



**Information and Privacy
Commissioner/Ontario**

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

FINAL ORDER MO-1898-F

Appeal MA-030433-2

Municipal Property Assessment Corporation



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NATURE OF THE APPEAL:

This is my final order disposing of the sole outstanding issue in this appeal.

This is an appeal from a decision of the Municipal Property Assessment Corporation (MPAC), under the provisions of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The requesters (now the appellants) requested information about their property, including reassessment information. They appealed MPAC's decision on the basis, among other things, that MPAC had failed to conduct a reasonable search for responsive records.

On October 25, 2004, I issued Interim Order MO-1859-I, in which I ordered MPAC to conduct further searches for responsive records and to provide me with detailed affidavits sworn by two individuals describing the searches. I also set out some requirements as to the information to be contained in the affidavits. In addition, if these further searches resulted in the identification of any records responsive to the request, I ordered that MPAC provide a decision letter to the appellants regarding access to these records.

As required by Interim Order MO-1859-I, MPAC conducted further searches, and provided me with two affidavits describing those searches. MPAC also provided the appellants with the additional "screen" information referenced in Interim Order MO-1859-I.

I then sent a letter to the appellants, inviting them to provide me with representations on whether MPAC conducted a reasonable search for records responsive to the request. With the letter, I enclosed the two affidavits, as well as an attachment to one of the affidavits.

The appellants provided representations in response. In their representations the appellants raise questions concerning certain issues, and identify that they are not satisfied that MPAC conducted a reasonable search for responsive records. I shared the appellants' representations with MPAC, which in turn provided representations addressing the issues raised by the appellants.

DISCUSSION:

As identified above, in accordance with Interim Order MO-1859-I, MPAC provided two affidavits in support of its position that the searches conducted for responsive records were reasonable.

Affidavit from the employee who attended at the appellants' property

In Interim Order MO-1859-I, I ordered MPAC to provide an affidavit sworn by the MPAC employee who attended at the appellants' property. The order set out that, at a minimum, the affidavit 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.

In response, the employee provided an affidavit identifying the date that he attended at the appellants' property and stating that the employee recorded "all measurements and details pertaining to the new structure" on his pocket personal computer (PC). He states that information from his PC would have been uploaded on to MPAC's property database known as Ontario Assessment System (OASYS). He also advised that, although it is possible that he made some sketches on a piece of paper, it is not his practice to do so, and that any such rough notes or sketches would have been destroyed. In addition, he advises that it would not have been possible for him to take photographs, as he was not provided with a camera during the time he visited the property. Finally, he advises that he did not create any records related to the property following his attendance at the the property.

The appellants were provided with a copy of this affidavit. In response, the appellants concede that the observations they made concerning the writing of notes during the employee's attendance at the property could have been notes made on a computer notebook, as opposed to a paper notebook. Similarly, with respect to the photographs, the appellants accept that the actions of the employee which they believed involved taking pictures with a digital camera may have been the employee's use of the computer notebook.

Finding

Upon my review of the affidavit sworn by the employee, as well as the information provided by the appellants, I am satisfied that the search by MPAC for information recorded by the employee who attended at the appellants' property was reasonable in the circumstances.

Search for records responsive to the appellants' request for records relating to their property prior to the current assessment

In Interim Order MO-1859-I, I ordered 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. The order set out that, at a minimum, the affidavit should include information relating to:

- (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.

In response to this part of the Interim Order, MPAC provided an affidavit sworn by the employee who conducted the search for responsive records. In this affidavit, the employee identifies his qualifications, his responsibilities and his knowledge of the subject matter. He then identifies the specific record holdings and files he searched, and also identifies that one particular file contains the appraisal cards for the property in question prior to the construction of the new residence, as obtained from the permanent historical files for this property. He states that these are the only permanent hard copy files for this property. He goes on to identify the other actions taken and searches made as a result of Interim Order MO-1859-I, and confirms that no additional information was found.

Again, the appellants were provided with a copy of this affidavit.

In response, the appellants identify that, with one exception, they are satisfied with the search conducted by MPAC. In their view, however, this one exception brings into question the nature of the searches conducted by MPAC for the responsive records.

