



**Information and Privacy  
Commissioner/Ontario**

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

# **INTERIM ORDER MO-1859-I**

**Appeal MA-030433-2**

**Municipal Property Assessment Corporation**



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## **NATURE OF THE APPEAL:**

The Municipal Property Assessment Corporation (MPAC) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) from two individuals (a husband and wife). The request read as follows:

I request a copy of all and any records concerning the assessment and/or reassessment of property jointly owned between myself and my [named] spouse located at [an identified location] between the dates of July 26, 1996 and October 7, 2003.

This request includes, but is not limited to, any information concerning this property, as well as information of other properties used as a comparison between those properties and our property, that have been used for assessment/reassessment purposes of our property, including any records, notes, diagrams, Assessment Corporation employee notations and photographs.

MPAC responded to the request by letter which read, in part, as follows:

... As per your correspondence and our subsequent telephone conversations we have divided your request into two parts. Part 1 relates to records that specifically describe your property. Part 2 relates to similar data about other properties that were used to assist in determining the value of your property.

With respect to Part 1 of your request; our field staff informs me that they no longer create or maintain hard copy records (appraisal cards) on properties. They do, however, collect data using a hand-held computer and upload the data onto the mainframe. We have extracted a record from the mainframe database titled "Property Profile Report". This report describes the physical attributes of your property. A copy is enclosed. In accordance with section 45(4) of the *Act* I am waiving the fee for producing this record as I deem it appropriate to do so.

MPAC also identified that records responsive to the second part of the request were denied under section 15(a) (information publicly available) of the *Act*. MPAC also indicated where this information could be obtained.

The requesters (now the appellants) appealed MPAC's decision.

With respect to the first part of the request, the appellants identified that they seek access to "all" information concerning their property assessments from 1996 to 2003, and identified their concern that additional records responsive to the request exist. In support of their position, the appellants identify certain information which was obtained by them in the course of appealing the assessment of their property.

During the course of processing this appeal, all issues regarding the second part of the request were resolved.

Accordingly, the sole issue remaining in this appeal is whether additional records responsive to the first part of the request exist.

To begin the adjudication of this appeal, I sent a Notice of Inquiry to MPAC, initially, and received representations in response. I then sent the Notice of Inquiry, together with a copy of MPAC's representations, to the appellants, who also provided representations. Those representations were shared with MPAC, and MPAC provided reply representations in response.

## **DISCUSSION:**

### **REASONABLE SEARCH**

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 17 [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 [P-624].

### **MPAC's representations**

In its initial representations, MPAC identifies the steps taken to respond to the appellants' request. These include various contacts with the appellants in an attempt to clarify the request. MPAC also identifies the information on comparable sales properties that was provided to the requester in response to the second part of the request, and that in some instances confusion exists regarding whether records held by MPAC contain information about an individual, or information about an individual's property.

Concerning the nature of the searches conducted, MPAC states that identified staff members were asked to identify responsive records. MPAC states:

[A named staff member], being familiar with the local filing system conducted a search for any records which would indicate/show/display the physical attributes of [the appellants'] residence. She could not locate any hard copy records because the property details were collected electronically via a hand-held computer. Data from the hand-held computer was subsequently up-loaded to MPAC's property database known as Ontario Assessment System (OASYS).

OASYS contains billions of data elements on several million properties. OASYS is capable of producing numerous reports.

Because no hard copy records existed it was decided that a Property Profile Report (PPR) would be extracted from the database and given to [the appellants] in order to satisfy [their] request for information as to what data we had on [their] property. The record was provided to [the appellants].

MPAC's Freedom of Information Co-ordinator also identifies that, in his view and based on his familiarity with MPAC's record-keeping practices, it is very reasonable that the search conducted did not yield any records other than those identified.

In response to the question in the Notice of Inquiry asking whether it was possible that responsive records existed but no longer exist, MPAC's representations state:

It is not possible that a hard copy record existed. [The appellants'] new residence was built in 2002 and data on the new structure was only ever collected by handheld computer, in March, 2003.

### **The appellants' representations**

As identified above, I sent a Notice of Inquiry, along with a copy of MPAC's representations, to the appellants. The appellants responded to a number of the positions taken by MPAC.

The appellants identify that the information which has been provided to them in response to their request is information of which they are already aware, and which relates to the description of their property, specifically their "new" construction which was completed just prior to their most recent assessment. They identify that the information they are seeking deals with the assessed value of their property leading up to the final assessment, of which they were informed that there were several steps. They identify that they have never been provided with this earlier information. The appellants then state:

The fact is that we are paying our property taxes based on an assessed value from the point we purchased the property in 1996. The assessed value (prior to our current assessment) of that property *must* be recorded with MPAC somewhere. This information must be in our file, but the information we received showed nothing prior to our construction on the property. We know this information exists ...

When we visited [an identified MPAC employee's office, he] was very helpful and personally showed us MPAC documents outlining the progressive increase in our assessed value. These documents were not provided to us...

