Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-2996

Appeal MA12-522

The Corporation of the Municipality of Mattawan

January 15, 2014

Summary: The Corporation of the Municipality of Mattawan received a request for the names, mailing addresses, and other information about property owners whose access to their properties is by way of a road that crosses the requester's property. The municipality identified the assessment roll as the responsive record and denied access to it pursuant to the exemption for information that is publicly available under section 15(a) of the *Municipal Freedom of Information and Protection of Privacy Act*. The requester appealed the municipality's decision. During mediation, the appellant took the position that it was not reasonable for him to be required to travel a great distance to view the assessment roll during the limited times available and stated that he did not understand why the municipality could not exercise its discretion to provide him with a list of the information that he requires. Accordingly, whether information contained in the assessment roll is subject to the exemption in section 15(a) and whether the municipality is required to create a record containing the information sought by the appellant are the sole issues in the appeal. In this order, the adjudicator finds that the assessment roll information is publicly available pursuant to section 15(a) of the *Act* and that the municipality is not required to create a record responsive to the appellant's request. The appeal is dismissed.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 15(a) and 17; *Assessment Act,* R.S.O.1990, c. A.31, as amended, sections 39(1) and (2).

Orders and Investigation Reports Considered: Orders 50, 99, PO-2237 and MO-2668.

Cases Considered: *Municipal Property Assessment Corporation v. Mitchinson,* 2004 CanLII 17632 (Div.Ct.).

OVERVIEW:

[1] The Corporation of the Municipality of Mattawan (the municipality) received a request for the names, mailing addresses and respective property descriptions including property roll numbers and property identifier numbers (PINS) or legal descriptions for those property owners whose access to their own property is by passage over the requester's property. Following some communication with the municipality, the requester confirmed his request was for the following:

> …[I]nformation I need to contact those property owners whose access to their properties is by the road I graveled across my land – namely their names, addresses, and respective property descriptions. My request does not include information such as the size of those properties, their zoning, whether there are any buildings or other structures, or the property assessments, etc. It is unrelated to the activities of the Municipal Property Assessment Corporation.

[2] The municipality initially issued a decision letter stating that the *Municipal Property Assessment Corporation* (MPAC) produces and provides the municipality with an assessment roll annually but that access to that information was denied under the *Act*.

[3] The municipality then issued a revised decision letter that stated the following:

> As we understand the request, you (the requester) are asking the municipality to firstly, make a determination as to who uses a road across your property to access their property and, secondly, to provide you with their names and addresses. Please be advised that the municipality has no record that specifically identifies property owners who use the road across your property to access their property.
>
> It appears that you are requesting the municipality to compile information and to create a new record. The municipality has no duty or obligation to compile information for a requester, or in effect, to create a record or document to respond to a request.
>
> If you are seeking information concerning the identity of property owners within the municipality and specifically in the area of your property, we can advise you that, pursuant to section 39(2) of the *Assessment Act*[1], a

[1] R.S.O.1990, c. A.31.

> member of the public may inspect the assessment roll that has been delivered to the municipality. The content of the assessment roll is prescribed by section 14 of the *Assessment Act* …. Accordingly, you may attend at the municipal office to review the assessment roll during regular office hours…
>
> …[T]itle information is most appropriately accessed through the Regional Office records.

[4] The requester, now the appellant, appealed the municipality's decision to require him to attend at the municipal office to review the requested records and the municipality's refusal to create a record responsive to his request.

[5] During mediation, the municipality confirmed that it was relying on section 15(a) (publicly available) of the *Act* to deny access to the responsive information as the records containing that information are publicly available for inspection at its municipal office.

[6] Also during mediation, the appellant confirmed that he requires the names and addresses of the property owners that access their properties via the road across his own property. He explained that he requires this information in order to commence a legal proceeding regarding the road. He also explained that he lives more than 400 kilometres from the municipal office and, therefore, to attend at the municipal office to view the assessment roll is unreasonable and would cost him a significant amount of time and money. The appellant does not understand why the municipality cannot simply provide him with the 7 or 8 names and addresses that he requires.

