

SASKATCHEWAN
OFFICE OF THE
INFORMATION AND PRIVACY COMMISSIONER

REPORT LA-2007-002

RURAL MUNICIPALITY OF EDENWOLD #158

Summary:

The Applicant sought information from the Rural Municipality of Edenwold #158 (the R.M.) consisting of the names of registered owners of property in the R.M. together with the street address and the balance of the tax account owing on each property. The R.M. denied access on the basis that the information sought would be personal information of the property owners and could not be disclosed under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Commissioner found that LA FOIP did not apply to certain information that was material available for purchase by the public in accordance with section 3(1)(a) of LA FOIP. This information consisted of the legal description of the land, the name of the registered owner, the published mailing address of that registered owner, the value of the current tax assessment, whether that tax assessment has been paid in full, and if not, the sum of arrears. All of this information is available by means of municipal tax certificates or title searches through Information Services Corporation of Saskatchewan (ISC). The Commissioner recommended that the other information on the assessment roll, when it identifies an individual, should be viewed as personal information and not released without the consent of the individual, all as provided by section 28 of LA FOIP. The Commissioner further recommended that the Minister of Municipal Affairs should provide clear direction to all municipalities to ensure a clear and consistent understanding of what qualifies as personal information under LA FOIP. That direction should address the bulk sale of data and Internet publication of such data.

Statutes Cited:

The Local Authority Freedom of Information and Protection of Privacy Act, [S.S. 1990-91, c. L-27.1], ss. 3(1)(a)(b), 17(1)(f), 23, 28, 32(d); *The Rural Municipality Act, 1989* [S.S. 1989, c.R-26.1], ss. 66(1), 67, 294, 301(5)(6), 331(1)(q), 339, 395; *The Archives Act, 2004* [S.S. 2004, c.A-

26.1], s. 2(j); *The Interpretation Act, 1995* [S.S. 1995, c.I-11.2], s. 12; Alberta's *Freedom of Information and Protection of Privacy Act* [S.A. 1994, c. F-18.5], s.15(2); British Columbia's *Freedom of Information and Protection of Privacy Act* [R.S.B.C. 1996, c. 165]; Ontario's *Freedom of Information and Protection of Privacy Act* [R.S.O. 1990, c. F.31], s. 21; Ontario's *Municipal Freedom of Information and Protection of Privacy Act* [R.S.O. 1990, c. M.56].

Authorities Cited: Reports and Orders: Saskatchewan OIPC: Report LA-2007-001, Investigation Report 2005-001, Report 2001/043; Alberta OIPC Order 2000-024; British Columbia OIPC Order P98-011; Ontario IPC: Order PO-2109, Order MO-2030, Order MO-1693, Order MO-1456.

Court Decisions: *Municipal Property Assessment Corp. v. Ontario (Assistant Information and Privacy Commissioner)* [2004] O.J. No. 2118; *Phinjo Gombu v. Tom Mitchinson, Assistant Commissioner at al* (2002), 59 O.R. (3d) 773.

Other Sources Cited: Access and Privacy Services, Archives of Manitoba, *Freedom of Information and Protection of Privacy Act, Manuals & FAQ's for Public Bodies, Frequently Asked Questions – Municipalities*; Alberta Government Services, *FOIP Discussion Paper: Assessment Roll, 2002*; Office of the Victorian Privacy Commissioner, *Public Registers and Privacy – Guidance for the Victorian Public Sector*, 2004; Saskatchewan Government Relations and Aboriginal Affairs, *Municipal Administrator's Guide for Rural and Urban Municipalities*, August 2003; Saskatchewan Legal Education Society Inc., CPLED Resource Materials for Saskatchewan, *Saskatchewan: Bar Admission Program, Real Estate – Residential Real Estate*, 2006; Saskatchewan Ministry of Municipal Affairs, *Property Assessment and Taxation*.

TABLE OF CONTENTS

I. BACKGROUND4

II. THE RECORD.....9

III. ISSUES.....9

IV. DISCUSSION.....9

1. Is the record excluded from LA FOIP by virtue of section 3(1)(a)?9

2. Is it appropriate for a municipality to disclose assessment roll or tax roll information upon request?11

A. Names of persons recorded in the R.M.'s assessment roll or tax roll20

B. Address for those persons that the R.M. records show are associated with any given parcel of land.....20

C. Value of the property21

D. Information about the particular tax account.....21

E. The approach in other provinces.....24

(i) British Columbia24

(ii) Manitoba26

(iii) Alberta27

(iv) Ontario28

F. The role of property tax information in conveyancing and financing transactions.....32

G. A Saskatchewan solution33

V. FINDINGS34

VI. RECOMMENDATIONS.....35

I. BACKGROUND

[1] The Applicant submitted a Request for Access under *The Local Authority Freedom of Information and Protection of Privacy Act*¹ (LA FOIP) to the Rural Municipality of Edenwold #158 (the R.M.) for the “*complete Tax roll for the R.M. of Edenwold #158 (a complete listing of all taxes broken down by address)*”. The R.M. responded in part as follows:

Upon reviewing all aspects of your request, I am sorry to advise that I am unable to provide a copy of the tax roll as it contains personal information which is not provided to the general public. Providing a copy of the entire roll would, in my opinion, contravene Section 23(1) of The Local Authority Freedom of Information and Protection of Privacy Act.

In our discussion you indicated that you were interested in knowing what properties within Emerald Park were eligible for a tax exemption under Section 331(1)(q) of The Rural Municipality Act, 1989; and that information is identified in the municipality’s assessment roll, which is currently open for public inspection.

[2] The Applicant then submitted a formal Request for Review to the Office of the Saskatchewan Information and Privacy Commissioner (OIPC) dated July 14, 2004.

[3] The R.M. provided a sample of the information that would be responsive to the request and submitted that it was entitled to refuse access on the basis of section 23(1) and in addition sections 17(1)(f) and 28(1) of LA FOIP.

[4] By a letter dated July 23, 2004 the R.M. made a further submission to the OIPC. A copy of the R.M.’s submission was shared with the Applicant with the permission of the R.M.

[5] Over the phone on August 9, 2004, the Applicant advised the Portfolio Officer that he wished to narrow his request as follows:

- names of all the people on the title for each property;
- street address only; and
- tax amount owing on each property, but not the amount paid or information about whether the owner is in arrears.

¹ *The Local Authority Freedom of Information and Protection of Privacy Act*, [S.S. 1990-91, c. L-27.1].

[6] On August 31, 2004 an OIPC Portfolio Officer traveled to Balgonie to meet with the Administrator for the R.M.. The Portfolio Officer was provided with access to the computer system that holds the tax roll data and received a guided tour of the system.

[7] The R.M. at all material times was subject to *The Rural Municipality Act, 1989*² (the RMA). The tax roll is enabled by section 339 of the RMA that provides as follows:

339(1) On or before the first day of September in each year the administrator shall:

(a) prepare a tax roll; and

(b) proceed to collect the taxes specified in the roll.

