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

ORDER MO-1693

Appeal MA-010246-1

Municipal Property Assessment Corporation

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NATURE OF THE APPEAL:

The appellant represents a consulting business whose primary work involves judgment collection accounts under license pursuant to the *Collection Agencies Act*. He submitted a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the Ontario Property Assessment Corporation (OPAC), now the Municipal Property Assessment Corporation (MPAC) for:

> A copy of the current year's tax assessment roll for the entire Province of Ontario in whatever electronic format it is currently kept in. For greater clarity, I am specifically seeking a copy of the roll that contains the names of all property owners within the Province of Ontario as ordinarily contained within the assessment roll.

MPAC denied access to the requested record pursuant to section 14(1) of the *Act* (invasion of privacy), with specific reference to the exception in section 14(1)(f) and the presumptions in sections 14(3)(e), (f) and (h). MPAC also advised the appellant that, pursuant to section 39 of the *Assessment Act*, the Assessment Roll for each municipality is available for viewing at the municipality's offices during office hours. MPAC also indicated that it makes certain non-identifying portions of the Assessment Roll available on its website.

The appellant appealed MPAC's decision on the basis that Assessment Rolls are "public records" under section 39 of the *Assessment Act*. He states in his appeal letter:

> Assessment rolls are public records under section 39 of the Ontario *Assessment Act*. Every member of the public has a right to review them. However not everyone can reasonably go to the 461 municipal offices in the province to do so. Therefore the only means of achieving access is through the database held by [MPAC].
>
> Moreover, any member of the public can access property ownership information in registry offices. Again it would not be practical to go from office to office in order to collect the information. It shows, however, that the information in the database is public and not private or personal. Therefore there is no invasion of privacy.

The appellant also points out:

> The database was previously compiled by the Ontario Ministry of Finance which started selling it, with property owners' names, in electronic format in 1988. The Ministry charged $0.003 per roll number plus administration charges and taxes. In the 1995 database there were 6,435,346 records. The cost of the data would have been $19,306.04.
>
> In August 2000 [MPAC] stopped selling the roll containing residential information. It does currently sell the commercial assessment data scrubbed of personal names. The cost is significantly higher: $0.03 per roll number. …

The appellant also raises the application of the "public interest override" in section 16 of the *Act*.

During mediation, MPAC issued a supplementary decision adding section 15(a) (information published or available) as a new exemption claim for properties in the Assessment Roll that are designated as either commercial, industrial or multi-residential. MPAC also clarified that the section 14(1) exemption applied to the names and addresses of any identifiable individuals, and implicitly to the names and addresses of sole proprietorships and partnerships. MPAC also suggested that the appellant could purchase the commercial, industrial or multi-residential records, with personal information severed, for $26,680 through MPAC's Business Development Branch.

Mediation was not successful, so the appeal was transferred to the adjudication stage of the appeal process.

Adjudicator Laurel Cropley sought and received representations from both MPAC and the appellant. After reviewing these representations, Adjudicator Cropley decided to seek additional representations from MPAC on a number of issues, including the possible impact of Order MO-1366 and the Divisional Court's decision on judicial review of that order in *Phinjo Gombu* v. *Tom Mitchinson, Assistant Commissioner et al.* (2002), 59 O.R. (3d) 773 (*Gombu*). She shared MPAC's representations on these issues with the appellant. At that time the *Gombu* case was scheduled to be heard by the Court of Appeal, and the appellant asked Adjudicator Cropley to put her inquiry on hold pending the outcome of this hearing. After receiving representations from both parties, Adjudicator Cropley put this appeal on hold.

The *Gombu* appeal was subsequently abandoned, and this appeal was then reactivated. Because Adjudicator Cropley is currently on leave, the appeal was transferred to me. I invited the appellant to make representations on the impact of the *Gombu* decision on his appeal, but he declined to make any further representations.

PRELIMINARY ISSUES:

REASONABLE APPREHENSION OF BIAS

The appellant alleges a reasonable apprehension of bias in this case because of my decision, since reversed, to appeal the Divisional Court decision in *Gombu*. The appellant does not link this argument to any of the recognized criteria connected with a bias allegation.

