



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER PO-1655

Appeal PA-980201-1

Ministry of Finance



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NATURE OF THE APPEAL:

The appellant submitted a request to the Ministry of Finance (the Ministry) for access to information under the Freedom of Information and Protection of Privacy Act (the Act). The request was for access to all information relating to the Ministry's compliance with orders and/or recommendations from: (1) the Information and Privacy Commissioner's office; (2) the Ombudsman, and (3) the Assessment Review Board. The appellant also asked for his property assessment complaints.

The Ministry issued an initial decision on June 4, 1998. In this decision, the Ministry provided the appellant with a fee estimate of \$120 pursuant to section 57(1) of the Act. The appellant appealed the fee estimate and Appeal PA-980181-1 was opened to address this issue.

The Ministry issued a second decision on July 9, 1998. In this decision, the Ministry advised the appellant that it had divided his request into 26 parts. It indicated further that following extensive searches, it was unable to locate records responsive to parts 2, 3, 4, 5, 6, 8 - 10, 13 - 18 and 20 - 26. The Ministry advised the appellant that parts 7 and 11 could not be interpreted as requests for information and declined to issue a decision with respect to them. The Ministry requested clarification regarding part 12 of the request and indicated that responsive records were located for parts 1 and 19. The Ministry revised its fee estimate to \$97.90, and indicated that it intended to grant access to these records upon payment of the required fees.

The appellant appealed the decisions relating to access and the current appeal was opened to address these issues.

Upon further clarification regarding part 12, the Ministry issued a third decision letter on September 22, 1998, which stated that access was denied to records containing information related to the sale of 2476 properties pursuant to section 22(a) of the Act, as this information is currently available to the public. The Ministry advised the appellant to contact his local Regional Assessment Office to arrange to purchase a copy of the sales database for these properties. The appellant indicated that he disagreed with this decision and the possible application of section 22(a) is, therefore, included as an issue in the current appeal.

I disposed of the issues arising in Appeal PA-980181-1 in Order PO-1647, dated December 22, 1998. The current order will address the remaining issues arising from the Ministry's July 9 decision, and those arising from the September 22 decision.

I sent a Notice of Inquiry to the Ministry and the appellant. Representations were received from the Ministry.

The issues to be determined in this appeal are as follows:

- Whether parts 7 and 11 are requests for access under the Act;
- Whether section 22(a) applies to the records responsive to part 12 of the request;

- Whether the Ministry's search for records responsive to parts 2, 3, 4, 5, 6, 8 - 10, 13 - 18 and 20 - 26 was reasonable in the circumstances.

RECORDS:

The only record which has been identified consists of the sales database which contains information about 2476 properties.

PRELIMINARY MATTER:

EXTENSION FOR RECEIPT OF REPRESENTATIONS

On December 15, 1998, I received a letter from the Ministry asking for an extension for the receipt of representations due to the extended illness of the individual responsible for preparing them. I should note that the Ministry contacted this office in late November to advise that this person had become ill and had been granted an unofficial extension at that time. The Ministry indicated in its letter that this person would not be available to complete the representations and due to holiday schedules at this time of the year, another individual would not be able to complete them before January 18, 1999. On this basis, I wrote to the Ministry on December 15, 1998 and granted its request for an extension until Monday, January 18, 1999. This letter was copied to the appellant.

On Friday, January 15, 1999, I received a faxed letter from the appellant indicating that he objected to the extension being granted to the Ministry. He outlined his reasons for objecting. However, in my view, the issue raised by the appellant is moot as the time has already passed and the Ministry submitted its representations on the expected date. It is also important to point out that although the appellant was apprised of the situation on December 15, he did not register his complaint until the date representations were due, effectively eliminating the possibility of any remedy. As a result, I will not deal with his objections further.

