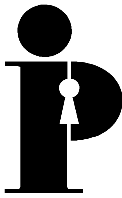

Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER P-1047

Appeal P-9500438

Ministry of Finance

80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Téléc: 416-325-9195
TTY: 416-325-7539
http://www.ipc.on.ca

NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The Ministry of Finance (the Ministry) received a request for several categories of information related to the assessments of a number of international border crossings. As the exact wording of the request is germane to the issues raised in this appeal, I will quote the request verbatim:

> 1. If any of the bridges or tunnels or other crossings are valued based on depreciated replacement cost, we request the Ministry's estimates on which these costs are based, for example, the estimates for the cost of steel (etc.).
>
> 2. If the properties are valued on the basis of capitalized net income, while we do not require the actual expense or income information we would like access to:
>
>   (a) the method employed by the Ministry;
>
>   (b) assumptions made by the Ministry or its consultants about stabilized net income and expenses;
>
>   (c) the capitalization rate employed by the Ministry;
>
>   (d) any studies obtained or relied on by the Ministry to derive the capitalization rates; and
>
>   (e) identification of similar real properties identified or relied on by the Ministry in returning or assessing the properties.

The Ministry responded by advising the requester that no records existed in response to parts 1, 2(a), (b) and (d) of the request. In response to part 2(c) of the request, the Ministry indicated that the capitalization rates used by the Ministry in calculating the 1994 assessments for 1995 varied from 8.5% to 16.6%. The Ministry's response to part 2(e) of the request was that this property type, i.e. international border crossings, was not valued utilizing comparable properties.

The requester appealed the Ministry's decision that no records responsive to parts 2(a), (b) and (d) exist. In addition, he was not satisfied with the Ministry's response to part 2(c) because, among other things, the rates provided by the Ministry were not limited to bridges or other crossings. The requester also objected to the Ministry's response to part 2(e) as he maintains that "[t]he assessments of all properties are established in such a way that they are equitable in comparison with similar real properties in the vicinity." On this basis, the requester takes the position that similar real properties must exist. The requester also indicated in his letter of appeal that he was satisfied with the Ministry's response to part 1 of the request.

During mediation, the appellant provided the Ministry with an affidavit outlining in detail the records sought. The affidavit was sworn by one of the appellant's partners (the partner), who has many years of municipal tax experience. The affidavit states that the partner is "... familiar with the methodology employed by the

Ministry of Finance in valuing international border crossings ...” and is also “... aware of the types of records created by the Ministry of Finance in connection with these properties.”

In response to the affidavit, the Ministry maintained that its initial decision was correct and that no responsive records exist. The Ministry stated that Regional Assessment Offices value international crossings on an ad hoc basis without regard to a standardized methodology. The Ministry did, however, advise the appellant that the Property Assessment Program was in the process of developing a standard methodology to be used throughout the province to value international bridges. The Ministry went on to explain that the methodology was expected to be approved by the end of September, 1995, and would be incorporated into a manual, available for public viewing in the Ministry’s library.

The partner then asked the Ministry to provide him with whatever methodology assessors have used to value international crossings, with the actual income and expense data removed in order to comply with section 53(1) of the Assessment Act. The Ministry responded that neither the appellant nor the partner were entitled to this information as their client did not hold a pecuniary or proprietary interest in these properties. In response to another query made by the partner, the Ministry stated that section 53(3) applied to the individual Assessment Offices, rather than to requests made under the Act. (I will discuss these sections of the Assessment Act in detail in my consideration of the appellant’s request for capitalization rates.)

The appellant was not satisfied with the Ministry’s response and maintained his position that records responsive to his request should exist.

A Notice of Inquiry was sent to the Ministry and the appellant. Representations were received from both parties. In his submissions, the appellant confirmed that he was satisfied that no records exist in response to part 1 of his request but that all the other matters remained outstanding.

As part of its representations, the Ministry provided an affidavit prepared by an Appraisal, Research and Development analyst with the Appraisal Services Branch in the Assessment Division of the Ministry (the analyst). The analyst indicated that he had been working on “... the creation of current procedures to assist the assessor in assessing international crossings including bridges and tunnels.” (These are the procedures which the Ministry had previously advised the partner would be available in September, 1995.) In its submissions, the Ministry advised this office that a copy of the analyst’s affidavit could be provided to the appellant.

