



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

# **ORDER PO-1738**

Appeal PA-990048-1

Assessment Review Board



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## **BACKGROUND:**

The appellant has a long-standing dispute with the Assessment Review Board (the Board) with respect to the realty tax assessment of his property dating back to 1981. At an assessment hearing before the Board on May 18, 1993, which was subsequently adjourned to December 17, 1993, the matter was settled, with the appellant's consent. In furtherance of his on-going complaints about the manner in which the assessment and the hearing were conducted however, the appellant has pursued a number of remedies, including a complaint to the Ombudsman of Ontario (the Ombudsman). A representative of the Ombudsman wrote to the Chair of the Board in early 1995, outlining the nature of the appellant's complaint, and seeking the Board's response to his allegations. By letter dated March 15, 1995, the Chair of the Board replied to the Ombudsman's office, describing the Board's version of the events of May 18 and December 17, 1993.

On November 12, 1998, the appellant submitted a request to the Board seeking the correction of a number of items contained in the Board's March 15, 1995 letter, pursuant to section 47(2) of the Freedom of Information and Protection of Privacy Act (the Act). The appellant was of the view that the letter contained a number of inaccuracies. On February 3, 1999, having received no response from the Board, the appellant appealed the matter to this office. The Ministry of the Attorney General (the Ministry) responded to the appellant on behalf of the Board on February 22, 1999, requesting that he provide further clarification of his correction request.

By letter dated April 21, 1999, the appellant described in some detail the information contained in the record which he wanted corrected and provided additional supporting documentation. The Board responded by advising the appellant that it was unable to confirm that the information which the appellant seeks to correct is, in fact, inaccurate. Accordingly, the Board was unwilling to make the requested corrections, but agreed to attach the appellant's April 21, 1999 letter to the record as a "statement of disagreement" in accordance with section 47(2)(b) of the Act. The appellant did not agree to this suggestion and indicated his wish to proceed with the appeal of the Board's decision not to make the requested corrections.

## **NATURE OF THE APPEAL:**

In his letter of April 21, 1999, the appellant described a total of 12 corrections which he wishes to have made to the subject record. This office provided a Notice of Inquiry to the appellant and to the Board, inviting representations on the following issues:

- (1) whether the record contains information which qualifies as the "personal information" of the appellant, within the meaning of section 2(1) of the Act;
- (2) whether there is an error or omission in the personal information which should be corrected pursuant to section 47(2)(a) of the Act; and
- (3) whether the correction should be by means of removal of the indicated information and/or the replacement of the information, as indicated by the appellant.

This office received representations in response to the Notice of Inquiry from the Ministry on behalf of the Board. The Board's submissions refer to the 12 enumerated items listed in the appellant's April 21, 1999 letter using the appellant's numbering system. For ease of reference, I will also refer to each of the correction request items using the appellant's numbering system.

## **DISCUSSION:**

### **DOES THE RECORD CONTAIN THE PERSONAL INFORMATION OF THE APPELLANT?**

"Personal information" is defined in section 2(1) of the Act to mean, in part, recorded information about an identifiable individual. As noted above, the record represents the Board Chair's recitation of his understanding of the events of May 18 and December 17, 1993, as well as his later efforts to respond to the appellant's allegations.

The Board submits that only Items 1, 3 and 4 from the appellant's list of corrections contain information which qualifies as his personal information within the meaning of section 2(1). It argues that Items 1 and 3 relate to a statement from the Chair that the appellant told the presiding Board member at the hearing on May 18, 1993 that an outstanding appeal of his September 1992 supplementary assessment remained before the Board. The Board also submits that the record refers to the fact that certain Board staff were directed by the presiding Board member to locate the supplementary complaint. This portion of the record forms the basis for Item 4 of the appellant's list of corrections.

