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

ORDER M-697

Appeals M_9500755, M_9500756 and M_9500757

Town of Penetanguishene

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 APPEALS:

Pursuant to the Municipal Freedom of Information and Protection of Privacy Act (the Act), the requester made a total of 36 separate access requests to the Town of Penetanguishene (the Town). The Town issued a notice of a time extension of 213 days under section 20 of the Act for each request. The Town indicated that the time extension was claimed due to the numerous requests made by the requester, and meeting the time limit would unreasonably interfere with its operations.

The requester objected to the time extension as he believes that none of his individual requests would amount to more than a few pages of records.

The requester and the Town agreed to pursue this matter with the Commissioner's office using three of the 36 requests as the basis for the requester's appeal. The three files were mutually agreed upon and the requester filed an appeal of the Town's decision under the Act.

Following receipt of the Confirmation of Appeal, the Town wrote to the requester (now the appellant) to advise him that in addition to claiming a time extension, the town claims that his actions amount to an abuse of process.

Three appeal files were opened. However, since the issues raised by the parties are the same in each case, I will deal with all three appeals in this order. Despite the agreement between the Town and the appellant, this order will only deal with and is only applicable to the three requests which have been appealed.

THE REQUESTS

The selected requests represent the first and last request received by the Town and one from the middle of the total number received.

Appeal Number P-9500755

In this appeal, the requester asked to see all records related to cheque number 029157, September 14, $2,033.54 as well as all tender records. The request was dated October 27, 1995.

Appeal Number P-9500756

In this appeal, the requester asked to see all records related to cheque number 029217, September 21/95 IGA, $48.60. The request was dated October 25, 1995.

Appeal Number P-9500757

In this appeal, the requester asked to know or see all records stating or relating to the estimated or approved cost for the extension of the Penetanguishene library. The request was dated November 27, 1995.

DISCUSSION:

SHOULD THE APPELLANT BE PRECLUDED FROM MAKING REQUESTS

The Town submits that I should consider the application of the principles set forth in Order M-618 to the circumstances of this appeal. It argues that the appellant has a long history of making multiple requests, dating back to 1991. The Town has submitted evidence in support of its argument that the appellant ought to be precluded from making further requests in the same fashion as the appellant who was the subject of Order M-618. The Town stresses, however, that it does not wish to restrict the appellant's access to information. Rather, it seeks an order from the Commissioner which would place limits on the number of requests he is able to make under the Act.

In Order M-618, Commissioner Tom Wright set forth a number of factors to be considered when determining whether an individual's use of the Acts constituted an "abuse of process" which required curtailing. The order discusses the use of the Commissioner's power to control his own process as well as the power to limit an abuse of process which occurs at the request stage. Commissioner Wright held that, in the unique circumstances of that case, the appellant's course of conduct led him to the conclusion that this individual's use of the Acts constituted an abuse of process. Commissioner Wright outlined a number of factors which, taken together, led him to this conclusion. These included the sheer volume of requests, the nature and scope of the requests, the number of requests which were made to many different institutions, as well as the rate at which requests were made by the appellant in that case. One other important factor the Commissioner considered was the stated (or possibly implicit) objective to burden or break the system.

In this regard, Commissioner Wright stated:

> All these factors go to establish a pattern of abuse of process, through the excessive use of that process by this individual **requester**, for purposes unrelated to a genuine or bona fide wish to secure the information requested.

I cannot agree that the conduct of the appellant in the present appeals constitutes an "abuse of process" as contemplated by Commissioner Wright in Order M-618. I have not been presented with sufficient evidence to demonstrate that the present appellant has entered into a course of conduct which is analogous to that of the appellant in Order M-618. In the present situation, the volume and rate of requests by the appellant is not on a scale approaching that of the appellant in Order M-618. Nor am I persuaded that his objective in submitting requests is anything other than for informational purposes. Accordingly, I find that the actions of the appellant in the cases before me cannot be characterized as an "abuse of process".

TIME EXTENSION

In its representations, the Town outlines the number of requests received from the appellant and the total number of requests received to date. The Town also provides a detailed description of the resources available in the Town's Municipal offices and the impact of having to deal with

access requests. Essentially, each employee of the Town, including the Freedom of Information and Privacy Co-ordinator, is responsible for multiple tasks with no spare time for additional tasks. In this regard the town states:

> To respond to thirty-seven requests within thirty days, carry out the every day duties and special tasks, it is reasonable to expect that to respond to these requests will result in an unreasonable interference with the operations of the institution.

In Order 28, Former Commissioner Sidney B. Linden addressed this very issue as it related to section 27 of the Freedom of Information and Protection of Privacy Act, which is similar to section 20 of the Act. He stated:

> The Act provides institutions with a clear and relatively short time limit for responding to requests. This time limit can be extended only in the circumstances set out in section 27. Further, in invoking section 27, the head of an institution must address him or herself to whether **any particular request** involves a large number of records or consultations that 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, which collectively involve a large number of records or necessitate consultation, section 27 is properly triggered.

