



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-2412

Appeal MA07-302

Municipal Property Assessment Corporation



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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 access to certain information relating to residential properties in neighborhood areas G37 in Toronto, Ontario and B02 in Mississauga, Ontario. The request related to upcoming hearings before the Assessment Review Board. In particular, the requester sought access to:

1. Copies of the formulae used to estimate current value for each assessment year since OPAC [MPAC's predecessor, the Ontario Property Assessment Corporation]/MPAC's inception for areas G37 and B02;
2. Copies of statistics showing the number of properties entered in each year for assessment/appraisal purposes and the total number of properties in each area, for both areas G37 and B02, since OPAC/MPAC's inception;
3. Copies of real property assessment reports showing completed assessor reports, certification of value (signed statements) and identification of the assessing officers for the subject property and comparable properties previously sent to the requester for roll numbers [specified roll number] and [specified roll number];
4. A copy of [named individual]'s application and/or submission to the I.A.A.O. [International Association of Assessment Officers] for MPAC to receive the Distinguished Jurisdiction Award;
5. Copies of the complete history of the subject properties identified above; when and how they were appraised/assessed, current value history, the assessing officers and the standards applied by assessing officers;
6. Copies of documents showing that areas G37 and B02 are devoid of stratification and the tests used to exclude stratification in MPAC models.

After a telephone conversation with the requester clarifying the request, MPAC issued its decision letter. In the letter:

- MPAC granted access, for a fee, to records responsive to item one of the request (identified in MPAC's index of records as records 1 to 16), but relied on sections 11(a), (c) and (d) of the *Act* (economic and other interests of an institution) to withhold access to "data that has been redacted [which] is commonly referred to as the syntax file" or "syntax data" and section 15(a) of the *Act* (information published or publicly available) to deny access to its Market Model Report.
- After the appellant clarified that "entered" meant a physical inspection of the interior, MPAC identified record 17 in its index of records as responsive to item two of the request and granted access to it, for a fee.

- MPAC identified records 18, 19 and 20 as responsive to item three of the request and provided the appellant with a copy of records 18 and 19 at no charge. MPAC advised the appellant that record 20, which showed the names of MPAC staff that visited the “subject property”, was available for a fee. MPAC further provided the appellant with a fee estimate for searching for records relating to the names of staff that visited twelve comparable properties. Finally, MPAC advised that no records existed pertaining to “certification of value.”
- MPAC identified records 21 to 27 as responsive to item four of the request. It granted access to records 21, 22, 23 and 27, for a fee. MPAC relied on section 15(a) of the *Act* to deny access to records 24, 25, 26 and a record MPAC also described as 27 in its index of records.
- With respect to item five of the request MPAC directed the appellant to its response to item three, above, and relied on section 15(a) of the *Act* to deny access to the responsive current value history for each of the two identified properties. In addition, MPAC provided an explanation of its assessment process.
- MPAC identified records 28 to 33 as responsive to item six of the request and granted access to them, for a fee.

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

At mediation MPAC provided a break-down of its fee estimate and confirmed that the amount of \$1,218.50 pertained to items one, two, four, five and six of the request. The appellant confirmed that he is no longer seeking access to records numbered 1 to 16 and 23 to 27 as well as the information set out in items two, three and five of the request. As a result, all of that information, as well as the fee estimate for access to the names of staff who visited twelve comparable properties (pertaining to item three of the request) is no longer at issue in this appeal. Also during mediation the appellant asserted that other records exist which are responsive to item one of the request. In particular, the appellant asserted that there must be a “formula” that is different from MPAC’s Syntax Files. In addition, the appellant took issue with the estimated fee for access to records numbered 21 and 22 (pertaining to item four of the request) and 28 to 33 (pertaining to item six of the request). Accordingly, the adequacy of MPAC’s search for responsive records and the amount of its fee estimate were added as issues in the appeal. Finally, the appellant asserted that it is in the public interest that the requested information be disclosed. This raises the possible application of the “public interest override” set out at section 16 of the *Act*.

Mediation did not resolve the appeal and it was moved to the adjudication phase of the appeals process.

After mediation had been completed, but before a Notice of Inquiry was prepared, MPAC forwarded correspondence to this office containing a revised fee estimate and advising that the

Syntax Files for the 1999 assessment year for Market Area UR070 in region 9 (for the property in neighbourhood G37 in Toronto) could not be located.

I sent a Notice of Inquiry setting out the facts and issues in the appeal to MPAC, initially. MPAC provided submissions in response to the Notice. I then sought representations from the appellant by sending a Notice of Inquiry along with a copy of MPAC's representations. The appellant provided representations in response. I determined that the appellant's representations raised issues to which MPAC should be given an opportunity to respond. Accordingly, I sent the non-confidential representations of the appellant to MPAC along with a letter inviting its reply representations. MPAC provided representations in reply.

RECORDS:

The records remaining at issue in this appeal are the "Syntax Files" that MPAC claimed are subject to the discretionary exemptions at sections 11(a), (c) and (d) of the *Act* as well as the Market Model Reports that MPAC claims are subject to the discretionary exemption at section 15(a).

BACKGROUND

The request and records at issue in this appeal are somewhat complex and specific to the assessment process. This office has reviewed issues relating to access to MPAC records on a number of occasions. Given this history and complexity, I find it helpful to set out the background information below, based on the representations of MPAC and information contained in previous orders of this office.

The Municipal Property Assessment Corporation (MPAC) is a non-share capital, not-for-profit corporation established under the *Municipal Property Assessment Corporation Act* (the *MPAC Act*).

MPAC administers a uniform, province-wide property assessment system based on current value assessment. In its representations, MPAC outlines the approach it uses in establishing current values for properties, and how it applies this approach to value in mass appraisal. MPAC explains that it uses advanced statistical techniques and a statistical tool known as "Multiple Regression Analysis" (MRA), and that it estimates unknown data (e.g. market value) from known and available data (e.g. sales prices and property characteristics of sold properties).

MPAC created a Business Development Group to seek new revenue sources. The Business Development Group is also charged with the task of maintaining existing revenue sources for MPAC and identifying potential markets for future sales of information. MPAC's Business Development Group has negotiated the licensing of various products to individuals, corporations and all levels of government.

MPAC is covered by the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*, *MFIPPA*). 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* and that *Act* applies with necessary modifications with respect to the Corporation.

Consequently, any person may request access to records that are in the custody or under the control of MPAC.

