

Information and Privacy Commissioner,
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

ORDER MO-3701

Appeal MA16-726

Municipal Property Assessment Corporation

November 30, 2018

Summary: The Municipal Property Assessment Corporation (MPAC) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for information used to generate the requester's property assessment, including the formula and sales and property data from the requester's area. MPAC granted partial access to the responsive records, denying access to portions pursuant to the discretionary exemptions at sections 11 (economic and other interests) and 15 (information published or available to the public) of the *Act*. The appellant raised the possible application of the public interest override at section 16 of the *Act* and it was added as an issue on appeal. In this order, the adjudicator finds that sections 11(a) and 15(a) apply to the information for which they were claimed and that the public interest override at section 16 does not apply in the circumstances of this appeal. She also finds that MPAC's search for responsive records was reasonable. She upholds MPAC's decision.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 11(a), 15(a), 16, and 17; *Assessment Act*, R.S.O. 1990, c. A.31, as amended, section 53(5); *Municipal Property Assessment Corporation Act 1997*, S.O. 1997 c. 43, Sched. G., as amended, sections 8(3) and 12(5).

Orders Considered: Orders MO-1564, MO-1948 and MO-2412.

Cases Considered: *Municipal Property Assessment Corp. v. Ontario (Assistant Information and Privacy Commissioner)* (2004), 71 O.R. (3d) 303 (*MPAC v. IPC*).

OVERVIEW:

[1] The appellant submitted a request to the Municipal Property Assessment

Corporation (MPAC) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the following information:

- 1) The formula/model and data that was used to generate the property value listed on [the appellant's] January 1, 2016 assessment; and
- 2) Data on all properties sold in [the appellant's area] between January 1, 2012 and December 31, 2015, to include: address, sale amount, sale date, assessed value, site information including site area, frontage and depth, structure information, including year built, year renovated, quality, building total area, basement area, basement finished area, secondary structures and locational influences.

[2] MPAC issued a decision granting partial access to the requested information. In its decision, MPAC stated that it withheld some information pursuant to sections 11 (economic and other interests) and 15 (information published or available to the public) of the *Act*.

[3] The appellant appealed MPAC's decision.

[4] During mediation, the appellant confirmed that he seeks access to all of the information that was withheld. He also states that he believes that further records responsive to his request exist.

[5] As a mediated resolution could not be reached, the file proceeded to the adjudication stage of the appeal process for an adjudicator to conduct an inquiry. I sought and received representations from MPAC, initially. I shared those representations with the appellant in accordance with the sharing procedure set out in this office's *Code of Procedure* when I invited him to submit representations, which he did. In his representations, the appellant raised the possible application of the public interest override at section 16 of the *Act*. Accordingly, I shared his representations with MPAC, seeking a reply on the issue of the public interest override, as well as other matters raised by the appellant. MPAC provided representations in reply, and I determined it was not necessary to share those representations with the appellant.

[6] In this order, I find that the exemptions at sections 11(a) and 15(a) apply to the information for which they were claimed. I find that the public interest override provision at section 16 does not apply in the circumstances of this appeal and uphold MPAC's decision to deny access to the responsive records. I also find that MPAC's search for records responsive to the request was reasonable.

RECORDS:

[7] In its representations, MPAC describes the records and portions of records that remain at issue. Those that are responsive to part 1 of the request (which sought

access to the formula/model and data used to generate the assessment), will be described as the "model records." They include:

- a. The SPSS syntax file for model 201609UR070,
- b. The remaining portions of the SPSS output file (other than the information contained in record 1 (Model Output), 2 (Standard Variable List) and 3 (Ratio Study File), which were disclosed); and
- c. The R program file for model 201609UR070.

[8] MPAC claims that sections 11(a), (c) and (d) exemptions apply to the model records so as to exempt them from disclosure.

[9] The records remaining at issue that are responsive to part 2 of the request (which sought access to data on all properties sold in the appellant's area) will be referred to as the "data" or the "property and sales data" and are described by MPAC as "the property and sales data used for calibrating model 201609UR070."

[10] MPAC claims that section 15(a) applies to the property and sales data.

ISSUES:

- A. Do any of the discretionary exemptions at sections 11(a), (c) or (d) apply to the model records?
- B. Does the discretionary exemption at section 15(a) apply to the property and sales data?
- C. Did MPAC properly exercise its discretion under sections 11 and 15(a)? If so, should this office uphold the exercise of discretion?
- D. Pursuant to section 16, is there a compelling public interest the disclosure of the model records?
- E. Did MPAC conduct a reasonable search for records responsive to the appellant's request?

DISCUSSION:

A. Do any of the discretionary exemptions at sections 11(a), (c) or (d) apply to the model records?

[11] Although MPAC's decision letter refers generally to section 11, in its representations it clarified that it relies on sections 11(a), (c) and (d) to deny access to the model records. Having considered the representations of both MPAC and the

appellant, I accept that MPAC has demonstrated that section 11(a) applies to the model records.

Model Records

[12] Although the specific records that made up the model records have been set out above under the heading "Records," I will set out additional information about what these records are and the information they contain to provide useful context for my determination of whether any of the claimed exemptions in section 11 apply to them.

[13] In its representations, which it supports with affidavits sworn by several MPAC employees, MPAC describes the context in which the model records are created in substantial detail. MPAC explains that to determine the value of a residential property it uses the "industry-standard direct (sales) comparison approach," which estimates the current value of a property by adjusting the sale price of comparable properties on the basis of differences between them and the property being assessed. MPAC explains that to ensure that residential properties are valued in an accurate and uniform manner, it uses industry-accepted, computer-assisted mass appraisal (CAMA) techniques. This approach provides the valuation of a group of properties as of a common date, using standardized methods, common data and statistical testing. It explains that the results of a mass appraisal analysis are often in the form of "models" applied to individual property data to establish an estimate for the current value of a property in a given market area.

[14] MPAC submits that its analysts follow a process to develop and apply assessment models which are equations used to value residential properties in a given market area using adjustments derived directly from market information. It sets out the four steps to model development: (1) model specification (designing the model or equation to be applied); (2) model calibration (determining the value adjustments using a statistical technique known as multiple regression analysis (MRA)); (3) model testing (testing the quality of the model by comparing the value estimates produced by the model with actual sale prices, known as a ratio study); (4) model application (predicting the value of a property based on its attributes and the model).

[15] MPAC explains that it uses a statistical software program called SPSS to complete both model specification and model calibration. To do so, it submits that MPAC's analysts create "syntax files" in SPSS's programming language. It explains that once each valuation model has been developed, MPAC's analysts conduct model testing using a sales ratio study to ensure equity, accuracy and uniformity.