[7] The municipality then explained that, in its view, section 39(2) of the *Assessment Act* clearly states that the assessment roll is for inspection only by the public. The municipality indicated that it also believes that it is not permitted to reproduce the information contained in the assessment role for a purpose that is inconsistent with the purposes prescribed in the *Assessment Act*.

[8] The municipality also explained that it has electronic access to MPAC's assessment roll records. The municipality indicated that the information at issue could be found electronically, however it was prohibited from using this information for a purpose other than meeting the municipality's planning requirement, as outlined in a user agreement with MPAC. The municipality did not believe that processing an access request under the *Act* was a permitted use of this information.

[9] The appellant remained unconvinced that the municipality could not exercise its discretion in this instance given the distance he would have to travel to inspect the assessment roll.

[10] As further mediation was not possible, the file was transferred to the adjudication stage of the appeal process, for an inquiry. As the adjudicator assigned to the appeal, I began my inquiry by seeking and receiving representations from the municipality.

[11] I then sought representations from the appellant, providing him with a complete copy of the municipality's submissions. As the appellant's representations raised issues to which I believed the municipality should be given an opportunity to reply, I sent them to the municipality, which also provided me with representations by way of reply. Finally, I provided the appellant with the opportunity to respond to the municipality's reply representations and he provided me with representations in sur-reply.

[12] In this order, I uphold the municipality's decision and dismiss the appeal. In the discussion below, I reach the following conclusions:

- the discretionary exemption at section 15(a) applies to the information at issue;
- the municipality's exercise of discretion under section 15(a) was reasonable; and
- the municipality is not required to create a record in response to the appellant's request.

RECORDS:

[13] The appellant seeks a record that describes the names, addresses and property descriptions of property owners who access their properties by way of a road that crosses the appellant's property.

ISSUES:

A. Does the discretionary exemption at section 15(a) apply to the information?

B. Did the municipality exercise its discretion under section 15(a)? If so, should this office uphold its exercise of discretion?

C. Does the *Act* require the municipality to create a record in response to the appellant's request?

DISCUSSION:

A. Does the discretionary exemption at section 15(a) apply to the information?

Section 15(a) states:

> 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;

[14] For this section to apply, the institution 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.[2]

[15] To show that a "regularized system of access" exists, the institution 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.[3]

[16] Section 15(a) is intended to provide an institution with the option of referring a requester to a publicly available source of information where the balance of convenience favours this method of alternative access. It is not intended to be used in order to avoid an institution's obligations under the *Act.*[4]

[17] In order to rely on the section 15(a) exemption, the institution must take adequate steps to ensure that the record that they allege is publicly available is the record that is responsive to the request.[5]

[18] Section 15(a) does not permit an institution to sever a small amount of information from a larger record, particularly where the entire record is otherwise subject to disclosure under the *Act.* Additionally, a requester should not be required to

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[2] Orders P-327, P-1387 and MO-1881.
[3] Order MO-1881.
[4] Orders P-327, P-1114 and MO-2280.
[5] Order MO-2263.

compile small pieces of information from a variety of sources in order to obtain a complete version of a record that could be disclosed.[6]

[19] Examples of the types of records and circumstances that have been found to qualify as a "regularized system of access" include:

- unreported court decisions[7]
- statutes and regulations[8]
- property assessment rolls[9]
- septic records[10]
- property sale data[11]
- orders to comply with property standards[12]

[20] The exemption may apply despite the fact that the alternative source includes a fee system that is different from the fees structure under the *Act*.[13] However, the cost of accessing a record outside the *Act* may be so prohibitive that it amounts to an effective denial of access, in which case the exemption would not apply.[14]

[21] In *Municipal Property Assessment Corporation v. Mitchinson,*[15] the Divisional Court stated that public availability of the assessment roll under section 39(2) of the *Assessment Act* means that assessment roll information is exempt under section 15(a) of the *Act.* Subsequent orders of this office have relied on that decision to dismiss appeals for electronic access to a township's assessment roll.[16]

Representations

[22] The municipality submits that the information that is responsive to the request is available on the assessment roll which is publicly available within the meaning of section 15(a).

