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

ORDER MO-2030

Appeal MA-040269-1

Municipal Property Assessment Corporation

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NATURE OF THE APPEAL:

Background

The Municipal Property Assessment Corporation (MPAC) is a non-share capital, not-for-profit corporation established under the *Municipal Property Assessment Corporation Act* (the *MPAC Act*). Every municipality in Ontario is a member of MPAC, and the organization is governed by a 15-member board of directors appointed by the Minister of Finance. The Board includes municipal representatives, property taxpayers and members representing provincial interests.

MPAC administers a uniform, province-wide property assessment system based on current value assessment. One of its duties is to prepare an assessment roll for each municipality in Ontario. Municipalities use the information in the assessment roll to calculate property taxes. Section 14 of the *Assessment Act* sets out the information that MPAC is required to include on the assessment roll that it provides to each municipality. This information includes:

- A description of the property sufficient to identify it;
- The names and surnames, in full, of all persons liable to assessment in the municipality;
- The person's religion, if they are Roman Catholic;
- The type of school board the person supports under the *Education Act*;
- The number of acres, or other measures showing the extent of the person's land;
- The current value of the parcel of land;
- The value of the land leased to tenants; and
- The name of every tenant who is a supporter of a school board.

Sections 10 and 11 of the *Assessment Act* require property owners and other assessed persons to provide information to MPAC assessors. Section 13 of the *Assessment Act* makes it an offence to refuse to comply with MPAC's lawful demand for information. In other words, property owners and other occupiers (e.g., tenants) in Ontario face a statutory compulsion to disclose information about themselves and their properties to MPAC.

Under sections 39(1) and (2) of the *Assessment Act*, MPAC must deliver the assessment roll to the clerk of the municipality, who then must make it available for inspection by the public during office hours.

MPAC also collects other personal information about property owners and occupiers pursuant to its duties under other statutes, including the *Municipal Elections Act*, the *Education Act*, the *Municipal Act, 2001*, and the *Provincial Land Tax Act*.

The information collected by MPAC is maintained in a database known as the Ontario Assessment System (OASYS), which MPAC describes as its "master file." The OASYS database contains information about 4.3 million properties, including 623,389 Toronto properties. These include residential, commercial, industrial and multi-residential properties that may be owned by individuals, corporations, sole proprietorships, partnerships or unincorporated associations. MPAC claims that the OASYS database contains the personal information of 10.7

million individuals in Ontario. It developed OASYS to store the electronic data relating to property owners and their properties that it collects from various sources, including its own data collectors and external sources.

The OASYS database contains 159 fields of data, many of which are not available on the public assessment rolls. In other words, the database contains all of the information found in the assessment rolls but also includes significant amounts of additional information about property owners and their properties.

MPAC also operates an online service known as Municipal Connect that is available by subscription for tax-collecting bodies, particularly municipalities. Subscribers receive a password that allows them to search for relevant details of properties (within their municipal jurisdiction only), such as location, legal description, frontage, depth, roll value and school support. They must sign a license agreement that restricts the use of data to purposes authorized by statute. The license agreement stipulates that, "[p]ursuant to section 53 of the *Assessment Act*, the information on this file is provided with a non-exclusive and non-transferable right to use the assessment information only for the purpose of meeting your planning requirements and shall not be used for any other purpose."

Moreover, MPAC has a Business Development Group that sells information to the public in electronic format. However, the electronic information sold by MPAC is stripped of personal information and is subject to license agreements that limit the purposes for which the information may be used, including a prohibition against sale or transfer to others. The fee charged is based on a standard pricing structure developed by MPAC.

MPAC is covered by the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). Section 7(1) of the *MPAC Act* provides that:

> The Corporation [i.e. MPAC] shall be deemed to be an institution for the purposes of the *Municipal Freedom of Information and Protection of Privacy Act* and that *Act* applies with necessary modifications with respect to the Corporation.

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

The Access-to-Information Request

The requester, who is a councillor on Toronto City Council, filed an access-to-information request under the *Act* with MPAC:

> On behalf of the members of Council for the City of Toronto, I am requesting that each member be given access to the Ontario Assessment System (OASYS) for the purpose of accessing the names, addresses and property data of constituents within each member's respective ward. Access is requested either (i) in the form of an OASYS CD or (ii) via direct on-line access through MPAC's Internet base 'Municipal Connect'.

MPAC issued a decision letter denying access to the requested records under sections 11(a), (c), and (d) of the *Act* (economic and other interests), and sections 14(1) (personal privacy) and 15(a) of the *Act* (information currently available to the public). In its decision letter, MPAC stated that the hard-copy assessment roll is a public record, and that the requester could inspect the assessment roll by visiting the city clerk's office during normal business hours. In addition, it pointed out that the requester could purchase detailed "property data" on individual properties from MPAC and directed the requester to the eProducts section of its website.

The requester (now the appellant) appealed MPAC's decision to this office. During mediation, the appellant submitted that there was a compelling public interest in making the requested database available to councillors for the City of Toronto. Consequently, the public interest override in section 16 of the *Act* is also at issue in this appeal.

This appeal was not settled in mediation and was moved to adjudication. Initially, I issued a Notice of Inquiry to MPAC, which submitted representations in response. In its representations, MPAC stated that it was relying on section 10(1) of the *Act* (third party information) as an additional ground for refusing disclosure. Specifically, it provided submissions on the application of sections 10(1)(a), (b), and (c) of the *Act*.

MPAC also identified Teranet as an affected party in its representations. MPAC stated that some of the information in the database belonged to Teranet and was only licensed to MPAC under the terms of an agreement that prohibited MPAC from disclosing it, except in specific circumstances that do not apply in this appeal. I issued a Supplementary Notice of Inquiry to Teranet, which submitted representations in response.

I then issued a Notice of Inquiry to the appellant and attached the full representations of both MPAC and Teranet. I invited the appellant to provide representations on all issues raised in this Notice of Inquiry and to respond to the representations submitted by both MPAC and Teranet. In its representations, MPAC submits that the Ontario Divisional Court's decision in *Municipal Property Assessment Corp. v. Ontario (Assistant Information and Privacy Commissioner* (2004), 71 O.R. (3d) 303 (*MPAC v. IPC*) is applicable in the circumstances of this appeal. In *MPAC v. IPC*, the Divisional Court quashed an order of this office (MO-1693) that had ordered MPAC to disclose a copy of the assessment roll in electronic format for the entire province of Ontario to the requester, a collection agency.

Consequently, the Notice of Inquiry that I issued to the appellant invited him to address, amongst other issues, whether the Divisional Court's decision in *MPAC v. IPC* is applicable in the circumstances of this appeal or whether it can be distinguished. The appellant submitted representations in response to all issues in the Notice of Inquiry.

