revised, no individual property owners on the list have been billed and therefore no individual property owner on the list is able to be in a position of tax arrears for the listed properties* [emphasis added]. The property owners listed are not yet responsible for the proposed land division and property tax and payment allocations. At this point in time it is a matter for the consideration of Council at an open meeting as required by section 356 of the *Municipal Act, 2001*.

The City's submissions make it quite clear that the column entitled the "Owner(s) Balance" does not represent a situation of tax arrears on the part of the individuals identified in the records, as the property owners listed are not yet responsible for the proposed land division and property tax and payment allocations. Therefore, I accept the City's submission that no individual property owner on the list is able to be in a position of tax arrears for the listed properties. Accordingly, I conclude that the information in this column does not qualify as "personal information" as defined in section 2(1).

Similarly, based on the City's submissions and previous decisions of this office, I conclude that the information found in the column "Less Payments Received" falls outside the scope of the definition of "personal information" in section 2(1) as this information is also about the properties and not about any of the individuals identified in this record.

In light of the above, and given that there is no indication that any of the other information in the columns reveals anything of a personal nature about any identifiable individuals, I conclude that the information contained in the Allocation of Taxes schedule does not qualify as "personal information" as defined in section 2(1) of *Act*.

Issue B: Was the disclosure of the "personal information" in accordance with section 32 of the *Act*?

In light of my conclusion that the information contained in the Allocation of Taxes schedule is not personal information, it is not necessary for me to consider section 32 of the *Act*. However, even if I were to find that the information in question is personal information, I am satisfied that the disclosure in question was authorized by section 32(c) of the *Act*.

Section 32(c) allows disclosure of personal information for the purpose for which the information was originally collected or compiled or for a consistent purpose. The City made extensive submissions regarding condominium conversion applications, which are made under section 356 of the *Municipal Act, 2001*, and the public nature of the process. As described above, this process involves the division of one property into two or more parcels and the division and application of any part payment of taxes on the original property to each of the parcels.

The City also provided specific information concerning the collection and compilation of the information in the Allocation of Taxes schedule explaining that this information was collected and compiled for the purpose of the land division, tax and payment allocation process required by section 356 of the *Municipal Act, 2001*. With respect to the disclosure of the schedule, the City explained that section 356 of the *Municipal Act, 2001* requires the local municipal Council to hold a public meeting enabling the applicants and owners to make representations on the application and requires Council to make a formal decision on the application. The City also explained that section 356 also requires Council to notify the applicants and owners by mail about the meetings and to also notify them by mail about the final decision and the deadline date for appealing that decision.

Having reviewed the City's submissions, as well as section 356 of the *Municipal Act, 2001*, I am satisfied that the information contained in the Allocation of Taxes schedule was obtained and compiled by the City as part of the statutory process for the land division, tax and payment allocation as required by section 356 of the *Municipal Act, 2001*. I am also satisfied that the City disclosed the information in question for the same purpose for which it was obtained and compiled, that is, as part of this statutory process. Accordingly, the City's disclosure of the Allocation of Taxes schedule was in accordance with section 32(c) of the *Act*.

OTHER

Despite the conclusions reached above, and in light of the complainant's main concern in this complaint, the City may wish to consider including clearer language on the Allocation of Taxes schedule to avoid the perception that a positive balance in the "Owner's Balance" column infers a tax arrears situation.

Original signed by: _____

Maria Tzimas
Investigator

February 2, 2006
