



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-2440

Appeal MA08-288

Municipal Property Assessment Corporation



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NATURE OF THE APPEAL:

The Municipal Property Assessment Corporation (MPAC) received a request pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* (the Act) for information pertaining to “valley lands”. More particularly, the request read:

All letters, emails, documents on related policy to MPAC’s methodology in assessing river valley flood plain lands and all directives related from all Ontario municipalities and provincial agencies.

In his request, the requester requested that MPAC release to him all records relating to the assessment of the valley lands and enumerated the following:

- a) Who authorized City flood hazardous valley lands to be assessed in the million dollars?
- b) The records in the methodology used in arriving in these figures.
- c) Indication of how spread this policy is in Ontario and which municipalities high assessment applies to valley lands.
- d) All information if this is MPAC sole policy or initiated by city or provincial governments.
- e) Any recent directives by MPAC to correct high assessments.

In a follow-up telephone call, the Senior Manager Legislation and Policy Support Services, Freedom of Information Coordinator (FOIC) at MPAC clarified the request with the requester. The FOIC then sent the requester an email, setting out the clarified request and asking the requester to confirm whether the wording was correct. The clarified request was worded as follows:

- a) Any document or other form of record that approved MPAC’s current valuation policy for valley or flood plain land in the City of Toronto or the Regional Municipality of Peel.
- b) Any document or other form of record describing MPAC’s valuation methodology for arriving at assessed values for valley or flood plain land in the City of Toronto or the regional municipality of Peel.
- c) Any document or other form of record that approved MPAC’s current valuation policy for valley or flood plain land in other areas of the Province of Ontario, other than the City of Toronto or the Regional Municipality of Peel.
- d) Any document or other form of record sent to MPAC from the Province of Ontario, or any municipality, giving direction to MPAC respecting the determination of assessed values for valley or flood plain land in Ontario.

e) Any document or other form of record from MPAC management giving direction to MPAC staff relating to valuation policy or methodology for the determination of assessed values for valley or flood plain land in Ontario, including but not limited to such lands in the City of Toronto or the Regional Municipality of Peel.

The requester subsequently sent a reply email to the FOIC, stating: "Thank you for your clarification reply and I have no problem in accepting it."

MPAC then issued an access decision to the requester, stating that it does not have records responsive to his clarified request. In its decision, it provided the following information regarding valuation (part (a) of the clarified request):

We have asked MPAC's Property Values Department to conduct a search. They have advised that MPAC does not have any written documentation regarding the policy and procedures with respect to the valuation of flood plain lands. Conservation Authority lands, which are often designated as flood plain lands are initially valued similar to surrounding land. However, due to the restrictions placed on the development of the land, a value adjustment is made to all Conservation Authority properties across the Province (generally 50%). This adjustment would apply to the City of Toronto and the Regional Municipality of Peel. Further adjustments may be required on an individual property by property basis depending on the type of land and its use e.g., swamps wetlands and creek banks. If the flood plain land is located within the Conservation Authority lands, it would receive the adjustment for restricted use and if a further adjustment is warranted due to the nature of the specific land and available market date, then a further reduction might occur.

In addition, flood plain lands outside the Conservation Authorities are valued according to real estate market data. Sales data is collected and the flood plain nature of the land is identified as restricted or non-restricted. The market evidence is analysed using Multiple Regression Analysis (MRA) to determine whether an adjustment is warranted in the estimated value for a specific property.

The requester, now the appellant, appealed MPAC's decision. As mediation did not resolve the issues in this appeal, the file was transferred to adjudication. I sent a Notice of Inquiry to both MPAC and the appellant describing the appeal process for an oral inquiry where the issue to be determined is whether MPAC had conducted a reasonable search for responsive records. I also asked the parties to be prepared to address the appellant's position that the software development instructions/directives incorporated within the MPAC software, tables, reports, emails, etc. and the factual representational report are records responsive to his request as clarified in the MPAC email to the appellant.

The appellant was specifically asked to be prepared to inform me of any details he was aware of concerning records which have not been located, or any other information to indicate that the search carried out by MPAC was not reasonable.

