



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

ORDER P-1275

Appeal P-9600208

Ministry of Finance



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BACKGROUND:

In the year of a municipal election, the Ministry of Finance (the Ministry) sends out 5.1 million Municipal Enumeration Forms (MEF) for the purpose of enumerating the inhabitants of the municipalities and localities in each assessment region. The information collected on the MEF is used to prepare voters' lists for the municipal and school board elections, direct school taxes, identify English-language and French-language electors for school boards, prepare lists of potential jurors, prepare the Ontario Population reports, help with municipal and school board planning and update assessment records.

In Ontario, the school support portion of municipal taxes is used to fund the public school boards unless a property owner or ratepayer qualifies for, applies for and is granted an exemption from public school support. Ratepayers who are Roman Catholic and who apply for an exemption can exercise their right to direct their school taxes to a Catholic school board. Ratepayers who have French-language rights (as defined by statute) and who apply for an exemption may exercise their right to direct their school taxes to a French-language school board.

One way a ratepayer may be exempted from public school support is through the MEF. If a ratepayer qualifies as a Roman Catholic or as a person with French-language rights, he or she may choose to complete the appropriate boxes on the MEF and direct school support. When that is done, the Ministry exempts him or her from public school support on the assessment roll for the following year. Once a ratepayer has been exempted from public school support by the Ministry as a result of use of the MEF, that exemption remains operative until it is cancelled or withdrawn by the ratepayer.

In order to change the direction of school support, a ratepayer must complete an Application for Direction of School Support which, when completed, contains all of the information collected on the MEF. If the Assessment Commissioner approves the application, he or she must deliver a copy of the approved application to the secretary of each school board in the municipality or locality in which the applicant is entitled to direct taxes for school support.

The Ministry enters the information collected on the MEF on the computer and uses it to create a database from which various forms are created for various purposes. The Assessment Act requires the Ministry's Assessment Commissioner to prepare a list showing the school support of every inhabitant who is entitled to direct taxes for school support purposes for each municipality or locality in the assessment region and deliver it to the secretary of each school board in the municipality on a yearly basis. The School Support List is generated from the database and assists the school boards in apportioning school support among the following boards: Public, Separate, French-Public, and French-Catholic. The Ministry also provides school boards with tax tapes created from the database, which contain the enumeration information. Most recently, the Ministry has created a CD-ROM which contains all the enumeration information collected on the MEF as well as information about property derived from assessments. The Ministry destroys the MEFs after one year.

Under the Assessment Act, a school board can complain to the Assessment Review Board that an individual was wrongly placed or omitted from the assessment roll in respect of school support. The filing fee for each complaint is \$20. After hearing the evidence and the submissions of the

parties, the Assessment Review Board determines the matter and the clerk of a municipality alters the assessment roll as required.

The Ottawa Public School Board (the Board) complained to the Assessment Review Board about the Ministry's preparation of the assessment roll in respect of school support matters. During the Assessment Review Board's process, the Board was entitled to the disclosure of the information upon which the Ministry relied to change a ratepayer's school support from public to one of the exceptions, and requested disclosure of the MEFs which had been relied upon. The Board indicates and the Ministry confirms that the Ministry disclosed a severed version of the MEFs to the Board during those proceedings. The Ministry refused to disclose the name, sex, date of birth and citizenship of the ratepayers. The Board has applied for judicial review of the Assessment Review Board's determination of the matter to the Ontario Court (General Division) (the Divisional Court). The Divisional Court will be ruling on the disclosure of the MEFs to the Board in the judicial review proceedings.

NATURE OF THE APPEAL:

The Board made a request under the Freedom of Information and Protection of Privacy Act (the Act) to the Ministry. The request was for access to all documents, including Municipal Enumeration Forms (MEFs), which formed part of the record applicable to school support matters which are under complaint to the Assessment Review Board. The Ministry identified 58 MEFs as the records responsive to the request and denied access to these forms pursuant to the following section of the Act:

- invasion of privacy - section 21

The Board appealed the Ministry's decision.

During mediation of this appeal, the scope of this appeal was limited to one MEF. In addition, the Board raised the issue of a public interest in the disclosure of the record under appeal. Therefore, the application of section 23 of the Act is also at issue in this appeal.

A Notice of Inquiry was sent to the Ministry, the Board and the individual whose form was randomly chosen to be at issue in this appeal (the affected party). Representations were received from the Ministry and the Board. In its representations, the Ministry withdrew its reliance on section 21 of the Act. The Ministry continues to refuse to disclose the MEF to the Board.

DISCUSSION:

In its representations, the Ministry indicated that the original MEF had been destroyed pursuant to its retention schedule, and the only copy remaining in existence was the severed version. The Ministry indicated that it had prepared and retained the severed versions specifically for the purpose of disclosing them if required during Assessment Review Board proceedings, as the severed information was personal information which was not relevant to the issues before the Assessment Review Board. Thus, the disclosure sought under the Act has been accomplished by other means. However, the Board has refused to withdraw this appeal.

In Order M-271, Assistant Commissioner Irwin Glasberg dealt with a situation in which the requester had obtained a copy of the record from someone other than the institution. In that case, he proceeded with the appeal because one of the issues was the appellant's desire to request a correction of personal information under section 36 of the Municipal Freedom of Information and Protection of Privacy Act (the equivalent of section 47 of the Act). He indicated that, in this situation, the institution in question would have to acknowledge that it had custody of the record for which the correction was to be requested. Also, the parties in that case had been involved in an ongoing series of requests and the Assistant Commissioner was of the view that his order might reduce the need for future appeals.

However, he also made the following comments of a more general nature about situations where an appellant already has the record at issue:

In the ordinary course of events, I would be extremely reluctant to apply the resources of the Commissioner's office to decide an appeal where the appellant is already in possession of the records at issue through legitimate means. In my view, such an exercise would serve no useful purpose. In addition, appeals of this nature consume the scarce resources of institutions and impede the ability of the Commissioner's office to deal with the files of other appellants.

I agree with these views and adopt them for the purposes of this appeal. In my view, some appeals may present circumstances (such as those referred to in Order M-271) which would justify proceeding even where an appellant has obtained a copy of the record at issue. However, in the absence of factors such as those present in Order M-271, the fact that an appellant has, by legitimate means, obtained a copy of the record at issue would render the appeal moot as regards that record, because any determination regarding access would have no practical effect.

In this case, I find that there are no factors such as those present in Order M-271 to warrant continuation of this appeal. I find that this appeal is moot and no useful purpose would be served by proceeding.

ORDER:

The appellant's appeal is denied.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

October 11, 1996 _____