ORDER MO-1712-I

Appeal MA-010012-3

Municipal Property Assessment Corporation

BACKGROUND AND NATURE OF THE APPEAL:

The appellant submitted a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the Ontario Property Assessment Corporation, now the Municipal Property Assessment Corporation (MPAC), for access to information relating to how the current value assessment for two specified properties was determined. In particular, the appellant requested the model used to prepare the valuation of the two properties. The request also included all supporting documentation and studies, a list of sales comparisons, any "analyses packages" which may include ratio studies, land value studies, capitalization rate studies, GIM studies, quality assurance reports, and cross regional boundary studies.

The appellant subsequently clarified his request, indicating that he was seeking records for the June 30/96 and June 30/99 valuations.

In response, MPAC issued a decision (the first decision) in which it provided the appellant with records containing the assessment value for the two properties. The appellant appealed this decision on the basis that additional records should exist (Appeal MA-010012-1).

During the intake stage of this appeal, the appellant described the types of records he believed would be responsive to his request, including, among others, all data used to determine the current value of the subject properties and sales data, as well as the records identified in his request.

During the mediation stage of Appeal MA-010012-1, MPAC located other responsive records and issued a supplemental decision letter (the second decision), in which it indicated that access would be granted to some records, but denied to other records. Since this appeal was no longer restricted to the issue of the reasonableness of search, appeal MA-010012-1 was closed.

In the second decision, the Freedom of Information and Privacy Co-ordinator (the Co-ordinator) referred to a number of discussions she had had with the appellant. In particular, she indicated that further to these discussions, the appellant had agreed not to pursue access to the model that was used to obtain the assessed value of the subject properties.

She also provided the appellant with some information relating to the model and to the neighbourhood covered by the model.

With respect to all sales used in the model to determine the property assessment, the Co-ordinator indicated that access would be granted to the sales used in the model with identifying information relating to the properties severed on the basis of sections 11(a), 11(c), 11(d) (economic and other interests) and sections 14(1)(f), 14(3)(e) and 14(3)(f) (invasion of privacy) of the *Act*.

The appellant appealed MPAC's decision to deny access to certain records and this office opened Appeal MA-010012-2. In his letter of appeal of MPAC's second decision, the appellant also objected to the characterization of his request as excluding the model.

During mediation of Appeal MA-010012-2, a number of things occurred:

1. MPAC confirmed that over 1900 properties were used to determine the value of the properties;

2. the Co-ordinator indicated that the record to which its decision relates (and which was sent to this office) is the wrong record. It appears that this record is an excerpt from the model, rather than a record about sales;

3. the Co-ordinator confirmed her position that the appellant narrowed his request to exclude the model and that the only issue remaining is whether he can access the sales data;

4. the mediator indicated to the Co-ordinator that the appellant did indeed want to pursue access to this record;

5. the Co-ordinator identified that the appellant is able to access "sales" information through the Release of Assessment Records (ROAR) at a cost, although in doing so, he will not get names, addresses, roll numbers or instrument numbers; and

6. MPAC issued a new decision to the appellant (the third decision) in which it explained to the appellant that the records originally identified as being responsive to his request are the analytical files downloaded from the model. It then identified the "correct" record relating to sales as the "Sales Enquiry Screen" or "SAE Screen" which is downloaded from the OASYS database. According to MPAC, this record contains the roll number, location, name, legal description, dates of sales, instrument numbers, sale amounts, type, market amount, realty assessment, property code, property class code and market to sale ratio. MPAC denied access to this record on the basis of section 15(a) (publicly available) and 14(1)(f) (invasion of privacy) of the *Act*. The decision indicated further that the appellant could purchase the non-exempt portions of this record pertaining to the 1929 sales used to determine the value of the subject properties at a cost of $1,491.55.

Following the issuance of the third decision Appeal MA-010012-2 was closed. The appellant appealed this decision and Appeal MA-010012-3 (the current appeal) was opened. The appellant continues to take the position that more records exist, in particular, the model, which he states has never been removed from the scope of the request.

Mediation did not resolve the issues, and this office sent a Notice of Inquiry setting out the facts and issues in this appeal to MPAC, initially, which submitted representations in response. The Notice was then sent to the appellant together with the non-confidential portions of MPAC's representations. The appellant submitted representations in response.

This appeal raises a number of issues, some of which are similar to issues which are/have been the subject of other orders and/or applications to the courts. This file was placed on hold pending the outcome of some of these other issues. However, in order to move this appeal forward, I have decided to address the scope of the appellant's request as a preliminary matter in this Interim Order.

DISCUSSION:

SCOPE OF THE REQUEST

Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

> (1) A person seeking access to a record shall,
>
> (a) make a request in writing to the institution that the person believes has custody or control of the record;
>
> (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record; and
>
> ...
>
> (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

In Order P-880, Adjudicator Anita Fineberg determined that records must "reasonably relate" to the request in order to be considered "responsive." She went on to state:

> ... the purpose and spirit of freedom of information legislation is best served when government institutions adopt a liberal interpretation of a request. If an institution has any doubts about the interpretation to be given to a request, it has an obligation pursuant to section 24(2) of the [provincial] *Act* to assist the requester in reformulating it. As stated in Order 38, an institution may in no way unilaterally limit the scope of its search for records.

