

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3964

Appeal MA18-426

Municipal Property Assessment Corporation

October 22, 2020

Summary: An individual submitted an access request to the Municipal Property Assessment Corporation (MPAC) for records related to the consolidation of his property. MPAC issued a decision granting partial access to records identified as responsive to his request, while denying access to portions of the records under section 38(b) (personal privacy). The requester appealed and an inquiry was conducted into the issues. MPAC argued that the appeal was moot because the appellant had obtained some or all of the records through the Land Registry Office. The adjudicator finds the appeal is moot in relation to four of the five records and she declines to proceed with a determination of whether the withheld information is exempt under section 38(b). The adjudicator upholds MPAC's decision to deny access to portions of the remaining record under section 38(b).

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1) (definition of "personal information"), 14(3)(f), 38(b).

Orders and Investigation Reports Considered: Orders M-271 and P-1295.

Cases Considered: *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342.

OVERVIEW:

[1] This order deals with an individual's request for access under the *Municipal Freedom of Information and Protection of Privacy Act* to the Municipal Property Assessment Corporation (MPAC) for records that would explain to him how the two assessment roll numbers for a property he purchased in 2016 were "consolidated." This desire to

understand the process led him to submit a request to MPAC for the "consolidation records" of two specific, adjacent addresses and it is this request that is before me in this appeal.

[2] In response to the request the individual submitted,¹ MPAC located the responsive records in its Central Processing Facility, which is responsible for the consolidation of properties for assessment purposes. MPAC issued a decision to the requester granting partial access to the records, with some information withheld under section 14(1) (personal privacy) of the *Act*.

[3] The requester (now the appellant) appealed MPAC's decision to this office and a mediator was appointed to explore the possibility of resolution. Although there were discussions between the parties, a mediated resolution of the appeal was not possible and it was transferred to the adjudication stage. I decided to conduct an inquiry, and sought and received representations from MPAC, which were shared with the appellant in their entirety. The appellant provided representations in response.

[4] In this order, I find that the appeal is moot as regards the issue of the appellant's access to records 1a, 2, 3 and 4, because the records are already in his possession. I also find that the record remaining at issue, record 1, contains the personal information of the appellant and another individual, and that the other individual's personal information is exempt under the personal privacy exemption in section 38(b). I dismiss the appeal.

RECORDS:

[5] MPAC withheld information from the following records identified as responsive to the appellant's request:

Records 1 and 1a – Severance/Consolidation Plan Information Form (SCIF) for 2016 and 2017 taxation years (2 pages, in part)

Record 2 – Parcel Register (Abbreviated) for Property Identifier (3 pages, in part)

Record 3 – 2011 Property Transfer (3 pages, only 2 pages partly at issue)

Record 4 – 2016 Property Transfer (3 pages, only 2 pages partly at issue)

ISSUES:

Preliminary issues: how consolidation happens, responsiveness and mootness

A. Does record 1 contain personal information?

¹ The request stated: "Consolidation records of [1st specific address] and [2nd specific address adjacent to it], [named city]. I want to Examine Original Documentation and receive a copy."

- B. Is the personal information in record 1 exempt under the discretionary personal privacy exemption in section 38(b)?
- C. Did MPAC properly exercise its discretion under section 38(b)?

DISCUSSION:

Preliminary issues

[6] Based on my review of the appeal file, I asked MPAC to include with its representations a written explanation of how consolidations occur in case it might be helpful in showing “who” (in the appellant’s words) consolidated the two roll numbers for the property he purchased in 2016. Additionally, since MPAC had suggested that the appellant seek documentation about the consolidation through the Land Registry Office (LRO), I also asked MPAC to explain why it had made that suggestion. MPAC provided both explanations, which appear below for context.

MPAC and consolidation

[7] MPAC² administers a province-wide property assessment system based on current value assessment, a term that represents the amount of money a buyer would pay to purchase the property. Each year, MPAC prepares an assessment roll for every Ontario municipality, which contains the assessed value of all properties in the municipality. Each assessed parcel listed in an assessment roll is assigned its own identification number, known as a roll number.

