



**Information and Privacy  
Commissioner/Ontario**

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

# **RECONSIDERATION ORDER MO-1600-R**

**Appeal MA-010188-1 – Order MO-1564**

**Municipal Property Assessment Corporation**



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

This order sets out my decision on the reconsideration of Order MO-1564, issued August 16, 2002.

## **BACKGROUND AND NATURE OF THE APPEAL**

The appellant submitted a request to the Municipal Property Assessment Corporation (MPAC) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for certain information relating to the property assessment of his home.

MPAC identified a number of responsive records, and granted the appellant access to some of them. MPAC denied access to any records or portions of records containing information pertaining to the assessment market models, including coefficients, variables and equations, on the basis of the exemptions found in sections 11(a) (valuable government information), and 11(c) and (d) (economic and other interests). The appellant appealed MPAC's decision.

By the time the appeal had reached the adjudication stage, four records remained at issue. I described these records in Order MO-1564 as follows:

- Record 1:** a five-page computer printout consisting of raw data and tables. The tables are labeled: *Regression, Model Summary, ANOVA, Coefficients, Case Wise Diagnostics* and *Residual Statistics*. The entire record is known as MPAC's SPSS output file for City of Toronto Market Model 8. MPAC identifies that this output file is the "model". MPAC explains that approximately 36,000 properties are valued using Market Model 8.
- Record 2:** a 15-page computer printout of variables, entitled *File Information*.
- Record 3:** a "syntax file", which is the computer program used to conduct analyses to create and recreate Market Model 8.
- Record 4:** the severed portion of the "MCE screen" for the appellant's property, portions of which have been disclosed to the appellant.

During the course of my inquiry I determined that the appellant was no longer seeking access to Record 3. For reasons outlined in Order MO-1564, I nonetheless decided to address Record 3 in the order.

After conducting an inquiry, I found that Record 1, when considered as a whole, qualified for exemption under sections 11(a), (c) and (d) of the *Act*. I also found that if Record 3 had remained within the scope of the appeal, it too would have qualified for exemption under sections 11(a), (c) and (d). I summarized these section 11 findings in Order MO-1564 as follows:

In summary, I find that disclosing Record 3 (the syntax file) and Record 1 when considered as a whole (Market Model 8), would reveal the market model itself, and therefore, subject to my discussion of severance below, these two records

qualify for exemption under sections 11(a), (c) and (d) of the *Act*. On the other hand, disclosing Record 2 and the withheld portions of Record 4 would not reveal the market model itself, or any other information that is exempt under sections 11(a), (c) or (d), nor do I accept that their disclosure would permit one to ascertain components of the model or other exempt information through reverse-engineering.

I then went on to consider whether any portions of Record 1 could be severed without revealing information that qualifies for exemption under sections 11(a), (c) and (d). In that regard, I stated:

The coefficients on the page 3 chart are a series of numbers, which are apparently derived from the model for Market Model 8. Two columns of figures are listed against each variable to reflect “unstandardized coefficients”, and one column of figures for “standardized coefficients”. The remaining columns on the chart contain other statistical information also apparently derived from the model. Erring on the side of caution, I am prepared to accept that disclosing all of the chart could reveal or enable one to re-create enough of Market Model 8 to constitute MPAC’s trade secret and result in the section 11(a), (c) and (d) harms. However, if the chart is severed to disclose only the variables and corresponding coefficients, in my view, this would not disclose any of the actual model, and without the additional statistical information contained in the chart, and based on MPAC’s representations, I am not convinced that it would be possible to reverse-engineer the information in a way that would reveal the model. As MPAC points out a number of times in its representations, all of the various components of the model are required in order to understand how the property assessment has been determined for each model area. In my view, it would appear to follow that disclosing only certain components, such as the variables and coefficients associated with the model area, would not be sufficient to reveal the trade secret itself, and this supports my finding that severance can be made in this case without compromising MPAC’s legitimate interest in the confidentiality of its intellectual property.

I find that the portions of the chart on page 3 headed “Coefficients” that contain the variables and coefficients for Market Model 8 can reasonably be severed from the chart and disclosed to the appellant without revealing information that qualifies for exemption under sections 11(a), (c) and (d). Therefore, these portions of Record 1 should be disclosed to the appellant.

My findings regarding disclosure are reflected in Provision 1 of Order MO-1564, which states:

I order MPAC to disclose to the appellant Record 2, the undisclosed portions of Record 4, and the portions of the chart on page 3 of Record 1 headed “Coefficients” that list the variables and coefficients.

