



Information and Privacy
Commissioner/Ontario

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

ORDER P-855

Appeals P-9400787, P-9400789, P-9400790, P-9400791
and P-9400805

Ministry of Health



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Téléc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The Ministry of Health (the Ministry) received six requests on October 27, 1994, for information from the Psychiatric Patient Advocate Office - Head Office (the PPAO).

The Ministry did not respond within the 30 days prescribed by the Act and did not request a time extension to process the requests under section 27(1) of the Act. Six appeals were filed on the basis that the Ministry's failure to respond constituted a deemed refusal under section 29(4) of the Act.

Five appeal files were opened on December 21, 1994 and the sixth was opened on December 28, 1994. The letter of appeal in each of these matters designated and authorized the same representative to act as agent on the appellants' behalf (the agent).

On December 23, 1994, the Ministry issued a notice under section 27(2) of the Act with respect to five of the appeals, extending the time for issuing its decision by 55 days to February 17, 1995.

On January 4, 1995, the Ministry extended the time for issuing its decision to February 17, 1995 with respect to the remaining appeal.

The Ministry indicated that it was extending the time for issuing a decision letter for the following reason:

... the files containing responsive records are extensive and voluminous. Also, given [this] office's limited resources, to dedicate one or more staff members to search duties solely for the purpose of responding to your requests would seriously compromise the PPAO's ability to carry out its mandate of service to all patients in provincial psychiatric hospitals.

A Notice of Inquiry was sent to the Ministry and the agent. Representations were received from both.

During the Inquiry stage of these appeals, the Ministry issued a decision letter with respect to one of the six appeals. This file was closed and is, therefore, not at issue in this order.

In his representations, the agent expresses concern that, by invoking a time extension while in a state of deemed refusal, the Ministry can circumvent, at will, the time limits set out in the Act. This, he argues, is clearly prejudicial to a requester.

In its representations, the Ministry provides some background to the requests. It states that the six requests were faxed to the Ministry in the same communication, that all the requests were virtually identical and were similar to previous requests submitted by the agent. The Ministry also alludes to an "improper" motivation on the part of the agent in the filing of the requests in the above manner.

It then outlines the steps it took to consolidate overlapping parts of the requests to avoid duplication and reduce fees. The Ministry notified the requesters regarding this approach on November 10, 1994, well within the 30 days required by section 26.

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. In this case that was not done.

The Ministry does not address why it did not respond to the requesters within the 30 days, but rather focuses on why a time extension is reasonable in the circumstances of these appeals.

In explaining its reasons for claiming a time extension, the Ministry refers to one of the requests and outlines what would be required in responding to it. Because of the breadth of the request and the PPAO's file management system, the Ministry indicates that it would be required to search through all the records of the PPAO for the time period set out in the request.

The Ministry does not explain why or how the other four requests would require a similar search. However, in concluding its representations, the Ministry submits that an extension until February 17, 1995 was reasonable given:

... the number, subject matter, and time frames of the requests from these six individuals; the voluminous number of files which must be searched ...; the filing system in place at the PPAO; and, the extreme workload pressures placed on the small number of staff in the PPAO ...

Although the Ministry does not explicitly state that it has grouped the requests together for the purposes of processing, the implication is apparent from its representations. It has been established in previous orders that, in invoking section 27, the Ministry must consider whether **any particular request** involves a large number of records for which a search cannot reasonably be completed within the 30-day time limit. Section 27 does not lend itself to the interpretation that, where the response to a **number** of separate requests by the same individual, or by different requesters, which collectively involve a large number of records, section 27 is properly triggered (see Order 28).

In its representations, and in discussions with the Appeals Officer, the Ministry indicated that it intended to respond to the requests during the week of January 23, and most likely by January 25, 1995, with a fee estimate and interim notice. That date has passed and the Ministry has failed to respond. The Ministry advised the Appeals Officer that a further week would be required to complete the necessary work in order to issue decision letters, which it indicates now will likely be final decisions.

As I indicated above, the first steps to processing the requests were taken by the Ministry and the requesters were advised accordingly. However, from that point on the Ministry has consistently failed to commit to a date for responding to the requests.

In failing to respond within the 30-day time limit the Ministry has deprived the requesters of a timely resolution of their requests. In claiming time extensions four weeks after decisions should have been issued, the Ministry has compromised the integrity of the access process. In failing to meet its own projected timelines for issuing decision letters, the Ministry has effectively secured the time extensions it was seeking.

In the circumstances of these appeals, I am of the view that the Ministry has failed to provide sufficient evidence that the extensions of time under section 27(1) were reasonably invoked. Accordingly, I find that the extensions of time claimed by the Ministry are not reasonable.

Given the above, and the fact that the time extensions expire on February 17, 1995, I believe it is appropriate for me to adopt an approach set out in earlier orders (see Order P-193). I order the Ministry to respond to the requests by February 13, 1995 without recourse to any fee other than photocopying charges as set out below.

ORDER:

1. I order the Ministry to undertake a search for records which are responsive to the requests **and** to provide a final decision to each requester regarding access to the records on or before February 13, 1995.
2. I further order that the Ministry may not charge a fee pursuant to section 57 of the Act for processing the requests, other than for photocopying charges at 20 cents per page for each page disclosed.
3. In order to verify compliance with this order, I order the Ministry to provide me with a copy of its decision letters referred to in Provision 1 by February 17, 1995. The notices 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: _____
Laurel Cropley
Inquiry Officer

_____ February 2, 1995