In my view, the entire record addresses the manner in which the appellant's hearing was conducted and the Chair's attempts to answer the appellant's complaints about the assessment process. As such, I find that the complete record refers to the appellant and to his actions, statements and arguments through the assessment hearings and beyond. This information is "about" the appellant and therefore qualifies as his personal information in accordance with the introductory wording in the definition of "personal information" contained in section 2(1).

### **SHOULD THE PERSONAL INFORMATION BE CORRECTED?**

Sections 47(2)(a) and (b) of the Act provide for correction requests and statements of disagreement relating to one's own personal information. These sections state:

Every individual who is given access under subsection (1) to personal information is entitled to,

- (a) request correction of the personal information where the individual believes there is an error or omission therein;
- (b) require that a statement of disagreement be attached to the information reflecting any correction that was requested but not made;

In Order 186, former Commissioner Tom Wright set out the requirements necessary for granting a request for correction as follows:

1. the information at issue must be personal and private information; **and**
2. the information must be inexact, incomplete or ambiguous; **and**
3. the correction cannot be a substitution of opinion.

I adopt former Commissioner Wright's approach for the purposes of this appeal.

**Is the information which is the subject of the correction request personal and private information?**

In my discussion above, I have found that the entire record consists of the personal information of the appellant. Accordingly, each of the 12 items identified by the appellant for correction in the record also qualify as his personal information and the first requirement has been satisfied.

**Is the information "inexact, incomplete, or ambiguous"?**

The Ministry, on behalf of the Board, concedes that the information referred to by the appellant as Items 1, 3 and 4 is factually incorrect.

The appellant has provided an "Adjournment Record" signed by the presiding member of the Board at the time of the May 18, 1993 hearing in which certain information with respect to the reason for the adjournment and further steps to be taken are set forth. I agree with the position taken by the appellant that the record is inaccurate in that it states that the presiding Board member was seized of the matter as the adjournment record clearly indicates that he was not. Therefore, I find that Item 2 in the appellant's list is also factually inaccurate.

As an aside, there seems to be some confusion on the part of the appellant as to the meaning of the term "seized". Based on his submissions and the correspondence which he filed with this office, he appears to believe that the term relates to the staying or freezing of his assessment proceeding when in fact, what is meant in the record is that the presiding member, if he is seized of the matter, will continue to preside over the resumed hearing when it recommences. The term relates only to the fact that this particular Board member, if seized of the matter, must continue to hear it on any subsequent hearing dates. The appellant's right to a hearing is not in any way limited by the use of the term "seized", contrary to the appellant's assertions.

The statement contained in Item 5 of the appellant's correction list relates to the instructions given by the presiding Board member to the appellant following the adjournment of his May 18, 1993 assessment hearing. In my view, this statement is in accordance with the Adjournment Record submitted by the appellant. Accordingly, I find that it is not inexact, incomplete or ambiguous.

The excerpt from the record referred to by the appellant as Item 6 refers to the Board's confirmation that the appellant had not filed a supplementary complaint concerning his September 1992 assessment. I find that this statement is entirely consistent with the evidence provided by the appellant in his April 21, 1999 letter. Again I cannot agree that it is inexact, incomplete or ambiguous.

Insofar as Items 7, 8, 9 and 10 are concerned, each of these items deal with the timeliness of certain events involving the Board's hearing process and its initial response to the appellant's complaints. I find that the appellant has not provided me with sufficient evidence to substantiate his contention that the statements complained of in this portion of the record are either inexact, incomplete or ambiguous. They do not, accordingly, fall within the ambit of the second requirement for correction.

Finally, the appellant takes exception to the statement in the record that he "has been properly served by this Board." He argues at Items 11 and 12 that, in fact, his treatment by the Board was improper. In my view, the Chair is simply expressing his opinion that the appellant's complaints are unfounded. A correction of personal information under section 47(2)(a) cannot correct or substitute another opinion for one which is expressed in a record (Order 186). Accordingly, I am unable to order the requested corrections to this portion of the record.