(2) The tax roll may be a continuation of the assessment roll and shall in that way or independently contain:

(a) the name and number of the municipality;

(b) the name and residence address of every person assessed;

(c) the nature and description of the land or improvements with respect to which the person is assessed;

(d) the total amount for which he or she is assessed;

(e) an indication whether the assessed person is a public school supporter or a separate school supporter;

(f) a statement of the amount of tax levied for any taxing authorities other than the municipality;

and there shall be calculated and set down in the roll opposite to or under appropriate headings the sum for which that person is chargeable by way of taxes on account of any rate that may be imposed under this or any other Act and arrears and the total of the taxes and the arrears.

[Emphasis added]

[8] The tax roll is different than the assessment roll. The assessment roll is described in the RMA as follows:

294(1) The assessor shall prepare annually, not later than May 1, an assessment roll in which he or she shall enter:

² *The Rural Municipality Act, 1989* [S.S. 1989, c.R-26.1] was repealed on January 1, 2006 and replaced with *The Municipalities Act* [S.S. 2005, c.M-36.1].

(a) a list of all land and improvements assessed, identified by legal description;

(b) the category of assessment, whether land or improvement;

(b.1) any class established pursuant to section 285.2 that any land or improvements belong to;

(c) the fair value assessment of the land or improvement, and any phased-in assessed value of the land or improvement if the council of the municipality has passed a bylaw pursuant to subsection 22(11) of The Assessment Management Agency Act;

(c.1) the assessed value of the land or improvements after applying the applicable percentage of value set by regulation made pursuant to subsection 285.2(5);

(d) the name and address:

(i) with respect to every parcel of land that is assessed:

(A) of the registered owner as shown in the records of the Land Titles Registry;

(B) of the owner under a bona fide agreement for sale; or

(C) in the case of land exempt from taxation:

(I) of the owner under a bona fide agreement for sale; or

(II) of the occupant under a lease, licence, permit or contract;

(ii) with respect to every improvement that is assessed:

(A) of the registered owner as shown in the records of the Land Titles Registry;

(B) of the owner of the improvement; or

(C) of the owner or operator of the resource production equipment of any mine, petroleum oil well or gas well and any pipe line on or under the land;

(iii) Repealed. 2000, c.25,s.22.

(e) in the case of a municipality in which a separate school division is or may be established, a designation respecting whether the person described in clause (d) is a public school supporter or a separate school supporter.

(2) Notwithstanding clause (1)(d), where two or more parcels of land are owned by the same person, the assessor may combine the assessment of those parcels into a single assessment for the purposes of the assessment roll.

(3) If land and improvements are assessed together pursuant to subsection 284(1.1) or 285(3), the assessor:

*(a) may combine the assessment of land and improvements into a single assessment for the purposes of the assessment roll of the municipality; and
(b) shall report to the council that a single value is being used for certain land and improvements in the municipality for the purposes of the assessment roll.*

[9] There is a specific provision for access to information in the assessment roll in the RMA as follows:

301(5) The assessor shall make the assessment roll available for public inspection during normal business hours from the day of completion of the assessment roll to the last day for lodging an appeal.

(6) The council may authorize that the assessment roll or portions of the assessment roll be available for public inspection at any additional times that council may determine.

[Emphasis added]

[10] I understand from the R.M. that, in practice, once the assessment roll is completed, advertised and notice given, the assessment roll is open to the public for inspection during normal business hours for a period of not less than 30 days to allow for any assessment appeals. Council may authorize that the roll or portions of the roll be available for public inspection during any additional times that council determines.

[11] Once the assessment process is complete the R.M. must prepare the tax roll. The tax roll may be a continuation of the assessment roll and contain the same information with the addition of the sums of taxes charged to each property and arrears of taxes.³

[12] Insofar as documents that show information about property taxes, there is a third document in addition to the assessment roll and the tax roll. The third document is a tax certificate issued by a R.M. upon payment of a \$25.00 fee. The relevant provision in the RMA is as follows:

³ Saskatchewan Government Relations and Aboriginal Affairs, *Municipal Administrator's Guide for Rural and Urban Municipalities*, August 2003.

395(1) The administrator shall on demand issue a certificate in a form prescribed by the minister under the hand of the administrator and the seal of the municipality showing the amount:

(a) of taxes owing with respect to any lot or parcel of land; and

(b) required to redeem the lot or parcel from any tax lien.

(2) the administrator shall not issue a certificate pursuant to subsection (1) that relates to more than four lots or parcels of land.

(3) The fee for a certificate issued pursuant to subsection (1) is the fee set by the council, by bylaw, payable to the municipality.

(3.1) Any fee set by the council pursuant to subsection (3) is subject to any maximum fee prescribed by the minister for the purposes of that subsection.

(4) The administrator may issue a statement to any person setting out the amount of taxes owing with respect to any lot or parcel of land.

(5) The fee for a statement issued pursuant to subsection (4) is the fee set by council, by bylaw, payable to the municipality.

(6) Any fee set by the council pursuant to subsection (5) is subject to any maximum fee prescribed by the minister for the purposes of that subsection.

[13] The tax certificate referred to in section 395(1) of the RMA provides the following data:

- Roll Number
- Property Municipal Address
- Legal Description (Lot, Block and Plan)
- Current Tax
- Supplementary Tax
- Tax Arrears
- Total Taxes Outstanding
- Utility Charges Pending
- Name and address of Assessed Owners

[14] We determined from the R.M. that the ‘Assessed Owners’ on the tax certificate may, but sometimes do not, correspond with the registered owners whose names appear on the land title.

II. THE RECORD

[15] The Record in this case is in digital format. For each parcel of real estate the data elements in the tax roll maintained by this R.M. consist of:

- Legal description of the property by lot, block and plan
- Name (usually of assessed person)
- Mailing address
- Fair value
- Total
- Exempt
- Net value
- Liens
- Grants in lieu
- Assessment number from SAMA records
- Municipal assessment amount
- Hail tax
- Amount paid re: municipal assessment
- Amount paid re: hail tax
- Arrears

III. ISSUES

- 1. Is the record excluded from LA FOIP by virtue of section 3(1)(a)?**
- 2. Is it appropriate for a municipality to disclose assessment roll or tax roll information upon request?**

IV. DISCUSSION

- 1. Is the record excluded from LA FOIP by virtue of section 3(1)(a)?**

[16] Although section 3(1) of LA FOIP was not invoked by the R.M. in denying access to the Applicant, that provision is an exclusion under LA FOIP and must be considered

wherever appropriate. In other words, we treat this similar to a mandatory exemption under Part III of LA FOIP.

[17] The statutory provision is as follows:

3(1) This Act does not apply to:

(a) published material or material that is available for purchase by the public;

(b) material that is a matter of public record; or

(c) material that is placed in the custody of a local authority by or on behalf of persons or organizations other than the local authority for archival purposes.

