



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER M-307

Appeal M-9400201

The Corporation of the Town of Cobourg



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ORDER

On March 28, 1994, the undersigned was appointed Inquiry Officer and received a delegation of the power and duty to conduct inquiries and make orders under the provincial Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act.

The Corporation of the Town of Cobourg (the Town) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to copies of specified records relating to a landfill site. The Town asked for clarification of the request. The requester indicated that the request was for access to all records relating to the landfill site. The Town then responded with a letter extending the time for issuing its decision letter by 106 days to June 30, 1994 for the following reason:

... that the request appears to be 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 operation of [the Town].

The requester appealed the decision of the Town to extend the statutory 30 day time limit. Notice that an inquiry was being conducted to review the decision of the Town was sent to the Town and the appellant. Representations were received from both parties.

The sole issue in this appeal is whether the extension of time claimed by the Town under section 20(1)(a) of the Act is reasonable in the circumstances of this appeal.

Since the request for access was dated February 14, 1994 and section 19 of the Act requires a response within 30 days unless a time extension is invoked, the Town would have been required to respond by March 16, 1994. By extending the response date to June 30, 1994, the Town has indicated that it will require 106 days in addition to the standard response time.

Section 20(1)(a) of the Act states, as follows:

A head may extend the time limit set out in section 19 for a period of time that is reasonable in the circumstances, if,

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;

In its representations, the Town takes the position that only the head of an institution can reasonably evaluate what an appropriate time extension should be. The Town states that the Information and Privacy Commissioner is not in a position to reasonably or equitably determine whether a head's decision in this respect is appropriate.

I do not accept this position. Section 39(1) provides a requester with the right to appeal **any** decision of a head to the Information and Privacy Commissioner, including a head's decision to invoke an extension of time under section 20(1)(a) as in the present case. Section 41 of the Act makes it mandatory for the Information and Privacy Commissioner to conduct an inquiry if a settlement is not effected. In my view, in accordance with sections 39 and 41 of the Act, the Information and Privacy Commissioner has both the jurisdiction and a statutory obligation in an appeal to review this decision of the head. In my opinion, it is the head's responsibility to provide the Information and Privacy Commissioner with adequate evidence to substantiate a decision to seek a time extension.

In his representations, the appellant indicates that the responsive records are likely located at the Town offices in files specific to the former Town landfill and the site search process. The appellant believes that the requested records should require little or no assembly.

In its representations, the Town claims that the request is for an extremely large number of records requiring a lengthy search and that meeting the statutory 30 day time limit would unreasonably interfere with the normal operations of the Town and "... would require the re-allocation of resources which may be contrary to the established priorities of [the Town] ...".

The Town further states that the majority of the records are in the "care and custody" of the Town's Director of Engineering Services who will be away from the office on vacation between April 9, 1994 and May 2, 1994 and therefore unavailable to search or supervise a search.

I have carefully reviewed the Town's representations and I am unable to conclude that the appellant's request would necessitate a search through a large number of records. The Town has provided no evidence on the approximate number or size of the records responsive to the request or the volume of records which must be searched. Nor has the Town provided me with any evidence as to how the search "would require the re-allocation of resources" or how this "may be contrary to the established priorities of [the Town]".

Furthermore, I am not persuaded that the absence of the Director of Engineering Services for a period of three weeks is a relevant consideration in this appeal. The Town has provided no explanation as to why this particular individual is required to undertake or supervise the search. Even if I were to find that this is a relevant consideration, I note that 54 days have lapsed from the time of the initial request to the commencement of the Director's leave. The Town has provided no evidence as to why the search could not have been conducted prior to his/her departure, nor is there any evidence of any attempts made to undertake the search in that time.

After careful review of all the representations, I am of the view that the Town has failed to provide sufficient evidence that the extension of time under section 20(1) was reasonable on the basis that the request was for a large number of records or that it would necessitate a search through a large number of records and that meeting the time limit would unreasonably interfere with the operations of the institution. I find that the extension of time invoked by the Town is unreasonable in the circumstances of this appeal.

ORDER:

1. I order the Town to provide a decision letter to the appellant regarding access to the records in accordance with the Act within twenty-one (21) days from the date of this order.
2. In order to verify compliance with this order, I order the Town to provide me with a copy of its decision letter on access referred to in Provision 1 within five (5) days of the date that the notice of the decision is sent to the appellant. The notice 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: _____
Mumtaz Jiwan
Inquiry Officer

_____ April 19, 1994