In *Canadian Pacific Ltd. v. Matsqui Indian Band* (1995), 122 D.L.R. (4th) 129 (S.C.C.), former Chief Justice Lamer discussed the test for bias as follows (at 158):

> The classic test for a reasonable apprehension of bias is that stated by de Grandpré J. in *Committee for Justice and Liberty v. Canada (National Energy Board)* (1976), 68 D.L.R. (3d) 716 at p. 735, [1978] 1 S.C.R. 369, 9 N.R. 115:

> ...the apprehension of bias must be a reasonable one, held by reasonable and right-minded persons, applying themselves to the question and obtaining thereon the required information. In the words of the Court of Appeal [at p. 667], that test is "what would an informed person, viewing the matter realistically and practically -- and having thought the matter through – conclude." …
>
> De Grandpré J. further held that the grounds for the apprehension must be "substantial".

The Court also held that "a more flexible approach should be taken in applying the test for bias in the context of administrative tribunals".

The Information and Privacy Commissioner performs multiple roles and responsibilities under the *Act* (see, for example, section 46). Despite these many roles, the Commissioner is expected to decide appeals in an unbiased manner. Although filing a motion for leave to appeal indicates a desire for a different ruling from the Court, it does not suggest any cause for concern in the application of the existing law as currently interpreted by the courts. In any event, the appeal of the Divisional Court's ruling in *Gombu* has now been abandoned.

In my view, a reasonable and right-minded person in possession of the relevant facts would not conclude that a reasonable apprehension of bias has been established in these circumstances.

CROSS-EXAMINATION ON AFFIDAVIT

MPAC made a request to cross-examine an officer of the appellant on his affidavit submitted as part of the appellant's representations. It is not necessary to consider this request because I do not rely on the evidence provided in the affidavit.

RECORD:

The record consists of all electronic data in the Assessment Roll database for the Province of Ontario. MPAC has provided a sample printout of the type of information contained in the database. Each entry in the record contains the following information:

- Parcel number
- Primary subdivision number
- Notice indicator
- Ward
- Poll and poll suffix
- Name and mailing address

- Occupancy status
- Religion
- Designated ratepayer
- French entitlement
- School Support
- Tax Direction
- Location and description
- School Boards
- Tax Data
- Total Current Value
- Exempt Distribution
- Taxable Distribution

DISCUSSION:

PERSONAL INFORMATION

MPAC claims section 14(1) as the basis for denying access to all database entries relating to private residential properties, and for the names and addresses of identifiable individuals, sole proprietorships and partnerships in records designated as commercial, industrial or multi-residential.

The section 14(1) personal privacy exemption applies only to information that qualifies as "personal information", as defined by section 2(1) of the *Act*. The definition states, in part, as follows:

> "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,

> (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;

MPAC submits:

> . . . the Assessment Roll contains an abundance of personal information about identifiable individuals of the type outlined in section 2 of the *Act*. Specifically, individual names are listed in conjunction with property addresses, mailing addresses, roll numbers, occupancy status, religion, school support, tax direction, french language entitlement and the total value of the property. Clearly any combination of such information in conjunction with the name of an identifiable individual constitutes the personal information of that individual.

In his representations, the appellant agrees that certain information contained in the Assessment Roll is personal in nature, where the owner of the property is a natural person.

The appellant also offers in his representations to restrict the scope of his request to the name, legal description, roll number, assessed value and mailing address for all properties, and states that he is "content" that all other information be severed. In response, MPAC submits that "information cannot be selectively severed from the CD-Roll, as it is only cut and produced once a year". I accept MPAC's submission. Accordingly, my decisions in this order will be based on the appellant's original request for access to the electronic version of all data in the Assessment Roll.

I find that the Assessment Roll as it relates to natural persones contains "personal information" as defined in paragraphs (a), (b), (d) and/or (h) of the definition at section 2(1) of the *Act*.

The appellant submits that information relating to the names of the property owners that are sole proprietorships, partnerships, unincorporated associations or corporations, is not personal information within the meaning of section 2(1).

