



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

ORDER P-744

Appeal P_9300507

Ministry of the Solicitor General and Correctional Services



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NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The requester asked the Ministry of the Solicitor General and Correctional Services (the Ministry) for a copy of an investigation report initiated on his behalf and all supporting documents, including witness statements and correspondence, related to the investigation. The request was made on **July 16, 1993**.

The Ministry did not respond within the 30 days prescribed by the Act and did not request a time extension to process the request under section 27(1) of the Act. The Ministry thus placed itself in a "deemed refusal" situation pursuant to section 29(4) of the Act. The requester appealed the Ministry's deemed refusal to provide access.

Over the months that followed, the Commissioner's office advised the Ministry of its obligations under the Act, and endeavoured to have the Ministry issue the necessary decision letter.

On July 22, 1994 the Ministry issued a decision letter respecting one portion of the responsive records. On August 5, 1994 the Ministry issued a second decision letter on another portion of the responsive records. A third decision, addressing yet another portion of the records, was issued on August 16, 1994. In each of these decisions, the Ministry advised the appellant that "... as portions of your request are completed we will be forwarding them to you."

The Ministry has advised the Commissioner's office that there still exist a number of records which it must review in order to issue a decision and complete the processing of the request. The Ministry now anticipates that it will be in a position to issue its decision on the last group of records shortly. However, it has not provided this office or the appellant with a specific date by which this event will definitely occur.

The issuance of a comprehensive decision letter is critical both to the integrity of the access process and the timely processing of an appeal. In addition, until the appellant receives a decision on these records, he cannot make an informed decision on whether to continue with the appeal.

The Ministry has provided several reasons as to why this request has not been processed in a timely fashion. Ministry employees have indicated that the responsive records are some 1,000 to 1,200 pages in length. They have also indicated that, pursuant to section 28 of the Act, numerous individuals whose personal information is contained in the records, were notified of the request. The Ministry is experiencing staff shortages in these times of government fiscal restraint.

While I appreciate the Ministry's difficulties, I would suggest that the Act itself addresses some of these problems and sets out procedures for an institution to follow in such circumstances. For example, the Ministry could have extended the time for responding to the request on the basis that the request was for a large number of records (section 27). In addition, section 28 of the Act provides institutions with an extended period of time to respond to access requests where third parties must be notified.

In both instances, the Act requires that an institution apprise a requester of the reason for the delay in responding to the access request and the time at which the decision will be made. In my view, the key to these sections is adequate and timely communication by an institution to a

requester. Either of these approaches would have required that, at minimum, the Ministry advise the appellant of its position within a reasonable period of time. In this case, the appellant initially received no response from the Ministry within the statutory time frames and thus did not know what, if anything, the Ministry was doing to respond to his request.

As I have indicated, the Ministry now anticipates that it will complete the processing of this request shortly. However, given the length of time that has passed since the filing of this request, and the legitimate interests of the appellant, it is necessary that the final resolution of this matter be established with some certainty.

Accordingly, I am ordering the Ministry to issue a decision letter on the issue of access to the outstanding records.

ORDER:

1. I order the Ministry to provide the appellant with a decision on access to the outstanding records requested by the appellant on July 16, 1993 within fifteen (15) days of the date of this order, without recourse to a time extension.
2. In order to verify compliance with Provision 1 of this order, I order the Ministry to provide me with a copy of the decision letter referred to in Provision 1 within twenty (20) days of the date of this order. This 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: _____

Anita Fineberg
Inquiry Officer

August 23, 1994