[8] MPAC says that the requirement for current value assessment is the reason why it consolidates roll numbers in certain situations. Sometimes one property can be associated with two or more assessment roll numbers. Where MPAC becomes aware of this, it will consolidate the roll numbers, so that the assessed property only has one roll number, and the other roll number is retired.

[9] According to MPAC:

Land in Ontario is subject to the provisions of the *Planning Act*, which is provincial legislation that sets out the rules for land use planning. Section 50 of the *Planning Act* prevents land from being conveyed (i.e. bought and sold) where certain conditions are not met. This can occur in some situations where two adjacent parcels of land have a common owner. Section 50 of the *Planning Act*³ would prohibit the sale of each parcel without the adjacent one, effectively merging them into one property, unless special consent is obtained.

² MPAC describes itself as an independent, not-for-profit corporation funded by all Ontario municipalities whose main responsibility is to assess and classify all properties in Ontario under the *Assessment Act*, the *Municipal Property Assessment Corporation Act* and various regulations.

³ MPAC sets out the provision in its entirety, but I do not reproduce it here.

[10] According to MPAC, therefore, since assessment is based on current value, it cannot assess part of a property that cannot be sold on its own because of the *Planning Act*. It must assess the adjacent parcels as one property. This is why MPAC will consolidate the roll numbers when a *Planning Act* consolidation has come to its attention.

Ontario's land registration system and consolidation

[11] MPAC states that the province's land registration system contains the official records of land ownership, mortgages, and other information. It explains that whenever a land sale transaction is completed, it is registered (and available) electronically with the LRO as a transfer instrument, which is what records 3 and 4 are in this appeal.

[12] MPAC states that every land parcel registered in the LRO has a Property Identification Number (PIN).⁴ The parcel register for each existing PIN, including record 2 in this appeal, lists every transaction for the parcel of land since the creation of the PIN. Sometimes, where two parcels of land are owned by the same person, their registration will have been consolidated into one PIN. MPAC points out that it is not responsible for the land registry system or a decision to consolidate two parcels of land under one PIN; nor does it make changes to the PIN or the land registry documents. MPAC is only responsible for the assessment roll.

[13] MPAC also provides the following explanation about how a *Planning Act* consolidation would come to its attention:

MPAC's Central Processing Facility obtains a nightly listing of land transfers that have occurred in Ontario on the previous day. These transactions are described by the instruments (records 3 and 4). Where the PIN associated with a particular land transaction is associated with more than one roll number, this will be automatically flagged for review by MPAC's computer systems. At that point, **assuming that there is no reason for maintaining two roll numbers for one PIN** (for example, a consent granted under the *Planning Act*), **one of the roll numbers will be retired and the parcel in question will have only one roll number. This is known as a consolidation** [emphasis added].

[14] When this happens, MPAC says, a Severance/Consolidation Plan Information Form, (a SCIF, which is what records 1 and 1a are) is prepared and sent to the relevant municipality, advising of the change to the assessment roll, namely that the two properties have been consolidated for assessment purposes, and providing the revised assessment roll number.⁵

[15] MPAC submits that records 2, 3, and 4 are available to the public, either through the LRO or online through Teranet, for a standard fee, because all official documents respecting land ownership are contained in Ontario's land registry system. MPAC concludes

⁴ A PIN assigned by the LRO is different than a roll number assigned by MPAC.

⁵ MPAC notes that it is not responsible for consolidating the title to the parcels in the Land Registry.

by stating that records pertaining to a specific property can be obtained from the relevant LRO for that property.

[16] In the course of making its submissions on the availability of (at least some of) the records at issue in this appeal through the LRO, MPAC also argued, for the first time, that the appeal is moot because the appellant has some or all of the records at issue or, alternatively, that the records are exempt because the discretionary exemption for publicly available information in section 15(a) applies.

[17] As MPAC did not rely on section 15(a) in the access decision sent to the appellant, this gave rise to a possible issue of the late raising of a discretionary exemption by an institution.⁶ MPAC was asked to provide supplementary representations on these issues and the appellant was given an opportunity to reply to them. Given my findings, below, on the mootness issue and the personal privacy exemption, however, I find it unnecessary to address either of the supplementary issues with the late raising of a discretionary exemption or the possible application of section 15(a) to the records.

