Office of the Information & Privacy Commissioner for British Columbia

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Order F19-37

MINISTRY OF FINANCE

Erika Syrotuck
Adjudicator

October 18, 2019

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Summary: The Commissioner decided to hold an inquiry regarding the Ministry of Finance's authority to collect, use and disclose the personal information of property owners who are required to make a declaration under the *Speculation and Vacancy Tax Act*. The adjudicator found that the information at issue is personal information and that the Ministry of Finance is authorized to collect, use and disclose it under the *Freedom of Information and Protection of Privacy Act.*

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 26(a), 26(c), 32, 33; *Speculation and Vacancy Tax Act; Income Tax Act (Canada).*

INTRODUCTION

[1] This inquiry is to decide whether Ministry of Finance (Ministry) is authorized to collect, use and disclose personal information under the *Freedom of Information and Protection of Privacy Act* (FIPPA) in relation to the Province of British Columbia's speculation and vacancy tax (tax) under the *Speculation and Vacancy Tax Act*. [1]

[2] The Office of the Information and Privacy Commissioner (OIPC) received two complaints that the Ministry had exceeded its authority by requiring residential property owners to provide their Social Insurance Number (SIN) in order to fill out the declaration form under the *Speculation and Vacancy Tax Act* (SVTA).

[1] SBC 2018, c. 46 [*SVTA*].

[3] The OIPC also received other correspondence expressing concern about the Ministry's authority to collect, use and disclose the name, address, SIN, date of birth and email address of property owners.

[4] As a result of the complaints and correspondence, the Commissioner initiated this inquiry under s. 56 of FIPPA.

[5] The OIPC invited both of the complainants to make submissions in this inquiry. However, only one of the complainants made submissions. For the rest of this order, reference to 'the complainant' is a reference to this complainant.

Preliminary Issue

[6] In his submissions, the complainant raises the issue of whether the Ministry requires federal authorization in order to collect and use the SIN. This is not an issue listed in the Notice of Inquiry. In general, an adjudicator will not consider issues not set out in the Notice of Inquiry. However, I have decided to address this issue because it is one of the complainant's main arguments and I can deal with it summarily. In addition, the Ministry had an opportunity to and did respond to the complainant's argument about this issue.

[7] The complainant argues that the Province does not have the authority to collect or use the SIN because it is not authorized in federal legislation or through an agreement.[2] The complainant referenced several documents published by the federal government on the use of the SIN, including a directive on the use of the SIN and a Code of Practice.[3] He says that the directive does not give the Province authority to use the SIN.

[8] In response, the Ministry says that there is no requirement in law for Canada to authorize the Province to collect a SIN or to have an information sharing agreement with Canada to collect the SIN. It says that the Province collects the SIN to verify income in other circumstances and collecting the SIN is subject to privacy legislation such as FIPPA.[4]

[9] I have reviewed the documents referenced by the complainant and find that they do not support his argument that the Province does not have authority to collect the SIN because it is not authorized in federal legislation or through an agreement. For example, the directive on the use of the SIN states that it does not apply to the use of the SIN by the provinces or territories.[5] The Code of Practice says that more than 150 provincial or territorial laws mention the SIN

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[2] Complainant's submissions, page 5.
[3] Complainant's submissions, Appendices B, C, D and E.
[4] Ministry's reply submissions.
[5] See Directive on Social Insurance Number, https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=13342 , s. 2.2, also attached to the complainant's submissions as Appendix B.

and that for more information on provincial or territorial requirements for the SIN, one should consult those governments.[6] I am not prepared to conclude, based on the materials before me, that the Province is required to get federal authorization to use the SIN.

[10] I will now set out and address the issues that were in the Notice of Inquiry.

ISSUES

[11] The issues in this inquiry are:

1. Is the information at issue (the name, address, date of birth, email address and SIN) personal information under FIPPA?

2. Is the Ministry authorized to collect the personal information under s. 26 of FIPPA for the purpose of administering the Speculation and Vacancy Tax?

3. Is the Ministry authorized to use the personal information under s. 32 of FIPPA for the purpose of administering the Speculation and Vacancy Tax?

4. Is the Ministry authorized to disclose the personal information under s. 33 of FIPPA for the purpose of administering the Speculation and Vacancy Tax?