[16] MPAC states that running a syntax file in SPSS creates an output file, which contains the model coefficients and statistical information associated with MRA. SPSS output files include the results of the analysts' exploratory data analysis, the calibrated model and ratio study information. The relevant output file at issue in this appeal is the SPSS output file identified in part (b) of the description of the model records set out above under "Records."

[17] MPAC states that once they are created, models are assigned a Market Model Area Number. It explains that the market model that is responsive to the appellant's request is 201609UR70, identified in part (a) of the description of the model records set out above under "Records." It further explains that this market model is not unique to the appellant's property as it applies to an entire market area in Toronto.

[18] MPAC states that to apply a model to value properties within a given market, MPAC's analysts must write a software program called VaaS (Valuation as a Service) to be executed by one of MPAC's computer systems. MPAC's programmers use the information in the SPSS output file to write a program in what is known as R, a programming language for statistical computing. The R program that is responsive to the appellant's request is identified in part (c) of the description of the model records set out above under "Records." VaaS then executes the R program using data about the characteristics of a property to be valued. The output is the assessed value of the property based on the application of the characteristics to the model.

[19] MPAC further explains that as models are developed using computer programs, there is no record that sets out the specific equation used to generate the assessed value of a property. MPAC submits that "a model can be thought to 'exist' in the form of a SPSS syntax file, a SPSS output file and an R program," which are the three components of the "model records" referred to in the "Records" section and which MPAC submits are responsive to part (a) of the appellant's request.

Section 11(a): information that belongs to government

[20] MPAC takes the position that the model records amount to information that belongs to government exempt under section 11(a). In support of its section 11(a) claim, MPAC relies on Order MO-1564, in which former Assistant Commissioner Tom Mitchinson found that a version of the model records¹ were exempt under that section. For the reasons that follow, I agree with both MPAC's claim and the findings set out by former Assistant Commissioner Mitchinson in Order MO-1564, which were followed by Adjudicator Steven Faughnan in Orders MO-1948 and MO-2412. I find that section 11(a) applies to the model records.

[21] Section 11(a) reads:

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;

[22] The overarching purpose of section 11 is to protect certain economic interests

¹ The records in that appeal were responsive to a request for the equation used to calculate residential assessments and are referred to in that order as "syntax files".

and commercially valuable information of institutions under the *Act*.² Section 11(a) is concerned only with the type of record, rather than the consequences of disclosure.

[23] For section 11(a) to apply, the institution must show that the information:

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

Part 1: type of information

[24] MPAC submits that the model records “are trade secrets or, at the very least, technical information, for the purpose of the section 11(a) exemption.” Both of those terms have been defined by this office in prior orders.

[25] I will first address whether the model records contain trade secrets, which is defined as:

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 monetary value from not being generally known, and
- (iv) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.³

[26] MPAC submits that this office has previously found that market models designed for the purpose of evaluating property assessments in Ontario, including SPSS output files, SPSS syntax files and processes underlying the implementation of the sales comparison approach, qualify as “trade secrets” within the meaning of the *Act*.⁴ It explains that the model records clearly satisfy the requirement set out in the definition of that term because:

- a. the model records contain formulas, programs, methods, techniques or processes used to develop and apply models in the field of property appraisal;

² *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy 1980*, vol. 2 (the Williams Commission Report) Toronto: Queen’s Printer, 1980.

³ Order PO-2010.

⁴ Orders MO-1564 and MO-2412.

- b. the programs and the SPSS output files are known only to MPAC;
- c. the programs and output files have economic value because they are not known to others, thus giving MPAC a competitive advantage in the provision of assessment services to other jurisdictions and through its AVM [Automated Valuation Model] product;
- d. MPAC takes reasonable steps to protect the secrecy of the programs and output files through industry-standard technical security measures and a prohibition against disclosure of MPAC's confidential business information, which includes models and software programs, contained in its employee Code of Conduct.

[27] In support of its position on all four of these points, MPAC refers to affidavit evidence submitted by its Director, Assessment Standards and Mass Appraisal, who is responsible for the valuation and data collection activities for all properties across Ontario, including residential properties. In his affidavit, the director submits that he is responsible for developing MPAC's property valuation models and he asserts, in more comprehensive terms, the points submitted by MPAC in (a) to (d) set out above.

[28] The appellant argues that there has been a "continued overbroad misinterpretation and misapplication of the exemptions under section 11 of [the Act] to the formula and models used by MPAC." He submits that the formula and models that MPAC uses are not trade secrets within the meaning of that term but rather well known industry-accepted, computer-assisted mass appraisal techniques.

[29] The appellant submits that the use of well known multiple regression techniques, and industry available software, such as SPSS software and R software, further highlights that there is no trade secret in the model records as, he submits, these are popular industry available tools and their use is generally known in the trade or business. He submits:

Similar to driving a vehicle on a road, or use of any other tool, the user of the tool needs to be trained. Just because a user is trained to drive a vehicle or use a tool does not mean that the driving of the vehicle or use of the tool is a trade secret. The affidavits of [two named MPAC employees] submitted by MPAC simply describe the obvious requirements to operate the tools, rather than provide any evidence whatsoever of any trade secret. Any use of industry standard tools like SPSS and R require the use of syntax files and programs and does not qualify as a trade secret. Any user, with access to, and trained in the use of SPSS, R, etc. and the data collected by MPAC could produce the same result as MPAC.

[30] In support of his position, the appellant provided a description of SPSS and R taken from Wikipedia.

[31] In my view, and having taken into consideration all of the evidence before me, MPAC has provided sufficient evidence to establish that the specific records that

comprise the model records contain trade secrets as that term has been defined for the purposes of the *Act*. Specifically, I find that MPAC has established that the SPSS syntax file, the portions of the SPSS output file that remain at issue and the R program file for the specific model relevant to the appellant's property, meet the requirement of the definition of a trade secret for the following reasons:

- a. they contain formulas, programs, techniques and processes that are used to develop and apply models in the business of property appraisal business;
- b. although other bodies responsible for property appraisal in other jurisdictions may have similar models, these specific models with their specific formulas, programs techniques and processes are not generally known in the property appraisal business as they were developed by and only known to MPAC;
- c. they have monetary value from not being generally known because the model records generate information that MPAC sells to customers; and,
- d. through the use of security measures and prohibitions against disclosure of confidential business information in its employee Code of Conduct, MPAC takes reasonable steps to maintain the secrecy of the model records.

[32] My finding is in keeping with Order MO-1564 where former Assistant Commissioner Mitchinson found that MPAC market models (which included SPSS output files, SPSS syntax files and processing underlying the implementation of the sales comparison approach for property assessment adopted by MPAC) qualified as trade secrets for the purpose of section 11(a).

