



Information and Privacy
Commissioner/Ontario

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

ORDER P-910

Appeal P-9400607

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 information relating to the assessment of property taxes on three parcels of land located in the Township of Horton. At the time of the request, the requester was appealing his property tax assessment and sought information on the calculations used in the assessment of taxes on properties neighbouring his own. The Ministry located the requested records and denied access to them under section 67(2) of the Act stating that the confidentiality provision described in section 53(1) of the Assessment Act prevails over the access provisions of the Act.

The requester appealed the Ministry's decision to deny access. A Notice of Inquiry was sent to the appellant and the Ministry. Representations were received from both parties.

The records at issue in this appeal consist of the property records, appraisal cards and valuation forms relating to the subject lands including information as to the method of calculation of the appropriate property taxes as determined by the assessor.

DISCUSSION:

The sole issue to be determined in this appeal is whether the information contained in the records is subject to the confidentiality provision contained in section 53(1) of the Assessment Act. If section 53(1) applies, then, by virtue of section 67(2) of the Act, the information is not accessible under the Act.

Section 67 of the Act states, in part:

- (1) This Act prevails over a confidentiality provision in any other Act unless subsection (2) or the other Act specifically provides otherwise.
- (2) The following confidentiality provisions prevail over this Act:
 1. Subsection 53(1) of the Assessment Act.

...

Section 53(1) of the Assessment Act states:

Every assessment commissioner or assessor or any person in the employ of a municipality or school board who in the course of the person's duties acquires or has access to information furnished by any person under section 10 or 11 that relates in any way to the determination of the value of any real property or the amount of assessment thereof or to the determination of the amount of any business assessment, and who wilfully discloses or permits to be disclosed any such information not required to be entered on the assessment roll to any other person not likewise entitled in the course of that person's duties to acquire or have access to the information, is guilty of an offence and on conviction is liable to a fine

of not more than \$2,000, or to imprisonment for a term of not more than six months, or to both.

In order to determine whether the information at issue in this appeal is covered by this confidentiality provision, it must satisfy four requirements in order for section 53(1) to apply.

1. The information must not be required to be entered on the assessment roll.

Section 14(1) of the Assessment Act lists the 20 "particulars" which must be included in the assessment roll. The only information contained in the records at issue in this appeal which is required to be entered on the assessment roll is the name of the owner, the roll number of the subject property, acreage of the property, its market value and the amount of its assessment. This information should be disclosed to the appellant.

The remaining information, particularly that which relates to allowances, is not required to be included on the assessment roll. Accordingly, insofar as the remaining information is concerned, the first requirement is met.

2. The information must have been acquired by or furnished to an assessor in the course of his duties pursuant to section 10 or 11 of the Assessment Act.

The Ministry submits that the information at issue falls within section 10 of the Assessment Act which states, in part:

- (1) An assessor, and any assistant of and designated by an assessor, upon producing proper identification, shall at all reasonable times and upon reasonable request be given free access to all land and to all parts of every building, structure, machinery and fixture erected or placed upon, in, over, under or affixed to the land, for the purpose of making a proper assessment thereof or of making a proper business assessment in respect thereof.
- (2) Every adult person present on land when any person referred to in subsection (1) visits the land in the performance of his or her duties shall upon request give to the person all the information in his or her knowledge that will assist the person to make a proper assessment of the land and every building, structure, machinery and fixture erected or placed upon, over, under or affixed to the land, to make a proper business assessment in respect thereof, and to obtain the information he or she requires with respect to any person whose name he or she is required to enter on the assessment roll or concerning whom he or she is required to obtain any information for the purpose of enumeration required by section 15.

The information contained in the property records, appraisal cards and valuation forms, with the exception of the assessment roll information described above, was obtained as the result of visits to the subject properties or searches undertaken at the Registry or Land Titles Offices by an assessor. I find that the information which was obtained as a result of the assessor's visit to the lands was acquired by the assessor in the course of his duties under section 10 of the Assessment Act. Accordingly, the second requirement of section 53(1) has been met with regard to this information. The information which was obtained at the Registry or Land Titles Office, however, was not acquired by the assessor under sections 10 or 11 of the Assessment Act and does not fall within section 53(1) as a result. This information should also be disclosed to the appellant.

3. The information must relate in some way to the determination of the value of any real property or the amount of assessment thereof or to the determination of the amount of any business assessment.

The information acquired by the assessor during his visits to the properties which is contained in the appraisal cards and the valuation forms describe the method of calculation of the assessed values of the properties. Included in the calculations are allowances for features of the land which are unique to each property. I find that this information relates directly to the determination of the value of the land and, thereby, the amount of assessment for each property. The third requirement has, accordingly, been satisfied with regard to the information which is not included in the assessment roll or accessible at the Registry or Land Titles office.

4. The information is not being disclosed to any other person entitled in the course of that person's duties to acquire or have access to the information.

The appellant is not a person who is entitled to this information in the course of his duties.

In summary, I have found that all four requirements of the confidentiality provision in section 53(1) of the Assessment Act have been satisfied with regard to portions of the information contained in the records. As such, section 53(1) of the Assessment Act applies and this confidentiality provision prevails over the access rights provided to the appellant under the Act.

I have highlighted on the copy of the records provided to the Ministry's Freedom of Information and Privacy Co-ordinator with this order those portions of the records which contain information which does not fall within section 53(1) of the Assessment Act. The highlighted portions of the records **should** be disclosed to the appellant.

ORDER:

1. I uphold the decision of the Ministry to deny access to those portions of the records which have **not** been highlighted on the copy of the records provided to the Ministry's Freedom of Information and Privacy Co-ordinator with a copy of this order.

2. I order the Ministry to disclose the highlighted portions of the records to the appellant within twenty-one (21) days of the date of this order.
3. In order to verify compliance with this order, I reserve the right to require the Ministry to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 2.

Original signed by: _____
Donald Hale
Inquiry Officer

April 21, 1995

POSTSCRIPT:

Under section 53(3) of the Assessment Act, an assessor is given the discretion to provide information about properties which are similar to those being assessed to enable the property owner to determine the fairness of his or her assessment.

In the present appeal, it appears that the assessor chose not to exercise his discretion in favour of providing the appellant with the requested information. Rather, the assessor advised the appellant to make an application pursuant to the Freedom of Information and Protection of Privacy Act for access to information about the assessment of similar properties.

In my view, the disclosure provisions of the Assessment Act should be interpreted liberally in order to ensure fairness and timely access to useful information in the assessment process. It would appear that this was not the case in the assessment appeals involving this appellant. In my view, Ministry staff should make every effort within the context of the Assessment Act to assist property owners who undertake appeals of their assessments to obtain the information which they require for a proper adjudication of their cases.