



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER MO-1953

Appeal MA-030148-1

Municipal Property Assessment Corporation



Tribunal Services Department
2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

Services de tribunal administratif
2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel: 416-326-3333
1-800-387-0073
Fax/Télé: 416-325-9188
TTY: 416-325-7538
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

Background

On December 31, 1998, the Government of Ontario transferred responsibility for property assessment from the Ministry of Finance to the Ontario Property Assessment Corporation (OPAC), an independent body established by the *Ontario Property Assessment Corporation Act*, 1997. Amendments to that *Act* in 2001 renamed the legislation as the *Municipal Property Assessment Corporation Act* (the *MPAC Act*) and changed the name of OPAC to the Municipal Property Assessment Corporation (MPAC).

MPAC is a non-share capital, not-for-profit corporation. Every municipality in Ontario is a member of MPAC, and the organization is governed by a 15-member board of directors appointed by the Minister of Finance. The Board includes municipal representatives, property taxpayers and members representing provincial interests.

MPAC administers a uniform, province-wide property assessment system based on current value assessment in accordance with the provisions of the *Assessment Act*. It provides municipalities with a range of services, including the preparation of annual assessment rolls used by municipalities to calculate property taxes. MPAC is responsible for the assessment of more than 4.25 million properties in Ontario.

MPAC has a Business Development Group that sells property information to the public in electronic format. This electronic information is derived from various databases that MPAC maintains for its assessment systems. The fee charged is based on a standard pricing structure that was developed by MPAC.

Section 7(1) of the *MPAC Act* provides that:

The Corporation [i.e. MPAC] shall be deemed to be an institution for the purposes of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) and that *Act* applies with necessary modifications with respect to the Corporation.

Freedom-of-Information Request

MPAC received a request under the *Act* for the following nine fields for each address in Ontario:

1. Suite number
2. Street number
3. Street name
4. Street type
5. Street direction
6. City
7. Postal code
8. Property type
9. XY coordinates or mapping coordinates (where available)

MPAC issued a decision letter to the requester denying access to the responsive records pursuant to the exemptions in sections 11(a), 11(c), 11(d), and 15(a) of the *Act*. It informed the requester that the first eight fields for all properties in Ontario could be purchased through MPAC's Business Development Group at a cost of \$11 per property for approximately 4.25 million properties, plus shipping and handling and GST. It also informed the requester that MPAC does not maintain a record of XY coordinates and therefore no records existed which were responsive to that portion of the request.

The requester (now the appellant) appealed MPAC's decision to this office. The appeal was not settled in mediation and the file was assigned to former Assistant Commissioner Tom Mitchinson for adjudication. With Assistant Commissioner Mitchinson's retirement, I have taken over responsibility for the adjudication of this appeal.

Assistant Commissioner Mitchinson began his inquiry by sending a Notice of Inquiry, setting out the facts and issues on appeal to MPAC. MPAC submitted representations to him, including an affidavit from its Senior Manager, Sales, in its Business Development Group. In its representations, MPAC stated, amongst other things, that it has recently become aware that one of its employees had, at the time of the appellant's request, limited XY coordinate information for properties in three regions of the province: Niagara North, Niagara South and Middlesex. This limited XY coordinate information is contained in the Ontario Parcel, which consists of digital parcel mapping databases that are being created and maintained by MPAC, Teranet and the Ontario government. MPAC obtained this information, the Ontario Parcel, through a licensing agreement with the other two parties. The XY Coordinate information is not yet made publicly available by MPAC. It further stated that it was denying the appellant access to these new responsive records pursuant to the exemptions in sections 11(a), 11(c), 11(d) and 10(1) of the *Act*.

Shortly after receiving MPAC's representations, this office issued Order MO-1693, which ordered MPAC, in a different appeal, to disclose a copy of the current year's assessment roll for the entire province of Ontario. Assistant Commissioner Mitchinson wrote to MPAC and invited MPAC to make supplementary representations on how Order MO-1693 impacted the issues in this particular appeal.