[33] Although the appellant submits that by acknowledging that it uses well-known industry-accepted, computer-assisted mass appraisal techniques and industry-available software, MPAC's own submissions demonstrate that there is no trade secret, I disagree. It is not the SPSS software, the R software nor any other software itself that I find to constitute a trade secret; nor is it the use of that software that is being characterized as such. I accept MPAC's submissions that demonstrate that, through the vehicle of the various software programs, an MPAC analyst applies skill and expertise to create products, the model records or the formulas, which are subsequently used to generate property assessments for properties in specific market areas. It is the specific SPSS syntax file, the specific output file or the specific R program file, not the software itself that consists of the trade secret.

[34] Accordingly, I find that the information contained in the model records amount to trade secrets, thereby meeting part 1 of the three-part test for section 11(a) to apply.

[35] The information contained in the model records also clearly qualifies as technical information. That term has also been defined by this office as follows:

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.

[36] MPAC submits that in Order MO-1564, former Assistant Commission Mitchinson found that the formula, coefficients and other related information contained in MPAC's market models was "technical information." It submits that he found that property assessment was properly characterized as an applied science, and that the models developed by MPAC constituted processes prepared by professionals in this specific field of expertise. MPAC submits that this characterization of MPAC's models as technical information was adopted by Adjudicator Faughnan in Orders MO-1948 and MO-2412.

[37] MPAC further submits that, regardless of precedent, the model records meet the definition of technical information because:

- a. they contain information belonging to the field of property appraisal and more specifically, computer-assisted mass appraisal;
- b. they were prepared by professionals in this field, namely, the skilled staff who create syntax files, output files and R programs to develop and apply models;
- c. they describe the development, calibration and application of MPAC's models which are part of MPAC's process for mass appraisal of property.

[38] Again, MPAC supports its position in this respect through the affidavit of the Director of Assessment Standards and Mass Appraisal.

[39] The appellant does not refute MPAC's position that the records contain technical information.

[40] In keeping with the findings of former Assistant Commissioner Mitchinson in Order MO-1564 and Adjudicator Steven Faughnan in Orders MO-1948 and MO-2412, and based on the evidence before me, I accept that property assessment is properly characterized as an applied science and that the model records consist of processes prepared by professionals with expertise in the specific field of property assessment. Accordingly, I find that the model records are properly characterized as "technical information" as required by part 1 of the test for the application of section 11(a).

Part 2: Belongs to MPAC

[41] MPAC submits that the model records "belong to" it for the purpose of the section 11(a) exemption. For the reasons that follow, I agree.

[42] 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.⁵

[43] Information that has been found to belong to an institution includes trade secrets, business-to-business mailing lists,⁶ 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, the information is consistently treated in a confidential manner, and it derives its value to the organization from not being generally known, the confidential business information will be protected from misappropriation by others.⁷

[44] MPAC submits that this office has previously held that models developed by MPAC "belong to" MPAC. More specifically, it submits that Order MO-2412 recognized that the 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.'"

[45] MPAC also submits that it has copyright in the model records. It submits that "SPSS output file is a work subject to copyright because it is original expression created by an MPAC analyst using the SPSS software." It further submits:

- a) It has applied skill and effort to develop the programs and their output. The records were created by skilled staff with expertise in computer programming, statistics and property appraisal.
- b) It has invested millions of dollars and the time and expertise of dozens of skilled employees to create, maintain its CAMA processes.
- c) It has consistently treated the records in a confidential manner. They are protected by a variety of industry standard technical security measures; access is restricted to certain employees; and MPAC employees are contractually bound not to disclose the records to third parties.
- e) The records are valuable from not being generally known because they give MPAC a competitive advantage in the provision of assessment services to other jurisdictions and through the AVM product.

[46] MPAC supports its position with the affidavit of the Director, Assessment Standards and Mass Appraisal at MPAC, who attests to the points listed above.

[47] In his representations, the appellant does not specifically comment on whether

⁵ Order MO-1564.

⁶ Order P-636.

⁷ Order PO-1736, upheld on judicial review in *Ontario Lottery and Gaming Corporation v. Ontario (Information and Privacy Commissioner)*, [2001] O.J. No. 2552 (Div. Ct.); see also Orders PO-1805, PO-2226 and PO-2632.

the model records “belong to” MPAC.

[48] In my view, MPAC has provided sufficiently detailed evidence to support a conclusion that the model records have been developed both through the expenditure of money and the application of skill and effort to develop the information. I accept that there is an inherent monetary value in them in that they form part of MPAC’s commercial business. I also accept that MPAC has copyright in the model records, or at minimum, that they can be described as confidential business information. Additionally, I find that the evidence supports that MPAC has consistently maintained the confidentiality of these records and that they are not part of the ‘public domain.’ As a result, I accept that the model records “belong to” MPAC for the purpose of part 2 of the test under section 11(a) of the *Act*.

Part 3: monetary value

[49] To have “monetary value,” the information itself must have an intrinsic value. The purpose of this section is to permit an institution to refuse to disclose a record where disclosure would deprive the institution of the monetary value of the information.⁸

[50] The mere fact that the institution incurred a cost to create the record does not mean it has monetary value for the purposes of this section.⁹ Nor does the fact, on its own, that the information has been kept confidential.¹⁰

[51] MPAC submits that this office has accepted in numerous orders that its market models have monetary and potential monetary value.¹¹ It submits that the model records at issue in this appeal have considerable value for the following reasons:

- a. They are part of the intellectual property that MPAC uses to offer commercial assessment services to other jurisdictions.
- b. This intellectual property also underlies MPAC’s AVM [Automatic Valuation Model] product, which is highly valuable to MPAC through licensed sales to real estate agents, property appraisers, mortgage lenders and insurers, among others who pay for access to its estimates. The AVM product accounts for a significant portion of MPAC’s commercial revenues.
- c. MPAC has invested millions of dollars and the time and expertise of dozens of skilled employees to create, maintain and refine its CAMA processes.
- d. The records are valuable to a competitor in that they would permit a competitor to imitate or duplicate MPAC’s CAMA processes without incurring these costs.

⁸ Orders M-654 and PO-2226.

⁹ Orders P-1281 and PO-2166.

¹⁰ Order PO-2724.

¹¹ Orders MO-1564, MO-1948 and MO-2412.