DISCUSSION

Background

[12] The Province implemented the tax in November 2018 as part of its plan to address housing affordability. The Ministry says the tax is designed to apply to foreign and domestic speculators and satellite families who own property in BC but do not pay their share of income taxes.[7]

[13] The SVTA imposes the tax on all owners of residential property in specified areas in BC unless an exemption applies. For the years 2019 and beyond, the tax rate is 2.0 percent of the assessed value of the property unless the owner is a "specified Canadian citizen," "specified permanent resident of

[6] The Social Insurance Number Code of Practice: https://www.canada.ca/en/employment-social-development/services/sin/reports/code-of-practice/annex-2.html Annex 2.
[7] Ministry's submissions, para. 7.

Canada" or a "resident of British Columbia,"[8] in which case the tax rate is 0.5 percent.[9]

[14] The SVTA requires all property owners in specified areas in British Columbia to file a declaration.[10] The Ministry uses the information obtained from the declaration to determine if an owner is liable for the tax and, if so, at what rate. If an owner of a residential property does not file a declaration, the owner is liable to pay the tax at the higher rate.[11]

[15] The SVTA allows the Minister of Finance to designate a person as an "administrator" to administer the act.[12] Under the SVTA, the administrator specifies the form and contents of the declaration.[13] The designated administrator is the Executive Director of the Property Taxation Branch in the Revenue Division of the Ministry (the Administrator).[14]

[16] The information at issue in this inquiry is information that property owners are required to submit to the Ministry as part of the declaration.

Personal Information

[17] The first issue is whether the information at issue is personal information as defined in FIPPA. Schedule 1 says:

> "personal information" means recorded information about an identifiable individual other than contact information;

[18] The personal information at issue in this inquiry is a declarant's name, address, date of birth, SIN and email address. Both the Ministry and the complainant submit that all of this information is personal information. I agree that all of this information is personal information because it is identifiable information about an individual that it is not contact information. In particular, I find that the SIN is personal information because it is a unique identifier assigned to an individual.

[19] I will first consider whether s. 26(c) of FIPPA authorizes the Ministry to collect the personal information.

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[8] The terms "specified Canadian citizen", specified permanent resident of Canada" and "resident of British Columbia" are defined in s. 1 of the SVTA.
[9] *SVTA*, ss. 15, 16, 17 and 19.
[10] Section 62 of the *SVTA* says that a person must file a declaration for each residential property. Section 6(1) of the *SVTA* says that a reference in the *SVTA* and the regulation to a residential property is a reference to a residential property located wholly or partially within a specified area. The term "specified area" is defined in s. 1.
[11] *SVTA,* s. 18.
[12] *SVTA,* s. 117.
[13] *SVTA,* s. 64.
[14] Affidavit of the Administrator, paras. 1 and 2 and Exhibit A.

Section 26(c) – collection for a program or activity

[20] Section 26 sets out a defined set of circumstances where public bodies can collect personal information in order to carry out their mandates.[15] Section 26(c) says:

> 26 A public body may collect personal information only if
>
> (c) the information relates directly to and is necessary for a program or activity of the public body,

[21] In Order F07-10, former Commissioner Loukidelis commented on the purpose of 26(c):

> A relevant part of the interpretive context of s. 26(c) and FIPPA overall is the reality that governments need personal information to do their work. They cannot provide services, confer benefits or regulate conduct without our personal information. For this reason, citizens may be compelled by law to give up their personal information or will disclose it to receive services or benefits and one cannot ignore the power of the state in relation to personal information collection in interpreting what is meant by "necessary" in s. 26(c).[16]

[22] I will first consider whether the tax is a program or activity of the public body.

Is the tax a program or activity of the Ministry?

[23] Schedule 1 of FIPPA defines "program or activity" as:

> "program or activity" includes, when used in relation to a public body, a common or integrated program or activity[17] respecting which the public body provides one or more services;

[24] The Ministry does not directly address whether the tax is a program or activity. The complainant says that a tax cannot be considered a service, and consequently is not a program or activity of the Ministry.[18]

[25] For the reasons that follow, I find that administering the tax in accordance with the SVTA is a program of the Ministry.

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[15] Order F07-10, 2007 CanLII 30395 (BCIPC) at para. 29.
[16] *Ibid.* at para. 47.
[17] Schedule 1 of FIPPA also defines "common or integrated program or activity" but the Ministry is not asserting that the SVTA is common or integrated program or activity, so I will not reproduce it in this order.
[18] Complainant's submissions, page 9.