In a response letter, MPAC stated that it had filed an application for judicial review of Order MO-1693 with the Divisional Court and requested that this appeal be put on hold, pending the Divisional Court's decision. Assistant Commissioner Mitchinson sought the appellant's input on MPAC's request to put the appeal on hold. He received a letter from the appellant, who did not object to MPAC's request. Consequently, pursuant to section 19.01 of the IPC's *Code of Procedure*, Assistant Commissioner Mitchinson put this appeal on hold pending the judicial review of Order MO-1693.

On May 21, 2004, the Divisional Court issued its decision in *Municipal Property Assessment Corp. v. Ontario (Assistant Information and Privacy Commissioner)* (2004), 71 O.R. (3d) 303 (*MPAC v. IPC*), which quashed the IPC's decision in Order MO-1693. Assistant Commissioner Mitchinson then took the present appeal off hold and continued the adjudication process by

issuing a Notice of Inquiry that invited the appellant to make representations on the issues in this appeal. MPAC's representations were shared in full with the appellant. The appellant submitted representations and Assistant Commissioner Mitchinson then invited MPAC to reply to the appellant's representations, which were shared in full. After receiving MPAC's reply representations, he invited the appellant to respond and the appellant submitted sur-reply representations.

DISCUSSION:

RECORDS AT ISSUE

Format of Records

During the mediation process, MPAC provided the IPC with a sample of the records at issue. This sample is a one-page print-out of 30 properties (out of 4.25 million properties) from MPAC's electronic databases. Each property listing in the sample record contains the information sought by the appellant, except for XY coordinates.

In its representations, the appellant submits that it is not seeking a "print out" on paper. It states that its request is for an electronic compilation of the nine fields for each property in Ontario (suite number, street number, street name, street type, street direction, city, postal code, property type, and XY coordinates). It further notes that it would like to obtain this information by either download from MPAC's server via an FTP (file transfer protocol) or in CD format.

I do not believe that MPAC disputes that the records at issue in this appeal are in the form of an electronic compilation, not a paper print-out. Although MPAC provided the IPC with a sample print-out for reasons of convenience, its representations contain numerous references to the "electronic" records sought by the appellant. Moreover, the sample print-out provided to the IPC is clearly an extract from a larger electronic compilation held by MPAC that contains at least eight of the nine fields sought by the plaintiff for all properties in Ontario.

In short, I accept the appellant's submission that the records at issue in this appeal are in the form of an electronic compilation held by MPAC, not a paper print-out of this compilation.

Responsive Records: XY Coordinates

As noted, MPAC's decision letter informed the requester that it does not maintain a record of XY coordinates and therefore no records existed which were responsive to that portion of the request. However, in its subsequent representations to the IPC, MPAC states that it had recently become aware that one of its employees had, at the time of the appellant's request, limited XY coordinate information for properties in three regions of the province. MPAC further states that it recognizes that there is a demand for such information and has therefore proposed to build a database with XY coordinate information in the near future which will be offered to the public for a prescribed fee.

In its representations, the appellant notes that based on the information available at the time on the Ontario Parcel website, it appeared that the entire mapping project was to be completed in the summer of 2004. Consequently, the appellant submits that it was reasonable to conclude that MPAC now has custody or control of the XY coordinates for all properties in Ontario, and the appeal should be considered on that basis.

In its reply representations, MPAC seeks to rebut the appellant's suggestion that the Ontario Parcel mapping project was complete. It submits that the project was expected to be completed by the end of 2004, and that it would be inconsistent with the *Act* and beyond the IPC's jurisdiction to consider this appeal on the basis of XY coordinate information that MPAC does not have. Since the submission of MPAC's last representations, it has not acknowledged or notified the IPC that further XY coordinate information for other properties in Ontario has come into its custody or under its control.

Under section 4(1) of the *Act*, a person has a right of access, subject to subsections (a) and (b), to a record or a part of a record that is "*in the custody or under the control of an institution*" (emphasis added). I agree with MPAC that records containing XY coordinate information that are not in MPAC's custody or under its control are clearly not subject to access under the *Act*.

REASONS FOR THE REQUEST/BURDEN OF PROOF

In its representations and reply representations, MPAC questions why the appellant has filed its access-to-information request. For example, MPAC submits that the appellant has not filed any evidence to explain why it would require information for all 4.2 million properties to service its existing clients. Similarly, it claims that the appellant has not tendered any evidence that it provides a public service or that it would transfer any value to the public.