[52] The appellant submits that the value that MPAC obtains from the records, or more specifically, the commercial business that MPAC generates from the use of its tools is not derived from the tools themselves. He argues that their value results from the fact that MPAC has paid staff that have been trained to use the tools which, he submits, is something that most organizations do not have. He submits:

These MPAC staff are primarily funded by the Ontario municipal governments, which puts those interested in having such data or any other commercial competitors at a disadvantage because they do not have access to such funding for staff to do such work. Other entities are not willing to pay the costs to train staff, and are therefore willing to pay fees to MPAC for its services which would be lower than the fees it would cost to train its own staff. As a result, there is no prejudice to the economic interests, or injury to the financial interests of MPAC with the disclosure of the formula, model and data used.

[53] The appellant further submits that there is no economic value to MPAC from the assessment formula and model because it is not the formula or model that is of value. He submits that MPAC generates revenue because it has staff who can perform assessment services using the tools that other entities are unwilling to invest in.

[54] Based on MPAC's representations, which are supported by affidavits, I find that the model records have monetary value to MPAC. I accept that they have intrinsic value in that they form part of the commercial product that MPAC is able to sell to generate revenue. I also accept that their disclosure would deprive MPAC of their monetary value as a competitor could duplicate MPAC's product at little to no cost. The appellant does not provide any information to refute this position. Accordingly, I find that the information contained in the model records has monetary value as required to satisfy part 3 of the test for section 11(a) to apply.

[55] As it has been established that the model records contain trade secrets and technical information, belong to MPAC and have monetary value to MPAC, I find that section 11(a) applies to them.

B. Does the discretionary exemption at section 15(a) apply to the property and sales data?

[56] MPAC submits that section 15(a) applies to the property and sales data because it is available to the public through a regularized system of access. For the following reasons, I agree.

[57] Section 15(a) 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;

[58] For this section to apply, the institution must establish that the record is available to the public generally, through a regularized system of access, such as a public library or a government publications centre.¹²

[59] To show that a regularized system of access exists, the institution must demonstrate that:

- a. a system exists,
- b. the record is available to everyone, and
- c. there is a pricing structure that is applied to all who wish to obtain the information.¹³

[60] Section 15(a) is intended to provide an institution with the option of referring a requester to a publicly available source of information where the balance of convenience favours this method of alternative access. It is not intended to be used in order to avoid an institution's obligations under the *Act*.¹⁴

Representations

MPAC's representations: Background about MPAC and how the information it holds can be accessed by the public

[61] In an affidavit submitted in support of MPAC's representations, the Director of Government, Energy and Custom Accounts, who is responsible for commercial sales to custom markets, sets out the various means through which outside parties can request information, records or data managed by MPAC's Business Development group.

[62] The director explains that MPAC is a not-for profit, public sector corporation funded by all Ontario municipalities. Its core business is to classify and value the more than five million properties in Ontario. She asserts that notwithstanding its not-for profit status, MPAC undertakes to its member municipalities to recover costs and to generate revenue for its bottom line in order for municipalities, and by extension taxpayers, to benefit through lower rates for core assessment services and reduced charges under the annual levy. To that end, she submits that MPAC has created a Business Development group charged with seeking revenue through products and services offered inside and outside Ontario.

[63] The director explains that one of the primary ways that MPAC generates commercial revenues is by charging licensing fees for property data collected, licensed or otherwise obtained by MPAC to run its core business of property assessment. Through the Business Development group, MPAC supplies property data to commercial markets including, for example, the appraisal, real estate, financial, legal, insurance,

¹² Orders P-327, P-1387 and MO-1881.

¹³ Order MO-1881.

¹⁴ Orders P-327, P-1114 and MO-2280.

and government sectors. Their clients include banks, mortgage insurers, appraisers, appraisal management companies, property and casual insurers, real estate professionals, legal professionals, provincial and federal agencies and ministers, property tax consultants, electric utilities and natural gas providers. She submits that MPAC's commercial data products are used by its clients to, among other things, calculate risk, insure property, support real estate transactions, review property valuations, finalize legal transactions, settle claims, solicit participation in programs, and monitor change.

[64] The director explains that MPAC also licenses data from other parties, including, in particular, data on property sales in Ontario, from Teranet, which operates Ontario's land registry system. She states that MPAC may only disclose property sales data to others subject to certain terms and conditions and that it pays Teranet a royalty on data licensed from Teranet when MPAC sublicenses the data to third parties for commercial purposes.

[65] The director explains that sales and property data of the type that is responsive to part (b) of the appellant's request is made available to the public through a regularized system of access. She explains that certain sales and property data is available to the public including property owners like the appellant without charge through MPAC's AboutMyProperty website. She explains that additional sales and property data is available to be licensed for a fee through MPAC's propertyline¹⁵ website and custom sources.

[66] Describing MPAC's propertyline website, which she submits can be used by any member of the public, the director explains that it offers, among other products, standardized reports on one or more properties, which contain data about the properties and recent sales. She states that MPAC publishes a product catalogue and standardized pricing information on the website. That information was attached to MPAC's representations.

[67] With respect to the customized pricing, she explains that MPAC will also licence custom data sets in various forms. If a custom report can be fulfilled by providing a number of standardized reports, she states that MPAC will typically charge a fee based on the standardized pricing set out on propertyline but discounted to reflect the size of the request or other factors. She states that the same pricing structure applies to all customers.

[68] The director explains that MPAC requires propertyline customers to enter into a license agreement limiting the purposes for which the data can be used and prohibiting the licensee from providing the data to anyone at any charge, including free of charge. She states that this agreement, and in particular the prohibitions on sharing or publishing the data, are essential to protecting MPAC's economic interests, as well as the interests of MPAC's data suppliers.

¹⁵ In its representations, MPAC identified "propertyline" as its trademarked website that can be used by any member of the public.

[69] The director describes MPAC's AboutMyProperty website, which she states is a secure, online, self-serve website that provides easy access to assessment information at no charge to a property owner. She explains that through AboutMyProperty, a property owner can learn more about how their property was assessed, see the information MPAC has on file about their property and compare their property to others in their neighbourhood or area. She states that information on property values and market trends is also available through the site. The purpose of AboutMyProperty is to assist property owners in understanding their assessments and determining whether they are accurate and equitable. She states that if a property owner is not satisfied with their assessment, they can use the information to file a request for reconsideration under the *Assessment Act*¹⁶ or pursue an appeal to the [ARB].

