



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

## **ORDER 23**

Appeals 880020, 880035, 880066 and 880242

Ministry of Revenue



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Appeal Numbers 880020, 880035, 880066 and 880242

O R D E R

These appeals were received pursuant to subsection 50(1) of the Freedom of Information and Protection of Privacy Act, 1987 (the "Act") which gives a person who has made a request for access to a record under subsection 24(1) a right to appeal any decision of a head under the Act to the Commissioner .

The facts of these appeals and the procedure employed in making this Order are as follows:

1. On January 4, 1988, the requester in Appeal No. 880020, filed a request with the Ministry of Revenue (the "institution") for access to: "Proposed re\_assessment values for all properties in the City of Scarborough, all classes based on 1984 values as proposed in the Metropolitan section 63 study".
2. On February 17, 1988, the requester in Appeal No. 880035, filed a request with the institution for access to "...the proposed re\_assessment values for properties in Metropolitan Toronto pursuant to re\_assessment under section 63 (1984 values)".
3. On February 19, 1988, the requester in Appeal No. 880066 filed a request with the institution for access to records

"...with respect to house\_by\_house market value assessment figures for the year 1984 for the City of Toronto".

4. On April 6, 1988, the requester in Appeal No. 880242 filed a request with the institution for access to "...estimates of market value for 1984 of all properties in the Municipality of Metropolitan Toronto, on a property\_by\_property basis". The requester also sought access to "...the 1984 estimate of market value and the applicable factor which would produce the new taxable assessment of the proposed method of Metropolitan\_wide s. 63 market value assessment".
5. Within thirty days of receipt of each access request, the Freedom of Information Co\_ordinator for the institution responded to the requesters by advising that "...[a]ccess is denied to the records under Section 21(1) of the Act. [The Freedom of Information and Protection of Privacy Act, 1987]. Section 21(3)(f) states that it is a presumed invasion of privacy to disclose personal information that describes an individual's finances, income, assets, liabilities, net worth, ...".
6. In the response to the request in Appeal No. 880242, the Freedom of Information Co\_ordinator for the institution also stated:

"In addition to the above, the Assessment Act, Subsection 57(1), also contains a confidentiality provision which precludes the release of the requested data. The Freedom of Information and Protection of Privacy Act, Section 67, clearly indicates that this

confidentiality provision of the Assessment Act prevails over the Freedom of Information and Privacy Act, until January 1, 1990".

The appellants in Appeal Nos. 880020, 880035 and 880066 were advised by my office of this additional ground for refusal.

7. An appeal from each decision was received by my office. These appeals were filed between February 17 and July 27, 1988.
8. A sample of the record at issue was obtained and reviewed by an Appeals Officer. Attempts were made by the Appeals Officer to settle the matter, however they were unsuccessful.
9. I gave notice to the parties of my intention to conduct an inquiry into this matter. Because all of the appeals involved the same issue and the same institution, the parties agreed it would be appropriate for me to deal with all of the appeals together. I decided to conduct an oral inquiry and requested all parties to forward written representations to me prior to the date of the oral inquiry. These representations were received and reviewed.
10. On September 7, 1988, I conducted an oral inquiry at which all parties either attended in person or were represented by counsel, and further submissions were made to me.
11. At the commencement of the inquiry, it was agreed by all parties that the information requested was 'the estimated

1984 market values (dollar amounts) of all properties in Metropolitan Toronto on a property by property basis, including the municipal address of each property'. The appellants indicated that they did not want the names or addresses of owners of the properties.

I believe the issues involved in these appeals would be more clearly understood by providing some background to the record (information) in question. The following statement, which was contained in the written representation of the institution, provides a good summary:

- "1. In 1982, the Ministry of Revenue completed an impact study to determine the degree to which all property assessments in Metropolitan Toronto would be altered if they were adjusted to reflect their 1980 market value within classes as provided under subsection 63(3) of the Assesment Act.
2. To accomplish the study, the following procedure was followed:
  - (a) information on individual properties was gathered by the Ministry's assessors;
  - (b) the physical characteristics of a property were compared to values determined from sales data in and around the base year in the neighborhood of the property to establish their relationship;
  - (c) typical values for properties, called benchmarks were established for the neighborhood or vicinity;
  - (d) all other similar properties in the vicinity were compared to the benchmarks to establish their market value estimate for the base year;
  - (e) the properties in a municipality were then divided into classes, such as residential properties containing less than 7 units, commercial properties, etc.;