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[6] Order PO-2641.
[7] Order P-159.
[8] Orders P-170 and P-1387.
[9] Order P-1316.
[10] Order MO-1411.
[11] Order PO-1655.
[12] Order MO-2280.
[13] Orders P-159, PO-1655, MO-1411 and MO-1573.
[14] Order MO-1573.
[15] 2004 CanLII 17632 (Div.Ct.) (*MPAC*).
[16] Order MO-2688.

[23] The municipality contends that previous orders have established that property assessment rolls are considered to be available to the public. It submits that there is no electronic access to the rolls. It submits that it does not have a website and even if it did, the requested information would not be available on it as it is personal information about land owners.

[24] The municipality submits that based on an article written by Jack J. Santos,[17] "neither MPAC nor municipalities have control over the purpose or use made of the information [obtained from assessment rolls] once obtained" but "[i]t is MPAC's position that inspect means 'view only'; it does not mean photocopying, scanning, filming by still or video cameras or reproducing the roll by some other form of electronic or other means...."

[25] The municipality states that any member of the public may attend its office during regular office hours and may view the assessment roll. It submits that it has a non-transferable right to use, for planning purposes only, the assessment information contained in the "Municipal Connect" electronic database created and maintained by MPAC based on the terms of licence to use as well as section 53 of the *Assessment Act*.

[26] The appellant takes the position that the assessment rolls and the information that appears on the MPAC website does not contain the information he seeks. He states that the names and mailing addresses of the owners of vacant rural properties do not appear on the website.

[27] Regarding the municipality's position that the information is "available" within the meaning of the exemption at section 15(a) and the requirement that he attend at the municipality's office to view the assessment rolls he submits:

> I am unaware of any definitive criteria as to what constitutes "reasonable" access. I do not believe that requiring a requester to travel many hundred kilometers, when there is a quicker and less costly practical alternative, is reasonable. Moreover, the municipal office is only open part time (two days of the week), and then, for limited hours, which further constrains access.

[28] He also submits:

> As noted above, the municipality's insistence that I must attend at their office of the selected an variable days of the week it is open, and during the limited hours it is staffed to personally inspect the township map(s)

[17] *Municipal Freedom of Information and Protection of Privacy Act & the Reproduction of the Assessment Roll,* Jack J. Santos, Manager, Freedom of Information and Records Management Branch, Legal and Policy Support services, Municipal Property Assessment Corporation.

> and the tax roll to extract less than 10 names and addresses place an unreasonable burden of travel, time and cost that constitutes an effective barrier to access, that is to say, availability. The reasonableness of the municipality's requirement must be weighed against the value of the time it would take the Clerk to carry out those actions (or select names and addresses from an existing mailing list) and to send the information to me by email or regular mail.

[29] In reply, the municipality submits:

> …[T]he roll is available is available for **public viewing** for assessment purposes. As stated by MPAC "the assessment roll contains personal information such as mailing addresses, religion, and educational support. The release of this information by MPAC or other bodies governed by [the *Act*], including municipalities, is prohibited by [the *Act*].
>
> It is not public information. Just because municipalities have the information in their possession, or have access to the information does not suggest it to be public. MPAC's Connect information is information that is licensed to the municipality to use for taxation or planning purposes.
>
> …
>
> Yes, you must attend the office to view the roll because this is the location of the information and as specified by MPAC's legislation "**available for inspection by the public during office hours.**" The roll is not available in any other form. The fact that it must be viewed when the office is open cannot be helped…

[30] The municipality also states that there are at least one hundred other property owners in the municipality who also choose to live elsewhere and would also be required to attend the office if they were they to seek access to information contained in the local assessment rolls.

Analysis and findings

[31] Although the responsiveness of the assessment roll is not at issue in this appeal, I accept the municipality's position that the assessment rolls contain the information that is responsive to the appellant's request. MPAC's website, as well as the websites of several Ontario municipalities, indicate that the assessment rolls that are available for public viewing list all property in a given municipality including a description of the property, its owner's names and mailing addresses and the assessed value of each property.

[32] What I must determine is whether the information contained in the assessment rolls qualifies as being publicly available pursuant to section 15(a) of the *Act* or whether the municipality is obliged to provide the appellant with access to the particular information that he seeks that is contained in the roll by a means other than having him attend at the municipal office.