RECORDS AND EXEMPTIONS:

The records at issue in this appeal are MPAC's OASYS database or the information in Municipal Connect, MPAC's online service for municipalities. According to the appellant, the purpose of its request is to access the names, addresses and property data of constituents within each city

councillor's respective ward in Toronto. Consequently, I will consider the scope of the request to be limited to information relating to the 623,389 Toronto properties contained in the OASYS database or accessible through Municipal Connect.

MPAC submits that the following exemptions in the *Act* apply to the records at issue:

- Sections 10(1)(a), (b) and (c) – Third party information
- Sections 11(a), (c) and (d) – Economic and other interests
- Section 14(1) – Personal privacy
- Section 15(a) – Information available to the public

The appellant submits that the public interest override at section 16 of the *Act* is applicable in the circumstances of this appeal.

DISCUSSION:

PERSONAL INFORMATION

In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. That term is defined in section 2(1) as follows:

> "personal information" means recorded information about an identifiable individual, including,
>
> (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) any identifying number, symbol or other particular assigned to the individual,
>
> (d) the address, telephone number, fingerprints or blood type of the individual,
>
> (e) the personal opinions or views of the individual except where they relate to another individual,
>
> (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and

> replies to that correspondence that would reveal the contents of the original correspondence,
>
> (g) the views or opinions of another individual about the individual, and
>
> (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order 11].

To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F, PO-2225].

Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225].

To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

Summary of the representations of MPAC and the appellant

MPAC submits that the information in the OASYS database and the information accessible through Municipal Connect fall within the definition of personal information in section 2(1) of the *Act*:

> The information in the OASYS database falls squarely within subsections (a), (b), (c), (d), (e) and (h). The OASYS database contains all of the data in the assessment roll, including the names and addresses of all property owners assessed in the Province of Ontario. It contains 159 fields of data, many of which are not available on the public assessment roll, both personal and non-personal in nature. Specifically, individual names are listed in conjunction with information such as gender, birth dates, citizenship, property addresses, mailing addresses, roll numbers, occupancy status, religion, school support, tax direction, French language entitlement, sale amount, and the total value of the property …
>
> Municipal Connect™ offers a licensed Municipality (such as the City of Toronto) access to property data for that Municipality in electronic form, including personal information.

MPAC further submits that any combination of information in OASYS in conjunction with the name of an individual constitutes the personal information of that individual, is "about" the individual in his or her personal capacity, and makes that individual easily identifiable.

In its representations, the appellant simply acknowledges that "… the information in the databases contains personal information."

Analysis and Findings

I agree with the parties that the information in the OASYS database and accessible through Municipal Connect includes personal information, as defined in section 2(1) of the *Act*. The 159 fields in the OASYS database contain data elements that are clearly personal information, such as an individual's gender, occupancy status (e.g., owner, tenant, spouse, etc.), month of birth, day of birth, citizenship, residency, religion, school support, French-language entitlement, property address, and mailing address. For example, a person's citizenship, month and day of birth, sex, and religion fall within paragraph (a) of the definition. Similarly, an individual's residential property and mailing addresses fall within paragraph (d). An individual's name is also a data element, and under the circumstances, in my view, it is reasonable to expect that an individual may be identified if any of this information is disclosed.

The 159 fields in the OASYS database also include other information such as the sale amount (market value) and total value (assessed value) of a residential property, the year a residential property was built, the number of bedrooms, the number of full or half bathrooms, the basement height and type, the garage type, the insulation type, floor areas and shapes, the number of acres of land, frontage, depth, instrument number, water service, hydro service, etc. On their own, each of these data elements would not constitute personal information. For example, the total value of a residential property on its own, without the property owner or occupier's name attached, would not be personal information. However, the appellant is seeking property data *in conjunction* with the names and addresses of individuals.

In my view, all of the residential property information in the OASYS database or accessible through Municipal Connect would constitute the personal information of a residential property owner if this property-related information is disclosed in conjunction with the individual owner or occupier's name. I note that this is consistent with the representations submitted by both the appellant and MPAC. For example, the sale amount of a residential property appears in the OASYS database. In previous orders, this office has found that disclosure of an individual's name along with the value of real or personal property constitutes personal information because they reveal information about an individual's finances (PO-1736). Consequently, the sale amount of a residential property, in conjunction with the name of the property owner, is recorded information about an identifiable individual that relates to financial transactions in which the individual has been involved (paragraph (b) of the definition).

However, the information in MPAC's databases is not limited to individual residential property owners. Property owners may also include corporations, sole proprietorships, partnerships and

unincorporated associations. Moreover, properties include commercial, industrial and multi-residential properties (e.g., apartment buildings).

In Order MO-1693, former Assistant Commissioner Tom Mitchinson found that information about commercial, industrial and multi-residential properties and their owners does not qualify as personal information. Similarly, he found that the name, address, legal description, sale value and other information in MPAC's assessment roll databases relating to corporations, sole proprietorships, partnerships and unincorporated associations would generally be categorized as information about a business rather than an identifiable individual. In my view, the same line of reasoning applies here and I adopt his findings for the purposes of this appeal.

In short, I accept the submissions of both MPAC and the appellant that the records at issue contain the personal information of individual residential property owners and other occupiers. However, the information relating to commercial, industrial and multi-residential properties, and to property owners such as corporations, sole proprietorships, partnerships and unincorporated associations, does not qualify as "personal information."

PERSONAL PRIVACY

Where a requester seeks personal information of another individual, section 14(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 14(1) applies.

If the information fits within any of paragraphs (a) to (f) of section 14(1), it is not exempt from disclosure under section 14.

The section 14(1)(a) to (e) exceptions are relatively straightforward. The section 14(1)(f) exception is more complex, and requires a consideration of additional parts of section 14.

Based on the representations of the parties and my review of the records, I have concluded that the only parts of section 14(1) that could be relevant in the circumstances of this appeal are sections 14(1)(d) and (f).

Section 14(1)(d): another Act

Section 14(1)(d) states:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
>
> (d) under an Act of Ontario or Canada that expressly authorizes the disclosure;

In order for section 14(1)(d) to apply, there must either be specific authorization in the statute for the disclosure of the specific type of personal information at issue, or there must be a general reference to the possibility of such disclosure in the statute together with a specific reference to

the type of personal information to be disclosed in regulation (Compliance Investigation Report I90-29P, Order M-292).

In the circumstances of this appeal, this means that for section 14(1)(d) to apply, there must be specific authorization in the statute (e.g., the *Assessment Act*) for disclosure of the personal information sought by the appellant that is contained in the OASYS database or accessible through Municipal Connect.

The application of section 14(1)(d) was at issue in the Divisional Court decision in *MPAC v. IPC*, which was a judicial review of Order MO-1693. The Court stated:

> Section 14 of MFIPPA begins with the general principle that a head "shall refuse to disclose personal information to any person other than the individual to whom the information relates". However, the section specifies certain exceptions to the general rule prohibiting disclosure. The relevant exception in this case is s. 14(1)(d), which permits disclosure where an Act of Ontario or Canada "expressly authorizes the disclosure."

