

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4626

Appeals MA21-00538 and MA21-00553

Municipal Property Assessment Corporation

February 11, 2025

Summary: MPAC denied access to two transferred requests for GIS Shapefiles. MPAC claimed that the requested records are available under a licensing framework for a fee and are therefore publicly available (section 15).

MPAC later issued revised decisions, adding sections 9 (relations with other governments), 10(1) (third party information), and 11 (economic interests) to deny access.

The adjudicator finds that the records are exempt under sections 11(c) and (d). She finds that disclosure under the *Act* outside the existing licensing framework could reasonably be expected to cause harm to MPAC's economic and financial interests. The adjudicator finds that the public interest override in section 16 does not apply to the records. She dismisses both appeals.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, sections 11(c), 11(d), and 16.

Orders Considered: Orders MO-1693, MO-2030, MO-2248, and MO-2377-F.

Cases Considered: *MPAC Corporation v Ontario (Assistant Information and Privacy Commissioner)*, 71 O.R. (3d) 303; [2004] O.J. No. 2118.

OVERVIEW:

[1] The County of Simcoe (the county) and the Township of Oro-Medonte (the

township)¹ each received the same request for access to Geographic Information System (GIS) Shapefiles for zoning, water, sewer, and assessment parcels. The requests were made by a developer, a company that is the appellant in both appeals. Both the county and the township transferred part of each request (relating to assessment parcel shapefiles) to the Municipal Property Assessment Corporation (MPAC). The following is the portion of each request that was transferred to MPAC:

...the most recent versions (as used by [county or township] staff) of the complete GIS layer Shapefiles packages listed below, in a digital format that can be loaded and read by ArcGIS or equivalent program.

...

(4) Assessment parcels.

[2] MPAC issued decisions in each request denying access to the assessment parcel shapefiles in full. MPAC claimed that they are exempt under section 15 of the *Act* because they are publicly available under a licensing framework for a fee.

[3] The appellant appealed MPAC's decisions to the Information and Privacy Commissioner of Ontario (IPC). The parties attempted mediation.

[4] During mediation, MPAC issued revised decisions denying access in full to responsive records. In its revised decisions, MPAC maintained that the records are exempt under section 15 (publicly available), but also claimed that the records qualify for exemption under sections 9(1)(b) and (d) (relations with other governments), 10(1) (third party information), and 11(c) and (d) (economic interests). These exemptions were added as issues to each appeal.

[5] The appellant, meanwhile, took the position that there is a compelling public interest in disclosure of the records that outweighs the purpose of the exemptions in sections 9, 10, and 11. Accordingly, the public interest override in section 16 was also added as an issue to each appeal.

[6] The appeals were not resolved in mediation and were transferred to the adjudication stage of the appeal process. I conducted a written inquiry in each, and received representations from MPAC, the appellant, and Teranet and the Ministry of Natural Resources and Forestry (MNR) as parties whose interests might be affected by disclosure of the records at issue (affected parties).

[7] In this order, I find that the requested records qualify for exemption under sections

¹ See footnote 2, below. In its representations, the appellant refers to "Durham" instead of the Township of Oro-Medonte. The appellant's requests, which are the subject of the decisions in this appeal, identify the Township of Oro-Medonte and the County of Simcoe as the institutions to which the requests were made. There is no request before me for information from Durham Region in either appeal.

11(c) and (d) of the *Act*. I also find that the public interest override in section 16 does not apply to the records, and I dismiss both appeals.

RECORDS:

[8] The records are Geographic Information System (GIS) Shapefiles for every parcel of land in the County of Simcoe and the Township of Oro-Medonte.²

ISSUES:

- A. Does the discretionary exemption for economic interests in sections 11(c) and/or (d) apply to the records?
- B. Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 11(c) or (d) exemptions?

DISCUSSION:

Issue A: Does the discretionary exemptions for economic interests in section 11(c) and/or (d) apply to the records?

[9] For the following reasons, I find that the requested records are exempt under sections 11(c) and (d) of the *Act*. Since I have found that they records are exempt under sections 11(c) and (d), I do not need to consider whether they are also exempt under the remaining exemptions claimed by MPAC.