MPAC's Processes and Procedures

In Order MO-1564 former Assistant Commissioner Tom Mitchinson undertook an exhaustive and detailed analysis of MPAC and its processes and procedures. To put the request for the records in this appeal in context, it is helpful to reproduce his summary of the sales comparison approach that MPAC used during the relevant time period. He explained:

Sales investigations and data collection

In step #1, MPAC analyses and stores data concerning properties and sale information. To do so, MPAC establishes market area and neighbourhood boundaries to be used for analysis and comparison purposes. These are areas referred to as “models”, and MPAC explains that there are approximately 165 models in Ontario, 11 of which are in the City of Toronto. The models are geographic areas that are considered to be subject to the same economic influences and are usually, but not always, geographically contiguous.

Within these models, locational neighbourhoods are created to capture the influence of location within a given market. MPAC identifies that significant resources are expended by it in defining, identifying, monitoring and reviewing these locational neighbourhoods. Furthermore, their boundaries are not static, and are subject to change based on macro and micro economic fluctuations.

Model specification/model calibration

Model specification is the formal process of developing a model into a formula or equation. This work is done by MPAC staff, who analyse the factors influencing the local real estate market and determine the property characteristics (independent variables) to test in the particular model. MPAC explains that, in order to specify sound valuation models, an analyst must first conduct data analysis based on a study of property sales in the model area, and then exercise professional judgement in establishing the specification for the model. Once the model has been specified, model calibration takes place. Calibration is the process of developing adjustments, known as coefficients, for the particular

model, based on market analysis of the property characteristics that are used in the valuation methodology. This process allocates specific values to the various property characteristics on the basis of the sale prices of sold properties.

MPAC stores its sales databases and calibrates its models using the statistical software package SPSS. Once the analysis has been completed and coefficients have been identified, the analyst uses the software to create a syntax file. The syntax file, in turn, creates an output file, which includes the model coefficients and standard statistical information. The syntax file, once created, can be used to re-run the analysis on the current sales database, or to run a new analysis on an adjusted sales database through edits to the syntax file.

Model application

The model application part of the process involves developing values for all properties within a given market area, by programming the model into MPAC's mainframe computer system, OASYS [Ontario Assessment System]. All variables and data transformations from each model must be entered into OASYS. Each model is assigned a model number, and the model number is used as the basis of valuation for all properties in the model area.

MPAC's new Integrated Property System (IPS) has recently replaced OASYS.

The Syntax Files

In its submissions, MPAC refers to the description of a syntax file reproduced above and states that, in effect, a syntax file is the "formula" used to calculate current value for each property in the province. In an affidavit included in MPAC's representations, the deponent explains:

SPSS contains both Graphic User Interface (GUI) screens and a programming language ("command syntax") that allows analysts to complete MPAC's market analysis. Analysts create syntax file(s) to complete their exploratory data analysis, variable creation (i.e. data transformations) as well as to specify and calibrate the property valuation model. The syntax file produces an output file, which contains the model coefficients and statistical information associated with MRA. Once the syntax file is created, it can be used to re-run the analysis for the current base year or for future base years with minimal edits to the file. The syntax file also contains notes of the analyst and shows his or her thought process and the trial and error process, as the analyst will specify and calibrate several models before selecting the final valuation model.

Once each valuation model has been developed, it is tested using a sales ratio study to ensure equity, accuracy, and uniformity. MPAC has developed objectives for sales ratio studies (which exceed international industry standards), and the

overall performance indicators must meet or exceed these objectives before a valuation model is fit for use.

Once the statistical testing has been completed and the valuation model for each market area has been deemed fit for use, it is actually applied to the properties in the market area.

Values for all properties within a given market area are developed by programming the model into MPAC's corporate computer system, OASYS. All variables, data transformations and coefficients for the model are entered into OASYS. Before the model is applied, it is assigned a Market Model Area Number (e.g., 200509UR070). One model may be applied in several different versions in order to value all properties in a given market area.

The Market Model Reports

Referring to the discussion by former Assistant Commissioner Mitchinson above, MPAC explains that the responsive Market Model Reports contain a general description of the sales comparison approach along with:

- Sample regression equation and sample value calculation.
- Discussion of ratio studies, standards, and how results are measured.
- Overview of the finetuning process;
- Listing of market models for the specific area;
- Market model boundaries for the area;
- Summary of the sales database for the market model requested;
- Ratio study for the market area; and
- List of variables, coefficients, and standard statistics in the model.

MPAC advises that, with the exception noted in the section on reasonable search below, Market Model Reports for the specific market areas identified by the appellant can be purchased for the cost of \$250.00, each.

PRELIMINARY MATTERS

OVERVIEW OF APPELLANT'S REPRESENTATIONS

The appellant filed extensive and detailed submissions in support of his access request and to challenge the fee. In general the appellant challenges the adequacy of MPAC's processes and procedures for property assessment and advocates a different approach. Many of the appellant's representations relate to concerns he has regarding MPAC's appraisal process, including concerns that MPAC is not in compliance with various statutory requirements and guidelines, and other improper actions. A summary of his objections to MPAC's exemption claims appears at page 16 of his representations. In addition, the appellant makes extensive submissions on the public interest in the disclosure of the requested information. This latter point is addressed in the section of my order dealing with the public interest override at section 16 of the *Act*, below. The appellant's criticism of MPAC's processes cut a broad swath. However, my powers and the scope of this inquiry only extend to the application of the *Act*.

RESPONSIVENESS/REASONABLE SEARCH

Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. To be considered responsive to the request, records must "reasonably relate" to the request [Order P-880].

Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17 [Orders P-85, P-221, PO-1954-I]. The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records [Order P-624]. A reasonable search is one in which an experienced employee expending reasonable effort conducts a search to identify any records that are reasonably related to the request (see Order M-909). Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.

The Representations of MPAC

Item one of the request is for access to copies of the formula used to estimate current value for each assessment year since OPAC's/MPAC's inception for areas G37 and B02. At mediation the appellant took the position that there is a formula which "is not necessarily the same as a syntax file."

In its decision letter MPAC identified certain Syntax Files and Market Model Reports relating to the identified areas as responsive records. MPAC explains that there is no one document containing a true "formula" but that the Syntax File is the "formula" used to determine the

assessed value of properties within a specific area. Accordingly, MPAC submits that the Syntax Files are the only records responsive to a request for a “formulae.” In an affidavit included with MPAC’s initial representations the deponent explains:

The records responsive to a request for the “formulae” MPAC uses to assess current property values are the syntax files. While MPAC does not specifically label the syntax files as a “formula,” they could be considered the closest thing to a formula that exists in the assessment process ... No record exists that states the formula explicitly.