[Emphasis added]

[18] I have no hesitation in finding that the tax certificate enabled by section 395 of the RMA qualifies as “*material available for purchase by the public*”. If the Applicant was only seeking the data elements that are included in the tax certificate and listed above, I would find that this would be excluded from LA FOIP by virtue of section 3(1)(a) and there would be no reason to consider any exemption. The Applicant’s remedy would be to pay the appropriate fee and purchase the relevant tax certificates.

[19] The Applicant, however, is seeking information that is not available via the tax certificate. He has asked for the names of all the people on the title for each property. We are advised by the R.M. that the names in the tax roll may, but sometimes do not, correspond to the names of the registered owners, whose names would appear on the title. The Applicant is entitled to undertake title searches for a fee through the Information Services Corporation of Saskatchewan (ISC). This would provide the Applicant with the names of the registered owners and an address for those registered owners.

[20] I find that a search of the land titles registry maintained by ISC for the appropriate fee would provide the Applicant with the additional information he seeks.

[21] I see no requirement that the information already available to anyone as “published material” within the meaning of section 3(1)(a) of LA FOIP need all be contained in a

single document or format. In this case, all of the Applicants' requested information can be purchased through a combination of tax certificates from the R.M. and title searches from ISC. My finding is that section 3(1)(a) of LA FOIP is a full answer to the request for review by the Applicant.

[22] In light of that finding, there is no need for me to consider section 17(1)(f) of LA FOIP that was also raised by the R.M. as a basis to refuse access to the Applicant. In any event, this discretionary exemption was not mentioned in the formal response of the R.M. to the Applicant's request for access. The practice of the OIPC is not to consider discretionary exemptions raised for the first time in the course of the review by this office unless it can be satisfied there is no prejudice to the Applicant.

2. Is it appropriate for a municipality to disclose assessment roll or tax roll information upon request?

[23] Does that application of section 3(1)(a) of LA FOIP to the three elements of this revised access request conclude this matter? It might, but it has come to our attention in the course of this review that some municipalities in Saskatchewan are routinely providing to requesters considerably more information from their assessment roll and/or tax roll database, than would be provided by the tax certificate. This is not done in response to formal requests for access under Part II of LA FOIP. It is done on the basis of municipalities exercising their discretion to disclose this information entirely independent of the access provisions of LA FOIP. We have heard from a number of municipalities that they would appreciate some guidance on how our office views the various existing practices for sharing of assessment roll and tax roll information. The Applicant on this review submitted that all of the information he originally sought in his initial request for access was available from certain other municipalities either through website publication or via a request independent of LA FOIP.

[24] The OIPC has reviewed a number of excellent publications and resources related generally to property taxes and assessment and taxation rolls which materials have been produced by the Saskatchewan Assessment Management Agency (SAMA) and the

Saskatchewan Government. The OIPC has been unable however to find comprehensive and accurate materials that provide clear direction to municipalities in meeting both their transparency requirements and their privacy protection requirements under LA FOIP, particularly in the context of tax roll and assessment roll information. In the interest of providing guidance to Saskatchewan municipalities generally in terms of protecting the privacy of residents, I offer some additional commentary pursuant to section 32(d) of LA FOIP. That section provides as follows:

32 The commissioner may:

...

(d) from time to time, carry out investigations with respect to personal information in the possession or under the control of local authorities to ensure compliance with [Part IV of LA FOIP].

[25] This requires a consideration of other provisions of LA FOIP. The first would be section 3(1)(b). In other words, is the information in either or both the assessment roll and the tax roll information that is “a matter of public record”? There is no definition of “public record” in LA FOIP.

[26] The RMA does not explicitly define the tax roll as a public record. I note section 67 of the RMA provides as follows:

67 (1) A council shall preserve all public documents of the municipality until:

(a) the documents may be destroyed in accordance with a records retention and disposal schedule adopted by the council, by bylaw; or

(b) the documents are, with the consent of the Saskatchewan Archives Board, deposited with the board for preservation in the archives.

(2) The following documents of the municipality must be preserved permanently and are not subject to a records retention and disposal schedule:

(a) annual financial statements;

(b) tax and assessment rolls;

(c) minister’s orders;

(d) bylaws and minutes, with the exception of repealed bylaws, which may be destroyed in accordance with a records retention and disposal schedule;

(e) cemetery records.

(3) *The Lieutenant Governor in Council may make regulations respecting the contents of the records retention and disposal schedule mentioned in this section.*

[27] The heading which immediately precedes section 67 of the RMA states “*Preservation of public documents*”. That is of no assistance however since section 12 of *The Interpretation Act, 1995* states:

12 The following are not part of an enactment, but are inserted for convenience of reference only:

(a) *table of contents;*

(b) *marginal notes;*

(c) ***headings;***

(d) *references to former enactments after the end of a section or schedule.*⁴

[Emphasis added]

[28] I find that the reference to “*public documents*” in section 67 of the RMA reflects the broad definition of ‘public record’ in *The Archives Act, 2004*⁵ but is something quite apart from the phrase “*a matter of public record*”. Virtually all documents in the possession or control of a Saskatchewan public sector organization could be said to be public records. I find that “*a matter of public record*” however relates to documents that one would typically find in a public register that the members of the public have ready access to. In other words, a matter of public record would be information collected and maintained specifically for the purpose of creating a record available to the general public. A good example would be our land titles registry operated by ISC. That could not be said to be the case with the tax roll. There is no statutory provision assuring public access to the tax roll or the information in the tax roll. It is mentioned in the same subclause as the assessment roll. The assessment roll is only available to the public for a prescribed period of approximately one month. I find that this is inconsistent with the concept of a matter of public record.⁶

⁴ *The Interpretation Act, 1995* [S.S. 1995, c.I-11.2].

⁵ *The Archives Act, 2004* [S.S. 2004, c.A-26.1], section 2(j): “‘*Public record*’ means a record created in the administration of the public affairs of Saskatchewan...”.

⁶ In Investigation Report 2005-001, I found that the internet published decisions of the Automobile Injury Commission did not qualify as a “public record”. SK OIPC Investigation Report 2005-001 at 24-25. Available online at www.oipc.sk.ca under the *Reports* tab.

- [29] I have not been referred to any clear policy produced either by the R.M., the Department of Government Relations⁷, or SAMA that indicates that the information included in the tax roll should be considered as a matter of public record. It appears that the legislature determined that by making the tax certificate a record available for purchase by the public and also a matter of public record, it adequately recognized the importance of the core information in the tax roll for purposes of financing and real estate purchase and sale transactions. Lawyers and realtors routinely require information about the tax levy and particulars with respect to arrears. Prospective purchasers and lenders require confirmation of particulars of the property tax account.
- [30] The purpose of the assessment roll and the tax roll is related but different. Given the structure of our municipal legislation and similar legislation in other provinces, the assessment process is one that requires a kind of fundamental fairness. The provision allowing a property owner access to his or her assessment information allows him or her to assess the fairness of the assessment and to seek to have the assessment revised if he or she thinks it is unfair. The fairness in question is whether one taxpayer is being treated in an equitable way given the assessment of his or her neighbours and others with equivalent property. The tax roll on the other hand is the distillate of the assessment process. It reflects the product of multiplying the municipal mill rate by the assessed value with adjustments for the ‘percentages of value’ established by the province.⁸
- [31] I have determined that 3(1)(a) of LA FOIP does not apply to the tax roll nor to the assessment roll. The R.M. does not publish this information and does not sell it. Since the tax roll is also not a matter of public record I therefore find that section 3(1)(b) of LA FOIP also does not apply. In the result, it would still be necessary to consider other relevant provisions in LA FOIP to determine whether the disclosure of tax roll or assessment roll information conforms to LA FOIP.