The appellant submits that no person has a legal obligation to justify his or her purpose in exercising a right under the *Act*. It further argues that wholly apart from the lack of legal foundation for MPAC's objection based on the alleged "illegitimacy" of the appellant's request, the purpose of the appellant's request is legitimate. It submits that it has no intention of using the information for ulterior purposes or for any purpose contrary to the law.

Under section 42 of the *Act*, where an institution refuses access to a record or part of a record, the burden of proof that the record or part of the record falls within one of the specified exemptions in the *Act* lies upon the institution. In other words, the legal burden in this appeal is on MPAC to prove that one of the exemptions that it has claimed apply to the records at issue. In the circumstances of this appeal, the legal burden is not on the appellant to prove that it has legitimate reasons for seeking the records.

EXEMPTION CLAIMS

MPAC submits that the exemptions in sections 11(a), 11(c), 11(d), and 15(a) of the *Act* apply to the first eight fields of information sought by the appellant (i.e., suite number, street number, street name, street type, street direction, city, postal code, and property type). In addition, it

submits that the exemptions in sections 11(a), 11(c), 11(d) and 10(1) of the *Act* apply to the ninth field of information (i.e., XY coordinates for properties in Niagara North, Niagara South and Middlesex).

In its representations, the appellant submits that the real issue in this appeal involves the exemptions in sections 11(c) and (d) of the *Act*, and that these exemptions can be considered together. In addition, MPAC has claimed that these two exemptions apply to all nine fields of information that are at issue. Consequently, I have concluded that the most logical and efficient way of assessing the exemptions claimed by MPAC is to first consider whether MPAC has proven that sections 11(c) or (d) of the *Act* apply to the information at issue.

Economic and Other Interests

Sections 11(c) and (d) state:

A head may refuse to disclose a record that contains,

- (c) information whose disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;
- (d) information whose disclosure could reasonably be expected to be injurious to the financial interests of an institution;

Summary of MPAC's Representations

MPAC submits that the property information, including the XY coordinate data, is protected by section 11(c) of the *Act*. In an affidavit, MPAC's Senior Manager, Sales, in its Business Development Group, points out that MPAC has a responsibility to its customers – namely the Ontario municipalities that make up its membership – to recover costs and generate revenue for its bottom line. One way that MPAC generates revenue is by charging a standard price for property information. This revenue is then used to lower rates for core assessment services, thereby benefiting municipalities and taxpayers.

MPAC also submits that the disclosure of property information to the appellant would “greatly prejudice” MPAC's economic interests in several ways:

- MPAC would be deprived of the significant amount of fees that a request of this size would generate.
- MPAC would suffer an undue loss in its revenue stream and a concomitant loss on its bottom line. This revenue source significantly reduces the cost of MPAC's services to municipalities, and hence, taxpayers. If this information must be disclosed in bulk under the *Act*, MPAC would not be able to sustain its Business Development Group, whose efforts allow it to lower its costs to the municipalities and taxpayers.

- The competitive position of MPAC would be greatly prejudiced because the appellant could sell or distribute the property information to other parties at a reduced rate.

MPAC further submits that its competitive position would be prejudiced if the XY coordinate information was disclosed in bulk. MPAC plans to build a database with XY coordinate information in the near future which will be offered to the public for a prescribed fee. It argues that if the appellant obtains this information, it could develop such a project prior to MPAC, which would have a “great impact” on MPAC’s competitive position.

Summary of the Appellant’s Representations

In its representations, the appellant submits that although MPAC is not required by statute to engage in non-statutory, revenue-generating activity, it is arguably permitted to do so by s. 53(5) of the *Assessment Act* and section 9(2) of the *MPAC Act*.

Section 53(5) of the *Assessment Act* states as follows:

Subject to subsection (1) and to any requirement of the Assessment Review Board concerning the disclosure of evidence, the assessment corporation may disclose any information acquired by it and may do so on such terms as it determines.

Section 9(2) of the *MPAC Act* states:

The Corporation may engage in any activity consistent with its duties that its board of directors considers to be advantageous to the Corporation.