MPAC makes the following submissions with respect to information relating to non-natural persons:

> Unfortunately, because of the structure of MPAC's database which contains the assessment roll, MPAC is unable to differentiate between information pertaining to individual property owners and properties owned by sole proprietorships or partnerships. Commercial, industrial and multi-residential classified properties contain a "blank" entry in the field related to the sex of the owner and can thus be easily distinguished from all other types of properties. Properties owned by sole proprietorships and partnerships, on the other hand, are classified in the database

> in the same way as properties owned by individuals. As such, properties owned by sole proprietorships and partnerships are indistinguishable from individually-owned properties because, as with individuals, the name contained in the title of these entities is characterized as either "male" or "female" based on the male or female designation provided by the property owner.

In Order 16, former Commissioner Sidney B. Linden addressed the issue of whether information about a business entity could be personal information. He stated:

> The use of the term "individual" in the *Act* makes it clear that the protection provided with respect to the privacy of personal information relates only to natural persons. Had the legislature intended "identifiable individual" to include a sole proprietorship, partnership, unincorporated association or corporation, it could and would have used the appropriate language to make this clear.

MPAC concedes that information pertaining to commercial, industrial and multi-residential properties does not relate to identifiable individuals. I agree, and find that those portions of the database do not contain personal information.

As far as information about partnerships, sole proprietorships and unincorporated associations is concerned, consistent with the reasoning in Order 16, which has been applied in many subsequent orders, it would not qualify as "personal information". Information relating to the name, address, legal description, assessed value and mailing address of this type of business entity would generally be categorized as information about the business rather than any identifiable individual. I recognize that exceptions to this general rule have been accepted in rare cases (e.g. Order P-364), but the interpretation set out in Order 16 represents the general direction this office has followed in classifying information concerning partnerships, sole proprietorships and unincorporated associations.

Applying this direction to the circumstances of this appeal, I find that the information in the records about properties owned by partnerships, sole proprietorships and unincorporated associations is assessment-related information about the property itself. As such, I am not persuaded that information about these categories of property owners, which are unquestionably businesses, is sufficiently connected to any identifiable individual to qualify as "personal information", regardless of how this information is structured in MPAC's database.

To summarize, I find that the database contains the personal information of individual residential property owners, but information relating to corporations, sole proprietorships, partnerships and unincorporated associations do not qualify as "personal information".

INVASION OF PRIVACY

Only personal information can be exempt under section 14(1) of the *Act*.

Once it has been determined that a record contains personal information, section 14(1) of the *Act* prohibits disclosure of this information except in certain circumstances. In this case, the parties' representations refer to sections 14(1)(c), (d) and (f). These sections state:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
>
> (c) personal information collected and maintained specifically for the purpose of creating a record available to the general public;
>
> (d) under an Act of Ontario or Canada that expressly authorizes the disclosure;
>
> (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

SECTION 14(1)(d)

Introduction

Previous orders have found that the interpretation of the words "expressly authorizes" in section 14(1)(d) of the *Act* closely mirrors the interpretation of similar wording in section 28(2) of the *Act* and its counterpart, section 38(2) of the provincial *Freedom of Information and Protection of Privacy Act* [Orders M-292 and M-484 (reversed on other grounds on reconsideration in Orders M-787) and M-1154]. Investigation I90-29P, established the interpretation of section 38(2) as follows:

> The phrase "expressly authorized by statute" in subsection 38(2) of the [provincial] *Act* requires either that the specific types of personal information collected be expressly described in the statute or a general reference to the activity be set out in the statute, together with a specific reference to the personal information to be collected in a regulation made under the statute, i.e., in the form or in the text of the regulation.

I agree with this interpretation and consider it the appropriate test to apply in this case.

Representations

In arguing that the exception at section 14(1)(d) of the *Act* applies, the appellant refers to sections 14(1) and 39 of the *Assessment Act*. Section 14(1) provides that "[MPAC] shall prepare an assessment roll for each municipality and the roll shall contain …" the particulars contained in the record at issue in this appeal. Section 39(1) requires MPAC to "… deliver the assessment roll to the clerk of the municipality and shall do so on or before the date fixed for the return of

the roll", and section 39(2) requires that "[i]mmediately upon receipt of the assessment roll, the clerk shall make it available for inspection by the public during office hours".