⁷ The Department has been continued as the Ministry of Municipal Affairs effective December 2007.

⁸ Saskatchewan Ministry of Municipal Affairs, *Property Assessment and Taxation*. Available online at <http://www.municipal.gov.sk.ca/publications/pdf/munadvisory/assessment/propassessoverview.pdf>.

[32] As noted in our Report LA-2007-001⁹, section 23(1) of LA FOIP is only a definition of what is ‘personal information’ and is not an exemption provision. That section provides as follows:

23(1) Subject to subsections (1.1) and (2), “personal information” means personal information about an identifiable individual that is recorded in any form, and includes:

(a) information that relates to the race, creed, religion, colour, sex, sexual orientation, family status or marital status, disability, age, nationality, ancestry or place of origin of the individual;

(b) information that relates to the education or the criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;

(c) information that relates to health care that has been received by the individual or to the health history of the individual;

(d) any identifying number, symbol or other particular assigned to the individual;

(e) the home or business address, home or business telephone number, fingerprints or blood type of the individual;

(f) the personal opinions or views of the individual except where they are about another individual;

(g) correspondence sent to a local authority by the individual that is implicitly or explicitly of a private or confidential nature, and replies to the correspondence that would reveal the content of the original correspondence, except where the correspondence contains the views or opinions of the individual with respect to another individual;

(h) the views or opinions of another individual with respect to the individual;

(i) information that was obtained on a tax return or gathered for the purpose of collecting a tax;

(j) information that describes an individual’s finances, assets, liabilities, net worth, bank balance, financial history or activities or credit worthiness; or

(k) the name of the individual where:

(i) it appears with other personal information that relates to the individual; or

(ii) the disclosure of the name itself would reveal personal information about the individual.

⁹ SK OIPC Report LA-2007-001. Available online at www.oipc.sk.ca under the Reports tab.

(1.1) *On and after the coming into force of subsections 4(3) and (6) of The Health Information Protection Act, with respect to a local authority that is a trustee as defined in that Act, “personal information” does not include information that constitutes personal health information as defined in that Act.*

(2) *“Personal information” does not include information that discloses:*

(a) the classification, salary, discretionary benefits or employment responsibilities of an individual who is or was an officer or employee of a local authority;

(b) the personal opinions or views of an individual employed by a local authority given in the course of employment, other than personal opinions or views with respect to another individual;

(c) financial or other details of a contract for personal services;

(d) details of a licence, permit or other similar discretionary benefit granted to an individual by a local authority;

(e) details of a discretionary benefit of a financial nature granted to an individual by a local authority;

(f) expenses incurred by an individual travelling at the expense of a local authority;

(g) the academic ranks or departmental designations of members of the faculties of the University of Saskatchewan or the University of Regina; or

(h) the degrees, certificates or diplomas received by individuals from the Saskatchewan Institute of Applied Science and Technology, the University of Saskatchewan or the University of Regina.

(3) *Notwithstanding clauses 2(d) and (e), “personal information” includes information that:*

(a) is supplied by an individual to support an application for a discretionary benefit; and

(b) is personal information within the meaning of subsection (1).

[Emphasis added]

[33] The assessment and tax roll information that is linked to a named individual is caught by the definition of ‘personal information’. It includes “*information relating to financial transactions in which the individual has been involved*”, and information that describes “*an individual’s finances, assets, liabilities, net worth, bank balance, financial history or activities or credit worthiness*” within the meaning of section 23(1)(b) and (j) of LA FOIP respectively. In addition, the record includes information that was obtained by the

R.M. “for the purpose of collecting a tax”, namely the property tax enabled by the RMA within the meaning of section 23(1)(i) of LA FOIP.

[34] In terms of whether that personal information can be disclosed by a local authority, we need to examine section 28 of LA FOIP. In this respect section 28 operates both as:

- (a) a mandatory exemption to a request for access under Part II of the Act; and
- (b) as the primary rule in Part IV for discretionary disclosure of personal information independent of any request for access.

[35] Given my earlier finding that section 3(1)(a) of LA FOIP resolves the access issue, I am only concerned in the balance of this Report with section 28 of LA FOIP in the context of an exercise of the discretion to disclose, absent any Part II considerations.

[36] Section 28 of LA FOIP provides as follows:

28(1) No local authority shall disclose personal information in its possession or under its control without the consent, given in the prescribed manner, of the individual to whom the information relates except in accordance with this section or section 29.

(2) Subject to any other Act or regulation, personal information in the possession or under the control of a local authority may be disclosed:

(a) for the purpose for which the information was obtained or compiled by the local authority or for a use that is consistent with that purpose;

(b) for the purpose of complying with:

(i) a subpoena or warrant issued or order made by a court, person or body that has the authority to compel the production of information;
or

(ii) rules of court that relate to the production of information;

(c) to the Attorney General for Saskatchewan or to his or her legal counsel for use in providing legal services to the Government of Saskatchewan or a government institution;

(d) to legal counsel for a local authority for use in providing legal services to the local authority;

(e) for the purpose of enforcing any legal right that the local authority has against any individual;

(f) for the purpose of locating an individual in order to collect a debt owing to the local authority by that individual or make a payment owing to that individual by the local authority;

(g) to a prescribed law enforcement agency or a prescribed investigative body:

(i) on the request of the law enforcement agency or investigative body;

(ii) for the purpose of enforcing a law of Canada or a province or territory or carrying out a lawful investigation; and

(iii) if any prescribed requirements are met;

(h) pursuant to an agreement or arrangement between the local authority and:

(i) the Government of Canada or its agencies, Crown corporations or other institutions;

(ii) the Government of Saskatchewan or a government institution;

(iii) the government of another province or territory of Canada, or its agencies, Crown corporations or other institutions;

(iv) the government of a foreign jurisdiction or its institutions;

(v) an international organization of states or its institutions; or

(vi) another local authority;

for the purpose of administering or enforcing any law or carrying out a lawful investigation;

(h.1) for any purpose related to the detection, investigation or prevention of an act or omission that might constitute a terrorist activity as defined in the Criminal Code, to:

(i) a government institution;

(ii) the Government of Canada or its agencies, Crown corporations or other institutions;

