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

ORDER MO-2314

Appeal MA-040384-1

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*) for a report titled *Municipal Property Assessment Corporation, Integrated Property System Project, Health Check Report* (the report).

MPAC denied access to the entire report pursuant to the exemptions in sections 7(1) (advice and recommendations) and 11(c) and (d) (economic and other interests) of the *Act*.

The requester (now the appellant) appealed MPAC's decision.

The appeal was then assigned to a mediator to attempt settlement. The mediator had conversations with the appellant and MPAC. She reviewed the issues in dispute, including the appellant's belief that there is a compelling public interest to disclose the record at issue. This raised the issue of whether the information, if it falls within an exemption, is subject to the public interest override in section 16 of the *Act*.

MPAC subsequently issued a revised decision letter. The revised decision granted access to the title page, table of contents, pages 1 and 2, 10-12, 20 and 39-43 of the report.

As no further issues were resolved by mediation, this appeal entered the adjudication stage. This office sent a Notice of Inquiry to MPAC, setting out the facts and issues in this appeal and invited it to provide representations. This office received representations from MPAC. In its representations, MPAC raised the possible application of the mandatory exemption in section 9 of the *Act* (information received from governments). This office sent the non-confidential portions of MPAC's representations to the appellant with a Notice of Inquiry, inviting his representations, which he subsequently provided.

The appeal was then re-assigned to me. I then invited the appellant to provide written representations on whether a report by the Ontario Ombudsman entitled, *Getting It Right: Investigation into the Transparency of the Property Assessment Process and the Integrity and Efficiency of Decision-Making at the Municipal Property Assessment Corporation*, had an impact on the public interest in disclosure in this appeal. The appellant did so. I then provided the appellant's representations to MPAC, inviting it to provide representations on this issue. MPAC did so. I sent MPAC's representations on this issue to the appellant, inviting reply representations, which he provided.

DISCUSSION:

BACKGROUND

MPAC

MPAC is a non-share capital, not-for-profit corporation governed by the *Municipal Property Assessment Act (MPAC Act)*. Its main responsibility is to provide its customers - property owners, tenants, and various levels of government (including all Ontario municipalities) - with consistent and accurate property assessments. MPAC is accountable to the public through a

fifteen-member Board of Directors composed of eight municipal representatives, five directors who represent the interests of property taxpayers, and two who represent provincial interests. According to MPAC, it is not a Crown agent, but a corporation with revenue-generating authority and a concomitant responsibility to generate income to reduce the cost of its services. MPAC administers a statutory province-wide property assessment system based on current value assessment. Each year, MPAC prepares an assessment roll for every Ontario municipality. The roll provides the assessed value of all of the properties in a municipality or in the jurisdiction of a school board with taxing authority.

Every three years, to coincide with municipal elections, MPAC also conducts a province-wide municipal enumeration. During this process, MPAC records the name, birth date, school support information and other related data for every person in Ontario. This information is used to prepare voters' lists for each municipality and is also provided to school boards.

MPAC is accountable for performing these and other duties and obligations set out in the *Assessment Act* and the *MPAC Act*. The Province of Ontario, through this legislation, has instituted and regulates this uniform property assessment system. The Legislature has chosen not to allow private enterprises to compete with MPAC with respect to the provision of assessment services in Ontario. However, it is open to competition when providing other services.

The *MPAC Act* gives MPAC the authority to engage in revenue-generating opportunities to offset amounts payable by municipalities for MPAC's services. MPAC states that the legislation ensures that MPAC will use its income solely in furtherance of the duties and activities authorized under the *MPAC Act*. Any surplus revenue generated by MPAC effectively reduces the cost of MPAC's services to taxpayers. According to MPAC, by giving MPAC sole responsibility for assessment services, the Province ensures that all fees, dues, and levies collected from taxpayers and municipalities with respect to assessment services are channeled directly back into the assessment system for the public good, rather than for private profit. In connection with its revenue-generating activities, MPAC is expected to conduct its affairs in a cost-effective manner and adhere to good business practices.

OASYS and the IPS

MPAC developed its Ontario Assessment System (OASYS) database to store the electronic data it collects from various sources, including its own data collectors and external sources. Property information is also submitted on forms completed by property owners. The information collected from property owners is stored in MPAC's OASYS database, along with information from the land registry records and data elements that MPAC receives from Teranet pursuant to a licence agreement. Thus, the OASYS database is MPAC's compilation of all property assessment information it receives from all sources and is, in essence, MPAC's "master file".

