



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-2020

Appeal MA-040350-1

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

NATURE OF THE APPEAL:

The Municipal Property Assessment Corporation (MPAC) received a multi-part request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for information relating to statements made by the President and Chief Administrative Officer as well as information about MPAC's procedures. Specifically, the request read as follows:

Several months ago the London Free Press printed an article outlining a presentation made by MPAC during a public hearing held in Strathroy Ontario. During his presentation, MPAC's Public Relations Officer, Mr. Carl Isenburg made several statements that should be validated as a matter of public record. I am writing to request audit findings, documents and records that support MPAC's public position that the present residential assessment system is indeed fair and accurate.

The appellant then detailed a number of specific statements that were made at the public meeting and requested records that support or explain those statements.

In response to the request, MPAC provided the requester with an interim fee estimate totaling \$1,660.00. The estimate consisted of a photocopying charge of \$0.20 per page for 5,000 pages, search time of 6 hours at \$30.00 per hour and preparation time of 16 hours at \$30.00 per hour. The requester was asked to deposit \$830.00 in order for the request to be processed. MPAC also informed the requester that the exemptions found in sections 11 and 15 of the *Act* may apply to some of the records.

The requester, now the appellant, appealed MPAC's decision to this office. He took the position that MPAC had failed to provide any details of what documents or files were available, or would be made available. He also claimed that the fee estimate was excessive.

During mediation, the appellant submitted a revised request by way of letter. This letter contains questions that do not relate to a request for records, but rather are more in the nature of comments aimed at what he sees as flaws in MPAC's operations. However, I have identified the following four specific requests for records in the custody and control of MPAC in the letter:

- Any reports or audit reports on which Mr. Isenburg's statement that the present MPAC assessment system was benchmarked as exceeding international accuracy standards is based.
- Any reports that indicate that the software used to prepare residential assessment values is tested regularly for accuracy and that the output is not biased by subjective inputs from the valuator.
- A copy of the table of contents from MPAC's quality manual or operational policies and procedures manual used by the Assessor or Valuator during the preparation of a residential property assessment.

- Any formal audit reports and corrective action documents that supplement improvement in the accuracy of residential property assessments performed by the Assessment Department.

MPAC responded to the revised request by providing a revised interim access decision and fee estimate. The revised fee estimate totals \$275.00 and consists of photocopying charges for 950 pages at \$0.20 per page and three hours of combined search and preparation time at \$30.00 per hour. (By my calculation, this amounts to a fee estimate of \$280.00, however, for the purposes of this appeal, I will use MPAC's figure of \$275.00.) The appellant was asked to provide a deposit of \$137.50 in order for MPAC to proceed with the request.

MPAC also informed the appellant that:

Our preliminary review of the records, the vast majority being MRA Model Audits/Reviews, indicates that some of the exemptions provided for in the legislation, namely section 11 (economic and other interests) as well as section 15 (information currently available) may apply to some of the responsive records.

The appellant was not satisfied with this response. He continued to take the position that he had not received a satisfactory response from MPAC. No further mediation was possible and the appeal was moved to the adjudication stage of the process. I sought and received the representations of MPAC, which were shared in their entirety with the appellant. I then received representations from the appellant.

DISCUSSION:

IS MPAC'S INTERIM DECISION ADEQUATE?

It is clear that MPAC has made an interim access decision, including a fee estimate. The issue for me to determine is whether this decision complies with the requirements of the *Act* and this office for interim access decisions and fee estimates.

The purpose of the interim access decision, fee estimate and deposit process is to provide the requester with sufficient information to make an informed decision as to whether or not to pay the fee and pursue access, while protecting the institution from expending undue time and resources on processing a request that may ultimately be abandoned [Order MO-1699].

Where a fee exceeds \$100, an institution may choose to do all the work necessary to respond to the request at the outset. If so, it must issue a final access decision. Alternatively, the institution may choose not to do all of the work necessary to respond to the request, initially. In this case, it must issue an interim access decision, together with a fee estimate [Order MO-1699].

