



Information and Privacy  
Commissioner/Ontario

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

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## PRIVACY COMPLAINT REPORT

PRIVACY COMPLAINT NO. MC-020052-1

Corporation of the City of Kingston

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August 1, 2003



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# PRIVACY COMPLAINT REPORT

**PRIVACY COMPLAINT NO.**                      **MC-020052-1**

**MEDIATOR:**                                      **Mona Wong**

**INSTITUTION:**                                **Corporation of the City of Kingston**

## **SUMMARY OF COMMISSIONER INITIATED COMPLAINT:**

The Office of the Information and Privacy Commissioner/Ontario (the IPC) received a copy of an article that appeared in a local City of Kingston (the City) newspaper. It referred to “19 pages of unpaid business occupancy taxes, some dating back to the mid-1990s”. A subsequent newspaper article indicated that “a list of the delinquents – 19 pages long – was attached to the council agenda. The agenda was circulated to councillors and the media, posted on the city’s Web site and made available in hard copy to members of the public.” In addition, the article stated “Councillor [a named councillor] also posted the list on his personal Web site.”

The City confirmed that a list of business occupancy tax (BOT) arrears was distributed on the publicly available Council agenda for the City’s Council Meeting 01-2003 held on December 3, 2002. A report from the City’s Commissioner of Corporate Services recommended that Council strike the listed BOT arrears from the roll pursuant to section 441 of the *Municipal Act*. The City advised that, in accordance with established policy, it had posted to its web site the Council meeting agenda, which included the report to Council and the BOT arrears list, but subsequently removed the list when they started receiving complaints.

The *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) contains privacy provisions that require institutions covered by the *Act* to protect personal information in their custody and control, and only disclose personal information in specified circumstances. Because the article suggested that the list could contain the names of individuals, and might, therefore, contain personal information, the IPC initiated a privacy investigation under the *Act*.

## **DISCUSSION:**

The following issues were identified as arising from the investigation:

### **Is the information contained on the list “personal information” as defined in section 2(1) of the *Act*?**

During my investigation I was provided with a copy of the report from the City’s Commissioner of Corporate Services and the 19-page BOT arrears list referenced above.

The City indicates that in 1998, the Province eliminated BOT, which had been charged to business owners, and the lost municipal revenue was recovered by an increase in the general property tax rate. According to the City, the report and the list deal with arrears of BOT, which have been deemed uncollectible.

Section 2(1) of the *Act* states in part that “personal information” means recorded information about an identifiable **individual** (emphasis added). Previous decisions of this office indicate that information about a business, as opposed to an individual, will not generally be considered to be “personal information”. Senior Adjudicator David Goodis summarized this line of decisions in Order MO-1392:

“Personal information” means recorded information about an “identifiable individual”. The Commissioner has interpreted this term to mean a natural person; it does not apply to information about other entities such as corporations, partnerships, sole proprietorships or business organizations (Order 16). The Commissioner has also recognized that some information relating to a business entity may, in certain circumstances, be so closely related to the personal affairs of an identifiable individual as to constitute that individual’s personal information (Orders 113, P-364, M-138). Nonetheless, in order to qualify as “personal information”, the fundamental requirement is that the information must be “about an identifiable individual” and not simply associated with an individual by name or other identifier. It is apparent, therefore, that while the meaning of “personal information” may be broad, it is not without limits.

The issue of whether the list contains personal information in the circumstances of this complaint arises from the fact that sometimes the names of “natural persons” (i.e. individuals) can form part of a business name, and that the names of individuals, without further words to describe or identify the business, appear on the list. The City takes the position that where an individual’s name appears on the list as the name of the business, they are engaged in commercial activities as distinct from activities undertaken in a personal, non-commercial capacity.

The City explains that, based on assessment information collected by the Ministry of Finance (the Ministry) through its annual Commercial Enumeration process, the City billed business owners for the BOT each year prior to 1998. Individual property owners were not billed for the BOT. The assessment roll prepared by the Ministry distinguishes between residential occupancy and commercial/business occupancy of a property. The commercial tenant information was collected directly from the business tenants through visits by the Ministry's assessment office staff. At that time, the business operators themselves provided the name and address of the business owners to the Ministry staff for the purpose of billing the owners for the BOT.

As for the list itself, the City explains that it was compiled using the Ministry's tax assessment roll, which includes codes that identify real property assessments separately from BOT assessments. The City used a program that searched the computerized version of the tax assessment roll for commercial entities. A further search was then conducted to identify those commercial entities that had outstanding unpaid BOT.

The City is of the view that none of the names of business owners appearing on the BOT arrears list appear there as natural persons, not even those that may have the appearance of being individual names. The City further contends that, by definition, a business name cannot be a natural person, and that the Ministry of Finance does not assess natural persons as commercial or business entities for the purposes of the Commercial Enumeration process. As a result, according to the City, natural persons are not billed for outstanding BOT arrears, and the financial details about BOT are "about" the business, not an individual. On this basis, the City indicates that the list does not contain personal information.

I have carefully reviewed the circumstances surrounding the BOT arrears list. I agree that information which clearly relates exclusively to corporations, partnerships, sole proprietorships and business organizations and not to identifiable individuals is not personal information.

I accept the City's explanation that the Ministry of Finance does not assess individuals as commercial or business entities for the purposes of the Commercial Enumeration process and, for this reason, no individual could, in fact, be in arrears of BOT. Accordingly, I have concluded that the information contained in the BOT arrears list is not about any individual in a personal capacity, and therefore does not qualify as "personal information" as defined by section 2(1) of the *Act*.

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

In light of my conclusion that the information contained on the BOT arrears list is not personal information, it is not necessary for me to consider section 32 of the *Act*.

**CONCLUSION:**

The information contained in the BOT arrears list is not personal information as defined by section 2(1) of the *Act*.

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Mona Wong  
Mediator

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August 1, 2003