



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER PO-2565

Appeal PA-060091-1

Ministry of Government Services



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NATURE OF THE APPEAL:

The Ministry of Government Services (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for various records related to a land severance proceeding involving the requester's property at a specified address. The requester sought the following information:

The following is a list of missing documentation that involves that land severance proceedings for the property at [address] in Ottawa, ON. The documentation requested may or may not be available at certain institutions, depending on their jurisdiction. Please review the list and provide all documentation that is, or should be, available at the institutions at the Provincial and Municipal levels. ...

1. Application of Consent for Severance of Property
Date: June 4, 1985
Details: Property severance took place with consent. Documentation is required to show the application of consent and who authorized it.
2. Name of Person who signed the Consent Application
Details: The abovementioned Consent Application (June 4, 1985) was signed and thus authorized by someone. The name(s) of those who authorized the Consent Application are required.
3. Land Severance/Surveyor Records
Date: June 1985
Details: (Surveyor) completed the severance of the property. Documentation is required to show who gave the surveyor authorization to proceed with Land Severance.
4. Authorization for Land Severance/Documentation for Severance
According to then Mayor's office, the Committee of Adjustment said that the "consent to convey ... was approved with certain conditions"
Date: April 26, 1989
Details: The 'certain conditions' were not met, according to the Mayor's office, yet the land conveyance still took place. Documentation is required to show how the authorization to proceed with land severance took place.

Copy of Documentation used for Land Severance in accordance with the Planning Act of 1983.

Date: March 7, 1991

Details: According to the Planning Act of 1983, the documentation for severance was not completed but the Land Severance proceeded nonetheless. A copy of the documentation used to

authorize the Land Severance (when the Planning Act said it should not proceed) is required.

5. Conversion of Land Titles

Date: 1996

Details: Conversion of Land Titles took place in 1996 without consent. The Land Registry Act allowed for this Conversion. Documentation is required to show authorization of this Conversion.

6. Name Change Correction

Date: February 20, 2002

Details: A correction to the name “[name]” was made on the files pertaining to the property. Documentation is required to show who authorized the name correction on the files pertaining to the aforementioned property.

7. TITLE and DEED to the property

Details: These are critical missing documents. To date, there are no Titles and Deeds that exist for the property.

Assistance is required to find these documents as they are imperative for the owner of the property.

The Ministry located and granted access to records responsive to Items 5, 6 and 7 of the request. The Ministry advised the requester that records that are responsive to Items 5 to 7 of the appellant’s request are items within the custody or control of the Ministry. It also advised that records responsive to Items 1 through 4 of the appellant’s request are not within the custody or control of the Ministry, pursuant to section 29 of the *Act*. In its decision, the Ministry included the following statement:

Land severance is usually a municipal matter so you may wish to contact [the City of Ottawa’s] *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)* (the municipal *Act*) Coordinator for assistance in establishing whether the municipality has the records that you are seeking.

The requester also sent a copy of his seven item request to the City of Ottawa seeking responsive records pursuant to *MFIPPA*.

The City granted full access to responsive records in the possession of the City’s Committee of Adjustment. In its decision, the City included the following:

The Committee of Adjustment has advised that the records attached hereto constitute their entire file on the property at [the appellant’s address]. With respect to certain portions of your request, you will need to attend at the Land

Registry Office (LRO), Ottawa Courthouse, 4th Floor, 161 Elgin Street, Ottawa. The LRO registers, stores and manages documents such as deeds, mortgages and plans of survey.

The requester, now the appellant, appealed the decisions of both the Ministry and the City.

The appellant is of the view that additional records responsive to his request ought to exist. The appellant claims that in 1984, a lawyer requested the appellant's signature on a document that would grant approval of the severance of his property. The appellant indicates that he refused to sign the application for severance as he had the "right of first refusal" to purchase the land unsevered. The appellant believes that a severance of his land occurred despite his refusal and that additional records should exist, including records containing the signature of the person who authorized the severance of the land and the removal of the appellant's name from the property title.

Accordingly, the reasonableness of the searches undertaken by the Ministry and the City is the sole issue in both appeals. As further mediation was not possible, both files were moved to the adjudication stage of the appeal process. In both appeals, I sent a Notice of Inquiry, setting out the facts and an explanation of the issues, to the institutions, initially. Both the City and the Ministry provided representations in response. I then sent a complete copy of these institutions' representations along with Notices of Inquiry to the appellant. The appellant provided representations in response. I sought reply representations from the Ministry only, which were also shared with the appellant. The appellant was invited and provided surreply representations.

As the City is governed by the municipal *Act*, I have issued a separate decision, Order MO-2185, disposing of the appellant's appeal of the City's decision. Similarly, due to the involvement of two institutions and the numerous real estate and tribunal-related documents in the appellant's two appeals, I decided to proceed with a written, paper inquiry for both appeals, rather than proceeding with an oral inquiry, as requested by the appellant.