As far as the “public interest override” was concerned, I indicated that there was a compelling public interest in the disclosure of the records that did not qualify for exemption, but not for

those that did. Accordingly, section 16 did not have a direct impact on my findings in Order MO-1564.

On September 6, 2002, I received a letter from MPAC, asking me to reconsider certain aspects of Order MO-1564. Specifically, MPAC asked that I reconsider the following findings:

1. that two of the columns of figures listed against each variable to reflect “unstandardized coefficients” can be severed from Record 1 and disclosed to the appellant;
2. that all of Record 2 can be disclosed to the appellant;
3. that there is a compelling public interest in disclosing the portions of Records 1 and 2 covered by the reconsideration request.

In compliance with Provision 1 of Order MO-1564, MPAC provided the appellant with a copy of the undisclosed portions of Record 4, all relevant portions of Record 1 other than the two columns identified in the reconsideration request, and the first 7 ½ pages of Record 2.

After considering MPAC’s request, I granted an interim stay of Provision 1 of Order MO-1564 as it applies to the portions of Records 1 and 2 I have been asked to reconsider, pending my determination of whether to reconsider this provision and, if I do, pending my determination on the reconsideration itself.

I then wrote to the parties, inviting them to provide representations on whether MPAC’s reconsideration request fit within any of the grounds for reconsideration set out in Section 18.01 of this office’s *Code of Procedures* (the *Code*), and if so, how I should deal with the substantive issues raised by MPAC for the identified portions of Records 1 and 2. Both parties submitted representations, which were then exchanged, and additional representations were provided by the appellant in response.

## **DISCUSSION:**

### **PRELIMINARY MATTER – Responsiveness of records**

MPAC makes the following representations regarding Record 2:

It is MPAC’s submission that the first 7 pages of Record 2 can be released in their entirety. The balance of the Record [starting about three-quarters of the way down page 8...] should not be disclosed.

In the alternative, it is MPAC’s position that Pages 8-15 of Record 2 should be severed to only include variables used in the final model; namely those released in Record 1. To assist in identifying those variables, enclosed with this request is a highlighted copy of Record 2.

The appellant has only requested the variables used in Market Model 8. The highlighted portions of Record 2 are not responsive to that request and should not have been included in the first place. Accordingly, even if the IPC denies the request for reconsideration on other grounds, the Order should be varied to exclude the highlighted portions from disclosure.

My original Notice of Inquiry sent to the parties in this appeal invited them to provide representations on the scope of the request, and I discussed this issue in considerable detail in Order MO-1564. As I stated in that order:

... the parties clearly still do not have a meeting of the minds as to what information is required in order to adequately respond to the appellant's request. The appellant maintains that he does not require all the formulae and background information to the data relating to the properties, simply the results; and MPAC maintains that in order to address the scope of the request, MPAC must provide the appellant with more information than he thinks he needs, including information that would compromise its economic interest.

MPAC has provided four records to this office during the course of this appeal, and takes the position that there are no other records responsive to the appellant's request. These four records are: a 15-page list of variables and most of their definitions; a five-page computer printout of an "output file" for the appellant's model area, which includes a list of approximately 26 variables with corresponding coefficients; a "syntax file" for Market Model 8 (which the appellant has removed from the scope of the appeal); and the severed portion of the "MCE screen" for the appellant's property, which contains five variables and their coefficients. Four of the five variables on the appellant's "MCE screen" are contained in the list of coefficients found in the "output file".

Based on the various statements and submissions made by the parties, it seems to me that these four records may not contain all of the information sought by the appellant. However, I have decided in the circumstances to issue this order based on the four records provided by MPAC. In my view, reaching some degree of clarity through this order is preferable to delaying the matter further while the parties continue to try to sort out whether other responsive records exist. I will be ordering the disclosure of certain records in this appeal. If, after reviewing these records and considering the reasoning in this order, the parties are in a position to identify the existence of additional responsive records, the appellant will be entitled to pursue his request further at that time.

For the first time in its reconsideration representations, MPAC identifies that the list of variables and their corresponding definitions in Record 2 can be divided into 2 categories: the first 7 ½ pages, which contain "general" variables and definitions; and the remaining 7 ½ pages, which contain variables and definitions specific to particular market models. MPAC has disclosed the first category to the appellant, and is suggesting that my reconsideration of the second category be restricted to only those variables that relate to Market Model 8.

The appellant was provided with copies of MPAC's reconsideration submissions, which included its position on this issue. However, he did not address this aspect of the reconsideration in his reply representations.