Concerning the existence of hard copies of records, the appellants state:

[MPAC] reports that documents recorded by their employees on paper no longer exist and that information is "uploaded" into a database. We personally assisted

the MPAC appraiser in taking measurements of our property, which we watched him write into a paper notebook. We were present when this person took photographs of our property. [MPAC] does not say that this information does not exist, but that it was “uploaded” into a database. We must ask, what happened to the photographs of our property? [MPAC] refers to appraisal cards no longer being used. Although this may be the case, we know their field workers use notebooks. These must exist somewhere.

### **MPAC’s reply**

The appellants’ representations were shared with MPAC, which responded by way of reply representations. MPAC states that upon receipt of the appellant’s representations, the MPAC Co-ordinator immediately contacted one of the employees at the regional office referred to by the appellants, and asked him to conduct a further search for records. MPAC states that no additional records were found.

MPAC also identifies that its OASYS database is capable of creating a series of reports or “screens” and that it is possible that one or more of these screens could have been shown to the appellants during one of their visits to the field office. The employee at the regional office was asked to provide a printout of those screens which the appellants may be alluding to in their representations. MPAC identifies the screens, and that MPAC would have no objection sharing those screens with the appellant, “notwithstanding whether or not they may be responsive to the request.” MPAC provided me with copies of those screens.

In response to the appellants’ position on the existence of notebook entries or photographs, MPAC responds as follows:

[The regional employee] went on to inform me that it is not unusual for some assessors/data collectors to write down the measurements at the time they are taken and shortly thereafter enter the data into the hand-held computer. The paper notes are not retained. One of the principal purposes for using hand-held computers is to eliminate the need for the use of paper. To retain paper notes would be totally redundant.

Lastly, [the regional employee] informs me that he spoke with the [named] MPAC representative that visited [the appellants’] property and took the measurements. [The named MPAC employee who took the measurements] informed [the regional employee], with total certainty, that he did not take any photographs of the property. With respect to the matter of photographs, [the regional employee] states that he recalls reviewing interior/exterior photographs of [the appellants’] home with [the appellants] sometime in January/February. However the photographs were taken by [the appellants]. They are his photographs. [The regional employee] states that MPAC does not have any copies.

## **Findings**

In this appeal I must decide, based on the evidence provided to me, whether in the circumstances MPAC has conducted a reasonable search for records as required by section 17.

### *Notebook entries*

The appellants state that notebook entries were made by the MPAC appraiser who visited their property. They state:

We personally assisted the MPAC appraiser in taking measurements of our property, which we watched him write into a paper notebook.

In response, MPAC's representations identify that an MPAC appraiser did attend the appellants' property and did take measurements. With respect to whether a search was conducted for any notebook entries, MPAC identifies generally that:

... it is not unusual for some assessors/data collectors to write down the measurements at the time they are taken and shortly thereafter enter the data into the hand-held computer. The paper notes are not retained. One of the principal purposes for using hand-held computers is to eliminate the need for the use of paper. To retain paper notes would be totally redundant.

I have been provided with direct evidence from the appellants, signed by one of the appellants (though not in affidavit form), that they watched the MPAC appraiser write into a paper notebook. In response, MPAC acknowledges that the MPAC appraiser took measurements of the property, but makes a general statement concerning the use and retention of paper notes. MPAC does not identify whether or not the appraiser was asked whether any notebook entries were searched for or located, or what may have happened to any records which may have been created in paper form at the time the appraiser attended at the appellants' property.

In the circumstances of this appeal, and based on the evidence provided by the parties, I am not satisfied that MPAC has conducted a reasonable search for notebook entries responsive to the request, and I will order MPAC to conduct a further search for any responsive records.

### *Photographs*

In this appeal, the appellants have identified that photographs of their property taken by the appraiser should exist. They state:

We were present when [the MPAC appraiser] took photographs of our property.... We must ask, what happened to the photographs of our property?

In response, MPAC's representations, which were prepared by the Freedom of Information Co-ordinator, state:

... [the regional employee] informs me that he spoke with the [named] MPAC representative that visited [the appellants'] property and took the measurements. [The named MPAC employee who took the measurements] informed [the regional employee], with total certainty, that he did not take any photographs of the property.

In the circumstances, I have specific evidence from the appellants, signed by one of the appellants (though not in affidavit form), that they were present when the MPAC appraiser took photographs of the appellants' property. In response, MPAC has provided specific information of the response given by the appraiser to an intermediary (the regional employee), and then passed on to the Co-ordinator, identifying that the appraiser did not take any photographs of the property.

In the circumstances of this appeal, and based on the evidence provided by the parties, I am also not satisfied that MPAC has conducted a reasonable search for photographs responsive to the request, and I will order MPAC to conduct a further search for any responsive records.

*Information concerning the assessed value of the property prior to the current assessment*

In this appeal, the appellants' request was for records concerning the assessment and/or reassessment of their property between the dates of July 26, 1996 and October 7, 2003. In their representations they identify that, in their view, MPAC must have some information concerning the assessment of their property prior to their current assessment. They also identify by name the MPAC employee with whom they met. They state that he "personally showed us MPAC documents outlining the progressive increase in our assessed value. These documents were not provided to us...".

