

# ALBERTA

## INFORMATION AND PRIVACY COMMISSIONER

### ORDER 2000-024

December 21, 2000

### CITY OF CALGARY

Review Number 1802

**Office URL:** <http://www.oipc.ab.ca>

**Summary:** The Applicant asked the City of Calgary for the names and mailing addresses of property owners from the Assessment Roll. The Commissioner held that section 15(2) of the Act applied because the names and mailing addresses were information about third parties collected for the purpose of determining tax liability and/or for collecting a tax. Therefore, the Commissioner upheld the City's decision to withhold the information.

**Statutes Cited:** **AB:** *Freedom of Information and Protection of Privacy Act*, S.A. 1994, c. F-18.5, ss.4(1)(h)(iii), 5(2), 15(2), 15(3), 16(1); *Municipal Government Act*, S.A. 1994, c. M-26.1, ss. 299-301.1, 307.

**Authorities Cited:** **AB:** Orders 2000-002, 2000-022. **BC:** Order No. 248-1998.

## I. BACKGROUND

[para. 1.] The Calgary Real Estate Board Co-operative Limited (the "Applicant") is a corporate entity. It consists of approximately 3,500 realtor members who carry on the business of residential and commercial real estate within the City of Calgary and surrounding areas.

[para. 2.] Pursuant to a written agreement dated September 12, 1983, the City of Calgary (the "Public Body"), agreed to provide to the Applicant with the following data for each assessed parcel of residential property within the City's boundaries:

- (a) Location addresses of property;
- (b) Legal description of property;
- (c) Roll number of property;
- (d) Land use (zoning of property);
- (e) Age of principal structure on property;
- (f) Lot size;
- (g) Owner's name and mailing address;
- (h) Gross taxes including local improvement for the preceding taxation period.

[para. 3.] Pursuant to this Agreement, the Applicant supplied the Public Body with valuable market information to assist the Public Body in its tax assessment.

[para. 4.] The term of this Agreement was for a one year period with an automatic renewal on an annual basis unless either party provided 90 days' notice of its intention to terminate. The Agreement has been automatically renewed on an annual basis from 1983 to the present time.

[para. 5.] On October 1, 1999, the Public Body became subject to the *Freedom of Information and Protection of Privacy Act* (the "Act"). Since October 1, 1999, the Public Body has been willing to provide the data to the Applicant but with the name and mailing address of the property owner removed.

[para. 6.] The Applicant made the following continuing request under the Act for information from the Public Body:

Names of all Taxpayers on the Assessment Rolls. The Calgary Real Estate Board had access to the property owners' names on the assessment rolls. This information has been removed from data we are to receive. We are requesting this information to be reinstated to the data received by the Calgary Real Estate Board. Our data was received electronically from the City of Calgary.

[para. 7.] On November 25, 1999, the Public Body denied the request under sections 16(1) and 16(4)(g) of the Act. On January 6, 2000, the Applicant requested a review of the Public Body's decision to deny. Mediation was undertaken but was unsuccessful. The matter was set down for inquiry.

[para. 8.] Because the personal information requested is the names and mailing addresses of the property owners residing in the Public Body, I invited amicus counsel to represent the interests of the property owners (the "Third Parties") at the inquiry. The Canadian Real Estate Association and the Alberta Urban Municipal Association were also invited to participate as intervenors.

[para. 9.] On September 19, 2000, my office wrote to the parties and asked them to also deal with the issue of jurisdiction regarding the application of section 5(2) of the Act at the inquiry.

[para. 10.] An oral inquiry was held September 20-21, 2000 in Calgary. After the conclusion of the inquiry, I requested and received supplemental submissions on the issue of jurisdiction.

## **II. ISSUES**

[para. 11.] The first issue in this inquiry is:

- A. Does the application of section 301.1 of the *Municipal Government Act* to the information requested by the Applicant engage section 5(2) of the Act, so that the Commissioner does not have jurisdiction to deal with this access request?

[para. 12.] If I determine that section 5(2) is not engaged and that I do have jurisdiction, the issues to be decided are:

- B. Does section 4(1)(h)(iii) of the Act exclude the records from the application of the Act?
- C. If the records are subject to the Act, does section 15(2) of the Act apply to the records?
- D. If the records are subject to the Act, would the disclosure of personal information be an unreasonable invasion of a third party's personal privacy as provided by section 16?