Finally, MPAC was also asked to be prepared to provide me at the oral inquiry with a summary of all steps taken in response to the appellant's request. In particular, I asked that it be prepared to provide evidence on the following questions and also to provide documents or other evidence to support its position:

1. Was the appellant contacted for additional clarification of his/her request? If so, please provide details including a summary of any further information the appellant provided.
2. Please provide details of any searches carried out including:
 - by whom were they conducted
 - what places were searched
 - who was contacted in the course of the search
 - what types of files were searched and finally
 - what were the results of the searches
3. Is it possible that such records existed but no longer exist? If so, you will be asked to provide details of when such records were destroyed including information about record maintenance policies and practices such as evidence of retention schedules.

The oral inquiry was scheduled for April 21, 2009. In attendance in person was the appellant, as well as on behalf of MPAC, its Senior Manager of Multiple Regression Analysis, Property Values (Manager MRA), and the Senior Manager Legislation and Policy Support Services, Freedom of Information Coordinator (FOIC). Also available to testify on behalf of MPAC by telephone were two more individuals, MPAC's Residential Valuation Manager, Property Values Department, Sudbury Field Office (Manager Residential Valuation) and the Manager, Land Analysis, Property Values Department, Barrie Field Office (Manager Land Analysis).

Prior to the oral inquiry, both the FOIC and the Manager Residential Valuation provided affidavits concerning the searches undertaken in response to the clarified request. The other two witnesses had been consulted by the Manager Residential Valuation in the preparation of his affidavit.

All four MPAC witnesses testified at the oral inquiry, as did the appellant concerning the existence of any additional responsive records. In addition, the Manager MRA testified concerning the existence of any responsive "software development instructions/directives incorporated within the MPAC software, tables, reports, emails, etc. and the factual representational report" as outlined in the cover letter to the oral Notice of Inquiry.

At the conclusion of the oral inquiry, the parties agreed that the only outstanding issue, based on the wording of the clarified request, was whether there existed any policies, methodologies and directives regarding the fine-tuning and review of the assessment of municipally-owned flood plain and valley lands in the Toronto or Halton-Peel regions. The parties agreed that MPAC would make inquiries of a Customer Service Manager in each of the Toronto and Halton-Peel Field Offices, who is responsible for fine-tuning and review of municipally-owned flood plain and valley lands, for any policies, methodologies and directives regarding this fine-tuning and review of municipally-owned flood plain and valley lands in those regions.

MPAC was to provide a response in affidavit form within 21 days of the oral inquiry from each of the Customer Service Representatives, with a copy to the appellant. The appellant was to provide his written representations regarding these affidavits within 21 days of delivery of MPAC's affidavits.

MPAC provided both the appellant and me with the affidavits of its Customer Service Managers (CSMs) from its Toronto and Halton-Peel Field Offices, as agreed upon at the oral inquiry. In its cover letter, MPAC advised that certain types of property that may be municipally-owned and on valley and flood plain lands, for example municipal park lands, are reviewed and fine-tuned by MPAC's Property Values department, not MPAC's Customer Service department. MPAC reiterated that the Property Values department had already conducted a search for records responsive to the appellant's request at the time MPAC received the request. MPAC also enclosed with the affidavits and cover letter a copy of its *Fine-Tuning 2008 Residential Current Value Assessment Guidelines*, which guidelines were referred to at the inquiry.

The affidavits of the CSMs address the issue of whether there are any policies, methodologies or directives in their respective field offices regarding the review and fine-tuning of municipally-owned valley or flood plain lands.

The Customer Service Manager (CSM) of Halton-Peel manages 14 Valuation Review Specialists (VSR) as well as three Customer Service Clerks. He states in his affidavit that:

The Customer Service department of MPAC fine-tunes and reviews the preliminary values of certain types of properties. These preliminary values are provided by MPAC's Property Values division, which will use a statistical process called Multiple Regression Analysis (MRA) to arrive at an estimate of the value of certain property types.

One of the responsibilities of a VRS is to review preliminary values prior to the release of a new valuation base year to ensure that new values reflect local real estate market trends, previous appeal decisions, and location-specific circumstances.

To ensure that assessed values reflect the local marketplace, a VRS may fine-tune preliminary values by applying adjustments to a preliminary value for a property.

An adjustment may change the preliminary value by a specific percentage or dollar amount. These adjustments are made based on the VRS's appraisal judgment and knowledge of the local area.