[33] Public access to assessment rolls is mandated by section 39(2) of the *Assessment Act*. Sections 39(1) and (2) of the *Assessment Act* state:

> (1) the assessment corporation [MPAC]shall deliver the assessment roll for a municipality and any area attached to the municipality under clause 56(b) or subsection 58.1(2) of the Education Act to the clerk of the municipality, the assessment roll for a locality or a local roads area under the Local Roads Boards Act to the secretary of the applicable board and the assessment roll for non-municipal territory to the Minister, and shall do so on or before the date fixed for the return of the roll.
>
> (2) *Immediately upon receiving the assessment roll for the municipality, the clerk shall make it available for inspection by the public during office hours.* [Emphasis added.]

[34] In the *MPAC*[18] decision the Divisional Court addressed the issue of electronic access to the assessment roll. In that decision, the Court quashed the IPC's order to disclose that type of information, upholding MPAC's denial of access. The Court held that the public availability of the assessment roll under section 39 of the *Assessment Act* means that assessment roll information is exempt under section 15(a) of the *Act*.

[35] In Order MO-2668, former Senior Adjudicator John Higgins examined the issue of whether the Township of Minden's assessment roll was available to be scanned using a hand-held device. The township denied the request to duplicate the roll by means of scanning or photography. Senior Adjudicator Higgins upheld the township's decision to deny access as section 15(a) of the *Act* applies to the tax assessment roll and it is considered to be "publicly available."

> [T]he relationship between section 15(a) of the *Act* and the tax assessment roll has been considered by the Divisional Court in the *MPAC* case. In that case, the Divisional Court held that MPAC's electronic database containing assessment roll information for the province of Ontario was exempt under section 14(1) of the *Act* where the records pertained to individual property owners, and that because the database is available for inspection under section 39(2) of the *Assessment Act*, the

[18] *Supra,* note 15.

> entire database was also exempt under section 15(a) of the *Act* (information published or available).
>
> The precedent set by the Divisional Court in the *MPAC* case is clear, and applicable in the circumstances of this appeal. The Court unequivocally states that the public availability of paper records for inspection under section 39(2) of the *Assessment Act* is sufficient to support the application of section 15(a) to assessment roll information. It is implicit in this decision that access under section 39(2) is a regularized system of access, and that the balance of convenience does not favour someone who requests assessment roll information. I therefore find that this exemption applies.
>
> As a result, and consistent with the township's decision, the appellant's access to the assessment rolls is under section 39(2) of the *Assessment Act*, and not under the *Act*. In that circumstance, section 23 of the *Act*, which speaks to the manner of providing access where it is granted under the *Act* does not apply.

[36] Although in the current appeal the appellant does not specifically seek electronic access to information contained in the assessment roll, I find that the reasoning expressed by the Divisional Court as well as that explained by former Senior Adjudicator Higgins in Order MO-2668 to be relevant and I agree with it.

[37] The crux of the appellant's position is that due to the distance that he must travel and the restrictions on the times that the information is available for viewing at the municipality's office, the assessment roll does not provide him with "reasonable access" to the information that he seeks. However, in keeping with clear precedent established by both this office and the Divisional Court, access to information contained in assessment rolls is governed by section 39(2) of the *Assessment Act* which has been found to provide a regularized system of access to that information.

[38] Accordingly, I find that the information contained in the assessment roll is publicly available and the exemption at section 15(a) applies. As a result, information from the assessment roll is not available under the *Act* and the municipality is not obliged to provide the appellant with information from it by another means of access.

B. Did the municipality exercise its discretion under section 15(a)? If so, should this office uphold its exercise of discretion?

[39] The section 15(a) exemption is discretionary, and permits an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, this office may determine whether the institution failed to do so.

[40] This office may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose;
- it takes into account irrelevant consideration; or
- it fails to take into account relevant consideration.