The appellants submit that, during the processing of this appeal and on the day I forwarded MPAC's affidavits to them, they found a copy of a document entitled "Assessment Information Request" which they had forwarded to MPAC on an earlier occasion. The appellants state that they had not received a copy of this form in response to their request for information.

Upon locating the form and contacting the individual at MPAC who had conducted the search for records relating to their property prior to the current assessment, they were advised that this particular form, if it existed with MPAC, would be located in another file. MPAC then located the form in the other file. The appellants contend that this does not reconcile with the statement in the affidavit asserting that the files which were located and searched by the MPAC employee were the "only permanent hard copy files for this property". The appellants therefore question the veracity of the affidavit sworn by the MPAC employee.

Upon receiving the appellants' representations on this point, I forwarded their representations to MPAC. I asked MPAC to respond specifically to the appellants' representations concerning the statement in the affidavit that the files searched were the only permanent hard copy files for this property, and the appellants' concern that an additional hard copy file exists.

MPAC provided representations in response. With respect to the appellants' concern about the existence of the "Assessment Information Request" form in another file, MPAC identifies this form (also referred to as the "Help Us Get it Right" form) was sent out in a blanket mail-out to residential properties in the municipality in early 2003. With regards to why the copy of this form for the appellants' property was not contained in the file searched by the MPAC employee, but was contained in another file, the MPAC employee states:

When received, the ... forms are reviewed by Property Valuation staff... and, if information on this form differs from our electronic records, our records would be updated to account for this input. In the case of [the appellants'] property, there

would have been no record of the new residence to update, as the inspection of the property had not yet been completed.... Once the questionnaire had been received, it would have been filed (by valuation staff), in Roll Number Order, with the other questionnaires that had been received. **Unless someone from Customer Service (my department) had physically received the questionnaire at the front counter, we would not know that it had been returned or that it was ever physically present in the building.**

Addressing the appellants' concern regarding the veracity of the statement in the affidavit that the files which were located and searched by the MPAC employee were the "only permanent hard copy files for this property", the employee asserts that this statement is entirely true. He states:

The "Help Us Get it Right" form is NOT part of the permanent record for any property. It is a supplementary information gathering tool; it is our practice to keep these on record for a period of up to 2 years, (or longer if space permits) after which they are destroyed as the information contained becomes outdated and of little use to future assessments. While retained **they are filed together and separate from any individual property file**, such as the one I have been maintaining for [the appellants'] property. Once [the appellants] made me aware that [they] had returned a questionnaire that I did not know existed, it was a simple matter for me to ask our valuation staff where it may be filed, and to look it up by roll number.

Finding

Upon my review of the affidavit sworn by the employee, as well as the information provided by the appellants, I am satisfied that the search by MPAC for records responsive to the appellants' request for records relating to their property prior to the current assessment was reasonable in the circumstances.

The affidavit provided by the employee identifies his qualifications, responsibilities and knowledge of the subject matter, as well as the specific record holdings and files he searched. He goes on to identify in detail the other actions which were taken and searches made as a result of Interim Order MO-1859-I, and confirms that no additional information was found.

The appellants question MPAC's response, largely based on their identification of a record which was not provided to them, and which existed separately from the file searched by the employee. I understand the appellants' surprise that, coincidentally on the same day they received the copy of the employee's affidavit, they located a record which was contained elsewhere at MPAC, and their concerns that this casts doubt on the statements of the MPAC employee. However, the MPAC employee has responded by identifying the unique nature of this additional record, and providing a detailed explanation as to why that particular record was not contained in the "hard copy permanent files" searched by him. The employee reviewed the

nature of this additional record and the record-keeping practices of MPAC with respect to documents of this nature.

The appellants also acknowledge that, apart from the issues arising from the location of the ‘Help Us Get it Right’ form, they would have been satisfied with the results provided by MPAC, and that no other information could be obtained from MPAC.

In the circumstances, I am satisfied with the explanation and information provided by MPAC concerning the existence and location of this additional form. Accordingly, I am satisfied that the search conducted by MPAC for records of the nature requested was reasonable.

ORDER:

I uphold the decision of MPAC.

Original signed by: _____
Frank DeVries
Adjudicator

January 10, 2005