The syntax files are developed by MPAC analysts to manipulate and transform the data MPAC collects, to calibrate the model, and to save estimated market values for the sold properties. ... the syntax file created using SPSS is MPAC’s electronic paper trail for its residential valuation process. Analysts write command syntax to create data transformations and variables for the model. Using the regression command syntax, analysts then specify a market model for each market area. Finally, running the syntax file against the sales database calibrates the model for the market area. The result is an SPSS output file, which contains the list of model coefficients and associated statistical information for MRA.

In an affidavit included in MPAC’s reply representations, the deponent explains:

The actual model equation was never written out in OASYS or in SPSS and therefore the equations sought do not exist as a record. The predict statement in the new Integrated Property System (“IPS”) (which replaced OASYS) is the first time the actual model equation is written out in a record.

After mediation had occurred but before a Notice of Inquiry was issued MPAC advised this office that it was unable to locate the Syntax Files for the 1999 assessment year for the Market Area UR070 in region 9 (for the property in neighbourhood G37 in Toronto). In affidavits included with MPAC’s representations the deponents explain the steps that were taken in an unsuccessful effort to locate those Syntax Files. The deponent believes that those Syntax Files could have been inadvertently deleted. During the course of adjudication MPAC further confirmed that the corresponding Market Model Report, because it is based on those Syntax Files, could not be provided.

The Representations of the Appellant

In his representations the appellant characterized MPAC’s position as “disingenuous” and sets out a number of his concerns about the integrity and utility of MPAC’s assessment processes and procedures. He, however, does not specifically provide any clear and cogent evidence to refute MPAC’s position that the Syntax Files are the records responsive to the appellant’s request for a “formula” as set out in item one of the request.

Analysis and Findings

I have considered the submissions of the parties on this point and I am satisfied that MPAC has appropriately identified the Syntax Files that exist as being the records that are responsive to the appellant's request for a "formula" and that, together, the Syntax Files and the identified Market Model Reports are the records that are responsive to item one of the request. I am also satisfied that MPAC has made reasonable efforts to locate the responsive Syntax Files for the 1999 assessment year for the Market Area UR070 in region 9 (for the property in neighbourhood G37 in Toronto) and they could not be located. As a result, the corresponding Market Model could not be generated. I find, therefore, that MPAC had conducted a reasonable search for records responsive to item one of the request.

INFORMATION CURRENTLY AVAILABLE TO THE PUBLIC

MPAC takes the position that, except for the Market Model Report that could not be generated, the other responsive Market Model Reports for areas G37 and B02 are available for a fee of \$250.00 each.

If the information is publicly available, it may be exempt under section 15(a) of the *Act*, which reads:

A head may refuse to disclose a record if,

the record or the information contained in the record has been published or is currently available to the public.

For this exemption to apply, MPAC must establish that the record or the information contained in the record is available to the public generally, through a regularized system of access, such as a public library or a government publications centre [Orders P-327, P-1387 and MO-1881].

To show that a "regularized system of access" exists, MPAC must demonstrate that

- a system exists
- the record is available to everyone, and
- there is a pricing structure that is applied to all who wish to obtain the information

[Order MO-1881]

The exemption may apply despite the fact that the alternative source includes a fee system that is different from the fees structure under the *Act* [Orders P-159, PO-1655, MO-1411 and MO-1573].

MPAC submits that any member of the public can access a Market Model Report by email or regular mail at a cost of \$250.00.

The appellant submits that section 15(a) should not be interpreted to allow MPAC to generate revenue by charging a fee for access to a Market Model Report which should be made available through Ontario government publications at a nominal cost, or posting on the internet, for free. The appellant asserts that MPAC is utilizing section 15(a) to charge “an unreasonable amount for the information that appears to be an assemblage from various sources” which he believes has limited usefulness and lacks sufficient integrity to perform the assessment function. He submits that MPAC charging a fee for a Market Model Report “should be reviewed, especially without MPAC specifically making warranties about the usefulness of its secondary product.”

Finally, the appellant submits that he has received voluminous records from another institution under another unrelated access request at a much lesser fee.

Analysis and Findings

The appellant takes issue with the underlying value of a Market Model Report and suggests that it should be available in other ways at no cost. In Order MO-1573, former Assistant Commissioner Tom Mitchinson addressed a similar argument, writing:

....once it is established that the records are ‘publicly available’, the exemption applies, and this office is not in a position to inquire into whether (...) the alternative fee structure ‘includes a profit element or only covers the seller’s costs of production and sale.’

The same sentiment is expressed by former Commissioner Wright in Order P-1387 in the following way:

Since I have found that section 22(a) [the provincial equivalent of section 15(a)] has been properly applied to exempt the information at issue, the fee structure of the *Act*, including the provisions for fee waiver, are no longer operative and I am unable to consider the issue of cost.

I agree with these statements of principle and adopt them for the purposes of this appeal. The appellant’s opinion of the intrinsic value of the Market Model Report has no bearing on section 15(a). The section does not permit a determination of the intrinsic value of a record, rather only whether the information contained in the record has been published or is currently available to the public. As set out above, once section 15(a) has been found to apply, the fee structure of the *Act*, including the provisions for fee waiver, are no longer operative and, except in limited circumstances, which are not present here (see in this regard Order MO-1573), I am unable to consider the issue of cost.

In this appeal, the appellant has provided no evidence to refute MPAC’s position that the Market Model Report is available to everyone and there is a pricing structure that is applied to all who wish to obtain the information.

Accordingly, I find that, in all the circumstances, MPAC has established that a system exists for obtaining a Market Model Report, the record is available to everyone, and that there is a pricing structure that is applied to all who wish to obtain the information. As a result, I am satisfied that, except for the Market Model Report that could not be generated, the other responsive Market Model Reports for areas G37 and B02 are exempt under section 15(a) of the *Act*.

PREJUDICE TO THE ECONOMIC INTERESTS OF AN INSTITUTION

MPAC claimed that the exemptions in sections 11(a), (c) and (d) of the *Act* apply to the responsive Syntax Files. Those sections state:

A head may refuse to disclose a record that contains,

- (a) trade secrets or financial, commercial, scientific or technical information that belongs to an institution and has monetary value or potential monetary value;
- (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.

