



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

ORDER P-350

Appeal P-910096

Ministry of Consumer and Commercial Relations



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ORDER

BACKGROUND:

The Ministry of Consumer and Commercial Relations (the institution) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to records relating to the requester's activities as a registered broker under the Real Estate and Business Brokers Act (REBBA). The institution responded by providing access to several responsive records, and denied access to five others pursuant to section 49(c) of the Act.

The requester appealed the institution's decision to deny access, and also maintained that additional responsive records had not been located.

During the course of mediation, the Appeals Officer obtained the consent of the authors to release the exempt records, and on that basis the institution withdrew its exemption claim under section 49(c) and disclosed the remaining five records to the appellant.

As far as the issue of additional records is concerned, the following activities took place during the course of mediation:

1. The institution located seven additional records which were disclosed to the appellant.
2. The appellant identified the following records which he felt should exist:
 - REBBA registration records for 1954-1968;
 - records of a hearing involving the appellant which was heard by the predecessor tribunal to the Commercial Registration Appeals Tribunal in 1968;
 - records relating to a July 24, 1990 meeting between the appellant and the Registrar of Real Estate and Business Brokers (the Registrar);
 - records relating to a complaint made by the appellant to the Minister of Consumer and Commercial Relations (the Minister) in 1986; and
 - records relating to a May 21, 1986 letter from the appellant to the Registrar.

3. The appellant provided the Appeals Officer with copies of his certificates of registration under the REBBA for 1962, 1963 and 1967 and a copy of a letter he wrote to the then-Registrar, dated Feb. 8, 1967 with enclosed sales records dating from 1957.
4. The institution was provided with the information outlined in points 2 and 3 and asked to conduct further searches for responsive records. The institution did so, but no records were located.

Because the appellant continued to maintain that additional records should exist, further mediation was not possible and the matter proceeded to inquiry. Notice that an inquiry was being conducted was sent to the appellant and the institution. Enclosed with each notice was a report prepared by the Appeals officer, intended to assist the parties in making their representations concerning the subject matter of the appeal. Representations were received from the institution. Although the appellant did not submit formal representations, his letter of appeal and other correspondence received during the course of the appeal contain information which supports his position.

The sole remaining issue in this appeal is whether the institution's search for the requested records was reasonable in the circumstances.

In his representations, the appellant raises the following three principal points:

1. he has provided documentary evidence of his registration under REBBA during the period 1954-68, and additional records covering this period should exist;
2. during the course of the appeal the institution offered to prepare a summary of his registration history in the form of a Director's Certificate, and to do so, the institution must have had the relevant records in its custody; and
3. the July 24, 1990 meeting with the registrar was a "judicial proceeding" where notes were made and various records taken from him and later returned, and records of this meeting should exist.

In its representations, the institution describes the steps taken to locate the responsive records, and includes an affidavit sworn to by the institution's Freedom of Information and Privacy Co-ordinator which outlines the various searches conducted. I will deal with each category of records identified by the appellant.

1. REBBA registration records for 1954-1958

The institution points out that on May 3, 1982 all paper registration records covering the period prior to 1974 were converted to microfiche and the paper files destroyed. The institution conducted several searches of all microfiche records

for the period 1954-68, but was unable to locate any records concerning the appellant. By way of explanation, the institution states:

"Records pertaining to [the appellant's] earlier registration period should be available. However, it is possible that these records were lost during their transfer to MCCR at the time of the Ministry's creation in 1967.

As well, in 1982, all paper registration records were transferred to microfiche. Again, it is possible that the records were either lost or destroyed during the microfilm process.

The possibility also exists that the records of other registrants are missing, however, until such time as they request access to their registration file, this cannot be verified".

The institution does not dispute the fact that the appellant was registered during this time period; only that it has been unable to locate records which confirm registration.

As far as the offer to create a Director's Certificate is concerned, the institution states that the offer was made on October 17, 1990, before any searches for responsive records were conducted, and that it was only after the searches took place that it was discovered no records were available.

2. Records related to 1968 Registration Hearing

The institution submits that searches were conducted at the institution's Business Practice Division and the Commercial Registration Appeals Tribunal to attempt to locate records of the appellant's hearing before the predecessor tribunal. It was determined that all records dated prior to 1979 had been destroyed, in accordance with the institution's record retention schedules.

3. Notes of July 24, 1990 meeting with Registrar

Searches for records of this meeting were conducted at various REBBA offices, including the office of the Registrar, as well as at the institution's Legal Services branch. The appellant was provided with all records submitted by him at that meeting, but the institution was unable to locate any other responsive records.

4. Records of complaint to the former Minister

Although records in the custody or control of the former Minister at his constituency office are not subject to the Act, at the request of the institution, the

former Minister agreed to conduct a search of his constituency records. No responsive records were located.

5. Records related to May 21, 1986 letter from the appellant to the Registrar

The institution conducted searches of various REBBA offices, including the office of the Registrar, but was unable to locate any records relating to this letter.

I have carefully reviewed the representations of the institution, including the sworn affidavit submitted by the Co-ordinator. In my view, several thorough searches were conducted during the course of processing the appellant's request and appeal, and I am satisfied that the institution's search for responsive records was reasonable in the circumstances.

Original signed by: _____ September 3, 1992
Tom Mitchinson
Assistant Commissioner

POSTSCRIPT

Although I am satisfied on the evidence before me that the institution has conducted a reasonable search for records in this case, the representations provided by the institution regarding the inability to locate REBBA registration records for the period 1954-68 cause me some concern. The institution acknowledges that microfiche registration records for other individuals exist for this period, and the explanation offered for the absence of records relating to the appellant is that they may have been inadvertently destroyed or misplaced.

If an institution's records retention schedules require that a certain category of records be maintained, or if the institution decides for other reasons to maintain certain types or records, it is vital to the integrity of the institution's records management system that procedures are put in place to ensure that these records are carefully and properly maintained. It is not acceptable, in the absence of particular justifiable circumstances, for members of the public to be denied access to records which they would otherwise be entitled to receive, solely on the basis that the institution's records management systems are inadequate or deficient.