

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-2765

Appeal MA12-13

Municipal Property Assessment Corporation

July 13, 2012

Summary: The appellants sought access to records relating to their property. MPAC granted access to many of the responsive records, and indicated that no responsive records exist for other categories of records. The appellants appealed, maintaining that additional records, particularly older ones, existed. The issue in this appeal is whether the searches conducted by MPAC for responsive records were reasonable. In this order, MPAC's search for records is found to be reasonable.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, section 17.

OVERVIEW:

[1] The Municipal Property Assessment Corporation (MPAC) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for 24 specific records or categories of records relating to a property owned by the appellants.

[2] In response to the request, MPAC issued a decision addressing each of the 24 items requested. MPAC provided access to records responding to a number of the categories, advised that no records exist for others, and referred the appellants to other sources for records responding to the balance of the request. MPAC also severed some records on the basis of certain identified exemptions in the *Act*, and identified the fee payable for the records to which access was granted.

[3] The appellants appealed MPAC's decision on the basis that additional responsive records ought to exist. Specifically, the appellants took the position that MPAC had limited the timeline of the request, and that older records relating to the property ought to exist. The appellants advised that they wanted records dating back to 1962.

[4] During mediation, the Freedom of Information Coordinator for MPAC provided an explanation of MPAC's record-keeping procedure. He indicated that, although MPAC does not keep copies of the assessment notices *per se*, it does have the data elements used in the assessment notices, and that these would be re-created and provided to the appellants. MPAC's explanations were shared with the appellants; however, the appellants advised that they believe that additional records exist.

[5] Also during mediation, the appellants confirmed that issues regarding the application of the exemptions claimed for certain records are not at issue in this appeal, and that the sole issue is whether MPAC conducted a reasonable search for responsive records.

[6] Mediation did not resolve this appeal, and it was transferred to the inquiry stage of the process.

[7] After this file was transferred to the inquiry stage of the process, but prior to this office sending out a Notice of Inquiry, MPAC sent the appellants a 4-page letter. In that letter, MPAC reviewed the appellants' request and the process it had used to respond to the request, summarized the information that was provided to the appellants, reviewed the searches conducted for responsive records, and provided the appellants with explanations regarding why certain records were not located.

[8] After receiving this letter, the appellants confirmed that they wished to continue their appeal of whether MPAC conducted a reasonable search for responsive records. I decided to send a Notice of Inquiry, identifying the facts and issues in this appeal, to the appellants, initially.

[9] The appellants provided representations in response to the Notice of Inquiry. After reviewing those representations, I decided to seek MPAC's representations in response to one of the issues identified by the appellants, and sent MPAC a Notice of Inquiry. MPAC provided representations in response.

Preliminary issue – Appropriateness of MPAC's 4-page letter

[10] In their representations, the appellants take the position that MPAC ought not to have provided them with the 4-page letter when it did, and argue that I should not consider the letter in the course of this appeal. In support of their position, the appellants indicate their dissatisfaction with the manner in which MPAC dealt with them, both when the appellants first contacted MPAC regarding the assessment of their

property, and in the course of this appeal. The appellants also provide a detailed account of their various contacts with MPAC representatives, and question why certain information, including some of the explanations contained in the 4-page letter, was not provided to them earlier in the process. They also state that, by providing the 4-page letter, MPAC is "interfering with the adjudication process." The appellants argue that, therefore, MPAC's letter ought not to be considered.

[11] I do not accept the appellants' position. In this appeal, the sole issue remaining at the end of the mediation process was whether MPAC's searches for responsive records were reasonable. In providing the appellants with the 4-page letter, MPAC provided significant additional information to the appellants concerning the nature of the searches that were conducted and the results of those searches. MPAC also indicated in that letter that they were providing additional information to the appellants as a result of the information which it obtained during mediation about the appellants' specific concerns and questions. A copy of the 4-page letter was provided to me at the same time that it was sent to the appellants and, after confirming with the appellants that they wished to continue with their appeal, I decided to invite the appellants to address the reasonable search issue in light of the detailed information provided by MPAC. By providing the additional detailed information about the searches conducted, this appeal was able to proceed more quickly and efficiently, and the appellants were provided with additional detailed information which may otherwise have only been provided later in the inquiry process.

[12] On my review of the 4-page letter and the circumstances of this appeal, I do not accept the appellant's position that the 4-page letter ought not to be considered by me in my inquiry.

DISCUSSION:

Did the institution conduct a reasonable search for records?

Introduction

[13] In appeals involving a claim that additional responsive records exist, as is the case in this appeal, the issue to be decided is whether MPAC has conducted a reasonable search for the records as required by section 17 of the *Act*. If I am satisfied that the search carried out was reasonable in the circumstances, the MPAC's decision will be upheld. If I am not satisfied, further searches may be ordered.