The requester in that particular appeal was a collection agency that had asked MPAC to provide it with an electronic version of the assessment roll for the entire province of Ontario, which contained the personal information of more than 10 million Ontario residents.

Former Assistant Commissioner Tom Mitchinson found that section 39 of the *Assessment Act* expressly authorized the head of MPAC to disclose the assessment roll. That section provides:

> Delivery of roll to clerk
>
> 39(1) The assessment corporation shall deliver the assessment roll to the clerk of the municipality and shall do so on or before the date fixed for the return of the roll.
>
> Inspection by public
>
> (2) Immediately upon receipt of the assessment roll, the clerk shall make it available for inspection by the public during office hours.

In finding that the *Assessment Act* expressly authorized disclosure, the Assistant Commissioner held that he was bound by the Ontario Divisional Court's decision in *Gombu v. Ontario (Assistant Information and Privacy Commissioner)* (2002), 59 O. R. (3d) 773. In that particular case, a journalist was seeking access to an electronic database containing the names, addresses and telephone numbers of municipal election campaign contributors. Under section 88(5) of the *Municipal Elections Act*, contribution lists are "public records" and required to be disclosed:

> Despite anything in the *Municipal Freedom of Information and Protection of Privacy Act*, documents and materials filed with or prepared by the clerk or any other election official under this Act are public records and, until their destruction,

> may be inspected by any person at the clerk's office at a time when the office is open.

In *Gombu*, the Divisional Court held that because the election campaign contribution database had been prepared by the clerk under the *Municipal Elections Act*, section 88(5) applied. Moreover, the Court held that because of the importance of transparency in the democratic process, and the diminished expectation of privacy with respect to the subject information, it was not reasonable for the Assistant Commissioner to refuse to direct disclosure of the electronic database.

In Order MO-1693, Assistant Commissioner Mitchinson found "compelling" similarities to *Gombu*. However, in quashing this order in *MPAC v. IPC*, the Divisional Court ruled that the Commissioner erred in finding that *Gombu* was indistinguishable and that section 39 of the *Assessment Act* expressly authorized the disclosure of the electronic version of the assessment roll sought by the collection agency:

> In *Gombu*, s. 88(5) of the *Municipal Elections Act* mandates disclosure of the electronic record. In this case, however, the *Assessment Act* contains no such mandate. The *Assessment Act* neither obligates nor authorizes MPAC to do anything besides making the municipal rolls available to the clerk … To override the important privacy interests addressed in MFIPPA, MPAC must have express authorization to disclose.

Summary of the representations of MPAC and the appellant

In the appeal currently before me, MPAC cites the Divisional Court's finding in *MPAC v. IPC* and submits that section 14(1)(d) does not apply in the circumstances of this appeal:

> MPAC distributes to each municipality, in paper form, only the portion of the roll that applies to that municipality. The *Assessment Act* does not require MPAC to maintain an electronic record at all, nor does it require MPAC to provide an electronic version to the municipalities for viewing by the public.

The appellant submits that the Divisional Court's decision in *MPAC v. IPC* is distinguishable primarily on the basis that the requesters in this appeal are councillors who require the information for the purposes of effectively performing their duties as elected representatives. However, the appellant does not specifically address whether section 14(1)(d) is applicable in the circumstances of this appeal. Instead, he submits that in *MPAC v. IPC*, the Divisional Court did not address whether the disclosure of the information would be an unjustified invasion of privacy under section 14(1) of the *Act*. This appears to be a reference to the exception to the exemption found in section 14(1)(f), which applies where disclosure "does not constitute an unjustified invasion of personal privacy." I will address this provision below.

Analysis and Findings

In my view, it is clear that section 14(1)(d) does not apply in the circumstances of this appeal. The appellant is seeking personal information contained in OASYS database or accessible through Municipal Connect. The OASYS database contains 159 fields of data which includes all of the information found in the assessment rolls but also includes significant amounts of additional information about property owners and their properties not found on the assessment rolls. In addition, Municipal Connect includes personal information accessible in the assessment rolls.

As the Divisional Court held in *MPAC v. IPC*, the *Assessment Act* only requires that MPAC deliver the assessment rolls to the clerks of Ontario municipalities. It does not expressly authorize MPAC to disclose personal information from the assessment rolls to anyone else, including municipal councillors. Consequently, there is no specific authorization in the statute for the disclosure of the personal information contained in OASYS database or accessible through Municipal Connect that is found in the assessment rolls.

Moreover, neither the *Assessment Act* nor any other statute governing MPAC expressly authorizes the disclosure of the additional personal information of property owners or other occupiers that is contained in OASYS database or accessible through Municipal Connect, but not found in the assessment rolls. In short, I find that section 14(1)(d) of the *Act* does not apply in the circumstances of this appeal.

Section 14(1)(f): disclosure not an unjustified invasion of personal privacy

Section 14(1)(f) states:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
>
> (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

The factors and presumptions in sections 14(2), (3) and (4) help in determining whether disclosure would or would not be an unjustified invasion of personal privacy under section 14(1)(f).

Do any of the presumptions in paragraphs (a) to (h) of section 14(3) apply?

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 14. Once established, a presumed unjustified invasion of personal privacy under section 14(3) can only be overcome if section 14(4) or the "public interest override" at section 16 applies. [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

MPAC submits that the presumptions in sections 14(3)(e), (f) and (h) apply to the personal information at issue in this appeal:

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,
>
> (e) was obtained on a tax return or gathered for the purpose of collecting a tax;
>
> (f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;
>
> (h) indicates the individual's racial or ethnic origin, sexual orientation or religious or political beliefs or associations.

I will consider whether each of these presumptions applies to the personal information at issue.

Section 14(3)(e)

MPAC submits that the information it collects from individuals that is stored in the OASYS database and that is accessible through Municipal Connect is gathered for the purpose of collecting a tax. In particular, MPAC gathers this information for the purpose of providing it to municipalities in order to collect residential property taxes, which are calculated using the assessed value of the property.

MPAC further submits that municipalities require this information from MPAC in order to levy property taxes:

> Without receiving the assessed value of the property in conjunction with the name of the owner(s), the property address, the mailing address of the owner(s), the legal description, and the roll number, a municipality would not be able to levy property taxes and would not know to whom the amount should be assessed nor where to send the property tax bill. Therefore, while MPAC does not claim that it uses the information it gathers to collect taxes itself, it certainly provides an essential service to tax-collecting authorities, without which they could not collect property taxes.

The appellant's representations do not address whether the section 14(3)(e) presumption is applicable in the circumstances of this appeal.