[26] First, the definition of the phrase "program or activity" in FIPPA begins with the word "includes", which indicates that the definition is not exhaustive. Therefore, whether or not a tax can be considered a service is not determinative of whether administering the tax is a "program or activity." FIPPA does not define the terms "program" or "activity" individually.

[27] The Canadian Oxford Dictionary defines "program" as "a course of activities or actions undertaken to achieve a certain result."[19] This is similar to a definition of "program" adopted by a delegate of the Ontario Information and Privacy Commissioner in relation to the Ontario FIPPA, where the adjudicator found that a program is a "set of related measures or activities with a particular long-term aim."[20]

[28] I note that two past orders have considered the term "program" in relation to s. 13(2). In Order 325-1999, former Commissioner Loukidelis said that a program for the purpose of this section was "an operational or administrative program that involves the delivery of services under a specific statutory or other authority." He found that a policy review process was not a program of the public body.[21] In Order F16-47, the adjudicator said that a "program" or "activity" involves a public body's designed delivery of services to more than one individual and found that a plan that only applied to a specific individual was not a program.[22]

[29] These decisions do not restrict the meaning of the word "program", to that of a "service" for the purpose of FIPPA. Rather, the decision makers' comments on a "program" are specific to the facts and issues in those orders.

[30] In my view, an organized effort by a ministry of the Province to implement a law is a "program" within the meaning of s. 26(c). The legislature enacts legislation but that legislation cannot be carried out without further action. In most cases, it is the public service who must actually implement the law. When that law imposes a tax, there must be an organized effort by public servants to identify who the tax applies to, how much they must pay and how they must pay it.

[31] I have no hesitation in concluding that administering the speculation and vacancy tax in the manner I have just described is a program of the Ministry. The SVTA sets out the structure of the tax and delegates some decisions about how to administer the tax up to the Administrator. This organized effort of the Ministry to implement the tax is the program of the Ministry.

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[19] Canadian Oxford Dictionary, 2nd ed., sub verbo "program."
[20] Order PO-3734, 2017 CanLII 39044 (ON IPC) at para. 60.
[21] Order 325-1999, 1999 CanLII 4017 (BC IPC) at page 4. I note that this order was issued before FIPPA was amended to add a definition of "program or activity."
[22] Order F16-47, 2016 BCIPC 52 at para. 25.

[32] Given my finding that administering the tax in accordance with the SVTA is a program of the Ministry it is not necessary to decide if it is "activity."

[33] I will now turn to whether the personal information at issue directly relates to and is necessary for administering the speculation and vacancy tax.

Does the personal information relate directly to and is it necessary to administer the tax?

[34] Past orders have said that personal information may be "necessary" in the context of s. 26(c) even in cases where it is not indispensable. Personal information is not "necessary" only where it would be impossible to operate a program or carry on an activity without the personal information.[23]

[35] In determining what "necessary" means in the context of s. 26(c), former Commissioner Loukidelis made the following comments:

> The assessment of whether personal information is "necessary" will be conducted in a searching and rigorous way. In assessing whether personal information is "necessary", one considers the sensitivity of the personal information, the particular purpose for the collection and the amount of personal information collected, assessed in light of the purpose for collection. In addition, FIPPA's privacy protection objective is also relevant in assessing necessity, noting that this statutory objective is consistent with the internationally recognized principle of limited collection.[24]

Ministry's submissions

[36] The Ministry says that the personal information at issue is necessary to accurately identify the individual owner and to obtain and verify information about that individual in order to administer provisions of the SVTA.

