

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER 2001-036**

January 25, 2002

**THE CITY OF CALGARY**

Review Number 2150

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

**Summary:** The Applicant made a request under the *Freedom of Information and Protection of Privacy Act* (the “FOIP Act”) to the City of Calgary for access to a variety of assessment information. Along with that request, the Applicant asked the City of Calgary to waive the \$25 application fee under section 93(4) [previously section 87(4)] of the FOIP Act. The City of Calgary refused to grant the fee waiver.

The Commissioner held that the requested information fell within the ambit of sections 299-301 of the *Municipal Government Act* and that sections 299-301 of the *Municipal Government Act* were inconsistent and in conflict with the FOIP Act. Consequently, section 5 [previously section 5(2)] of the FOIP Act was engaged so that the FOIP Act did not apply to the access and disclosure of the information. As the FOIP Act did not apply to the access and disclosure, the Commissioner had no jurisdiction to decide whether the Applicant was entitled to a fee waiver regarding the records containing that information.

**Statutes Cited:** **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 5 [previously section 5(2)], 72 [previously section 68], 93(4) [previously section 87(4)]; *Municipal Government Act*, R.S.A. 2000, c. M-26, ss. 299, 300, 301, 301.1.

**Authorities Cited:** **AB:** Orders 99-034, 2000-002, 2001-005

**Cases Cited:** *Friends of the Oldman River Society v. Canada (Minister of Transport)* (1992), 88 D.L.R. (4<sup>th</sup>) 1 (S.C.C.); *Imperial Investments Ltd. v. Saint John (City)* (1993), 106 D.L.R. (4<sup>th</sup>) 585 (N.B.C.A.)

## **I. BACKGROUND**

[para 1] On March 8, 2001, the Applicant made an access request under the *Freedom of Information and Protection of Privacy Act* (the “FOIP Act”) to the City of Calgary (the “Public Body”) for a variety of residential assessment information regarding the Elbow Park Community for 1999, 2000, 2001 and all future assessment years. This included the quality and condition of all properties; the criteria or manual used by the Assessor for determining or rating the quality and condition of properties; the properties in a given “market analysis area” whose values have been determined to be affected by positive or negative influences; the property sales time adjustment factors; a detailed description of the assessment analysis process; and a list of all properties for which appeals were/are submitted in any given year and the results or disposition of these appeals.

[para 2] In that letter, the Applicant also requested a fee waiver of the initial \$25 fee under section 93(4)(b) [previously section 87(4)(b)] of the FOIP Act.

[para 3] On March 28, 2001, the Public Body denied the Applicant’s request for a fee wavier.

[para 4] On April 5, 2001, the Applicant requested a review of the Public Body’s decision to refuse the fee waiver. Mediation was not successful. The matter was set down for a written inquiry.

[para 5] The Public Body and the Applicant each submitted an initial submission. The Applicant also submitted a rebuttal submission. The Public Body did not submit a rebuttal submission.

## **II. RECORDS**

[para 6] The records consist of a variety of assessment information for the Elbow Park Community for 1999, 2000, 2001 and all future assessment years.

## **III. ISSUES**

[para 7] The inquiry notice identified section 87(4) of the FOIP Act as the issue in the inquiry. In addition, due to the subject matter of the records at issue, during the inquiry I also identified section 5(2) of the FOIP Act as an issue.

[para 8] However, as of January 1, 2002, the Revised Statutes of Alberta 2000 came into force. Although this did not result in substantive changes to the FOIP Act, various sections of that Act have been renumbered. As such, for ease of reference, in this Order I will refer to both the new and the previous section numbers. I have also rephrased the issues to reflect this change. The issues in this inquiry now read as follows:

- A. Does section 5 [previously section 5(2)] of the FOIP Act apply to the information/ records?
- B. Is the Applicant entitled to a fee waiver under section 93(4) [previously section 87(4)] of the FOIP Act?

#### **IV. DISCUSSION**

##### **A. Does section 5 [previously section 5(2)] of the FOIP Act apply to the information/ records?**

[para 9] Section 5 [previously section 5(2)] reads:

*5 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 10] Section 299-301.1 of the *Municipal Government Act*, R.S.A. 2000, c. M-26 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 assessments if it is satisfied that necessary confidentiality will not be breached.*

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

[para 11] In Order 2000-002, I outlined the two-step process that determines whether section 5 [previously section 5(2)] of the FOIP Act is engaged. First, I must decide whether the information requested falls within the ambit of another enactment or provision of it that expressly provides that the enactment or provision of it prevails despite the FOIP Act. If this question is answered in the affirmative, I must decide whether a provision in the FOIP Act is inconsistent or in conflict with the other enactment or provision of it. If I find that there is an inconsistency or a conflict, the other enactment or provision of it will prevail, and I have no jurisdiction with respect to the Applicant's access or fee waiver request.