[14] A number of previous orders have identified the requirements in reasonable search appeals (see Orders M-282, P-458, P-535, M-909, PO-1744 and PO-1920). In Order PO-1744, Acting-Adjudicator Mumtaz Jiwan made the following statement with respect to the requirements of reasonable search appeals:

... the *Act* does not require the Ministry to prove with absolute certainty that records do not exist. The Ministry must, however, provide me with sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records. A reasonable search is one in which an experienced employee expends a reasonable effort to locate records which are reasonably related to the request (Order M-909).

[15] I agree with Acting-Adjudicator Jiwan's statement.

[16] Where a requester provides sufficient detail about the records that he/she is seeking and the institution indicates that records or further records do not exist, it is my responsibility to ensure that the institution has made a reasonable search to identify any records that are responsive to the request. The *Act* does not require the institution to prove with absolute certainty that records or further records do not exist. However, in my view, in order to properly discharge its obligations under the *Act*, the institution must provide me with sufficient evidence to show that it has made a reasonable effort to identify and locate records responsive to the request.

[17] Although an appellant will rarely be in a position to indicate precisely which records have not been identified in an institution's response, the appellant must, nevertheless, provide a reasonable basis for concluding that such records exist.

Background and representations

[18] As identified above, the appellants take the position that additional responsive records exist, specifically, records that are older than the ones provided, and that may date back as far as 1962.

[19] In the 4-page letter sent by MPAC to the appellants, MPAC's Freedom of Information Coordinator [the Coordinator] reviews the appellant's request and indicates his understanding of the appellant's position about the possibility that additional records exist. The letter identifies the Coordinator's understanding of the concerns raised by the appellant as follows:

As I understand it, you were specifically looking for records that related to and/or provided information on when and how [an identified] frontage error occurred in respect to your property. You had also expressed concerns regarding the completeness of the search since none of the records that were retrieved and disclosed to you addressed this frontage error. And lastly, you had expressed concerns in regard to the absence of copies of historical assessment notices in the records release package.

[20] The letter then provides the following information relating to the identified concerns:

Property assessment used to be administered by the Property Assessment Division of the Ontario Ministry of Finance up to 1999 at which point the function was divested to the Ontario Property Assessment Corporation (OPAC). Upon divestment, those records that were relevant to the ongoing property valuation function were transferred from the Ministry of Finance to OPAC. Many historical records remained with the Ministry of Finance and were not included as part of the transfer. Approximately a year later, in 2000, OPAC was, for simplicity of explanation, renamed to the Municipal Property Assessment Corporation (MPAC).

[During the mediation process] ..., I asked program staff to perform a second search for responsive records. Their search did not reveal any records beyond those that were originally identified and retrieved as part of the original request and ensuing disclosure to you Additionally, none of the records revealed any details of when, why or how the frontage error occurred in respect to your property.

I then spoke with the Property Assessor whose geographical territory includes your property. I ask[ed] that he review all of the records and files in relation to the property and to use his best professional judgment to make a reasonable assumption of why the frontage error occurred and what may have caused it. Following a review, he was able to ascertain that the error likely occurred pre-1999 divestment since none of the records that MPAC has on file provides an explanation. The assessor also stated that in his opinion, and based on files that MPAC has available, the frontage error likely occurred on or about 1997 when the property was severed. ...

Since a search for responsive records within the custody or control of MPAC did not result in any responsive 1997 record, it is possible that these historical records were not included with the transfer from the Ministry of Finance as part of the 1999 divestment. This would explain why MPAC has been unable to locate any records detailing why the frontage error occurred and what may have caused it. Although we cannot speak for what records the Ministry of Finance still has available, given the length of time that has elapsed and the application of relevant records retention/destruction scheduled, however you may wish to approach the Ministry of Finance on this subject and/or file an access to information request with them.

[21] The letter then provides the appellant with the contact information for the Freedom of Information Coordinator at the Ministry of Finance, and provides additional information on pre-1999 records as follows:

Lastly, in regard to historical Assessment Notices (pre-1999), MPAC does not by practice maintain copies of the physical notices that are mailed to the over four million property owners in Ontario. Rather, Assessment Notices are produced from data contained in our computer systems. During the mailing process, the data is used to generate the notices and they are then mailed out. A copy is not typically kept in MPAC files. ...

[During the mediation process], I asked MPAC staff to look into the cost and time that it would take to extract the data elements that would "normally" appear on an assessment notice so that we could provide this to you in the absence of actual copies of the notices. The extract has subsequently been produced.

I am pleased to provide you with the data extract that contain the data elements that would normally be used to produce an assessment notice. The attached extract contains all of the years for which MPAC has Assessment Notice data. This is from 1999 (the year of divestment) to 2012 (the current year). MPAC does not have any pre-1999 data, although you may inquire with the Ministry of Finance if such data or records still exist. ...

