



Information and Privacy
Commissioner/Ontario

Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER P-935

Appeal P-9400522

Ministry of Finance



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NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The Ministry of Finance (the Ministry) received a request for access to records relating to the application of Land Transfer Tax to conveyances of agricultural land by way of a transfer of shares to a non-resident. In addition, the requester sought records of any instances where the Ministry has forgiven the payment of the higher, non-resident Land Transfer Tax and any criteria used by the Ministry to determine when the higher rate of tax might be forgiven. The Ministry responded by denying access to the requested records, claiming the application of the following exemptions contained in the Act:

- tax information - section 17(2)
- invasion of privacy - section 21(1).

After some discussion with the requester, the Ministry disclosed a copy of Land Transfer Tax Information Bulletin 1-82 and advised that no other responsive records exist. The requester appealed the Ministry's decision on the basis that additional records responsive to his request should exist.

During the mediation of the appeal, copies of four Orders-in-Council in which the non-resident portion of Land Transfer Tax was forgiven by the Lieutenant Governor were provided to the appellant by the Ministry.

A Notice of Inquiry was provided to the appellant and the Ministry. Representations were received from both parties. The sole issue to be determined in this appeal is whether the Ministry's search for records responsive to the request was reasonable in the circumstances.

DISCUSSION:

REASONABLENESS OF SEARCH

Where a requester provides sufficient details about the records which he is seeking and the Ministry indicates that such records do not exist, it is my responsibility to ensure that the Ministry has made a reasonable search to identify any records which are responsive to the request. The Act does not require the Ministry to prove with absolute certainty that the requested records do not exist. However, in my view, in order to properly discharge its obligations under the Act, the Ministry must provide me with sufficient evidence to show that it has made a **reasonable** effort to identify and locate records responsive to the request.

With its representations, the Ministry provided an affidavit from a Legislation Specialist in the Ministry's Motor Fuels and Tobacco Tax Branch, which also has responsibility for the collection of Land Transfer Tax. In his affidavit, the Legislation Specialist outlines the application of various provisions of the Ministry of Revenue Act and the Land Transfer Tax Act as they relate to the remission of tax. He also explains why records responsive to the request beyond those already disclosed do not exist. The Land Transfer Tax Act does not enable the Ministry to forgive the non-resident portion of any Land Transfer Tax payable. Any such "forgiveness" of tax may only be made by the Lieutenant Governor in Council. Accordingly, the Ministry has no documents or criteria respecting instances where it has forgiven the higher rate of tax.

The appellant maintains that written policies or guidelines addressing situations where the non-resident portion of the tax is waived should exist and that the Ministry has not responded to his request in a forthright manner. The appellant is unable to provide any specific information about records which he would have expected to exist.

Having reviewed the representations of the parties, I am satisfied that the Ministry has provided me with sufficient evidence to demonstrate that a reasonable effort was made to locate records responsive to the request. Accordingly, I find that the search conducted by the Ministry for records responsive to all facets of the request was reasonable in the circumstances of the appeal.

ORDER:

I uphold the decision of the Ministry.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ May 31, 1995