[41] In either case, this office may send the matter back to the institution for an exercise of discretion based on proper considerations. This office may not, however, substitute its own discretion for that of the institution.[19]

[42] The appellant submits that the balance of convenience favours access by means alternative to the regularized system of access established by section 39(2) of the *Assessment Act* and that the municipality did not take into account relevant considerations, such as the distance he must travel to view the assessment roll and the limited times that it is available for viewing. Specifically, he submits that in making a determination of what constitutes public accessibility in the "sense and spirit intended by the *Act*" the municipality must weigh:

> (a) the respective costs of and other impediments to personal attendance in order to be able to view the records, against,
>
> (b) the cost that would be incurred by and the adverse impacts upon normal operations of an institution.

[43] The municipality submits that given the nature of the information contained in the assessment roll, as well as the fact that it is accessible under section 39(2) of the *Assessment Act* and not available under the *Act* pursuant to section 15(a), it was neither "correct nor appropriate" to provide the appellant with access to the information by an alternative means.

[44] Having considered the submission of the parties, I accept that the municipality properly considered the circumstances of this case in deciding to deny access. I find that it was appropriate for the municipality to base its decision on the public availability of the assessment roll under section 39(2) of the *Assessment Act* and that this decision is supported by the Divisional Court's decision in *MPAC*.[20] I do not find that the municipality's decision was made in bad faith, or that it took irrelevant factors into consideration. Therefore, I find that the municipality properly exercised its discretion in denying access to information from the assessment roll under section 15(a) of the *Act*.

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[19] Order MO-1573 and section 43(2) of the *Act*.
[20] *Supra,* note 15.

C. Does the *Act* require the municipality to create a record in response to the appellant's request?

[45] I has been established and recognized in previous orders that section 17 of the *Act* does not, as a rule, oblige an institution to create a record where one does not currently exist.[21] However, in Order 99, former Commissioner Sidney Linden made the following observation with respect to the obligations of an institution to create a record from existing information which exists in some other form:

> While it is generally correct that institutions are not obliged to "create" a record in response to a request, and a requester's right under the *Act* is to information contained in a record existing at the time of his request, in my view the creation of a record in some circumstances is not only consistent with the spirit of the *Act*, it also enhances one of the major purposes of the *Act* i.e., to provide a right of access to information under the control of institutions.

Representations

[46] The municipality submits that "it is debatable whether the road in question runs over [the appellant's] property" and that this issue has been ongoing since his purchase. It submits that it was determined to be a municipal road, despite the fact that it is not maintained. It submits "there is no specific record listing property owners or otherwise who use this road."

[47] The municipality submits that a record that would respond to the appellant's request does not exist in an electronic format or otherwise. It submits that in order to obtain the information that he seeks the appellant would need to determine which property owners' information he requires and then attend at the office and review the municipal property assessment rolls.

[48] Additionally, the municipality notes that the appellant attended at the municipality's office approximately one month before its representations were submitted. The municipality submits that the appellant viewed the assessment roll and made notes during his review.

[49] The appellant submits that the municipality's suggestion that he is asking it to compile information and create a new record is "misguided." The appellant submits that the information that he seeks is available on the municipality's mailing lists. He suggests that transcribing names from a list used routinely by the municipality when it needs to contact specific property owners to provide notices cannot be characterized as "creating

[21] Orders P-50, MO-1381, MO-1442, MO-2129, MO-2130, PO-2237, PO-2256 and MO-2829.

a new record." He also submits that producing the information that he seeks access to would not unreasonably interfere with the operations of the institution.

[50] Presumably in response to the municipality's submission that the appellant would need to determine which property owner's information he requires, the appellant submits that the municipality "has been provided" with several surveys that show the roadway on his property. He also clarifies that his request is for information about property owners whose "access" to their properties is via the road that crosses his land and not for information about property owners who "use" the road.

[51] The appellant submits that:

> The MPAC website, which contains much information extraneous to my request, does not provide the information I need. This is corroborated at paragraph 2 in the text … that the municipality attached to its representations. The statement that "…the residential address, *which in many cases* is also the mailing address…" [italics added] clearly indicates that "residential" addresses are not always mailing addresses. That is especially true for vacant rural non-residential properties such as most of the few served by the road across my land. I note that the municipality's representations acknowledge that many land owners live elsewhere.