- (f) the sum of all existing assessments on properties in each class is divided by the sum of the total market value estimates for properties in that class to produce a factor which is further adjusted by 2% for appeal losses;
  - (g) the adjusted factor is applied to the market value estimate of each property in the class to produce the proposed assessment.
3. The report on the impact study which contained statistical summaries of assessment changes by property types was released to the public in November, 1985.
  4. In June, 1986, Metropolitan Toronto Council requested that the Ministry of Revenue produce an assessment impact study based on 1984 market value as an update to the existing impact study.
  5. To provide the update, market value estimates for 1980 were adjusted to reflect relative market changes which had occurred by 1984 and a class factor produced based on the adjusted market value estimates.
  6. The 1984 impact study containing statistical information on assessment increases and decreases for properties in each class, including the factors used to determine the proposed assessments, was released in May, 1987.
  7. In January and February, 1988, the Appellants herein applied to the Ministry for the release to them of the proposed reassessment values for properties in the City of Scarborough, in the Municipality of Metropolitan Toronto and in the City of Toronto.
  8. On February 23, 1988, the Minister advised the Appellants, that the Ministry was prepared to release the market value estimate on any property owned by an individual only to that individual or his or her agent upon written request pursuant to clause 21(1)(a) of the Freedom of Information and Protection of Privacy Act, 1987 (the 'Act').
  9. Their request for the market value estimates on properties owned by other individuals was rejected on

the basis that such disclosure constituted an unjustified invasion of personal privacy under clause 21(3)(f) of the Act as describing an individual's finances or assets".

Before discussing the specific matters at issue in these appeals, the purpose of the Act as set out in section 1 should be noted. Subsection 1(a) provides a right of access to information under the control of institutions in accordance with the principles that information should be available to the public and that necessary exemptions from the right of access should be limited and specific. Subsection 1(b) sets out the counterbalancing privacy protection purpose of the Act. This subsection provides that the Act should protect the privacy of individuals with respect to personal information about themselves held by institutions and should provide individuals with a right of access to their own personal information.

The issues arising from these appeals are:

- A. (1) Whether subsection 57(1) of the Assessment Act, R.S.O. 1980, c. 31, as amended, is a "confidentiality provision" pursuant to section 67 of the Act.
- (2) If the answer to (1) above is in the affirmative, whether the information contained in the record falls within the scope of the "confidentiality provision" relied on.
- B. Whether the information contained in the record is personal information as defined in subsection 2(1) of the Act.

- C. If Issue B is answered in the affirmative, whether disclosure of the personal information in question would violate the provisions of subsection 21(1) of the Act.
- D. If Issue C is answered in the affirmative, whether there is a compelling public interest in the disclosure of the record which clearly outweighs the purpose of the exemption pursuant to section 23 of the Act.
- E. Whether the severability requirements of subsection 10(2) apply to the record in question.

**ISSUE A(1) : Whether subsection 57(1) of the Assessment Act, R.S.O. 1980, c. 31, as amended, is a "confidentiality provision" pursuant to section 67 of the Act.**

Subsections 67(2) and (3) of the Freedom of Information and Protection of Privacy Act, 1987 provide that:

(2) This Act prevails over a confidentiality provision in any other Act unless the other Act specifically provides otherwise.

(3) Subsection (2) shall not have effect until two years after this section comes into force.

(The Act came into force on January 1, 1988)

As I stated in my Order in Appeal No. 880016 released July 28, 1988, in the case where a head relies on a "confidentiality provision" in another act to deny access to a record, my responsibility is not only to determine that the provision claimed is a "confidentiality provision" as contemplated by



subsections 67(2) and (3) of the Act, but also to analyze the record in question to determine whether it falls within the terms of the provision.

Subsection 57(1) of the Assessment Act states:

Every assessment commissioner or assessor or any person in the employ of a municipality who in the course of his duties acquires or has access to information furnished by any person under section 9 or 10 that relates in any way to the determination of the value of any real property or the amount of assessment thereof or to the determination of the amount of any business assessment, and who wilfully discloses or permits to be disclosed any such information not required to be entered on the assessment roll to any other person not likewise entitled in the course of his duties to acquire or have access to the information, is guilty of an offence and on conviction is liable to a fine of not more than \$200, or to imprisonment for a term of not more than six months, or to both.

Counsel for the institution argues that subsection 57(1) of the Assessment Act is a "confidentiality provision" excluding the application of the Freedom of Information and Protection of Privacy Act because "...it intends to require the Ministry officials to maintain the confidentiality of information gathered under the Assessment Act that relates to the preparation of assessments but which is not itself required by section 13 [of the Assessment Act] to be included in the assessment roll returned under the said Act".

The language of subsection 57(1) of the Assessment Act is clear; it stipulates what sort of information is to be protected from disclosure; identifies the class of persons who provide the information and those who receive it and are entrusted to

preserve confidentiality; provides for the conditions of lawful disclosure to third parties; and outlines the penalties for unauthorized disclosure.