Broadly speaking, section 11 is designed to protect certain economic interests of institutions covered by the *Act*. Sections 11(c) and (d) both take into consideration the **consequences** that would result to an institution if a record was released (Order MO-1474). This contrasts with section 11(a), which is concerned with the **type** of the record, rather than the consequences of disclosure (see Orders MO-1199-F, MO-1564).

MPAC submits that Order MO-1564, a decision of former assistant Commissioner Tom Mitchinson, is a complete answer to the question of whether a Syntax File is exempt under sections 11(a), (c) and (d) of the *Act*. MPAC submits:

In the appeal determined in MO-1564, the appellant had requested the “actual regression equation which is used to calculate residential assessments.” The appellant in that case further clarified precisely what he was seeking, and MPAC identified the syntax file for the appellant’s model area as one of four responsive records. The appellant later determined that he no longer sought access to the syntax file, but Assistant Commissioner Tom Mitchinson made some comments with respect to that record which prove instructive on this appeal. At page 19 of that Order [former] Assistant Commissioner Mitchinson wrote:

I find that disclosure of [the] syntax file would reveal MPAC's trade secrets, specifically the process for developing its model specification for Market Model 8. Therefore, I find that Record 3 [the syntax file], had it not been removed from the scope of this appeal by the appellant, would have qualified for exemption under sections 11 (a), (c) and (d) of the *Act* for the same reasons as the models when considered as a whole.

He also wrote at page 21:

In summary, I find that disclosing Record 3 (the syntax file) and Record 1 when considered as a whole (Market Model 8), would reveal the market model itself, and therefore subject to my discussion of severance below, these two records qualify for exemption under sections 11(a), (c) and (d) of the *Act*...

MPAC submits that if I decline to make a decision solely on the basis of this precedent, its representations support the same conclusion.

I will first address the possible application of section 11(a) to the Syntax File.

Section 11(a)

In order to qualify for exemption under section 11(a), MPAC must establish that the information:

1. is a trade secret, or financial, commercial, scientific or technical information; and
2. belongs to MPAC; and
3. has monetary value or potential monetary value.

Part 1- Type of information

The terms "trade secret" and "technical information" have been defined in prior orders as follows:

Trade secret means information including but not limited to a formula, pattern, compilation, programme, method, technique, or process or information contained or embodied in a product, device or mechanism which

- (i) is, or may be used in a trade or business,

- (ii) is not generally known in that trade or business,
- (iii) has economic value from not being generally known, and
- (iv) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy [Order PO-2010].

Technical information is information belonging to an organized field of knowledge that would fall under the general categories of applied sciences or mechanical arts. Examples of these fields include architecture, engineering or electronics. While it is difficult to define technical information in a precise fashion, it will usually involve information prepared by a professional in the field and describe the construction, operation or maintenance of a structure, process, equipment or thing [Order PO-2010].

Representations of MPAC

MPAC submits that the Syntax File is technical information and a trade secret. MPAC submits that it is the work product of highly-trained analysts, and is part of a process for property assessment prepared by professionals in the specific field of property assessment. MPAC submits that the Syntax File is an electronic “formula” (or can be thought of as part of a program, method, or technique) used in the business of property assessment.

In support of its position, MPAC refers to the following characterization of a Syntax File under consideration by former assistant Commissioner Mitchinson in Order MO-1564:

The syntax file consists of a combination of computer codes, programming instructions, and narrative comments made by MPAC analysts in developing the model for Market Model 8. In my view, the syntax file for this, and presumably all market models, contains the key components of MPAC’s trade secret. It consists of a computer-based data analysis of the various property sales information for the model area, together with the subjective assessment of an expert analyst, which are combined to produce the model specification that is then calibrated...

MPAC submits that the specifics of its Syntax Files are not generally known and are used to generate information that MPAC sells to customers. MPAC considers the valuation models developed by it and the processes used to create them to be its intellectual property. MPAC states that it makes efforts to keep them confidential, as there is economic value in the information not being generally known. It submits that it has taken the appropriate steps to ensure protection of this type of information both internally and externally and that access to model information is limited to certain MPAC MRA staff. It further submits that access to MPAC databases and proprietary information on its servers is denied to anyone who is not pre-approved by MPAC (i.e. to anyone who has not been provided with a user identity string and a password). Even approved users must be working at a computer that meets MPAC’s local software security

requirements before they can connect to the system. Random attempts at accessing MPAC are managed by standard industry access denial software and this process is periodically tested by the use of unannounced third party ethical hacking attacks. Once admitted, MPAC only allows access to previously specified services based on the recognized user identity.

Representations of the Appellant

The appellant submits that the information in the Syntax Files is statistical, and does not qualify as “technical information”. The appellant also disagrees with former Assistant Commissioner Mitchinson’s conclusion in Order MO-1564. He submits that MPAC’s MRA analysis is operational in nature and used throughout the assessment industry. Characterizing normal trade practices and standards as being proprietary, he says, is extremely misleading, particularly since the technology is accessible or available through proprietary software. He submits that previous use or prior art, preclude MPAC models as being described as inventive or novel. He submits that any monetary value of the MRA analysis derives from its operational use. This value, he says, is created by restricting access to information of interest to the public.

MPAC’s Reply Representations

In an affidavit included in MPAC’s reply representations, the deponent summarizes MPAC’s position in the following way:

The syntax files that MPAC developed and uses are described in paragraphs 16 and 17 of my February 22nd Affidavit. The syntax files are the bread and butter of MPAC’s operation. They are our electronic paper trail. Among other things, they outline the analyst’s thought process and rationale, the application of his or her specialized judgment and knowledge, and the reasons why the analyst made certain decisions - for example, to filter sales, to use one form of depreciation over another, or to test several different model specifications before finalizing the model and the market analysis.

This electronic paper trail is also our audit trail. MRA Managers and Quality Service (“QS”) reviewers can and do review the syntax files to look for errors and to understand the thought process and analysis before signing off on the model. The electronic paper trail also allows QS the ability to replicate our results, which is part of the audit process.

We maintain and develop syntax files to automate tasks and increase efficiencies. The SPSS syntax files vary in complexity and require a great deal of time and skill to learn SPSS programming language.