DISCUSSION:

FORM OF REQUEST

Part 7 of the request reads as follows:

Since this statement,

The Ministry's explanation is that the house had been assessed at \$7390 (incomplete) (?) but for the appeal hearing.. .a 50% allowance for work still to be done.. .left an assessment of \$3695.. .Although your home was assessed at \$7390, a 25% reduction had been allowed for obsolescence. This produced 5540.

was accepted by the Ministry as factual, why should it not be considered reasonable to infer that my 1998 assessment was grounded on the 1993 comparables list? After all if 6600 (25% of 7390 is 5540 which when added to the land value of 1060 equals 6600) was factual, I would not be appealing. Translated into actual Value assessment terms 6600 would be \$230,000, a value differential comparable to my other five comparables -

The Ministry submits that part 7 is a question about the appellant's assessment rather than a request for a document. Moreover, the Ministry indicates that there is no document which answers the question. The Ministry states that all records about his assessment have been provided to the appellant. Further, his 1998 assessment has been explained to him by the Regional Assessment Office both prior to the request and subsequently. The Ministry explained that the appellant is a frequent caller and visitor to the Regional Assessment Office. The Ministry indicates that this office was advised of the appellant's request and had prepared to respond to his queries during his subsequent visits. The Ministry notes that the Regional Assessment Office worked with the appellant to clarify his question (as referred to above) and provide an answer to it.

Previous orders of this office have considered the circumstances in which requests for information are set out in the form of questions (Orders M-493, M-530 and P-995). In two of these cases, it was determined that the questions could be interpreted as requests for records. In my view, this is not the case here. Based on my reading of part 7 and the Ministry's explanation, I agree that the appellant has asked a question of the Ministry and is seeking an answer rather than seeking information or records which would respond to it. Therefore, I find that part 7 of the request is not a request for access to records under the Act, and there is no need for the Ministry to respond further to it in this context.

Part 11 reads as follows:

What soil changes have since taken place to increase my value above the comparables?
(The Requester indicates that his neighbour's increase in land value was proportionately less than his.) The increase requires validation which is what I request.

The Ministry submits that this is not a request for a record but a question about the land portion of his assessment. The Ministry indicates that there is no record which answers his question, as there were no soil changes brought to its attention. The Ministry provides the same explanation as that provided for part 7 with respect to its attempts to clarify and to understand what the appellant was seeking.

In considering this part of the request, I am of the view that the appellant is asking two questions: first, he is asking what soil changes took place; and second, he is asking for validation for the increase in value of his property. With respect to the first question, it is possible that a record might exist which would provide the information he is seeking. However, the Ministry indicates that no record exists and provides a reason for its non-existence. In order to determine whether the Ministry's explanation is acceptable, I will consider it in the context of my discussion below under the heading "Reasonableness of Search".

With respect to the second question, I agree with the Ministry that the appellant is seeking answers to his question, or at least, an explanation for what has happened regarding his property assessment. In my view, the Ministry's explanation of the manner in which it has attempted to address the appellant's questions reflects extensive contact with the appellant on the Ministry's part and continual attempts to respond to him. The appellant is simply not satisfied with the Ministry's response. However, I find that the appellant is not seeking access to records under the Act in seeking "validation" and the Ministry is, therefore, not obligated to respond further to this part of part 11 in this context.

REASONABLENESS OF SEARCH

Where a requester provides sufficient detail about the records which he is seeking and the Ministry indicates that further 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 further 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.

Although an appellant will rarely be in a position to indicate precisely which records have not been identified in the Ministry's response to a request, the appellant must, nevertheless, provide a reasonable basis for concluding that such records may, in fact, exist.

The appellant did not submit representations. He did provide some information to this office with his letter of appeal, however, I do not find it helpful in determining this issue.

The Ministry attached its representations for Appeal PA-980181-1 (concerning the appellant's fee appeal referred to above) to the representations for this appeal. The Ministry indicates that these representations are equally relevant to the issue of "reasonableness of search" in the current appeal as they describe the Ministry's search, in detail, for the purpose of justifying the search fee.

The Ministry indicates that searches for responsive records were conducted in five locations, including the appellant's Property Assessment File. In addition, a number of employees in the Ministry who are knowledgeable about the types of records in the Ministry met on several occasions to discuss these requests in an effort to understand them and to determine where they should look and what they should look for.

With respect to part 11 of the request, the Ministry indicates that no record exists because there were no soil changes brought to the Ministry's attention.