## **III. PRELIMINARY APPLICATION**

[para. 13.] There was an application by the Applicant that the first issue regarding jurisdiction (section 5(2) of the Act) should be decided before hearing the other issues at the inquiry. The Applicant argued that if the Commissioner decided he did not have jurisdiction, it would not be necessary to hear further evidence or arguments.

[para. 14.] I decided that I would hear all of the issues, given that the parties were all prepared to proceed. In addition, I took into account that one of the intervenors came from Ottawa to participate, and it would be inconvenient for that intervenor to appear at a second inquiry at a later date. I stated that, in any event, I would reserve my decision regarding the application of section 5(2) until the writing of this decision.

## **IV. RECORDS AT ISSUE**

[para. 15.] For the purposes of section 4(1)(h)(iii), the record at issue is a CD- ROM made by the public body. The data provided to the Applicant is in a text file on a CD- ROM that the Applicant can download into its database.

## V. DISCUSSION

**Issue A. Does the application of section 301.1 of the *Municipal Government Act* to the information requested engage section 5(2) of the Act, so that I do not have jurisdiction to deal with this access request?**

### 1. Legislation

[para. 16.] Section 5(2) of the Act reads:

*5(2) If a provision of this Act is inconsistent or in conflict with a provision of another enactment, the provision of this Act prevails unless*

*(a) another Act, or*

*(b) a regulation under this Act*

*expressly provides that the other Act or regulation, or a provision of it, prevails despite this Act.*

[para. 17.] Section 301.1 of the *Municipal Government Act*, S.A. 1994, c. M-26.1 states:

*301.1 Sections 299 to 301 prevail despite the Freedom of Information and Protection of Privacy Act.*

[para. 18.] I note that section 301.1 came into force in October, 1999 (when Municipalities became subject to the Act).

[para. 19.] Sections 299-301 of the *Municipal Government Act* read:

*299(1) An assessed person may ask the municipality, in the manner required by the municipality, to let the assessed person see or receive sufficient information to show how the assessor prepared the assessment of that person's property.*

*(2) The municipality must comply with a request under subsection (1).*

*300(1) An assessed person may ask the municipality, in the manner required by the municipality, to let the assessed person see or receive a summary of the assessment of any assessed property in the municipality.*

*(2) The municipality must comply with a request under subsection (1) if it is satisfied that necessary confidentiality will not be breached.*

*301 A municipality may provide information in its possession about assessment if it is satisfied that necessary confidentiality will not be breached.*

## **2. The Test**

[para. 20.] In Order 2000-002 I said (paragraphs 21-22):

*Section 5(2) delineates the FOIP Act's application. Section 5(2) permits another "enactment" (a statute or regulation), or a provision of the enactment, to prevail despite the FOIP Act. Section 5(2) is jurisdictional because, if another enactment or a provision of it "prevails" despite the FOIP Act, I have no jurisdiction to apply the FOIP Act.*

*Section 5(2) requires that I first decide whether the information falls within another enactment or a provision of it that expressly provides that the enactment or provision of it prevails despite the FOIP Act. If so, I must then decide whether there is an inconsistency or conflict between a provision of the FOIP Act and the other enactment or a provision of it. If there is an inconsistency or conflict, that enactment or a provision of it prevails despite the FOIP Act.*

[para. 21.] Determining whether section 5(2) of the Act is engaged in this case involves a two-step process. First, I must decide whether the information requested falls within the ambit of sections 299-301 of the *Municipal Government Act*. If this question is answered in the affirmative, then I must decide whether a provision in the FOIP Act is inconsistent or in conflict with sections 299-301 of the *Municipal Government Act*.

[para. 22.] If I find that there is an inconsistency or a conflict, the *Municipal Government Act* prevails and I have no jurisdiction with respect to the Applicant's access request.

### **3. Does the information requested fall within sections 299 - 301 of the *Municipal Government Act*?**

[para. 23.] The parties were in agreement that sections 299-300 are not applicable because they both refer to "an assessed person" who may ask to see or receive information. The Applicant is not an assessed person.

[para. 24.] I agree that the information that would properly fall within sections 299-300 would have to be the result of an assessed person's request.

[para. 25.] However, section 301 does not refer to an assessed person. In the margin notes it states "Right to release assessment information". According to section 301, a municipality may provide information in its possession about assessments if it is satisfied that necessary confidentiality will not be breached.