The affidavit was forwarded to the appellant who responded that, while it clarified the issues in the appeal, “... [it provides] evidence that records exist which fall squarely within the request for documents [we] made.” The Ministry has recently advised this office that the analyst has submitted a final draft of the procedures for approval, at which time they will be included in the Ministry’s Assessment Policy and Procedure binder and be available for public viewing in the Ministry’s reading room.

Based on the information contained in the appellant’s request, the affidavits exchanged between the parties, and their representations, I am of the view that the issue to be determined in this order is whether records exist which contain the following five categories of information:

(1) The method applied by the Ministry in assessing international crossings.
(2) The assumptions made by the Ministry with respect to stabilized net income and expenses.
(3) The capitalization rates employed by the Ministry in valuing all international crossings.
(4) Sales studies obtained or relied on by the Ministry.
(5) Identification of similar real properties relied on by the Ministry in assessing the properties.

EXISTENCE OF RECORDS

In the general case, where an institution claims that no records exist which are responsive to a request, the issue to be determined is the adequacy of the institution's search for the records. In this appeal, the issue is somewhat different, given the nature of the information requested and the Ministry's response to the request. I will consider each category of information separately.

Category 1 - The Method Applied by the Ministry in Assessing International Crossings

In its submissions, the Ministry denies that any policy or procedure "has existed on this matter when such assessments were made." The affidavit of the analyst states that he has not undertaken a search for any Ministry policies and procedures which would indicate the Ministry's assessment method as he is familiar with the Assessment Division's Policy and Procedure manual and knows that it contains no information which responds to this part of the request. In addition, the analyst states that if such a document existed outside the manual, it would have been provided to him as he has been in the process of developing new procedures in this area. He states that other than the procedures he is currently developing, he believes that "... no document exists setting out the procedures for assessing international bridges and tunnels ..."

The appellant who, as I have indicated, has reviewed the analyst's affidavit, does not question the fact that a search for these records was not conducted. Rather, his position on the existence of the method employed by the Ministry to assess bridges, may be summarized as follows:

(1) There are three ways of valuating properties - depreciated replacement cost, comparative sales and capitalized net income.
(2) The analyst's affidavit confirms that the depreciated replacement cost approach has not been used in these valuations.
(3) It is inconceivable that a comparative sales analysis would be employed to value properties of this nature.
(4) Therefore, the capitalized net income methodology must have been used to value at least some of the border crossings. If this method was not used, the logical inference is that crossings were valued without regard to any known or recognized valuation methodology. Thus, records must exist.

Furthermore, it is the appellant's position that the analyst's affidavit itself, in paragraphs 7 and 8, confirms the existence of such records. These paragraphs read as follows:

> Some assessment offices have assessed bridge structures, other than spans, using the 1969 Ontario Assessment cost manual methodology and updated that specific information to the valuation base year using modifiers. Depreciation was applied to individual buildings in accordance with the assessment policies that were in place for that reassessment.
>
> Other bridge spans have been assessed on an income approach to values, which is in the opinion of Appraisal Services, the preferred method for this property type. The assessor considers the toll revenue from the bridge as well as the income derived from other tenant sources, then deducts from that an amount for expenses and then capitalizes the Net Operating Income using factors.

In addition, as part of his representations, the appellant has provided a copy of a newspaper article in which there is a reference to a named bridge which was reassessed in 1986. This reassessment would have been conducted by the Ministry (then the Ministry of Revenue) which is responsible for such assessments. The appellant has provided this article as he is of the view that it supports his contention that records must exist that describe the methodology used by the Ministry to assess bridges, such as the one described in the article.

Based on a consideration of the information provided by both parties, I find that records dealing with the methodology employed by the Ministry in assessing international border crossings (part 2(a) of the request) exist. I accept the affidavit evidence of the analyst that such assessments occur infrequently as these structures are frequently exempt from taxation. However, the analyst himself admits to circumstances in which such assessments have been carried out and, in paragraphs 7 and 8 provides some explanation of the method used. He also states, in paragraph 5 that:

> With no Ministry wide policy or procedure in place for these special structures, each regional assessment office has assessed them using general appraisal theory.