The Ministry indicates that one responsive record had been destroyed in accordance with its records retention schedule and attached a copy of this document to its representations. This record was the "now obsolete impact study as the Requester was aware".

Based on the Ministry's representations, I find that the efforts made by Ministry staff to search for and locate responsive records was extensive and that searches were done in locations which could reasonably have been expected to produce responsive records, had they existed. Further, I find the Ministry's explanation for the non-existence of a record responsive to part 11 of the request to be reasonable. Finally, I am satisfied that the document which was destroyed was done so in accordance with the established records retention schedule. Accordingly, I am satisfied that the Ministry's search for responsive records was reasonable.

INFORMATION PUBLISHED OR AVAILABLE

This section confers a discretion upon the head to refuse disclosure where "the record or information contained in the record has been published or is currently available to the public". In order for records to qualify for exemption under section 22(a), they must either be published or available to members of the public generally, through a regularized system of access, such as, for example, a public library or a government publications centre (Order P-327).

The Ministry indicates that part 12 of the request was for sales data relevant to the assessment of the requester's property and five comparables. The Ministry indicates that there were 2476 sales used in the analysis to develop the rates for use on all properties such as the appellant's. The Ministry explains further that there is no way of determining which of the 2476 relate specifically to the appellant's property or the five comparables. In an interesting turn, the Ministry submits that it believes it could have made the decision that no records exist which would be responsive to the appellant's request, and leaves it open to me to make such a finding. As this issue was not put before the appellant, I do not intend to address it at this time, especially in light of my findings under this section. However, I am satisfied, as the Ministry explains, that there is no way to specifically determine which of the 2476 properties relate specifically to the appellant's property and the five comparables.

The Ministry submits that sales data can be denied under section 22(a), as it is otherwise available to the public through a regularized channel available at a fixed price. In this regard, the Ministry states that sales data is available in hard copy or in various electronic formats at the same price. The sales data is contained in the Property Assessment Division's database which is located in Oshawa. The Ministry provided a copy of its "Release of Assessment Records Policy", which provides for the regularized access to all assessment information, including sales information, and which contains a Schedule of Fees. Under this policy, the cost of sales data is \$1.50 per property in any format.

The Ministry relies on Order P-1316 as authority for a finding that this record is publicly available. In this order, former Commissioner Tom Wright found that property assessment information was distributed through a regularized channel of access. He stated in that order:

In my opinion, in order to establish that a regularized system of access exists for the computer tape, the Ministry must demonstrate that a system exists, the tape is available to

everyone and there is a pricing structure which is applied to all who wish to obtain the information.

In many instances, the existence of a regularized system of access is clear because the system and its associated fees are prescribed by statute or regulation. The system of access which the Ministry has established for assessment information in electronic format has not been formalized in such a manner, therefore, I must examine it more closely.

In its representations, the Ministry advises that the electronic tape of assessment roll information has been available to persons outside government since 1988. The Ministry does not advertise the availability of the tape, however those who could take advantage of this format are made aware of its existence when assessment roll information is requested.

...

According to the Ministry, the full pricing structure is consistently applied to all requesters outside government such as the appellant. The Ministry also states that it has not licensed its clients to resell the data as yet, but that may come.

In the circumstances, I am satisfied that the tape is available through a regularized system of access. If the appellant purchases the tape he will obtain access to the information he seeks. Accordingly, the Ministry has established that the requested record or the information contained in it is "published or available to the public" and section 22(a) applies.

The Ministry indicates that any individual need only contact the Property Assessment Division and upon request, the Ministry extracts the needed data, which is then provided to the requester at the prescribed cost.

As in Order P-1316, the system of access which the Ministry has established for sales data in electronic and paper format has not been formalized by statute or regulation. However, I am satisfied that the Ministry has developed a policy for the purpose of making available sales data relating to properties through a regularized system of access at an established fee which is consistently applied to all requesters. Accordingly, I find that the Ministry has established that the information contained in the record is "published or available to the public" and section 22(a) applies to it.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____

Laurel Cropley
Adjudicator

_____ February 4, 1999