[22] The appellants were invited to address the issue of whether MPAC's search for responsive records was reasonable, in light of the information provided by MPAC.

[23] The appellants provided extensive representations in response. In these representations, the appellants provide a very detailed chronology of their interaction with MPAC, and their interest in accessing information about their property. In particular they identify specific meetings and contacts they have had with MPAC assessors and others since February, 2011, and which eventually resulted in their formal access request that gave rise to this appeal.

[24] The appellants also question MPAC's actions in processing this file, and identify concerns they have regarding how and when they were provided with certain information. A number of their concerns relate to when they were provided with explanations about their property assessment questions. The appellants also ask why certain information, including information about records pre-dating 1999, was not provided to them earlier. In addition, the appellants refer to general concerns that have been identified relating to access to information held by MPAC, and state that they are concerned that the search was not reasonably conducted.

[25] With respect to the specific information provided in MPAC's 4-page letter, the appellants also state:

[In the letter, the Coordinator] explains that he spoke with the Property Assessor whose geographical territory includes our property. With all due respect, the assessor is not a male but a female: [a named female property assessor]. It seems to us, that [the Coordinator] has confused our case with somebody else's.

[26] After reviewing the appellant's representations, I decided that it was not necessary for me to invite MPAC to address all of the representations of the appellants. I did decide, however, to invite MPAC to address the concerns identified by the appellants regarding the identity of the assessor who was consulted in the course of this search. I referred MPAC to the appellants' statement that the assessor dealing with their property was a female, and in the Notice of Inquiry I sent to MPAC, I stated:

Based on the [the information provided by the appellants], MPAC is asked to respond to the appellants' concern that MPAC has confused the appellants' case with that of somebody else.

If MPAC has not confused the cases, MPAC is asked to indicate who the property assessor identified in [the 4-page letter] is. MPAC is also asked to indicate why this (male) individual, and not [the identified female assessor], is identified as the "Property Assessor whose geographical territory includes [the appellants'] property," and why he was asked to provide information about responsive records.

[27] MPAC provided lengthy and detailed representations in response to the Notice of Inquiry I sent to it. Many of these representations provide even greater detail about the nature of the searches for records conducted by MPAC. MPAC also specifically addresses the questions raised regarding the identity of the assessor. MPAC states:

The [named field office] is the local MPAC office that is directly responsible for the geographical area where the Appellants' property is located. Local MPAC field offices are where the assessment subject matter experts work from and where the bulk of all property related assessment work is performed. These subject matter experts include property assessors and responsible management. Further, local MPAC field offices also maintain the majority of the relevant current and historical property records. In many instances, the only other property records that would exist outside of a field office would be property data maintained in MPAC's database systems, which local field offices have direct connectivity with and access to.

When a property owner seeks access to their property file, it is the local field office that performs the search and retrieval and is able to provide most, if not necessarily the entire file, both in the form of physical records

as well as information and screen capture extracts from MPAC's database systems. Additionally, local MPAC field offices are uniquely responsible for providing property owners access to their property files and records in accordance with MPAC's *Guidelines for the Release of Assessment Data* (GRAD).

On the matter of the Appellants' access request, the [named field office] was identified as maintaining the bulk of the records pertaining to the Appellants' property. On November 4, 2011, FOI Office staff provided a copy of the Appellant's 24 part request to [a named male individual] Director, Valuation and CR Residential and Farm Properties ... and asked that a search be undertaken to locate and retrieve those records that were responsive to the access request.

A search was initiated involving a total of four property assessment staff who had expert knowledge of the subject matter and who had previously worked on the Appellants' property file. [A named male acting property valuation analyst] commenced the search on November 7 and 8, 2011, with guidance from [the named female property assessor] and [a named male property valuation analyst].

[The named female property assessor] is flagged as the "assessor of record" for Requests For Reconsideration (RFR) and Assessment Review Board (ARB) hearing matters. [The named male property analyst] is one of the more senior and knowledgeable staff member in [the named field office] and is the natural "go to person" who was assisting [the male acting property valuation analyst] in the search for records. [The named female property assessor] subsequently checked and performed a further search for records after [the male acting property valuation analyst] had completed his search.

[28] MPAC then reviews in considerable detail the specific areas in the local field office that were searched, and the results of those searches. It also indicates that on February 8, 2012, during the mediation stage of the appeal, the named Manager of Valuation & Customer Relations conducted a second search of the various property files and MPAC's database systems, and that no additional records were located. MPAC then states:

This second search, in part, formed the basis for MPAC's [4-page letter] to the Appellant[s]; and which references the "...Property Assessor whose geographical territory includes your property" as a "he", which MPAC understands is the source for Issue A in the Notice of Inquiry.

