



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

# **ORDER P-1073**

**Appeal P-9500491**

**Ministry of the Attorney General**



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## **BACKGROUND:**

On May 18, 1993, a hearing was scheduled before the Assessment Review Board (the ARB) for the appeal of the appellant's 1992 property assessment. The appellant maintains that, during the hearing, an affidavit was presented by the valuation manager to the presiding ARB member and recorded by the member's assistant. The appellant states that the valuation manager claimed that he had received the affidavit from the ARB Regional Office in Newmarket. The appellant also claims that the affidavit had been requested by the Regional Assessment Office in Barrie and stipulated that the appellant had no outstanding supplementary appeals before the ARB.

## **NATURE OF THE APPEAL:**

The appellant submitted a request to the Ministry of the Attorney General (the Ministry) under the Freedom of Information and Protection of Privacy Act (the Act) for access to a copy of the affidavit. The Ministry undertook a search for the affidavit and issued a decision in which it indicated that the ARB advised that no affidavit existed in either the ARB or Regional Office. The Ministry further advised the requester that, as he had indicated that the affidavit was sent by the Newmarket Regional Registry Office to one of two individuals in the Region 16 Office, he might wish to submit his request to the Ministry of Finance. The Ministry of Finance has jurisdiction for that office. The appellant has submitted this request, but has not yet been advised as to whether the Ministry of Finance does, in fact, have custody of the affidavit.

The appellant filed an appeal of the Ministry's decision.

During mediation, the Ministry provided this office with a copy of a letter signed by the Chair of the ARB (the Chair). In this letter, the Chair indicated that a search for the affidavit had been conducted by both the Regional Registrar of the ARB in Sault Ste. Marie (the Regional Registrar) and the Toronto Co-ordinator of Written Reasons for the ARB who is also the Freedom of Information and Privacy Co-ordinator (the Co-ordinator). The Chair stated that he was satisfied with the searches conducted by both of these individuals. The information in the letter was conveyed to the appellant. However, this did not settle the appeal.

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

The sole issue to be determined in this appeal is whether the Ministry has conducted a reasonable search to locate the affidavit.

## **DISCUSSION:**

### **REASONABLENESS OF SEARCH**

The Ministry's representations consist of two affidavits.

The first affidavit is that of the Co-ordinator. She indicated that she searched her files in the ARB Toronto office, as well as the Chair's correspondence file relating to the appellant. She also contacted the Secretary to the Regional Registrar in Newmarket, which office was responsible for the records related to the appellant's property. This individual advised that, because of a reorganization of the ARB, such records had been transferred to the Regional Office in Sault Ste. Marie.

The affidavit of the Regional Registrar states that she searched the only file box and hearing file in the Sault Ste. Marie office where the affidavit might be located. She also indicates that she searched the correspondence file of the municipality in which the appellant's property is located.

Both of these affidavits conclude that no affidavit, dated on or about May 14, 1993, "clarifying that no supplementary assessment appeal had been filed" could be located.

In his request, the appellant identified the sender of the affidavit, the recipient (one of two individuals), the presiding member at the ARB hearing at which the affidavit was ostensibly presented, as well as the individual who he maintains recorded the affidavit. The appellant was present at the hearing.

The request also made reference to another document, so as to distinguish it from the requested affidavit. The Ministry acknowledged that it did locate this document in its files in the Toronto office. (It was not disclosed to the appellant as it did not form part of his request.)

Where the appellant provides sufficient detail about a record which he is seeking and the Ministry indicates that such a record does not exist, it is my responsibility to ensure that the Ministry has made a reasonable search to identify any records that are responsive to the request. The Act does not require the Ministry to prove with absolute certainty that the requested record does 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.

It is possible that the Ministry of Finance will locate the affidavit in response to the appellant's request. However, based on the information provided by the Ministry and the appellant, I cannot conclude that the Ministry has conducted a reasonable search to locate the affidavit.

As I have indicated, the appellant's request was very specific in identifying those individuals (ARB and Ministry employees) who would appear to have some knowledge of the circumstances surrounding the alleged presentation, receipt and recording of the affidavit at the May 18, 1993 ARB hearing. There is no indication in either of the affidavits submitted by the Ministry that either the Regional Registrar or the Co-ordinator, or indeed any other individual involved in processing the appellant's request, contacted or attempted to contact any of the individuals identified in the appellant's request, individuals who, in my view, could have assisted the Ministry in conducting its search.

Accordingly, I will order the Ministry to conduct a further search to locate the affidavit. The terms and conditions of the search are set out below.

**ORDER:**

1. I order the Ministry to conduct a further search to locate the affidavit requested by the appellant and to advise the appellant of the results of the search within twenty (20) days of the date of this order.
2. In particular, I order that the Ministry, when conducting this further search, contact the five individuals named in the request, to ascertain if they have any knowledge of the circumstances under which the affidavit was alleged to have been received and thus where it might be located. Should any of these individuals provide any information as to the possible location of the affidavit, I order the Ministry to conduct a search in these locations. I further order the Ministry to include the information provided to it by these five named individuals in the correspondence referred to in Provision 1.
3. If, as a result of this further search, the Ministry locates the affidavit, I order the Ministry to provide a decision letter regarding access to the affidavit to the appellant in accordance with sections 26 and 29 of the Act, considering the date of this order as the date of the request and without recourse to a time extension.
4. In order to verify compliance with this order, I order the Ministry to provide me with a copy of the letter referred to in Provision 1 and a copy of the decision referred to in Provision 3 (if applicable) within thirty-five (35) days of the date of this order. These copies 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: \_\_\_\_\_  
Anita Fineberg  
Inquiry Officer

\_\_\_\_\_ December 4, 1995