[10] Section 11 is intended to protect certain economic and other interests of institutions. Section 11 also recognizes that an institution's own commercially valuable information should be protected to the same extent as that of non-governmental organizations.³

[11] MPAC claims that all of the responsive records qualify for exemption under sections 11(c) and (d). These state that:

A head may refuse to disclose information that contains,

² In its representations, the appellant refers to GIS Shapefiles for The County of Simcoe and Durham Region. The appellant's requests were submitted to Simcoe and the Township of Oro-Medonte. The appellant's appeals to the IPC also identify Simcoe and Oro-Medonte as the institutions to which the requests were initially submitted. There is no request to, or decision affecting, Durham before me. This order deals with the requests and subsequent decisions regarding Simcoe and Oro-Medonte.

³ *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy 1980*, vol. 2 (the Williams Commission Report) Toronto: Queen's Printer, 1980.

(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 injurious to the financial interests of an institution;

[12] Section 11(c) protects the ability of institutions to earn money in the marketplace. It recognizes that institutions may have economic interests and compete for business with other public or private sector entities and gives them discretion to refuse to disclose information on the basis of a reasonable expectation of prejudice to these economic interests or competitive positions.⁴

[13] Section 11(d) is intended to protect the broader economic interests of Ontarians.⁵ An institution resisting disclosure of a record on the basis of section 11(d) cannot simply assert that the harms identified are obvious based on the records. The institution must provide detailed evidence about the risk of harm if the record is disclosed. While harm can sometimes be inferred from the records themselves and/or the surrounding circumstances, the institution should not assume that the harms are self-evident and can be proven simply by repeating the description of harms in the *Act*.⁶

[14] The institution must show the risk of harm is real and not just a possibility.⁷ However, it does not have to prove that disclosure will, in fact, result in harm. How much and what kind of evidence is needed to establish the harm depends on the context of the request and the seriousness of the consequences of disclosing the information.⁸

Summary of the parties' representations

MPAC

[15] MPAC submits that the requested data forms part of a proprietary "Ontario Parcel" database, which was developed through the digital integration of proprietary maps and other information from MPAC, Teranet, and various Ontario agencies, including the MNRF. It says that MPAC, Teranet and the province collectively invested significant intellectual property, resources, and ongoing efforts into creating, maintaining, and improving this database. It says that the database is governed by a complex commercial agreement,

⁴ Orders P-1190 and MO-2233.

⁵ Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, 1999 CanLII 1104 (ONCA), [1999] O.A.C.108, [1999] O.J. No. 484 (C.A.), leave to appeal to Supreme Court of Canada refused (January 20, 2000), Doc. 27191 (S.C.C.); see also Order MO-2233.

⁶ Orders MO-2363 and PO-2435.

⁷ *Merck Frosst Canada Ltd. v Canada (Health)*, 2012 SCC 3 (CanLII), [2012] 1 S.C.R. 23.

⁸ *Ontario (Community Safety and Correctional Services) v Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4; *Accenture Inc. v Ontario (Information and Privacy Commissioner)*, 2016 ONSC 1616.

the Ontario Parcel Master Agreement (OPMA), which imposes restrictions on how MPAC, Teranet, and Ontario may use each other's data.

[16] MPAC says that the requested records are made available to the public under a regularized system of access involving a fee and licensing terms mandated by the OPMA, which limit use and distribution of the information.

[17] MPAC says that it offered the appellant a licence to access the requested records on a per-parcel fee basis, subject to the standard licensing terms and conditions of the OPMA and tried to work with the appellant to identify his specific needs and provide the least expensive quote possible. MPAC says, however, that the appellant would "not limit his request to a reasonable amount of data," and seeks access to "massive" amounts of data without any restrictions on its use or further disclosure.

[18] According to MPAC, its pricing structure is uniformly applied to all requests, with the total cost varying based on factors like the number of licensed users, the number of parcels, and the type of information requested. MPAC argues that its fees are reasonable for smaller, defined requests. It asserts that the sheer amount of data requested by the appellant raises concerns that the data could be used to create a province-wide parcel fabric that could be commercialized.

[19] MPAC emphasizes that the revenue generated through its licensing fees is essential to offset the costs of developing and maintaining the Ontario Parcel database, as well as the statutory services it provides to its 444 member municipalities. MPAC asserts that this revenue reduces the fees and levies municipalities would otherwise have to pay, and, ultimately, download to taxpayers.