It submits that while MPAC’s non-statutory business activities are not, *per se*, unlawful or *ultra vires*, the decision by MPAC to deny the appellant’s access request under the *Act* is unlawful and *ultra vires* its powers under the *MPAC Act*. According to the appellant, as a matter of law, MPAC does not have the legal power to restrict the public’s access to information in its custody and control by imposing terms and conditions which are inconsistent with the public’s access rights. Further, MPAC’s refusal to disclose is not “consistent with its duties,” as required by section 9(2) of the *MPAC Act*, and is consequently *ultra vires*.

The appellant also submits that there is no evidence that MPAC is restricted from replacing the potential revenue it says is at risk as a result of the appellant’s request with revenue from a different type of activity. It points out that under section 12 of the *MPAC Act*, MPAC has the power to raise or lower the amount of money it collects from Ontario municipalities to pay for its operations during the relevant taxation year. In short, MPAC has the legal right to make up any loss by sourcing its funds elsewhere.

To illustrate its point, the appellant cites MPAC’s 2003 annual report, which sets out MPAC’s financial position:

During the 2003 fiscal year, MPAC had total revenues of \$140,835,812 and total expenses of \$144,821,060.00, for a relatively small operating shortfall of \$3,985,248. Of its total revenues, \$133,900,000 came from its Municipal Assessment Services, and only \$5,541,648 came from “other” revenue, which presumably includes the revenue generated by its private business activities.

To “break even”, MPAC need only to increase its revenue by slightly under \$4,000,000. It has the powers under section 12 of the MPAC Act to source this revenue from municipalities. This would involve a virtually negligible increase of less than 3% distributed across all the municipalities in Ontario. Therefore, to break even, MPAC plainly does not require the income it says will be lost by [the appellant’s] request.

The appellant further submits that:

- Beyond breaking even, MPAC has no real economic or financial interest in increasing its revenues, because MPAC is restricted to using its income solely in furtherance of the duties and activities authorized under the *MPAC Act*, and any revenue not required to offset expenses (or to fund expenses) must be applied to reduce charges levied under the *MPAC Act*.
- In light of the *MPAC Act* and MPAC’s financial reality, its stated expectation of economic and financial harm resulting from the appellant’s request is clearly “fanciful, imaginary and contrived”, and not based on reason. The evidence provided in support of MPAC’s economic and financial harm argument is singularly lacking detail and is unconvincing. If the evidence tendered in support of an exemption “lacks detail and is unconvincing”, as it is in this case, the information must be disclosed.
- MPAC’s sole statutory function is assessment services, and MPAC’s ability to discharge this function is not imperiled by the appellant’s request. MPAC’s position is different from that of organizations such as the Ontario Research Foundation, whose ability to serve its purpose and recover the value of its public investments would be compromised if members of the public could use freedom of information legislation to acquire the fruits of the organization’s valuable research. Consequently, MPAC and its activities do not fit within the policy concerns of sections 11(c) and (d), as contemplated by the Williams Commission report.
- The IPC is not bound by its previous decision in Order MO-1564 on the applicability of the sections 11(c) and (d) exemptions in the case of MPAC. The information at issue in that order (a complex market model developed by MPAC) was significantly different than the information at issue in this appeal (raw data), and the previous decision is distinguishable on that basis.

Summary of MPAC's Reply Representations

In its reply representations on sections 11(c) and (d), MPAC submits it has been given legislative authority to develop and sell products based on the data it collects, and that the money generated from the sale of these products is applied to lower the costs of the services MPAC provides to municipalities and taxpayers.

MPAC challenges the appellant's submission that MPAC could replace the potential revenue it says is at risk as a result of the appellant's request with revenue from a different type of activity:

The appellant's suggestion ... that MPAC will not suffer an economic loss and that it could raise the amount of money it collects from municipalities by a "negligible increase of less than 3% distributed across all municipalities in Ontario" is not only contrary to the legislative mandate but also highly insensitive and inappropriate ... Essentially, the appellant is suggesting that access to information legislation should be used to justify a result that would see Ontario municipalities and taxpayers paying more for the services that MPAC provides, in order that [the appellant] can increase its profits ...