As mentioned, MPAC is developing the Integrated Property System (IPS) to replace OASYS. MPAC states that this new mass appraisal system will be the first of its kind in the world. Before embarking on the IPS project, MPAC investigated systems used in other jurisdictions that could

replace OASYS and discovered that no existing system would meet its needs, as Ontario is the largest assessment jurisdiction in North America. According to MPAC, it would have to spend millions of dollars to acquire a system, and would then have to invest significant additional resources to modify the system to meet Ontario's unique needs. Therefore, MPAC set out to create its own mass appraisal system, which according to MPAC, incorporates functionalities not found in any other system.

MPAC says that the IPS, once completed, will not only serve as the central repository for all property data in Ontario, but will also include applications that will allow property valuation to be done in two different ways. One is based on cost and the other on a direct comparison approach. It will be the first system that integrates and runs the direct comparison valuations directly off the database. The IPS will give MPAC the tools to simplify inquiries and data entry and will allow MPAC to generate new products that will have the potential to generate revenue. In addition, once the IPS is fully operational, MPAC states that it will be able to market and sell the system to other assessment jurisdictions and, notably, to private companies in jurisdictions that allow private sector competition.

MPAC further explains that the IPS is a major, innovative information technology initiative that will allow MPAC to improve the computer system it uses for property assessment and to migrate away from the Ontario Government's mainframe network. The IPS replaces MPAC's former OASYS database, which was developed in the early 1980s. The IPS unites data collection, valuation, and product generation.

The Report

As already stated, the report is entitled *Municipal Property Assessment Corporation, Integrated Property System Project, Health Check Report* and is dated June 2004. It assesses the "health" or progress of the migration from OASYS to IPS. It was prepared by a team organized by the Central Agencies Cluster Information and Information Technology Group (the I&IT Group) of the Ontario Ministry of Finance at the request of MPAC's Board of Directors. The report outlines the I&IT Group team's findings and recommendations for consideration by MPAC's Board of Directors. The parts of the report that remain at issue are pages 3-9, 13-19, 21-38 and 44-52.

The appellant

The appellant is the president and CEO of a company with an interest in the assessment business. The company supports a competitive assessment system for Ontario.

RELATIONS WITH OTHER GOVERNMENTS

Section 9 states:

> (1) A head shall refuse to disclose a record if the disclosure could reasonably be expected to reveal information the institution has received in confidence from,
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> (a) the Government of Canada;
>
> (b) the Government of Ontario or the government of a province or territory in Canada;
>
> (c) the government of a foreign country or state;
>
> (d) an agency of a government referred to in clause (a), (b) or (c); or
>
> (e) an international organization of states or a body of such an organization.
>
> (2) A head shall disclose a record to which subsection (1) applies if the government, agency or organization from which the information was received consents to the disclosure.

For this exemption 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.)].

The purpose of this exemption is "to ensure that governments under the jurisdiction of the *Act* will continue to obtain access to records which other governments could otherwise be unwilling to supply without having this protection from disclosure" [Order M-912].

In light of this purpose, I have considered whether the Legislature intended section 9(1) to apply to this kind of situation, where information flows between a Government department and a corporation established under legislation passed by that Government. In addressing this question, I note that MPAC is an independent corporation, and is an institution under the *Act*, rather than the *Freedom of Information and Protection of Privacy Act* (*FIPPA*), which is the access-to-information legislation that applies to provincial government ministries and agencies. Taken together, the fact that MPAC is an independent corporation, and an institution under the *Act* rather than under *FIPPA*, indicates that it should be viewed as part of the municipal sector rather than an offshoot of the Ministry of Finance or any other part of the provincial government.

In this situation, I believe it is appropriate to apply section 9 if its requirements are otherwise satisfied.