Also, where the fee is \$100 or more, the institution may require the requester to pay a deposit equal to 50% of the estimate before the institution takes any further steps to respond to the request [section 7 of Regulation 460].

An interim access decision is based on a review of a representative sample of the requested records and/or the advice of an individual who is familiar with the type and content of the records. An interim access decision must be accompanied by a fee estimate and must contain the following elements:

- a description of the records;
- an indication of what exemptions or other provisions the institution might rely on to refuse access;
- an estimate of the extent to which access is likely to be granted;
- name and position of the institution decision-maker;
- a statement that the decision may be appealed; and
- a statement that the requester may ask the institution to waive all or part of the fee.

[Orders 81, MO-1479, MO-1614]

MPAC's Representations

In its representations, MPAC takes the position that its revised interim decision is adequate. It submits:

In order to process the request, MPAC's FOI and Privacy Coordinator (the Coordinator) sought the advice of the Director of Quality Services because he is the individual who is *completely* familiar with the type and content of responsive records. In addition, the Manager – Valuation & Data Processing Quality Assurance, who is directly responsible for the records was also consulted. A random sample of two MRA Job 8 Upload Reviews and three MRA Model reviews were used as a representative sample in order to prepare the interim decision.

The Coordinator initially issued an **interim decision** and subsequently, a **revised interim decision** (original emphasis). A plain reading of these decisions clearly indicates that they are interim and not final. The appellant was further advised by the mediator that the decision was interim and not final.

The revised interim decision included the following elements (see letter dated February 10, 2005 previously provided to IPC):

- a description of the records;
- an indication of what exemptions may apply;
- an indication that some of the exemptions may apply to some of the records; and
- the name and position of the decision maker.

MPAC also included in its representations the following Index of Records:

Document Number	Description of Record	Page Estimate	Possible Exemption s(s)	Estimate of Severing
1.	2003 – MRA Model Reviews (29 reports)	135	s.11 (a),(c) and (d)	Very limited
2.	2003 – MRA Job 8 Upload Reviews (96 reports)	800	s.11 (a),(c) and (d)	Very limited
3.	Table of Contents	3	Nil	Nil
4.	MPAC 2003 Annual Report	14	s.15(a)	All

The appellant's representations

The appellant's representations are general in nature and for the most part do not deal specifically with the issues raised in the Notice of Inquiry. The representations speak primarily to the appellant's dissatisfaction with MPAC's process for assessing residential land values. Of relevance to this appeal is the following comment:

I did however receive an interim decision and a hefty fee estimate from [MPAC] that contained only cursory information with little or no mention to the relevance of the documents to be considered for dissemination.

Analysis and Findings

Having reviewed the representations of MPAC, I cannot agree that MPAC has complied with the requisite elements of a proper interim decision. Specifically, MPAC has consistently failed to provide the appellant with a satisfactory description of the records available to respond to his request and as a result has failed to provide him "with sufficient information to make an informed decision regarding the payment of fees". [Order MO-1614]. In this regard, I agree with the appellant's assessment that he has received only cursory information and, throughout the process, has had no explanation from MPAC as to the relevance of responsive documents to his request.

The appellant's original request letter provides considerable detail on the type of records he was seeking at that time. There are at least 17 separate requests, ranging from audit reports to written policies and procedures. That request was subsequently narrowed, and I am therefore not actually ruling on the adequacy of MPAC's initial response in this order. In my view, however, that initial response provides relevant context for my assessment of MPAC's later decision and, if that decision is found inadequate, for determining the appropriate remedy in this case. MPAC's first interim decision simply provides an estimated fee for the records, a breakdown of how that fee was arrived at (based on photocopying, search and preparation time charges) and an indication of what exemptions might be applied to the records. No information is provided to the appellant regarding the kinds of records that might be made available to him. No attempt is made by MPAC to identify what records are available that respond to each of the parts of the

request contained in his letter, nor are the fees allocated among the parts in any fashion. These would have been important pieces of information given the scope of his original request and, in my view, render the interim decision letter inadequate. Based on the information provided, the appellant was not in a position to make an informed decision on whether to accept the fee estimate and proceed with his request.