Over the years, MPAC staff (including myself) have developed complex SPSS macro and Sax Basic scripts using SPSS macro and scripting facilities to automate creation of the sales databases (on OASYS, we had a significant work effort to

format the data before we were ready to model) as well as to automate ratio studies including the trimming features recommended by the IAAO [International Association of Assessment Officers].

These types of programs would have significant value if we were ever to sell them within our field. As the author of some of these scripts, I know personally that it takes a skilled person to create these programs. A person with an SPSS license and a basic understanding of its functions could not write these programs. Even though SPSS is an “off-the-shelf” program, constant use and a certain level of training and expertise are required to maximize its potential. MPAC staff are expert users of SPSS and it has taken many years to develop this skill level.

The syntax files are the property and trade secrets of MPAC. They reflect the application of the intellectual expertise MPAC staff have developed over many years. They are the electronic paper trail of technical and scientific (mathematical and statistical) information contained in MPAC’s system, comprised of programmes, methods, techniques, and processes as outlined above. The syntax files have monetary value from not being known. We do not share them outside the organization. The syntax files are full of technical terms and commands for SPSS to operate its functions.

Anaylsis and Findings

In Order MO-1564, former Assistant Commissioner Mitchinson found that the Syntax File under consideration in that appeal was a trade secret. As well, he found that the formulae, coefficients and other related information in MPAC’s market models also fell within the scope of the definition of technical information. In making the latter finding he wrote:

In my view, property assessment is properly characterized as an applied science, and the market models developed by MPAC would constitute a process prepared by professionals in this specific field of expertise.

I agree with former Assistant Commissioner Mitchinson that property assessment is properly characterized as an applied science. In my view, the information in the Syntax Files qualifies as “technical information” because it constitutes a process prepared by professionals in the field of property assessment. In light of my conclusion it is not necessary to also consider whether the information also constitutes a trade secret.

Part 2: Belongs to MPAC

In Order PO-1763 [upheld on judicial review in *Ontario Lottery and Gaming Corporation v. Ontario (Information and Privacy Commissioner)* (April 25, 2001), Toronto Doc. 207/2000 (Ont. Div. Ct.)], former Senior Adjudicator David Goodis reviewed the phrase “belongs to” as it appears in section 18(1)(a) of the *Freedom of Information and Protection of Privacy Act*, which

is similar to section 11(a) at issue in this appeal. After reviewing a number of previous orders, he summarized the status of the relevant previous orders as follows:

The Assistant Commissioner [Tom Mitchinson] has thus determined that the term “belongs to” refers to “ownership” by an institution, and that the concept of “ownership of information” requires more than the right to simply to possess, use or dispose of information, or control access to the physical record in which the information is contained. For information to “belong to” an institution, the institution must have some proprietary interest in it either in a traditional intellectual property sense - such as copyright, trade mark, patent or industrial design - or in the sense that the law would recognize a substantial interest in protecting the information from misappropriation by another party. Examples of the latter type of information may include trade secrets, business to business mailing lists (Order P-636), customer or supplier lists, price lists, or other types of confidential business information. In each of these examples, there is an inherent monetary value in the information to the organization resulting from the expenditure of money or the application of skill and effort to develop the information. If, in addition, there is a quality of confidence about the information, in the sense that it is consistently treated in a confidential manner, and it derives its value to the organization from not being generally known, the courts will recognize a valid interest in protecting the confidential business information from misappropriation by others. (See, for example, *Lac Minerals Ltd. v. International Corona Resources Ltd.* (1989), 61 D.L.R. (4th) 14 (S.C.C.), and the cases discussed therein).

Representations of MPAC

MPAC submits that it has expended a great deal of time, money, skill, effort and specialized knowledge in developing its Syntax Files, in which MPAC has a proprietary interest. It submits that it has always held this information in confidence and has refused every request for access to the Syntax Files, does not make the Syntax Files available to anyone in government or other assessing agencies, and has strongly opposed attempts to gain access to Syntax Files through appeals to this office.

Representations of the Appellant

The appellant submits that every thing purchased with public funds is for the public benefit. In addition, the appellant submits that “syntax is a part of normal minute by minute functions and are not patentable ... For the same reason models, developed from prior art, and other copyrighted material (SPSS software) cannot be patentable.”

Analysis and Finding

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) provides the following description of the rationale for including a “valuable government information” exemption in the *Act*, which is helpful in considering the application of the exemption in section 11(a) in the context of this appeal:

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 activities of the Ontario Research Foundation, for example, are a primary illustration of this phenomenon. We are not opposed in principle to the sale of such expertise or the fruits of research in an attempt to recover the value of the public investments which created it. Moreover, there are situations in which government agencies compete with the private sector in providing services to other governmental institutions . . . on a charge back basis. . . . In our view, the effectiveness of this kind of experimentation with service delivery should not be impaired by requiring such governmental organizations to disclose their trade secrets developed in the course of their work to their competitors under the proposed freedom of information law.

The appellant’s first submission, taken to its logical conclusion would eviscerate section 11, because all institutions under the *Act* receive public funding in one way or another. That cannot be the case. With respect to the second submission, I find that MPAC has provided me with sufficiently detailed and cogent evidence to establish that its Syntax Files have been developed through modification and manipulation, a great deal of time, money, skill, effort and specialized knowledge in development and efforts to maintain its confidentiality and is in no way part of the “public domain.” In the circumstances of this appeal, I find that the Syntax Files “belong to” MPAC.

Part 3: Monetary Value

In Order M-654, Adjudicator Holly Big Canoe stated:

The use of the term “**monetary value**” in section 11(a) requires that the information itself have an intrinsic value. The purpose of section 11(a) is to permit an institution to refuse to disclose a record that contains information where circumstances are such that disclosure would deprive the institution of the monetary value of the information...

Representations of MPAC

MPAC submits that its Syntax Files have monetary value, and that MPAC will be deprived of this value if the Syntax Files are disclosed.

MPAC submits, in particular:

... The syntax files are the result of the investment of time and of significant sums of money, and the application of highly specialized skills, so therefore have an inherent monetary value as a result. These files allow MPAC to assess property values. MPAC also sells its knowledge and expertise, including services which apply the concepts of the syntax files, to other assessment jurisdictions. In addition, the syntax files have commercial applications and intrinsic monetary value when they are used to generate reports and products that are routinely sold to mortgage brokers, financial institutions, and planners. The revenue streams generated by these sales total in the millions of dollars, which directly offsets the cost of MPAC's statutory services.