In that regard, MPAC submits as follows:

> The first question to be addressed is whether the information in question came from an agency of a government. The I&IT Group is an agency of the Ministry of Finance within the Ontario Government, and therefore falls within section 9(1)(d) of the Act.
>
> The next question is whether the information was "received in confidence" by MPAC. Previous orders of the commission have stated that for information to "have been received in confidence" there must be an expectation of confidentiality on the part of the supplier and the receiver of the information. [Orders 210, P-278, P-480, M-871, and MO-1896]. For a matter to be "in confidence", there must be a mutual intention, or at least a mutual expectation, of secrecy. MPAC submits that both the I&IT Group and MPAC had a reasonable expectation of confidentiality, implicit and/or explicit, at the time the information was provided, and that this expectation must have an objective basis [Order PO-2020].
>
> As summarized in Order MO-1896, in determining whether an expectation of confidentiality is based on reasonable and objective grounds, it is necessary' to consider all of the circumstances of the case, including whether the information was:
>
> - communicated to the institution on the basis that it was confidential and that it was to be kept confidential;
> - treated consistently in a manner that indicates a concern for its protection from disclosure by the affected person prior to being communicated to the government organization;
> - not otherwise disclosed or available from sources to which the public has access;
> - prepared for a purpose that would not entail disclosure [Order PO-2043].
>
> These considerations were originally articulated in the context of the reasonable expectation of confidentiality required by section 10. However, as held in Order MO-1896, they apply equally to the determination of whether information was received in confidence under section 9.
>
> In determining whether information was received in confidence for the purpose of section 9, it is also necessary to consider all the circumstances of the case. This would include

- the nature of the information;
- whether the information was prepared for a purpose that would entail disclosure;
- whether the information was communicated to the institution on the basis that it was confidential and that it was to be kept confidential;
- whether the institution receiving the information agreed explicitly or implicitly to accept it on the basis that it was confidential and that it was to be kept confidential;
- whether the government agency that supplied the information treated it consistently in a manner that indicates a concern for its protection from disclosure prior to communicating it to the institution;
- whether the institution that received the information treated it consistently in a manner that indicates a concern for its protection from disclosure after receiving it; and
- whether the information was otherwise disclosed or available from sources to which the public has access, either before or after the government or government agency provided it to the institution.

In the present case, the Report was received by MPAC in confidence and marked "confidential" accordingly. The Report was not prepared for a purpose that would entail disclosure or publication. As noted above, MPAC has not circulated the Report widely even within MPAC and has not circulated the Report at all outside of MPAC. MPAC and the I&IT Group have treated the Report consistently in a manner that indicates a concern for its protection from disclosure. The information is not available from other sources.

The appellant's representations do not specifically address the application of Section 9(1) of the *Act*.

It is evident that the report was produced by the Ministry of Finance and provided to MPAC, and accordingly I am satisfied that the information in the report was received from the Government of Ontario.

The report is marked "confidential" and I am satisfied from the context in which the report was prepared and the nature of its contents that both the Ministry and MPAC had a reasonable expectation that its contents would remain confidential. Therefore, in my view, MPAC has established a reasonable expectation that disclosing the report would reveal information received in confidence from the Government of Ontario.

Accordingly, I am satisfied the evidence before me is sufficient to demonstrate that disclosure of the report could reasonably be expected to reveal information MPAC has received in confidence from the Government of Ontario. I therefore find that the withheld portions are exempt from disclosure under section 9(1)(b). It is therefore unnecessary to consider the application of sections 7(1) and 11.

PUBLIC INTEREST OVERRIDE

Section 16 states:

> An exemption from disclosure of a record under sections **7, 9**, 10, **11**, 13 and 14 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

For section 16 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure of the record. Second, this interest must clearly outweigh the purpose of the exemption.

In considering whether there is a "public interest" in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act*'s central purpose of shedding light on the operations of government [Order P-984]. Previous orders have stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing the citizenry about the activities of their government, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices [Order P-984].

A public interest does not exist where the interests being advanced are essentially private in nature [Orders P-12, P-347, P-1439]. Where a private interest in disclosure raises issues of more general application, a public interest may be found to exist [Order MO-1564].

The word "compelling" has been defined in previous orders as "rousing strong interest or attention" [Order P-984]. A compelling public interest has been found to exist where, for example:

- the records relate to the economic impact of Quebec separation [Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 488 (C.A.)]