The purpose of all of the section 14(3) presumptions, including section 14(3)(e), is to set out the circumstances and conditions that would be presumed to constitute an unjustified invasion of personal privacy if personal information was disclosed. The inclusion of section 14(3)(e) in the list of presumptions evinces an intention on the part of the Ontario legislature to provide a high

degree of privacy protection to personal information obtained on a tax return or gathered for the purpose of collecting a tax.

The personal information at issue in this appeal includes OASYS data such as the name of the property owner, the property address, the mailing address of the owner, the legal description, the roll number and the assessed value of the property, as well as all the other data elements relating to residential properties. In my view, it is clear that MPAC gathers this information for the purpose of providing it to municipalities in order to collect residential property taxes, which are calculated using the assessed value of the property. Moreover, I accept MPAC's submission that a municipality would not be able to levy property taxes and would not know to whom the amount should be assessed nor where to send the property tax bill, unless it receives this personal information from MPAC.

In short, I find that the section 14(3)(e) presumption applies to all of the personal information in the OASYS database or accessible through Municipal Connect, including the name of the property owners, the property address, the mailing address of the owner, the legal description, the roll number, the assessed value of the property, and all other data elements concerning residential properties.

Section 14(3)(f)

Under section 14(3)(f), a disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness. An institution is only required to show that the personal information falls within one of the items in this list for the presumption to apply.

MPAC submits that OASYS contains "voluminous" data that describes or reveals information about an individual's finances, financial activities, income and assets:

> The records contain the individual owner's name in connection with the location of the property, the market and realty assessed values of the property, and descriptive details that an individual would require to research the individual's assets in great detail through other public sources. Information revealing that an individual owns property, together with the value of the property owned, provides information about a person's financial transactions, asset(s), creditworthiness (the person is capable of owning property) and net worth (since the value of the property contributes significantly to the owner's net worth).

The appellant's representations do not address whether the section 14(3)(f) presumption is applicable in the circumstances of this appeal.

As noted above, this office has established in previous orders that disclosure of an individual's name along with the value of real or personal property constitutes personal information about an individual and an individual's finances (e.g., Order PO-1736). The records at issue in this appeal include information such as the name and address of the property owner in conjunction with

other data such as the market value of the property and the assessed value of the property. In my view, this personal information describes individual property owners' finances, net worth and financial activities, which brings it within the section 14(3)(f) presumption.

Accordingly, I find that the section 14(3)(f) presumption applies to the following personal information in the OASYS database or accessible through Municipal Connect: the names and addresses of the property owners in conjunction with other data such as the market value of the properties and the assessed value of the properties.

Section 14(3)(h)

Under section 14(3)(f), a disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information indicates the individual's racial or ethnic origin, sexual orientation or religious or political beliefs or associations.

MPAC submits that the information on the databases requested includes information about individual property owners' citizenship, religion, school support and French-language rights. The appellant's representations do not address whether the section 14(3)(h) presumption is applicable in the circumstances of this appeal.

The records at issue in this appeal clearly contain information that falls within the section 14(3)(h) presumption. For example, the information about an individual's religion and school support would indicate that individual's religious beliefs or associations. In short, I find that the section 14(3)(h) presumption applies to the religion and school support of property owners or other occupiers, whether in the OASYS database or accessible through Municipal Connect.

Do any of the section 14(2) factors apply?

Once a presumed unjustified invasion of personal privacy is established under section 14(3), it cannot be rebutted by one or more factors or circumstances under section 14(2) [*John Doe*, cited above]. If no section 14(3) presumption applies, section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy [Order P-239]. Section 14(2) states:

> A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,
>
> (a) the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny;
>
> (b) access to the personal information may promote public health and safety;
>
> (c) access to the personal information will promote informed choice in the purchase of goods and services;

> (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
>
> (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
>
> (f) the personal information is highly sensitive;
>
> (g) the personal information is unlikely to be accurate or reliable;
>
> (h) the personal information has been supplied by the individual to whom the information relates in confidence; and
>
> (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

The list of factors under section 14(2) is not exhaustive. The institution must also consider any circumstances that are relevant, even if they are not listed under section 14(2) [Order P-99].

I have found that the section 14(3)(e), (f) and (h) presumptions apply to the personal information at issue in this appeal, including the names and addresses of property owners. While sections 14(3)(f) and (h) only apply to some of the personal information at issue, I have found that section 14(3)(e) applies to all of it. Based on the *John Doe* decision, cited above, I am not required to consider whether the section 14(2) factors are applicable in the circumstances in this appeal, because once a presumed unjustified invasion of personal privacy is established under section 14(3), it cannot be rebutted by one or more factors or circumstances under section 14(2).

Although I am technically not required to consider any section 14(2) factors, I will address two factors that the appellant submits are relevant in the circumstances of this appeal.

(1) Public availability

The appellant submits that disclosure of the requested information would not result in an unjustified invasion of privacy because the same information is in the public domain, in both paper and electronic format:

> The information at issue in this appeal is already in the public domain in the Assessment Roll, and the Toronto Property System that was developed by the City of Toronto with MPAC's consent. The Toronto Property System, an electronic database available for public inspection at various municipal offices contains certain additional information provided by MPAC in electronic form … This information, which can be characterized as being provided in "bulk", is available in electronic form to any member of the public.

> The City therefore submits that providing the same information to [c]ouncillors in electronic form, to be accessed in their offices for constituency work, is not an unjustified invasion of privacy under subs. 14(1) of MFIPPA.

The appellant also cites the *Gombu* decision, in which the Divisional Court quashed Order MO-1366. In that order, this office had upheld the City of Toronto's refusal to disclose an electronic database of contributors to municipal election campaigns. Former Assistant Commissioner Mitchinson had found that the possibility of wide dissemination and usage of the personal information in a computerized format, was a relevant factor to consider in determining whether disclosure of this information would constitute an unjustified invasion of privacy, particularly in the context of section 14(2)(f) (highly sensitive). He then concluded that the disclosure of the personal information in electronic format, where it can be massively disseminated, matched and merged, and used for purposes far beyond those for which the information was collected in the first place, was a relevant factor to consider, and weighed significantly in favour of non-disclosure of the personal information in that format.

The Divisional Court disagreed and ordered that the electronic campaign contribution database be disclosed. It ruled that the definition of a "record" in section 2(1) of the *Act* expressly equates electronic and paper records and stated:

> … the distinction drawn by the Commissioner did not provide a reasonable basis for refusal to disclose the requested database. Furthermore, the reasonableness of his interpretation must be considered in light of the importance of freedom of information legislation in furthering the democratic process through public scrutiny and transparency.

To the extent that the appellant's argument on this point might be based on the view that, because of *Gombu*, information that exists in the public domain in paper format can automatically be disclosed electronically, I do not accept that argument. As the Divisional Court states in *MPAC v. IPC*:

> The Commissioner held that since the requested data in this case was electronic and was also available in paper form, *Gombu* required its disclosure. We have already explained why this interpretation was incorrect, given the differing statutory contexts. *Gombu* did not purport to hold that if paper records were required to be disclosed, it followed that electronic records should as well. *Gombu* held that, in the context of protecting the integrity of the democratic process, the difference between electronic and paper records was not a sufficient basis for refusing to disclose them in electronic form. In the case before us, the context and the competing interests are obviously quite different.