The monetary value of the syntax file is difficult to quantify, but it essentially constitutes the basis of MPAC's entire residential property valuation operation. MPAC treats it as confidential and valuable information, which would lose monetary value if disclosed to the public. The information derives value from not generally being known (Order MO-1564). If the syntax file must be disclosed for free in response to access requests under *MFIPPA*, MPAC will be deprived of the monetary value of the record and its work product generally, as well as its revenue stream.

Free public access to the syntax file would give skilled users access to proprietary details of MPAC's assessment formulae including subjective assessments by MPAC's expert analysts. The legislature has given MPAC the sole authority to perform assessment services in the province. The record, if disclosed, could have considerable monetary value to the recipient, who could attempt to manipulate the data (without a full understanding of how all of the elements fit together) and even sell the information.

Based on the representations of MPAC and the affidavits filed in support, I find that the information in the Syntax Files has monetary value. As a result MPAC has satisfied the requirements of the exemption and I find that the information in the Syntax Files is exempt under section 11(a) of the *Act*.

It is therefore not necessary for me to address the application of the exemptions in section 11(c) or (d) of the *Act* to the Syntax Files.

FEES

I have addressed the cost of access to the responsive Market Model Reports above. The only issue remaining under this heading is the estimated fee for access to records numbered 21 and 22 (pertaining to item four of the request) and 28 to 33 (pertaining to item six of the request).

General principles

Section 45(1) of the *Act* provides that:

A head shall require the person who makes a request for access to a record to pay fees in the amounts prescribed by the regulations for,

- (a) the costs of every hour of manual search required to locate a record;
- (b) the costs of preparing the record for disclosure;
- (c) computer and other costs incurred in locating, retrieving, processing and copying a record;
- (d) shipping costs; and
- (e) any other costs incurred in responding to a request for access to a record.

More specific provisions regarding fees are found in section 6 of Regulation 823 (as amended by O. Reg 22/96). This provision states:

The following are the fees that shall be charged for the purposes of subsection 45(1) of the *Act* for access to a record:

- 1. For photocopies and computer printouts, 20 cents per page.
- 2. For records provided on CD-ROMs, \$10 for each CD-ROM.
- 3. For manually searching a record, \$7.50 for each 15 minutes spent by any person.
- 4. For preparing a record for disclosure, including severing a part of the record, \$7.50 for each 15 minutes spent by any person.
- 5. For developing a computer program or other method of producing a record from a machine readable record, \$15 for each 15 minutes spent by any person.
- 6. The costs, including computer costs, that the institution incurs in locating, retrieving, processing and copying the

record if those costs are specified in an invoice that the institution has received.

Where the fee exceeds \$25.00, the institution must provide the requester with a fee estimate. Where the fee is \$100.00 or more, the institution may require the requester to pay a deposit equal to 50% of the fee estimate before the institution takes any further steps to process the request. A fee estimate of \$100 or more must be based on either:

- The actual work done by the institution to respond to the request, or
- a review of a representative sample of the records and/or the advice of an individual who is familiar with the type and content of the records.

[Order P-81]

MPAC is entitled to charge \$7.50 for each 15 minutes (or \$30 per hour) of search and/or preparation time (including severances), and, generally this office has accepted that it takes two minutes to sever a page that requires multiple severances [see Orders MO-1169, PO-1721, PO-1834, PO-1990].

This office may review an institution's fee to determine whether it complies with the fee provisions of the *Act* and Regulation 823. In determining whether to uphold a fee, my responsibility under section 45(5) is to ensure that the amount is reasonable. The burden of establishing the reasonableness of the fee rests with MPAC. To discharge this burden, MPAC must provide me with detailed information as to how the fee has been calculated in accordance with the provisions of the *Act*, and produce sufficient evidence to support its claim.

Representations of MPAC

MPAC submits that its fee is based on the actual work done to respond to the appellant's request and itemizes the fees in an attachment to an affidavit provided in its representations. MPAC explains that it took one hour of search time for a staff member in the Property Values Department to locate Records 21 and 22. In addition MPAC is claiming \$.60 for the cost of photocopying three pages of responsive records and \$10.00 for a CD-ROM containing the presentation to the I.A.A.O. MPAC submits that it took five and a half hours to compile the ratio study files found at records 28 to 33. MPAC explains that the requested records are kept and maintained in both electronic and hard copy format. MPAC explains that it is claiming no fee for the "very little time" spent preparing the records for disclosure and it waives shipping costs of \$10.00. MPAC therefore claims a total of six and a half hours for searching for the records and the sum of \$10.60 for photocopying and the cost of a CD-ROM.

The appellant makes no specific representations on the estimated fee for access to Records 21, 22 and 28 to 33.

Analysis and Finding

As set out above, MPAC is entitled to charge \$7.50 for each 15 minutes of time spent searching for or preparing the records for disclosure and 20 cents per page for each photocopy. Based on the representations of MPAC (which included an affidavit filed in support) with respect to the time it spent actually locating the responsive records, I have no difficulty in upholding the search time, as well as the photocopying cost and the cost of the CD-ROM. In accordance with these findings, I uphold MPAC's fee estimate for search time of \$195.00. I also allow MPAC's claim of \$10.60 for the cost of three pages of responsive records and a CD-ROM.

PUBLIC INTEREST IN DISCLOSURE

In his representations, the appellant raises the possible application of the "public interest override" at section 16 which reads:

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

It should be noted that unlike section 11, section 15 is not listed as one of the sections that can be overridden by section 16. As a result, I will not consider section 15 in the discussion that follows.

In order for section 16 to apply, two requirements must be met: first, a compelling public interest in disclosure must exist; and secondly, this compelling public interest must clearly outweigh the purpose of the exemptions (Order P-1398, upheld on judicial review in *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)* (1999), 118 O.A.C. 108 (C.A.), leave to appeal refused [1999] S.C.C.A. No. 134 (note)).

In Order P-984, Adjudicator Holly Big Canoe discussed the first requirement referred to above:

"Compelling" is defined as "rousing strong interest or attention" (Oxford). In my view, the public interest in disclosure of a record should be measured in terms of the relationship of the record to the *Act's* central purpose of shedding light on the operations of government. In order to find that there is a compelling public interest in disclosure, the information contained in a 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.