- the integrity of the criminal justice system has been called into question [Order P-1779]

- public safety issues relating to the operation of nuclear facilities have been raised [Order P-1190, upheld on judicial review in *Ontario Hydro v. Ontario (Information*

and Privacy Commissioner), [1996] O.J. No. 4636 (Div. Ct.), leave to appeal refused [1997] O.J. No. 694 (C.A.), Order PO-1805]

- disclosure would shed light on the safe operation of petrochemical facilities [Order P-1175] or the province's ability to prepare for a nuclear emergency [Order P-901]

- the records contain information about contributions to municipal election campaigns [*Gombu v. Ontario (Assistant Information and Privacy Commissioner)* (2002), 59 O.R. (3d) 773]

A compelling public interest has been found *not* to exist where, for example:

- another public process or forum has been established to address public interest considerations [Orders P-123/124, P-391, M-539]

- a significant amount of information has already been disclosed and this is adequate to address any public interest considerations [Orders P-532, P-568]

- a court process provides an alternative disclosure mechanism, and the reason for the request is to obtain records for a civil or criminal proceeding [Orders M-249, M-317]

- there has already been wide public coverage or debate of the issue, and the records would not shed further light on the matter [Order P-613]

Any public interest in *non*-disclosure that may exist also must be considered [*Ontario Hydro v. Ontario (Information and Privacy Commissioner)*, [1996] O.J. No. 4636 (Div. Ct.)].

In its initial representations, MPAC states:

> … it is difficult to surmise what public the appellant thinks could be served by disclosure of the record. Based on past history, the appellant may try to suggest that the public has an interest in competition in the property assessment field with the goal of improving efficiency and reducing costs. The appellant's company has been attempting to have property assessment in Ontario privatized in order to enter the marketplace.

In response to MPAC's initial representations, the appellant provided a series of newspaper articles, press releases, and other documentation tending to support the privatization of the property tax assessment function in Ontario. The appellant's intent in providing this material is, apparently, to argue that competition in the assessment function currently performed only by MPAC would be facilitated by disclosure of the report, and that such competition is in the public interest.

The question before me, however, is whether there is a compelling public interest in the disclosure of the report *per se*, rather than in opening Ontario's property assessment system to competition amongst assessment firms. The latter is a question of public policy that is far beyond the scope of this inquiry and I will not make a ruling on it. My inquiry, and this order, relate to the former question, namely whether there is a compelling public interest in disclosure that clearly outweighs the purpose of any exemption found to be applicable. If there is a compelling public interest in the subject of whether to open Ontario's assessment system to competition, there may be a public interest in disclosing records that contribute meaningfully to that discussion. In my view, however, the undisclosed parts of the record at issue do not relate to that subject, even tangentially, and would not contribute to that debate in any meaningful way. I find that this does not provide the basis for a compelling public interest in disclosure.

With respect to his desire to introduce competition into the property assessment industry in Ontario, I am also not satisfied that the appellant's interest in the report is "public" in nature. In my view, the appellant's interest in undermining MPAC's monopoly and opening the industry to competition is, in relation to this request and appeal, essentially a private one. However, as noted in Order MO-1564, where a private interest in disclosure raises issues of more general application, a public interest may be found to exist. In that order, former Assistant Commissioner Tom Mitchinson stated:

> If I were satisfied that the appellant's request was directed at information that could only be used on an assessment appeal of his particular property, and had nothing to do with the process of valuation and how it works generally, I would find that the interest in disclosure was of a private, rather than public nature. A request of this nature would be similar to one dealt with by Adjudicator Donald Hale in Order M-536, where he concluded that a requester's interest in an agreement of purchase and sale relating to an individual's purchase of public land was of a private character where it was to be used in a law suit and in litigation before the Ontario Municipal Board.
>
> However, in my view, the interest in this case is different. Although the appellant has requested access to records specific to his own property, he has raised issues that have general application to property owners throughout the province.

Accordingly, if there is a broader public interest in disclosure, it may transcend the private interest of the appellant outlined above. In that vein, the question of whether there is a compelling public interest in disclosure of the report must take into account the remarks concerning transparency made in the report of the Ontario Ombudsman entitled *Getting It Right* (referred to above). As noted previously, I provided both MPAC and the appellant with an opportunity to comment on this report in the context of section 16 of the *Act*.