[37] The Ministry provided an affidavit from the Administrator. The Administrator says that the declarant's name, date of birth and SIN are all required to verify the identity of the property owners subject to the tax.[25] The Administrator says that the SIN was chosen as the least privacy invasive way of determining and verifying a property owner's identity.[26]

[38] The Ministry explains that the SIN is necessary because the SVTA links property ownership with information related to the federal *Income Tax Act.*[27] For

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[23] Order F07-10, 2007 CanLII 30395 (BCIPC) at para. 49.
[24] *Ibid.*
[25] Affidavit of the Administrator, para. 10.
[26] Affidavit of the Administrator, para. 18.
[27] *Income Tax Act* RSC, 1985 c.1.

example, the Ministry says it would be impossible to determine whether an individual is "resident in British Columbia" under the SVTA without knowing their provincial residency status for the purpose of the federal *Income Tax Act.*[28] A resident of British Columbia will be taxed at the lowest possible rate and may be eligible for reductions or exemptions, such as the principal residence exemption.[29] The Administrator says that the SIN is the single most reliable identification for tax purposes because it is a unique identifier issued by the federal government and is required in order to file tax returns and to work in Canada.[30] According to the Administrator, because of the federal *Income Tax Act's* reliance on the SIN as the primary identifier, the SIN is necessary to obtain information about an individual in order to calculate the amount of tax owing.[31]

[39] The Administrator says that the absence of a SIN is valuable because it indicates that a person does not pay taxes in Canada.[32] In addition, any anomalies of the SIN can alert the Administrator to further investigate that declaration.[33]

[40] The Administrator says that the date of birth is necessary regardless of whether the declarant has a SIN. Where the declarant does have a SIN, the Administrator says it is necessary to verify the SIN. Where the declarant does not have a SIN, the Administrator says that the date of birth is a necessary verification factor.[34]

[41] The Administrator says that the Ministry shares the property owner's name, date of birth and SIN with the Canada Revenue Agency (CRA) to ensure that the SIN is valid.[35] The Ministry says that the SIN is the most accurate way of verifying information collected by the CRA. [36]

[42] The Ministry collects a property owner's email address so the Ministry can provide confirmation that the Ministry has received the declaration submitted online. The Ministry says that this is the most efficient and cost effective means to provide the confirmation.[37]

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[28] Ministry's submissions, para. 29.
[29] Affidavit of the Administrator, para. 30.
[30] Affidavit of the Administrator, paras. 32 and 37. The administrator references the *Income Tax Act* RSC, 1985 c.1, ss. 237(1) and (1.1).
[31] Affidavit of the Administrator, para. 33.
[32] Affidavit of the Administrator, para. 40.
[33] Affidavit of the Administrator, para. 38.
[34] Affidavit of the Administrator, para. 41.
[35] Affidavit of the Administrator, para. 34.
[36] Ministry's submissions, para. 85.
[37] Ministry's submissions, para. 86.

Complainant's position

[43] The complainant states that the Province has consistently acknowledged that over 99 percent of British Columbians will not have to pay the tax, but yet 100 percent of property owners are required to fill out the declaration.[38] The complainant provided information about alternative approaches to identifying property owners who should pay the tax without impacting the majority who are exempt.[39] He says that requiring personal information from the majority of property owners who are exempt does not meet the standard of "necessary" under s. 26(c).[40]

Analysis

[44] I will start by addressing the complainant's submissions. I understand the complainant to be saying that the information at issue is not necessary because the Ministry could have structured the tax in a way that does not require every property owner in specified areas under the SVTA to file a declaration.

[45] The complaint's argument is based on a misapprehension of the issue in this inquiry. Section 26(c) is about whether a collection of personal information is directly related to and necessary for a program or activity of a public body. This means my assessment must be based upon the program or activity as the public body has chosen to structure it. In this case, I must decide whether the collection of the SIN and other information at issue is necessary for the program of administering the tax under the SVTA. Whether the Province could have chosen to structure the tax in a different way is not relevant.

[46] For the reasons that follow, I am satisfied that the property owner's name, address, date of birth, SIN and email address relate to and are necessary for the program of administering the tax.

Name and Address

[47] I am satisfied that the property owner's name and address directly relate to and are necessary to administer the tax. The property owner is the person liable for the tax. The Ministry needs to know their identity. Similarly, the tax is assessed in relation to a specific property. The Ministry needs to know the address of the property. I do not see how the Ministry could administer the tax without knowing who owns a specific property. In this way, the name and address of the property owner are not only necessary for this purpose, they are indispensable pieces of personal information.

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[38] Complainant's submissions, page 12.
[39] See Complainant's submissions, page 12 and Appendix A.
[40] Complainant's submissions, page 14.

SIN

[48] I am satisfied that it is necessary for the Ministry to collect the SIN in order to administer the SVTA. This is because the SIN provides an important link between a property owner and their residency status for tax purposes.