However, the appellant further submits that the information he seeks is already publicly available in electronic form through the Toronto Property System. Any member of the public can access some assessment information through the system at computers at municipal civic offices. The system may only be searched by assessment roll number or property address, not by name.

According to the appellant's representations, the following fields of information are available on the Toronto Property System:

- assessment roll number,
- ward and poll,
- property address,
- name of owner,
- occupant,
- school support,
- mailing address,
- legal description,
- property information (type, frontage, depth, site area, tax class and qualifier),
- school support and original assessment for the last five to six years,
- assessment, including any appeals in the last six years,
- a list of 10 neighbouring properties by roll numbers, addresses and assessment, including any appeals.

I do not accept that because some assessment information is publicly available in electronic form through the Toronto Property System, disclosure of the broader information contained in the OASYS database or through Municipal Connect would not result in an unjustified invasion of personal privacy. The Toronto Property System has built-in limitations and barriers that are designed to protect individual privacy. For example, the system does not allow users to conduct searches based on an individual's name. Moreover, users must go to municipal civic offices to access the Toronto Property System and can only obtain the information listed above. In contrast, providing municipal councillors with access to a CD of the OASYS database or direct access to Municipal Connect in their offices would enable them to download, manipulate, merge and use the personal information attached to many of the 623,389 Toronto properties, for innumerable and limitless purposes.

From this analysis, it is evident that the personal information in MPAC's database and the ways in which it can be accessed and used are very much broader than is the case in the methods of public access referred to by the appellant. Under the circumstances, therefore, I find that the public availability of personal information through the paper assessment rolls or electronically through the Toronto Property Assessment system is not a factor weighing in favour of disclosing the personal information at issue in this appeal.

(2) Sale of assessment data

The appellant submits that MPAC is already disclosing personal information when it sells its various products. The appellant does not specifically link this argument to any of the section 14(2) factors. However, I will interpret this submission as an argument that the sale of assessment data is a relevant consideration in determining whether disclosure of the personal information sought by the appellant would constitute an unjustified invasion of privacy.

The appellant submits that although the information sold by MPAC does not contain names, it does include personal information that could be traced to identifiable individuals:

> … the information being provided to commercial entities that pay a licensing fee includes financial information which can be traced to the individual concerned. As stated by MPAC, this information is widely disseminated to persons who enter into licensing agreements with MPAC. To disseminate similar information in electronic form to local [c]ouncillors who require the information to effectively communicate with their constituents could not reasonably give rise to a grave privacy concern … The City submits that the disclosure of personal information cannot be a justified invasion of personal privacy if a fee is paid but an unjustified invasion of privacy if no fee is paid.

I do not accept the appellant's submissions on this issue. The fact that MPAC may be authorized to sell information, and does so with personal information removed, does not provide a basis for concluding that disclosing the requested information in the circumstances of this appeal would not be an unjustified invasion of privacy. In *MPAC v. IPC*, the Divisional Court recognized MPAC's statutory authority to sell assessment data to the public under section 12(5) of the *MPAC Act* and section 53(5) of the *Assessment Act*:

> 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 or transfer to others.

Significantly, the Court went on to quash the IPC's decision that the information about individuals was not exempt under section 14(1), and this information was therefore withheld under that exemption despite the disclosures authorized under section 12(5) of the *MPAC Act* and section 53(5) of the *Assessment Act*.

Accordingly, I find that MPAC's authority to sell assessment data is not a factor that favours disclosure of the personal information at issue in this appeal to the appellant. MPAC is authorized by statute to sell information to members of the public for a fee and upon terms set by MPAC. MPAC has chosen to exercise this authority by selling data stripped of personal information and subject to license agreements.

Is disclosure not "an unjustified invasion of privacy" under section 14(4)?

If paragraph (a) or (b) of section 14(4) applies, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 14. Section 14(4) states:

> Despite subsection (3), a disclosure does not constitute an unjustified invasion of personal privacy if it,
>
> (a) discloses the classification, salary range and benefits, or employment responsibilities of an individual who is or was an officer or employee of an institution; or
>
> (b) discloses financial or other details of a contract for personal services between an individual and an institution.

The personal information at issue in this appeal does not fall within the types of disclosure contemplated in sections 14(4)(a) or (b). Consequently, the section 14(3) presumptions cannot be overcome by section 14(4) of the *Act* in the circumstances of this appeal.

Conclusion

I have concluded that the section 14(3)(e) presumption applies to all of the personal information in the OASYS database or accessible through Municipal Connect. As noted above, the section 14(3) presumptions cannot be rebutted by one or more factors or circumstances under section 14(2), and section 14(4) does not apply in the circumstances of this appeal. Consequently, I find that the personal information in the OASYS database or accessible through Municipal Connect is exempt under section 14(1) of the *Act*.

Even if I had found that not all of the personal information in the OASYS database or accessible through Municipal Connect was caught by the section 14(3) presumption, I would still have found this remaining personal information exempt under section 14(1). Under section 14(1)(f), I must be satisfied that the disclosure of personal information would *not* be an unjustified invasion of personal privacy. If no section 14(3) presumption applies, section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy. However, the appellant has not satisfied me that any of the circumstances in section 14(2) would favour disclosure. In the absence of any factors or circumstances favouring disclosure, I would have found that the section 14(1)(f) exception did not apply, and any remaining personal information that was not caught by the section 14(3) presumption, would still be exempt.

ECONOMIC AND OTHER INTERESTS

Although not raised in MPAC's or the appellant's representations, the section 14(1) personal privacy exemption only applies to the personal information of individual residential property owners and other occupiers (e.g. tenants) found in the OASYS database or accessible through Municipal Connect. It does not apply to non-personal information, including information relating to commercial and industrial properties, and information about multi-residential properties other than information about individual occupiers; nor does it apply to property owners such as corporations, sole proprietorships, partnerships and unincorporated associations.

It is necessary to assess, therefore, whether any of the other exemptions claimed by MPAC apply to the non-personal information in the OASYS database or accessible through Municipal Connect. MPAC submits that in addition to section 14(1), the exemptions in sections 10(1)(a), 10(1)(b), 10(1)(c), 11(a), 11(c), 11(d), and 15(a) apply to the records at issue.

In Order MO-1953, I dealt with an appeal of MPAC's decision to deny a requester access to nine fields from the OASYS database for all of Ontario, specifically suite number, street number, street name, street type, street direction, city, postal code, property type and XY coordinates. In that order, I found that MPAC had provided detailed and convincing evidence to support its position that disclosure of the information at issue could reasonably be expected to prejudice its economic interests or competitive position (section 11(c)), or be injurious to its financial interests (section 11(d)). Consequently, I upheld MPAC's decision to deny access to the records and dismissed the appeal.