After considering the representations, I have no difficulty in finding that subsection 57(1) of the Assessment Act is a "confidentiality provision" as the term is used in the Freedom of Information and Protection of Privacy Act, 1987. I must now determine how this provision should be applied in the circumstances of these appeals.

**ISSUE A(2):      If the answer to (1) above is in the affirmative, whether the information contained in the record falls within the scope of the "confidentiality provision" relied on.**

Counsel for the institution submits that "...the record at issue contains factored estimates of 1984 market values for individual properties that were prepared based on information gathered under section 9 of the Assessment Act; as such, the disclosure of the record would tend to indicate the nature of the information gathered under section 9 which is expressly required not to be disclosed" (emphasis mine). Counsel for the institution argues that the factored estimates are not required to be entered on the assessment roll until the Metropolitan Council has authorized the Minister to complete the re\_assessment described in the impact study, and as such can not reasonably be compared to the types of information accessible to the public under subsection 13(1) of the Assessment Act. He explains that "...pursuant to subsection 63(1) of the Assessment Act, the assessment roll returned each year to the clerk of each

municipality in Metropolitan Toronto is essentially frozen so that no changes can be made to the assessment roll prepared pursuant to subsection 13(1) of the said Act... until a re\_assessment is authorized by the municipality".

The appellants, on the other hand, argue that subsection 57(1) "...is a provision requiring that information be treated as being confidential in only limited circumstances; the section operates only to prohibit the release of certain types of information by certain named classes of individuals. The information itself is not deemed to be confidential. Nor does the section prohibit the release of the information through other channels, such as by direct request of the Ministry of Revenue, or pursuant to the provisions of the Freedom of Information and Protection of Privacy Act, 1987".

In my view, subsection 57(1) does not make all information collected under sections 9 and 10 of the Assessment Act confidential in all circumstances. These two sections, and relevant regulations (69 and 73), provide government assessors with a right of access to property for the purpose of conducting assessments, and require owners to provide these assessors with all necessary information required to make a proper determination of assessed value in accordance with the Assessment Act. Some, but not all, of the information provided to assessors under sections 9 and 10 is barred from disclosure by subsection 57(1). However, subsection 57(1), in my view, does not prohibit the release of information otherwise made available to the public under the Assessment Act.

Subsection 13(1) of the Assessment Act, as amended, requires certain specific information to be entered on an assessment

roll. This roll is accessible to the public at the office of the clerk of the municipality, and the information contained on it is excluded from the scope of the "confidentiality provision" under subsection 57(1). Among the categories of information enumerated in subsection 13(1) is:

...

1. a description of the property sufficient to identify it
2. the name and surnames, in full, if they can be ascertained of all persons who are liable to assessment in the municipality whether they are or are not resident in the municipality...
6. market value of the parcel of land...
12. residential assessment...
17. religion, if Roman Catholic
18. whether a public or separate school supporter, by inserting the letter "p" or "s", as the case may be.

"Market value" is defined by subsection 18(2) of the Assessment Act as "the amount that the land might be expected to realize if sold in the open market by a willing seller to a willing buyer". "Land" is defined under subsection 1(k) of the same act to include, among other things, "all buildings, or any part of any

building, and all structures, machinery and fixtures erected or placed upon, in, over, under or affixed to land".

Clearly, in my view, the confidentiality requirements of subsection 57(1) do not extend to information otherwise accessible to the public. Specifically, the municipal address of a property and its market value is publicly accessible information that is required to be entered on an assessment roll in accordance with subsection 13(1) of the Assessment Act, and therefore falls outside the scope of subsection 57(1).

Although the record at issue in these appeals deals with estimated 1984 market values, as distinct from market values determined under the current method of calculation, this does not change my view of the proper interpretation of subsection 57(1). In my view, the subsection 57(1) "confidentiality provision" was not intended to extend to the types of information that are required to appear on an assessment roll, pursuant to subsection 13(1) of the Assessment Act. The record in question contains information relating to the municipal address and the market value of properties in the municipality, and as such deals with the types of information referred to in subsection 13(1) of the Assessment Act.

In view of the above, I find that the information contained in the record at issue does not fall within the scope of the "confidentiality provision" contained in subsection 57(1).

**ISSUE B: Whether the information contained in the record is personal information as defined in subsection 2(1) of the Act.**

In all cases where an institution purports to rely on the mandatory exemption provided by subsection 21(1) of the Act, it is my responsibility before deciding whether the exemption applies, to ensure that the information withheld falls within the definition of "personal information" in subsection 2(1) of the Act.