[70] The director describes the four main sections in AboutMyProperty, but focuses on the "My Neighbourhood" section for the purposes of this appeal, which she states sets out a map that a property owner can use to access up to 100 snapshots of data about other properties in their neighbourhood. She states that each snapshot provides: property address, property description, lot size, current value assessment, and sales information, if applicable. She states that using this map, a property owner can select up to 24 properties of their choice to create a more detailed report which includes assessment roll number, current value assessment, site information, structural data, and applicable sales for the property owner's property and the selected properties. She submits that the purpose of this detailed report is to allow property owners to make detailed comparisons between their assessments and assessments of other, similar properties in their neighbourhood. She explains:

The limits of 100 snapshots and 24 detailed reports are intended to balance the interest of property owners in comparing their assessments to the assessments of other, similar properties and the interests of MPAC and its data suppliers in limiting the ability of someone to misuse AboutMyProperty by downloading large quantities of property and sales data for inconsistent purposes.

MPAC's representations: Application of section 15(a) to the ways in which MPAC makes its information available to the public

[71] In its representations, MPAC submits that it is clear that a regularized system of access exists due to the following:

- a. A system exists because MPAC offers to license standard reports containing sales and property data through propertyline,
- b. all of the data requested by the appellant is available to any member of the public through propertyline pursuant to the terms of a standard license from MPAC, and

¹⁶ *Assessment Act*, R.S.O. 1990, c. A.31.

- c. a pricing structure exists that applies to everyone because MPAC has standardized pricing for propertyline reports. MPAC may reduce the per-report price for larger requests.

[72] MPAC submits that “[t]here can be no serious suggestion that [it] uses propertyline and its other methods of licensing data as a means of avoiding its obligations under [the Act.]” It submits that it has a statutory authority to engage in commercial licensing of data, has done so for many years, and earns considerable revenues from these activities to defray the cost of its core assessment services. It submits that this is all in the interest of its stakeholder municipalities and ultimately, the property owner taxpayers.

[73] MPAC further submits that although previous orders of this office have recognized that there may be circumstances where the cost of accessing a record outside of the *Act* is so prohibitive that it amounts to an effective denial of access,¹⁷ this is not the case here. In her affidavit, the director explains that MPAC offered the appellant the option of three types of reports at varying levels of detail: the residential detail report at \$8.00 per property, the valid sales report at \$6.00 per property, or the residential detail level 2 report at \$12.00 per property. She submits that this pricing reflects a discount from the standardized propertyline pricing as they took into account that the appellant was seeking the information for his personal use to review his property assessment. She submits that the licensing fee for the 99 properties of interest to the appellant, depending on the report he chooses, would range between \$792 to \$1,188 for the below-market value cost that it offered to the requester.¹⁸

[74] Additionally, in her affidavit, the director noted that the appellant could reduce the fee by using a combination of platforms to access the information. For example, obtaining some of the data through the AboutMyProperty website for free would reduce the number of properties for which licensing fees would be charged through propertyline.

[75] In support of its position that the fee for the current request cannot be considered a barrier to access, MPAC referred to Order MO-1948 where this office determined that despite the fact that the fee for obtaining the sales data requested was significant, because the request was for over 12,000 properties, the record was publicly available. In that order, it was determined that it was the scope of the request, and not the method of calculating the fee, that resulted in the significant amount being charged for access.

Appellant’s representations: how the regularized systems of access do not meet the requirements of 15(a) for the purpose of accessing property and sales data

[76] The appellant submits that despite MPAC’s representations, its property and

¹⁷ Order MO-1573.

¹⁸ This is less than the listed propertyline pricing, which would range from \$792 to \$1,980 for the same information.

sales data is not publicly available under section 15(a), for several reasons.

[77] First, the appellant submits that MPAC advised him that in order to get the sales data he seeks, he needed to obtain a "Residential Detail Level 2 Report" from its customized electronic database. MPAC advised that it was prepared to provide him a discount from \$20 a record, down to \$12 a record, resulting in a fee of \$1,188. The appellant submits that this sum, which he characterizes as a computer generated printout report that has already been developed, is easily reproduced and takes less than a few minutes to run, is "substantially greater than the amount MPAC is permitted to charge under the Act." He argues that there is no express legislation that permits MPAC to override the amounts that it is permitted to charge under the *Act* and that it should not be entitled to charge an amount greater than the amount permissible under the *Act*. He takes the position that the cost is prohibitive and an effective denial of access.

[78] Second, the appellant submits that on its website MPAC states that the "Direct Comparison Approach" is an accurate assessment of a property's value because rather than a formula, it is determined by actual sales values of comparable properties. The appellant submits that he seeks this information to do a comparison of actual sales of comparable properties in his area during the identified time period, to determine the value of his own property for the purpose of assessment. He submits that MPAC has this information and it is easily available and producible. He submits that MPAC has produced this information for hearings in other Ontario government regulatory bodies to which it is subject, such as the Assessment Review Board [ARB].

[79] The appellant submits that all of the information that he requires to engage in a Direct Comparison Approach with respect to his own property is not publicly available through MPAC's AboutMyProperty website. He submits that only a "snapshot" is available and the MPAC website limits users to a maximum of 100 snapshots. He submits that the snapshot is insufficient to determine whether the subject property is in fact a comparable property for the purposes of the Direct Comparison Approach. He submits that although the MPAC website provides a user with the option of obtaining additional details, it is limited to a maximum of 24 properties and he asserts that, without additional details, he is unable to determine whether the property is comparable or not and it still counts towards his 24 property limit. Therefore, he submits that information on substantially less than 24 actual comparable properties can be obtained through MPAC's website. He argues that the sales data information that he seeks is effectively not publicly available on the MPAC website.

MPAC's response in reply

[80] In reply, MPAC submits that the appellant is correct that in a previous ARB appeal, MPAC disclosed sales information on properties sold in his area but that this disclosure was pursuant to an agreement reached at a hearing. MPAC submits that there is a distinct disclosure regime applicable to appeals before the ARB and that depending on the circumstances of an appeal, MPAC may determine that further disclosure is required under ARB rules or it may be ordered by the ARB to disclose the

information. It submits that if the appellant wishes to seek additional information in support of an ARB appeal, it is open to him to follow ARB's procedures for obtaining additional information.

[81] MPAC also submits that in its initial representations it clearly set out the information that is available free of charge on AboutMyProperty and that it has "never asserted that all of the sales data requested by the appellant is available on AboutMyProperty." MPAC submits that as it advised the appellant, and as it set out in its initial representations, the appellant is able to license additional sales data through the regularized system of access that is propertyline.ca.

Analysis and finding

[82] For the reasons that follow, I am satisfied that MPAC has established that the property and sales data is publicly available through a regularized system of access and, therefore, I find that the exemption at section 15(a) applies to this information.