The appellant submits:

> The statute does not limit the manner in which the Assessment Roll can be made publicly available. Indeed, OPAC [Ontario Property Assessment Corporation] itself made the Assessment Roll publicly available between December 31, 1998 and August 2000. Presumably OPAC was aware of the provisions of the *Assessment Act* when it did so, as was the Ministry of Finance before it, when it provided electronic tape of the Assessment Roll between 1988 and 1999.
>
> MPAC submits that section 39(2) of the *Assessment Act* does not make the Assessment Roll publicly available but merely makes it available for public viewing during municipal office hours. MPAC similarly submits that s. 39(2) of the *Assessment Act* does not expressly authorize disclosure. With respect, MPAC's statutory interpretation is simply nonsensical. The unambiguous intent of the legislature in section 39(2) is to enable any person to attend at the municipal office and be provided with access to the information on the Assessment Roll. It is difficult to imagine a provision that more clearly and expressly authorizes disclosure of information.

MPAC makes the following submissions in support of its position that the section 14(1)(d) exception does not apply:

> "Expressly has been generally interpreted in case law in predictable ways: "expressed and not merely implied; definitely formulated; definite, explicit" and "plainly, clearly or the like". There is no *Act* that **expressly** authorizes the disclosure of the Assessment Roll, in its entirety, in electronic format, for the Province of Ontario. Only section 39(2) of the *Assessment Act* states that each municipal clerk shall make the Assessment Roll available for viewing during office hours. The purpose of such viewing is to allow property owners in a municipality to determine if the assessment of their property is accurate, based on the assessed value given to other properties in the area. To our knowledge, Municipalities do not allow an individual to photocopy or duplicate the Municipality's portion of the Assessment Roll.

MPAC also refers to the postscript in Order P-1316, where former Commissioner Tom Wright expressed concerns regarding the disclosure of assessment-related information in electronic format, and also to my Order M-800, where I state:

> As far as the appellant's arguments that this information is a matter of public record are concerned, Commissioner Tom Wright considered a similar issue in Order 180, and I feel that some of his comments are relevant and applicable in the

current appeal. In that order, Commissioner Wright quoted from the decision in *United States Department of Justice, et al. v. Reporters' Committee for Freedom of the Press et al.* 109 S. Ct. 1468 (1989), where the Supreme Court of the United States considered the question of access to criminal identification records or "rap sheets" which contain descriptive information as well as history of arrest, charges, convictions and incarcerations. Much of the rap sheet information is a matter of public record. In that decision, Justice Stevens, speaking for the majority, made the following statements at page 1477.

> ...[T]he issue here is whether the compilation of otherwise hard-to-obtain information alters the privacy interest implicated by disclosure of that information. Plainly there is a vast difference between the public records that might be found after a diligent search of courthouse files, county archives and local police stations through the country and a computerized summary located in a single clearing house of information.

At page 1480, Justice Stevens referred to an earlier decision of the Supreme Court in *Whalen v. Roe* 97 S. Ct. 869 at page 872 where the Court stated:

> In sum, the fact that 'an event is not wholly private' does not mean that an individual has no interest in limiting disclosure or dissemination of the information.

I agree with the comments made by Justice Stevens. I am aware that the information about tax arrears owing on any particular property can be obtained upon request by members of the public, including the appellant. I also agree, as the appellant points out, that through diligence and investigation someone might be able to compile a list of properties on which tax arrears are owed. However, in my view, it does not necessarily follow that an easily retrievable computerized record of the names and addresses of all individuals with tax arrears owing should be disclosed.

Having considered the representations of both parties in this appeal, I find that the information contained in the listings for properties owned by individuals satisfies the requirements of a presumed unjustified invasion of privacy of the named individuals under section 14(3)(f) of the *Act*. I also find that the information which qualifies for exemption under section 14(3)(f) does not fall under section 14(4).