[49] For instance, many exemptions from the tax depend on whether a person is a "resident of British Columbia" as defined under the SVTA. Some of these exemptions are:

- An "eligible owner" of a residential property is exempt from the tax if the property is their principal residence.[41] An "eligible owner" must be a "resident of British Columbia."[42]
- Property owners who reside in a residential care facility,[43] have a medical reason for being absent,[44] or who are absent for an extended period of time[45] can qualify for an exemption from the tax. To qualify for one of these exemptions, property owners are required to have previously been exempt under the principal residence exemption in s. 29.
- An owner may be exempt from the tax if the property is tenanted. The criteria for the exemption differs if the owner is a "resident of British Columbia".[46]

[50] In addition, if an owner is a "resident of British Columbia" and is liable to pay the tax, the owner pays the tax at the lower rate of 0.5 percent.[47] The SVTA also includes a tax credit for "residents of British Columbia" who meet the criteria in s. 54.

[51] The term "resident of British Columbia" is defined in s. 1 of the SVTA:

> "resident of British Columbia", in relation to a calendar year, means an individual who
>
> > (a) is, for the calendar year, a specified Canadian citizen or specified permanent resident of Canada, and

[41] *SVTA* s. 29.
[42] *SVTA* s. 28.
[43] *SVTA* s. 32.
[44] *SVTA* s. 33.
[45] *SVTA* s. 34.
[46] Section 38 of the SVTA sets out the criteria where the owner is a resident of British Columbia, a specified Canadian Citizen or a specified permanent resident of Canada. Section 39 sets out criteria if an owner is not one of these three types. Section 39(2)(c) says that each non-arm's length tenant must be a resident of British Columbia and have a BC income three times the annual fair market rent for the property. There is no such requirement in s. 38.
[47] *SVTA* s. 17.

> (b) is, for the income taxation year of the individual that ends at the end of the calendar year, either
>
> > (i) resident only in British Columbia for the purposes of the federal Act,[48] or
> >
> > (ii) deemed, under section 2607 of the Income Tax Regulations (Canada), to have been resident in British Columbia for the purposes of the federal Act,
>
> but does not include an individual who is, for the income taxation year of the individual that ends at the end of the calendar year, deemed not to be a resident of Canada for the purposes of the federal Act;

[52] It is clear to me that whether a property owner is a "resident of British Columbia" under the SVTA depends on that individual's residency status as determined under the federal *Income Tax Act*. Paragraph (b) (i) and (ii) and the concluding clause of the definition all refer to residency for the purposes of the federal *Income Tax Act.* For this reason, I am satisfied that it is necessary for the Ministry to collect information that allows it to verify a property owner's residency status under the federal *Income Tax Act* in order to determine whether a person is a "resident of British Columbia."

[53] I am satisfied that the SIN is the necessary link to an individual's residency status under the federal *Income Tax Act*. When an individual files their tax return with the CRA under the federal *Income Tax Act* they are required to provide their SIN. I am satisfied that, as a unique identifier, the SIN is the piece of personal information that ultimately confirms a person's identity for the purpose of the federal *Income Tax Act.*

[54] It makes sense to me that in order to assess and collect taxes under the federal *Income Tax Act,* the CRA must make determinations about a person's residency status under that Act. I am satisfied that, as a unique identifier, the SIN is the link to an individual's tax history, including their residency status for the relevant year. Given that the SVTA's definition of "resident in British Columbia" is directly dependent on a property owner's residency under the federal *Income Tax Act,* the Ministry requires the SIN in order to verify information provided on the declaration against federal tax records. I cannot see what other reasonable means would be available to the Ministry to verify that a person is a "resident of British Columbia" for the purpose of claiming an exemption, the lower tax rate or a tax credit under the SVTA.

[55] There are other ways in which the SIN is necessary to administer the tax beyond determining whether a property owner is a "resident of British Columbia."

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[48] Section 1 of the SVTA also says that "federal Act" means the *Income Tax Act (Canada)*.

For example, the some provisions in the SVTA[49] depend on whether the property owner is an "untaxed worldwide earner" as defined in ss. 1 and 5 of the Act. In order to determine if an individual is an "untaxed worldwide earner," the Ministry needs to verify the amount reported on line 150 of that property owner's tax return filed under the federal *Income Tax Act*.[50] For the same reasons as above, I do not see how the Ministry could reasonably verify this information without the SIN.