(iii) the government of another province or territory of Canada, or its agencies, Crown corporations or other institutions;

(iv) the government of a foreign jurisdiction or its institutions;

(v) an international organization of states or its institutions; or

(vi) another local authority;

(i) for the purpose of complying with:

(i) an Act or a regulation;

(ii) an Act of the Parliament of Canada or a regulation made pursuant to an Act of the Parliament of Canada; or

- (iii) a treaty, agreement or arrangement made pursuant to an Act or an Act of the Parliament of Canada;
 - (j) where disclosure is by a law enforcement agency:
 - (i) to a law enforcement agency in Canada; or
 - (ii) to a law enforcement agency in a foreign country;
 - pursuant to an arrangement, a written agreement or treaty or to legislative authority;
 - (k) to any person or body for research or statistical purposes if the head:
 - (i) is satisfied that the purpose for which the information is to be disclosed is not contrary to the public interest and cannot reasonably be accomplished unless the information is provided in a form that would identify the individual to whom it relates; and
 - (ii) obtains from the person or body a written agreement not to make a subsequent disclosure of the information in a form that could reasonably be expected to identify the individual to whom it relates;
 - (l) where necessary to protect the mental or physical health or safety of any individual;
 - (m) in compassionate circumstances, to facilitate contact with the next of kin or a friend of an individual who is injured, ill or deceased;
 - (n) for any purpose where, in the opinion of the head:
 - (i) the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure; or
 - (ii) disclosure would clearly benefit the individual to whom the information relates;
 - (o) to the Government of Canada or the Government of Saskatchewan to facilitate the auditing of shared cost programs;
 - (p) where the information is publicly available;
 - (q) to the commissioner;
 - (r) for any purpose in accordance with any Act or regulation that authorizes disclosure; or
 - (s) as prescribed in the regulations.

[37] For purposes of analysis, it may be useful to take key data elements or fields of information individually and consider them in turn.

A. Names of persons recorded in the R.M.'s assessment roll or tax roll

[38] For each parcel of land in the province there will be a registered owner. As noted earlier, that information is publicly available through ISC, the government agency that maintains the system of land and interest registration in Saskatchewan. The name recorded by the R.M. however is only the name of the person who pays the property taxes on that particular parcel. The R.M. advised that, in some cases, the name in the R.M. records will be a purchaser under an agreement for sale who is paying the property tax levy, yet who is not the current registered owner.

[39] The R.M. advised that there is no need to determine who the registered owner for any given parcel is unless and until the property taxes are in arrears. The R.M. only receives notification of changes to the registered owner for land in the jurisdiction of the R.M. if that information is provided by SAMA. Historically, this information was provided to the R.M. by lawyers acting for a new purchaser of land. We are advised by the R.M. that the title information may be recorded by the R.M. but as a notation on a separate screen and not as part of the tax roll or assessment roll.

[40] My view is that to release the names of those persons recorded in the assessment roll or tax roll, unless they are identical to those listed as registered owners on the title or those who qualify as 'assessed owner', as would be listed in the tax certificate, would be a non-consented disclosure of personal information. In my view, this information should not be disclosed in order to conform with section 28(1) of LA FOIP. This would not be the case if the person is a corporation, in which case Part IV of LA FOIP would not be engaged.

B. Address for those persons that the R.M. records show are associated with any given parcel of land

[41] The R.M. advised that the recorded address in the records of the R.M. includes only the mailing address of the person paying the property taxes. In some cases this would be a post office box, and the R.M. advises that the address may be a remote address in the sense it is outside the R.M..

[42] Unless this address is identical to the address shown on the land title for the registered owner or the ‘assessed owner’, it would be the personal information of those individuals and any release of this information would be a non-consented disclosure of personal information. In my view, this information should not be disclosed in order to conform with section 28(1) of LA FOIP. This would not be the case if the person is a corporation, in which case Part IV of LA FOIP would not be engaged.

C. Value of the property

[43] As noted above, the assessment roll contains the “*fair value assessment of the land or improvement*”. There may also be information about improvements to the property and a valuation of those improvements. All of this information would qualify as the personal information of the owner under section 23(1) of LA FOIP. In my view, this information should not be disclosed in order to conform to section 28(1) of LA FOIP. This would not be the case if the person is a corporation.

D. Information about the particular tax account

[44] If the information is only the information that would be shown on a statutorily defined tax certificate, then section 3(1)(a) of LA FOIP would operate as a full answer to a breach of privacy complaint. If the information is different than the tax certificate contents, then presumably this information would be treated as personal information. The significance is that unless there is consent, the R.M. would have to find authority elsewhere in section 28(2) of LA FOIP.

[45] The R.M. advised that the software it utilizes has been locally created and does not permit this R.M. to extract information entered into specific fields in the assessment roll or the tax roll. The R.M. advised our office that if the Applicant wants to know the taxes due on any property, he could do so by pulling the information off the assessment roll when it is open to public inspection (30 days). This would not identify the actual tax assessment for the current year since that is a product of multiplying the mill rate established each year

by the rural municipality by the assessed value of the property with some adjustments for “percentages of value” set by the province.¹⁰

[46] The R.M. further advised that it is impossible for the municipality to give out the exact amount of taxes owing for each individual, as the values change constantly depending upon multiple factors such as the following: additional fees added on if in arrears, owing payments for firefighting, custom work, or the water or sewer bill. These outstanding costs will all affect taxes owing. I am not persuaded by these arguments since much of this information would have to be disclosed on a formal tax certificate if one were ordered, and would of course be a ‘point in time’ value.

[47] There is one report from a previous Commissioner which addressed section 28(1) of LA FOIP. Report 2001/043 dealt with a request for access to information “*contained in a computer printout that is comprised of several pages. The printout lists the names, addresses, and telephone numbers of the owners of the various lots located at the Resort Village of Big Shell. In addition to the lot description there is a block description together with a plan number for each of the individual properties.*”¹¹ The former Commissioner commented as follows:

*The names of the individuals and the **legal description of property they own are not items of personal information** excluded from disclosure under the Act. Furthermore, **personal information may be disclosed where the information is publicly available.***

...

A search of the title of properties located at the Respondent’s resort would reveal the lot, block and plan number together with the name or names of the registered owners of the properties in question. The information is therefore publicly available, in my view.

...

I therefore recommend the Respondent provide the Applicant with the listing of the names of the property owners and the descriptions of the lots, blocks, and plan numbers of the properties of which they are the owners.¹²

[Emphasis added]

¹⁰ Supra note 8.

¹¹ SK OIPC Report 2001/043 at 1.

¹² Ibid at 1-2.