MPAC goes on in its representations:

> The basic premise of [the postscript in Order P-1316 and my comments in Order M-800] is that while legislation may determine, for whatever reason, that portions

of personal information which have been collected should be made available for viewing by the public, there clearly is a fundamental difference between meeting the justification of the reason and combining all of the data, in an electronic format which allows for an unjustified invasion of individual's privacy. For the same reason that MPAC decided not to release the Assessment Roll on CD to the public (even though requiring a licence agreement must be signed), without an enforceable manner of restricting the use of Assessment Roll data (and no such restrictions are currently legislated), there is a vast difference between viewing the paper copy of the Assessment Roll at the 448 municipalities in Ontario versus having all of that information, in electronic format, at the disposal and unrestricted use of an individual. As stated by Assistant Commissioner Mitchinson in Order MO-1366:

> The right to privacy is fundamental. Section 1 of the Act incorporates this right as one of the two purposes of the legislation, making it clear that the public has a statutory right and a valid expectation that governments will ensure the adequate protection of all personal information held by these public bodies…The disclosure by governments of personal information in bulk, and in electronic format, would represent a significant invasion of personal privacy…a cautious approach must be taken; it is the only prudent one in the circumstances.

Further, in the same Order, Assistant Commissioner Mitchinson states: "Can it be argued that the personal information of all land owners in Ontario, provided in electronic format, is necessary in order to ensure the integrity of a particular land transaction? I do not think so." This is analogous to the situation of a property owner being able to determine the validity of the assessment of their property. The purpose of making assessment rolls available for viewing at the Municipality during office hours to a property-owner is so that they can compare their assessment to that of their neighbours; it is definitely not necessary to provide the information for all property assessments in Ontario, in electronic format, to ensure the integrity of the assessment system. Further, MPAC assessment offices will provide a property owner with information on six comparable properties to help the owner in determining the fairness of his/her assessment. There is also a reconsideration process in place where any property owner can ask and will be provided with a reassessment of their property.

It is relevant to note that the various quotations referred to by MPAC were made in the context of considering the application of the exception in section 14(1)(f) of the *Act* (unjustified invasion of privacy), not section 14(1)(d).

Order MO-1366 and *Gombu.*

In Order MO-1366, I upheld the City of Toronto's decision to withhold electronic data from its database of campaign donors for the 1997 municipal election. In arriving at my decision, I found that disclosing the record was not authorized under section 88(5) of the *Municipal Elections Act* (*MEA*), and the section 14(1)(d) exception did not apply. I also found that disclosure of the personal information in the database would constitute an unjustified invasion of privacy, and the public interest override at section 16 did not apply. My order was judicially reviewed, and in *Gombu*, the Divisional Court found that: (1) my interpretation of the *MEA* was incorrect, and the section 14(1)(d) exception *did* apply; and (2) my conclusion that disclosure would be an unjustified invasion of personal privacy was unreasonable.

As noted earlier, the parties in the present appeal were given an opportunity to make representations on the potential application of *Gombu* to this appeal.

MPAC submits:

> Although the principles set out in the *Gombu* decision may relate to the principles regarding bulk disclosure of electronic records in this case, MPAC notes that the facts in *Gombu* can be readily distinguished from the facts in this case. Above all, *Gombu* involves a request for access in the context of accountability for donations for election campaign. Gombu's intended use of the information is consistent with the original rationale for collecting the information and maintaining the record in that case; the *Municipal Election Act, 1996* authorizes the creation of public records of electoral contributions to foster accountability.
>
> Unlike the *Gombu* case, [the appellant] seeks the information for a purpose not contemplated by the *Assessment Act* and not communicated to the individuals whose data has been collected pursuant to the *Assessment Act*. MPAC submits that [the appellant's] bulk access to personal information in view of its intended use would not be reasonably contemplated by the individual property owners across the Province of Ontario. MPAC notes, further, that disclosure of the records for purposes of accountability with respect to election spending is a matter of greater public interest than the ability to trace individual judgment debtors involved in private disputes.
>
> Moreover, the *Assessment Act* does not contain a provision similar to the *Municipal Elections Act* ("*MEA*") that documents and materials filed with the clerk are public records "despite anything in [the *Act*]" (section 88(5) of *MEA*). To the contrary, the *MPAC* Act explicitly provides that MPAC is subject to [the *Act*].
>
> Further, the *Municipal Elections Act* – unlike the *Assessment Act* – provides that a person inspecting documents under section 88 of *MEA* is entitled to make extracts