In response to my invitation to comment on whether *Getting It Right* raises issues that relate to the public interest override, MPAC included arguments suggesting that the report could not properly be considered in this context. Titled, "The Ombudsman's Report is not Law," this section of MPAC's representations makes the following points:

- the Ombudsman's report "does not have any force of law" and "cannot alter the current legislative scheme", including the *Act*, the *MPAC Act* or the *Assessment Act*;

- the Ombudsman's report did not recommend the release of the type of information contained in the report;

- potential future changes to legislation arising from the Ombudsman's Report cannot affect the Commissioner's current decision-making process; and

- the Commissioner's role is to apply the legislative scheme set out in the *Act*, as well as to consider and apply its own precedents.

I disagree with the overall thrust of this submission. While I would certainly not purport to apply legislation that has not been drafted, let alone enacted, I am troubled by the suggestion that issues concerning the public interest override should be decided only in the context of the legislative scheme of the *Act* and the Commissioner's own precedents. The problem with this suggestion is that decisions must be based not only on the *Act* and applicable precedent, but also on evidence. Clearly this is the intent of the legislature. The Commissioner does not decide issues in an evidentiary vacuum. Section 43(1) refers to an order disposing of an appeal "after all the evidence for an inquiry has been received." It is inescapable that *Getting It Right* contains commentary by an officer of the Ontario legislature about the need for greater openness and transparency by MPAC. As such, although it falls far short of raising issue estoppel concerning its conclusions about openness and transparency, it provides potentially relevant context and must be considered in assessing whether there is a compelling public interest in the disclosure of the report.

In particular, *Getting It Right* contains the following statements that point to the need for openness and transparency:

> … MPAC operates with an exaggerated sense of the quality of its product, an unhealthy commitment to its complex computerized method of mass appraisal, and a habit of secrecy that is too deep to enable public trust. [p. 2]
>
> [The Ombusdman's] Office was inundated with protests from disaffected citizens – more than 3,700 of them. … They complained because they see MPAC's assessment practices as fundamentally unfair. [p. 3]
>
> An additional issue was added [to the Ombudsman's investigation] because it became evident that property owners felt the system was not transparent and

> complained they were not made aware of the criteria their property assessments were based on. [p. 3]
>
> MPAC's own quality assurance reviews disclosed significant problems in capturing accurate data about a premises, with error rates as high as 50% of properties in some cases. [p. 11]
>
> What is most worrisome are the suggestions made that downplayed the undeniable fact that there were a shocking number of errors in [MPAC's] data, signaling a troubling systemic problem. [p. 26]
>
> … Although it is a non-profit corporation, MPAC performs a governmental function that has serious implications for Ontarians. The ability to generate change, if required, depends on access to information. … If "trust me" was an adequate answer for public processes we would not have freedom of information legislation. [p. 19]
>
> Moreover, I lament that MPAC's entrepreneurial vision has caused it to hold-back its intellectual property; the net effect of doing so is that taxpayers do not see the corporation as operating in an open, transparent way. MPAC has unwittingly chosen to trade its own credibility for confidentiality by protecting aspects of its evaluation process. The public remains suspicious, and I fear that this suspicion will abate only if MPAC changes its priorities. [p. 52]

As well, the report notes that MPAC and the Assessment Review Board (ARB) use different assessment methods. While MPAC uses a complex computerized mass appraisal system, the ARB uses comparables or other evidence to do individual assessments. This raised the following additional concerns:

> The fact is that MPAC has a superiority complex – not the invidious kind that suggests it is better than others, but the still disconcerting kind that maintains that its mass appraisal results are better than the ARB's assessment decisions. [p. 28]
>
> MPAC's penchant for preferring its own mass generated market predictions to actual sale prices, without proof that the market failed other than the simper fact of deviation from its own model, is troubling enough in its own right. … [p. 35]
>
> … MPAC does not always respect the ARB decisions; while it is bound to follow them for the tax year appealed it far too often ignores those decisions when assessing property for future tax years. [p. 35]
>
> We encountered a number of taxpayers who successfully appealed their assessments for the first of those tax years, only to find that MPAC ignored the appeal results for the second tax year. [p. 36]

> It is also my opinion that [MPAC] has failed in its responsibility to ensure that its assessment decisions are accurate and fair, and has undermined the integrity of the [ARB] process through its conduct. I believe that [MPAC's] practices are unreasonable, unjust, oppressive and wrong, under subsections 21(1)(b) and (d) of the *Ombudsman Act*. [p. 55]

With respect to the public interest in disclosure of information about individual assessments, former Assistant Commissioner Tom Mitchinson observed as follows in Order MO-1564:

> In the circumstances of this case, the public interest in protecting the business or economic interests of MPAC is clearly outweighed by the compelling public interest in individuals being provided with *basic information about how their taxes are calculated including what factors (variables) were considered (and which ones were not) and the weight given to those variables (the coefficients)*. [Emphasis added.]