[para. 26.] For me to decide whether section 301 applies to the information requested, I must therefore examine whether the names and mailing addresses of property owners are "information about assessments".

**a. Applicant's Position**

[para. 27.] In its supplemental submission the Applicant stated:

It is submitted that section 301 of the *Municipal Government Act* uses very broad language about who can request information and the type of information that the municipality may provide pursuant to that request. It is submitted that the Commissioner should look at sections 299(1) and 300(1) of the *Municipal Government Act* to assist in the interpretation of section 301.

Section 299 restricts the party who can ask for information to an "assessed person". "Assessed person" is defined under section 284(1)(a) as a person who is named on an assessment role in accordance with section 304. Section 299 also restricts the type of information that the municipality can release to the assessed person, namely sufficient information to show how the assessor prepared the assessment of that person's property. It is submitted that section 299(1) is very restricted, both in terms of who can make the request for information and the type of information that can be released.

Similarly, section 300 restricts a request for information to an "assessed person" as defined. It also restricts the type of information to a summary of the assessment of any assessed property in the municipality. "Assessment" and "assessed property" are both defined terms under section 284(1)(c) and (b) respectively. Both terms are defined as being the final product of the assessment despite the fact that section 300 appears under Division 1 entitled "Preparation of Assessment". Section 300 allows an assessed person to receive a summary of the assessment that has been completed, not the preparation of that assessment.

Section 301 does not use the restrictive language which appears in sections 299 and 300. There is no restriction on who can ask for information pursuant to section 301 and therefore the Calgary Real Estate Board would be entitled to seek information under this section. Similarly, section 301 only restricts the type of information to that which is "in its possession about assessments". The City has argued that section 301 deals with the same type of information as sections 299 and 300. This interpretation cannot be proper as section 301 uses broader language than sections 299 and 300. It is submitted that any information in the municipality's possession about assessments would fall under this section, including the owner's name and mailing address. Section 301 is intended to allow a broader access to information than sections 299 and 300. If the legislature intended to restrict the type of information that could be released under this section, they could have used restrictive language similar to that in sections 299(1) and 300(1).

The City's further position is that section 301 does not use the phrase "assessment roll" and therefore there should be a distinction made in that regard. The Calgary Real Estate Board submits that as the name and mailing address is collected by the City in order to prepare the assessment, it is information about assessments and would fall within section 301. The Calgary Real Estate Board's submissions are further supported by the City's witness, Mr. Lindsay, who testified that if CREB made a request for the name and mailing address, it would be considered a request under section 301.

Mr. Lindsay further testified that pursuant to a request made under section 301, the City provides a customized report that is tailored to an individual request. The City's concern is primarily that of maintaining confidentiality over the information that is provided. Pursuant to By-law 17M99, Schedule "A" [Exhibit B] provides the assessment product and service fee for the provision of assessment and taxation information to the public. Item 9 is the customized report which is

provided pursuant to a request made under section 301. The By-law does not contain any restriction on what information can be released.

The Calgary Real Estate Board disagrees with the narrow interpretation of section 301 which counsel for the owners suggested. Section 301, by its very wording, is not restricted to information as to how an assessment was arrived at on a particular property or group of properties. That type of restricted wording is found in section 300, not section 301.

Counsel for the owners also argued that section 301 does not apply as the name and mailing address is needed for administrative purposes only and is not information in the public body's possession about assessments. His position is not supported by the evidence from the City's witnesses which indicated that the name and mailing address is collected and required for the preparation of assessments and is in the City's possession when the assessments are being prepared.

## **b. Public Body's Position**

[para. 28.] In its supplemental submission the Public Body stated:

Section 301 deals with the same type of information as sections 299 and 300 of the MGA. They all deal with information regarding the preparation and calculation of property tax assessments. The name and mailing address of property owners is not information which falls under section 301.

Section 303(b) of the MGA specifies that name and mailing address of the assessed person must be recorded on the Assessment Roll. Mr. John Lindsay testified that the names and mailing addresses in issue were collected pursuant to section 303 to compile the Assessment Roll.

The Assessment Roll, an example of which can be seen at Tab 5 of the City's Brief of Argument is not information to show how an assessment was prepared, or a summary of assessments and specifically regarding section 301 of the MGA is not information "about assessments".