> or copies. As noted in the Nemeth Affidavit [included as part of MPAC's representations], individual municipal offices should not allow copying of excerpts from the Assessment Roll as that is contrary to MPAC's policies and the privacy legislation. While a few municipalities might allow photocopying, MPAC does not condone this practice, it encourages municipalities not to do it, and, in MPAC's experience most municipalities do not allow it. Thus, unlike the applicable legislation in *Gombu*, the *Assessment Act* does not have any similar provision authorizing copies to be taken of the Assessment Roll. To the contrary, portions of the Assessment Roll are only available for viewing at the municipal offices and are not meant to be copied.

In response, the appellant submits:

> … the factual distinctions set forth by MPAC between this case and *Gombu* ignore the essential holding of the *Gombu* decision. *Gombu* makes clear that there is no meaningful distinction between electronic information and paper information for the purposes of disclosure. The fact that one case deals with municipal elections and another case deals with assessments is immaterial. Furthermore, MPAC's "policy" to discourage photocopying portions of the assessment is inconsistent an unsupported by the legislation. MPAC's predecessor made the assessment roll publicly available between December 31, 1998 and August 2000. MPAC is still prepared to provide copies of the assessment roll, in part, upon payment of a high fee. Although the *Assessment Act* does not specifically state that copies may be obtained, it does state that the information should be publicly available. In short, MPAC has presented a number of factual differences between this case and *Gombu* but no meaningful distinctions.

In *Gombu*, the record at issue was an electronic donors' database prepared by the municipal clerk to assist in keeping track of donations to local politicians. By section 88(5), the *MEA* mandated that "[d]espite anything in the [*Act*], documents and materials filed with or prepared by the clerk … under [the *MEA*] are public records and, until their destruction, may be inspected by any person at the clerk's office at a time when the office is open." While the *MEA* contemplated the maintenance of certain paper records, it did not refer to the type of electronic record prepared by the clerk and sought by the requester in *Gombu*. Despite this, the Court found that the record had been prepared "under" the *MEA* and, in a related finding, stated that the exception in section 14(1)(d) of the *Act* would apply.

In reaching these conclusions, the Court states (at 779-780):

> In my view, the material prepared by the Clerk to administer the rebate program is clearly prepared "under the Act". … The electronic database that was the subject of the disclosure application was prepared by the Clerk to facilitate the carrying-out of the duties mandated under the regulations made under the *MEA*. Without

> the database, the Clerk could not fulfil her mandate. Hence, the database was prepared "under the Act", as contemplated by s. 88(5). It is therefore a public record and must be disclosed, "notwithstanding anything in the [the *Act*]". It follows that the Commissioner erred in holding that s. 88(5) of the *MEA* did not govern this case, and further erred in holding that the exception in s. 14(d) of [the *Act*] did not apply.

Analysis and findings

In my view, the similarities between this appeal and the appeal considered in Order MO-1366/*Gombu* are compelling, and I do not accept the arguments put forward my MPAC for distinguishing the two cases on their facts. In the present appeal, the electronic version of the Assessment Roll is not strictly required by the *Assessment Act*, nor is there a requirement to create a consolidated version of the database that aggregates the information of all property owners in the province. Nevertheless, MPAC has decided to create such a consolidated database to assist with its assessment responsibilities. The components in the database are the same as those that must be included in the Assessment Roll, and the Roll itself must be disclosed by the clerk of each municipality under section 39(2) of the *Assessment Act*. The information mandated for disclosure under this statutory scheme is the same as the information in MPAC's database, the only difference being that the information in the database is in electronic format and aggregated.

