



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-439

Appeal M-9400702

The Corporation of the Town of Pickering



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NATURE OF THE APPEAL:

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The Corporation of the Town of Pickering (the Town) received a detailed request for access to records related to a named landfill site. The Town did not respond. The requester filed an appeal on the basis that the Town's failure to respond constituted a deemed refusal under section 22(4) of the Act.

Upon notification of the appeal, the Town issued a notice under section 20(2) of the Act extending the time for issuing its decision by 64 days to January 31, 1995 for the following reason:

... 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;

A Notice of Inquiry 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.

DISCUSSION:

REASONABLENESS OF THE EXTENSION OF TIME

Before I consider the merits of the Town's decision, I will review some background information which, I believe, places this appeal in some context.

On August 26, 1994, the appellant made a request to the Town for the same records. On September 26, 1994 the Town advised that the request did not sufficiently describe the records being sought. The appellant filed an appeal (Appeal No. M-9400546). During the appeal process, the appellant agreed to provide a detailed listing of the records sought in a reformulated request and Appeal No. M-9400546 was closed.

The reformulated request was forwarded to the Town on October 28, 1994. On November 7, 1994, the Town advised the appellant that it was awaiting confirmation of the closing of Appeal No. M-9400546 before records could be disclosed in response to the reformulated request. On December 9, 1994 the Town issued a notice of time extension which is the central issue of this order.

The Town received the request on October 28, 1994 and section 19 of the Act requires a response within 30 days (November 27, 1994) unless a time extension is invoked. By extending the response date to January 31, 1995, the Town has indicated that it will require 64 days in addition to the standard response time.

In its representations the Town states that all the responsive records have been forwarded to its counsel in preparation for a hearing for the permanent closure of the landfill site. The Town goes on to submit that as a

result of preparing for that hearing, meeting the statutory time limit would unreasonably interfere with the operations of the institution.

The appellant points out that his original request for the records was dated August 26, 1994 and therefore, the actual extension of time is much longer than the 64 days claimed by the Town.

I have carefully reviewed the representations of the parties. I note that the reformulated request provides a detailed listing of the records sought. I note also that beyond making a bare assertion, the Town has provided no evidence about **how** the operations of the Town will be unreasonably interfered with. The Town makes no reference to the number of records requested nor is there any evidence about the nature and length of the searches necessary to locate the requested records.

In my view, there are other factors which are relevant in considering whether the time extension is reasonable. The Town's notice of time extension was not provided to the appellant until December 9, 1994, some 12 days **after** the thirty day time period prescribed by section 19 had expired. Generally speaking, an institution, when assessing the time and resources it will need to properly respond to a request, must decide within the initial 30-day time limit for responding to the request, the length of any time extension it will need (Order P-234). In this case that was not done. In addition, the Town was already familiar with the nature of the records requested through the appellant's original request dated August 26, 1994.

I find 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. Accordingly, I find that the extension of time invoked by the Town is not reasonable. Given that the appellant has been waiting for a decision letter for over four months, the fact that the time extension expires on January 31, 1995, and considering all the relevant circumstances of this appeal, I believe it is appropriate for me to adopt an approach set out in earlier orders (Order P-193). I order the Town to respond to the request without recourse to any fee other than photocopying charges as set out below.

ORDER:

1. I order the Town to undertake a search for records which are responsive to the request **and** to provide a final decision to the appellant regarding access to the records on or before January 16, 1995.
2. I further order that the Town may not charge a fee pursuant to section 45 of the Act for processing the appellant's request, other than for photocopying charges at 20 cents per page for each page disclosed to the appellant.
3. In order to verify compliance with this order, I order the Town to provide me with a copy of its decision letter referred to in Provision 1 by January 20, 1995. The notice should be forwarded to
[IPC Order M-439/January 5,1995]

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

_____ January 5, 1995