[56] The sensitivity of personal information is a factor that I must consider in deciding whether personal information is "necessary" for a program or activity. I am mindful that the SIN is a sensitive piece of personal information as it can be used to perpetrate identity theft or fraud. However, in light of its purpose, I am satisfied that the SIN is directly related to and necessary for the program of administering the tax.

Date of Birth

[57] As I understand the Ministry's submissions, the Ministry uses the date of birth to verify the identity of the property owner. I accept the Ministry's submissions that the date of birth is critical to identify the property owner where there is no SIN.

[58] With regards to whether the date of birth is necessary where the property owner has provided their SIN, the Ministry has submitted that the date of birth is a valuable verification factor even where there is a SIN. The Ministry's submissions indicate that it checks the date of birth against the SIN, and this kind of anomaly can alert the Administrator to a potential problem.

[59] An individual's date of birth is valuable for identifying them, which means it is also sensitive. In light of the purpose for the collection and use of the date of birth, I find that the date of birth relates to and is necessary for administering the tax.

Email Address

[60] I understand from the Ministry's submissions that the email address is only collected if the property owner submits the declaration online. I understand that a property owner who submits a declaration online receives an email confirming that the Ministry received the declaration.

[61] I am satisfied that the purpose for the collection of the email address is to enable the Ministry to confirm for the property owner that it received the owner's

[49] For example, to be a "specified permanent resident of Canada" or a "specified Canadian Citizen" under s.1 of the SVTA, the property owner cannot be an "untaxed worldwide earner."
[50] See *SVTA* s. 5 for definition of "reported total income."

declaration. Given that the cost of not filing a declaration is to be liable for the tax at the higher rate of 2.0 percent, it is certainly valuable for a property owner who chooses to file online to know, contemporaneously, that there was no technical error that prevented the Ministry from receiving the online declaration.

[62] In light of the purpose for collection and the sensitivity of the information, I find that it is necessary for the Ministry to collect the email address of property owners who choose to fill out their declaration online.

Summary

[63] In summary, I find that the personal information at issue directly relates to and is necessary for the program of administering the tax.

[64] The Ministry also argued that s. 26(a) authorizes the collection the personal information at issue. Section 26(a) allows a public body to collect personal information if the collection is expressly authorized under an Act. Since I have determined that s. 26(c) authorizes the Ministry to collect the personal information at issue in order to administer the tax, it is unnecessary for me to consider whether the Ministry is also authorized to do so under s. 26(a).

[65] I will turn to whether the Ministry is using the personal information at issue in accordance with FIPPA.

Section 32 - use

[66] Section 32 of FIPPA sets out how a public body may use personal information. Section 32 says:

> A public body may use personal information in its custody or under its control only
>
> > (a) for the purpose for which that information was obtained or compiled, or for a use consistent with that purpose (see section 34),
> >
> > (b) if the individual the information is about has identified the information and has consented, in the prescribed manner, to the use, or
> >
> > (c) for a purpose for which that information may be disclosed to that public body under sections 33 to 36.

[67] The Ministry submits that s. 32(a) applies. Specifically, the Ministry says that the personal information at issue is used to verify the identity of the individual

and whether the individual is eligible for exemptions or credits, tax status or to determine the amount of tax owing, if any.[51]

[68] The Ministry notes that s. 120(2) of the SVTA prohibits the use of any taxpayer information otherwise than in the course of the administration and enforcement of the Act or for a purpose for which it was provided under this section.[52]

[69] The complainant says that the online declaration form does not seek consent. Rather, if a property owner does not submit the declaration, they will be subject to the tax at the higher amount. Therefore, the complainant submits that the Ministry does not meet the requirements of 32(b).[53]

Analysis

[70] Paragraphs (a) through (c) of s. 32 of FIPPA are separate sources of authority for a public body to use information in its custody or under its control. Therefore, the Ministry only has to show that it has the authority to use the information in dispute under one of paragraphs (a), (b) or (c) in s. 32.

[71] The Ministry submits that s. 32(a) applies. I understand the Ministry to be submitting that it is using the information for the purpose it was obtained, rather than a use consistent with that purpose.