Accordingly, I find that any recorded general assessment methods which have been used or applied in the past to assess international crossings are responsive to this portion of the request, even if they are not specifically referable to international crossings. In addition, while I have not viewed the procedures currently being prepared by the analyst, it is my opinion, based on the description contained in the affidavit, that they are also responsive to this portion of the request and should have been identified as such by the Ministry earlier in the appeals process. (The analyst states that he has been working on these "over the past year.") The Ministry will therefore be ordered to issue an access decision on these categories of records.

Category 2 - The Assumptions Made by the Ministry with respect to Stabilized Net Income and Expenses

The second category of information requested by the appellant is the "assumptions made by the Ministry or its consultants about stabilized net income and expenses." The Ministry's decision states that there are no records identifying these.

The Ministry states that these assumptions are not written down by the assessor, nor are they recorded on the appraisal card prepared for the assessment. Rather, it is the position of the Ministry that the assumptions are unique to each crossing, and that these are the proprietary information of the crossing owner because they include such information as the traffic flow (used to derive expected income) and whether the expenses provided by the owner are accurate. (I will return to the Ministry's argument on proprietary information in my discussion of the capitalization rates which follows.)

The Ministry further indicates that income and expenses are then estimated over a three year period and the assessor makes an independent judgment as to their validity.

The appellant states that, in valuing income-producing properties, the Ministry assessors customarily make standard allowances for certain expense items. The appellant provides the example of Ministry assessors customarily allowing a 3.5% deduction from income for management expenses in valuing hotel properties. He further states that:

> If any assessors have made similar, standard assumptions in valuing any international crossings, and we think they must have done so, then we ask for those calculations.

In my view, it is apparent from the Ministry's submissions that such standard assumptions and/or allowances are, in the words of the Ministry, "**peculiar** to each crossing" such that I am satisfied that no such standard assumptions as requested by the appellant exist.

Category 3 - The Capitalization Rates Employed by the Ministry in Valuing All International Crossings

In its submissions, the Ministry has clarified that the range of capitalization rates that it previously provided to the appellant, 8.5% to 16.6%, has been applied to **all international crossings bridges**.

In his submissions, the appellant has clarified this element of the request by reference to paragraph 9 of the analyst's affidavit which states:

> The capitalization factor to be applied to a bridge would normally be based on an analysis of bridge sales if such data were in our possession. The only bridge ever sold was the Ambassador Bridge in about 1979, and despite a number of requests, the new American owners have not provided the price on it so that a correct capitalization rate could be developed. In the absence of sales, however, the assessor must choose a rate that he believes best interprets how a potential investor would view the current income stream in relation to the future net benefits of ownership. The final two fold capitalization rate contains a rate for returns and a rate for the tax component. This is done, because of the necessity of removing the current realty taxes as direct operating expenses in the assessment appraisal process. There are no written procedures or directives indicating what rates are to be used in the province.

The appellant indicates that he seeks access to the first part of the overall capitalization rate, that is, the rate for returns.

The Ministry states that, as is the case with assumptions about income and expenses, these capitalization rates for international crossings are unlike those for other types of properties because they are not applied to an entire class of properties. This is so presumably because, as the analyst
notes, there are no sales data to derive such a figure. Rather, each capitalization rate is unique to its bridge or tunnel as " it depends on current and projected net incomes which vary." The Ministry states that, only when applied to an entire class of properties, are the capitalization rates disclosed.

Thus, it appears to be the position of the Ministry that, in fact, capitalization rates **do exist** for those international crossings which have been previously assessed, but that there is no standardized rate which the Ministry is prepared to disclose. The Ministry confirms that the individual capitalization rates are recorded on the appraisal cards for each international crossing.

Although the Ministry did not issue a written decision to the appellant on the issue of access to the capitalization rates which do exist, it is apparent that this matter was discussed by the Ministry and the partner, and the information relayed to the appellant. In order to resolve all the outstanding issues in this appeal, I will therefore consider the Ministry's position on these capitalization rates in this order.

Because of the manner in which these capitalization rates are calculated, which I will describe later, the Ministry submits that, by virtue of the combined application of section 53(1) of the Assessment Act and sections 67(1) and (2) of the Act, it is precluded from providing the appellant with this information.

Section 67(1) of the Act specifies that the Act prevails over the confidentiality provision found in any other statute unless section 67(2) of the Act or the other legislation specifically provides otherwise. Section 67(2), in turn, stipulates that section 53(1) of the Assessment Act is a confidentiality provision which prevails over the Act.