Responsiveness and mootness

[18] MPAC submits that three of the five records responsive to the appellant's request (records 2, 3, and 4) are available to the public through the LRO. MPAC says that, in spite of the fact that section 15(a) would apply to those records, it exercised its discretion to provide the appellant with the records requested, severing only the personal information of other individuals. MPAC maintains that the information it disclosed to the appellant "satisfies and is responsive to the appellant's request for documents related to who consolidated the properties in question."

[19] MPAC adds that, during the appeal, the appellant claimed to have already obtained unsevered versions of records 2 to 4 from the LRO and that he was aware of the information severed from records 1 and 1a by MPAC. MPAC submits, therefore, that:

To the extent that any unredacted copies of the records requested are already within the appellant's possession, because he has obtained them through the LRO, the appeal with respect to those records is moot.

[20] MPAC refers to the rationale for a finding of mootness where the requester has a copy of the records through another source and relies on Order M-271. In that order, former Assistant Commissioner Irwin Glasberg considered the issue of mootness in a situation where an appellant sought access to a copy of a letter already in his possession. In that order, the former assistant commissioner stated:

⁶ The IPC's Code of Procedure for appeals under the *Act* provides basic procedural guidelines for parties involved in appeals before this office. Section 11.01 of the Code addresses circumstances where an institution seeks to raise a new discretionary exemption claim during an appeal, more than 35 days after it is notified of the appeal. An adjudicator may decide not to consider such a new discretionary claim, based on her weighing of the relative prejudice to the parties of proceeding and the effect on the integrity of the appeals process.

I would be extremely reluctant to apply the resources of the Commissioner's office to decide an appeal where the appellant is already in possession of the records at issue through legitimate means. In my view, such an exercise would serve no useful purpose. In addition, appeals of this nature consume the scarce resources of institutions and impede the ability of the Commissioner's office to deal with the files of other appellants.

[21] In submissions offered on the personal privacy exemption, the appellant argues that it does not apply because, he says, he has the "full record, for my property, of all the information of the previous owners and their financial institutions since 1990." With his representations in this appeal, the appellant provided portions of records he obtained through the LRO:

- the record identified as record 1a in this appeal, which is a Severance/Consolidation Plan Information Form for the 2017 taxation year.
- two pages representing portions of two "Parcel Register (Abbreviated) for Property Identifier" forms (with the roll number for appellant's property), requested online by the appellant in September 2016 and July 2018. The July 2018 document provided by the appellant is "page 3 of 3" and appears to be part of record 2 at issue in this appeal.
- Page 1 of record 4, the 2016 agreement of purchase and sale for the purchase of the appellant's property.

[22] The appellant notes that "property is transparent all names are available to the public" and says,

I have received these records, however I have yet to receive the "records in issue", the issues being: original consolidation forms and name of who had control of my property. Maybe I was asking the wrong question; who severed my properties?"

Conclusions about responsiveness and mootness

[23] The appellant's representations, set out directly above, suggest a concern that the records identified by MPAC are not responsive to his request, because they do not answer his questions. The representations may also suggest an issue with the adequacy of MPAC's search for records that might answer his questions about consolidation. These issues were not identified in the mediator's report or previously raised in this appeal.

[24] The responsiveness of a record is determined in relation to the wording of the access request. Based on my consideration of MPAC's representations, it is clear that MPAC understood that the appellant was looking for an explanation of how the two assessment roll numbers for a property he purchased in 2016 were consolidated and one of them "retired." Seeking to understand the process led him to submit a request to MPAC for the "consolidation records" of the two adjacent addresses.