The former Assistant Commissioner went on to apply the public interest override and he ordered disclosure of that information in relation to the property owned by the requester in that case. Again, this decision provides context for understanding the nature of the public interest in disclosure of information about how MPAC does assessments.

MPAC states as follows in its representations in relation to *Getting It Right*:

> MPAC submits that the nature of [the report] must be borne in mind when considering both the Ombudsman's Report and the appellant's representations. The [report] is *not* the type of information for which the Ombudsman's Report recommends transparency – namely information about a taxpayer's property and its assessment, information useful in appeals to the Assessment Review Board, or information about MPAC's mass appraisal model and formulas.
>
> …
>
> The [report] details the status of the IPS Project, but it does not contain information on the IPS's functionalities, technical capabilities, applications, or characteristics, nor does in contain information on the data it will use or how it will function. As can clearly be seen from the table of contents, which MPAC provided to the appellant, the [report] contains recommendations to MPAC on items surrounding the *project* of preparing the IPS for use – such as project responsibilities, project status, project governance, etc.

MPAC acknowledges that "[t]he public has a strong interest in the accuracy and consistency of the property assessment system in Ontario". Despite this, however, MPAC states that:

> [T]he requested record must be "directly related" to the strong interest identified [Order PO-1804-F]. MPAC submits that there is no such relationship in this case. The Report evaluates and advises on a specific, highly-technical project upon which MPAC has embarked. It does not consider MPAC's business generally, and does not "shed light" on the organization's operation. Rather, it contains recommendations, many of them technical in nature, with respect to MPAC's new mass appraisal system. This is not a matter that has attracted strong public interest, debate or attention.

I agree that, in order to attract the application of section 16, the report must be directly related to an identified compelling public interest in disclosure, and in my view, for the most part, it is not. The majority of the undisclosed information in the report relates to the implementation of the new IPS database, rather than an evaluation of its efficacy or efficiency, or of MPAC's business operations. For that reason, I find that here is no compelling public interest in most of the undisclosed information in the report.

However, I have reached a different conclusion about the two passages in the report that deal with "Value for Money". The first of these appears as part of the Executive Summary at pp. 8-9. The second appears at pp. 33-38. In that regard, the appellant argues that it is in the public interest to shed light on inefficiencies, as this will add to pressure on MPAC to operate more efficiently, leading to lower costs to the public. In my view, this argument transcends the appellant's private interest and, if supported by the evidence, could be the foundation for finding a broader public interest in disclosure.

In support of this view, the appellant has provided materials, including a Toronto Sun newspaper article, a review of Ontario's property assessment system, a letter from a Member of Provincial Parliament to a Legislative committee, a resolution signed by 133 municipalities, and a petition to the Legislative Assembly of Ontario, criticizing Ontario's property assessment system and MPAC's "poor service to the people of Ontario". The Toronto Sun article refers to alleged "cost overruns, with the IPS project costs rising from $3 million-$5 million in 2002 to $7.3 million in 2003. The latter identified concern is directly related to the question of whether the IPS project represents "value for money," which is addressed in the two sections of the report described above, both of which appear under that heading.

As well, as I noted earlier, the Ombudsman observed in *Getting It Right* that "MPAC's entrepreneurial vision has caused it to hold-back its intellectual property; the net effect of doing so is that taxpayers do not see the corporation as operating in an open, transparent way." The Ombudsman also observed that "[a]lthough it is a non-profit corporation, MPAC performs a governmental function that has serious implications for Ontarians." In my view, these observations point to a strong interest in transparency concerning MPAC's operations and manner of doing business.