The Courts in Canada are now more frequently considering headings in legislation as part of the legislation and using them to assist in interpretation (R. Sullivan, Driedger on the Construction of Statutes, 3<sup>rd</sup> edition, Toronto Butterworths, 1994 Pages 268 to 273). The headings related to sections 299, 300 and 301 of the MGA are of assistance in determining the type of information that falls under sections 299, 300 and 301.

Sections 299 to 301.1 fall under Part 9 Division 1 of the MGA which is under the heading of "Preparation of Assessments". Further, section 301.1 places section 299 to 301 in the same category together. Section 301 should not be read out of context. It, like section 299 and 300, is in a part of the Act dealing with the Preparation of Assessments not compilation of the Assessment Roll, and sections 299 and 300 clearly deal with information about how an assessed value is calculated not name and mailing address of a property owner. Section 301 should not be read out of context.

Compilation of the Assessment Roll is governed by Part 9, Division 2 of the MGA and is under the heading "Assessment Roll". As stated by Mr. Lindsay, name and mailing address of the property owners is collected under the authority of that portion of the MGA.

## **c. Third Party's Position**

[para. 29.] In its supplemental submission the Third Party stated:

The Third Party's position is that section 5(2) does not operate so as to oust the jurisdiction of the Commissioner in this inquiry.

The wording of section 301 permits the City to disclose information in its possession "about assessments". It is submitted that the wholesale release of the names and addresses of property owners contained on the property tax assessment roll is not information about assessments. Instead, under this section, CREB would only potentially be entitled to information as to how an assessment was arrived at on a particular property or group of properties.

While section 303 of the MGA requires that the names and addresses of homeowners be contained on the assessment roll, this information does not assist CREB in obtaining insight into how fair valuations of property are arrived at for the purpose of taxation. Rather, this information is required for administrative purposes, such as sending out notices of assessments, and for enforcement purposes. This interpretation is consistent with the uncontroverted evidence of Mr. John Lindsay on behalf of the Public Body who testified that individuals' names and mailing addresses have no bearing on the valuation process used to assess property.

...

Section 301.1 of the MGA accords paramountcy to the MGA over FOIP for sections 299 to 301. The two prior sections refer to information being available "to show how the assessor prepared the assessment of that person's property" and to provide a "summary of the assessment of any assessed property in the municipality", where the City is satisfied that the necessary confidentiality will not be breached. In short, all three provisions provide for information, which would permit public scrutiny of the method of taxation employed by the City. It was never intended to grant third parties access to the assessment roll, itself for any purpose other than inspection.

#### **d. My Decision**

[para. 30.] In order to determine whether section 301 applies to the information requested, I must examine whether the names and mailing addresses of property owners are "information about assessments".

[para. 31.] At the inquiry, the Applicant did not present any evidence despite the presence of the President and the Executive Vice President of the Calgary Real Estate Board. Mr. John Lindsay, who is employed by the Public Body in its Policy Unit gave evidence on behalf of the Public Body. I found his evidence to be very helpful.

[para. 32.] Mr. Lindsay testified as to what kind of information is given under sections 299-301 of the *Municipal Government Act*. Sections 299 and 300 of the *Municipal Government Act* deal with Applicants who are "assessed persons". Even though in this inquiry the Applicant is not an "Assessed Person", I still found it useful to hear Mr. Lindsay's evidence on the relationship between sections 299 - 300.

[para. 33.] According to Mr. Lindsay, under section 299, the Public Body would provide to an assessed person specific information to show how the Assessment Office arrived at the assessment value of that assessed person's property. The Assessment Roll would not be provided in response to a section 299 request.



[para. 34.] Under section 300, an assessed person will be given information "so they know their property is being assessed in a manner equitable to their own". Bylaw 17M99 [Exhibit B] contains a schedule that provides which information is available to the public and for what fee. Moreover, the Public Body would answer questions specific to any property address the assessed person requested.

[para. 35.] Moreover, Mr. Lindsay stated that under section 301, the Public Body sells customized reports such as sales of data to a mortgage risk analyzer. Municipal address, area, property use, legal description and the Land Titles Link number would be provided. No name or address of the property owners would be sold.

[para. 36.] Mr. Lindsay stated that for the purposes of an assessment "a name would not help to assess a property, but may help in determining an assembly of properties and motivation purposes. As a result, the name of purchaser may have some bearing on the analysis". However, Mr. Lindsay also stated that non-residential property information is not part of the information the Applicant is seeking. I understand that his evidence on this point applies only to non-residential property. The information requested by the Applicant is only in regards to the residential property.

