

ALBERTA

ASSISTANT INFORMATION AND PRIVACY COMMISSIONER

ORDER 2001-005

February 12, 2001

CITY OF CALGARY

Review Number 2027

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Summary: The Applicant asked the City of Calgary for Property Assessment Detail Reports. The Assistant Commissioner found these records to be within the ambit of section 300 of the *Municipal Government Act* (a summary of the assessment of any assessed property in the municipality). Section 301.1 of the *Municipal Government Act* says that sections 299-301 prevail despite the *FOIP Act*. The Assistant Commissioner held that section 5(2) of the *FOIP Act* applies; therefore, the Assistant Commissioner has no jurisdiction regarding the disclosure of the Property Assessment Detail Reports.

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, S.A. 1994, c. F-18.5, s. 5(2); *Municipal Government Act*, S.A. 1994, c. M-26.1, ss. 299-301.1.

Authorities Cited: **AB:** Orders 2000-002, 2000-024.

I. BACKGROUND

[para. 1.] The Applicant made an access request to the City of Calgary (the "City") pursuant to the *Freedom of Information and Protection of Privacy Act* (the "FOIP Act") for Property Assessment Detail Reports for eight properties identified by tax roll number including the Applicant's own property. The Applicant stated that he had no objection with the City removing the owners' names or their school support. The City only disclosed to the Applicant the Property Assessment Detail Report for his property.

[para. 2.] On October 2, 2000, the City informed the Applicant that it was refusing his request for the other seven Property Assessment Detail Reports on the grounds that section 301.1 of the *Municipal Government Act* says that sections 299-301 of the *Municipal Government Act* prevail over FOIP. On October 3, 2000, the Applicant requested a review of the City's decision to refuse disclosure.

[para. 3.] Mediation was authorized but was unsuccessful. A written inquiry was held on February 6, 2001. I permitted another residential property owner residing in the City, who stated that he also had considerable difficulty obtaining assessment information from the City to participate as an intervenor. The City, the Applicant and the Intervenor provided written submissions for the inquiry.

II. RECORDS AT ISSUE

[para. 4.] The records at issue are seven Property Assessment Detail Reports of residential properties. They each consist of one page and contain information collected by the City's Assessment Department for use in determining the properties' tax assessment.

III. ISSUE

[para. 5.] Does the application of section 301.1 of the *Municipal Government Act* to the Property Assessment Detail Reports engage section 5(2) of the *FOIP Act*, so that I do not have jurisdiction to deal with this access request?

IV. DISCUSSION

1. Legislation

[para. 6.] Section 5(2) of the *FOIP 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. 7.] 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. 8.] I note that section 301.1 came into force in October 1999 (when municipalities became subject to the Act).

[para. 9.] 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. 10.] In Order 2000-002 the Commissioner 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. 11.] 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. 12.] 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. Do Property Assessment Detail Reports fall within sections 299 - 301 of the *Municipal Government Act*?

a) Applicant's Position

[para. 13.] The Applicant argued that the Property Assessment Detail Reports do fall within sections 300 and 301. He is not requesting the property owners' names or school support, and submits that confidentiality will not be breached. He wishes to use the Property Assessment Detail Reports as comparables to determine whether his property was fairly taxed.

[para. 14.] The Applicant submitted the City is in violation of section 300(2) because it must comply with the request since confidentiality will not be breached. Consequently, the Commissioner has jurisdiction to compel the City to follow the *Municipal Government Act* under the FOIP Act.

b) City's Position

[para. 15.] The City submitted that the Property Assessment Detail Reports fall within the ambit of section 300 and that the City has decided that it is not satisfied that necessary confidentiality will not be breached. Therefore, it will not disclose them to the Applicant.

[para. 16.] In the City's view the issue before the Assistant Commissioner is his jurisdiction over the "Records" and not what the City should withhold or produce pursuant to section 300 of the *Municipal Government Act*.

c) My Decision

[para. 17.] The Commissioner stated in Order 2000-024 that:

[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"...

[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...

[para. 18.] The City stated in its submissions:

Finally, and aside from the direction taken from Order 2000-024, a logical and common sense interpretation of section 300 of the MGA can only lead to the conclusion that the Records fall under section 300 of the MGA - "A summary of the assessment of any assessed property in the municipality." Those are the words used in section 300 of the MGA. Clearly, the seven Property Assessment Detail Reports are summaries of assessment. They contain some of the criteria used to calculate the assessment. They allow comparison. They are given on request, pursuant to section 300 of the MGA to an assessed person but only for his own property.

[para. 19.] I agree with the City that the Property Assessment Detail Reports fall within section 300(1) of the *Municipal Government Act*.