DISCUSSION:

SEARCH FOR RESPONSIVE RECORDS

Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 24 [Orders P-85, P-221, PO-1954-I]. If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records [Order P-624].

Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.

Representations of the Parties

The Ministry was asked to provide a written summary of all steps taken in response to the request. In particular, the Ministry was asked to respond to the following:

1. Did the institution contact the requester for additional clarification of the request? If so, please provide details including a summary of any further information the requester provided.
2. If the institution did not contact the requester to clarify the request, did it:
 - (a) choose to respond literally to the request?
 - (b) choose to define the scope of the request unilaterally? If so, did the institution outline the limits of the scope of the request to the requester? If yes, for what reasons was the scope of the request defined this way? When and how did the institution inform the requester of this decision? Did the institution explain to the requester why it was narrowing the scope of the request?
3. Please provide details of any searches carried out including: by whom were they conducted, what places were searched, who was contacted in the course of the search, what types of files were searched and finally, what were the results of the searches? Please include details of any searches carried out to respond to the request.
4. Is it possible that such records existed but no longer exist? If so please provide details of when such records were destroyed including information about record maintenance policies and practices such as evidence of retention schedules.

In response to the Notice of Inquiry, the Ministry provided representations along with an affidavit of its Freedom of Information Coordinator (FOIC). The FOIC attests in her affidavit that following receipt of the appellant's request, she spoke to the Land Registrar in the Ottawa Land Registry Office. The FOIC inquired into whether the requested records were held at the Land Registry Office, as records in the Land Registry Office pertain to the ownership of, and encumbrances on, real property. The Land Registrar advised the FOIC that Items 1 to 4 of the appellant's request pertain to a land severance and that these records are usually held by municipalities and do not normally form part of records held in the Land Registry Office. The

FOIC states in her affidavit that:

Severances of land are governed by the *Planning Act* and administered by municipalities, and therefore records pertaining to severances, such as those listed in Items 1 [to 4], are not held in the Land Registry Office.

The FOIC then wrote to the appellant and indicated that records responsive to Items 1 to 4 of his request are not held in the Land Registry Office. She also sought clarification from the appellant as to what documents he was seeking under Items 5 and 6 of the request. Following receipt of a response from the appellant, the FOIC confirmed the following with the Land Registrar:

- that the authorization for the conversion of Land Titles (Item 5) is the *Land Registration Reform Act*;
- that the authorization for the correction to the appellant's name on title (Item 6) was found in the *Land Titles Act*; and
- that the most recent title deed on record in relation to the appellant's property (Item 7) is from 1968.

The FOIC obtained a copy of the title deed and provided the appellant with a copy, along with the information that she had received from the Land Registrar in response to her clarification queries pertaining to the appellant's request.

In response to these representations, the appellant provided submissions that posed the following questions concerning Items 5 to 7 of his request:

Item 5 - *Conversion of Land Titles*, and

Item 6 - *Name Change Correction Documentation*

This document shows that my name was altered on critical documentation pertaining to my property. The [Ministry] failed to provide me with the documentation that clearly states the person that authorized such transactions to my property. Surely, such documentation had to have existed; as such changes can't be made without some due diligence behind them. Where is this documentation?

Item 7 - *Title & Deed for Property*

This is one of the most important pieces of documentation that has not been made available. How can a property owner not have the Title and Deed to his land?

No person at [the Ministry] could explain why I could not have access to my own Title and Deed that reflects all the transactions that took place on my property. To date, this has not been made available.

I then wrote to the Ministry and asked the following clarifying questions concerning Items 5 and 6 of the appellant's request:

1. Which sections and subsections of the *Land Registration Reform Act* are applicable in response to Item [5] of the appellants' request?
2. Are there any documents in existence relied upon by the Land Registrar with respect to section 158(2) of the *Land Titles Act* in response to Item [6] of the appellants' request? This section states that:

... the land registrar may correct errors and supply omissions in the register, or in an entry in it, upon the evidence that appears sufficient to the land registrar.

In response the Ministry provided the following information:

Item 5 - Conversion of Land Titles

The *Land Registration Reform Act (LRRRA)* introduced most of the recent reforms that... continue to occur in the land registration system. Part II of *LRRRA* provide[s] the authority for the automation of the land registration records. During this automation process, registry system records are converted to the land titles system. Under section 15, the Minister has the authority to designate all or any part of land in Ontario for the purpose of implementing a system of automated information recording and retrieval and property mapping. The entire province has been designated. The automation is occurring in a phased process.

Section 32 of the *Land Titles Act (LTA)* provides the legislative authority to implement this administrative land titles conversion process. During this administrative conversion process, there is no survey of the property required and no notice is served on interested parties. There are approximately 4.8 million properties that have already been automated (or automated and converted) of the approximate 5.2 million properties in Ontario. In the Ottawa office alone, over 120 thousand properties have been converted.