If a compelling public interest is established, it must be balanced against the purpose of any exemptions which have been found to apply. Section 16 recognizes that each of the exemptions listed, while serving to protect valid interests, must yield on occasion to the public interest in access to information. An important consideration in this balance is the extent to which denying access to the information is consistent with the purpose of the exemption [See Order P-1398].

In Order PO-2014-I former Assistant Commissioner Mitchinson also explained that in certain circumstances the public interest in non-disclosure of records should be considered. Although that appeal dealt with the equivalent provision in the *Freedom of Information and Protection of Privacy Act*, it is equally applicable here. He wrote:

This responsibility to adequately consider the public interest in both disclosure and non-disclosure of records in the context of a section 23 finding was also pointed out by the Divisional Court in *Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636. Before upholding my decision to apply the public interest override in section 23 and order the disclosure of certain peer review reports on the operation of Hydro facilities, the court in that case stated that it needed to first satisfy itself that “.. in deciding as to the existence of a compelling public interest [I took] into account the public interest in protecting the confidentiality of the peer review process”. Once satisfied that I had, the court upheld my section 23 finding.

In my view, the issue of whether there is a compelling public interest in disclosure of records is highly dependent on context. Certain key indicators of compellability can be identified, but each fact situation and each individual record must be independently considered and analyzed on the basis of argument and evidence presented by the parties.

Representations of the Appellant

The appellant’s extensive representations on this issue focus on his concerns about the integrity and utility of MPAC’s assessment processes and procedures. He submits that disclosure would promote transparency and is in the public interest for a number of reasons, including the following:

- there is public awareness and concern over the quality of MPAC property assessments and services;
- MPAC has “openly demonstrated indifference to the unfair treatment of the public”;
- MPAC is not acting in good faith in the use of public funds and is not acting in the public interest;
- there is inequity in the taxation process;
- there has been media and public interest in MPAC’s oversight as well as its assessment process;
- MPAC’s assessment processes are faulty and neither cost-effective nor transparent;

- MPAC has used this office to “conceal [the] public sentiment” and is “averse to review by peers, or public, preferring to seek affirmation through processes dependent upon representations;”
- assessments in Toronto are worse after MPAC took over the administrative duties, partly due to its failure to appraise properties based on inspections;
- MPAC’s conduct, business behaviour, policies and practices are in direct conflict with the spirit and letter of the I.A.A.O. and Appraisal Institute (USPAP) rules, standards and guidelines;
- the first Beaubien Report (April 2001), the Ombudsman’s Report (*Getting it Right*), headlines, the number of reassessment stays and possibly complaints to this Office all speak to an overwhelming and compelling public interest; specifically how and on what basis are assessments calculated;
- releasing the record would allow the public to “fix” the assessment process before a tribunal;
- elected officials have done nothing regarding the complaints about OPAC/MPAC which is “an egregious affront felt throughout the taxpaying community in Ontario.”

Representations of MPAC

MPAC submits that the interest at stake in this appeal is a “private” as opposed to a “public” interest. MPAC further submits that the appellant has access to a significant amount of information regarding how MPAC assesses current value, including detailed personalized information from MPAC, extensive information available upon payment of the applicable fees under the *Act*, the MPAC website, and through purchase of the Market Model Reports or other reports available to property owners. MPAC further submits that there is a public interest in non-disclosure. MPAC explains that it earns revenue by selling its “expertise” to other assessment jurisdictions. It sells the Automated Valuation Model, which is based on the syntax files and the statistical techniques developed by MPAC, to various jurisdictions, and uses the revenues to offset its costs. A loss of revenue to MPAC would harm its ability to keep its costs to municipalities low, which costs could eventually be passed on to the public in the form of higher taxes. Finally, MPAC submits that it cannot be said in these circumstances that any public interest, if it exists, outweighs the purpose of the exemption in issue - namely, to protect the economic interests of institutions subject to the *Act*.

In reply, MPAC further states:

... that there is a fundamental disconnect between the issues [identified by the appellant] and the records sought. Access to the syntax file does not and will not

address these public interests. The disclosure sought must address the public interest alleged and the record sought “must be directly related to an identified compelling public interest in disclosure” (MO-2314). MPAC publishes a variety of sources that are available to the public that address these concerns. For instance, MPAC issues an annual report that details how funds received from municipalities and MPAC’s sale of assessment products are used by MPAC. The syntax file, on the other hand, has no bearing on this issue. MPAC also provides a host of products and information on its website that disclose its procedures and explain in detail how it assesses properties, including providing particular information about how the appellant’s property and a certain number of neighbouring properties are assessed.

The level of disclosure has been increased considerably over the years in a concerted effort to improve transparency and provide members of the public with relevant information. The syntax file in and of itself is a tool used to calculate the assessments, but does not answer the question of how assessments are calculated. MPAC again refers to the [affidavits it provided], which describe in detail the intellectual property of MPAC that has been invested in the syntax files and market model, and the potential uses to which they can be put. At the end of the day, there remains a fundamental disconnect between the data sought and any of the public interests that the Appellant alleges. Disclosure of this data, despite the applicable exemptions and the resulting harm to MPAC, will not help the appellant understand whether he is getting a reasonable level of service for his tax dollar or how and on what basis assessments in general are calculated. ...

Analysis and Findings

The question before me is whether there is a compelling public interest in the disclosure of the Syntax Files that clearly outweighs the purpose of the section 11(a) exemption.

I accept that in certain circumstances a broader public interest may transcend the private interest of an appellant. In my view, however, those circumstances do not exist in this appeal.

In Order MO-1564, former Assistant Commissioner Mitchinson found that although the requester sought access to records specific to his own property, he raised issues that had general application to property owners throughout the province. In the course of his analysis, the former Assistant Commissioner wrote:

I support the appellant’s position that there is a compelling public interest in obtaining basic information about the way in which a property is assessed and therefore the way in which the taxation is calculated. This public interest is both inherent to the whole concept of property taxation, and also evident from the number of requesters, including the appellant in this case, who have sought access to information about their properties from MPAC under the *Act*. However, I also accept MPAC’s position that disclosure of its entire market model, which I have found to qualify as a trade secret, is not required in order to satisfy this public

interest in transparency and accountability. In other words, I find that there is a “rousing strong interest” in providing property owners with sufficient information to adequately understand how their properties are valued for assessment purposes, but no “rousing strong interest” in providing the public with access to information relating to the manner in which the model was developed and the trade secrets acquired by MPAC in this regard.