[The four named field office employees, including three male employees and the named female assessor] coordinated the search for records within the [named field office]. They are all experienced employees knowledgeable of the subject matter of the request, three of whom have been with MPAC since its creation following the 1999 divestment of property valuation from the Ontario Government, and in the property valuation field with the Ministry of Finance prior to Divestment. ...

[29] MPAC then states that there are several different persons that may have reviewed data or completed an analysis on a property, and states:

The property assessor whose geographical territory includes the Appellant's property that MPAC's FOI Coordinator referenced in his [4-page letter] is the lead assessor to whom the other assessors report to. He is also the most familiar with the property.

[30] MPAC also provides a description of the four individuals in the field office, including their seniority and years of experience. MPAC then states:

As previously noted, all four property assessors were involved in the original search for records in response to the Appellants' access to information request. ...

MPAC submits that it has not confused the appellants' case with that of somebody else and that it never indicated in any correspondence that the search had been restricted to, nor performed by a single male property assessor.

[The named female assessor] is the property "assessor of record" for the Appellant's Property. Properties whose owners have filed Requests for Review (RFR) or who have matters before the Assessment Review Board (ARB) are assigned an "assessor of record."

The identification of [the named female assessor] as the "assessor of record" is an administrative label that is used for internal work allocation and client contact/customer service purposes. For example, on the administrative side, the ARB requires that MPAC provide a single assessor's name in respect to each property matter that goes before it. Even though multiple assessors may have worked on a particular property, only one assessors' name is placed on the file. Similarly, on the customer service side, if a property owner has filed an RFR, the assignment of an assessor of record allows for a single point of contact — otherwise, a property owner may be placed in a situation where they may be passed amongst various assessors who have worked on their property

file each time they contact MPAC. When a property owner contacts MPAC's Customer Service Center or their local field office, property owners are directed to the "assessor of record". It is for this reason that the Appellants have had previous contact with [the named female assessor].

Although an "assessor of record" is familiar with the property, it does not necessarily mean that this assessor is the only person who has knowledge of the property, who has worked on the property file, nor that they have expert or historical knowledge of a property. In the case of the Appellants' property, [the male Manager of Valuation and Customer Relations] was the most knowledgeable assessor and the person to whom all of the other three assessors who had worked on the Appellants' property reported to, discussed property matters with and provided regular status briefings. [The named male Manager of Valuation and Customer Relations] also oversaw/managed the search of records amongst the other three assessors when the search for records was performed in respect to the Appellants' request.

MPAC re-submits that it has not confused the appellants' case with that of somebody else and that it acted correctly to have [the named male Manager of Valuation and Customer Relations] manage the search activities amongst all four property assessors who had worked on the Appellant's property file at [the named field office]. [He] was the most knowledgeable Property Assessor of the four in respect to the Appellants' property.

Findings

[31] As set out above, in appeals involving a claim that responsive records exist, the issue to be decided is whether MPAC has conducted a reasonable search for the records as required by section 17 of the *Act*. In this appeal, if I am satisfied that MPAC's search for responsive records was reasonable in the circumstances, MPAC's decision will be upheld. If I am not satisfied, I may order that further searches be conducted.

[32] A reasonable search is one in which an experienced employee expending reasonable effort conducts a search to identify any records that are reasonably related to the request [Order M-909]. In addition, in Order M-909, Adjudicator Laurel Cropley made the following finding with respect to the obligation of an institution to conduct a reasonable search for records. She found that:

In my view, an institution has met its obligations under the *Act* by providing experienced employees who expend a reasonable effort to conduct the search, in areas where the responsive records are likely to be located. In the final analysis, the identification of responsive records must

rely on the experience and judgment of the individual conducting the search.

[33] I adopt the approach taken in the above orders for the purposes of the present appeal.

[34] In this appeal, MPAC located records responsive to many of the categories of requested records. With respect to the records relating to assessments conducted before property assessment was divested to OPAC (and, subsequently, MPAC), MPAC has indicated that any responsive records which might exist would be held by the Ministry of Finance. Although the appellants are concerned that this information was provided to them later in the process, the appellants have not provided sufficient information to satisfy me that MPAC's searches for earlier records were not reasonable.

[35] With respect to the appellant's questions regarding the identity of the property assessor who was contacted by the Coordinator, I am satisfied that MPAC has provided a very detailed and satisfactory explanation regarding why the male property assessment employee was contacted, and also how the female property assessor was involved. Although the appellants raised relevant questions regarding this individual's identity, I am satisfied that MPAC has satisfactorily answered these questions.

[36] As a result, based on the information provided by MPAC regarding the searches conducted and the explanations provided, and because the appellant has not provided me with sufficient evidence to support a finding that additional searches ought to be conducted, I am satisfied that MPAC's search for records responsive to the request was reasonable.

ORDER:

I uphold the decision of MPAC, and dismiss this appeal.

Original signed by: _____
Frank DeVries
Adjudicator

July 13, 2012 _____