



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

# **ORDER P-680**

**Appeal P-9300498**

**Ministry of Finance**



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# ORDER

The Ministry of Finance (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to several categories of information used to arrive at the assessed value of the land and buildings of properties located at two specified addresses in the City of Ottawa.

The Ministry granted access to the requested records "with the exception of actual rental information on other properties" used for comparative assessment purposes. This information was denied pursuant to section 67(2) of the Act. The Ministry claimed that section 67(2) of the Act applies because section 53(1) of the Assessment Act operates as a confidentiality provision in such a manner as to bar the application of the Act.

The requester appealed the Ministry's decision.

Mediation was not successful and notice that an inquiry was being conducted to review the Ministry's decision was sent to the appellant and the Ministry. Representations were received from the Ministry only. In its representations, the Ministry also raised the mandatory exemption contained in section 17(2) of the Act as a further claim to exempt the record from disclosure. Accordingly, the appellant was informed of this new exemption and provided with the opportunity to make representations on this issue. The appellant did not submit any representations on this issue.

Because of the manner in which I have disposed of this appeal, it is not necessary for me to further consider the application of section 17(2) of the Act.

The information at issue in this appeal is contained in a one-page document identified as "1988 Multi Residential Rental Analysis".

The sole issue to be determined in this appeal is whether this information is subject to the confidentiality provision contained in section 53(1) of the Assessment Act. If it is, then section 67(2) of the Act acts to bar the information from the application of 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, I will analyze the provision according to its constituent elements, all of which must be satisfied in order for section 53(1) to apply.

**Constituent Element 1:**

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 11 of the Assessment Act which states, in part:

- (1) Where an assessor has visited land for the purpose of making a proper assessment thereof or a proper business assessment in respect thereof and has been unable to obtain all information necessary for the purpose, he or she may deliver or cause to be delivered or mailed to the address of any person, whether resident in the municipality or not, who is, or who may be assessed in respect of the land, a questionnaire or questionnaires in writing demanding information as prescribed in the regulations.
- (2) Every person to whom any questionnaire is delivered or mailed shall, within ten days after the delivery or mailing, enter thereon in the proper places all the information required thereby that is within the person's knowledge and sign and deliver or mail the questionnaires to the assessment commissioner or assessor whose name and address appear on the questionnaire.

As I have indicated, the information at issue in this appeal is the dollar values of the rents of properties used as comparables to derive the assessment of the properties named by the appellant in his request. In its representations, the Ministry indicates that this information was obtained from questionnaires sent to the landlords under section 11 of the Assessment Act. The Ministry provided a completed sample questionnaire with its representations. Based on these submissions, I find that the first element of the section 53(1) test has been satisfied and, therefore, that the information was furnished to an assessor in the course of his duties pursuant to section 11 of the Assessment Act.

**Constituent Element 2:**

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 Ministry points out that when "all the rents are added up, income information on a property is established". The Ministry further states that such rents relate to the value of the property in that the value of an apartment building is often expressed in terms of its income. Accordingly, I find that the information at issue, the rents, relates to the amount of the assessment of the property.

**Constituent Element 3:**

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

The Ministry indicates that rent information is not required to be published on the assessment roll and is not entered on the roll. Section 14(1) of the Assessment Act lists the 20 "particulars" which must be included in the assessment roll. Income information or rent is **not** included in this list.

**Constituent Element 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.

It is clear that the appellant who has requested this information is not a person who is entitled to this data in the course of his duties.

In summary, I have found that all four constituent elements of the confidentiality provision in section 53(1) of the Assessment Act have been satisfied.

I must now determine whether the exception contained in section 53(3) of the Assessment Act applies such that the information may be released to the requester. This section states:

Despite subsection (1), upon the request of a person assessed under this Act, an assessor may provide sufficient information on similar real property in the vicinity, **other than actual income and expense information on individual properties**, to enable the person to determine the fairness of that person's assessment. [emphasis added]

As stated above, the record at issue is the actual rents for specified properties which, in my view, relates directly to "actual income". Therefore, in the circumstances of this appeal, the exception in section 53(3) of the Assessment Act does not apply.

I have reviewed the representations submitted by the Ministry and, in my view, I have been provided with sufficient evidence to establish that the information at issue was collected pursuant to section 11 of the Assessment Act. As such, it is covered by section 53(1) of the Assessment Act, and this confidentiality provision prevails over the access rights provided to the requester under the Act.

**ORDER:**

I uphold the decision of the Ministry.

Original signed by: \_\_\_\_\_

Anita Fineberg

Inquiry Officer

\_\_\_\_\_ May 13, 1994