



**Information and Privacy
Commissioner/Ontario**

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

ORDER P-717

Appeal P_9400004

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 appellant's request was directed to the Ministry of Finance (the Ministry). The appellant sought access to the individual tax returns of persons remitting tobacco taxes to the Ministry on the basis of sales. The appellant made this request after the issuance of Order P-553, which dealt with a previous, related request made by the appellant.

In the present request, the appellant indicated that she would require the Ministry's decision letter to "... provide a detailed description of the record, the number of such records which are in existence, the date on which such records were in existence, and your reasons for failing to produce the records."

The Ministry denied access to the responsive records under the following exemption:

- tax return information - section 17(2).

The decision letter went on to state as follows:

The records which you request fall squarely into this category and as a consequence, we are mandatorily obliged to deny access. Not only are you not entitled to individual tax returns, you are not entitled, by law, to obtain any information derived therefrom.

In her letter of appeal, the appellant indicated that she does not wish to appeal the denial of access to the records pursuant to section 17(2) of the Act. What she does wish to appeal is the fact that the Ministry has not complied with her stipulations regarding the contents of the decision letter.

A notice of inquiry was provided to the parties to the appeal. Representations were received from the appellant and the Ministry.

DISCUSSION:

ADEQUACY OF DECISION LETTER

Since the appellant is not pursuing the issue of access, the only issue in this appeal is the adequacy of the decision letter.

In its representations, the Ministry relies on the wording of section 50(1)(a) of the Act to support its assertion that the contents of a decision letter are not a proper subject for an appeal. That section states, in part, as follows:

A person who has made a request for,

access to a record under subsection 24(1);
... may appeal any decision of a head under this Act to the
Commissioner.

The requirements for a decision letter denying access to records are also relevant. They are set out in section 29(1)(b) of the Act, which states as follows:

Notice of refusal to give access to a record or a part thereof under section 26 shall set out,

where there is such a record,

- (i) the specific provision of this Act under which access is refused,
- (ii) the reason the provision applies to the record,
- (iii) the name and position of the person responsible for making the decision, and
- (iv) that the person who made the request may appeal to the Commissioner for a review of the decision.

Sections 54(1) and (3) are also relevant to this discussion. Those sections state as follows:

- (1) After all of the evidence for an inquiry has been received, the Commissioner shall make an order disposing of the issues raised by the appeal.
- (3) The Commissioner's order may contain any terms and conditions the Commissioner considers appropriate.

Given that the Act contains requirements regarding the contents of decision letters issued in response to access requests, and in view of the provisions of sections 50(1)(a), 54(1) and 54(3), I find that the Commissioner and his delegates have jurisdiction to consider whether the decision letter issued in response to a request is in compliance with the Act.

Previous orders of the Commissioner's office have considered what should be contained in a decision letter denying access to records. These considerations flow from the provisions of section 29(1)(b), quoted above. As noted in Order P-553, the general purport of these considerations is summarized in Order P-537, as follows:

In providing a notice of refusal under section 29, the extent to which an institution describes a record in its decision letter will have an impact on the amount of detail required under section 29(1)(b)(ii). For example, should an institution merely describe a record as a "memo", more detailed reasons for denying access would be required than if a more expansive description of the record had been provided. Whichever approach is taken, the key requirement is that the requester must be put in a position to make a reasonably informed decision on whether to seek a review of the head's decision (Orders 158, P-235 and P-324).

The appellant has interpreted these provisions to mean that if access is denied, she is entitled to receive a detailed description of the record, and to be informed of the number of such records which are in existence, the date on which such records were in existence, and the Ministry's reasons for not granting access to the records.

The Ministry, on the other hand, takes the position that its decision letter complied with the requirements of section 29(1)(b).

Decision letters denying access to records are the subject of the June 1992 edition of *IPC Practices*. In that publication, reference is made to the advantages of providing an index of records. However, the publication is intended as a guideline to be applied in most cases where access is denied, as a way of ensuring compliance with section 29. In the circumstances of this appeal, where all of the records are part of a generic class, in my view an index is not required.

As noted above, past orders have indicated that the aim of section 29(1)(b) is to ensure that decision letters allow requesters to make a reasonably informed decision on whether to seek a review of the institution's decision.

I find that the decision letter in this appeal meets the requirements of section 29(1)(b). It indicates very clearly what the responsive records are and it explains why the exemption is applicable. Evidently the appellant was placed in a position where she was able to make a decision as to whether or not to appeal the access decision, since her letter of appeal clearly indicates that she does not wish to do so.

Original signed by: _____
John Higgins
Inquiry Officer

_____ June 30, 1994