[para. 37.] When asked whether he would consider the names and addresses to be "information about assessments", Mr. Lindsay said that if the Public Body did not have the name and mailing addresses of owners, it would not be able to mail out the assessment notices.

[para. 38.] Section 284(1)(c) of the *Municipal Government Act* says "assessment" means a value of property determined in accordance with this Part and the regulations. After hearing the parties' evidence and submissions, I find that the names and mailing addresses of property owners is not part of an assessment, as defined, because it is independent of the valuation of property. Therefore, the names and mailing addresses of property owners are not "information about assessment" as provided in section 301 of the *Municipal Government Act*, for three reasons.

[para. 39.] First, from Mr. Lindsay's evidence, I understand that property owners' names and mailing addresses have no bearing on the preparation of the assessment information of residential properties in this inquiry. No evidence was given to show that the names and mailing addresses of property owners is relevant for the assessment of residential properties.

[para. 40.] Second, sections 299-301 allow for the provision of information which permits public scrutiny of the method of taxation employed by the Public Body. Although the names and mailing addresses of property owners are required for purposes such as the preparation of the Assessment Roll and to mail out tax notices. Names and mailing addresses do not provide insight into how fair valuations of property are arrived at for the purpose of taxation.

[para. 41.] Third, the statutory interpretation principle, "Contextual Approach" says that the focus should be on a series of provisions that is capable of shedding light on the interpretive problem at hand: see R. Sullivan, *Driedger on the Construction of Statutes*, 3d ed., (Toronto: Butterworths, 1994) at page 247. The examination of the legislative scheme of the *Municipal Government Act* supports the finding that the name and mailing address is not "information about assessments".

[para. 42.] It is significant that section 301 is found under Division 1 which is entitled "Preparation of Assessments" of the *Municipal Government Act*. Division 1 deals with the process of the valuation of property for the purposes of assessment. For example, it specifies how a municipality must prepare an assessment, when and how a municipality can adopt an assessment, what each assessment must reflect, how different types of property are to be assessed, the duties and rights of assessors, classes of property and what type of property is non-assessable property. Division 1 does not deal with the recording of the names and mailing addresses of assessed persons. In contrast, Division 2 which is entitled "Assessment Roll", requires that the name and mailing address of the assessed person be on the Assessment Roll (section 303 (b)).

[para. 43.] In my view, using the contextual approach and construing the Act as a whole, section 301 of the *Municipal Government Act* does not apply to the names and mailing addresses of property owners.

#### **4. Conclusion under section 301.1 of the Municipal Government Act and section 5(2) of the Act**

[para. 44.] Section 301.1 does not apply because the information requested does not fall within section 301. Therefore, I do not need to examine the second part of the test: whether there is an inconsistency or a conflict between section 301 and the Act. Section 5(2) does not operate so as to oust the jurisdiction of the Commissioner in this inquiry. The Act applies to this access request and I have the jurisdiction to deal with it.

[para. 45.] As I have determined that I have jurisdiction over the Applicant's request for access, I will proceed to determine whether the Public Body has correctly withheld the requested information.

#### **Issue B. Does section 4(1)(h)(iii) of the Act exclude the records from the application of the Act?**

##### **1. General**

[para. 46.] A record may be excluded from the application of the Act by section 4(1)(h)(iii). Section 4(1)(h)(iii) reads:

*4(1) This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following:*

...  
*(h) a record made from information*

...  
*(iii) in a Land Titles Office,*

...

## **2. Analysis of section 4(1)(h)(iii)**

### **a. Applicant's Position**

[para. 47.] The Applicant argued that the names and mailing addresses of property owners is information available in the Southern Alberta Land Titles Office. It stated that while the source of the Public Body's information may have come from somewhere other than the Land Titles Office itself, the owner's name and mailing address is nevertheless at the Land Titles Office for public review. The Applicant stated that section 4(1)(h)(iii) should be interpreted such that the Act should not apply to public information regardless of the source of the information.

### **b. Evidence provided at the Inquiry**

[para. 48.] At the inquiry, Mr. Lindsay stated that the mailing address and name is provided by a direct electronic link from the Land Titles Office. The Land Titles information is fed in to the Calgary Ownership On Line data information system. This system in turn populates the assessment records once the finance department determines that the information is correct.

