



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

# **ORDER P-691**

**Appeals P-9300165 and P-9300166**

**Ministry of Finance**



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# INTERIM ORDER

## BACKGROUND:

The Ministry of Revenue (now the Ministry of Finance) (the Ministry) received two requests under the Freedom of Information and Protection of Privacy Act (the Act) for information relating to the assessment of approximately 300 properties in the vicinity of the Lester B. Pearson International Airport. The first request focused on properties that were part of the Airport, itself, while the second was directed to properties along the Airport Road.

The requester specifically sought information about the assessment of his client's property, the assessments levied on the other properties in and around the Airport and the rules which the Ministry applied to fix assessments for all of these properties.

In its decision letter, the Ministry indicated that it had decided not to release any of the requested information based on the combined application of section 53(1) of the Assessment Act and section 67 of the Act. The requester, through its representative, appealed the Ministry's decision to the Commissioner's office.

The mediation of these appeals was not successful and notice that an inquiry was being conducted to review the Ministry's decision was sent to the Ministry and the requester (now the appellant). Representations were received from both parties.

Each of the requests filed by the appellant was broken down into four components. For the purposes of this interim order, I will need to address the adequacy of the decision letter which the Ministry issued in relation to parts B and D of these requests. Since the Airport and Airport Road requests are very similar in nature, I will treat them as one for the purposes of this interim order.

## Part B of the Request:

Under this part of the request, the appellant sought access to:

All records in the possession of the Regional Assessment Commissioners wherever located, which relate generally to the valuation of similar real properties to The Subject Property located within the same regional municipality, including all policies, procedures, or statements of assessment practice, all files, memoranda, notes, calculations or any other material including computer data or software relating generally to the valuation of such facilities for assessment purposes or the preparation of any policies, procedures or practices relating to the valuation of such facilities.

In its representations, the Ministry indicated that, based on discussions held between its Freedom of Information Co-ordinator and a principal of the law firm which represented the appellant, it was the Ministry's belief that the appellant was no longer interested in pursuing part B of the request. The Ministry did not, however, provide the Commissioner's office with any documentation to establish that the appellant had formally withdrawn this part of the appeal.

In his representations, counsel for the appellant reiterated that he wished to proceed with part B of the request but indicated that he would be prepared to narrow the scope of the information that he was seeking. The appellant subsequently advised the Commissioner's office that he now only wished to receive:

A copy of all policies, memoranda or other records, (of whatever nature), which deal with the valuation of airports, including specifically Pearson International Airport.

On the basis that the Ministry has not provided me with any written evidence to indicate that the appellant has abandoned part B of his request, I find that this matter is still properly before me.

In its original decision letter, the Ministry purported to apply the confidentiality provision contained in section 53(1) of the Assessment Act, along with section 67(2) of the Act, to preclude access to **all** of the information which formed part of the appellant's request. This included the records which were responsive to part B of the request.

The threshold question for me to consider is whether these provisions can be applied to preclude access to the policy documents and related records which the Ministry employs to assess properties of a given class.

I have carefully reviewed section 53(1) of the Assessment Act as well as the companion provisions found in sections 10 and 11 of that statute. Based on my interpretation of these provisions, I am persuaded that section 53(1) only applies to information furnished to, or acquired by, an assessor which relates to **individual properties**. To put the matter differently, the protection afforded by section 53(1) does not extend to the general rules by which different classes of property are assessed.

On this basis, I believe that the Ministry has applied section 53(1) of the Assessment Act to this request in an imprecise fashion without due regard to the nature of the records being sought. Since I have determined that section 53(1) may only be applied to protect assessment information that relates to individual properties and because part B of the request seeks information about general policies for assessing Airports, the Ministry will be required to issue a new decision letter which responds specifically to the request.

In drafting this decision letter, the Ministry should pay careful attention to section 29(1) of the Act. This provision establishes the obligations of an institution in situations where it may choose to deny access to a record. Sections 29(1)(a) and (b) prescribe that the notice of refusal to provide access (which is contained in an institution's decision letter) shall include the specific provision of the Act under which access is refused and the reason that the provision applies to the record. In addition, previous orders issued by the Commissioner's office have held that notices of refusal must contain sufficient detail to allow a requester to make a reasonably informed decision on whether to review an institution's decision.

In June 1992, the Commissioner's office published an issue of "IPC Practices", which outlines the requirements for a proper decision letter. In issuing its decision letter, I expect that the

Ministry will fully comply with its obligations under section 29(1) of the Act as elaborated upon in the Practices publication.

I would also point out to the Ministry that, under section 33(1)(a) of the Act, an institution is required to make available to the public all manuals, directives or guidelines which contain interpretations of the provisions of any scheme administered by the Ministry. Similarly, section 33(1)(b) of the Act prescribes that public access must also be provided to instructions and guidelines issued by the Ministry on the methods and procedures to be followed in the administration of such a scheme.

#### **Part D of the Request:**

In this part of the request, the appellant sought access to:

All assessment records in the possession of the Regional Assessment Commissioner, in respect of any and all of the properties referred to above, including but not limited to all cost cards, valuations, notes, memoranda, calculations or other material prepared for and dealing with the valuation of the above-mentioned properties for all impact studies based on the 1980 market value authorized and prepared by the Ministry of Finance or Ministry of Revenue pursuant to Section 58(3) of the Assessment Act, R.S.O. 1990 c.A.31, as amended.

In his representations, the appellant indicated that he was seeking access to both general policy documentation on the 1980 market value assessment for properties located in the vicinity of the Airport and any information contained in the 300 or so individual files where the market value assessment has been applied to these discrete properties.

Following discussions with the Commissioner's office, the appellant agreed to clarify and streamline his request. He has now indicated that the records which he seeks consist of:

An impact study for the City of Mississauga based on 1980 market value assessments as well as any information about these assessments found in the individual assessment files referred to in the request.

The Ministry has also claimed that section 53(1) of the Assessment Act and section 67 of the Act apply to exempt these documents from disclosure. As indicated previously, the confidentiality provision found in section 53(1) of the Assessment Act can only be claimed for information furnished to, or acquired by, a Ministry assessor which relates to individual properties. As such, this section would not apply to a general study on market value assessments.

On this basis, it will be necessary for the Ministry to determine whether it has in its custody or control any "impact studies for the City of Mississauga on 1980 market value assessments" and to indicate, in a new decision letter, whether it is prepared to release this documentation to the appellant.

I will consider the application of section 53(1) of the Assessment Act to the records pertaining to individual Airport properties in the final order which disposes of these appeals.

**ORDER:**

1. I order the Ministry to issue a new decision letter with respect to part B of the request and for that portion of part D of the request where the appellant has sought access to impact studies for the City of Mississauga on 1980 market value assessments within twenty-one (21) days of the date of this interim order without recourse to a time extension.
2. In issuing the decision letter referred to in Provision 1, the Ministry shall have due regard for its obligations under section 29(1) of the Act as elaborated upon in the IPC Practices Publication entitled "Drafting a Letter Refusing Access to a Record".
3. In order to verify compliance with this interim order, I order the Ministry to provide me with a copy of the decision letter referred to in Provision 1 of this order within thirty (30) days of the date of this order. This notice should be forwarded to my attention c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

Original signed by: \_\_\_\_\_  
Assistant Commissioner

\_\_\_\_\_ May 26, 1994 \_\_\_\_\_ Irwin Glasberg