Conclusion

[para. 20.] The Property Assessment Detail Reports do fall within section 300(1) of the *Municipal Government Act*.

4. Is there an inconsistency or conflict between the *FOIP Act* and section 300 of the *Municipal Government Act*?

[para. 21.] In Order 2000-002, the Commissioner gave the following interpretation of the terms "inconsistent" and "in conflict with":

[para 91] In Order 99-034, I said that the terms "inconsistent" or "in conflict with" refer to a situation where two legislative enactments cannot stand together, that is, compliance with one law involves breach of the other: see *Friends of the Oldman River Society v. Canada (Minister of Transport)* (1992), 88 D.L.R. (4th) 1 (S.C.C.); *Imperial Investments Ltd. v. Saint John (City)* (1993), 106 D.L.R. (4th) 585 (N.B.C.A.).

[para. 22.] According to section 300(2), the only requirement regarding disclosure is that the City must be satisfied that necessary confidentiality will not be breached before it discloses information captured by section 300(1).

[para. 23.] The City's position is that it is satisfied that necessary confidentiality will not be breached with respect to the disclosure of Similar Property Reports but not for the Property Assessment Detail Reports which the Applicant requested.

[para. 24.] John Lindsay, the City's Senior Assessor, provided evidence by way of affidavit. He deposed that the City has developed procedures to address its obligations under sections 299 to 301 of the *Municipal Government Act*. These procedures, which are followed by the City staff who deal with property owners, address the issues of the amount and type of information to be released and to whom it should be released.

[para. 25.] Mr. Lindsay further stated in his affidavit that the information available to an assessed person regarding property tax assessments is set out in Schedule "A" of Bylaw 17M99. The City's procedure is that upon the request of an assessed person, they will be given a copy of the Property Assessment Detail Report for their property and a Similar Property Report that contains summaries of other comparable properties. It is the City's

policy that the Property Assessment Detail Report will be given to an assessed person for his or her own property only.

[para. 26.] Mr. Lindsay also stated that the Applicant is an assessed person and as such was given a Property Assessment Detail Report only for the property he owns. He was advised that the City would not release the Property Assessment Detail Reports other than for the property he owns.

[para. 27.] With respect to the satisfaction that necessary confidentiality would not be breached. Mr. Lindsay stated:

That in establishing the procedure for releasing Property Assessment Detail Reports only to assessed persons and only for their own property, the City has attempted to balance the public right to information with issues of confidentiality as required by section 300 of the MGA. The City considers it reasonable to release the information found on Similar Property Reports particularly to those who have appealed their assessment as that information allows comparisons to other similar properties. However, the additional information found on a Property Assessment Detail Report is not readily identifiable via a visual outside look at a property and thus its release is considered by the City to be intrusive to that third party property owner's privacy.

[para. 28.] I have compared the two types of reports for two identical properties. The main difference between the two reports is that the Property Assessment Detail Reports contain the owners' names and school support. A quick examination also shows that some of the fields in the Similar Property Report are not complete such as "the year of construction, quality, legal description and deck area".

[para. 29.] The Applicant stated that the names and school support could be severed. Therefore, the information on both types of records is very similar. I am puzzled why the City will not disclose the Property Assessment Detail Reports whereas it will disclose the Similar Property Report.

[para. 30.] In any event, the City says that it is not satisfied that the necessary confidentiality will not be breached with respect to disclosure of the Property Assessment Detail Reports.

[para. 31.] Because section 300(2) is the only factor the City must consider, section 300 cannot stand with the *FOIP Act*. Compliance with this provision would involve a breach of the *FOIP Act*. The principles and the process enounced in the *FOIP Act* with respect to disclosure of the Property Assessment Detail Reports would be profoundly different. Consequently, this provision is inconsistent and in conflict with the *FOIP Act*. The *Municipal Government Act* applies and I do not have jurisdiction to tell the City that it should be satisfied that the necessary confidentiality will not be breached.

Conclusion

[para. 32.] I find that the Property Assessment Detail Reports do fall within the ambit of section 300(1) of the *Municipal Government Act* and that there are inconsistencies and conflicts between section 300(2) of the *Municipal Government Act* and the *FOIP Act*.

Therefore, sections 300 prevails over the *FOIP Act*. Consequently, section 5(2) of the *FOIP Act* is engaged, and I have no jurisdiction over access to the Property Assessment Detail Reports.

V. ORDER

[para. 33.] I do not have jurisdiction over access to the Property Assessment Detail Reports. Therefore, I do not have the authority to decide whether the City properly withheld the Property Assessment Detail Reports from the Applicant.

Frank Work Q.C.
Assistant Information & Privacy Commissioner