Notwithstanding the failure of MPAC to bring the distinction between the two categories of variables and definitions comprising Record 2 to my attention earlier, I am nevertheless satisfied that the appellant has made it clear throughout this appeal that he is only interested in specific information relating to Market Model 8, and not to information relating specifically to other market models. Accordingly, I find that the first category of Record 2, as well as any portions of the second category that deal with Market Model 8, are responsive to the request, but that other portions of the second category that have no relevance to or impact on properties in Market Model 8 are not responsive. The Market Model 8 variables have been identified by MPAC, and I will vary Provision 1 of Order MO-1564 so that it only applies to these responsive portions of Record 2.

## **SHOULD THE ORDER BE RECONSIDERED?**

### **Introduction**

The reconsideration procedures for this office are set out in section 18 of the *Code*. In particular, sections 18.01 and 18.02 of the *Code* state:

18.01 The IPC [Information and Privacy Commissioner] may reconsider an order or other decision where it is established that there is:

- (a) a fundamental defect in the adjudication process;
- (b) some other jurisdictional defect in the decision; or
- (c) a clerical error, accidental error or omission or other similar error in the decision.

18.02 The IPC will not reconsider a decision simply on the basis that new evidence is provided, whether or not that evidence was available at the time of the decision.

### **MPAC's Representations**

MPAC identifies four grounds for reconsideration.

#### ***Ground 1***

MPAC submits that my order to disclose the two columns of figures listed against each variable to reflect "unstandardized coefficients" in Record 1 would have the unintended result of ordering disclosure of other information which I found exempt under section 11 of the *Act*, and

consequently that this qualifies as an accidental or similar error under section 18.01(c) of the *Code*.

In a follow-up letter, MPAC clarifies that this ground also applies to the undisclosed portions of Record 2. MPAC goes on to explain that Record 2, which includes the descriptions of the variables, is more than a mere “dictionary”. In MPAC’s view, the references contain transformations which are the mathematical applications used to create variables.

### ***Ground 2***

MPAC identifies section 15 of the *Code*, which permits an adjudicator during an inquiry to request additional information from a party, and submits that my failure to seek clarification from MPAC as to the nature of the records at issue in this appeal resulted in a fundamental defect in the adjudication process under section 18.01(a) of the *Code*.

### ***Ground 3***

MPAC submits that, although I found that the market models contain “technical information” as well as “trade secrets”, my section 11(a) findings for Records 1 and 2 were restricted to “trade secrets”. In MPAC’s view, this represents a fundamental defect in the adjudication process or other jurisdictional defect in my decision (section 18.01 (a) and (b)).

### ***Ground 4***

MPAC submits that, in deciding that the “public interest override” applied, the following actions on my part resulted in fundamental defects in the decision making process and other jurisdictional defects (sections 18.01(a) and (b)):

- i) relying on facts not in evidence;
- ii) ignoring unchallenged evidence and argument;
- iii) reversing the onus; and
- iv) applying the incorrect test regarding “clearly outweighed”.

### **The appellant’s representations**

The appellant disagrees with the MPAC’s position. In both sets of representations submitted in the context of this reconsideration inquiry, the appellant focuses on the public interest in disclosing the requested information, and the public’s right to know how property taxes are calculated.

### **Findings**

#### ***Ground 1***

MPAC takes the position that by ordering the disclosure of the two identified columns of figures in Record 1, I am inadvertently disclosing information contained in portions of Record 1 that I have found to be exempt under section 11. MPAC states:

It is submitted that the unintended result of ordering the disclosure of [the] same type of information as information ordered to be withheld, qualifies as an accidental or similar error under article 18.01(c) of the *IPC Code of Procedure*.

I do not accept MPAC's position.

I made it clear in Order MO-1564 that MPAC's market models, when considered as a whole, qualified for exemption under section 11 of the *Act*, but that certain discreet portions of individual records could be severed and disclosed to the appellant without revealing the exempt information. Specifically, I stated:

I find that the portions of the chart on page 3 headed "Coefficients" that contain the variables and coefficients for Market Model 8 can reasonably be severed from the chart and disclosed to the appellant without revealing information that qualifies for exemption under sections 11(a), (c) and (d). Therefore, these portions of Record 1 should be disclosed to the appellant.

MPAC disclosed some, but not all, of the portions of Record 1 covered by this finding.

