



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

# ORDER P-954

Appeal P-9500072

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 submitted a request to the Ministry of Finance (the Ministry) for the 1988 market value assessment for approximately 140 properties at or around Oak Lake in the Township of Methuen. As part of his request, the requester provided the Ministry with the roll numbers for the properties, as well as the names of the property owners. This information was provided to the Ministry in a five page document.

The Ministry responded that access to the requested information is available and issued a fee estimate in the amount of \$122.81. Upon receipt of payment of the fee, the Ministry provided the requester with the "1988 M.V." figures for each property. This information was inserted into the five page document which was originally provided to the Ministry by the requester. On the last page of this document, the Ministry inserted a disclaimer. Upon receipt of this record, the requester asked the Ministry to remove the disclaimer. The Ministry refused to do so and the requester appealed the Ministry's decision.

The sole issue to be decided in this appeal is whether the information contained in the record is responsive to the request.

The record at issue in this appeal consists of five pages, each of which contains four columns with the following information: roll numbers; last names of the property owners; 1988 M.V.; and first names of the property owners. Page 5 of the record also contains the following disclaimer inserted by the Ministry:

Disclaimer: The 1988 Market Values are preliminary figures prepared for a reassessment tax impact study. The figures were not finalized, have not been kept up-to-date and therefore have no legal significance.

A Notice of Inquiry was provided to the appellant and the Ministry. Representations were received from both parties.

### **Preliminary Matter**

The Ministry submits that since access to the requested information was granted, there are no grounds for appeal. The Ministry's representations are not clear on this issue. It appears that the Ministry is taking the position that the Commissioner or his delegates do not have the jurisdiction to hear this appeal.

As I have indicated previously, part of the Ministry's decision was to charge the appellant a fee for the requested information. The appellant did not appeal the calculation of the fee. He does, however, take the position that by inserting the disclaimer, the Ministry has arbitrarily added extraneous information which diminishes the value of that information which is responsive to his request. The appellant therefore submits that the record including the disclaimer is not responsive to the request and consequently, the fee should be refunded by the Ministry.

Section 50(1) of the Act allows the requester to appeal **any** decision of a head under the Act to the Commissioner or his delegates. Section 54(1) of the Act directs the Commissioner or his delegates to make

an order disposing of the issues raised by the appeal. Accordingly, I find that I have the appropriate authority to review the Ministry's decision in this matter.

## **DISCUSSION:**

### **Responsiveness of Record**

The appellant submits that the disclaimer which was inserted into the document by the Ministry does not form part of the information which he requested. The appellant states that the Ministry is aware that he intends to use the information at an assessment appeal hearing. He describes his previous attempts to obtain the information and the Ministry's alleged reluctance to provide the information. The appellant states that he was verbally advised by the Ministry that the 1988 market value figures were preliminary figures prepared for a reassessment tax impact study and that the assessments were not adopted.

The appellant states that the use of the word "disclaimer" which means "disown" or "renounce claim to" is inappropriate. He points out that he has received market value assessment figures, without such disclaimers, from other jurisdictions where market value has not been adopted.

The appellant submits that by placing the disclaimer on the record, the Ministry is attempting to destroy the evidentiary value of the information being provided. The appellant states that he has no objection to the Ministry identifying the source of the data. He also has no objection to the Ministry appending to the record such qualifications or explanations as are in fact in the original record.

The appellant does, however, object to the Ministry placing opinions or cautions directly on the record. He submits that it is not the Ministry who determines the "legal" significance of the market value data. Rather, this task lays with the tribunal where this information will be presented.

The Ministry submits that it was necessary for it to place the disclaimer on the record in order to warn the appellant that the information is not fit for the purposes of determining the market value at an assessment hearing. The Ministry explains that because the 1988 assessment figures were never adopted by the municipality, these values have not been updated to reflect changes or additions to the properties, which may have taken place since the assessment.

The Ministry further explains that, upon receipt of the appellant's request, the Ministry attempted to clarify the request with the appellant. The Ministry submits that the fact that the assessment figures were not adopted and are not being kept up-to-date was explained to the appellant. He in turn indicated that he still wished to receive this information. The Ministry's position is that the "... disclaimer was added as a courtesy and a protection". The Ministry agrees that the evidentiary value of the market value assessment figures is determined at the assessment hearing.

I have carefully reviewed all of the representations in this appeal. I find that the 1988 M.V. figures provided to the appellant are in fact responsive to his request. I also find, even though the qualifying statements described above may more appropriately belong in a cover letter, because this information is factual and places the requested information in context, I am prepared to accept that they too are responsive to the appellant's request.

In reaching my conclusion, I would make the following comments. In the present case, the information requested did not exist in a record created by the Ministry. Under the Act, an institution is not required to create a record where none exists. The market value assessment information was retrieved by the Ministry and inserted into a document provided by the appellant and the contextual information placed at the end of the document. Secondly, I am mindful of the fact that the determination on the legal significance of the market value figures lies with the tribunal charged with making such a finding and not the Ministry.

**ORDER:**

I uphold the decision of the Ministry.

Original signed by: \_\_\_\_\_  
Mumtaz Jiwan  
Inquiry Officer

\_\_\_\_\_  
July 17, 1995

**POSTSCRIPT:**

Finally, I note that the appellant has paid the fee charged. I acknowledge that the appellant is not satisfied with the information that he has received as a result of his request. I would recommend that, in the spirit of the Act, the Ministry consider the particular circumstances of this case and refund to the appellant part or all of the fee paid.