[83] First, I accept that the information that the appellant seeks is available through a regularized system of access. From MPAC's representations, it is clear that there are a number of regularized systems in place to facilitate public access to the information that it holds, including the property and sales data that the appellant seeks. I accept MPAC's submissions that property and sales data can be accessed in a number of ways, notably, through its AboutMyProperty website, through its propertyline website and through customized reports compiled by MPAC's Business Development group.

[84] The appellant states that the property and sales data that is available through the AboutMyProperty platform, accessible for free online, is insufficient to meet his needs. He submits that the way in which the system restricts the number of properties about which he can obtain information does not generate sufficient information for him to identify an adequate number of comparable properties in his neighbourhood to assist him for the purposes of the Direct Comparison Approach that MPAC uses to assess a property's value.

[85] I accept the appellant's position in this respect. From both the appellant's and MPAC's representations, it seems clear that for the type of analysis that he would like to engage in, the AboutMyProperty website does not provide him with sufficient information. However, I also accept that the type and quantity of information to which the appellant would like to have access in order to engage in the Direct Comparison Approach, is available to him for a fee, either through propertyline.ca or, if he requires even more detailed information, through a customized report.

[86] Therefore, from the evidence before me, I accept that the property and sales information sought by the appellant is available through a regularized system of access.

[87] Second, I accept that the information is available to everyone. The regularized systems of access put in place by MPAC to permit the public to access its information is clearly available to any member of the public. Both AboutMyProperty and propertyline

are web based and are available online. Additionally, anyone seeking customized reports are able to do so by either contacting MPAC directly by telephone, email or regular mail or through an online custom request form.

[88] Finally, I accept that there is a pricing structure in place to obtain the property and sales data and that the pricing structure is applied to all who wish to obtain the information. Depending on which platform is the best means for a member of the public to access the information they seek, from the evidence before me it is clear that MPAC has established standardized pricing structures. AboutMyProperty permits an individual to access a limited amount of data about properties in their neighbourhood free of charge, while propertyline and customized reports from MPAC's Business Development group enable an individual to access more detailed property and sales information for a fee. From the copy of its product catalogue and standardized pricing list available on the propertyline website (and which MPAC attached to its representations), it is clear that the same pricing structure applies to everyone.

[89] In my view, MPAC has provided sufficient evidence to demonstrate that the three components necessary to demonstrate that a regularized system of access exists have been met. The appellant argues that, despite this, the information that he seeks cannot be considered to be publicly available under section 15(a) because to obtain access to the level of detail of property and sales data that he seeks there is a fee that is more than MPAC would be entitled to charge under the *Act*. He submits that the fee is prohibitive and amounts to an effective denial of access.

[90] This office has stated that the exemption at section 15(a) may apply despite the fact that the alternative source includes a fee system that is different from the fee structure under the *Act*.¹⁹ Prior orders have found that once it is established that records are publicly available through a regularized system of access, section 15(a) applies and this office is not in a position to consider the alternative fee structure.²⁰ Therefore, it is beyond my jurisdiction to consider whether the intrinsic value of the information corresponds to the amount charged or whether the charge is commensurate with the MPAC's effort to produce it.

[91] However, prior orders have also agreed that circumstances may arise where the cost of accessing a record outside the *Act* is so prohibitive that it amounts to an effective denial of access, in which case the exemption would not apply.²¹ Despite the appellant's position, I do not accept that that is the case here.

[92] In the current appeal, MPAC's submissions state that the fee for licencing the data sought by the appellant, depending on the level of detail he prefers, would cost, at most, \$12.00 per property. The appellant seeks this information for 99 individual properties. In my view, \$1,188 to access reports for 99 properties at \$12.00 each cannot be described as prohibitive; nor would it amount to an effective denial of access.

¹⁹ Order MO-1573.

²⁰ Orders P-159, P-1316, P-1387, MO-1411 and PO-1655.

²¹ Order MO-1573.

[93] I am satisfied that MPAC has established that a regularized system of access that is available to everyone exists. I am satisfied that this is the case despite the fact that there is a pricing structure in place that is different from that set out in the *Act*, given my conclusion that the fees charged are not an effective denial of access. Accordingly, I find that the property and sales data is publicly available and the exemption at section 15(a) applies.

C. Did MPAC properly exercise its discretion under sections 11(a) and 15(a)? If so, should this office uphold the exercise of discretion?

[94] The exemptions at sections 11(a) and 15(a) are discretionary and permit MPAC 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.

[95] An institution may be found to have 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.

[96] In either case, this office may send the matter back to the institution for an exercise of discretion based on proper considerations.²² This office may not, however, substitute its own discretion for that of the institution.²³

[97] MPAC submits that the considerations taken into account in deciding not to disclose the records were relevant. Those considerations were laid out in more detail in an affidavit sworn by MPAC's Manager of the Freedom of Information & Records Management department. Specifically, he states that he considered the following five factors:

1. The public interest for and against disclosure.

MPAC developed the GRAD policy [Guidelines for the Release of Assessment Data] and the AboutMyProperty platform to provide transparency in the assessment process. The manager submits that he considered the fact that disclosure of the requested information would not materially advance the transparency of the assessment process. He also submits that he considered the fact that there is a strong public interest against disclosure as it would harm MPAC's economic and financial interests.

2. The alternative systems of access.

²² Order MO-1573.

²³ Section 43(2).

The manager submits that given that the appellant is seeking information about the assessment of his own residence, he considered the fact that through the GRAD policy and AboutMyProperty, MPAC provides extensive information so that property owners can learn more about how their property was assessed. He submits that this information includes assessment models and methodology and information about other property sales in the property owner's neighbourhood. He further submits that he also took into account that all the data requested by the appellant is available to him through MPAC's Business Development group, subject to payment of a fee and agreement to MPAC's licensing terms and conditions.

3. The value of the records to MPAC and its stakeholders.

The manager states that he considered the fact that the records are valuable to MPAC and, by extension, to its stakeholders because the sale of data offsets the costs of MPAC's service as otherwise paid by municipal levies. He submits that the models are valuable because they are intellectual property that MPAC uses to provide commercial assessment products and services and that the property data has value because MPAC licenses that data to commercial customers.

4. The impact of disclosure on MPAC and its stakeholders.

The manager states that he considered that disclosure would have a significant adverse impact on MPAC's commercial activities due to the disclosure of trade secrets and data. He submits that this would also negatively affect stakeholders as MPAC uses the commercial revenues to offset the costs of providing assessment services enabling it to provide reduced rates to Ontario municipalities, and by extension, Ontario taxpayers.

5. Consistency with past access requests and IPC decisions.

The manager states that he considered the fact that MPAC had previously refused access to similar records in response to previous requests made under the *Act* and that this office had predominantly upheld MPAC's decisions.