That being said, in my view, basic information such as the variables identified by MPAC as the basis for evaluation in a particular model, how these variables are weighted, as well as what variables from among this list were or were not used in the assessment of an individual’s home, should be answered by a public body established by statute to administer a uniform, province-wide current-value assessment process.

...

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.]

In Order MO-2314 the undisclosed portions of a report assessing the progress of MPAC’s migration from OASYS to IPS entitled “*Municipal Property Assessment Corporation, Integrated Property System Project, Health Check Report*” was at issue. In making his findings in that appeal Senior Adjudicator Higgins considered the statements about MPAC contained in the Ombudsman’s report entitled “Getting it Right” and concluded that only two discrete passages in the record at issue that dealt with “Value for Money” transcended the private interest of the requester. This was because they were about whether MPAC has used public money wisely and efficiently. In making his finding the Senior Adjudicator wrote:

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.

In this appeal, the appellant does not seek basic information about the way in which a property is assessed, and therefore the way in which the taxation is calculated, but rather Syntax Files, which are discrete components in the creation of MPAC’s Market Model for specified areas. In my opinion, the appellant seeks information relating to the manner in which Market Models are

developed and the technical information acquired by MPAC in that regard. In my view, in light of the volume of material that MPAC has made available relating to the assessment practices and procedures then in force, this information is not required in order to satisfy any public interest in transparency and accountability. Furthermore, I find that the Syntax Files do not directly relate to any identified compelling public interest in disclosure. They consist of MPAC's technical information, which is far removed from the type of information that former Assistant Commissioner Mitchinson or Senior Adjudicator Higgins found to meet the requirements of section 16 of the *Act* in Orders MO-1564 or MO-2314, respectively.

In other words, while there may be a "rousing strong interest" in providing property owners with sufficient information to adequately understand how their properties are valued for assessment purposes and to shed light on inefficiencies to enable MPAC to operate at a lower cost to the public, the appellant has failed to establish that there is a "rousing strong interest" in providing the public with access to the technical information in the requested Syntax Files.

In conclusion, I find that the appellant's private interest in disclosure of the Syntax Files does not raise issues of more general application, so that a public interest may be found to exist.

Furthermore, the purpose of the section 11 exemptions, including section 11(a), is to protect certain economic interests of institutions. MPAC has a statutory duty under section 8(3) of the *MPAC Act* to apply any surplus in its income to reduce the charges that it levies against municipalities for providing assessment-related services. One of the ways that MPAC generates revenue is by charging fees for property information. This revenue is then used to lower rates for core assessment services, thereby benefiting municipalities and taxpayers. Even if a compelling public interest did exist, it would not outweigh the purpose of the section 11(a) exemption, particularly as it relates, in the circumstances of this appeal, to protecting MPAC's ability to earn surplus income for the purpose of reducing the charges levied to municipalities.

I therefore find that no compelling public interest in disclosure is established, and the public interest override at section 16 does not apply in this appeal.

EXERCISE OF DISCRETION

Introduction

The section 11(a) and 15(a) exemptions are discretionary and permit an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, I may determine whether MPAC failed to do so.

I may also find that MPAC erred in exercising its discretion where, for example:

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations

- it fails to take into account relevant considerations

In all these cases, I may send the matter back to MPAC for an exercise of discretion based on proper considerations [Order MO-1573].

Relevant considerations

Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant [Orders P-344, MO-1573]:

- the purposes of the *Act*, including the principles that
 - information should be available to the public
 - individuals should have a right of access to their own personal information
 - exemptions from the right of access should be limited and specific
 - the privacy of individuals should be protected
- the wording of the exemption and the interests it seeks to protect
- whether the requester is seeking his or her own personal information
- whether the requester has a sympathetic or compelling need to receive the information
- whether the requester is an individual or an organization
- the relationship between the requester and any affected persons
- whether disclosure will increase public confidence in the operation of the institution
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person
- the age of the information
- the historic practice of the institution with respect to similar information

As discussed in Order MO-1573, this office does not have the power to substitute its discretion for the discretion of the institution in denying access. Rather, if I find that the institution failed to properly exercise its discretion, my power is limited to referring the matter back to the institution for an exercise of discretion based on proper principles.

Representations of the Appellant

One of the recurring themes in the appellant's representations is that MPAC applied the exemptions for improper purposes, including protecting "a monopoly."

Representations of MPAC

MPAC submits that in exercising its discretion under sections 11(a) and 15(a) it considered relevant factors and did not act in bad faith or for an improper purpose. In particular MPAC submits:

With respect to section 11, MPAC considered the impact that disclosure of the records would have on its competitive position and its economic and financial interests. MPAC considered its historic practice to protect and not to disclose the syntax files, as well as the fact that the Commission has agreed that these need not be disclosed in response to an access request.

With respect to section 15, MPAC also considered the need for public access to the information in the records and concluded that a regularized system exists to accommodate this need with respect to the Market Model and, in fact, for much of the information in issue. The public can learn about MPAC's assessment process and the valuation of their particular properties without accessing MPAC's proprietary "formula" or computer codes. As well, MPAC considered the public interest served by having MPAC pursue means of generating revenues that can offset the cost of its services to municipalities and ultimately, the taxpayer.

MPAC respectfully submits that there is no evidence to suggest that it acted in bad faith or for an improper purpose. MPAC employees invested literally dozens of valuable hours (in fact, days) searching for and gathering electronic and hard copy records in response to the appellant's request. MPAC has disclosed or offered to disclose a considerable amount of information to the appellant, in addition to information that is otherwise publicly available through a regularized system of access (i.e. the Market Model Report and the requested property specific information). MPAC only refused to disclose those records to which a statutory exemption applied, after taking into account the purposes of *MFIPPA*, the factors outlined in these representations, and all other relevant factors.

Analysis and Findings

In my opinion, based upon my review of the representations and the records at issue, MPAC appropriately exercised its discretion not to release the records it withheld. I will not, accordingly, disturb its exercise of discretion on appeal.

ORDER:

1. I find that MPAC had conducted a reasonable search for records responsive to item one of the request.
2. I uphold MPAC's decision to deny access to the syntax files and Market Model Reports on the basis of sections 11(a) and 15(a), respectively.
3. I uphold MPAC's fee claim of \$205.60.
4. The appeal is dismissed.

Original signed by: _____
Steven Faughnan
Adjudicator

_____ April 29, 2009