[20] MPAC relies on section 8(2) of the *MPAC Act*,⁹ which authorizes it to generate income in furtherance of its statutory duties. MPAC says that revenues from data sales are shared among the parties to the OPMA according to their respective contributions, with the fees charged to third parties partially compensating for the costs of ongoing database maintenance and development. MPAC says that its Business Development Group is responsible for generating revenue through licensing data¹⁰ for use in industries such as real estate, finance, law, insurance and government.

[21] MPAC asserts that unrestricted access to the requested records under the *Act* would undermine the OPMA licensing framework and prejudice MPAC's economic interests (as well as those of Teranet and the province).

[22] Specifically, MPAC claims that disclosure outside the licensing regime would result in significant harms under sections 11(c) and (d). It claims that unrestricted disclosure would prejudice its economic interests and competitive position by undermining its revenue-generating activities and creating the risk of misuse of the data outside the

⁹ *Municipal Property Assessment Corporation Act, 1997*, S.O. 1997, c. 43, Sched. G [*MPAC Act*]

¹⁰ MPAC submits that data is scrubbed for personal information.

licensing terms. MPAC argues that third parties could manipulate, resell or use the data to create competing products or services, potentially leading to a secondary market of unofficial data that could confuse users and undermine the reliability of MPAC's official data products. MPAC further contends that such disclosure would harm its ability to negotiate licensing agreements with other customers and jeopardize the revenue that offsets the costs of its services to municipalities. MPAC notes that, in the two years preceding the request, its data licensing activities generated tens of millions of dollars in revenue, which MPAC says directly reduced the financial burden on taxpayers. It argues that any precedent allowing free disclosure of the requested data would have long-term financial consequences for both it and its municipal stakeholders.

[23] MPAC disputes the appellant's characterization of its licensing practices as unreasonable and argues that its fee structure is proportionate to the costs of development, maintenance, and service delivery. MPAC submits that its licensing regime is necessary to fulfill its statutory mandate and that the requested disclosure would significantly undermine its ability to do so. Finally, MPAC says that the appellant has acknowledged an intention to use the data for investment purposes.

The appellant

[24] The appellant is a developer and investment company that says its research relies on GIS software, such as ArcGIS, to store and manipulate geographical information. The appellant says that it is seeking information that comprises parcel boundary shapefiles that can be loaded into this GIS software for analysis.

[25] The appellant submits that other regions and municipalities in Ontario provide similar data freely to the public through open data portals and argues that such practices demonstrate that providing open access to this type of data does not result in harm.

[26] The appellant characterizes MPAC's licensing fees as "outrageous" and "exceptionally onerous," alleging that the fees bear no resemblance to the cost of production. The appellant contends that MPAC's claims of irreparable harm from disclosing the data are "bizarre" and unsupported by evidence. It argues that:

- the requested data is already publicly available online for free, but its utility is limited because the appellant cannot upload and overlay its own proprietary data to locate high value or desirable information;
- MPAC has not explained how unrestricted disclosure of similar data by seven other Ontario municipalities – sourced from MPAC – has caused harm in the past; and,
- if MPAC's claims of competitive harm were valid, MPAC should be able to cite specific examples of competitors misusing the data.

[27] The appellant asserts that MPAC's current pricing structure effectively restricts public access to important information and likens MPAC's practices (together with

Teranet) to a monopoly exerting “draconian control” over citizens’ ability to use public data. It submits that MPAC does not have the right to decide what is a “reasonable amount of data.”

[28] The appellant argues that MPAC has failed to provide sufficient evidence of its claims of harm and that its pricing structure reflects an effort to preserve a monopolistic hold over public data. The appellant maintains that its request is reasonable, particularly given that other municipalities have made larger quantities of similar data freely available without restriction or charge.

[29] The appellant asks that the IPC review MPAC’s pricing structure, evaluating it against two specific tests: first, whether the pricing is accessible to the average person, and second, whether the pricing exceeds what is necessary to cover maintenance costs and a reasonable profit margin.

Affected parties

[30] Affected party Teranet, though not an institution under the *Act*, submits that the requested records have monetary value to MPAC. Teranet says this is evidenced by the fact that businesses and individuals across various fields routinely pay MPAC (and Teranet) for licenses to access the information, recognizing its commercial value for research and other activities. Teranet submits that disclosure of the records under the *Act* without a licence would deprive MPAC of the monetary value of the information and therefore prejudice MPAC’s economic and financial interests.

