



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

ORDER P-214

Appeal 900618

Ministry of the Solicitor General



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O R D E R

On October 29, 1990, a request was received by the Ministry of the Solicitor General (the "institution") under the Freedom of Information and Protection of Privacy Act, 1987, as amended (the "Act"). The requester sought access to the results of an Ontario Provincial Police investigation, correspondence between the Hamilton-Wentworth Regional Police and the Crown Attorney's office relating to a charge of murder against a named individual.

On November 5, 1990, by way of a telephone conversation with a representative of the institution, the requester agreed to limit his request to a two-volume report of an Ontario Provincial Police investigation into the allegations of police misconduct, Hamilton-Wentworth Region.

On November 30, 1990, the requester appealed the institution's failure to respond to his request within the statutory 30 day time limit under subsection 29(4) of the Act, which provides as follows:

A head who fails to give the notice required under section 26 or subsection 28(7) concerning a record shall be deemed to have given notice of refusal to give access to the record on the last day of the period during which notice should have been given.

Notice of the appeal was given to the institution and the appellant.

On December 4, 1990, the institution wrote to the requester as follows:

We wish to advise you that the time has been extended in accordance with section 27 of the Act for an additional 90 days to February 26, 1991.

The reason for the extension is:

- consultations with a person outside the institution are necessary to comply with the request and cannot reasonably be completed within the time limit.

The consultations required in this case are with the Ministry of the Attorney General and the Hamilton-Wentworth Region Police Force.

On December 19, 1990, the requester appealed the decision of the institution to extend the statutory thirty (30) day time limit for responding to the request for an additional ninety (90) days. Notice of this appeal was given to the institution and to the appellant. Both parties were advised that two issues (deemed refusal and the reasonableness of the time extension) would be dealt with in the same appeal file.

The Appeals Officer was not able to effect a mediated settlement of the appeal. Accordingly, on December 21, 1990, notice that an inquiry was being conducted to review the head's decision was sent to the institution and to the appellant. Representations were requested from the institution as to the reasons for the delay in responding to the request and the factual basis for its decision to extend the time to respond to the request. The appellant was given the opportunity to comment on the issues raised by the appeal.

Representations were received from the institution and I have considered them in making my Order.

As stated previously in this Order, the two issues arising in this appeal are the "deemed refusal" and the reasonableness of the time extension. I am of the view that it would be appropriate to deal with the issue of "deemed refusal" as an issue of delay on the part of the institution in responding to the request rather than as a refusal by the institution to respond to the request.

Subsection 27(1)(b) 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,

- (b) consultations with a person outside the institution are necessary to comply with the request and cannot reasonably be completed within the time limit.

In its representations, the institution has indicated that the record is 548 pages long and that consultations with two other institutions are necessary. There are as well other relevant factors outlined by the institution, all of which lead me to the conclusion that in the circumstances of this appeal, some additional time for responding to the request was reasonable. However, having carefully considered the representations of the institution, it is my view that the head's decision to extend the time for responding to the appellant's request for an additional ninety (90) days is not reasonable. In my opinion a reasonable extension would be seventy (70) days.

I have previously referred to the institution's delay in giving notice of the time extension to the appellant. I have taken that delay into account in arriving at the seventy (70) day extension. I do note that the institution has referred to the telephone conversation with the appellant of November 5, 1990 as "the discussion which clarified the request". As this telephone call merely narrowed the scope of the original request (which had provided the institution with sufficient detail regarding the nature of the records being requested), in my view the thirty day time limit must be calculated from the date the original request was first received by the institution. The effect of a seventy (70) day extension is that the institution will have a total of one hundred (100) days in which to complete its consultations and respond to the appellant's request.

In its representations, the institution referred to the existence of third parties (witnesses). I infer that affected persons may also need to be consulted or notified of the request although the institution did not specifically say so. Accordingly, I order the institution to send any section 28 notices that it intends to send within ten (10) days of the date of this Order. Of course, the institution must follow the appropriate procedures as set out in the Act should any section 28 notices be sent. I further order the institution to provide me with copies of any section 28 notices that are sent to affected persons.

Finally, subject only to the possibility of the institution sending section 28 notices, I order the institution to respond to the appellant's request by February 6, 1991. I further order

the institution to provide me with a copy of its decision on access within five (5) days of the date that the notice of the decision is sent to the appellant.

Copies of the section 28 notices, if any, and the institution's decision on access should be forwarded to my attention c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

Original signed by: _____
Tom A. Wright
Assistant Commissioner

January 17, 1991
Date