In explaining the basis for its position on section 18.01(c), MPAC itself makes specific reference to portions of Record 1 that I found were exempt under section 11. In so doing, MPAC has provided the appellant with the precise type of information that I took efforts to protect in Order MO-1564. That being said, this voluntary disclosure on the part of MPAC is irrelevant in the context of this reconsideration inquiry. I am only dealing here with the remaining two undisclosed columns of Record 1 that I found did not qualify for exemption - the standard error and standardized coefficients - when considered in conjunction with the other portions of Record 1 already disclosed to the appellant in compliance with my order. For reasons outlined in Order MO-1564, I am satisfied that disclosing **the portions of Record 1 covered by Provision 1** of Order MO-1564 would not have the unintended result of revealing MPAC's market model.

As far as Record 2 is concerned, MPAC submits that disclosing all of the information contained in this record would reveal trade secrets. MPAC then summarizes its position concerning how databases in the market models are formatted and the impact their disclosure would have on MPAC. It states:

Releasing all the variables and labels in the data directory defeats the purpose of protecting the syntax file (Record 3), which contains the logic to create the transformations. The variables are labeled in such a manner that MPAC's general modeling/thought processes would be released for all models across Ontario. In other words, the release of Record 2 in its entirety would reveal the methodologies and other important components of MPAC's trade secrets.

Together, Record 2 and the undisclosed portions of Record 1 (including those portions of Record 1 for which MPAC is requesting reconsideration) release the model, which is protected under Section 11.



MPAC took essentially the same position in its previous representations in this appeal, and attempts to re-argue it here.

I addressed this issue directly in Order MO-1564, where I made a clear finding that disclosing Record 2 would not reveal exempt information in Market Model 8, and explained the basis for reaching this conclusion as follows.

I find that this entire record can be disclosed without resulting in any of the section 11 harms that would apply to disclosure of MPAC's market model as a whole. In my view, this record is best described as a "dictionary" of the various factors that are of potential relevance in the context of the property assessment industry. None of the information described in the "label" heading is sensitive or confidential, and the other two columns on the list, although part of a computer program, do not reflect any of the methodologies, formulae or other components of MPAC's trade secret. In addition, I find that I have not been provided with sufficient evidence to convince me that it would be possible to take the information contained in Record 2 and reverse-engineer it to reveal information that would constitute a trade secret.

It is interesting to note that, in apparent contradiction to its original position with respect to Records 1 and 2, MPAC has in fact made severances to Records 1 and 2 and disclosed portions of each record to the appellant.

It is clear that MPAC disagrees with my conclusions regarding the release of the remaining portions of these records, but I am not persuaded that MPAC has established an accidental error on my part, nor any of the other bases for reconsideration under section 18.01 of the *Code*.

### ***Ground 2***

Section 15 of the *Code* reads:

During an inquiry, the Adjudicator may request additional information from any party, either orally or in writing.

After pointing to the inquiry procedures under the *Act*, MPAC submits:

Given these unusual powers and unorthodox procedure and in the interest of fairness, if there is any doubt regarding the nature of the Record or any uncertainty with respect to any representations made by a party, it is incumbent upon the IPC to make inquiries under Item 15. That is especially true where, as in this case, there is a recognition by the IPC that the Records are highly technical and complex.

Section 52 of the *Act* establishes a unique inquiry process for resolving access to information appeals. Considerable autonomy is given to the Commissioner in this regard, consistent with the

level of specialized expertise and procedural flexibility inherent in the statutory access scheme (see *John Doe v. Ontario (Information and Privacy Commissioner)* (1993) 13 O.R. (3d) 767 and *Gravenhurst (Town) v. Ontario (Information and Privacy Commissioner)*, [1994] O.J. No. 2782 (Div. Ct.)).

Section 15 of the *Code* is one of the procedural options available in this regard. However, it is clearly permissive and not mandatory in nature. This section simply allows an adjudicator to request additional information, at his or her discretion. Deciding whether or not to seek additional information from the parties is a decision of the adjudicator, based on the facts and circumstances of a particular appeal. Choosing not to do so here does not represent a fundamental defect in the adjudication process and is not grounds for a reconsideration of Order MO-1564.

### ***Ground 3***

MPAC submits:

The IPC decided that only those portions of records that contain or would reveal actual trade secrets qualify for exemption. However, the IPC also found that “the formulae, coefficients and other related information contained in MPAC’s market models also fall within the scope of the definition of ‘technical information’”.

The exemption in s. 11(a) applies equally to trade secrets and technical information. Having found that the information contained in MPAC’s market models constituted “technical information”, the IPC, as all other requirements for s. 11(a) had been met, had no jurisdiction to restrict the exemption to information containing trade secrets.