By way of summary, I find that Items 1, 2, 3 and 4 of the appellant's correction requests contain information which may properly be characterized as either inexact, incomplete or ambiguous. In addition, I find that these items are not the "opinion" of the author of the record. Therefore, the test has been met for these portions of the record.

### **WHAT IS THE APPROPRIATE REMEDY?**

I must now determine how to address the appellant's concerns with respect to the correction of the information referred to as Items 1, 2, 3 and 4 of the record. It would appear from the appellant's letter of April 21, 1999 that he wishes to substitute his own language for that contained in the record, where it is inaccurate. For its part, the Board submits that the appropriate remedy would be to attach the appellant's April 21, 1999 letter to the record as a statement of disagreement, as contemplated by section 47(2)(b).

In Order P-448, former Adjudicator Asfaw Seife made the following comments with respect to the question of the most appropriate way to effect the corrections required to a record. He held that:

In my view, the appropriate method of correction of personal information should be determined by taking into account the nature of the record, the method indicated by the requester, if any, and what would be the most practical and reasonable method in the circumstances.

In my view, the circumstances associated with this appeal are such that it would be inappropriate to order the Board to actually change the letter of March 15, 1995 to reflect the corrections which are required. The letter is now nearly five years old and was retrieved from the Board's archival material. I find that no useful purpose would be served by requiring the Board to re-write the letter to incorporate the corrections.

I find that the most practical and reasonable method of effecting the necessary corrections to the record may be accomplished by requiring that the Board attach to the record a memorandum containing the following information:

- (a) That the appellant did not have an outstanding supplementary appeal of his September 1992 assessment at the time of his assessment hearing on May 18, 1993.
- (b) That the presiding Board member was not seized of the matter following the May 18, 1993 assessment hearing.
- (c) That the appellant was asked by the presiding Board member at his May 18, 1993 hearing to determine the status of the supplementary assessment with the Barrie Assessment office.
- (d) A statement to the effect that the memorandum to be attached to the record forms an integral part of the record and should not be removed.
- (e) A statement to the effect that the memorandum reflects a correction ordered by the Information and Privacy Commissioner/Ontario.

In addition, I find that because of the unique circumstances of this appeal, the appellant ought to be permitted to file a statement of disagreement in accordance with section 47(2)(b), if he so chooses, as agreed by the Board. This statement is to take the form of the April 21, 1999 letter from the appellant. In this way, the appellant's views on the accuracy of all of the information contained in the record may be put "on the record".

**ORDER:**

1. I order the Board to attach to the record a memorandum containing the following information:
  - (a) That the appellant did not have an outstanding supplementary appeal of his September 1992 assessment at the time of his assessment hearing on May 18, 1993.
  - (b) That the presiding Board member was not seized of the matter following the May 18, 1993 assessment hearing.
  - (c) That the appellant was asked by the presiding Board member at his May 18, 1993 hearing to determine the status of the supplementary assessment with the Barrie Assessment office.

- (d) A statement to the effect that the memorandum to be attached to the record forms an integral part of the record and should not be removed.
  - (e) A statement to the effect that the memorandum reflects a correction ordered by the Information and Privacy Commissioner/Ontario.
2. I order the Board to make the correction in the manner specified in Provision 1 within twenty (20) days of the date of this order, and to notify the appellant and, **only** on my request, the Commissioner's office, within five (5) days of the date the correction is made.
  3. I order the Board to give written notice of the corrections that have been ordered to any person or body to whom the record has been disclosed in the past calendar year and the Ombudsman of Ontario, within five (5) days of the date the correction is made.
  4. I order the Board to attach the appellant's April 21, 1999 letter to the record as his Statement of Disagreement in accordance with section 47(2)(b) of the Act, if the appellant chooses to file it.

Original signed by: \_\_\_\_\_  
Donald Hale  
Adjudicator

\_\_\_\_\_ January 10, 2000