MPAC further challenges the appellant's submission that MPAC has no real economic or financial interest in increasing its revenues because it has to use the revenue to offset expenses to reduce charges levied to taxpayers:

The allegation that MPAC has no economic or financial interest in increasing its revenues is entirely unfounded and directly contrary to MPAC's evidence that it established a way to generate revenue specifically for the purpose of reducing the costs of its services. The MPAC Act fully authorizes it to do so. At present, municipalities pay for the services MPAC provides. Increased revenue would allow MPAC to reduce the fees it charges to municipalities, which are presently overburdened.

MPAC submits providing the information at issue essentially for free to the appellant and others would diminish MPAC's exclusive right to exploit its intellectual property and would effectively remove from MPAC the ability to sell this information. Consequently, the economic harm would be "self-evident."

Finally, MPAC challenges the appellant's submission that the decision by MPAC to deny the appellant's access request under the *Act* is unlawful and *ultra vires* its powers under the MPAC Act:

[The appellant's] representations regarding MPAC's jurisdiction and statutory obligations effectively read the mandatory and discretionary exemptions right out of MFIPPA. They ignore the fact that the "right" of public access must always be subject to the "necessary exemptions" from disclosure that the head of every institution must consider in assessing every request for access to information.

MPAC, acting reasonably, is entitled to rely on the exemptions set out in MFIPPA, and its decisions are subject to appeal and review by the Commission. It is clearly within MPAC's jurisdiction, in view of all of its statutory obligations and authority, to rely on the exemptions in MFIPPA – even if the Commission determines on appeal that MPAC's decision was incorrect.

Summary of the Appellant's Sur-Reply Representations

In its sur-reply representations (i.e., its response to MPAC's reply representations) on sections 11(c) and (d), the appellant submits that it is noteworthy that MPAC does not dispute that it has the statutory ability to increase its revenues by increasing the amount of its levies on municipalities. Consequently, the appellant argues that MPAC implicitly concedes that its economic and financial position is not dependent on revenue it says it is entitled to extract from persons such as the appellant as a condition of disclosing property information.

The appellant further submits that MPAC's entire argument conflates its economic and financial interests with those of Ontario municipalities:

... MPAC says that “[i]ncreased revenue would allow MPAC to reduce the fees it charges to municipalities, which are presently overburdened. This is the crux of MPAC's argument on this issue. The argument fails to demonstrate the MPAC itself has an interest in increasing sales revenues.

MPAC describes Ontario municipalities as its “customers.” MPAC, a corporation, and Ontario municipalities are not one and the same. MPAC and each Ontario municipality are separate legal entities and separate “institutions” for the purposes of the Act. MPAC's entire argument relative to s. 11(c) and (d) ignores this fundamental distinction ...

Analysis

As noted above, the burden of proof is on MPAC in this appeal to demonstrate that the records at issue fall within the exemptions in sections 11(c) or (d) of the *Act*.

The purpose of section 11 is to protect certain economic interests of institutions. The report titled *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy 1980*, vol. 2 (Toronto: Queen's Printer, 1980) (the Williams Commission Report) explains the rationale for including a “valuable government information” exemption in the *Act*:

In our view, the commercially valuable information of institutions such as this should be exempt from the general rule of public access to the same extent that similar information of non-governmental organizations is protected under the statute ... Government sponsored research is sometimes undertaken with the intention of developing expertise or scientific innovations which can be exploited.

The purpose of section 11(c) is to protect the ability of institutions to earn money in the marketplace. This exemption recognizes that institutions sometimes have economic interests and compete for business with other public or private sector entities, and it provides discretion to refuse disclosure of information on the basis of a reasonable expectation of prejudice to these economic interests or competitive positions [Order P-1190].

To establish a valid exemption claim under section 11(d), an institution must demonstrate a reasonable expectation of injury to its financial interests.

For sections 11(c) or (d) to apply, the institution must demonstrate that disclosure of the record “could reasonably be expected to” lead to the specified result. To meet this test, the institution must provide “detailed and convincing” evidence to establish a “reasonable expectation of harm”. Evidence amounting to speculation of possible harm is not sufficient [*Ontario (Workers’ Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

Accordingly, in order to meet the requirements of the section 11(c) or (d) exemption claims, MPAC must provide detailed and convincing evidence sufficient to establish a reasonable expectation or probability of one or more of the harms described in either of these sections if the records are disclosed to the appellant.