[98] The manager submits that after considering these factors, MPAC exercised its discretion not to grant access to the records. He submits MPAC's determined that its interest in commercializing information to reduce costs to municipalities and Ontario taxpayers by preserving the value of MPAC's key asset, its intellectual property, outweighed the interest of a property owner seeking access to property data and the technical details of MPAC's model records. He submits that MPAC's decision was reached in light of the disclosure of information regarding other properties and MPAC's assessment process available to the appellant at no charge and the ability of the

appellant to obtain, for a fee, additional property data through MPAC's Business Development group. He submits that the regularized system of access available to all property owners is equitable and fulfils the goal of transparency with respect to property assessment. He further submits that the requirement of license to use the information balances the goals of transparency with the need for MPAC to protect the privacy of other property owners and its own intellectual property interests.

[99] The appellant submits that MPAC had the discretion under section 11 and 15 to disclose the information that he requested to him, but that it did not exercise its discretion properly. He submits that MPAC has the information and data with respect to the formula and model and has chosen not to produce it "as it is aware that there are frequent errors in how it creates its formula and model." He also submits that MPAC has the sales data that he has requested and is aware that it is not possible for him to obtain all the sales data that he has requested from the MPAC website. He submits that it has demanded a "prohibitively expensive fee to hand over the data he has requested, the effect of which is to prejudice my position before the [ARB]."

[100] Having considered the parties' submissions and the nature of the information requested and withheld, I accept that MPAC properly considered the circumstances of this case in deciding to deny access. I find that it was appropriate for MPAC to base its decision on, among other things, the amount and type of information that is available to the appellant through regularized systems of access as well as the value of the information and the impact of its disclosure on MPAC itself, as well as its stakeholders. I do not find that there is evidence before me to suggest that MPAC's decision was made in bad faith, for an improper purpose, or that it took irrelevant factors into consideration. Therefore, I find that MPAC properly exercised its discretion in denying access to the requested information under sections 11(a) and 15(a) of the *Act*.

D. Pursuant to section 16, is there a compelling public interest the disclosure of the model records?

[101] In his representations, the appellant raises the possible application of the "public interest override" at section 16 of the *Act*. Having considered the evidence before me, I find that it does not apply in the circumstances of this appeal.

[102] Section 16 reads:

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

[103] 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(a), or the records that I have found to be subject to that exemption, in the discussion that follows.

[104] For section 16 to apply, two requirements must be met. First, there must be a

compelling public interest in disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption.

[105] The *Act* is silent as to who bears the burden of proof in respect of section 16. This onus cannot be absolute in the case of an appellant who has not had the benefit of reviewing the requested records before making submissions in support of his contention that section 16 applies. To find otherwise would be to impose an onus which could seldom if ever be met by an appellant. Accordingly, I will review the records with a view to determining whether there could be a compelling public interest in disclosure which clearly outweighs the purpose of the exemption at section 11(a).

Compelling public interest

[106] In considering whether there is a "public interest" in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act's* central purpose of shedding light on the operations of government.²⁴ Previous orders have stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing or enlightening the citizenry about the activities of their government or its agencies, 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.²⁵

[107] The appellant submits that there is a compelling public interest in the disclosure of the MPAC formula (the model records). He states that an open and transparent property tax system is fundamental to a democratic society and the *Act* was established for the very reason of ensuring openness and transparency. He states that to ensure openness and transparency, government agency processes must be made available to the public to prevent discrimination and to ensure that government institutions such as MPAC properly fulfill their duties under their enabling legislation. He submits that openness and transparency protects against government process errors because through public review those errors can be examined and corrected.

[108] MPAC disputes the existence of a compelling public interest in the disclosure of the model records. In support of its position, it relies on previous orders issued by this office, including Order MO-1564 where former Assistant Commissioner Mitchinson found that, although there is a public interest in providing property owners with "sufficient information to adequately understand how their properties are valued for assessment purposes," there was no "rousing strong interest" in providing the public with access to information relating to the manner in which the MPAC market model was developed and the trade secrets acquired by MPAC in this regard.

[109] MPAC also relies on Order MO-2412 where Adjudicator Faughnan found that the disclosure of the syntax files that make up the MPAC model "do not directly relate to any identified compelling public interest in disclosure." In that order, Adjudicator

²⁴ Orders P-984 and PO-2607.

²⁵ Orders P-984 and PO-2556.

Faughnan further found that "in light of the volume of material that MPAC has made available 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." MPAC states that these findings were made in 2009, and since that time, it has only increased the amount of disclosure about its assessment practices and procedures.

[110] I have reviewed the evidence before me, including Orders MO-1564 and MO-2412 referenced by MPAC. I accept the reasoning expressed in both of those orders and find it to be relevant in the appeal before me.

[111] As found in those orders, I agree that there is a public interest in property owners being able to obtain basic information about the way in which their property is assessed and the way in which taxation is calculated. I also accept that such a public interest could be described as compelling. However, in light of the information that MPAC makes available to the public through the regularized systems of access described above, I am not satisfied that there is a public interest in the disclosure of the specific information that is at issue in this appeal. Further, I am also not persuaded that if such interest existed, it could be described as "compelling."

[112] First, a public interest does not exist where the interests being advanced are essentially private in nature.²⁶ The appellant's interest in obtaining access to the specific records at issue, the model records, is clearly private in nature. He has specifically stated that he believes that the assessment that has been calculated for his own property is not reflective of the current state of the market.

[113] I acknowledge that previous orders have recognized that where a private interest in disclosure raises issues of more general application, a public interest may be found to exist.²⁷ The appellant's submissions suggest that his particular interest in obtaining the model records raises issues of more general application, but I disagree. In my view, the public interest that exists in this type of information is satisfied by the various systems of access to information established by MPAC to permit the public to understand and to review how their properties are valued for assessment purposes. I have not been provided with sufficient evidence to conclude that the regularized systems of access currently in place to access information held by MPAC does not provide sufficient openness and transparency to ensure the public interest in its accountability. I have also not been provided with sufficient evidence to demonstrate how the disclosure of the model records themselves or the specific trade secrets or technical information they contain would add to the information that is already available to the public.

[114] Second, the word "compelling" has been defined in previous orders as "rousing strong interest or attention."²⁸ I accept that generally, the disclosure of sufficient information to enable property owners to adequately understand how their properties are valued for assessment purposes might rouse strong interest. However, in my view, I

²⁶ Orders P-12, P-347 and P-1439.

²⁷ Order MO-1564.

²⁸ Order P-984.

have not been provided with sufficient evidence to support a conclusion that providing access to the specific model records at issue – ones that contain trade secrets and technical details about computer algorithms – rouses strong interest or attention, especially in light of the information that is already made available to the public through MPAC’s various regularized systems of access.