[52] Also in his representations he states that "[i]t is unclear what the municipality construes as the record specific to my request," and expresses that his "primary concern" is that in seeking to deny access to his request for limited information and a small number of records the municipality is attempting to hinder or obstruct his ability to make a legal application to protect his property rights.

[53] Finally, the appellant submits:

> My maple syruping activities in March did allow a brief visit to the municipal office at a time it was open to examine the roll. It did not include information about some parties whom I have good reason to believe have property that is accessed by the road that crosses my land. I believe the municipality has the names and mailing addresses of those parties, to whom I am obliged to provide notice of an application under the Road Access Act. Hence, my request is still open.

[54] In reply, the municipality submits:

> The request … is indeed asking the municipality to compile a record. The record would contain a list of those property owners who would could [sic] access their property by using this road…. The only way to provide this information would be through the assessment roll.

> Firstly, determining who the property owners in question are and then creating a record listing them. The roll is roughly 263 properties. Extrapolating a specific 10 or so (as stated by the appellant) for this purpose does not change that the request is for private confidential information about identifiable people, property owners, that I am not at liberty to disclose. It is creating a record for his purpose. I strongly disagree with the comment that this is a routine act. Municipalities have many legislations that must be adhered to. Whether it is the Municipal Act, Planning, Assessment, MPAC, or MFIPPA (the *Act*) to name a few. This routine that is suggested would be in response to a **personal request to address a personal issue** and not in accordance with any of the legislation.

[55] In his sur-reply representations the appellant responds:

> To claim that providing a very small number of names and addresses is "compiling a record" raises the question as to what are the defining criteria and features of compiling a record. It would severely limit the force of the *Act* if a narrow definition is allowed to be adopted.
>
> The municipality has a duty under several pieces of provincial legislation to provide notification to sometimes all, and sometimes only specific property owners/tenants. It is inconceivable that it does not have files containing names and addresses of specific property owners and/or tenants from which it can and routinely does extract and produce appropriate lists for correspondence, to address envelopes, or to print mailing labels to comply with its statutory responsibilities, as well as to keep its internal paper trails and administrative records. Further, the municipality must maintain and update that information to enable it to fulfill its responsibilities to mail notices to the citizenry it serves, as circumstances require, regardless under what statutory authority.
>
> Such mailing lists may be either inclusive for matters requiring communication with the general population of owners/tenants, or quite specific…. The municipality must maintain records that allow it to compile either kind of list. I question whether it is appropriate to construe generating each such list or subset of names and addresses as "compiling a record."

[56] The appellant further submits that he is of the view that the assessment roll does not contain all the information that he seeks and that it is not the only source of the names and addresses of the property owners or tenants who access their property by way of his roads. He also submits that from records received from a previous request

submitted under the *Act*, Hydro Quebec contacted the municipality regarding right of access across their land and "they are among the parties whose names and mailing addresses [his] request embraced."

[57] In response to the municipality's position that to respond to the request it must go through 264 properties on the assessment roll to determine which property owners access their property by way of the appellant's road, the appellant submits:

> It is unclear what issue this might raise. If it relates to the inherent burden my request imposes, I must observe that the total number is so small that it would not demand much effort for a municipal clerk with working knowledge of that mostly rural municipality to determine, by simply looking at a township map, which "10 or less" are related to my request. That requisite quantum of effort is much less than what would be required to search out a way to circumvent compliance with the spirit of the *Act*, and would consume much fewer financial resources.

[58] The appellant concludes his sur-reply representations by stating:

> My request is very limited in scope and detail. I did not ask for anything out of the ordinary. The process of producing the information I sought would not have unreasonably interfered with the operations of the institution…

Analysis and findings

[59] As previously noted, generally speaking an institution is not required to create a record where one does not exist. In Order 50, former Commissioner Sidney Linden stated that:

> ..the *Act* gives requesters a right (subject to the exemptions contained in the *Act*) to the "raw material" which would answer all or part of a request, but, … the institution is not required to organize the information into a particular format before disclosing it to the requester.

[60] However, also as previously noted, it has been acknowledged that there are some circumstances in which the creation of a record is said to be both consistent with the purposes of the *Act* as well as enhances the right to access information which is one of the major purposes of the *Act*.[22]

[22] Order 99.