As noted above, the appellant subsequently narrowed his request to four issues. Again, MPAC's revised interim decision letter provides a reduced fee estimate, states that the vast majority of the responsive records are "MRA Model Audits/Reviews" and indicates some of the exemptions that might be applied to the records. Although reference is made to a type of responsive record, in my view, this revised interim decision suffers from the same inadequacy as the original interim response. The appellant was still not provided with sufficient information on what records were available to respond to each part of his request. Further, unless one is intimately familiar with the operation and processes of MPAC, reference to "MRA Model Audits/Reviews" provides no particular guidance as to the nature of the record. As a result, the appellant still did not have sufficient information to make an informed decision with regard to fees.

While the Index of Records included in MPAC's representations provides greater detail than either of the interim decision letters, in my view it is still insufficient. For the most part, it is not apparent which of the documents referred to correspond to the appellant's revised request. The exception to this is document number 3 which corresponds to the appellant's request for the table of contents of the manual used by MPAC's assessors or valuers. Otherwise, the connection of these documents to the various parts of the appellant's request is not apparent. For example:

- I have reviewed the MPAC 2003 Annual Report, and I fail to see its relevance to any element of the appellant's request.
- Reference is made in the Index to "MRA Model Reviews" and "MRA Job 8 Upload Reviews". While these may be familiar terms to employees of MPAC, they do not necessarily assist the appellant in determining whether they are responsive to his requests. Further, as Adjudicator, in the absence of some explanation as to what these reviews are and how they relate to the request, I am no further ahead in determining whether an adequate interim response has been provided by MPAC.

In summation, MPAC's interim decision is inadequate because it does not provide an adequate description of the responsive records and as such, the appellant is unable to make an informed decision regarding the payment of fees. Similarly, MPAC's representations do not provide me with sufficient information to assess the adequacy of the interim decision and the reasonableness of the fee estimate.

WHAT IS THE APPROPRIATE REMEDY?

In reviewing previous orders of this office, it is clear that adjudicators have fashioned several different remedies to address inadequate interim decisions. These remedies are dependent on the facts and circumstances of a particular appeal.

In Order M-1123, former Assistant Commissioner Tom Mitchinson dealt with a situation where the institution responded to a request by providing some records, and issuing a fee estimate to cover other possible responsive records not yet identified. However, the institution did not provide an adequate interim access decision to accompany the fee estimate. Former Assistant Commissioner Mitchinson found the following:

By not complying with Order 81, none of the benefits of the process identified in that order are present in this case...The appellant does not have the benefit of an interim access decision. Finally, the Commissioner's office has not been provided with the type of information required in order to assess the reasonableness of the fee estimate.

The former Assistant Commissioner disallowed the fee and ordered the institution to issue a final access decision to the appellant,

MPAC has had three opportunities to provide the appellant with sufficient information on the nature of the responsive records in order to allow the appellant to make an informed decision regarding the payment of fees: the original interim decision, the revised interim decision and its representations in response to the Notice of Inquiry issued in this appeal. It has not done so and, in my view, simply requiring a proper interim decision and fee estimate at this stage is not the appropriate remedy in the circumstances of this appeal. In my view, the remedy imposed by the former Assistant Commissioner in Order M-1123 is also the appropriate remedy here.

Accordingly, I will not uphold the fee estimate and will order MPAC to provide the appellant with a final access decision, without charging a fee.

ORDER:

1. I find that MPAC's decision letter to the appellant is not adequate.
2. I do not uphold MPAC's fee estimate.
3. I order MPAC to provide the appellant with a final access decision by **March 20, 2006**, without charging a fee.

Original signed by: _____
Brian Beamish
Assistant Commissioner

February 20, 2006 _____