Item 6 - Name Change Correction Documentation

There is no specific document related to [appellant's address] that the Land Registrar would have relied upon when the correction was made. Because the electronic registration system distinguishes between company or individual names based on punctuation and applies different authorization statement logic for each, any punctuation [aside from accents, hyphens or apostrophes and one comma separating the surname from the given name(s)] is removed from the names of all individuals. This is why the brackets around "[appellant's first name]" were removed. The record initially showed him as [last name], [first name (short form of first name)] and the correction changed it to [last name], [first name short form of first name].

The Ministry, under separate cover letter, sent me some additional documents from the LRO to assist in understanding the events related to the appellant's appeal. These documents clarify the title history of the adjoining residence of the appellant's co-owner and confirm that the appellant's property was severed in 1985, followed by the sale of the appellant's co-owner's residence to a third party in 1986. I provided the appellant with copies of these documents and asked for his representations. These documents consist of:

- a copy of the parcel register;
- another copy of the registered deed from 1968 showing the appellant as the owner of the land as a tenant in common;
- a copy of the registration on title of the Deposit of the Committee of Adjustment decision of May 2, 1985 on title on May 16, 1985;
- a June 7, 1985 plan of survey of the severed property registered on title on June 18, 1985;
- a copy of the registration on title on September 20, 1985, of an ex parte Vesting Order vesting title to the land occupied by the appellant's co-owner, as severed by the Committee of Adjustment, to the appellant's co-owner; and,
- a copy of the registered transfer of the appellant's co-owner's land to a third party on January 9, 1986.

I shared the Ministry's reply representations and additional documents with the appellant and asked him to provide me with information as to the reasons for his belief that any additional records responsive to Items 5 to 7 of his request exist. I pointed out to the appellant that the Ministry had indicated in response to:

Item 5 - that the conversion of his property to Land Titles was accomplished as part of a province-wide automated conversion of all properties.

Item 6 - that the brackets around the appellant's first name had been removed to conform to the punctuation requirements of the electronic land registration system.

Item 7 - that the appellant had been provided with the most recent title deed on record.

In response, the appellant posed questions concerning the property severance that took place in 1985, answers to which are responsive to Items 1 to 4 of his request, which I have dealt with in the corresponding Order under the municipal *Act*.

Analysis/Findings

It appears from the appellant's representations that he has questions concerning his property title and severance documents. The appellant is not satisfied with the answers that he has received to his questions concerning the title history of his property. However, the issue before me is whether the Ministry has conducted a reasonable search for records responsive to Items 5 to 7 of the appellant's request, as required by section 24 of the *Act*. I agree with the following statement of Adjudicator Laurel Cropley in Order MO-2096 concerning an institution's obligation to respond to questions posed by a requester:

Although the documents that the appellant received may raise questions in her mind to which she thinks there should be answers, this does not necessarily mean that answers exist in the documents that she received or in other documents. [T]here is no requirement under the *Act* that an institution answer the questions that the contents of records might raise. The issue is whether there are records in existence that might provide an answer to these questions. As I noted in Order PO-1655:

Previous orders of this office have considered the circumstances in which requests for information are set out in the form of questions (Orders M-493, M-530 and P-995). In two of these cases, it was determined that the questions could be interpreted as requests for records. In my view, this is not the case here. Based on my reading of part 7 and the Ministry's explanation, I agree that the appellant has asked a question of the Ministry and is seeking an answer rather than seeking information or records which would respond to it.

In PO-1655, I concluded that the institution had no obligation to simply answer questions or provide explanations of information contained in the records.

Based on my review of the representations of both the Ministry and the appellant, along with the records which are responsive to all items in the appellant's request, I find that the Ministry has provided me with sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control [Order P-624].

With respect to Items 5 to 7 of the appellant's request, which are within the custody or control of the Ministry, I find that the Ministry has conducted a reasonable search by experienced employees, expending reasonable effort, to identify any records that are reasonably related to the appellant's request (Order M-909). In particular, the Ministry has responded to the questions posed by the appellant in Items 5 and 6 of his request. In addition, I conclude that the Ministry and has provided the appellant, with a copy of the registered deed on title that is applicable to the severed part that comprises the appellant's residence (the deed from 1968), and that this document is responsive to Item 7 of the request.

The Ministry has provided me with a comprehensive description of the steps it undertook to locate records responsive to Items 5 to 7 of the appellant's request. In my view, the appellant has not provided a reasonable basis for concluding that additional records exist. I am satisfied that the Ministry conducted a reasonable search for records responsive to Items 5 to 7 of the appellant's request and I will uphold the Ministry's search.

ORDER:

I uphold the Ministry's search for responsive records and dismiss the appeal.

Original signed by: _____
Diane Smith
Adjudicator

_____ April 19, 2007