In Order 9, former Commissioner Sidney B. Linden considered the manner in which the predecessor provision to section 67(1) should be interpreted. He explained his approach as follows:

> ... where, as in this case, an institution purports to remove itself from the ambit of the Act, through the use of a "confidentiality provision" in another act, it is my responsibility to scrutinize the provision of that other act to ensure that both the subject matter and the person who would be releasing the requested information under that act (i.e. the head of the institution) are covered by the "confidentiality provision" relied on.
> ...
>
> While the head of an institution must determine at first instance whether a particular statutory provision is a "confidentiality provision" precluding access to the requester, I, too must be assured of the relevance and application of the provision upon receipt of the appeal. I regard this duty as fundamental to the effective operation of the Freedom of

> Information and Protection of Privacy Act, 1987, and the principles of providing a right of access to information and protecting the privacy of individuals.

I agree with this interpretation and adopt it for the purposes of this appeal. On this basis, the first step in my analysis will be to determine whether section 53(1) of the Assessment Act applies to the capitalization rates.

Section 53(1) states as follows:

> 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 both.

This confidentiality provision, in turn, makes reference to two other provisions contained in the Assessment Act - sections 10 and 11. In its submissions, the Ministry refers to sections 10(1), 10(2) and 11(1). The relevant passages from section 10(1) state that:

> As assessor ... shall ... be given free access to all land and to all parts of every building, structure, machinery and fixture erected or placed upon, in, over, under or affixed to the land, for the purpose of making a proper assessment ... or ... business assessment in respect thereof.

Section 10(2) then goes on to state that:

> Every adult person present on land when any person referred to in subsection (1) visits the land in the performance of his or her duties shall upon request give to the person all the information in his or her knowledge that will assist such person to make a proper assessment of the land and every building, structure, machinery and fixture erected or placed upon, in, over, under or affixed to the land, to make a proper business assessment thereof ...

Section 11(1) then provides that:

> 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

> may be assessed in respect of the land, a questionnaire or questionnaires in writing demanding information as prescribed by the regulations.

In Order 23, Commissioner Linden considered the interaction of what are now sections 10, 11 and 53(1) of the Assessment Act along with the categories of information to which these provisions apply. He approached this subject in the following manner:

> The language of subsection 57(1) [now 53(1)] of the Assessment Act is clear; it stipulates what sort of information is to be protected from disclosure; identifies the class of persons who provide the information and those who receive it and are entrusted to preserve confidentiality; provides for the conditions of lawful disclosure to third parties; and outlines the penalties for unauthorized disclosure.
>
> In my view, subsection 57(1) does not make all information collected under sections 9 and 10 [now 10 and 11] of the Assessment Act confidential in all circumstances. These two sections, and relevant regulations (69 and 73), provide government assessors with a right of access to property for the purpose of conducting assessments, and require owners to provide these assessors with all necessary information required to make a proper determination of assessed value in accordance with the Assessment Act. Some, but not all, of the information provided to assessors under sections 9 and 10 is barred from disclosure by subsection 57(1).

In Order P-680, I established that section 53(1) must be analysed according to its four constituent elements, each of which must be satisfied in order for this provision to apply. This approach was also adopted in Order P-911 and I will similarly apply it to the present appeal.

Constituent Element 1

The confidentiality provision found in section 53(1) of the Assessment Act does not extend to information which must be placed on the assessment roll. Thus, for the Ministry to rely on this section, it must show that:

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

Section 14(1) of the Assessment Act lists the 20 items which, if applicable to a property or the occupant thereof, must be placed on the assessment roll. The capitalization rate is not included in this list.

Constituent Element 2

For the Ministry to rely on section 53(1) of the Assessment Act, it must also establish that:

> The information has been acquired by or furnished to an assessor in the course of his duties pursuant to section 10 or 11 of the Assessment Act.

Typically, an assessor will acquire information about a property during a physical visit to the location as contemplated under section 10(1) of the Assessment Act.

Section 53(1) of the Assessment Act also applies to information furnished to an assessor. The Shorter Oxford English Dictionary (3rd. edition) defines the term “furnished” to mean “to supply with what is necessary.” Applying this definition to the assessment context, a property owner or tenant will have furnished information where he or she has taken some positive action to supply these materials to an assessor.

Under section 10(2) of the Assessment Act, an owner or occupant of a property is obliged to provide the assessor with "... all the information in his knowledge that will assist such person to make a proper assessment of the land and of every building ..."

