



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

ORDER P-1386

Appeals P_9600456 and P_9600457

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/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEALS:

The appellant has had an ongoing dispute with the Ministry of Finance (the Ministry) concerning the assessment of his property for municipal realty tax purposes. The appellant believes that errors have been made in his assessment because of an over measurement and that, as a consequence, he has paid too much in property taxes.

In connection with this dispute, the appellant has submitted two requests for access to records under the Freedom of Information and Protection of Privacy Act (the Act). Because the parties are the same and the basis for the requests are the same, I have decided to address the issues raised concerning these two requests in this order. For ease of reference I will refer to each request by the Appeal Number assigned to it.

Appeal Number P-9600456

In correspondence dated November 5, 1996, the appellant asked the Ministry for records including "... a copy of the Notice of Valuation (or any other shred of evidence) proving that I had been officially notified of the original house assessment of 7390". The Ministry replied that the record did not exist.

In appealing this decision, the appellant explained that an investigation report by the Ontario Ombudsman dated December 7, 1995 indicates that the original house assessment was \$7390. The appellant maintained that the Ministry was required to send him a Notice of Valuation of this original assessment. The appellant contended that a Notice of Valuation, or any other documents showing that he was notified of this original assessment, ought to exist.

Appeal Number P-9600457

On April 6, 1996, the appellant submitted a seven-part request to the Ministry for a number of records, including records confirming that the finished basement was measured by a named assessor (for reference the Ministry later referred to this as Part 1).

On December 10, 1996, the Ministry issued a decision letter stating that the appellant was previously provided with 20 pages of records on May 29, 1996 in response to a prior request. The Ministry explained that those records contain measurements of the property, and that it had no additional records in response to the request.

In appealing this decision, the appellant advised that the records previously provided do not contain measurements of the basement taken by the named assessor (the Assessor). He stated that the only measurements in the records referred to by the Ministry are those taken in 1980 by a different assessor, as well as those taken on December 6, 1993 by an Acting Valuation Manager (the Manager) and another assessor. The appellant contends that the Manager drafted a memo, dated May 20, 1993, in which he explicitly states that the Assessor measured the basement during his March 1, 1991 inspection. Therefore, he believes that there ought to be records of these particular basement measurements.

A Notice of Inquiry was provided to the Ministry and the appellant. Both parties submitted representations in response to this Notice. The sole issue to be determined in this appeal is whether the Ministry's search for records responsive to the two above-noted requests was reasonable.

DISCUSSION:

REASONABLE SEARCH

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 submitted extensive representations, however, for the most part they detail the history of his dispute with the Ministry.

The Ministry's representations consist of affidavits sworn by a property assessor from the head office in Oshawa (the property assessor) and the Manager (from the Regional Assessment Office in Barrie). These two individuals were responsible for assembling the records responsive to the appellant's requests.

Appeal Number P-9600456

The property assessor indicates that he has responded to a previous request by the appellant, and has attached, as exhibit "A" to his affidavit, a copy of his affidavit, sworn on May 6, 1996 in relation to this previous access request. In the previous request, the appellant had requested all records related to his assessment roll number for several properties for the years 1978 - 1995. In this affidavit, the property assessor details the steps taken during his search for records in response to this previous request. He states that he located some of the records in the Regional Assessment office for the region which deals with the appellant and his property. In contacting this office, the property assessor affirmed that he contacted the Assessor and the Manager in that office. The property assessor also obtained documents from the Assessment Division's head office personnel. In addition, he received documentation from other Ministry personnel including the Associate Deputy Minister and Ministry counsel.

With respect to the specific record referred to in the current request, the property assessor states, in his March 20 affidavit, that "[n]o searches were made for the Notice of Valuation, and nobody was contacted in order to find it, as I know that we don't keep a copy of these". In this regard, the property assessor explains that when the province is obliged to send a "Notice of Valuation", it does not need to keep a copy, as a database is maintained with the requisite information.

As I indicated above, in this current request, the appellant asked for "... a copy of the Notice of Valuation (**or any other shred of evidence**) proving that I had been officially notified of the original house assessment of 7390" [emphasis added]. I am satisfied, based on the searches conducted in response to the appellant's previous request, combined with the property assessor's explanation for the non-existence of such a document, that the Ministry's search for the "Notice of Valuation" was reasonable in the circumstances.

However, the appellant's request was not restricted to this one document. In this regard, the information he was seeking was very clear. The Ministry's representations do not indicate that the "shred of evidence" might be found in records which were disclosed to the appellant pursuant to a previous access request. The property assessor suggests in his affidavit that the **information** that the appellant is looking for may be located in a computer database. He does not indicate what information is maintained on the database, or whether this information was considered to be responsive to the request. Nor does he indicate whether it has been previously provided to the appellant, or whether it is capable of being retrieved.

In my view, the Ministry's interpretation of the appellant's request in Appeal Number P-9600456 was too narrow, and thus its search for responsive records was incomplete. As a result, I find that the Ministry's search for records responsive to the appellant's request was not reasonable.

Appeal Number P-9600457

In his affidavit, the Manager indicates that he is a property assessor in the Barrie Regional Office. He indicates that he and the Assessor were asked to gather all of the documents on the assessment file relating to the appellant's property. The Manager states that this is the only file which contains documents pertaining to this property.

The Manager indicates that the Assessor was previously responsible for the file pertaining to the appellant's property, but that care and control of the file had been transferred to the Manager. The Manager confirms that he understands that the appellant's request was for a document containing measurements of the basement taken by the Assessor. The Manager affirms that there is no such document in the assessment file.

In explaining why the particular document that the appellant is seeking does not exist, the Manager states that the measurements on the back of the appraisal card outline the finished basement. He adds that anything the Assessor added to these measurements was added directly to the appraisal card, a copy of which has been provided to the appellant. He reiterates that no other record of the measurements exist.

Having reviewed the representations of the Ministry with respect to Appeal Number P-9600457, I am satisfied that it conducted a reasonable search in order to locate records responsive to this request.

ORDER:

1. I find the Ministry's search for "The Notice of Valuation" in Appeal Number P-9600456, and its search for records responsive to the request in Appeal Number P-9600457 to be reasonable, and this part of the appeal is dismissed.

2. I order the Ministry to conduct a further search for records responsive to the part of the request in Appeal Number P-9600456 which states: "... (or any other shred of evidence) proving that I had been officially notified of the original house assessment of 7390". In conducting this further search, the Ministry is directed to turn its attention to the database (which appears to contain information relating to valuation notification). I order the Ministry to advise the appellant in writing of the results of this search by **May 20, 1997**.
3. If, as a result of this further search, the Ministry locates additional records, I order the Ministry to provide a decision letter regarding access to the records 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 2 and a copy of the decision referred to in Provision 3 (if applicable) by **May 29, 1997**. 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: _____
Laurel Cropley
Inquiry Officer

_____ April 29, 1997