



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

ORDER P-1036

Appeal P-9500451

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 Ministry of Finance (the Ministry) received a nine part request for information relating to the assessment of retail sales tax. The Ministry provided the requester with access to records responsive to one part of his request and denied access to records responsive to seven parts of the request pursuant to section 22 of the Act. The Ministry further advised the requester that records relating to the remaining portion (Part B) of his request do not exist.

The requester appealed the Ministry's decision that no records responsive to Part B of the request exist. This portion of the request relates to statistical data on retail sales tax assessments for businesses similar to that operated by the requester. A Notice of Inquiry was provided to the appellant and the Ministry. Representations were received from the Ministry only.

DISCUSSION:

REASONABLENESS OF SEARCH

In its decision letter, the Ministry advised the appellant that its Retail Sales Tax Branch does not maintain the type of data requested and does not use it as a basis for assessing retail sales tax. The Ministry referred specifically to two pages from its audit handbook (a copy of which is available for viewing by members of the public in the Ministry's reading room) which contain information similar to that requested which was supplied to the Ministry by Statistics Canada for the year 1985/86. It also advised the appellant that this information was not used during the course of his audit.

The Ministry has also provided me with affidavits from the Manager of Administration and Finance of its Retail Sales Tax Branch and from the Tax Appeals Officer who reviewed the audit of the appellant's business in which they describe the nature and extent of the searches which they undertook for records responsive to this portion of the appellant's request.

Where a requester provides sufficient details about the records which he is seeking and the Ministry indicates that further records do not exist, it is my responsibility to ensure that the Ministry has made a reasonable search to identify any records which are responsive to the request. The Act does not require the Ministry to prove with absolute certainty that further records do not exist. However, in my view, in order to properly discharge its obligations under the Act, the Ministry must provide me with sufficient evidence to show that it has made a **reasonable** effort to identify and locate records responsive to the request.

The appellant has not provided any information in support of his position that additional records responsive to this portion of his request should exist.

I have carefully reviewed the representations of the Ministry. I am satisfied that the Ministry has taken all reasonable steps to locate records which are responsive to this portion of the appellant's request. Accordingly, I find that the search was reasonable in the circumstances of this appeal.

ORDER:

[IPC Order P-1036/November 2, 1995]

I uphold the Ministry's decision.

Original signed by: _____ November 2, 1995
Donald Hale
Inquiry Officer