[72] The evidence before me indicates that the Ministry is using the information at issue for the purpose for which it was obtained. The Ministry's evidence indicates that it is using the personal information obtained through the declaration to administer the SVTA. Nothing before me suggests that the Ministry is using the personal information at issue for another purpose. Therefore I am satisfied that the Ministry is authorized to use the personal information at issue under s. 32(a).

[73] I will now turn to the final issue, which is whether the Ministry is authorized to disclose the personal information at issue under FIPPA.

Section 33 - disclosure

[74] Section 33 of FIPPA sets out when a public body may disclose personal information in its custody or under its control. Section 33 authorizes disclosure only as permitted under specific sections of FIPPA:

[51] Ministry's submissions, para. 98.
[52] Ministry's submissions, para. 97.
[53] Complainant's submissions, page 22.

> 33 A public body may disclose personal information in its custody or under its control only as permitted under section 33.1, 33.2 or 33.3.

[75] It is not clear to me that there is a complaint about a specific disclosure from the complainant or the others who contacted the Commissioner as described at the beginning of this order. The main evidence and submissions the parties provided about disclosure relate to the Ministry's disclosure of the information to the CRA. I will focus my analysis on this disclosure.

Ministry's position

[76] The Ministry submits that it is authorized under ss. 33.1(1)(c) and (d) to disclose the personal information at issue to the CRA. These sections state:

> 33.1 (1) A public body may disclose personal information referred to in section 33 inside or outside Canada as follows:
>
> > (c) in accordance with an enactment of British Columbia, other than this Act, or Canada that authorizes or requires its disclosure;
> >
> > (d) in accordance with a provision of a treaty, arrangement or written agreement that
> >
> > > (i) authorizes or requires its disclosure, and
> > >
> > > (ii) is made under an enactment of British Columbia, other than this Act, or Canada;

[77] The Administrator says that the information at issue in this inquiry is shared with the CRA under the terms of an existing Memorandum of Understanding (memorandum). Specifically, the Administrator says that the property owner's name, date of birth and SIN will be shared with the CRA for validation and assessment.[54] The Ministry provided a copy of the memorandum as evidence in this inquiry.[55]

[78] The Ministry submits that the SVTA authorizes disclosure of the personal information, therefore the disclosure is authorized under s. 33.1(1)(c) of FIPPA. It also says that s. 33.1(1)(d) authorizes the disclosure because the disclosure is governed by the memorandum.

[79] The Ministry points to ss. 120 and 121 of the SVTA as authority for disclosing the personal information in dispute. Section 120 authorizes disclosure of taxpayer information in a variety of circumstances.

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[54] Affidavit of the Administrator, para. 34.
[55] Affidavit of the Administrator, Exhibit C.

[80] For the purpose of ss. 120 and 121, the s. 120 of SVTA defines "taxpayer information" as follows:

> "taxpayer information" means information of any kind and in any form relating to one or more taxpayers
>
> > (a) that is obtained for the purposes of this Act by or on behalf of the minister, or
> >
> > (b) that is prepared from information referred to in paragraph (a),
>
> but does not include information that does not directly or indirectly reveal the identity of the taxpayer to whom the information relates.

[81] Section 120(5) of the SVTA sets out circumstances where an official can disclose taxpayer information. The relevant provisions of s. 120(5) are:

> 120 (5) Subject to subsections (6) and (9), an official may do one or more of the following:
>
> (a) provide to any person taxpayer information that can reasonably be considered necessary for the purposes of the administration or enforcement of this Act, solely for those purposes;
>
> (b) provide to any person taxpayer information that can reasonably be considered necessary for the purposes of determining
>
> > (i) any tax, interest, penalty or other amount that is or may become payable by the person under this Act,
> >
> > (ii) any refund, exemption or tax credit to which the person is or may become entitled under this Act, or
> >
> > (iii) any other amount that is relevant for the purposes of a determination under subparagraph (i) or (ii);

[82] Section 120(6) limits disclosure of taxpayer information for some purposes to where there is an information-sharing agreement under s. 121:

> (6) Except in accordance with an agreement entered into under section 121, an official must not, under subsection (5) (a) to (c) and (e) to (m) of this section, provide taxpayer information to, or allow inspection of or access to taxpayer information by, an official of
>
> > (a) a public body, as defined in the *Freedom of Information and Protection of Privacy Act*, other than the ministry or, under subsection (5) (c) (v) of this section, the ministry of the finance minister,
> >
> > (b) the government of Canada, or

(c) the government of another province.