As identified above, MPAC responded to these representations by identifying that its OASYS database is capable of creating a series of reports or "screens" and that it is possible that one or more of these screens could have been shown to the appellants during one of their visits to the field office. MPAC provided me with copies of those screens, and identifies that it has no objection to sharing those screens with the appellant, "notwithstanding whether or not they may be responsive to the request."

I have viewed the two reports or "screens" provided by MPAC to me along with its reply representations. At least one of these records appears to contain some information concerning assessments of the appellants' property made prior to their current assessment, and these records should be provided to the appellant by MPAC.

However, in the circumstances of this appeal, and based on the evidence provided by the parties, I am also not satisfied that MPAC has conducted a reasonable search for any other records which

may be responsive to the request for records concerning prior assessments of the appellants' property.

The request was for "all and any records concerning the assessment and/or reassessment ... between the dates of July 26, 1996 and October 7, 2003." MPAC's initial representations state that "[The appellants'] new residence was built in 2002 and data on the new structure was only ever collected by handheld computer, in March, 2003". It appears that the initial searches conducted dealt with the current assessment, as opposed to previous assessments.

In response to the appellants' representations, MPAC provided reply representations which identify that, upon receipt of the appellant's representations, the employee at the regional office referred to by the appellants was contacted and asked to conduct a further search for records, and that no responsive records were found. However, MPAC does not identify where these further searches for records were conducted, and I am not satisfied that MPAC has conducted a reasonable search for records of assessments of the appellants' property prior to the current assessment. I will order MPAC to conduct a further search for any responsive records.

## CONCLUSIONS

As identified above, the *Act* does not require an institution to prove with absolute certainty that any records or any additional records do not exist. What is required of institutions in reasonable search appeals is to provide sufficient evidence to show that reasonable efforts were made to identify and locate responsive records.

Although the search activities undertaken by MPAC were extensive, I am unable to satisfy myself that all reasonable efforts have been made. I am in receipt of direct evidence from the appellants concerning their specific observations of the actions of an appraiser, both with regard to notebook entries and the taking of photographs of their property. MPAC chose to respond to this direct evidence by relying on indirect evidence (namely, statements made by the appraiser to the regional employee and passed on to the co-ordinator) when direct evidence would have been more appropriate. With respect to the records concerning assessments prior to the current assessment, I am not satisfied that MPAC has conducted a reasonable search for responsive records.

I must make my decisions based on the evidence and arguments presented by the parties. In my view, the evidence provided by the appellants is more compelling than the evidence provided by MPAC, and I am not satisfied that all reasonable steps have been taken to identify records responsive to the appellants' request.

In the circumstances, I find it appropriate to order MPAC to conduct further searches for responsive records. MPAC must also provide me with a detailed affidavit sworn by the employee(s) who conduct the searches, the contents of which are outlined in the provisions of this order.



**INTERIM ORDER:**

1. I order MPAC to conduct further searches for responsive records and provide me with a detailed affidavit(s) sworn by the MPAC employee who attended at the appellants' property within 30 days of the date of this Interim Order. If for any reason it is not possible or practicable to have this individual conduct a search or provide an affidavit, MPAC is to provide me with information detailing why not. At a minimum, the affidavit(s) should include information relating to the following:
  - (a) Details of the date[s] and time[s] upon which this employee attended at the appellants' property;
  - (b) Whether this employee created any records, including notebook entries or photographs, during the attendance at the property;
  - (c) Whether this employee created any records following the attendance at the property that related to the property;
  - (d) If records were created and no longer exist, what steps were taken to ensure that no records responsive to the appellant's request exist.
  
2. Further, I order MPAC to conduct a further search for records responsive to the appellants' request for records relating to their property prior to the current assessment, and to provide me with an affidavit sworn by the individual who conducts the search within 30 days of the date of this Interim Order. At a minimum, the affidavit should include information relating to the following:
  - (a) information about the employee(s) swearing the affidavit describing his or her qualifications and responsibilities;
  - (b) a statement describing the employee's knowledge and understanding of the subject matter of the request;
  - (c) the date(s) the person conducted the search and the names and positions of any individuals who were consulted by the person, if any;
  - (d) information about the type of files searched, the nature and location of the search, and the steps taken in conducting the search;
  - (e) the results of the search.
  
3. If, as a result of the further searches, MPAC identifies any records responsive to the request, I order the MPAC to provide a decision letter to the appellants regarding access to these records in accordance with sections 19, 21 and 22 of the *Act*, considering the date of this order as the date of the request.
  
4. The affidavits referred to in Provisions 1 and 2 should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 2 Bloor Street East, Suite 1400, Toronto, Ontario, M4W 1A8. The affidavits provided to me may be shared with the appellants, unless there is an overriding confidentiality concern. The procedure for the submitting and sharing of representations is set out in *IPC Practice Direction 7*.

5. I remain seized of these matters with respect to compliance with this interim order or any other outstanding issues arising from this appeal.

Original signed by: \_\_\_\_\_  
Frank DeVries  
Adjudicator

\_\_\_\_\_ October 25, 2004