[31] The MNRf submits that MPAC’s submissions regarding the monetary value of the data and the potential harm to its economic, competitive, and financial interests from disclosure outside the licensing framework are consistent with MNRf’s general understanding as a party to the OPMA.

Analysis and findings

[32] For the following reasons, I find that the requested records qualify for exemption under sections 11(c) and (d) of the *Act*. Specifically, I find that disclosure under the *Act*, outside MPAC’s existing licensing framework, could reasonably be expected to cause MPAC financial harm and be injurious to its financial interests.

[33] As noted above, section 11 permits an institution to refuse to disclose information that would deprive the institution of monetary value. For section 11(c) to apply, MPAC must show that disclosure of the records could reasonably be expected to prejudice its economic interests or competitive position. For section 11(d) to apply, MPAC must show that disclosure could reasonably be expected to be injurious to its financial interests or its ability to manage its economic interests.

[34] According to the materials before me, MPAC is authorized by the *Assessment Act*¹¹ to administer a province-wide property assessment system, with all municipalities in Ontario jointly funding MPAC pursuant to the *MPAC Act*. Section 8(2) of the *MPAC Act* grants MPAC the power to generate revenue and provides that the income MPAC earns must be used to support MPAC's duties and activities.

[35] I accept MPAC's submission that the revenue it generates offsets the costs of its services, thereby reducing the fees or levies it charges municipalities for its statutory operations. MPAC licenses its data to customers through various platforms, including a proprietary website, accessible to the public. It offers standardized reports containing property data, publishes standardized pricing information and a catalogue of services online, and provides custom data sets through bespoke licensing agreements, such as access – as is at issue in this case – to specialized databases like the Ontario Parcel.

[36] Past court and IPC orders have consistently recognized the importance of protecting MPAC's ability to earn revenue.

[37] In *Municipal Property Assessment Corporation v. Ontario (Assistant Information and Privacy Commissioner)*¹² [*MPAC v IPC*], the Divisional Court recognized the proprietary nature of MPAC's data and upheld its right to protect its economic interests through controlled access and licensing arrangements. The court quashed an IPC order (Order MO-1693) requiring MPAC to disclose an electronic copy of an assessment roll for the entire province of Ontario.¹³ The court confirmed MPAC's statutory authority to sell assessment data under licence¹⁴ and stated that:

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...subject to license agreements that limit the purposes for which information may be used, and prohibit its sale or transfer to others.¹⁵

[38] Applying this reasoning to the current appeals, I find that MPAC has a legitimate economic interest in maintaining its revenue streams from the sale of data, which supports its operations and fulfills its public duties. MPAC has the statutory authority to earn surplus income to reduce the charges levied to municipalities for assessment services, and it is reasonable to expect that MPAC would engage in entrepreneurial endeavours that serve to increase its revenue through the sale and/or licensing of its

¹¹ *Assessment Act*, R.S.O. 1990, c. A.31.

¹² (2004), 71 O.R. (3d) 303.

¹³ A collection agency.

¹⁴ Under section 12(5) of the *MPAC Act* and section 53(5) of the *Assessment Act*.

¹⁵ *Municipal Property Assessment Corporation v Ontario (Assistant Information and Privacy Commissioner)*, 2004 CanLII 17632, 71 O.R. (3d) 303 at para. 8 (Div. Ct.)

products.¹⁶

[39] Prior IPC decisions have also found that the disclosure of data outside MPAC's licensing regime could reasonably be expected to prejudice MPAC's economic interests and competitive position, thereby justifying exemption under sections 11(c) and (d).

[40] For instance, in Order MO-2030, Former Commissioner Brian Beamish considered a request for information analogous to the records at issue here. The requester sought data maintained in MPAC's Ontario Assessment System (OASYS) database for approximately 4.3 million properties. MPAC argued that the request threatened its revenues from its subscription-based online service, Municipal Connect, which was (and remains) available by subscription and subject to licensing agreements restricting further use and disclosure. Commissioner Beamish found that the information in the OASYS database and information made accessible through Municipal Connect which MPAC made available for sale was exempt under sections 11(c) and (d), stating:

If MPAC is required to disclose information from [MPAC's property database known as OASYS] 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.