Both MPAC and the appellant have provided substantial and thorough representations. I have carefully reviewed and considered the representations of both parties and in my view, MPAC has successfully demonstrated that the records at issue fall within the exemptions in both sections 11(c) and (d) of the *Act*.

Order MO-1564 established that MPAC’s business activities fall within the rationale for the “valuable government information” exemption articulated by the Williams Commission. In that order, then Assistant Commissioner Tom Mitchinson stated:

In my view, the activities undertaken by MPAC within the scope of its mandate are the type of activities described by the Williams Commission. MPAC has been given the statutory authority to earn surplus income for the purpose of reducing the charges levied to municipalities for assessment services. To do so, in my view, it is reasonable to expect that MPAC would try its best to become a dynamic and entrepreneurial organization, applying its expertise in ways that would enhance its reputation and, in turn, increase its revenue through the sale of its products.

MPAC clearly has the statutory authority to sell assessment-related information to the public under section 12(5) of the *MPAC Act* and section 53(5) of the *Assessment Act*.

This statutory authority was recognized by the Divisional Court in *MPAC v. IPC* (cited above):

MPAC is ... authorized to sell information to members of the public for a fee set by MPAC and upon terms set by MPAC. The information that MPAC sells to the public under this authority is, however, stripped of personal information; it is also subject to license agreements that limit the purposes for which information may be used, and prohibit its sale and transfer to others.

Moreover, section 8(3) of the *MPAC Act* requires MPAC to apply any surplus in its income to reduce the charges that it levies against municipalities for providing assessment-related services. Consequently, I accept MPAC's submissions that:

- It has a responsibility to its customers – Ontario municipalities – to recover costs and generate revenue for its bottom line.
- One way that MPAC generates revenue is by charging a standard price for property information.
- This revenue is then used to lower rates for core assessment services, thereby benefiting municipalities and taxpayers.

As demonstrated in the following review of the parties' submissions, MPAC has provide detailed and convincing evidence to support its position that disclosure of the information at issue could reasonably be expected to prejudice its economic interests or competitive position, or be injurious to its financial interests.

Loss of revenue

MPAC submits that if it is required to disclose the property information sought by the appellant, it would be deprived of the significant amount of fees that a request of this size would generate. In other words, MPAC would lose significant revenue, which would have an adverse effect on its bottom line. I accept that this loss of revenue could reasonably be expected to prejudice MPAC's economic interests or be injurious to its financial interests. I would point out as well that if MPAC is required to disclose the records at issue to the appellant, it would be required to release the same records to anyone else who asked, which could reasonably be expected to lead to further losses of revenue for MPAC.

The appellant submits that there is no evidence that MPAC is restricted from replacing the potential revenue it says is at risk as a result of the appellant's request, with revenue from a different type of activity. It points out that under section 12 of the *MPAC Act*, MPAC has the power to raise or lower the amount of money it collects from Ontario municipalities to pay for its operations during the relevant taxation year. It argues that MPAC plainly does not require the income it says will be lost by the appellant's request, because it could break even by simply levying a "virtually negligible increase of less than 3% distributed across all the municipalities in Ontario."

I do not accept the appellant's submissions on this issue. The section 11(c) and (d) exemptions provide discretion to institutions to refuse disclosure of information on the basis of a reasonable expectation of prejudice to their economic interests or competitive positions or injury to their financial interests. They do not require institutions such as MPAC to download the harms that could reasonably be expected to occur onto other parties, such as Ontario municipalities. It is also important to note, that under the provisions of the *MPAC Act*, such as section 8(3), MPAC has a duty in specified circumstances, to reduce the charges that it levies against municipalities for providing assessment-related services, not to increase them.

In short, disclosure of the records at issue could reasonably be expected to prejudice MPAC's economic interests (section 11(c)) or be injurious to its financial interests (section 11(d)).

MPAC's Competitive Position

MPAC submits that its competitive position would be "greatly prejudiced" if the records at issue were disclosed, because the appellant could sell or distribute the property information to other parties at a reduced rate. MPAC further submits that its competitive position would be prejudiced if the XY coordinate information was disclosed in bulk. MPAC plans to build a database with XY coordinate information in the near future which will be offered to the public for a prescribed fee. It argues that if the appellant obtains this information, it could develop such a project prior to MPAC, which would have a "great impact" on MPAC's competitive position.