Subsection 2(1) of the Act states:

"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 where 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 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.

Counsel for the institution submits that the record in question contains the name, address and factored estimate of the 1984 market value of the real property owned by individuals and, as such, constitutes "...recorded information about an identifiable individual, including... (d) the address [of the individual]" so as to meet the definition of "personal information" under section 2 of the Act. Counsel for the institution argues that "...even if the record was altered to delete the name of the individual, the provision of a municipality address would still constitute "personal information" as an individual owner can be readily identified from his or her address through the existing assessment roll available in the municipal clerk's office and through other directories".

The appellants disagree. Their position is that the information contained in the record does not constitute personal information under the Act. They contend that "...any identifying number, symbol or other particular contained in the record is assigned to the property..., is used to describe the location of the property, and cannot be said to have been assigned to an individual. The assessment was conducted in 1984, and ownership in these properties may have changed since then." The appellants argue that no specific individual can be identified by reference to a municipal address, and further submit that "...the information [at issue in these appeals] relates to properties at a particular point in time. In any event, the evaluation is merely an opinion, rendered by a provincial assessor, expressed as of 1984. The record cannot, therefore,

be said to contain personal information because it is merely a considered estimate of value which attaches to properties, and not to persons. All identifiers relate to pieces of real estate and therefore cannot be said to be aspects of personal information".

As previously indicated, the information sought by the appellants is the estimated 1984 market values of all properties in Metropolitan Toronto, together with the municipal address (or location) of each property. The appellants did not request access to the names or addresses of individual property owners, occupiers or tenants.

The municipal address of a property is a description identifying the location of the property in a municipality. Typically, a municipal address consists of the name of the street on which the property is located, the number assigned to the property on the street, and the municipality in which the street is located. In most cases, the name of the street and the number of the property are affixed at locations on the street, and the property is clearly visible to the public.

An individual's address, on the other hand, is his or her "place of residence". The owner of a property may or may not be an individual, and individual property owners may or may not reside in the property they own. In many cases an individual's address may have nothing whatsoever to do with property ownership, as is the case with the large proportion of properties occupied by tenants. It is clear to me that the municipal location of a property cannot automatically be equated with the address of its owner, notwithstanding that many individuals do reside in the properties they own. For this



reason, I have reached the conclusion that the recorded information sought by the appellants is not "the address... of the individual", and therefore does not qualify as "personal information" under subparagraph (d) of the definition in section 2 of the Act.

In considering whether or not particular information qualifies as "personal information" I must also consider the introductory wording of subsection 2(1) of the Act, which defines "personal information" as "...any recorded information about an identifiable individual...". In my view, the operative word in this definition is "about". The Concise Oxford Dictionary defines "about" as "in connection with or on the subject of". Is the information in question, i.e. the municipal location of a property and its estimated market value, about an identifiable individual? In my view, the answer is "no"; the information is about a property and not about an identifiable individual.

The institution's argument that the requested information becomes personal information about an identifiable individual with the addition of the names of the owners of the property would appear to raise the potential application of subparagraph (h) of the definition of "personal property".

Subparagraph (h) provides that an individual's name becomes "personal information" where it "...appears with other personal information relating to the individual or where the disclosure of the name would reveal other information about the individual" (emphasis added). In the circumstances of these appeals, it should be emphasized that the appellants did not ask for the names of property owners, and the release of these names was never at issue. However, even if the names were otherwise

determined and added to the requested information, in my view, the individual's name could not be said to "appear with other personal information relating to the individual" or "reveal other personal information about the individual", and therefore subparagraph (h) would not apply in the circumstances of these appeals.

It is my responsibility as Commissioner to interpret the provisions of the definition of "personal information" in subsection 2(1) of the Act, and apply them to the circumstances of each individual appeal. The type of information that meets this definition will vary on a case by case basis depending on the specific facts involved, but in all cases where an institution purports to rely on the exemption provided by section 21 of the Act, the head must successfully demonstrate that the information contained in the record satisfies the section 2 definition. The institution has failed to do so with respect to the information contained in the record at issue in these appeals.

Having found that the information contained in the record is not personal information as defined in subsection 2(1) of the Act, Issue B is decided in the negative, and it is not necessary for me to deal with Issues C, D and E.

In conclusion, my Order is that the institution disclose to the appellants the estimated 1984 market values of all properties in Metropolitan Toronto, on a property\_by\_property basis, identified by the municipal location or address, within twenty (20) days of the date of this Order. The institution is further ordered to advise me in writing, within five (5) days of the

date of disclosure of the record, of the date on which disclosure was made.

Original signed by:  
Sidney B. Linden  
Commissioner

October 21, 1988  
Date