The ambit of information to be supplied in this fashion can be quite extensive. For example, Form 1 of R.R.O. 1990, Reg. 48 made under the Assessment Act specifies that, for income-producing properties, the owner or occupant must provide the assessor with such items as (1) actual operating expenses, (2) the actual gross income received from the property during the year (broken down by different categories) and (3) the estimated loss in income due to vacancy.

In addition to information acquired by the assessor and information furnished to the assessor, there is another category of information which may be considered by an assessor in valuating a particular property. This category of information was described by former Assistant Commissioner Irwin Glasberg in Order P-931 as follows:

> ... information where the assessor has taken the data acquired or furnished from various sources and, through the application of various approaches and formulae, arrived at a valuation for the properties in question. That ... category would include (1) the assessor's working notes, (2) the numerical calculations and drawings prepared by the assessor, (3) analytical concepts such as fair market rent and (4) such technical items as the normalized revenue and expense inputs.

The Ministry submits that the capitalization factor fits within this category of information. It states that the capitalization factor is a factor composed of elements which take into account the value of the investment in terms of the expected income and the value of the land and the condition of the bridge and input on whether the more or less traffic will cross the bridge paying tolls which will increase revenue. Thus:

> As such it includes all kinds of information which has been collected from a visit to the property under section 10(1) and it includes information about income derived from further questions or a questionnaire under s. 10(2) or s. 11.

Thus, the Ministry submits that accurate inferences could be drawn about the relative income of one bridge as compared to another if the capitalization factor is known.

The question for me to resolve is whether the capitalization rates have either been acquired by or furnished to an assessor pursuant to section 53(1) of the Assessment Act. This issue is analogous to the decision which former Assistant Commissioner Glasberg was called upon to resolve in Order P-931 with regard to the intermediary work products of an assessor. He analysed that situation as follows:

> The fact situation in these appeals is not dissimilar from the issues canvassed in a series of orders issued by the Commissioner's office regarding section 17(1) of the Act (the third party information exemption). The question raised in these decisions was whether the release of a record would reveal information supplied to a government organization by a third party. These orders have held that such information would be revealed where its disclosure would permit the drawing of accurate inferences about the information actually supplied to the institution (Orders P-218, P-228 and P-241).
>
> I consider this interpretative approach (which is basically that a requester should not be able to obtain indirectly what he or she cannot secure directly) to be analytically sound. I also believe that it can be usefully extended to evaluate the contents of records for which the section 53(1) confidentiality provision has been claimed.
>
> In the present context, I believe that a record can be said to contain information acquired by or furnished to an assessor where the release of that document would either (1) reveal the information actually obtained by or supplied to the assessor or (2) permit the drawingof accurate inferences about the information which was actually obtained or supplied in this fashion.

I agree with this approach and adopt it for the purposes of this appeal. Thus, I must determine whether the disclosure of the capitalization rates would disclose either directly or indirectly the information which would otherwise be subject to protection under section 53(1) of the Assessment Act.

Based on the submissions of the Ministry, I find that the release of the capitalization rates would either (1) reveal the information actually acquired by or furnished to the assessor or (2) permit the drawing of accurate inferences about the information which was actually acquired or furnished in this fashion, in particular the revenues produced.

Constituent Element 3

In order to rely on the section 53(1) confidentiality provision, the Ministry must also demonstrate that:

> The information relates 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 submits that, as the capitalization rate turns an income figure into a capital value figure, it relates to the determination of the value of the real property. I accept this submission and, on this basis, the Ministry has satisfied me that the third constituent element of the test applies to this information.

Constituent Element 4

The final element which the Ministry must establish in order to rely on section 53(1) pertains to the recipient of the assessment information. Specifically, the Ministry must show that:

> 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.

In the context of section 53(1), I am satisfied that the appellant is not a person who is entitled to receive this information as part of his duties. On this basis, the Ministry has met the fourth and final aspect of the test.

To summarize, I find that the specific capitalization rates that do exist are subject to the section 53(1) confidentiality provision.

Discretion to Release Assessment Related Information

In his conversation with the Co-ordinator, the partner took the position that, despite the application of the section 53(1) confidentiality provision, this information could be disclosed under section 53(3) of the Assessment Act which states:

> Despite [section 53(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.