The nature of the request in the appeal currently before me is similar, but not identical to the request in Order MO-1953. In this appeal, the appellant is seeking access to the names, addresses and property data of constituents in each Toronto city councillor's ward, either through the OASYS database (which contains 159 fields of data) or through Municipal Connect. In Order MO-1953, the appellant was seeking access to nine fields of data from the OASYS database for all of Ontario and was not interested in obtaining access to the names of property owners. However, given that both this appeal and the one in Order MO-1953 involve obtaining access to information that MPAC sells for revenue-generation purposes, logic dictates that my consideration of the additional exemptions claimed by MPAC should begin with an assessment of whether the sections 11(c) and (d) exemptions also apply in the circumstances of this appeal.

Sections 11(c) and (d) state:

> A head may refuse to disclose a record that contains,
>
> (c) information whose disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;
>
> (d) information whose disclosure could reasonably be expected to be injurious to the financial interests of an institution.

The purpose of section 11 is to protect certain economic interests of institutions. The report titled *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy 1980*, vol. 2 (Toronto: Queen's Printer, 1980) (the Williams Commission Report) explains the rationale for including a "valuable government information" exemption in the *Act*:

> In our view, the commercially valuable information of institutions such as this should be exempt from the general rule of public access to the same extent that similar information of non-governmental organizations is protected under the

> statute . . . Government sponsored research is sometimes undertaken with the intention of developing expertise or scientific innovations which can be exploited.

The purpose of section 11(c) is to protect the ability of institutions to earn money in the marketplace. This exemption recognizes that institutions sometimes have economic interests and compete for business with other public or private sector entities, and it provides discretion to refuse disclosure of information on the basis of a reasonable expectation of prejudice to these economic interests or competitive positions [Order P-1190].

To establish a valid exemption claim under section 11(d), an institution must demonstrate a reasonable expectation of injury to its financial interests.

For sections 11(c) or (d) to apply, the institution must demonstrate that disclosure of the record "could reasonably be expected to" lead to the specified result. To meet this test, the institution must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm." Evidence amounting to speculation of possible harm is not sufficient [*Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

Accordingly, in order to meet the requirements of the section 11(c) or (d) exemption claims, MPAC must provide detailed and convincing evidence sufficient to establish a reasonable expectation or probability of one or more of the harms described in either of these sections if the records are disclosed to the appellant.

Summary of the representations of MPAC and the appellant

MPAC submits that it has a responsibility to its customers, Ontario municipalities, to recover costs and generate revenue for its bottom line. One of the ways that MPAC generates revenue is by charging fees for property information. This revenue is then used to lower rates for core assessment services, thereby benefiting municipalities and taxpayers.

In its representations on section 11 of the *Act*, MPAC points out that the OASYS database allows it to generate reports and products that it routinely sells to mortgage brokers, financial institutions, and planners (stripped of personal information). It submits that the revenue streams generated by these sales total in the millions of dollars, and that if OASYS must be disclosed for free in response to access requests under the *Act*, MPAC will be deprived of this revenue stream as well as the monetary value of its work product generally.

With respect to section 11(c), MPAC submits that it has the discretion to refuse to disclose the OASYS database on the basis that disclosure can reasonably be expected to prejudice MPAC's economic interests and competitive position:

> Once the database is in the public domain, MPAC would be unable to prevent users from manipulating or disseminating the information … Ultimately if MPAC is required to disclose the electronic property information pursuant to requests for access to information, MPAC may not be able to sustain its Business

> Development Group, whose efforts allow it to lower its costs to municipalities and the taxpayers. This information is MPAC's main asset and constitutes its entire business.

MPAC makes its online service, Municipal Connect, available by subscription for tax-collecting bodies, particularly municipalities. MPAC submits that allowing access under the *Act* to Municipal Connect to "non-taxing authorities" would prejudice its economic interests and competitive position:

> MPAC's products constitute proprietary technical and commercial information developed at great effort by and expense to MPAC. Disclosing this service, which is licensed exclusively to customers, would allow others to generate their own reports on the system. Free disclosure of MPAC's reports would allow MPAC's achievements in the field to be replicated, but at a much lower cost.

For similar reasons, MPAC submits that it is reasonable to expect that disclosure of its databases could reasonably be expected to be injurious to its financial interests (section 11(d)):

> … MPAC's continued financial viability depends on its exclusive access to the whole of the OASYS database. MPAC will continue to derive much of its exclusive revenue stream from the uses to which it puts the data, including providing it under license to municipalities and selling products to property owners and others based on data stored in OASYS. MPAC has devoted considerable time and effort in developing both OASYS and the Municipal Connect™ service, and the cost of this work would be lost if either or both had to be disclosed to the public at large.

The appellant submits that there is no reasonable expectation of harm to MPAC's financial or economic interests or its competitive position by providing councillors with access to the OASYS database or Municipal Connect for the purpose of facilitating their ability to effectively communicate with constituents:

> MPAC will not lose its ability to generate revenue since [c]ouncillors are under an obligation to refrain from using their position, and confidential information they receive by virtue of their office, for personal gain.

Analysis and Findings

MPAC's statutory authority to sell assessment-related information to the public is found in section 12(5) of the *MPAC Act* and section 53(5) of the *Assessment Act*.

Section 12(5) of the *MPAC Act* states:

> (5) The Corporation may levy a charge to be paid by other persons for whom it performs duties under this or any other Act.

Section 53(5) of the *Assessment Act* states:

> (5) 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.

Moreover, section 8(3) of the *MPAC Act* requires MPAC to apply any surplus in its income to reduce the charges that it levies against municipalities for providing assessment-related services.

In Order MO-1564, this office found that MPAC's business activities fall within the rationale for the "valuable government information" exemption articulated by the Williams Commission. In that order, then Assistant Commissioner Tom Mitchinson stated:

> In my view, the activities undertaken by MPAC within the scope of its mandate are the type of activities described by the Williams Commission. MPAC has been given the statutory authority to earn surplus income for the purpose of reducing the charges levied to municipalities for assessment services. To do so, in my view, it is reasonable to expect that MPAC would try its best to become a dynamic and entrepreneurial organization, applying its expertise in ways that would enhance its reputation and, in turn, increase its revenue through the sale of its products.

As noted previously, MPAC's statutory authority to sell assessment-related information to the public was further recognized by the Divisional Court in *MPAC v. IPC*.

I have carefully considered the representations of both MPAC and the appellant. In my view, MPAC has provided detailed and convincing evidence that disclosure of the records at issue could reasonably be expected to prejudice its economic interests or competitive position (section 11(c)), or be injurious to its financial interests (section 11(d)).