- [48] The former Commissioner directed that the addresses and telephone numbers of the owners of various lots be deleted since this information was clearly personal information protected by reason of section 28(1) and section 23(1)(e) of LA FOIP. There is no reference in that Report to a tax roll nor is there any reference to the RMA. The information in question appears unrelated to the municipality's property tax regime.
- [49] To the extent that the record of the R.M. in Report 2001/043 contains the names of registered owners of real estate and the lot, block and plan description of the lands, I agree that this would be a matter of public record under section 3(1)(b) of LA FOIP. That earlier Report is of limited value on this Review, however, since the evidence before me is that the names that appear in the record of this R.M. may not be the registered owners.
- [50] Given that tax certificate information constitutes a kind of 'public registry', it will be important for any local authority to carefully consider its responsibility to protect the privacy of individuals and the confidentiality of their personal information. I discussed many of those issues in Investigation Report 2005-001¹³ including the concerns associated with identity theft.
- [51] Given the lack of clear direction in either the municipal legislation or the guides and explanatory materials produced by the Province, it may be useful to consider the approach to the disclosure of similar information in other provinces. Much of this appears to deal with what in Saskatchewan would be considered the assessment roll although in this province it appears that there is considerable common information in both assessment roll and tax roll.¹⁴

¹³ Supra note 6.

¹⁴ *The Rural Municipality Act*, 1989 [S.S. 1989, c.R-26.1], section 339(2): "*The tax roll may be a continuation of the assessment roll...*".

E. The approach in other provinces

(i) British Columbia

[52] In British Columbia, the counterpart to LA FOIP is the *Freedom of Information and Protection of Privacy Act*.¹⁵ The former Information and Privacy Commissioner in that province issued his Investigation Report P98-011 on March 31, 1998.

[53] The following are excerpts from that Investigation Report:

In September, 1996, the City of Victoria announced it was becoming the first municipality in Canada to provide property assessment information to the public through the Internet. The City's Information Systems Manager stated:

Our new system will make available property assessment information to the public via the City of Victoria's home page, twenty-four hours per day, seven days a week. Our goal is to provide increased service to our customers through easy and quick access to information.

The new service would allow the public to search the database by property owner's name, address and Roll number. Further search would yield the location of the property, assessed values, actual values, legal description, current year tax levy and 'other related information about the property'.

...

The City of Victoria was caught off guard by public criticism accusing them of running roughshod over the privacy of property owners in Victoria, when in fact, the information it provided over the Internet could be accessed through a number of other sources, including the BC Assessment Authority, BC OnLine and the Land Title Registry.

Nonetheless, the Office of the Information and Privacy Commissioner received a number of complaints from citizens concerned about their privacy.

...

The Commissioner's Office undertook to conduct such an investigation and issues this report as a summary of its findings.

Specifically, the Commissioner's report focuses on the privacy issues surrounding the publication of personal information in property databases. It examines the wider assessment system and most specifically, the BC Assessment Authority (BC

¹⁵ *Freedom of Information and Protection of Privacy Act* [R.S.B.C. 1996, c. 165].

Assessment), which assumes the lead role in the property assessment system in British Columbia. The actions of the BC Assessment Authority are guided by the Assessment Act, the Assessment Authority Act, and the taxing provisions in a number of statutes such as the Municipal Act, Taxation (Rural Area) Act and the Vancouver Charter.

...

Digital technology fundamentally changes the nature of public records as the paper record decomposes and becomes discrete pieces of information that can be searched, manipulated and reconfigured in ways that may improve efficiencies but were never intended by the legislature.

In short, from a privacy perspective, information which is “public” information is vulnerable to misuse, particularly when the information is provided in an electronic format.

...

Property databases are made available for inspection to permit the comparison of the value of one property to another for taxation purposes. However, these databases can be used for inappropriate purposes.¹⁶

[Emphasis added]

[54] The former British Columbia Commissioner made four recommendations:

The first is that property registries such as the Assessment Roll should be searchable by property address only.

...

*Second, we are recommending that those public bodies which make available property information clearly state the **legitimate purposes for which property registries may be inspected**, and discourage any other use of those registries.*

Our third recommendation is that in the case of bulk sales of property registry data, whether in electronic, microfiche or hard copy format, the name of the property owner should be suppressed.

*Finally, provisions should be made to suppress personal information in cases where individuals can reasonably demonstrate that disclosure of their personal information would jeopardize their safety, or that of their family.*¹⁷

[Emphasis added]

¹⁶ BC OIPC Order P98-011 at 1-2. Available online at <http://www.oipc.bc.ca/orders/>.

¹⁷ Ibid at 3.

[55] I find that those recommendations warrant careful consideration in dealing with disclosure of real property, tax and assessment information in Saskatchewan. I fully agree with the observation of former British Columbia Information and Privacy Commissioner, David Flaherty, from that Investigation Report that:

Property databases are made available for inspection to permit the comparison of the value of one property to another for taxation purposes. However, these databases can be used for inappropriate purposes. They can be used to compile mailing lists for solicitation; as a locational device to track down the address of another person; as part of a financial profile or simply to satisfy a curiosity about another person. The Office of the Information and Privacy Commissioner does not believe that information collected for the purposes of property tax assessments should be accessible for unauthorized purposes nor exempt from the privacy protections set out in [equivalent to Part IV of LA FOIP].

This Office acknowledges that obvious benefits accrue to society through the availability of public databases such as the Assessment Roll, the Corporate Registry, and Land Title Registry. Volumes of business transactions depend on the quick availability of such information. Furthermore, the availability of other sorts of records, such as court records, promotes greater accountability of public bodies and serves an educative function. The debate concerning public records centers on striking the balance between providing personal information that is necessary and useful to realize a public policy goal, while at the same time protecting the privacy of the data subjects as much as possible. The challenge, from our perspective, is to develop information guidelines which promote the policy goal while at the same time give individuals some control over the use of their personal information contained in a particular database.¹⁸

(ii) Manitoba

[56] The Access and Privacy Services Branch of the Archives of Manitoba provides numerous resources for their *Freedom of Information and Protection of Privacy Act*, including the following advice:

13. Should municipalities continue to make the assessment roll available for inspection?

- *Yes. Subsection 44(1)(e) of [equivalent Act to LA FOIP] permits disclosure of personal information when this is authorized by other legislation (in this case The Municipal Assessment Act).*

¹⁸ Ibid at 2-3.

- *The purpose of providing the assessment roll is to enable property owners to compare their assessments with those for similar or adjacent properties.*

14. Should the municipality provide personal information from the assessment roll or other municipal records to bill collectors or private businesses who telephone or write to the municipality?

- *No. Subsection 44(1) of [equivalent to LA FOIP] sets out the conditions under which personal information may be disclosed. Personal information on the assessment roll is collected for purposes of taxation under provisions of The Municipal Assessment Act. It is not collected to provide a tracing service for organizations that may have private business with municipal taxpayers. However, this would apply only to telephone or written requests for information. Any person, including bill collectors and other private businesses, may examine the assessment roll at the municipal office.¹⁹*

(iii) Alberta

[57] I have considered the *FOIP Discussion Paper: Assessment Roll*, prepared in November 2002 and updated in September 2003 by Alberta Government Services, which includes the following statement:

However, the [Municipal Government Act] does state that the records are to be available during business hours, implying that the public must go to a specific location to inspect the records. This also implies inspection of the roll must be done in person at the location designated by the municipal council, and upon payment of the fee set by council.