In these circumstances, I agree with the appellant that there is a compelling public interest in the information in the report about whether MPAC has used public money wisely and efficiently. I

also find that the information under the two "value for money" headings in the report addresses that issue, and therefore "rouses strong interest or attention." As well, contrary to MPAC's submission, these sections of the report do in fact shed light on MPAC's operations in precisely the way contemplated by section 23. Therefore, I find that there is a compelling public interest in the disclosure of these sections of the report.

In the circumstances of this appeal, for the reasons that follow, I am also satisfied that the compelling public interest in these two passages clearly outweighs the purpose of the section 9(1) exemption, which I have found applicable, as well as the purposes of other claimed exemptions, if they were applicable.

The purpose of section 9(1) is to protect confidential communications between governments and municipal bodies. In this case, the report came from Ontario's Ministry of Finance. While section 9(1) technically applies, I note that the report was provided by an Ontario government ministry to a body created by the Ontario legislature to perform the assessment function mandated by an Ontario statute, the *Assessment Act*. In my view, the purpose of section 9(1), of protecting communications between governments and municipal bodies, is not strongly engaged. I find that the compelling public interest in disclosure of the parts of the report dealing with value for money, relating to the strong transparency interest described above, is more compelling than the need to maintain confidentiality under section 9(1).

MPAC also relies on section 7(1), which exempts "… advice or recommendations of … a consultant retained by an institution." Parts of the information I am ordering disclosed do consist of recommendations and would likely be exempt under section 7(1), whose purpose is "to protect the free-flow of advice and recommendations within the deliberative process of government decision-making and policy-making" (Order 94). Again, in the circumstances of this case, the transparency interest in the "value for money" information in the report is very high, and in my view, clearly outweighs any interest in protecting the deliberative process for an IPS transition that was implemented in November 2007.

In addition, MPAC relies on sections 11(c) and (d). These sections 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.

Generally speaking, section 11 is intended to protect certain interests, economic and otherwise, of municipal institutions (see Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*[1999] O.J. No. 484 (C.A.), leave

to appeal refused [1999] S.C.C.A. No. 134 (S.C.C.)). Again, the transparency interest is very strong in the "value for money" portions of the report. As well, in my view, the sections of the report in question are unlikely to benefit MPAC's competitors or harm its economic, financial or competitive position in any significant way. In my view, under the circumstances, the compelling public interest in disclosure clearly outweighs any economic prejudice that might result.

Before leaving the subject, I must also consider whether there is a public interest in *non*-disclosure of the value for money information (see *Ontario Hydro*, cited above). MPAC makes several representations in this regard:

> It is in the public interest for MPAC and other institutions to be able to seek confidential advice and recommendations to improve their operations and systems. Finally, MPAC has invested significant resources into developing the IPS Project. It is not in the public interest to provide this information, essentially for free, for private enterprise and profit. Moreover, for every dollar MPAC loses to private competition, MPAC has one dollar less to contribute to its bottom line to reduce the cost of its statutory assessment services to the public.

I have dealt with these arguments in the analysis above. I remain of the view that, with respect to the "value for money" portions of the report, the compelling public interest in disclosure clearly outweighs these interests. In this regard, it is also to be noted that I am only ordering disclosure of the "value for money" portions of the report, which do not reveal anything significant about the technical side of the IPS or its development. In my view, the public interest in non-disclosure is not compelling in relation to these passages.

To summarize, I have found that there is no compelling public interest in disclosure of the report, except the portions that address "value for money." With respect to those portions, I have found that there is a compelling public interest in disclosure that clearly outweighs the purposes of all claimed exemptions. I will therefore order disclosure of these passages.

ORDER:

1. I uphold the decision of MPAC not to disclose the portions of the record that it has withheld, except the sections entitled "Value for Money" on pages 8-9 inclusive, and pages 33-38 inclusive.

2. I order MPAC to disclose the portions of the record entitled "Value for Money" on pages 8-9 inclusive, and pages 33-38 inclusive, by sending a copy to the appellant no later than **June 19, 2008**. For greater certainty, the information on page 8, beginning with and following the heading, "Value for Money", and all of pages 9, 33, 34, 35, 36, 37 and 38 of the report are to be disclosed.

3. To verify compliance with this order, I reserve the right to require MPAC to send me a copy of the pages disclosed to the appellant pursuant to order provision 2, above.

May 29, 2008

John Higgins
Senior Adjudicator