



**Information and Privacy  
Commissioner/Ontario**

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

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# **INVESTIGATION REPORT**

## **INVESTIGATION MC-980018-1**

### **A City**

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**October 28, 1998**



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# **INTRODUCTION**

## **Background of the Complaint**

This investigation was initiated as a result of a complaint that three cities had provided incumbent Councillors with access to citizens' names, addresses, amounts paid for their homes, amounts of down payments and names of vendors.

The cities in question have amalgamated and will therefore be referred to as the "former cities". The City in which they are now included will be referred to as "the City" and is the institution that is the subject of this investigation report.

The City indicated that the former cities were provided with information about real estate transactions by a company which compiles Ministry of Consumer & Commercial Relations Land Registry information (electronic and hard copy); a Real Estate Board database; and Assessment Roll information. The information provided to the former cities included the names and addresses of purchasers, purchase prices, names of vendors, assessment roll numbers, assessed values, amount of down payments, existing mortgages and chattels registered against property.

According to the City, Councillors were provided with monthly hard copy listings of purchasers' names, addresses of properties purchased, vendors' names and purchase prices.

The City also indicated that the former cities maintained central property databases and that Councillors in some former cities were provided on-line access to these databases upon request. The information provided for residential properties included tax ledger numbers, lot sizes, total prices, cash down, purchasers' and vendors' names, classes of properties, geographic positions, wards, census tracts, city blocks, lot and plan descriptions, structural and parking data and dates when buildings were built.

The complainant, who asked to not be identified, was concerned about the use of this information for campaign purposes by incumbent politicians, as she felt that the information was confidential and that the practice disregarded the privacy rights of citizens and could create an unfair electoral advantage for incumbent politicians.

Since the former cities have amalgamated into and are now part of the City, the information previously held by each of the former cities is now the information of the City.

## **Issues Arising from the Investigation**

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information", as defined in section 2(1) of the Act? If yes,
- (B) Did section 27 of the Act apply to the personal information? If not,

- (C) Was the personal information disclosed to the Councillors, in compliance with section 32 of the Act?

## RESULTS OF THE INVESTIGATION

**Issue A: Was the information in question "personal information", as defined in section 2(1) of the Act?**

Section 2(1) of the Act states, in part:

"personal information" means recorded information about an identifiable individual, including,

(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,

...

(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;

(Emphasis added)

In some cases, the information included the purchaser's name, the address of the property, the vendor's name and the purchase price. In other cases, it included the purchaser's and the vendor's names, the total prices, the cash down, the class of property and other information about the property sold/purchased.

It is our view that information relating to individuals including their names, addresses, their financial transactions, as well as other personal information about them would meet the requirements of paragraphs (b), (d) or (h) of the definition of "personal information" in section 2(1) of the Act.

**Conclusion:** The information was personal information, as defined in section 2(1) of the Act.

**Issue B: Did section 27 of the Act apply to the personal information?**

Section 27 of the Act states:

This Part does not apply to personal information that is maintained for the purpose of creating a record that is available to the general public.

“This Part” refers to Part III of the Act which sets out provisions for the protection of individual privacy.

It is our view that under section 27 of the Act, personal information that is maintained by an institution may be excluded from the application of Part III of the Act only if the personal information is maintained by that institution specifically for the purpose of creating a record which is available to the general public. Other institutions cannot claim the exclusion unless they also maintain the personal information for this purpose.

In its representations, the City submits that the information in question is obtained primarily from Land Registry Information, Assessment Roll information and building permit application information, all three of which the City describes as a “public record of personal information”. According to the City, the first source is maintained by the Ministry of Consumer & Commercial Relations, the second is established under statute, and the third is established by the custom and practice the former cities followed in maintaining this information as a public record of personal information.

However, the City’s submissions do not establish that the personal information provided to the Councillors by the former cities was being maintained by the former cities for the purpose of creating a record that is available to the general public. Further, the City has not indicated that it is presently maintaining this information for the purpose of creating a public record. It is clear from the City’s submissions that a member of the public cannot visit the City and obtain access to the personal information in the manner in which it was made available to the Councillors. The City points out that individuals may attend at civic centres and look at the assessment roll or request the name of the assessed owner of a property or building permit application information on a record-by-record basis. However, the City also acknowledges that it does not provide direct public access to the complete database or hard copy record.

Therefore, although some of the City’s information may have been obtained from sources whose databases are made available to the public, in our view, the City cannot claim the exclusion in section 27 in the circumstances of this case because the City itself is not maintaining this personal information as a public record.

**Conclusion:** Section 27 of the Act does not apply in the circumstances of this case.

**Issue C: Was the personal information disclosed to Councillors, in compliance with section 32 of the Act?**

Under the Act, personal information in the custody or under the control of an institution cannot be disclosed except in the specific circumstances outlined in section 32.

The City submits that section 32(d) of the Act permits institutions to disclose personal information to officers of the institution who need the record in the performance of their duties. The City states that many Councillors believe that they have a responsibility and a duty to be

fully knowledgeable about any planning or land use issue brought forward by or concerning their constituents.

Section 32(d) of the Act states:

An institution shall not disclose personal information in its custody or under its control except ... if the disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and if the disclosure is necessary and proper in the discharge of the institution's functions

The City submits that:

...members of Council have an obligation to represent their constituents and to be aware of land use and planning issues which arise in their wards.

Councillors also wish to be in a position to welcome new residents to their wards and to create accurate mailing lists in order to communicate directly and by name with their constituents. In some cases, constituents may call the Councillor demanding some action be taken with respect to a building permit matter or planning matter. Direct access to the database allows Councillors to quickly obtain accurate background information ... in order to address the issue.

In our view, Councillors do not need the information of all constituents in order to discharge their responsibility to help those who request assistance with respect to a particular building permit, planning or other similar matter. It is our view that section 32(d) does not apply to the routine disclosure of or access to personal information of a large group of City residents where this disclosure does not directly relate to a particular land use or planning matter. We are also not persuaded that activities such as welcoming new residents to a ward are sufficiently connected to the City's service functions to fit within the scope of section 32(d).

In our view, the City's (the former cities') routine disclosure of lists of personal information to Councillors was not in accordance with section 32 of the Act.

We have carefully examined the remaining provisions of section 32 and find that none are applicable in the circumstances.

We accept that Councillors should be able to respond to issues raised by constituents and to have access to information necessary to properly discharge their responsibilities. In circumstances where personal information of a constituent is required in order to meet this need, it should only be disclosed to the Councillor in compliance with section 32 of the Act. This can be achieved, for example, under section 32(b), which permits the disclosure of personal information with the consent of the person to whom the information relates.

**Conclusion:** The City's (former cities') disclosure of personal information to Councillors was not in accordance with section 32 of the Act.

## **SUMMARY OF CONCLUSIONS**

- The information was personal information, as defined in section 2(1) of the Act.
- Section 27 of the Act does not apply in the circumstances of this case.
- The City's (former cities') disclosure of personal information to Councillors was not in accordance with section 32 of the Act.

## **RECOMMENDATIONS**

We recommend that the City take steps to ensure that personal information is disclosed only in accordance with section 32 of the Act.

Within six months of receiving this report, the City should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendation.

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Tom Mitchinson  
Assistant Commissioner

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28 October 1998