[41] I find that the same reasoning applies here. I have already found that the sale of data under licence is part of commercial operations that MPAC is statutorily authorized to undertake. MPAC submits that, in the two years preceding these requests, its licensing regime generated tens of millions of dollars in revenue. This fee-based licensing framework, whether for access to standardized data or to custom data packages under licence, directly supports MPAC's operational mandate. I find that disclosing this revenue-generating data outside the licensing scheme could reasonably be expected to result in financial losses. In the current appeals and given the scale of the requests and volume of data involved, the mere act of disclosure under the *Act*, apart from any concerns about subsequent commercialization, would deprive MPAC of revenue associated with the sale of the data and impair or undermine MPAC's ability to charge for data that it is statutorily authorized to sell. In my view, such a scenario could reasonably be expected to undermine the financial model that offsets the costs of MPAC's services. I am satisfied

¹⁶ See, for example, Order MO-1564.

that disclosure of such information for free under the *Act* would deprive MPAC of this revenue stream and could therefore reasonably be expected to prejudice, and be injurious to, its economic interests. I am also satisfied that disclosure of the requested records outside of the licensing framework would undermine MPAC's ability to offset costs payable by member municipalities. I find that this, in turn, could reasonably be expected to prejudice MPAC's economic interests and injure its financial position for the purposes of sections 11(c) and (d).

[42] In Order MO-2248, the IPC denied a request for an assessment roll for several Ontario cities. MPAC had made this data available for a standard fee and under licence, with restrictions on its use and distribution. Former Commissioner Beamish wrote:

Further, potential competitors could make requests under the *Act* to obtain the information at issue, for free, thus avoiding the expenses MPAC incurred in establishing its business and use the information to generate property assessment reports and products at a reduced cost...The practical reality is that if MPAC is required to disclose the information at issue in this appeal, there is nothing stopping competitors from making requests under the *Act* for the same information on an ongoing and regular basis.

[43] I find that the same concerns are applicable in these appeals. Specifically, disclosure of the requested records under the *Act*, outside of MPAC's fee-based licensing framework, could reasonably be expected to establish a precedent that undermines the integrity of that framework. I accept MPAC's submission that circumventing its licensing model could enable the commercialization or use of its data outside of the established framework, bypassing the restrictions designed to protect its financial interests. In my view, this would not only deprive MPAC of legitimate revenue streams but could also create a scenario in which requesters, including potential competitors, exploit the *Act* to avoid licensing costs. I am satisfied that such outcomes could reasonably be expected to prejudice MPAC's financial interests by eroding its economic position and jeopardizing the value of its licensing framework as a revenue-generating mechanism.

[44] Finally, in Order MO-2377-F, former Senior Adjudicator Frank DeVries upheld a decision by the City of Ottawa to deny access to certain assessment roll numbers that MPAC made available for a fee. He found that disclosure of such records would "deprive MPAC of a legitimate revenue stream" and could reasonably be expected to prejudice MPAC's economic interests and be injurious to its financial interests for the purposes of sections 11(c) and (d).

[45] The appellant says that it "does not disagree with the broad principles" in Order MO-2377-F but contends that the decision was "likely based on erroneous and/or incomplete information," specifically, a failure to properly balance MPAC's revenue-generating interests against the public's right to access information. I find no merit in this argument. The appellant's comments are vague and unsubstantiated, lacking any identification of gaps in the decision, including regarding MPAC's exercise of discretion

under section 11. In any event, the fundamental principle affirmed in Order MO-2377-F, namely, that MPAC has the right to generate revenue, is applicable in the present circumstances. I also note that the current requests involve records numbering in the hundreds of thousands, compared to the 159 pages at issue in MO-2377-F, amplifying the scope of the potential harm to MPAC.

[46] I have no difficulty finding that MPAC has a legitimate right to engage in revenue-generating opportunities to offset costs incurred by municipalities for its services.¹⁷ MPAC sells information under a defined licensing framework, and I find that disclosure of large volumes of data under the *Act*, at minimal cost, would deprive MPAC of a significant revenue stream. Accordingly, I am satisfied that the records qualify for exemption under sections 11(c) and (d).