[83] Section 121 defines an information-sharing agreement and sets out who the minister may enter into one with:

> 121 (1) In this section:
>
> "information-sharing agreement" means an agreement or arrangement to exchange, by electronic data transmission, electronic data matching or any other means, information for a purpose described in section 120 (5);
>
> "taxpayer information" has the same meaning as in section 120.
>
> (2) The minister may enter into an information-sharing agreement with any of the following:
>
> (a) the government of Canada or an agency of that government;
>
> (b) the government of a province or other jurisdiction in Canada or an agency of that government;
>
> (c) a public body as defined in the *Freedom of Information and Protection of Privacy Act*.
>
> (3) Subject to subsection (4), taxpayer information obtained by the minister under an information-sharing agreement may only be used or disclosed for the purpose for which it was obtained under the applicable agreement.
>
> (4) Subsection (3) does not prevent
>
> (a) any taxpayer information obtained by the minister under an information-sharing agreement with the government of Canada or an agency of that government from being used or disclosed for the purpose of administering or enforcing any of the following:
>
> (i) an enactment administered by the minister that provides for the imposition and collection of a tax;
>
> (ii) the *Home Owner Grant Act*;
>
> (iii) the *Land Tax Deferment Act*, or
>
> (b) any taxpayer information obtained by the minister under an information-sharing agreement from being used or disclosed for the purpose of administering or enforcing an Act of the Parliament of Canada that provides for the imposition and collection of a tax or duty.

> (5) The Lieutenant Governor in Council may prescribe terms and conditions that are to be included in the information-sharing agreements entered into by the minister.

[84] The complainant says that what the Ministry refers to as an information-sharing agreement is really a memorandum of understanding. He says he leaves it to the Commissioner to explore disclosure further.[56]

Analysis

[85] In my view, s. 33.1(1)(c) authorizes the Ministry to disclose the information at issue to the CRA because the Ministry is disclosing taxpayer information pursuant to s. 120 of the SVTA.

[86] In my view, the personal information at issue is "taxpayer information" as defined in ss. 120 and 121 of the SVTA. It is information obtained for the purposes of the SVTA and would directly or indirectly reveal the identity of the taxpayer. Therefore, disclosure of the information at issue is regulated by ss. 120 and 121 of the SVTA.

[87] Section 120(5) lists a variety of circumstances where an official can disclose taxpayer information. In my view, the disclosure is for the purpose of determining the amount that a property owner owes under the SVTA. That purpose is a purpose described in s. 120(5)(b)(i) and (ii). Section 120(6) requires that disclosure for these purposes be in accordance with an information-sharing agreement under s. 121.

[88] Section 121 allows the minister to enter into an information-sharing agreement. In my view, the memorandum is an information-sharing agreement under the SVTA. The memorandum of understanding contemplates exchanging information by electronic or other means. For example, the memorandum says that the CRA will "make available for examination" information relating to taxable income.[57]

[89] Under the definition of information-sharing agreement in s. 121, an information-sharing agreement must be for a purpose described in s. 120(5). Above, I determined that the disclosure was for the purposes of s. 120(5)(b)(i) and (ii). Therefore, I find that the memorandum is an information-sharing agreement under the SVTA.

[90] Section 121(2)(a) allows the Minister to enter into an information-sharing agreement with the government of Canada or an agency of that government. The CRA is an agency of the federal government.

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[56] Complainant's submissions, page 23.
[57] See section 2.8 of the memorandum.

[91] I am satisfied that the Ministry is authorized under s. 120 of the SVTA to disclose information to the CRA in accordance with the memorandum. Therefore, I find that the Ministry is authorized under s. 33.1(1)(c) of FIPPA to disclose the information at issue.

[92] In light of my finding that the Ministry is authorized to disclose personal information at issue to the CRA under s. 33.1(1)(c), I do not need to also consider s. 33.1(1)(d).

CONCLUSION

[93] Under s. 58(3)(e) of FIPPA, in the circumstances and for the purposes described above, I confirm the decision of the Ministry of Finance to collect, use and disclose the name, address, date of birth, SIN and email address of individuals required to fill out a declaration under the *Speculation and Vacancy Tax Act.*

October 18, 2019

ORIGINAL SIGNED BY

Erika Syrotuck, Adjudicator

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