In Order 134, former Commissioner Sidney B. Linden also commented on the proper interpretation of section 24(2) (the equivalent of section 17(2) of the *Act*), stating, among other things:

> ...the appellant and the institution had different interpretations as to what this meant: the institution felt that the files were outside the scope of the original request and should be the subject of a new one; and the appellant thought he was seeking information which he expected to receive in response to his initial

> request. While I can appreciate that there is some ambiguity on this point, in my view, the spirit of the *Act* compels me to resolve this ambiguity in favour of the appellant. The institution has an obligation to seek clarification regarding the scope of the request and, if it fails to discharge this responsibility, in my view, it cannot rely on a narrow interpretation of the scope of the request on appeal.

In Order PO-1897-I, commenting on the above orders, Adjudicator Sherry Liang noted that in the appeal under consideration in Order 134, the request was somewhat vague, and that the institution had genuine difficulty in interpreting the scope of the request. She pointed out, however, that "even there, the former Commissioner resolved the ambiguity in favour of the appellant's view of the request".

In this case, the appellant's original request (which resulted in Appeal MA-010012-1) was quite detailed and I suspect, quite broad. In my view, however, the focus of his request was clear in that he sought the model used to prepare the valuation of the two properties and all supporting documentation.

At one point during the processing of this request, the Co-ordinator had a telephone conversation with the appellant in which the appellant allegedly "narrowed" the scope of his request by removing the model from the request.

The issue in dispute is whether the appellant, in fact, narrowed the scope of his request, and whether MPAC can rely on this in removing the model from the scope of the appeal.

MPAC has provided extensive representations on this issue and has attached to them an affidavit sworn by the Co-ordinator, which also includes a number of attachments. In essence, these submissions re-iterate the background to the current appeal as described above as viewed from MPAC's perspective.

The basis for MPAC's stand on this issue is the Co-ordinator's statement that the appellant narrowed the scope of the request in a specific discussion between them. In support of her position, the Co-ordinator provides a copy of the notes she made of their telephone conversation (which consist of handwritten notations in point form). The last line of these notes reads "- doesn't want model". In her affidavit, the Co-ordinator outlines her contacts with the appellant relating to this issue.

MPAC refers to previous orders of this office (Orders MO-1488 and PO-1755) which discuss the reasons why it is inappropriate to allow parties to "re-introduce" records which have been removed from the scope of an appeal, and submits that it would be inappropriate to re-introduce the model as part of this appeal.

The orders referred to by MPAC refer to the removal of records/issues during the mediation stage of the appeal, and the principles set out in them contemplated a **clear** position taken on the record/issue by the appellant at the mediation stage and/or a clear meeting of the minds of both parties regarding settlement of the issue.

In this case, the specific discussion between the Co-ordinator and the appellant occurred during the request stage. I accept that it was the Co-ordinator's understanding at that time that the appellant did not wish to seek access to the model. The discussion was confirmed by the Co-ordinator in her subsequent decision letter. However, the appellant **immediately** appealed this decision and clearly stated that the Co-ordinator's characterization of his request was incorrect. The appellant has consistently and forcefully maintained from that point on that the model should be considered to be a record responsive to his request, and this was communicated to the Co-ordinator by the mediator. It was also included as an issue in the Mediator's Report.

It is not unusual that a Co-ordinator will confirm his or her understanding of the clarification discussions with a requester, prior to making a decision or in the decision itself. Often, a requester will contact the Co-ordinator directly to advise that this understanding was incorrect. In the circumstances of this appeal, there were three decision letters issued by MPAC over a period of six months from the initial request. It is apparent that there was considerable confusion, not only on the appellant's part, but also on the part of the Co-ordinator and MPAC's staff, as to what the request was about and to what the records referred. Indeed, following the conversation referred to by the Co-ordinator, and MPAC's second decision letter, MPAC issued a third decision explaining that the records identified in the second decision letter as being responsive to the appellant's request were incorrectly identified.

In my view there was not a clear meeting of the minds on the issue of whether the appellant narrowed the scope of his request to exclude the model. Based on my review of all of the circumstances of this appeal (as well as the two preceding it), I am satisfied that the appellant did not intend for the model to be removed from the scope of the request. Consequently, I find that the model that was used to obtain the assessed value of the subject properties is responsive to the request and was not removed from the scope of the request.

ORDER:

1. I order MPAC to provide a decision letter to the appellant with respect to access to the model that was used to obtain the assessed value of the subject properties, in accordance with the requirements of the *Act*. A copy of this letter should be forwarded to my attention.

2. I remain seized of this matter, in order to deal with all outstanding issues.

Original signed by: November 20, 2003
Frank DeVries
Adjudicator