[25] To be considered responsive to the request, records must “reasonably relate” to the request.⁷ Generally, an institution is not required to create a new record in response to a request under the *Act*.⁸ Nor is there a requirement under the *Act* that an institution answer the questions that the contents of records might raise.⁹ The issue is whether there are records in existence that might provide an answer to the questions posed by a requester.¹⁰

[26] The appellant says that he is looking for the “original consolidation forms,” “name of who had control of my property” and, alternatively, “who severed my properties?” Records 1 and 1a are responsive to the appellant’s request for “consolidation forms” as they cover the time period of this particular consolidation process, which was triggered automatically with the transfer of the property to the appellant.¹¹ As shown on records 1 and 1a, the property, at the time of the transfer, had two assessment roll numbers.¹² Disclosed portions of those records indicate that the triggering event for the consolidation was the sale transaction by which the appellant became the owner. This is the same sales transaction set out in the parcel register document (record 2) and the 2016 property transfer (record 4), and MPAC has also identified as responsive the 2011 property transfer (record 3). I am satisfied that these five records are responsive to the appellant’s questions about “who” consolidated the appellant’s properties, the control of the appellant’s property and about the (non-) severance of it.¹³ There is nothing before me to suggest that there would be other, additional, MPAC records responsive to the request.

[27] Next, I consider the issue of mootness, given MPAC’s submission that the appeal is moot “[t]o the extent that any unredacted copies of the records requested are already within the appellant’s possession.” I agree with MPAC.

[28] In appeals before the Commissioner, the issue to be determined is whether a record should be disclosed to a requester. Where the record has previously been disclosed by the institution, or in another context, the issue of mootness is raised. The issue before me, therefore, is whether the appeal is moot as regards any of the records. MPAC submits that the appellant already has copies of records 2, 3 and 4 in his possession. The appellant does not dispute this assertion. He acknowledges that he has these records and, with his representations, provided full or partial copies of records 1a, 2 and 4, showing no severances, including where MPAC applied severances to portions of these same records in

⁷ Orders P-880 and PO-2661.

⁸ See Order MO-1989 upheld in *Toronto Police Services Board v. (Ontario) Information and Privacy Commissioner*, 2009 ONCA 20. See also Orders MO-2957 and MO-2285.

⁹ Order MO-2096.

¹⁰ See Order MO-3590 at para. 28, where I stated, on this issue: Taken together, Orders 17, MO-2096, MO-2285, and MO-2957 establish that a “right to information” does not require an institution to provide an answer to a specific question; rather, the institution must consider what records in its possession might contain information that would partly or fully answer the questions asked in a request.

¹¹ I accept MPAC’s explanation that the SCIF (the Severance/Consolidation Plan Information Form) is created automatically when MPAC is made aware of a consolidation under the *Planning Act*.

¹² These records were disclosed to the appellant, nearly in their entirety, including the two assessment roll numbers prior to consolidation.

¹³ There is no evidence the appellant’s property has been severed. The SCIF appears to be a multi-purpose document used by MPAC for both severance and consolidation situations.

its access decision under the *Act*.

[29] Therefore, I accept that the appellant has copies of records 1a, 2, 3 and 4 in his possession, and the question is whether I should nonetheless still proceed to a determination of the personal privacy exemption claimed by MPAC to withhold portions of them. In the circumstances, I conclude that I should not do so.

[30] In Order P-1295, former Assistant Commissioner Irwin Glasberg outlined the appropriate approach to the determination of mootness in appeals adjudicated by this office, as follows:

The leading Canadian case on the subject of mootness is the Supreme Court of Canada's decision [in *Borowski v. Canada (Attorney General)*¹⁴]. There, the court commented on the topic of mootness as follows:

The doctrine of mootness is an aspect of a general policy or practice that a court may decline to decide a case which raises merely a hypothetical or abstract question. The general principle applies when the decision of the court will not have the effect of resolving some controversy which affects or may affect the rights of the parties. If the decision of the court will have no practical effect on such rights, the court will decline to decide the case. This essential ingredient must be present not only when the action or proceeding is commenced but at the time when the court is called upon to reach a decision. Accordingly if, subsequent to the initiation of the action or proceeding, events occur which affect the relationship of the parties so that no present live controversy exists which affects the rights of the parties, the case is said to be moot ...

In the *Borowski* case, Sopinka J., speaking for the court, indicated that a two-step analysis must be applied to determine whether a case is moot. First, the court must decide whether what he referred to as "the required tangible and concrete dispute" has disappeared and the issues have become academic. Second, in the event that such a dispute has disappeared, the court must decide whether it should nonetheless exercise its discretion to hear the case.