In rejecting my section 14(1)(f) finding in Order MO-1366, the Court in *Gombu* made it clear that the distinction between discrete paper records and an aggregated electronic record is not important (at 781-2):

> Although [the *Act*] expressly equates electronic and paper records [a reference by the Court to the definition of "record" at section 2 of the *Act*], the [Assistant] Commissioner gave considerable weight to the perceived danger in the possible inappropriate use of electronic records. He concluded that disclosure of the database would constitute an unjustified invasion of personal privacy that warranted refusal to disclose the material.
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> At p. 18 of his reasons, the [Assistant] Commissioner stated:
>
> > In the circumstances of the present appeal, I am satisfied that the disclosure of the personal information in electronic form, where it can be massively disseminated, matched and merged, and used for purposes far beyond those for which the information was collected in the first place, is a relevant factor to consider, and weighs significantly in favour of non-disclosure of the personal information in that format.

> In my opinion, the view taken by the [Assistant] Commissioner of the dangers of misuse of the database is not reasonable, particularly in the context of the present electronic age in which governments are increasingly moving to electronic information-storing. …
>
> The definition of "record", as previously noted includes information recorded in both paper and electronic form; and, in any event, paper material may be converted to an electronic database. Hence, the distinction drawn by the [Assistant] Commissioner did not provide a reasonable basis for refusal to disclose the requested database. Furthermore, the reasonableness of his interpretation must be considered in light of the importance of freedom of information legislation in furthering the democratic process through public scrutiny and transparency.
>
> In a contextual consideration of the overall legislative scheme, it must be remembered that s. 88(5) of the *MEA*, when read with the accompanying regulations, specifically overrides the privacy interests otherwise required to be considered under the *MFIPPA*, and mandates disclosure of campaign contributors' names, addresses and amounts given. The telephone numbers of the contributors is the only personal information contained in the electronic database that is not contained in the hard copy material already disclosed. In my view, given the availability of an electronic database that may be easily accessed, collated and cross-referenced, its disclosure would achieve the important objective of enhancing the transparency of the political process with only a minimal further intrusion upon the personal privacy of contributors, whose names, addresses and amounts contributed are already subject to disclosure. It was, in my view, unreasonable for the [Assistant] Commissioner to place that minimal intrusion ahead of the importance of furthering public accountability in the political process.

In my view, any distinctions that can be drawn between the facts and records at issue in Order MO-1366 and the circumstances of the present appeal are not sufficient to impact my overall finding on the application of section 14(1)(d). It is clear that the Court in *Gombu* did not consider aggregate, searchable electronic data to be significantly different from paper records, and specifically relied on the "parallel" between the two in the definition of "record" in section 2 of the *Act* ("any record of information however recorded, whether in printed form, … by electronic means or otherwise …"). Accordingly, in my view, the fact that a database consists of aggregated electronic information is not a significant factor in determining whether the section 14(1)(d) exception applies.

As noted at the outset of my section 14(1)(d) discussion, in order to qualify under this exception, the specific types of personal information must be expressly described in a statute, or a general reference to the activity must be set out in that statute. I find that that test is met in this appeal. Section 14(1) of the *Assessment Act* requires the assembly of the same personal information that

is contained in MPAC's database, and section 39(2) of that same statute mandates its public disclosure. In reaching this conclusion, I note that the Court in *Gombu* made a similar finding under section 14(1)(d) for information stored in an electronic database, on the basis of provisions in the *MEA* which, like the sections of the *Assessment Act* under consideration here, only required the availability of paper records during office hours, and only at municipal offices.

Therefore, I find that the requirements of the section 14(1)(d) exception have been established and, accordingly, the record does not qualify for exemption under section 14(1) of the *Act*.

In light of this finding, it is not necessary for me to consider whether the record also falls under the other exceptions in sections 14(1)(c) and (f).

INFORMATION PUBLISHED OR CURRENTLY AVAILABLE

MPAC claims that section 15(a) applies to the portions of the Assessment Roll that relate to commercial, industrial and multi-residential properties.

Section 15(a) reads as follows:

> A head may refuse to disclose a record if,
>
> > the record or the information contained in the record has been published or is currently available to the public;

For this section to apply, MPAC must establish that the record is available to the public generally, through a regularized system of access, such as a public library or a government publications centre [Orders P-327, P-1387].

