



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

ORDER 155

Appeal 890341

Ministry of Correctional Services



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I N T E R I M 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 (the "Act") which gives a person who has made a request for access to a record under subsection 24(1) a right to appeal any decision of a head under the Act to the Commissioner.

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

1. On September 1, 1989, a request was made to the Ministry of Correctional Services (the "institution") for a copy of:

[the] Probation record in regard to [the
appellant's father] - Date of Birth ...

2. In a letter dated September 18, 1989, the head of the institution gave his response to the request, granting partial access to the requested record with severances. The head claimed exemption for the remainder of the record under subsections 14(2)(d) and 21(1), "to protect the privacy of the individual and the confidentiality of the documents".
3. The institution's mail log indicates that the above response was mailed to the requester on September 20, 1989, by registered mail.
4. The requester has no recollection as to the precise date on

which he received the institution's response.

5. On November 14, 1989, a letter from the requester appealing the head's decision was received in this Office. The letter was dated October 27, 1989. The postmark on the envelope was partially illegible, but did indicate that the letter had been mailed on a date in October, 1989.
6. On November 16, 1989, I sent notice of the appeal to the institution and to the appellant.
7. In accordance with the usual practice, the appeal was assigned to an Appeals Officer from this Office. The Appeals Officer contacted the institution's Freedom of Information Office in order to obtain and review the requested records. The Appeals Officer was informed that the institution was of the view that the Information and Privacy Commissioner was without jurisdiction or authority to review the decision of the head. The reason given by the institution for this position was that the appeal had not been filed within the 30 day period referred to in subsection 50(2) of the Act.
8. On November 29, 1989, a Notice of Inquiry was sent to the institution and to the appellant. The Notice of Inquiry letter outlined the facts of the appeal and invited representations as to the preliminary issue of my jurisdiction to proceed with this appeal.
9. I have received representations from the institution and from the appellant, and have considered them in making my Order.

The sole issue for me to decide in this Interim Order is whether I have jurisdiction to review the head's decision.

ISSUE: Whether the Information and Privacy Commissioner has jurisdiction to review the decision of the head.

The right to appeal a decision of a head under the Act is provided by subsection 50(1) which states:

- 50.--(1) A person who has made a request for,
- (a) access to a record under subsection 24(1);
 - (b) access to personal information under subsection 48(1); or
 - (c) correction of personal information under subsection 47(2),

or a person who is given notice of a request under subsection 28(1) may appeal any decision of a head under this Act to the Commissioner.

The procedure for commencing an appeal is set out in subsection 50(2):

- (2) An appeal under subsection (1) shall be made within thirty days after the notice was given of the decision appealed from by filing with the Commissioner written notice of appeal.

It is the position of the institution that the appellant did not file his appeal within the 30 day period after notice of the decision was given, as provided by the Act.

To reiterate the facts set out above, the institution's mail log indicates that the head's decision was mailed to the appellant

on September 20, 1989. The appellant has no recollection as to the precise date upon which he received the decision from the institution.

The appellant's letter appealing the head's decision was dated October 27, 1989, and was received in this Office on November 14, 1989. The appellant states that he mailed the letter on the day that it was written, that is, on October 27, 1989. Unfortunately, the postmark on the envelope is partially illegible, and it is not possible to discern from it the precise date upon which the letter was mailed, but it does indicate that the letter was mailed on a date in October. Therefore, taking October 31, 1989, as the last date upon which the letter could have been mailed, the letter of appeal took a minimum of 14 days from the date of mailing to reach this Office.

The institution has provided me with no evidence as to the date upon which the head's decision was delivered to the appellant. Given the number of days which elapsed between the time when the letter of appeal was mailed and its delivery to this Office, it is not unlikely that the head's decision was not delivered to the appellant until up to two weeks after it was mailed by the institution. If the decision was delivered to the requester two weeks after mailing by the institution, he would have received it on October 4, 1989. The postmark on the envelope containing the letter of appeal indicates that the letter of appeal was mailed in October.

The Act itself is not clear as to the beginning and end of the time periods respecting appeal - it does not define when "the notice is given of the decision appealed from", when the time begins to run from the date when the notice was given, nor does

it "deem" a date after the mailing of the decision by which notice is presumed to have been given. The Act does not define the process of "filing" an appeal. The nature of the appeals system envisaged by the Act is informal. The policy of the Act as outlined in section 1 thereof is to promote access to information in the custody or under the control of government institutions, and to provide for the protection of personal privacy.

In view of these considerations, it is reasonable, at this stage in the development of the interpretation of the Act, to interpret the Act liberally in favour of access to the process, rather than strictly to deny access. This is especially true where the alleged lapse of time after the date when an appeal should have been filed is not significant, and where no prejudice has been shown by the institution or any other person affected by the alleged delay.

In the present case, the institution was requested to provide evidence of prejudice to its interests arising from any delay in filing the appeal. I have reviewed the representations of the institution, and the institution has not addressed this issue, and has provided no evidence of prejudice which would occur if I were to review the head's decision.

In my view it is possible, on the basis of the evidence before me in this case, to find that the appellant mailed his letter of appeal within the 30 day period after receiving the head's decision and that even if the time limit was exceeded, it was exceeded by an insignificant amount of time. In this case, no prejudice resulting from the delay has either been alleged or shown by the institution. Therefore, I have no difficulty in

concluding, on the facts of this particular case, that I have jurisdiction to review the head's decision and proceed with the appeal.

This question of my jurisdiction in cases of delay must be decided on a case by case basis on the circumstances in each particular case. If the delay in filing an appeal is substantial or if an institution, or any other affected person, can show some prejudice resulting from the delay, then I may interpret subsection 50(2) more strictly. I must also be mindful of the fact, in these cases, that an appellant, or his designate, may file a new request and start the process over again.

Having found that I have jurisdiction to review the head's decision in this appeal, I remain seized of the matter in regard to the exemptions claimed by the head, and the appeal will proceed according to the usual practice of this Office.

Original signed by:
Sidney B. Linden
Commissioner

March 19, 1990
Date