[115] Accordingly, I find that the appellant has not established that there is compelling public interest in the disclosure of the model records.

Purpose of the exemption

[116] Furthermore, even if it could be established that there exists a compelling public interest in the disclosure of the model record, I do not accept that it would clearly outweigh the purpose of the exemption at section 11(a).

[117] The appellant takes the position that the compelling public interest he asserts exists in the disclosure of the model records outweighs the purpose of the section 11 exemption because MPAC should not be permitted to use a:

...secondary permission under the *MPAC Act*²⁹ of generating income to override its primary obligation to provide to perform its duties under the *Assessment Act* in an open and fair manner that property owners in the Province of Ontario can review and validate.

[118] As set out in its representations, MPAC engages in commercial business whereby it generates income by developing and selling products based on the data it collects. MPAC’s statutory authority to sell assessment-related information to the public is set out under section 12(5) of the *MPAC Act*³⁰ and section 53(5) of the *Assessment Act*.³¹ Additionally, this statutory authority was recognized by the Divisional Court in *MPAC v. IPC*³² where the Court stated:

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

[119] Furthermore, in relation to its commercial activities, MPAC has a statutory duty

²⁹ *Municipal Property Assessment Corporation Act 1997*, S.O. 1997 c. 43, Sched. G. (*MPAC Act*).

³⁰ Under section 12(5) of the *MPAC Act*, “The Corporation may levy a charge to be paid by other persons for whom it performs duties under this or any other *Act*.”

³¹ Section 53(5) of the *Assessment Act* states: “Subject to subsection (1) and to any requirement of the Assessment Review Board concerning the disclosure of evidence, the assessment corporation may disclose any information acquired by it and may do so on such terms as it determines.”

³² *Municipal Property Assessment Corp. v. Ontario (Assistant Information and Privacy Commissioner)* (2004), 71 O.R. (3d) 303 (*MPAC v. IPC*).

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.

[120] As previously stated, the purpose of section 11 is to protect certain economic interests of institutions covered by the *Act*. In the context of this appeal, therefore, its purpose is to protect MPAC's legislatively permitted ability to generate income by charging fees for information that it provides to the public and then subsequently apply any surplus funds received to reduce charges levied to municipalities and, in turn, taxpayers, as the law requires.

[121] In my view, the appellant does not provide sufficient evidence to support a conclusion that MPAC's commercial activities exceed its mandate or that they prevent MPAC from performing its duties under the *Assessment Act* in an open and fair manner. Further, I do not accept that the appellant's submissions, or any of the other evidence before me, support a conclusion that any compelling public interest in disclosure, if one existed, would outweigh the purpose of the exemption at section 11 to protect MPAC's economic interests.

[122] As the existence of a compelling public interest that outweighs the purpose of the exemption at section 11(a) has not been established, I find that the public interest override at section 16 does not apply in the circumstances of this appeal.

E. Did MPAC conduct a reasonable search for records responsive to the appellant's request?

[123] The appellant claims additional responsive records exist beyond the records identified by MPAC. Accordingly, I must determine whether MPAC conducted a reasonable search for records as required by section 17 of the *Act*.³³ If I am satisfied the search carried out was reasonable in the circumstances, I will uphold MPAC's decision. If I am not satisfied, I may order further searches.

[124] The *Act* does not require MPAC to prove with absolute certainty that further records do not exist. However, MPAC must provide sufficient evidence to show they made a reasonable effort to identify and locate responsive records.³⁴

[125] 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 reasonably related to the request.³⁵ A further search will be ordered if the institution does not provide sufficient evidence to demonstrate it made a reasonable effort to identify and locate all of the responsive records within its custody or control.³⁶

[126] MPAC submits that it undertook a reasonable search. In support of its position, MPAC provided representations, supported by affidavit evidence, to explain which staff

³³ Orders P-85, P-221 and PO-1954-I.

³⁴ Orders P-624 and PO-2559.

³⁵ Orders M-909, PO-2469 and PO-2592.

³⁶ Order MO-2185.

members conducted the search, their experience with MPAC, and their role in the search for responsive records. MPAC submits generally that “more than reasonable efforts were made” to search for responsive records and “there is no basis to conclude that additional records exist beyond those identified.”

[127] Based on the evidence submitted by MPAC in its representations and supporting affidavits, I accept that its search for responsive records is one in which experienced employees knowledgeable in the subject matter of the request expended reasonable efforts to locate records within its custody or control that are reasonably related to the request.

[128] In his representations, the appellant submits that MPAC has not done an adequate search for responsive records as it has “not produced all of the information used for (1) model specification, (2) model calibration, (3) the model testing and (4) the model application.” Additionally, he submits that none of the affidavits submitted by MPAC state that a search for the data that was used for the model was ever conducted.

[129] The first part of the appellant’s request specifically sought access to “the formula/model and data that was used to generate the property value listed on [the appellant’s] assessment.” Based on my reading of this request, I do not accept that MPAC ought to have construed it as seeking access to the information about the model specification, calibration, testing and application enumerated in his representations and reproduced in the paragraph above. Moreover, I do not accept that the second part of part (a) of his request, which was for data that was used to generate a property value on an assessment, can reasonably be interpreted to include data used for the model.

[130] Although institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act* and, generally, ambiguity in a request should be resolved in the requester’s favour,³⁷ to be considered responsive to the request, records must “reasonably relate” to the request.³⁸ In my view, even applying a liberal interpretation of the request, I am not persuaded that information about model specification, calibration, testing, and application and data used for the model itself would be responsive to the request. Therefore, I conclude that the described data falls outside the scope of the appellant’s request.

[131] Other than the representations outlining what he believes should have been searched for by MPAC, that is, the information I found to be outside the scope of the request, above, I conclude that the appellant has not provided a reasonable basis for his belief that additional records responsive to his request, beyond those that have been identified by MPAC, should exist. Although a requester will rarely be in a position to indicate precisely which records the institution did not identify, the requester must still provide a reasonable basis for concluding such records exist.³⁹ In this case, I find that he has not.

³⁷ Orders P-134 and P-880.

³⁸ Orders P-880 and PO-2661.

³⁹ Order MO-2246.

[132] Given my conclusion that the appellant has not provided a reasonable basis upon which to conclude that additional responsive records exist, I find that MPAC conducted a reasonable search for records responsive to the request, and I uphold MPAC's search.

ORDER:

I uphold MPAC's decision and dismiss the appeal.

Original Signed by: _____
Catherine Corban
Adjudicator

_____ November 30, 2018