...

By requiring personal viewing of the assessment roll, a measure of privacy protection is built in as mainly those with a legitimate interest in the roll are likely to make the effort to view it.²⁰

[Emphasis added]

[58] In Alberta, the Information and Privacy Commissioner issued Order 2000-024.²¹ In that case, the Applicant asked the City of Calgary for the names and mailing addresses of

¹⁹ Access and Privacy Services, Archives of Manitoba, *Freedom of Information and Protection of Privacy Act, Manuals & FAQ's for Public Bodies, Frequently Asked Questions – Municipalities* at 6-7. Available online at: www.gov.mb.ca/chc/fippa/manuals/guide/faq.html.

²⁰ Alberta Government Services, *FOIP Discussion Paper: Assessment Roll, 2002* at 2.

²¹ AB OIPC Order 2000-024. Available online at: <http://www.oipc.ab.ca/orders/orders.cfm>.

property owners from the assessment roll. The Commissioner held that section 15(2) of the *Freedom of Information and Protection of Privacy Act*²² 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. The Commissioner therefore upheld the City's decision to withhold the information.

(iv) Ontario

[59] I found a number of decisions by the Ontario Information and Privacy Commissioner and by Ontario superior courts that are relevant.

[60] Ontario's Information and Privacy Commissioner issued Order MO-1693 that involved an access request for the following record:

*A copy of the current year's tax assessment roll for the entire Province of Ontario in whatever electronic format it is currently kept in. For greater clarity, I am specifically seeking a copy of the roll that contains the names of all property owners within the Province of Ontario as ordinarily contained within the assessment roll.*²³

[61] That request was made to the Municipal Property Assessment Corporation (MPAC) that is charged with responsibility to prepare an assessment roll for each municipality in Ontario. MPAC is a not-for-profit corporation that administers the province-wide property valuation system and provides an assessment roll for each municipality which includes names of persons liable for assessments. The assessment roll would be available for public inspection.

[62] MPAC denied access to the requested record pursuant to section 14(1) of the *Municipal Freedom of Information and Protection of Privacy Act*. That section provides as follows:

14(1) A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

...

²² *Freedom of Information and Protection of Privacy Act* [S.A. 1994, c. F-18.5].

²³ ON IPC Order MO-1693 at 1. Available online at: <http://www.ipc.on.ca/index.asp?navid=62>.

(c) *personal information collected and maintained specifically for the purpose of creating a record available to the general public;*

(d) *under an Act of Ontario or Canada that expressly authorizes the disclosure;*

...

(f) *if the disclosure does not constitute an unjustified invasion of personal privacy.*²⁴

[63] The Ontario Assistant Information and Privacy Commissioner ordered MPAC to disclose a copy of the current year's assessment roll for the entire Province of Ontario in electronic format to the appellant. He based his decision on an Ontario Divisional Court decision of *Phinjo Gombu v. Tom Mitchinson, Assistant Commissioner at al* (Gombu).²⁵

[64] This order of the Assistant Commissioner was the subject of a judicial review application to the Ontario Superior Court of Justice in *Municipal Property Assessment Corp. v. Ontario (Assistant Information and Privacy Commissioner)*. The Court determined as follows:

*Gombu v. Mitchinson was distinguishable and the Assistant Commissioner erred in finding that there was legislation that expressly authorized MPAC to disclose the information it had gathered. In Gombu, s. 88(5) of the Municipal Elections Act, 1996, S.O. 1996, c. 32 mandated disclosure of the electronic record. In the immediate case, however, the Assessment Act contained no such mandate. The Assessment Act neither obligates nor authorizes MPAC to do anything besides making the municipal rolls available to the municipal clerk. To override the important privacy interests addressed in [Municipal Freedom of Information and Protection of Privacy Act], MPAC must have express authorization to disclose. In finding that Gombu was indistinguishable, the Assistant Commissioner erred by failing to consider properly the differing contexts and the different purposes of the legislative schemes under consideration. **As a result [page 305] of these two errors, the Assistant Commissioner erred by finding that since the information was available on paper, the electronic version of the information must also be disclosed.***²⁶

[Emphasis added]

²⁴ *Municipal Freedom of Information and Protection of Privacy Act* [R.S.O. 1990, c. M.56].

²⁵ *Phinjo Gombu v. Tom Mitchinson, Assistant Commissioner at al* (2002), 59 O.R. (3d) 773.

²⁶ *Municipal Property Assessment Corp. v. Ontario (Assistant Information and Privacy Commissioner)* [2004] O.J. No. 2118 at 2.

[65] In another decision, Order MO-1456²⁷, issued by an adjudicator in the Ontario Information and Privacy Commissioner office, the City of Hamilton denied access to an applicant who sought the tax roll database for that municipality in electronic format. During mediation, the City agreed to provide the appellant access to four data fields (roll number, assessment amount, tax classes and property address) in a listing of residential and non-residential properties found within the database. The only issue before the adjudicator related to the fees charged by the city for the access.

[66] Order PO-2109 of the Ontario Assistant Information and Privacy Commissioner dealt with a decision by the Ontario Rental Housing Tribunal (ORHT) to refuse access to the names and addresses of all tenants whose landlords had filed an application to evict in the months of May and June 2002. The basis for the access denial was the reasonable expectation that the record would be published within 90 days. The Assistant Commissioner observed as follows:

Once it has been determined that a record contains personal information, section 21 of the Act prohibits the disclosure of this information unless one of the exceptions identified in section 21(1) applies.

ORHT relies on the exception in section 21(1)(c), which reads:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

Personal information collected and maintained specifically for the purpose of creating a record available to the general public;²⁸

...

*It is clear from this line of orders and investigations that, in order for the exception in section 21(1)(c) to apply, the personal information at issue must be 'collected and maintained **specifically** for the purpose of creating a record available to the general public.' If collected and maintained for purposes other than the specific purpose of making records available to the public, then section 21(1)(c) does not apply.²⁹*

...

²⁷ ON IPC Order MO-1456. Available online at: <http://www.ipc.on.ca/index.asp?navid=62>.

²⁸ ON IPC Order PO-2109 at 3. Available online at: <http://www.ipc.on.ca/index.asp?navid=62>.

²⁹ Ibid at 6.

*In my view, the situation of this appeal is similar to the one I faced in Order M-849. I found in that case that the arrest sheet records were created for the purpose of prosecuting a crime and, although made available to the public on an individual record basis, they were not collected and maintained **specifically** for that purpose.*³⁰

[67] This provision (section 21 of Ontario's *Freedom of Information and Protection of Privacy Act*)³¹ is very different from its Saskatchewan counterpart, but the point remains that the focus should be on 'why the information was collected in the first place'.