A CSM reviews and discusses preliminary values with the VRS and Customer Service and Property Values staff to ensure that property- and location-specific characteristics or appeals information and decisions are appropriately addressed. A CSM may also fine-tune preliminary values to maintain equity between all properties as well as equity between comparable properties. Again, such fine-tuning is based on local real estate markets trends and appraisal judgment...

The Halton-Peel Field Office does not have any policies, methodologies and directives specifically regarding the fine-tuning and review of municipally-owned flood plain and valley land. In fact, the Halton-Peel Field Office does not have any policies, methodologies and directives regarding the fine-tuning and review of flood plain and valley land, whether municipally-owned or otherwise.

...MPAC does not have a specific property code or other category for municipally-owned flood plain and valley land.

Where the Halton-Peel Field Office is responsible for reviewing and fine-tuning the preliminary value of a municipally-owned property that includes flood plain and/or valley land, this would be performed in the same way as the review and fine-tuning of any other property reviewed and fine-tuned by the field office. That is, the review and fine-tuning of a specific property is performed on a case-by-case basis based on sound appraisal judgment and local market knowledge. Fine-tuning adjustments take into account local real estate markets trends, previous appeal decisions and requests for reconsideration, and location-specific circumstances.

The CSM of the Toronto Field Office is one of four CSMs in the Toronto Field Office, supervising 60-61 VRS's and five Customer Service Clerks. In his affidavit, he adopts the statements of the Halton-Peel CSM regarding the fine-tuning and review of municipally-owned flood plain and valley land concerning the Toronto Field Office. He states that:

[T]he Toronto Field Office does not have any policies, methodologies and directives specifically regarding fine-tuning and review of municipally-owned flood plain and valley land, nor does it have any policies, methodologies and directives regarding the fine-tuning and review of flood plain and valley land, whether municipally-owned or otherwise.

The appellant disagrees with the claim of MPAC that no responsive policies exist regarding the fine-tuning and review of municipally-owned flood plain and valley lands. He states that he:

...believes from the facts, there is an orchestrated policy within MPAC to place high assessments on non-paying municipal lands to increase the overall Ontario total assessed values, for funding purposes...

Contrary to MPAC, the evidence shows that none of the thousand plus municipal owned flood prone valley lands are assessed at market value but fraudulently are assessed at developable tablelands...

The affidavit[s] from manager ...states that ...fine tuning is done by MRA to arrive at an estimated value "of CERTAIN Property Types" and adjustments are made based on the VRS's appraisal judgment and knowledge of the local area.

Note: Most valley flood lands MPAC estimates them on purpose, in the millions of dollars value and are estimated to build able table lands... All VRS Region [Toronto and Halton-Peel] could not be lock-in-step in implementing across the board ridiculous estimates.

Re: ...MPAC does not have a specific property code or other category for municipally -owned flood plain lands.

Note: To confirm this, appellant requests access to the MRA data entry. The [CSM] ...does not directly account, why municipal flood plains are acquired at a minimal values and his authority finds it normal to have such high unaccounted values...

This alleged practice could not be individual VRS input but automatically incorporated into the MRA system.. [The a]ppellant has been refused by his staff to see the tabulations done by his staff in arrival of such estimates. Their reasoning is that, the MRA program is off limits to the public.

...There is no individual separate estimation of these lands as presented by [the CSMs.

...The appellant believes that there is a policy written or in the database of MPAC.

Analysis/Findings

In appeals where the issue involves denial of access due to a claim that records do not exist as is the case in this appeal, the issue to be decided is whether MPAC has conducted a reasonable search for the records as required by section 17 of the *Act*. If I am satisfied that the search

carried out was reasonable in the circumstances, the decision of MPAC will be upheld. If I am not satisfied, further searches may be ordered.

Important factors in assessing the reasonableness of the search will be whether the appellant has provided sufficient identifying information to assist MPAC in its search and has provided a reasonable basis for concluding that such records exist.

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 [Orders P-624 and PO-2559]. To be responsive, a record must be “reasonably related” to the request [Order PO-2554].

A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request [Orders M-909, PO-2469 and PO-2592].

A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control [Order MO-2185].

As stated above, the only outstanding issue in this appeal, based on the wording of the clarified request, was whether there existed any policies, methodologies and directives regarding the fine-tuning and review of the assessment of municipally-owned flood plain and valley lands in the Toronto or Halton-Peel region.

