



STAFF REPORT INFORMATION ONLY

Implications of Privacy Legislation on the Disclosure of Property Tax Arrears Information

Date:	April 26, 2007
To:	Government Management Committee
From:	Treasurer
Wards:	all
Reference Number:	P:\2007\Internal Services\Rev\gm07015Rev (AFS #4860)

SUMMARY

This report is being provided in response to a request from the Government Management Committee to provide information on the policy of maintaining the confidentiality of the names of persons who are in arrears of taxes greater than \$500,000, and to identify the resolution adopted by Council implementing this policy. This report also provides information on the implications of privacy legislation as it concerns the release of property tax arrears information, and was prepared in consultation with the Corporate Access & Privacy (CAP) Office and Legal Services.

Financial Impact

There are no financial implications associated with this report.

DECISION HISTORY

In considering the staff report: "Accounts Receivables – Largest Debtors with Tax Arrears Greater than \$500,000 as at December 31, 2006" from the Treasurer dated March 21, 2007, the Government Management Committee requested the Treasurer, in consultation with the City Clerk, to report to the May 10, 2007 meeting of the committee on the policy of maintaining the confidentiality of the names of persons who are in arrears of taxes greater than \$500,000 and to identify the resolution, if any, adopted by Council implementing this policy. The Decision Document from this meeting can be accessed at:

<http://www.toronto.ca/legdocs/mmis/2007/gm/decisions/2007-04-12-gm03-dd.pdf>

ISSUE BACKGROUND

In accordance with previous Council directives, the Treasurer reports to Administration Committee (now Government Management Committee) twice a year identifying properties with tax arrears of \$500,000 or more, what efforts have been made to collect the tax arrears, and if a bailiff has been used in the collection efforts. For those properties that are owned by an individual (as opposed to a corporation) the listing is submitted *in camera* in accordance with privacy legislation.

COMMENTS

Council's request to receive regular reports on properties with arrears of taxes greater than \$500,000 dates back to October 2000, with the adoption of a staff report from the Chief Financial Officer and Treasurer dated June 7, 2000 entitled: "Public Disclosure of Tax Arrears Information and Strategy for Aggressive Collection Procedures" (Re: Clause 2 of Administration Committee Report No. 19 as adopted by Council at its meeting held October 3, 4, 5, 6, 10, 11 and 12, 2000). To view this report online please follow the link below:

<http://www.toronto.ca/legdocs/2000/agendas/council/cc/cc001003/adm19rpt/c1002.pdf>

Council's adoption of the report above also established the current policy governing the disclosure of property tax arrears information contained within the Largest Debtor's report. In particular, this report included the following recommendation, as amended:

"The Chief Financial Officer and Treasurer report to Administration Committee on a quarterly basis identifying those properties with tax arrears of \$500,000 or more, that are owned by a corporation (i.e., reports will be submitted identifying tax arrears of \$500,000 or more as at March 31st, June 30th, September 30th, December 31st); such report to identify what efforts have been made to collect taxes and if a bailiff has been used in the collection method; and report, in-camera, those properties owned by individuals".

The staff report containing the above recommendation referenced an earlier staff report dated May 2, 2000 from the City Clerk titled "Access Legislation and Tax Arrears Information" that was considered by the Administration Committee on May 16, 2000. That report identified, among other things, that:

- a) all corporate records relating to tax arrears are subject to the *Municipal Freedom of Information and Protection of Privacy Act* (the Act) and may only be disclosed in accordance with the Act;
- b) tax arrears information constitutes the financial information of the respective property owner(s); and
- c) the Act strictly prohibits the release of personal information, including tax arrears information, related to an individual person.

Based on the above, and on advice received from both the City Clerk and the City Solicitor at that time, it was recommended that the Chief Financial Officer and Treasurer report to Administration Committee on a quarterly basis identifying those properties owned by corporations with tax arrears of \$500,000 or more, and that the report identify the property address, property tax classification, mailing address, assessed value and outstanding property taxes, and ownership information.

It was also recommended that, for properties owned by individuals, the information above (excluding ownership information) would be provided to Council on an *in camera* basis. The practice of reporting publicly on those properties in arrears owned by corporations, and reporting confidentially on those properties owned by individuals, has remained in place since 2000.

Implications of Privacy Legislation

This section of this report was prepared in consultation with the Corporate Access & Privacy (CAP) Office and Legal Services.

Section 32 of the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA) states that institutions shall not disclose “personal information” in its custody or control unless the disclosure meets the requirements indicated in section 32, subsections a) through l).

Several orders of Ontario’s Information and Privacy Commissioner (IPC) have held that information on tax arrears, when provided with the name of an identifiable property owner and the property address, constitutes personal information. As such, this information may not be publicly disclosed unless permitted under section 32 of MFIPPA. In particular, IPC Orders no. MO-1627 and M-800, specifically dealt with the disclosure of tax arrears information by a municipality in list format (similar to the list of Largest Debtors provided to Council).

In both cases, it was found that tax arrears information could be publicly disclosed for properties owned by a sole proprietor, partnership, unincorporated association or a corporation, i.e., where the ownership information did not relate to an identifiable individual. For properties owned by an individual, the IPC ordered disclosure of tax arrears amounts, but ordered that the owner names, addresses and assessment roll numbers for such properties not be disclosed. Further, the Information and Privacy Commissioner stated in Order M-800:

Having reviewed the record and the representations, I am not convinced that disclosure of the names and addresses of individuals, which I have found to constitute a presumed unjustified invasion of privacy under the Act, is necessary in order to advance the public interest in having property owners pay their municipal taxes in a timely manner. I am also not satisfied that disclosure of this information would contribute in any meaningful way to the public’s understanding of the activities of government, and would be contrary to one of the central purposes of the Act, that of protecting personal privacy.

While there are provisions in the *City of Toronto Act, 2006* which require disclosure of information related to tax arrears in certain circumstances, the IPC (in considering similar provisions in the *Municipal Act*) has held that “none of these provisions requires that the particular combination of information in the notice be made available to the ‘general public’ by the municipality.” In other words, the IPC has held that tax arrears information pertaining to individuals is not a record that is available to the general public.

A review of privacy legislation and relevant IPC orders/reports reveals that disclosure of the names of individuals who are in tax arrears (as well as the related property address and assessment roll number) is a breach of privacy legislation. If the City discloses this information the IPC may launch a privacy investigation and find the disclosure contrary to MFIPPA. Furthermore, it should be noted that wilfully disclosing personal information in contravention of MFIPPA is a provincial offence. Consequences of an IPC report against the City’s disclosure practice may also result in individuals whose privacy has been breached seeking civil remedies and/or damages.

Options:

Option 1: Council may direct the public disclosure of a tax arrears report for properties owned by individuals, indicating the amount of arrears, interest and penalties, but not identifying the names, addresses or assessment roll numbers. The justification in support of this option is that disclosing the names, addresses or assessment roll numbers would be an unjustified invasion of personal privacy, as upheld by the Orders of the IPC.

Option 2: Where an institution does not agree with the validity of a provision of a statute of the Provincial Legislature, the governing body of the institution may decide to take steps to request an amendment to the legislation that it considers a bar to the exercise of the institution’s powers.

CONTACTS

Giuliana Carbone
Director, Revenue Services Division
Tel: 416-392-8065
Fax: 416-395-6811
gcarbone@toronto.ca

Suzanne Craig
Director, Corporate Access & Privacy
Tel: 416-392-9683
Fax: 416-392-4900
scraig@toronto.ca

SIGNATURE

Cam Weldon
Treasurer