[31] Given the facts of the present appeal, any live controversy which might have been said to exist between MPAC and the appellant relating to 2017 SCIF, the Parcel Register, and the 2011 and 2016 Property Transfer documents that are records 1a, 2, 3 and 4 in this appeal is now over given that the appellant has obtained these records through the LRO or otherwise. I am satisfied that this meets the first requirement of the mootness test set out in *Borowski*. I am also satisfied that any decision I may make on access to records 1a, 2, 3 and 4 under the *Act* will not affect the rights of either party to this appeal.

[32] In reviewing the second part of the test in *Borowski*, I considered whether I should

¹⁴ [1989] 1 S.C.R. 342.

exercise my discretion to consider the issue of the appellant's access to the withheld information in records 1a, 2, 3 and 4, even though he has already obtained copies of these records elsewhere. In the circumstances of this appeal, I have concluded that there is not sufficient public interest or importance in the disclosed records to merit such a review. Although the appellant still has questions about the meaning of these records, which MPAC attempted to provide some answers to during the inquiry, no useful purpose would be served by proceeding with my inquiry in relation to the records, and I decline to proceed with a determination of the personal privacy exemption in relation to them.

[33] As I have not been presented with evidence that the appellant has a copy of record 1 in his possession, I will review the application of the personal privacy exemption to it.

Issue A: Does record 1 contain personal information?

[34] Before reviewing whether the section 38(b) personal privacy exemption applies to the withheld information in record 1, I must first decide whether the record contains "personal information" and, if so, to whom it relates.

[35] As defined in section 2(1) of the *Act*, personal information "means recorded information about an identifiable individual." The definition also includes a non-exhaustive list of examples of personal information and the relevant ones in this appeal are found in the following paragraphs:

- a. information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- b. information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved, ...
- c. the address, telephone number, fingerprints or blood type of the individual, ...

[36] Information that does not fall under paragraphs (a) to (h) of the definition may still qualify as personal information.¹⁵ There are exceptions to the personal information definition for "business information" and for individuals deceased more than 30 years, but these exceptions are not relevant in this appeal.

[37] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.¹⁶

¹⁵ Order 11.

¹⁶ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

Representations

[38] MPAC submits that all of the records at issue¹⁷ contain personal information as defined in section 2(1) of the *Act*. According to MPAC, this personal information includes age, marital or family status, information relating to financial transactions in which the individual has been involved, including a power of sale, and addresses. Some of MPAC's submissions relate to information found in the other four records, which are no longer at issue, given my finding above. MPAC acknowledges that record 1 contains the appellant's personal information and the personal information of another individual.

[39] The appellant does not dispute that other individuals' information appears in the records. He responds with concern to MPAC's submissions about personal information in the records, particularly the reference to a "power of sale," because he wonders if "someone has taken power of my property" or "sold my property to someone else."

Findings

[40] Having reviewed record 1, which is the Severance/Consolidation Plan Information Form, or SCIF, for the appellant's property for the year 2016, I agree with MPAC that it contains personal information as defined in section 2(1) of the *Act*. In particular, I find that there is information fitting within paragraphs (a), (b) and (d), because the record provides details related to another individual, as well as the appellant, including their names and addresses. The record also describes and reflects a financial transaction in which the appellant and the other individual were involved. MPAC disclosed this record in part, severing the personal information of the other individual.

[41] Given this finding, I will now review MPAC's denial of access to the personal information of the other individual under the relevant personal privacy exemption, which is the discretionary one in section 38(b) of the *Act*.

Issue B: Is the personal information in record 1 exempt under the discretionary personal privacy exemption in section 38(b)?

[42] Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 38 provides a number of exemptions from this right. Under section 38(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would be an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the requester. Since the section 38(b) exemption is discretionary, the institution may also decide to disclose the information to the requester.

[43] In applying the section 38(b) exemption, sections 14(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of privacy. Also, sections 14(1) and 14(4) list situations that would not be an unjustified invasion of personal

¹⁷ I confine my discussion to record 1, given my finding above that the issue of access to records 1a, 2, 3 and 4 is moot.

privacy. In the circumstances of this appeal, none of the exceptions in sections 14(1) and 14(4) apply.