The appellant submits that no person has a legal obligation to justify his or her purpose in exercising a right under the *Act*. It further argues that wholly apart from the lack of legal foundation for MPAC's objection based on the alleged "illegitimacy" of the appellant's request, the purpose of the appellant's request is legitimate. It submits that it has no intention of using the information for ulterior purposes or for any purpose contrary to the law.

As noted above, the legal burden in this appeal is on MPAC to prove that one of the exemptions that it has claimed apply to the records at issue. The legal burden is not on the appellant to prove that it has legitimate reasons for seeking the records. Further, I would note that MPAC has not submitted any evidence to prove that the appellant would use the records at issue to set up a rival business that would undercut MPAC, or to build a database of XY coordinates that could be sold to the public prior to MPAC.

However, the practical reality is that disclosure of the records at issue to the appellant would constitute disclosure to the world. Other requesters would be entitled to obtain the same records as the appellant. Consequently, even if the appellant has no interest in using the records at issue to set up a rival business by selling or distributing the property information to other parties at a reduced rate, there would be nothing to stop other requesters from doing exactly that after they have obtained the same property information in electronic format from MPAC.

Similarly, if XY coordinate information is disclosed to the appellant, there would be nothing to stop other requesters from obtaining the same and additional XY coordinate information from MPAC as it becomes available, which they could then use to develop a database or related

products that could be made available for sale in competition with MPAC's planned XY coordinate information products. In short, disclosure of the records at issue could reasonably be expected to prejudice MPAC's competitive position (section 11(c)), which could, in turn, reasonably be expected to be injurious to its financial interests (section 11(d)).

I therefore find the records exempt under both sections 11(c) and (d) of the *Act*.

MPAC'S JURISDICTION AND EXERCISE OF DISCRETION

In its representations, the appellant submits that while MPAC's non-statutory business activities are not, *per se*, unlawful or *ultra vires*, the decision by MPAC to deny the appellant's access request under the *Act* is unlawful and *ultra vires* its powers under the *MPAC Act*. It argues that as a matter of law, MPAC does not have the legal power to restrict the public's access to information in its custody and control by imposing terms and conditions which are inconsistent with the public's access rights. MPAC's refusal to disclose is not "consistent with its duties," as required by section 9(2) of the *MPAC Act*, and is consequently *ultra vires*.

I have carefully considered the appellant's submissions on this issue and find that they are unpersuasive and without merit. In its reply representations, MPAC submits it is clearly within MPAC's jurisdiction, in view of all of its statutory obligations and authority, to rely on the exemptions in the *Act* – even if the IPC determines on appeal that MPAC's decision was incorrect. I agree with MPAC's submissions on this issue. Under section 7(1) of the *MPAC Act*, MPAC shall be deemed to be an institution for the purposes of the *Act*. Consequently, MPAC is entitled to rely on the exemptions in the *Act* and is clearly not acting *ultra vires* its powers under the *MPAC Act* if it denies an access request.

Seen from another perspective, the appellant's submissions on this point can be interpreted as an argument that MPAC's exercise of discretion to claim the discretionary exemptions at sections 11(c) and (d) was improper. I do not accept this argument. In my view, as outlined in its representations, MPAC took relevant considerations into account in deciding to withhold the requested information, including the potential impact of disclosure on its bottom line, and consequently on the cost of its services to municipalities and taxpayers. I find that MPAC's exercise of discretion was proper in the circumstances of this appeal.

CONCLUSION

In my view, MPAC has presented detailed and convincing evidence that disclosure of the records at issue could reasonably be expected to prejudice its economic interests or competitive position, or be injurious to its financial interests. Although MPAC is only required to prove that one of the exemptions apply, I have concluded that MPAC has satisfied the requirements of both sections 11(c) and (d) of the *Act*.

Given that I have found that MPAC has discharged the burden of proving that the records at issue fall within the exemptions in sections 11(c) or (d) of the *Act*, it is not necessary for me to consider whether the section 11(a), 15(a) and 10(1) exemptions apply to the records at issue.

ORDER:

I uphold MPAC's decision to deny access to the records and dismiss the appeal.

Original Signed by: _____
Brian Beamish
Assistant Commissioner

_____ August 19, 2005