[47] Regarding the appellant's arguments about the licensing fees, I note that the *Act* does not regulate the fees charged for information available through commercial licensing schemes. Given that MPAC's licensing framework is statutorily authorized, I reject the appellant's assertion that it acts as a guise to circumvent access rights under the *Act* or that it is a barrier to the appellant's access. I am also satisfied that the licensing model considers the scale of the data requested and the associated costs, which will vary depending on the amount of information sought and the number of licensed users. In any event, as the Divisional Court in *MPAC v IPC* observed, the *Act* does not impose an obligation on institutions to provide free access to information that is commercially available.

[48] I will next consider MPAC's exercise of discretion under section 11, followed by the appellant's claim that there is a compelling public interest in disclosure of the records that outweighs the section 11(c) and (d) exemptions.

MPAC exercised its discretion under section 11 appropriately

[49] MPAC submits that it considered relevant factors in deciding to deny access, including:

- the absence of a compelling public interest in disclosure;
- the public interest in protecting MPAC's ability to earn revenues to offset the cost of its services and, in turn, the fees borne by municipalities;
- the considerable value of the records to MPAC and Teranet; and,
- the importance of consistency with past access requests and IPC decisions that have upheld MPAC's right to refuse disclosure of information that can be obtained with a licence and/or for a fee.

¹⁷ Order MO-2377.

[50] MPAC also notes that it tried to work with the appellant to craft a licence that would meet the appellant's needs at a lower cost, but that the appellant declined to refine the scope of the information sought.

[51] I am satisfied that MPAC did not consider irrelevant factors in exercising its discretion to deny access to the requested records under sections 11(c) and (d). I am also satisfied that MPAC appropriately balanced the requests and the volume of data at issue against its need to safeguard its economic interests. MPAC's licensing framework already provides a mechanism for access. Additionally, I find that MPAC demonstrated some flexibility in attempting to accommodate the requests while preserving its statutory right to generate revenue. For these reasons, I uphold MPAC's exercise of discretion as reasonable in the circumstances.

Issue B: Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 11(c) or (d) exemptions?

[52] The "public interest override" in section 16 of the *Act* provides for the disclosure of records that are otherwise exempt under section 11 if two requirements are met: first, there must be a compelling public interest in disclosure of the records; second, this interest must clearly outweigh the purpose of the exemption.

[53] In considering whether there is a "public interest" in disclosure of a 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.¹⁸ In previous orders, the IPC has stated that, to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing or enlightening the population about the activities of their government or its agencies, adding in some way to the information the public has to make effective use of the means of expressing public opinion, or to make political choices.¹⁹ The IPC has defined "compelling" as "rousing strong interest or attention."²⁰

[54] A "public interest" does not exist where the interests advanced are essentially private in nature.²¹

[55] MPAC submits that public interest considerations point to non-disclosure, and that the appellant seems to be seeking access for a purely private purpose.

[56] The appellant submits that it invests in projects that have a positive social impact, and that underlying the current requests is a desire to invest in business that aligns with certain defined public policy objectives.

¹⁸ Orders P-984 and PO-2607.

¹⁹ Orders P-984 and PO-2556.

²⁰ Order P-984.

²¹ Orders P-12, P-347 and P-1439.

[57] While the appellant's described projects may have secondary public benefits, the underlying investment is commercial and private in nature. Section 16 requires that there be a compelling public interest that outweighs the purpose of the section 11(c) and (d) exemptions, which in this case, is to protect MPAC's financial interests. In my view, the fact that the appellant's requests are tied to a private business venture undermines the appellant's claim that the public interest is sufficiently compelling to override these protections.

[58] The appellant has not demonstrated that the shapefiles themselves are integral to addressing issues affecting the public or, for example, for fostering public engagement in policymaking, participation in local governance and projects, or promoting transparency. The records are not being requested to inform or influence public policy or governance; but are intended to facilitate the appellant's business decisions. Even if the appellant's businesses align with certain public values, the public interest override in section 16 is not intended to apply in cases where the primary motivation for disclosure serves a private or commercial interest, even if there are tangential public benefits. Accordingly, for these reasons, I have no basis to conclude that there is a compelling public interest in disclosure of the shapefiles that outweighs the purpose of the exemptions in sections 11(c) and (d).

ORDER:

I uphold MPAC's decisions and dismiss appeals MA21-00538 and MA21-00553.

Original Signed by: _____
Jessica Kowalski
Adjudicator

February 11, 2025 _____