[44] If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 38(b). Section 14(2) also lists various factors that may be relevant in determining whether disclosure of the personal information would be an unjustified invasion of personal privacy, and the information will be exempt unless the circumstances favour disclosure.¹⁸

[45] For records claimed to be exempt under section 38(b) (i.e., records that contain the requester's personal information), this office will consider, and weigh, the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties in determining whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy.¹⁹

[46] In addition, where an appellant originally supplied the information, or is otherwise aware of it, the information may be found not exempt under section 38(b), because to find otherwise would be absurd and inconsistent with the purpose of the exemption.²⁰ This is referred to as the absurd result principle. During the inquiry, I asked MPAC to specifically address the possible application of the absurd result principle in the circumstances of this appeal.

Representations

[47] MPAC's representations addressed all five of the records that were at issue, but the submissions set out below outline only those related to record 1, the 2016 SCIF.

[48] MPAC explains that records 1 and 1a disclose the municipal tax assessments for the two portions of the appellant's property prior to consolidation. It points out that it only severed identifying information about the other individual, which it says is consistent with section 4(2) of the *Act*.²¹

[49] MPAC maintains that none of the listed factors in section 14(2) are directly relevant to the application of section 38(b) to record 1, but says that it withheld portions because disclosure would constitute an unjustified invasion of personal privacy due to the application of the presumption in section 14(3)(f). It submits that the presumption against disclosure in section 14(3)(f) applies because the record relates to a financial transaction in which the identified individual was involved, and is about their finances, assets and financial history. MPAC submits that section 14(3)(f) does not require that the information

¹⁸ Order P-239.

¹⁹ Order MO-2954.

²⁰ Orders M-444, M-451, M-613, MO-1323, PO-2498 and PO-2622.

²¹ Section 4(2) of the *Act* states: If an institution receives a request for access to a record that contains information that falls within one of the exemptions under sections 6 to 15 and the head of the institution is not of the opinion that the request is frivolous or vexatious, the head shall disclose as much of the record as can reasonably be severed without disclosing the information that falls under one of the exemptions. 1996, c. 1, Sched. K, s. 13.

describe the individuals' finances as a whole.²²

[50] MPAC acknowledges that the appellant may already be aware of some or all of the severed information. MPAC also acknowledges that this office has held that refusing to disclose personal information that an appellant is already aware of would lead to an absurd result, but denies that it would be absurd to withhold the personal information remaining at issue in this instance. MPAC states that:

Although the appellant likely knows the identity of the vendor of his property and has already obtained this information from the Land Registry Office, this does not release MPAC from its obligation to protect the personal information of third parties. As such, it would not be appropriate for MPAC to disclose the full record on this basis.

[51] The appellant says that he has been told by three different MPAC staff members that his property is registered to another individual. His submissions demonstrate concern that his property, or his interest in his property, has somehow been sold or otherwise affected. Based on this view, the appellant questions "whose personal privacy is in question" and he adds "property is transparent all names are available to the public." The appellant asserts that it is a breach of public trust for MPAC to withhold this information. He believes that he has the right to "examine any information that has been gathered concerning [his] (life) property." The appellant makes other assertions about MPAC using the *Act* to protect an alleged violation of criminal law, given his belief that his ownership status of the property has been changed without his knowledge or permission. He says that he finds "it very absurd that MPAC is hiding the individuals' identities, that have broken the law, and using sections of the *MFIPPA* in an attempt to protect them."

[52] Noting that he has "the full record, for [his] property of all the information of the previous owners and their financial institutions since 1990," the appellant questions how the disclosure of that information "would be in violation of another individual's rights" and why another person's "rights outweigh mine when clearly something has transpired to my property status." The appellant reiterates that what he is seeking are the "original consolidation records and the name of the person who was seen as the owner to my property."

[53] The appellant also suggests that disclosure may be necessary in this case to prosecute the individual who consolidated his property.

