



**Information and Privacy
Commissioner/Ontario**

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

ORDER 67

Appeal 880108

Archives of Ontario



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June 28, 1989

VIA PRIORITY POST

Appellant

Dear Appellant:

Re: Order 67
Appeal Number 880108
Archives of Ontario

This letter constitutes my Order in your appeal from the response of the Archives of Ontario (the "institution") with respect to the access request you made for, "any reports evaluating/assessing the operation of the Land Transfer Speculation Tax Act". (Appeal Number 880108)

The institution advised you that they could not provide access to the record because it could not be located in their holdings. Your original request for this record was made to the Ministry of Revenue. That Ministry transferred the request to the Archives of Ontario under subsection 25(2) of the Act, since the Land Speculation Tax Act had been repealed in 1978, and the Ministry felt that any records concerning this matter had either been destroyed or transferred to the Archives.

The issues in this appeal are whether the steps taken by the institution to search for the requested records were reasonable and sufficient in the circumstances, and whether the institution made all necessary inquiries to determine whether another

institution had custody or control of the record, as required by subsection 25(1) of the Act.

An Appeals Officer from my office reviewed the facts of the case and consulted with both you and the institution's Freedom of Information and Privacy Co_ordinator. A Notice of Inquiry was sent to both parties by letter dated October 4, 1988, and an

Appeals Officer's Report was prepared by my office to assist the parties in making their representations concerning the subject matter of the appeal. Written representations were received and, in addition, an affidavit was submitted by the head and Co_ordinator for the institution. This affidavit explained, in considerable detail, all steps taken by the institution in trying to locate the record. It also included an account of the time spent dealing with the request, and concluded by stating that: "the Archives assigned resources of time beyond those which are normally provided in such cases". A copy of this affidavit was sent to you.

During the course of the inquiry, my office learned from the institution that a record answering your request existed in the custody of the Ministry of Treasury and Economics and had been sent to an office in Ottawa. The Archives did not have a copy of the requested record in their possession.

In my Order 6 (Appeal Number 880005) dated July 18, 1988, I ordered that access to what turned out to be the record in this appeal, be given to you in Ottawa where you live. When your request to the Archives became the subject of this appeal, my staff assumed that you were seeking related records from a different institution. It was not until later, following discussions with you, that it was learned you had not availed yourself of the opportunity to view the record in Ottawa because the Ministry of Treasury and Economics intended to charge a fee of \$8.50 for preparing to ship, and actual shipping charges, for that record.

In your most recent representations to me, dated January 26, 1989, you state that you object to the charge of \$8.50 and ask me to "resolve the issue, either through this appeal or a new one as to whether upon a Commission order a party is allowed to collect \$8.50". As you will recall, in my Order 6 I stated that a head is entitled, by the Act:

to charge fees for costs incurred in circumstances outlined in subsection 57(1). The shipping charges claimed by the head in this case fall within the scope

of subsection 57(1)(d) and are allowable. If, after viewing the record in Ottawa, the appellant requests photocopies of the record or any part thereof, these costs would be allowed under subsection 57(1)(c),... Similarly, the costs of preparing the record, ...are allowable under subsection 57(1)(c).

I went on to state that, in the circumstances of that appeal, the head had properly exercised his discretion not to waive fees, and I upheld the head's decision to charge a fee. If and

when you decide to view the record, the head is also entitled under the Act to charge for photocopying any pages of the record you choose to have copied.

Your request for access to the record at issue in this appeal, and the related question of fees, have been dealt with in my Order 6, and the Ministry of Treasury and Economics has complied with the terms of that Order. After reviewing the representations of both parties in the current appeal and the affidavit submitted by the institution, I have reached the conclusion that the institution has properly discharged the duties and responsibilities imposed by section 25 of the Act, and the decision of the head is upheld.

Yours truly,

Sidney B. Linden
Commissioner

cc: The Honourable Lily Munro
Minister of Culture and Communications

Ian Wilson, Archivist of Ontario

Ian Forsyth, FOI Co_ordinator