[para. 49.] While the majority of ownership changes are automatically reflected by the electronic interface with the Land Titles Office, Mr. Lindsay also said that other changes are accomplished by owners notifying the City of Calgary or the Land Titles Office of any changes to their mailing address.

### **c. My Decision**

[para. 50.] The Applicant is requesting that the Public Body provide all the names and mailing addresses of residential property owners in a CD-ROM format. "Record" is defined in section 1(1)(q) of the Act to include information that is recorded or stored in any manner. Consequently, a CD-ROM format would be a "record".

[para. 51.] I do not believe that this information is the same information that is publicly available at the Southern Land Titles Registry. Furthermore, while some property tax assessment information may exist also at the Southern Land Titles Registry, the information requested is not made from that source.

[para. 52.] In Order 2000-022, I discussed what "a record made from information in a Land Titles Office" means. I stated (paragraph 41) that considering the definition of "record" in the Act, the information a Land Titles Office must maintain, and the statutory

functions of a Land Titles Office, a "record made from" information in a Land Titles Office is a record made from information in a Land Titles Office that relates to the search, registration or filing functions of a Land Titles Office.

[para. 53.] Just because a person's name and mailing address appears at the Land Titles Office, and is in a record elsewhere does not make that record a "record made from information in a Land Titles Office". In this case, I do not accept that section 4(1)(h)(iii) encompasses such a record. If I accepted the Applicant's argument, there would be very little of Albertans' personal information protected by the FOIP Act. Such an interpretation would unduly broaden the scope of records excluded from the application of the Act by section 4(1)(h)(iii). I do not think the Legislature intended this.

**d. Conclusion under section 4(1)(h)(iii)**

[para. 54.] I find that the CD-ROM record made by the Public Body is not a record contemplated by section 4(1)(h)(iii) of the Act. Therefore section 4(1)(h)(iii) of the Act does not apply to the record containing the information the Applicant requested. Consequently, that record is subject to the Act.

**Issue C. If the records are subject to the Act, does section 15(2) of the Act apply to the records?**

**1. General**

[para. 55.] Section 15(2) reads:

*15(2) The head of a public body must refuse to disclose to an applicant information about a third party that was collected on a tax return or collected for the purpose of determining tax liability or collecting a tax.*

[para. 56.] Section 15(2) is a mandatory ("must") exception. Thus, if the head of a public body determines that the information falls within this exception, access must be refused.

[para. 57.] For information to fall under section 15(2), the following three-part test must be satisfied:

- (i) the information must be about a third party;
- (ii) the information must be collected on a tax return or collected for the purpose of determining tax liability or collecting a tax; and
- (iii) none of the subsections in section 15(3) apply.

[para. 58.] The relevant portion of section 15(3) reads:

*15(3) Subsections (1) and (2) do not apply if*

...

*(b) an enactment of Alberta or Canada authorizes or requires the information to be disclosed,*

...

## **2. Application of section 15(2)**

[para. 59.] First, I find that the names and mailing addresses of property owners are information about third parties.

[para. 60.] Second, the names and mailing addresses of property owners are clearly "information collected for the purpose of determining tax liability and/or collecting a tax". The names and mailing addresses of the property owners are required in order to prepare the Assessment Roll, mail out assessments and collect the municipal property taxes.

[para. 61.] My decision is similar to British Columbia Order No. 248-1998, in which the Applicant requested names and mailing addresses of owners of properties to be forfeited to the province of British Columbia for non-payment of taxes. The Commissioner found that the information requested was gathered for the purpose of determining tax liability and/or collecting a tax. He thus upheld the Ministry's decision to withhold the names and mailing addresses of property owners.

[para. 62.] Third, I do not find that section 15(3) applies. I agree with the Public Body that section 307 of the *Municipal Government Act* is the only applicable provision relevant to a determination under section 15(3)(b).