Findings

[54] The appellant's interest in this appeal lies in accessing information from MPAC to better understand the situation with his property, particularly in relation to the consolidation process and "who" may have requested it, all to assuage his concern that ownership of his property may have been adversely affected. Above, I set out MPAC's explanation of the consolidation process that, in my view, made clear that the

²² MPAC relies on Order PO-1986.

consolidation process is triggered, not by a person, but automatically under the *Planning Act*, in certain situations when a property with two assessment roll numbers is sold. This appears to me to be what happened here. The records speak for themselves.

[55] On the issue of access, I found above that the appeal is moot regarding four of the five responsive records. In this section of the order, therefore, I am concerned solely with whether the disclosure of the withheld personal information of another individual in record 1 would result in an unjustified invasion of that individual's personal privacy under section 38(b).

[56] I begin with considering whether the presumption against disclosure in section 14(3)(f) applies to the personal information withheld from record 1 by MPAC. This section provides that:

(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

(f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;

[57] To qualify under this section, information about an asset must be specific and must reveal, for example, its dollar value or size.²³ MPAC has already disclosed the financial information in this record. What it has severed is the name and address of the individual who conveyed the property to the appellant. MPAC argued that disclosure of the identifying information on the record would reveal information about the other individual's finances or financial history, and I agree. I find that section 14(3)(f) applies to the undisclosed personal information of the other individual identified in record 1.

[58] The appellant did not specifically address the application of any of the factors, listed or unlisted, in section 14(2) that might favour disclosure of the information to him.²⁴ However, his representations suggest the possible relevance of section 14(2)(d), fair determination of rights, and an unlisted factor related to ensuring public confidence in MPAC. I have considered them.²⁵

[59] For section 14(2)(d) to apply, the personal information at issue must be relevant to a fair determination of rights affecting the person who made the request. A four-part test must be met for it to apply and weigh in favour of disclosure.²⁶ As prerequisites for the

²³ Order PO-2011.

²⁴ Section 14(2)(a) (public scrutiny), 14(2)(b) (public health and safety), 14(2)(c) (purchase of goods and services); unlisted factors favouring disclosure include inherent fairness issues and ensuring public confidence in an institution.

²⁵ The appellant suggested that section 14(3)(b) may also apply, but as a basis for ordering disclosure, because he believes it may be necessary "to prosecute the violation or to continue the investigation" into the status of his property. This provision has no application in this appeal, but I considered the submissions in the context of section 14(2)(d), fair determination of rights.

²⁶ The four-part test for section 14(2)(d) to apply requires the following to be established: 1. the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a

application of section 14(2)(d), there must be a legal right that is related to a proceeding which is either existing or contemplated (parts one and two). The appellant's submissions do not establish these elements to my satisfaction, and I find that the factor favouring disclosure in section 14(2)(d) does not apply.

[60] I have also considered the unlisted factor for ensuring public confidence in an institution²⁷ and, specifically, whether disclosure of the other individual's personal information would help ensure public confidence in MPAC or its operations in this particular situation. Given my understanding of what transpired with the consolidation of the property, as set out above, and the other information that the appellant has obtained, I am not persuaded that the disclosure of the withheld personal information would help ensure public confidence in MPAC. Therefore, I find that the unlisted factor related to ensuring public confidence in the institution does not apply in favour of disclosure of the other individual's personal information.

[61] Accordingly, based on my finding above that section 14(3)(f) applies and that no factors favouring disclosure in section 14(2) apply, and having weighed the parties' relative interests, I find that the withheld personal information in record 1 is exempt under section 38(b).

[62] As noted previously, I asked MPAC to comment on the absurd result principle, because it may apply where the appellant originally supplied the information or is otherwise aware of it. In such circumstances, the information may not be exempt under section 38(b), because to withhold the information would be absurd and inconsistent with the purpose of the exemption.²⁸ The absurd result principle has been applied where, for example: the requester sought access to his or her own witness statement,²⁹ the requester was present when the information was provided to the institution,³⁰ or the information is clearly within the requester's knowledge.³¹

[63] However, if disclosure is inconsistent with the purpose of the exemption, the absurd result principle may not apply, even if the information was supplied by the requester or is within the requester's knowledge.³²

[64] The information about the previous property owner in record 1 was not originally provided by the appellant, nor was he present when it was provided to MPAC. However, the evidence before me suggests that the information is within the appellant's knowledge,

non-legal right based solely on moral or ethical grounds; 2. the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; 3. the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and 4. the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing. See Order PO-1764.