I do not accept MPAC’s position.

In my analysis of Record 2 in Order MO-1564, I state:

I find that this entire record [Record 2] can be disclosed without resulting in any of the section 11 harms that would apply to disclosure of MPAC’s market model as a whole. In my view, this record is best described as a “dictionary” of the various factors that are of potential relevance in the context of the property assessment industry.

In deciding whether the relevant portions of Record 1 could be severed, I made the following findings in Order MO-1564:

Erring on the side of caution, I am prepared to accept that disclosing all of the chart could reveal or enable one to re-create enough of Market Model 8 to constitute MPAC’s trade secret and result in the section 11(a), (c) and (d) harms. However, if the chart is severed to disclose only the variables and corresponding coefficients, in my view, this would not disclose any of the actual model, and

without the additional statistical information contained in the chart, and based on MPAC's representations, I am not convinced that it would be possible to reverse-engineer the information in a way that would reveal the model.

...

I find that the portions of the chart on page 3 headed "Coefficients" that contain the variables and coefficients for Market Model 8 can reasonably be severed from the chart and disclosed to the appellant without revealing information that qualifies for exemption under sections 11(a), (c) and (d). Therefore, these portions of Record 1 should be disclosed to the appellant.

Section 11(a) requires more than a simple finding that a record contains "technical information" in order to qualify for exemption. The information must also "belong to an institution" and have "monetary value or potential monetary value".

Although I refer in Order MO-1564 to whether disclosing Record 2 and the severed portions of Record 1 would reveal a "trade secret", I also address the broader requirements of section 11(a) in finding that these specific records, as opposed to the market model, do not qualify for exemption. Inherent in this finding is my conclusion that either the technical information contained in the market model is not reflected in Record 2 and the non-exempt portions of Record 1, or that one or more of the other requirements of the section 11(a) exemption claim are not present for this information. Either way, the absence of any specific reference to "technical information" in the context of my section 11(a) discussion of Records 1 and 2 has no bearing on my findings for these two records. Therefore, I do not accept that this omission constitutes a fundamental defect in the adjudication process or other jurisdictional defect in my decision in Order MO-1564, as suggested by MPAC.

#### ***Ground 4***

MPAC's fourth ground for reconsideration relates to my discussion of section 16 in Order MO-1564. MPAC identifies what it sees as a number of adjudicative deficiencies with this part of the order, as outlined in its reconsideration letter.

I do not rely on section 16 as the basis for ordering the disclosure of any records or portions of records in Order MO-1564. Provision 1 of that order is based entirely on my finding that Record 2, the undisclosed portions of Record 4, and the identified portions on page 3 of Record 1 do not qualify for exemption under sections 11(a), (c) or (d) of the *Act*. My discussion of section 16 as it relates to these records, while instructive, is not determinative of their treatment in Order MO-1564. Although I do not accept MPAC's position that there was a defect in the adjudication process as it relates to my discussion of section 16 in Order MO-1564, clearly any defect that may exist in this regard, which does not affect my findings, cannot be considered "fundamental", as required by section 18.01 of the *Code*.

In summary, I do not accept MPAC's position that I should reconsider my decision on the basis of any of the grounds cited by MPAC.

Therefore, I find that there is no fundamental defect in the adjudication process, no jurisdictional or other defect in the decision, or any clerical error, accidental error or omission or other similar error in the decision as it relates to my treatment of the portions of Records 1 and 2 in Provision 1 of Order MO-1564. Accordingly, I uphold my decision as it relates to the two undisclosed columns in Records 1 and the variables on pages 8 through 15 of Record 2 that relate to Market Model 8.

**ORDER:**

1. Provision 1 of Order MO-1564 is amended to read as follows:

I order MPAC to disclose to the appellant the first 7 ½ pages of Record 2 in their entirety, the portions of the second 7 ½ pages of Record 2 relating to Market Model 8, and the portions of the chart on page 3 of Record 1 headed "Coefficients" that list the variables and coefficients. I have attached a highlighted version of page 3 of Record 1 with the copy of this Order provided to MPAC 's Freedom of Information and Privacy Coordinator that identifies the portions that should be disclosed. Disclosure is to be made by MPAC to the appellant by **January 14, 2003**.

2. In order to verify compliance with this order, I reserve the right to require MPAC to provide me with a copy of the records disclosed to the appellant pursuant to Provision 1, upon request.

Original signed by: \_\_\_\_\_  
Tom Mitchinson  
Assistant Commissioner

December 30, 2002 \_\_\_\_\_