Based upon my review of the parties’ representations and oral evidence, I find that MPAC has performed a reasonable search for this information.

The appellant has indicated in his representations that he believes that individual assessments of municipally-owned flood prone valley lands are assessed, not at market value, but at an inflated amount as developable tablelands. He submits that these inflated values are automatically incorporated into the MRA system. The appellant is interested in receiving specific MRA system information, including data entry and model frameworks.

Although the appellant believes that records responsive to his request may be imbedded in the MRA framework, I find that MRA records are not reasonably related to his request as clarified. The MRA system is a province-wide statistical analysis computer technique used by an assessor to estimate values of properties. It is used to automate the sales comparison approach through the development and application of a mass appraisal model. The MRA system is not used by MPAC to fine-tune and review municipally-owned flood plain and valley lands in the Toronto and Halton-Peel Regions.

Specific details concerning the MRA system were provided by MPAC in its representations filed prior to the oral inquiry, as follows:

MPAC uses a sales comparison approach to estimate the value of certain classes of lands, including single-family residences, condominiums and vacant land. The sales comparison approach to value estimates the current value of a subject property by adjusting the sale prices of comparable properties for differences between the comparable properties and the subject property.

...The MRA system uses market sales data to create a statistical model for estimating the value of properties. Specifically, MPAC takes the selling price and features of properties and uses a statistical method referred to as regression analysis to estimate how each of the property's features affects the selling price (technically, this is referred to as a "coefficient"). The features used in the analysis include the location of the property, the dimensions of the lot, the existence of secondary structures (i.e., garages, boathouses and pools), and topographical features. For example, the analysis may show that a particular feature (e.g., a finished basement) increases the selling price of the property by a certain amount. This amount is reflected by the estimated coefficient generated by the regression analysis.

If the available data shows that a feature of a property appears to increase or decrease the selling price by a significant amount, MPAC will use that feature and its estimated coefficient in a model for estimating the value of other properties. To estimate the value of a property using the model, MPAC takes the features of a property to be valued, adds or multiplies each of the attributes by the estimated coefficient in the model, and adds the results together to come up with an estimated value.

Both the initial analysis to estimate coefficients for a model and the estimation of the value of a subject property based on a MRA model are performed using an extremely large computerized database. The model is the intellectual property of MPAC and is not available to the public...

[T]here have been no changes to the assessment of valley or flood plain lands, except to the extent that the implementation of the MRA system has changed the methodology for assessing properties within certain classes of residential properties that may include properties on valley or flood plain lands. MPAC has used the MRA system for estimating the value of classes of residential properties since in or around 1997...

A MRA model may take into account the designation of land as flood plain when estimating the value of a subject property, just as it would with any other feature. MPAC's MRA section within the Property Values department has provided a

document showing how a property on valley and/or flood plain land is valued using a MRA model...

[A]n assessor may adjust the value of a subject property that is flood plain or valley land following a review of the estimated value generated by the MRA model. Again, this is a matter of the assessor's knowledge, experience and judgment and depends on the subject property in question. Thus, there is no MPAC policy or methodology with respect to how to make adjustments to the valuation of a subject property that is valley or flood plain land.

The scope of this inquiry concerns the existence of whether there are records responsive to the appellant's request as clarified. If the appellant wishes to obtain records concerning the assessment of individual properties or to obtain specific records concerning the MRA, then he needs to make a specific request to MPAC seeking this information. MPAC would then need to provide the appellant with an access decision in accordance with the exemptions and exceptions set out in the *Act*. Concerning the MRA system (or any other specific request), MPAC cannot simply refuse access on the basis that the information is not publicly available, without citing the relevant statutory provisions as set out in the *Act* and providing the appellant with the opportunity to appeal its decision.

In my view, MPAC has provided a thorough explanation of the efforts made by its experienced employees to identify and locate any records responsive to the appellant's clarified request, as well as providing an explanation as to why no responsive records could be located. Therefore, I find that MPAC has provided sufficient evidence to establish that it has made a reasonable effort to identify and locate responsive records.

I find that MPAC has conducted a reasonable search for records that are responsive to the appellant's request as required by section 17 of the *Act*.

ORDER:

I uphold MPAC's search as reasonable and dismiss the appeal.

Original Signed by: _____
Diane Smith
Adjudicator

July 22, 2009 _____