²⁷ Orders M-129, P-237, P-1014 and PO-2657.

²⁸ Orders M-444 and MO-1323.

²⁹ Orders M-444 and M-451.

³⁰ Orders M-444 and P-1414.

³¹ Orders MO-1196, PO-1679 and MO-1755.

³² Orders M-757, MO-1323 and MO-1378.

and this might give rise to the application of the absurd result principle. In my review of whether the absurd result principle could apply in this situation, I considered the inherent sensitivity of financial information, as well as the appellant's other means of obtaining access to the information through the LRO's regularized disclosure system. In the circumstances, I am not satisfied that ordering disclosure of the severed personal information of the other individual in record 1 under the *Act* would be consistent with the purpose of the personal privacy exemption. Accordingly, I find that disclosure of the withheld personal information in record 1 would constitute an unjustified invasion of the other individual's personal privacy, and I find that it is exempt under section 38(b), subject to my review of MPAC's exercise of discretion.

Issue C: Did MPAC properly exercise its discretion under section 38(b)?

[65] Because I have upheld MPAC's decision to withhold the personal information of another individual in record 1, I must review its exercise of discretion under section 38(b). This is because section 38(b) is discretionary, and permits an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion.

[66] On appeal, the Commissioner may determine whether the institution failed to do so. The Commissioner may also find that the institution 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, or it fails to take into account relevant considerations.

[67] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.³³ This office may not, however, substitute its own discretion for that of the institution.³⁴

Representations

[68] MPAC maintains that it properly weighed the appellant's right of access to his own personal information against another individual's right to the protection of their privacy and, in doing so, only redacted the personal information related to the individuals other than the appellant. MPAC submits that its exercise of discretion should be upheld because it was exercised in good faith after a consideration of all relevant factors, including:

- The appellant has a right to access his own information, and exemptions to this right should be limited;
- The appellant is an individual and requested information related to his own interests;
- The privacy of affected individuals should be protected;

³³ Order MO-1573.

³⁴ Section 43(2).

- MPAC is not the organization that creates, collects or maintains records like these and its possession of them is “secondary” to the Land Registry Office, which creates and makes such records available to the general public;
- The appellant has no compelling or sympathetic need to receive the information from MPAC; and
- The disclosure of this type of information by MPAC would not have any impact on public confidence in its operation.

[69] In response, the appellant suggests that MPAC exercised its discretion “not in good faith” because it protected another individual’s rights, but not his rights as a property owner. He argues that MPAC did not consider the fact that the property was “removed from my possession.”

[70] The appellant agrees with MPAC’s submission that “information should be made available to the public” but says that, in this case, it is not. Regarding MPAC’s comment that it did not create the documents in question, the appellant dismisses the relevance of that. He says he is unsure if public confidence would be increased by disclosure, but points out that his personal confidence in MPAC would increase.

Findings

[71] I have upheld MPAC’s decision to deny access to the personal information of another individual in record 1 under section 38(b). Therefore, I am reviewing MPAC’s exercise of discretion only in relation to record 1, the other records having been removed from the scope of this appeal. Based on MPAC’s representations, I am satisfied that it considered relevant factors in exercising its discretion to withhold the portions of the record that I have found exempt. There is no evidence to support bad faith on the part of MPAC in withholding this personal information. In my view, MPAC has tried to assist the appellant in understanding the circumstances of the consolidation of his property, while meeting its obligations under the *Act*. In the circumstances, I am satisfied that MPAC has properly exercised its discretion under section 38(b), and I uphold it.

ORDER:

1. I decline to proceed with a determination of access to records 1a, 2, 3 and 4 on the grounds that the issue of the appellant’s access to them is moot.
2. I uphold MPAC’s decision to deny access under section 38(b) to the withheld information in record 1.

Original signed by _____
Daphne Loukidelis
Adjudicator

October 22, 2020 _____