If MPAC is required to disclose information from the OASYS database or through Municipal Connect to the appellant under the *Act*, it would be deprived of the significant amount of fees that a request of this size would generate. Moreover, it would be required to release the same information to anyone else who asked, which could reasonably be expected to jeopardize MPAC's ability to earn money in the marketplace. The OASYS database allows MPAC to generate reports and products that it routinely sells to mortgage brokers, financial institutions, and planners, which generates millions of dollars in revenues. I find that if OASYS data must be disclosed in bulk for free in response to access requests under the *Act*, MPAC will be deprived of this revenue stream, which could reasonably be expected to prejudice its economic interests and be injurious to its financial interests.

I do not accept the appellant's submission that MPAC will not lose its ability to generate revenue because councillors are under an obligation to refrain from using their position, and confidential information they receive by virtue of their office, for personal gain. The practical reality is that disclosure of information in bulk from the OASYS database to councillors would constitute disclosure to the world. Consequently, even though the appellant may be prohibited from using

information from the OASYS database to, for example, set up a rival business by selling or distributing the information to other parties at a reduced rate, there would be nothing to stop other requesters from doing exactly that after they have obtained the same information in electronic format from MPAC. Consequently, disclosure could reasonably be expected to prejudice MPAC's competitive position as well.

The same principle would apply to providing the appellant with access to Municipal Connect, which is currently available by subscription only to bodies with taxing authority, particularly municipalities. If MPAC is required to disclose information from Municipal Connect to the appellant under the *Act*, it would be required to release the same information to anyone else who asked. Although Toronto city councillors may be prohibited from using information from Municipal Connect for personal gain, there would be nothing to stop other requesters from setting up a rival business if they are able to obtain access to this information from Municipal Connect. I accept MPAC's submission that disclosing this service, which is currently licensed exclusively to subscribers, would allow others to generate their own reports on the system. Free disclosure of these reports would allow MPAC's investment in Municipal Connect to be replicated, but at a much lower cost.

In short, I find that any information in the OASYS database or accessible through Municipal Connect that MPAC makes available for sale is exempt under sections 11(c) and (d) of the *Act*. This includes information relating to commercial, industrial and multi-residential properties, and to property owners such as corporations, sole proprietorships, partnerships and unincorporated associations.

EXERCISE OF DISCRETION

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

In addition, the Commissioner may 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
- it fails to take into account relevant considerations

In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations [Order MO-1573]. This office may not, however, substitute its own discretion for that of the institution [section 43(2) of the *Act*].

There is no evidence that MPAC exercised its discretion in bad faith or for an improper purpose, or took into account irrelevant factors in exercising its discretion. However, the appellant submits that it is not clear that MPAC considered all of the relevant factors in determining

whether to rely on a discretionary exemption. In particular, he submits that it is questionable whether MPAC considered the role of Council and members of Council and the role they must fulfill in representing their constituents.

In my view, MPAC took relevant factors into account in exercising its discretion, including the purpose of the *Act*, the wording of the exemptions, and the interests the exemptions seek to protect. Moreover, in various parts of its representations, MPAC considers, both explicitly and implicitly, the purposes for which Toronto city councillors claim they require access to the records at issue, including contacting, assisting and representing constituents.

In short, I find that MPAC did not err in exercising its discretion to apply sections 11(c) and (d) of the *Act* in the circumstances of this appeal. It exercised its discretion based on proper considerations. It did not exercise its discretion in bad faith or for an improper purpose and did not take into account irrelevant factors.

PUBLIC INTEREST OVERRIDE

The appellant submits that, unlike in the case of *MPAC v. IPC*, there are compelling public interest issues at stake in disclosing the requested records in this appeal that clearly outweigh the purposes underlying the exemptions raised by MPAC.

General principles

Section 16 states:

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

For section 16 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure of the records. Second, this interest must clearly outweigh the purpose of the sections 14(1) and 11(c) and (d) exemptions.

Compelling public interest

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

The word "compelling" has been defined in previous orders as "rousing strong interest or attention" [Order P-984].

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

A compelling public interest has been found to exist where, for example:

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

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

- public safety issues relating to the operation of nuclear facilities have been raised [Order P-1190, upheld on judicial review in *Ontario Hydro v. Ontario (Information and Privacy Commissioner)*, [1996] O.J. No. 4636 (Div. Ct.), leave to appeal refused [1997] O.J. No. 694 (C.A.), Order PO-1805]

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

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

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

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

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

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

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

Purpose of the exemption

The existence of a compelling public interest is not sufficient to trigger disclosure under section 16. This interest must also clearly outweigh the purpose of the established exemption claim in the specific circumstances.

Summary of the representations of MPAC and the appellant

In his request, the appellant stated that he was requesting access to the names, addresses and property data of constituents for a number of purposes, including:

- Contacting homeowners directly
- Encouraging homeowners to improve their properties
- Assisting constituents with property appeals
- Conducting 1st class mailings to the homeowners
- Printing mailing labels
- Conducting direct mailings on matters of municipal concern
- Inviting citizens to meetings pertaining to their properties
- Soliciting opinions of constituents on neighbourhood matters

MPAC submits that disclosure of the requested records would not shed light on any government activity or inform the citizenry about the activities of their government, MPAC, or any matter that is subject to public debate. It further submits that the reasons cited by the appellant for requiring personal information from the OASYS database or through Municipal Connect do not constitute a "compelling public interest":

> City Council's stated purposes for accessing personal information in electronic form appear to be clerical in nature, as indicated by its mention of mailing labels, first class mailing, direct mailings, and sending invitations. City Council would like easy access to information, but it proposes to do so at the cost of invading the privacy of millions of property owners whose information is stored on the OASYS database. Those property owners would not expect their personal information to be used in the manner proposed …

MPAC acknowledges that reaching constituents may very well be an important part of City Council's work. However, it suggests that councillors can conduct mailing through Canada Post's "Unaddressed Admail" program, which allows unaddressed mail to be delivered to defined areas. In addition, it submits that municipal councillors are arguably no different from any other group that should obtain permission before using an individual's personal information to send unsolicited mail.

MPAC further submits that in any consideration of section 16, it is critical to remember that an order requiring disclosure to city councillors would be tantamount to disclosure to the world at large:

> Surely, it cannot be in the public interest to make this database – replete with the personal information of almost 4.7 million Ontarians – available in electronic form for any member of the public. The uses to which this personal information could be put are limitless. Individuals who provide their personal and property information for statutory assessment, tax and enumerations purposes have not consented to, and undoubtedly would not support, this information being made available to any member of the public *en masse* in searchable electronic form.

The appellant submits that the compelling public interest is in ensuring that councillors have the necessary tools to effectively advocate, assist and represent their constituents. In particular, councillors need access to electronic assessment information to effectively communicate with their constituents and effectively respond to residents' concerns.