[para 12] Following the process outlined above, in this inquiry, I must decide whether the information falls within sections 299-301 of the *Municipal Government Act*. If this question is answered in the affirmative, I must decide whether a provision of the FOIP Act is inconsistent or in conflict with those *Municipal Government Act* provisions.

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

[para 13] The information requested by the Applicant can be divided into two categories.

[para 14] First, the Applicant requested information that refers to the condition, quality or assessment value of specific properties within a certain geographic area. Second, the Applicant requested information that refers to the assessment process including the criteria, property sales time adjustment factors, and a description of the assessment analysis process used in the assessment of the properties.

[para 15] I find that both types of information fall under sections 299-301 of the *Municipal Government Act*. I find that all of the information at issue is either information regarding "how the assessor prepared the assessment" of the Applicant's property under section 229(1), "a summary of the assessment of an assessed property" under section 300(1), or information "about assessments" under section 301.

2. Is there an inconsistency or conflict between the FOIP Act and sections 299-301 of the *Municipal Government Act*?

[para 16] 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. (4<sup>th</sup>) 1 (S.C.C.); *Imperial Investments Ltd. v. Saint John (City)* (1993), 106 D.L.R. (4<sup>th</sup>) 585 (N.B.C.A.).

[para 17] I find that sections 299-301 of the *Municipal Government Act* are inconsistent and in conflict with the FOIP Act.

[para 18] Under section 299 of the *Municipal Government Act*, a municipality must provide an assessed person with sufficient information to show how the assessor prepared the assessment of that person's property. The only requirement regarding access and disclosure under section 299 is that the Public Body must provide an assessed person with "sufficient information". None of the principles or processes found in the FOIP Act apply to this determination. Consequently, section 299 is inconsistent and in conflict with the access and disclosure provisions of the FOIP Act.

[para 19] In addition, pursuant to Order 2001-005, I find that section 300 of the *Municipal Government Act* is inconsistent and in conflict with the FOIP Act. The only requirement regarding access and disclosure under section 300 is that the Public Body must be satisfied that the necessary confidentiality will not be breached before it discloses information under this section. None of the principles or processes found in the FOIP Act applies to this determination. Consequently, section 300 is inconsistent and in conflict with the access and disclosure provisions of the FOIP Act.

[para 20] Similarly, I find that section 301 of the *Municipal Government Act* is also inconsistent and in conflict with the FOIP Act. Once again, the only requirement regarding access and disclosure under section 301 is that the Public Body must be satisfied that the necessary confidentiality will not be breached before it discloses information under this section. None of the principles or processes found in the FOIP Act applies to this determination. Section 301 is inconsistent and in conflict with the access and disclosure provisions of the FOIP Act.

### 3. Summary

[para 21] I find that the requested information falls within the ambit of sections 299-301 of the *Municipal Government Act* and that sections 299-301 of the *Municipal Government Act* are inconsistent and in conflict with the FOIP Act. Therefore, sections 299-301 prevail over the FOIP Act. Consequently, section 5 [previously section 5(2)] of the FOIP Act is engaged so that the Act does not apply to the access and disclosure of that information. As the FOIP Act does not apply to the access and disclosure, I have no jurisdiction to decide whether the Applicant is entitled to a fee waiver regarding the records containing that information.

**B. Is the Applicant entitled to a fee waiver under section 93(4) [previously section 87(4)] of the Act?**

[para 22] I have found that section 5 [previously section 5(2)] of the FOIP Act applies to the information at issue. As such, I do not have the authority to decide whether the Applicant is entitled to a fee waiver under section 93(4) [previously 87(4)] of the FOIP Act.

**V. ORDER**

[para 23] I make the following order under section 72 [previously section 68] of the FOIP Act.

[para 24] I find that the requested information falls within the ambit of sections 299-301 of the *Municipal Government Act* and that sections 299-301 of the *Municipal Government Act* are inconsistent and in conflict with the FOIP Act. Therefore, sections 299-301 of the *Municipal Government Act* prevail over the FOIP Act. Consequently, section 5(2) of the FOIP Act is engaged, so that the FOIP Act does not apply to the access and disclosure of that information. As the FOIP Act does not apply to the access and disclosure, I have no jurisdiction to decide whether the Applicant is entitled to a fee waiver under section 93(4) [previously section 87(4)] regarding the records containing that information.

Frank J. Work, Q.C.  
Acting Information and Privacy Commissioner