The Ministry takes the position that because disclosure of the capitalization rates would reveal income and expense information about the international crossings, it is prohibited from disclosing such information, even during discovery proceedings in the assessment hearings. Given my finding above that disclosure of these rates would permit the **drawing of accurate inferences** about the actual income and expense information, I am of the view that section 53(3) might not apply to the capitalization rates.

In any event, I prefer to follow the conclusion reached by former Assistant Commissioner Glasberg in Order P-931 on whether the Commissioner's office has jurisdiction to order disclosure under this section. He concluded:

> It is important to note that, in these sorts of appeals, the obligation of the Commissioner's office to interpret section 53(1) of the Assessment Act arises only because this confidentiality provision is referred to specifically in the Act. On this basis, the Commissioner's office is required to scrutinize this section to ensure that it actually applies to the information for which it has been claimed.
>
> The disclosure provision outlined in section 53(3) of the Assessment Act, however, is not mentioned in the Act. In addition, it is clear from the wording of this provision that the discretion contemplated under this section is to be exercised exclusively by an assessor.

> For these reasons, I find that the Commissioner's office does not have the authority to override the application of section 53(1), where this provision has been validly claimed, by ordering disclosure of the relevant information under section 53(3).

The result of this analysis is that the capitalization rates satisfy the four constituent elements of the test for the application of section 53(1) of the Assessment Act. This information is therefore not accessible under the Act.

Category 4 - Sales Studies Obtained or Relied On by the Ministry

As I have previously stated, the Ministry submits that as bridges do not normally sell and that since it has not been provided with the sale price of the Ambassador Bridge, it has no sales information.

However, the appellant's request was for assessment information related to international border crossings, which, in my view, includes tunnels. If there are any sales studies on tunnels or other crossings, the Ministry should provide this information to the appellant.

Category 5 - Identification of Similar Real Properties Relied on by the Ministry in Assessing the Properties

It is the position of the Ministry that no such information exists as, according to its decision letter, "this property type is not valued using comparable properties."

The appellant submits that, pursuant to section 53(3) of the Assessment Act, part of the assessment process necessarily involves placing the property into one of the Classes described by regulation made under this section. I also note that under section 60(1) of the Assessment Act, when a property assessment is appealed, the appeal body (which could be the Assessment Review Board, the Ontario Municipal Board or any court) must have reference to "similar real property in the vicinity" when determining whether the assessment being appealed is equitable. However, the Ministry correctly states that "comparables" are used in assessment **appeals** and that the Ministry is not obliged to create its list of comparables in response to a request made under the Act (Order P-906). The Ministry has advised that such a list has not been created with respect to the hearing of the assessment appeal involving the property of the appellant's client.

The Ministry has unequivocally stated that when valuing international border crossings for assessment purposes, it does not have reference to similar real properties. Thus, despite the submissions of the appellant, I conclude that such records do not exist.

ORDER:

1. I uphold the decision of the Ministry with respect to the following categories of information:

    (a) Ministry assumptions about stabilized net income and expenses;
    (b) the capitalization rate; and

(c) identification of similar real properties relied on by the Ministry in assessing international border crossings.

2. I order the Ministry to provide to the appellant a decision letter on access to the following records:

   (a) the procedures prepared by the analyst for use by assessors in assessing international crossings as described in the analyst's affidavit attached to the Ministry's representations in this appeal; and
   (b) the materials referred to in paragraph 5 of the analyst's affidavit;

   within fifteen (15) days of the date of this order, in accordance with sections 26 and 29 of the Act and without recourse to a time extension. In addition, as the existence of this information was identified late in the appeals process, I order the Ministry to issue this decision without recourse to the discretionary exemption referred to in section 22(a) of the Act.

3. I order the Ministry to conduct a further search for records on sales studies on other international crossings and to notify the appellant of the results of that search within fifteen (15) days of the date of this order.

4. If, as a result of this further search, the Ministry identifies any responsive records, I order the Ministry to provide the appellant with a decision letter regarding access to these records in accordance with the same terms and conditions as described in Provision 2.

5. In order to verify compliance with this order, I order the Ministry to provide me with a copy of the decision letter referred to in Provision 2 and the correspondence referred to in Provision 3 and, if applicable, the decision letter referred to in Provision 4, within thirty (30) days of the date of this order. The copies of these documents 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: November 10, 1995
Anita Fineberg
Inquiry Officer