With respect to the need to effectively communicate with constituents, the appellant submits that the City of Toronto is home to many new immigrants, refugees and persons of various backgrounds, many of whom are not familiar with the functions of municipal government and may therefore be unaware that councillors advocate on behalf of their constituents on any number of matters:

> As part of a Councillor's role in representing his or her constituents, a Councillor must be able to reach out to residents in their area, make them aware of issues that may affect their community and residents' private interests. Those residents who are unaware of the municipal government structures and how they may have their concerns heard and addressed through their local municipal representative, would certainly benefit from a Councillor's communications.

The appellant further submits that residents often expect their councillors to have access to assessment information to assist them with various concerns, including assessment appeals. However, in order to find the property information required to assist residents with their assessment appeals, councillors must "… spend considerable time searching through the hard copy of the assessment roll or undertake a time-consuming process of attending the lobby of a civic centre to search through the Toronto Property System on a property-by-property basis."

With respect to MPAC's suggestion that municipal councillors use Canada Post's "Unaddressed Admail" service to reach constituents, the appellant submits that councillors use the personal information in the assessment databank to identity landowners and tenants directly. Without knowing the mailing address of an absentee landlord, the service offered by Canada Post would not ensure that councillors are able to contact the landlord and resolve the issue.

Moreover, the appellant points out that the role of an elected official is to advocate on behalf of residents, and councillors must often mediate between parties rather than using coercive measures. The appellant takes the position that obtaining access to the records at issue would facilitate a Councillor's ability to perform this important public function.

The appellant submits, therefore, that there is a compelling public interest that clearly outweighs the exemptions claimed by MPAC. In his view, the right to be represented by councillors is a fundamental tenet of democracy, and "constituents have a reasonable expectation that councillors would readily have access to assessment information to properly perform this representative function."

Analysis and Findings

In *Gombu*, the Divisional Court concluded that the public interest override applied to the electronic campaign contribution database:

> I accept the position of the applicant that the only way that he can meaningfully scrutinize the information about campaign contributions is through the electronic database. Public scrutiny of the democratic election process and the integrity of the process governing political campaign contributions is a matter of significant public importance. In my view, in light of the fact that all but the telephone numbers of the contributors is already required to be disclosed, the public interest in disclosure of the database to enable meaningful scrutiny of the democratic process clearly outweighs other considerations.

By contrast, in *MPAC v. IPC*, the Divisional Court did not explicitly consider the application of the section 16 public interest override but found that there were no "compelling public policy considerations" that overrode the privacy interests at stake:

> … the information being sought by the respondent SRG, a collection agency, would be used by it for purely commercial purposes. The information contained in the electronic database was obtained by statutory compulsion and the individuals providing it were told that the information was "protected" under *MFIPPA*. Clearly, members of the public who were required to provide the personal information in question would reasonably expect their legitimate privacy interests to be protected. The information at stake here was gathered for four main purposes: to allow for the creation of assessment rolls for municipalities (*Assessment Act*, s. 14); to identify those entitled to vote in municipal elections (*Assessment Act*, s. 15); to create an annual school support list (*Assessment Act*, s. 16); and to generate a list of eligible potential jurors (*MPAC Act*, s. 9(2)).

The appellant in this appeal is seeking the records at issue for a different purpose than the collection agency in *MPAC v. IPC*. In the latter case, the collection agency intended to use the information from the assessment roll purely for commercial purposes. In contrast, the appeal before me was filed on behalf of municipal councillors who submit that they need the assessment information from the OASYS database or accessible through Municipal Connect for the purposes of more effectively communicating with their constituents and responding to residents' concerns.

However, to disclose the records at issue, I must be persuaded that there is a *compelling* public interest in the disclosure of the records that clearly outweighs the purpose of the sections 14(1) and 11(c) and (d) exemptions. In my view, this threshold has not been met for the following reasons.

First, the information at issue in this appeal would be disclosed to municipal councillors, not to citizens. Consequently, disclosure of this information would not shed light on the operations of government or, as in *Gombu*, enable public scrutiny of the democratic process. In the

circumstances of this appeal, this factor weighs against finding that there is a compelling public interest in disclosure of these records.

Second, municipal councillors are not facing a situation where they have no means of communicating with their constituents or responding to residents' concerns. There are a number of tools that councillors use to communicate with constituents. For example, councillors can use Canada Post's "Unaddressed Admail" program, which allows unaddressed mail to be delivered to defined areas. Although the appellant submits that this general mailing service would not ensure that councillors are able to contact absentee landlords for the purpose of resolving landlord-tenant disputes, there are undoubtedly other methods of tracing absentee landlords that do not require disclosing an electronic database containing the personal information attached to many of the 623,389 Toronto properties.

In addition, councillors can assist constituents with assessment appeals by consulting the paper version of the assessment rolls that is made available for public inspection by the city clerk or by accessing the Toronto Property System, an electronic database available for public inspection at various municipal offices. Although taking a walk to another floor or city office to obtain assessment information may not be convenient for the staff of municipal councillors, this inconvenience must be weighed against the privacy implications of disclosing an electronic database containing the personal information attached to many of the 623,389 Toronto properties to all municipal councillors.

One thrust of the appellant's submissions is that obtaining access to assessment information from the OASYS database or accessible through Municipal Connect would make the work of councillors more efficient, given the limited resources and the heavy demands placed on elected officials. I accept that councillors may have an interest in making their offices more efficient and some of the purposes identified by the appellant for seeking access to the names, addresses and property information of constituents (e.g., inviting citizens to meetings pertaining to their properties, soliciting opinions of constituents on neighbourhood matters) have a laudable motivation. However, I am not persuaded that municipal councillors are so lacking in the means to contact and assist their constituents that this creates a compelling public interest in the disclosure of an electronic database containing the personal information attached to many of the 623,389 Toronto properties.

Third, as regards the personal information in the records, members of the public who were statutorily compelled to disclose their personal information to MPAC would reasonably expect that their privacy interests would be protected, and that their personal information would not routinely be used or disclosed for purposes other than those for which it was collected. If the Ontario legislature had intended that assessment information be gathered for the purposes of assisting elected officials with contacting and assisting constituents, it would have stated so in the *Assessment Act* or another statute.

In short, I find that there is no compelling public interest in disclosure of the information at issue in this appeal. Moreover, even if a compelling public interest did exist, it would not outweigh the purpose of the sections 14(1) and 11(c) and (d) exemptions, for the following reasons.

The purpose of the section 14(1) exemption is to protect the personal information of individuals held by government. However, the appellant is asking me to assume that Toronto residents, including new immigrants, refugees and persons of various backgrounds, would be willing to sacrifice their privacy rights in exchange for receiving information and better service from their municipal councillors. The appellant has not provided evidence on this point beyond the barest of assertions, and under the circumstances, I do not find this argument persuasive.

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

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

ORDER:

I uphold MPAC's decision to deny access to the records and dismiss the appeal.

Original signed by: March 10, 2006
Brian Beamish
Assistant Commissioner