[61] Therefore, I must determine whether given the circumstances of the current appeal the municipality was required to create a record to provide the appellant with the information that he seeks.

[62] In Order PO-2237, Adjudicator Frank DeVries addressed a situation in which a requester asked that an institution create a record from existing information. He stated:

> It has been established and recognized in a number of previous orders that section 24 [the provincial equivalent of section 17] of the *Act* does not, as a rule, oblige an institution to create a record where one does not currently exist. However, in Order 99, former Commissioner Sidney Linden made the following observation with respect to the obligations of an institution to create a record from existing information which exists in some other form:
>
> > While it is generally correct that institutions are not obliged to "create" a record in response to a request, and a requester's right under the *Act* is to information contained in a record existing at the time of his request, in my view the creation of a record in some circumstances is not only consistent with the spirit of the *Act* it also enhances one of the major purposes of the *Act* i.e. to provide a right of access to information under the control of institutions.
>
> Although I accept the appellant's position that the ministry could calculate the specific amounts requested, I find that the ministry is not required to do so in the circumstances, and that it has met its obligations under the *Act*. As identified above, an institution is not, as a rule, obliged to create a record where one does not currently exist, and I find that the circumstances present in this appeal are not such as to warrant the creation of a record. In my view, this is not the type of situation described by former Commissioner Linden in Order 99. The creation of a record as suggested by the appellant would, in this case, simply be creating a record containing information already contained in a record in the possession of the ministry, but which the parties have agree that MAG has a greater interest in. Furthermore, any calculation as proposed by the appellant would also be based on the information contained in those records for which the request was transferred. Accordingly, I find that the present circumstances are not such as to oblige the ministry to create a record containing the requester information.

[63] I agree with and adopt the reasoning expressed by former Commissioner Linden and Adjudicator DeVries in the above-mentioned orders for the purposes of the present appeal.

[64] In my view, by requesting the particular information that he seeks, the appellant is indeed requesting the municipality to create a record by compiling information from a variety of sources, including the assessment roll. To provide the appellant with information regarding property owners who access their property via the road that crosses the appellant's property, the municipality would be required to review township maps and surveys to determine which properties can be accessed by that specific road, to make an assumption that those property owners access their property by that road and not by another means, and then to extract their information (names, addresses etc.) from the assessment roll.

[65] The sources from which the municipality would compile the information sought are already available to the appellant. By refusing to create a record, the municipality is not denying the appellant of his right to access this information. Accordingly, as in Order PO-2237, in my view, the circumstances before me do not present a situation where the creation of a record by the institution would be "consistent with the spirit of the *Act*," as described by former Commissioner Linden in Order 99.

[66] I acknowledge that the appellant takes the position that the assessment roll does not contain all of the information that he seeks. He submits that some information, such as the mailing addresses of some parties who he believes own property that is accessed via the road that crosses his property, does not appear in the roll. As previously mentioned, based on the evidence before me regarding assessment rolls which includes the submissions of the municipality and information about the rolls from the MPAC website and the websites of other municipalities, the roll contains the mailing address of property owners. I acknowledge that it is possible that some information could be missing for some property owners, however, in my view, this does not alter the fact that if this information is available, the assessment roll should contain the information that he seeks.

[67] The appellant goes on to state that he believes that the municipality is in possession of separate mailing lists that might contain the information that he seeks that is missing from the roll. If this is the case, I suggest that the appellant submit a new request to the municipality, identifying those property owners (by name or by another property identifier) that he believes access their property via the road crossing his property and specifying the information that he seeks. The appellant should be advised, however, that any such request for information would, of course, be subject to the provisions of the *Act* including any exemptions that might apply to the responsive information.

CONCLUSION:

[68] I have found that section 15(a) of the *Act* applies and permits the municipality to deny access to the assessment roll under the *Act*, and that the municipality properly

exercised its discretion in its denial of access. I have also found that the municipality is not required to create a record in response to the appellant's request. Accordingly, this appeal is dismissed.

ORDER:

The appeal is dismissed.

Original signed by: January 15, 2014
Catherine Corban
Adjudicator