



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

ORDER 176

Appeal 900177

Ministry of the Attorney General



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O R D E R

This appeal was received pursuant to subsection 50(1) of the Freedom of Information and Protection of Privacy Act, 1987, as amended (the "Act") which gives a person who has made a request for access to a record under subsection 24(1) and to personal information under subsection 48(1) a right to appeal any decision of a head under the Act to the Commissioner.

On January 5, 1990, the undersigned was appointed Assistant Commissioner and received a delegation of the power to conduct inquiries and make Orders under the Act.

The facts of this case and the procedures employed in making this Order are as follows:

1. On March 28, 1990, a request for access to information was received by the Ministry of the Attorney General (the "institution"). This request was transferred to the institution by the Ministry of the Solicitor General (to whom the request had been made) under section 25 of the Act. Section 25 allows for the transfer of a request where it appears that an institution other than the one to which the request has been made, has control or custody of the record, or has a greater interest in the information requested.

2. The request was for the following information:

...any and all records of the Ontario Provincial Police relating to the prosecution of [a named individual] at Provincial Court (Family Division), 199 Front Street, Belleville, Ontario

in the matter of [a cited case], Court file nos. [cited file numbers], during the period October 19, 1988 through July 7, 1989; including all O.P.P. records relating to her incarceration at the Corbyville Children's Facility, Corbyville, Ontario during the period June 29, 1989 _ July 7, 1989

...

The records requested were originally produced in and for the Ontario Provincial Police. This request includes access to records of all persons, including other ministries of the Government of Ontario, to whom the O.P.P. records may have been released by the O.P.P.

3. By letter dated April 17, 1990 the institution's Freedom of Information Co_ordinator wrote to the requester as follows:

We wish to advise you that we have extended the time limit set out in section 27 [sic] of the Act for an additional 90 days until July 17, 1990. The reason for the extension is that the request necessitates a search through a large number of records and meeting the time limits would unreasonably interfere with the operations of the institution and that consultations that cannot reasonably be completed within the time limit are necessary to comply with the request.

4. The requester appealed the head's decision by letter to this office which was received on April 20, 1990. Notice of the appeal was given by this office to the institution and to the appellant.
5. By letter dated May 11, 1990, notice that I was conducting an inquiry was sent to the institution, and representations were requested from the institution as to the reasons and the factual basis for its decision to extend the time to respond to the request. The appellant was also notified of

the inquiry, and given the opportunity to comment on the issues raised by the appeal.

6. I have received representations from both the institution and the appellant, and have considered them in making my Order.

The sole issue for me to determine in this appeal is whether the extension of time claimed by the institution as necessary to respond to the request, is reasonable in the circumstances.

Subsection 27(1) of the Act states as follows:

A head may extend the time limit set out in section 26 for a period of time that is reasonable in the circumstances, where,

(a) the request is for a large number of records or necessitates a search through a large number of records and meeting the time limit would unreasonably interfere with the operations of the institution; or

(b) consultations that cannot reasonably be completed within the time limit are necessary to comply with the request.

The representations of the institution provide information about four separate requests made by the requester, each request being for different information. Two of the requests were transferred to the institution by the Ministry of the Solicitor General pursuant to section 25 of the Act. The institution's representations are made in respect of the four requests for information "en bloc", rather than treating each request individually and explaining the circumstances relating to the need for an extension of time to respond to each request.

The institution states that "a considerable volume of records was being held by the Crown Law Office _ Civil, a branch of the

ministry located in Toronto. These records relate to litigation proceedings involving [name of appellant] and occupy approximately nine feet of filing cabinet drawer space."

The institution submits that although all of the records relevant to the four requests have, in its opinion, now been identified, a search for the records was not only undertaken in the Crown Law Office, Civil, but also at the Office of the Official Guardian, the Minister's Office, the Crown Attorney's office in Belleville and the Provincial Court, Family Division in Belleville.

It further submits that because the records related to litigation proceedings, a "lengthy and detailed review of the records would be required to determine those relevant to the request and to identify those records subject to solicitor and client privilege or to which other exemptions may apply."

Accordingly, the institution assigned the task of reviewing the record to a "lawyer with knowledge of the content of the same and the nature of the litigation involved." This particular lawyer is involved in other litigation on behalf of the institution, and the institution submits that her commitments with regard to that other litigation prevented her from completing the task of reviewing the record within the statutory 30 day period.

Had she devoted sufficient time to complete the review within the 30 day limitation period, the institution argues that the provision of legal services to the Provincial Government would have been severely prejudiced.

I accept that taken together the four requests appear to involve a large number of records. However, I am unable to determine from the representations the size of the records that relate to the request which is at issue in this appeal.

In Order 28, (Appeal No. 880317), dated December 6, 1988, Commissioner Sidney B. Linden stated at page 3:

The Act provides institutions with a clear and relatively short time limit for responding to requests. This time limit can be extended only in the circumstances set out in section 27. Further, in my view, in invoking section 27, the head must address him or herself to whether any particular request involves a large number of records or consultations that cannot reasonably be completed within the 30 day time limit. I do not believe that section 27 lends itself to the interpretation that, where the response to a number of separate requests by the same individual, which collectively involve a large number of records or necessitates consultations, section 27 is properly triggered.

I adopt the views of Commissioner Linden with respect to the interpretation of section 27 and feel that they apply in the circumstances of this appeal.

Commissioner Linden went on to say that he realized that with a "requester driven" system, it is difficult for an institution to plan for adequate staff and resources. In Order 28 above, the Commissioner suggested two solutions where an institution is faced with a sudden influx of requests or where a number of requests from the same requester places an inordinate strain on its resources.

Those suggestions are as follows:

1. Negotiate with the individual requester who sends in numerous requests as to whether the requester would consent to waive the 30 day limit for each of the requests in favour of a response within 30 days in respect of certain "priority" requests and a longer time for a response in respect of the others.
2. Allocate its resources in such a way that it can import, on an emergency basis, additional staff to assist those routinely working on Freedom of Information requests in situations in which there is a sudden influx of requests.

In the present situation, I have been provided with no information that would indicate that the institution attempted to meet its obligations under section 26 of the Act by providing assistance to the lawyer charged with the task of reviewing the record. Neither have I been provided with information to show that any negotiations were undertaken with the appellant.

Subsection 27(1)(b) of the Act allows for an extension of the time for responding to a request where:

- (b) consultations that cannot reasonably be completed within the time limit are necessary to comply with the request.

The institution's representations regarding necessary consultations are not detailed. It submits only that "it was expected that there would be time required for consultation with the Ministry of the Solicitor General." It further submits that

until the review of the record is completed, the institution will not be in a position to know the length of time required for consultation. It is my view that the institution has not

provided sufficient evidence to show that consultations were necessary to comply with the request.

In the circumstances, I believe that the institution's approach to the extension of time was incorrect. Further, I am unable to determine from the institution's representations that the circumstances necessary for the valid application of subsection 27(1) of the Act were present for the request which is the subject of this appeal. Accordingly, in my view, the 90 day extension of the time for responding to the request is not reasonable, and I order the institution to provide the appellant with its decision regarding access to the requested records within 14 days of the date of this Order. I further order the institution to advise me in writing that it has given its decision to the appellant, within 5 days of having done so.

The said notices should be forwarded to the attention of Maureen Murphy, Registrar of Appeals, Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

Original signed by: _____
Tom A. Wright
Assistant Commissioner

_____ June 8, 1990
Date