[68] A 2006 Order of the Ontario Assistant Commissioner dealing with the MPAC is relevant to this question. Order MO-2030 concerned a request from a councillor on Toronto City Council for access to the Ontario Assessment System database for the purpose of accessing the names, addresses and property data of constituents. The Assistant Commissioner found that "*the total value of a residential property on its own, without the property owner or occupier's name attached, would not be personal information. However, the appellant is seeking property data in conjunction with the names and addresses of individuals.*"³² The Assistant Commissioner concluded that all of the residential property information in the database would constitute the personal information of a residential property owner if the information is disclosed in conjunction with the owner or occupier's name. Information relating to commercial, industrial and multi-residential properties and to property owners such as corporations, sole proprietorships, partnerships and unincorporated associations would not qualify as 'personal information'.

[69] I note the observation of the Assistant Commissioner that "[i]f the Ontario legislature had intended that assessment information be gathered for the purposes of assisting elected officials with contacting and assisting constituents, it would have stated so in the *Assessment Act or another statute*".³³

³⁰ Ibid at 7.

³¹ *Freedom of Information and Protection of Privacy Act* [R.S.O. 1990, c. F.31].

³² ON IPC Order MO-2030 at 6. Available online at: <http://www.ipc.on.ca/index.asp?navid=62>.

³³ Ibid at 29.

F. The role of property tax information in conveyancing and financing transactions

[70] I am mindful of the importance attached to accessing key information about property taxes as a necessary element of the purchase, sale and financing of real estate in the province.

[71] I find this is neatly summarized in the following quote from the Real Estate-Residential Real Estate materials prepared for purposes of the Saskatchewan Bar Admission Program:

(a) Searching Property Taxes

As part of the due diligence, the lawyer must ensure that the seller is conveying clear title to the property to the buyer. The legislation pertaining to municipal corporations empowers municipalities to register tax liens against the title to property if property taxes levied against it remain unpaid. Once a tax lien is registered against a title, it is not removed by foreclosure or by a change in ownership; it continues to run with the land. ... Consequently such an interest is not acceptable to a mortgagee, or to a buyer, who will then be responsible to pay it. To protect against this possibility, it is very important to ensure that these have been paid, or will be paid from the sale proceeds.

Taxes are paid for the calendar year. In cities, the levy is usually sent out in early May, with the deadline for payment being June 30. In smaller municipalities and rural municipalities, the levy is often later, with payment due December 31. As well, there may be incentives for early payment, i.e., property taxes are reduced by a specified percentage when paid by a set date.

According to all enabling legislation for municipalities, if they supply residents with utilities including water and sewer services, unpaid charges for such services can form a charge against the property, by being added to the taxes owing for that property. In Saskatchewan, usually this is only water and sewer, as SaskEnergy and SaskPower supply natural gas and power in most communities and areas.³⁴

[72] In my view, municipalities are able to disclose the same information that appears on the formal tax certificate to those requesting it and be in conformity with LA FOIP. It is not

³⁴ Saskatchewan Legal Education Society Inc., CPLED Resource Materials for Saskatchewan, *Saskatchewan: Bar Admission Program, Real Estate – Residential Real Estate*, 2006 at 2-22.

clear that the additional information available in the assessment roll or tax roll would be necessary for the routine processing of real property purchase, sale and financing transactions. Put another way, municipalities in Saskatchewan should be able to meet their obligations to protect the privacy of citizens by complying with section 28 of LA FOIP without compromising the commerce in real estate.

G. A Saskatchewan solution

[73] My office has not undertaken a thorough review of the practices of all or most municipalities. We have not entered into discussions with provincial government departments or with organizations representing urban or rural municipalities. Our discussions with officials of SAMA have been limited to gathering certain information about the role of that office and the nature of information that is provided to rural municipalities to enable the preparation of the assessment roll. Based on information gathered in this review and on information available on websites maintained by provincial agencies and a number of municipalities, there appears to be a need for a more consistent approach to managing privacy in this area. For example, a quick survey of websites for other Saskatchewan municipalities reveals very different approaches to the kind of information available to the public about the assessment of properties and information about property tax levy. We understand that some municipalities may provide bulk assessment information to commercial organizations.

[74] There is an opportunity for Saskatchewan to produce a new standard for the public release of certain information related to assessment and tax levy that also reflects the contemporary challenges to the privacy of Saskatchewan residents posed by identity theft, data matching and powerful search engines. Some of these concerns were discussed in our Investigation Report 2005-001.³⁵ Such a review could consider identifying and defining the purpose for collecting this personal information. It could also address how to follow the rule that only the least amount of personal information necessary for the defined purposes should be disclosed.

³⁵ Supra note 6.

[75] Legislators could also draw guidance from some excellent work that has been done by the state of Victoria in Australia. Legislation has been enacted there to require a review and reassessment of all public registries through a modern privacy filter. The Privacy Commissioner for Victoria produced *Public Registries and Privacy – Guidance for the Victorian Public Sector*. This includes the following commentary:

A right of any person to inspect a register, or request an extract of, or particulars of any individual registration, implies that a register is public. But if Parliament has stated that members of the public be given certain information in, or extracts from, a particular register upon request, that is different from saying that any member of the public ought be provided with the contents of the entire register for any purpose, or that the information or extract must be provided in a particular form such as bulk release or on a CD Rom.”

...

A ratepayer database itself does not become a public register just because it may have some public register data on it.

...

*Articulating the purpose of a public register is important...The general rule is that purpose shapes use.*³⁶

[Emphasis added]

[76] I thank both the former Administrator for the R.M. and the Applicant for their helpful submissions and for their patience. I also appreciated the information provided by SAMA through its solicitor and the Chief Executive Officer.

V. FINDINGS

[77] I find that the three types of information sought by the Applicant in his revised request for access can be satisfied by means of accessing a combination of land title searches and tax certificates or that information that would be revealed by tax certificates, in accordance with section 3(1)(a) of LA FOIP.

³⁶ Office of the Victorian Privacy Commissioner, *Public Registers and Privacy – Guidance for the Victorian Public Sector*, 2004 at 9-10.

VI. RECOMMENDATIONS

[78] I recommend that, in accordance with section 3(1)(a) of LA FOIP, the R.M. decline to process the formal access request under Part II of LA FOIP.

[79] I recommend that the R.M. explore with SAMA and the Ministry of Municipal Affairs an appropriate written policy that would be available to the public and that would adequately reflect the need to protect the privacy of residents and the threat posed by identity theft. That policy should reflect the limitations created by section 28(1)(a) of LA FOIP in order to protect the personal information of Saskatchewan residents when requests are made to municipalities for personal information related to the current assessment roll and tax roll. That policy should also address the issue of bulk sale of personal information related to the current assessment roll and tax roll. Finally, that policy should also consider Internet publication of assessment roll and tax roll information and limitations appropriate to protect the privacy of individuals.

Dated at Regina, in the Province of Saskatchewan, this 18th day of December, 2007.

R. GARY DICKSON, Q.C.
Information and Privacy Commissioner for
Saskatchewan