

GUIDELINE

DISCLOSURE REQUIREMENTS FOR GENERAL AND SUMMARY PROCEEDINGS

Relevant Rules

Rule 45 of the Board's Rules of Practice and Procedure provides:

45. All parties must provide a copy, in paper or electronic form, of all relevant documents in their possession, control or power to all other parties in the proceeding, except for privileged documents.

Rule 3 defines "document" as follows:

"document" means written and visual material, and includes written, audio and images or images with sound including computer-generated images, photographs, maps, videos, plans, surveys, models and overlays;

The Schedules of Events for both the summary and general proceedings require that parties to an appeal must exchange disclosure in compliance by the due dates set out in the applicable Schedule of Events.

Purpose of the Disclosure Guideline

In order to assist the parties in ensuring that adequate disclosure is provided, and to avoid disputes respecting disclosure whenever possible, the Board has developed this Guideline which includes a Disclosure Schedule that outlines the most common issues that arise in appeal proceedings under s. 40 of the *Assessment Act*, and, for each issue, provides a non-exhaustive list of disclosure items which are considered to be relevant, and, therefore, should be routinely be disclosed. This Guideline also sets out which party is to provide this disclosure and when it is to be disclosed.

The Guideline is designed to be a useful checklist for parties and their representatives to ensure they provide disclosure on a timely basis. Please note, however, that the Guideline does not provide a comprehensive list. Additional documents, not listed in the Guideline, may be relevant, based on the issues raised in an appeal. Such relevant documents must be disclosed as well.

How the Disclosure Guideline was developed

The Board convened a stakeholder consultation group with representatives from MPAC, appellant representative firms, and municipalities, to identify common issues, and to identify where there was consensus regarding the relevant documents that should be disclosed in relation to each issue (the "Disclosure Workgroup"). The Disclosure Workgroup's consensus is reflected in this Guideline.

Requirement to Disclose

Under Rule 45, a party must disclose all relevant documents that are in the party's possession, power, or control. This is an on-going obligation during an appeal proceeding. A party is not required to create new documents, but where a party does so (for example, a party obtains an expert report), the document must be disclosed.

Where there is a dispute regarding whether a document is relevant, parties are encouraged to provide the document, as Rule 46 provides that the disclosure or production of a document is not an admission of its relevance or admissibility at a hearing. This will avoid delay and expense in having to bring a motion before the Board to address the dispute. Remember that, if an appeal is settled, the dispute will become moot.

Timing of Disclosure

As noted above, the Schedule of Events for the appeal sets due dates for exchanging disclosure that is already in a party's possession, power, and control.

MPAC has agreed to provide initial disclosure to Appellants and the Municipality, through its on-line system "About My Property". In some cases, due to contractual obligations respecting its information database, MPAC, or one of the other parties, may require a written request for a relevant document before it can be disclosed.

Municipality's Obligation to Disclose

Providing disclosure often represents a challenge for a Municipality, as relevant information may be found in different municipal departments. Given the large number of appeals to be processed in the four- year assessment cycle, and the fixed due dates set for exchanging disclosure, this creates a significant resource challenge for municipalities. Practically speaking, in most cases, either the Appellant or MPAC will already be in possession of relevant documents that the Municipality also possesses, so either the Appellant or MPAC will provide the disclosure.

Rule 5 provides that the Board's Rules shall be applied in a manner proportionate to the importance and complexity of the issues in a proceeding and with a view to resolving appeals within the four-year assessment cycle. The Disclosure Workgroup considered this Rule, and made the following recommendation which has been accepted by the Board:

Unless a Municipality is an Appellant in an appeal proceeding, the Municipality should only be required to provide disclosure when another party submits a written request to the Municipality for specific relevant documents. However, if a

Municipality is aware that it has a relevant document in its possession, and is uncertain whether other parties have the document, then the Municipality should proceed to disclose the document.

Confidentiality – How Disclosure is to be used:

Documents disclosed pursuant to the requirement in Rule 45, are provided for use in the appeal proceeding only. *Such documents should not be used for any other purpose without the prior consent of the party who provided the document.*

In cases where information in a relevant document is particularly sensitive, parties may negotiate and execute a non-disclosure agreement amongst themselves, which governs how such information will be managed and used. All parties to the appeal should be a party to such an agreement, as all parties are entitled to receive the relevant document.

If necessary, a party may apply to the Board under Rule 43, to request an order that any document filed with an appeal or at a hearing event be treated as confidential, be sealed, and not form part of the public record.