To show that a "regularized system of access" exists, MPAC must demonstrate that

- a system exists
- the record is available to everyone, and
- there is a pricing structure that is applied to all who wish to obtain the information

[Order P-1316]

Most freedom of information statutes in Canada permit the government to refuse to disclose information that is available to the public. As stated by McNairn and Woodbury in *Government Information: Access and Privacy* (DeBoo: Toronto, 1989) at p. 2-28:

> Someone who is seeking information for which there is already a system of public access in place will normally be required to proceed in accordance with the rules of that system. A person who puts in an access request for a deed to property or a list of directors in a company's information return, for example, will likely be instructed to visit the land or companies registry to locate and view the relevant document. A government institution is unlikely to undertake a search for such a document when it has provided the facility for that to be done by members of the public or their representatives. If copies of a deed or a company return, once located, are ordered from the public office, charges will be levied in accordance with the scale of fees under the land registration or companies legislation, rather than that under the access legislation.

MPAC does not argue that information contained in its entire Assessment Roll database is available in electronic format by other means. In fact, MPAC states quite directly in its representations that "section 15(a) has only been claimed for those portions of the Assessment Roll that relate to commercial, industrial and multi-residential properties". MPAC identifies its own Business Development Group as the alternative source for this sub-set of information contained in the Assessment Roll.

In light of my section 14(1)(d) finding, all components of the Assessment Roll database are accessible under the *Act*, and there is no need for the various components to be compartmentalized on the basis of whether they contain "personal information". That distinction is no longer relevant. The appellant's right of access is not restricted to only certain components, and any alternative access scheme that restricts access in this manner does not respond to the request. The appellant seeks access to an electronic version of the entire database, based on the fee structure contained in the *Act*, and, in my view, MPAC's section 15(a) exemption claim that is premised on partial access must fail.

Unlike other exemptions, which are based on the premise that records should not be disclosed, section 15(a) of the *Act* assumes disclosure, and simply identifies an alternative source for the requested information. As noted in a number of previous orders, section 15(a) is a discretionary exemption claim, and balance of convenience considerations are relevant in determining whether the exemption applies [e.g Orders 170, M-773 and P-1384]. In my view, barring exceptional circumstances that are not present here, a requester should not be required to utilize an alternative access scheme for information responsive to only a portion of a responsive record where the entire record is readily accessible under the *Act*.

In the circumstances of this appeal, the appellant has asked for an electronic version of the entire Assessment Roll. I have determined that no portions of this record should be withheld. If I were to accept MPAC's section 15(a) exemption claim (and assuming without deciding that MPAC has the requisite authority to sell data from the Assessment Roll through its Business Development Group), the appellant would be required to purchase some of the requested data under MPAC's alternative access scheme, and then receive the rest of it through the regular access process under the *Act*. He would then have to merge these two partial records in order to

create the very record he asked for in the first place. In my view, this cannot have been the legislative intent of section 15(a). It is not reasonable for an institution to direct a requester to an alternative access source, particularly one that exists within the institution itself, in order to obtain partial access to a record that is otherwise fully accessible through the regular access process. To permit a section 15(a) claim in these circumstances would, in effect, allow an institution to sever a record under section 4(2) in circumstances where all of the record is in fact disclosable. In my view, section 4(2) does not contemplate two separate partial disclosures, one under the *Act* and the other under an alternate access scheme.

Therefore, I find that the record at issue in this appeal does not qualify for exemption under section 15(a) of the *Act*. Because it also does not qualify under section 14(1), it should be disclosed to the appellant in accordance with the fee scheme under the *Act*.

In light of my findings, I do not need to consider the section 16 issue raised by the appellant.

ORDER:

1. I order MPAC to disclose a copy of the current year's Assessment Roll for the entire Province of Ontario in electronic format to the appellant by **October 22, 2003**.

2. In order to verify compliance with Provision 1, I reserve the right to require MPAC to provide me with a copy of the record, only upon request.

Original signed by: September 30, 2003
Tom Mitchinson
Assistant Commissioner