[para. 63.] Section 307 of the *Municipal Government Act* reads:

*307 Any person may inspect the assessment roll during regular business hours on payment of the fee set by the council.*

[para. 64.] *Blacks' Law Dictionary* 5<sup>th</sup> edition, (St. Paul: West Publishing Co., 1983) defines "inspection" as

*To examine; scrutinize; investigate; look into; check over; or view for the purpose of ascertaining the quality, authenticity or conditions of an item, product, document, residence, business, etc.*

[para. 65.] The Applicant requested disclosure of the names and mailing addresses in a CD-ROM or other electronic format. Section 307 of the *Municipal Government Act* does not authorize disclosure in the manner the Applicant requested. Section 307 authorizes inspection limited by the conditions of the regular business hours and the specified fees. I do not accept that this includes a wholesale disclosure in a CD-ROM or in another

electronic format. Therefore, I find that section 15(3)(b) of the Act does not apply in this case.

[para. 66.] Moreover, I agree with British Columbia Order No. 248-1998, which stated "that information which is gathered for the purpose of determining tax liability or collecting a tax, and which may be listed on a public roll for the primary purpose of assisting the public in assessing taxation equity, should not be searched, manipulated and reconfigured to achieve secondary purposes which are unrelated to the purpose for which the information was gathered and intended to be used".

### **3. Conclusion under section 15(2)**

[para. 67.] I find that the names and mailing addresses of property owners is information about third parties, that was collected for the purpose of determining tax liability and/or for collecting a tax, and section 15(3)(b) does not apply to the information requested. Therefore, section 15(2) applies, and I uphold the Public Body's decision to withhold the names and mailing addresses of the Third Parties.

**Issue D. If the records are subject to the Act, would the disclosure of personal information be an unreasonable invasion of a third party's personal privacy as provided by section 16?**

[para. 68.] As I have found that section 15(2) applies to the information requested, I do not find it necessary to decide whether section 16 also applies to the information requested.

## **VI. ORDER**

[para. 69.] I make the following order under section 68 of the Act.

**Issue A. Does the application of section 301.1 of the *Municipal Government Act* to the information requested by the Applicant engage section 5(2) of the Act, so that the Commissioner does not have jurisdiction to deal with this access request?**

[para. 70.] Section 301.1 does not apply to the information requested. Therefore section 5(2) of the Act does not operate so as to oust the jurisdiction of the Commissioner in this inquiry. The Act applies to this access request and I have the jurisdiction to deal with it.

**Issue B. Does section 4(1)(h)(iii) of the Act exclude the records from the application of the Act?**

[para. 71.] I find that section 4(1)(h)(iii) of the Act does not apply to the record. Consequently, that record is subject to the Act.

**Issue C. If the records are subject to the Act, does section 15(2) of the Act apply to the records?**

[para. 72.] Section 15(2) of the Act applies to the information requested. Therefore the Public Body must refuse to disclose the information requested, as provided by section 15(2).

[para. 73.] I uphold the Public Body's decision that it must refuse to disclose under section 15(2) the information requested. I order the Public Body not to disclose the information requested by the Applicant.

**Issue D. If the records are subject to the Act, would the disclosure of personal information be an unreasonable invasion of a third party's personal privacy as provided by section 16?**

[para. 74.] As I have found that section 15(2) applies to the information requested, I do not find it necessary to decide whether section 16 also applies to the information requested.

Robert C. Clark  
Information & Privacy Commissioner

**APPENDIX "A"**

Appearances:

<u>Name</u>	<u>Capacity</u>
A.R. Cunningham	Solicitor for the Public Body, City of Calgary
Barbara Clifford	FOIP Coordinator for the Public Body
John Lindsay	Assessment Office of the Public Body
Daniel D. Downe	Solicitor for the Applicant, the Calgary Real Estate Board
Greg Luedtke	President of the Calgary Real Estate Board
Ron Esch	Executive Vice President of the Calgary Real Estate Board
Alex G. MacWilliam	Solicitor for the Third Parties, the Property Owners of the City of Calgary
William D. Harrington	Solicitor for the Intervenor, the Canadian Real Estate Association

James Robertson

For the Intervenor, the Alberta Urban Municipal  
Association

## **APPENDIX "B"**

Documents Received Prior to and at the Inquiry and Considered by the Commissioner:

- ◆ Public Body's written submission
- ◆ Applicant's written submission
- ◆ Third Parties' written submission
- ◆ Canadian Real Estate Association Intervenor's written submission
- ◆ Exhibit A: CD ROM of the Information Requested
- ◆ Exhibit B: City of Calgary Bylaw #17M99

Documents Presented after the Inquiry and Considered by the Commissioner:

- ◆ Public Body's supplemental written submission
- ◆ Applicant's supplemental written submission
- ◆ Third Parties' supplemental written submission