This reasoning has been followed in a number of previous orders of the Commissioner (Orders 93, 100 and 173). Section 20(1)(a) of the Act provides that:

> 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; (emphasis added)

In my view, the wording of this section requires that **each request** be treated separately. In this case, each request was submitted in a separate letter and on a different date. While I understand the difficulties faced by the Town, the wording of the Act does not support the interpretation advanced by the Town. Accordingly, I agree with the reasoning in Order 28 and adopt it for the purposes of these appeals. As a result, I find that the Town must consider each request on its own merits to determine whether a search for responsive records would unreasonably interfere with its operations.

The Town acknowledges that each request, taken individually, can be responded to within the 30-day time frame required by section 19 of the Act. I also note that the three requests were submitted over a one month period, although I recognize that since the requests consist of the first and last request submitted this means that 36 requests were, in fact, received during this time period.

The Town provides considerable background regarding its history of dealings with the appellant. In 1993, as a result of mediation efforts of the Appeals Department of the Commissioner's office, an agreement was reached between the Town and the appellant. This resulted in access to certain records being provided over the counter rather than through the access procedures under the Act. The Town indicated that this negotiated procedure was respected by both parties until 1995, at which time the appellant began submitting large numbers of requests under the Act.

Following his comments in Order 28 (referred to above), Former Commissioner Linden discussed the ways in which an institution might minimize the adverse impact of dealing with a large number of requests at one time. He said:

> There are two legitimate courses of action that an institution might consider where compliance with the time limits set out in the Act places an inordinate strain on resources: i) negotiate with the individual requester who sends in numerous requests as to whether the requester would consent to waive the 30 day limit for each of the requests in favour of a response within 30 days in respect of certain **"priority"** requests and a longer time for response in respect of the others; ii) allocate its resources in such a way that it can import, on an emergency basis, additional staff to assist those routinely working on Freedom of Information requests in situations in which there is a sudden influx of requests.

In my view, section 20 does not provide a legislated base for considering the attempts made by an institution in negotiating a reasonable time frame for responding to the appellant as a factor in determining whether this section has been properly applied. While I commend both parties for their earlier attempts to work together in achieving their objectives, my findings must be based on the wording of the section.

The Town also states that the appellant's practice in requesting access to information is to look at the records rather than receive copies of them. Indeed, each of the three requests referred to above states that the appellant wishes to "see" the records. The Town notes that the appellant is currently out of the country. The Town states further that, based on prior experience, it suspects that the appellant will not return until April. The appellant confirms that he is out of the country until the beginning of April. The Town does not indicate whether or not it has been provided with a forwarding address for the appellant, or whether or not the appellant's mail would be forwarded to him by some other means. While I am sympathetic to the Town's position, the fact that a requester is away for a period of time does not, in my view, alleviate an institution from its obligations under the Act.

Accordingly, as I indicated above, the Town's approach to the extension of time on the basis of the number of requests submitted by the appellant was not consistent with the wording of section 20(1)(a) of the Act. Further, I find that a search for records responsive to each individual request which is the subject of this appeal would not unreasonably interfere with the operations of the Town. Accordingly, in my view, the 213 day extension of the time for responding to the requests is not reasonable, and I will order the Town to provide the appellant with its decisions regarding access to the requested records within 30 days of the date of this order.

ORDER:

1. I do not uphold the Town's decision to claim a time extension of 213 days for the three requests at issue in Appeal Numbers M-9500755, M-9500756 and M-9500757.

2. I order the Town to send a decision regarding access to the appellant for each request at issue in these appeals on or before **February 29, 1996**.

3. In order to verify compliance with Provision 2 of this order, I order the Town to send me a copy of the decision letters referred to in Provision 2 on or before **February 29, 1996**. 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: January 30, 1996
Laurel Cropley
Inquiry Officer

POSTSCRIPT:

The Town states in its representations:

> The [Town] had a policy of openness long before the Act came into being. This was easy to do as we deemed much of the information held by the Town to be public information.

The Town indicates further that on a number of occasions staff were able to deal with many of the appellant's requests "over the counter", and that in most past cases access to the records has been granted. Moreover, since the appellant usually wishes to have visual access to the information, the Town has advised him that all he has to do is set up an appointment with the Freedom of Information and Privacy Co-ordinator to view the records.

In a Postscript in Order M-583, Commissioner Tom Wright drew institutions' attention to the desirability of finding a "low-tech, inexpensive way to respond to inquiries from the public". In recognizing the limited capacity of government organizations to respond to access requests, and the fiscal constraints faced by government organizations, he noted that:

> I believe that the routine disclosure of various types of government-held information will assist government organizations to respond to requests for information more effectively, more efficiently and at significantly less cost. Or to say it in plain words, routine disclosure makes access to information better, faster and cheaper.
> ...
>
> This is why we have begun to focus on systemic solutions as well as the one-off processing of appeals. For example, a group of access and privacy professionals from municipal and provincial government organizations, the Freedom of Information and Privacy Branch of Management Board Secretariat, and my office have published a series of guidelines to help government organizations determine which records could be routinely disclosed.

It appears that the types of records requested in the three appeals at issue may raise the possible application of the mandatory exemption in section 10 of the Act, in which case routine disclosure would not be appropriate. However, I would strongly urge the Town to obtain these guidelines, and in consultation with the Freedom of Information and Privacy Branch of Management Board Secretariat if necessary, determine whether certain types of records could be routinely disclosed outside the Freedom of Information access regime.

With respect to the mediated solutions that the parties arrived at through the assistance of this office, the views expressed by Commissioner Wright in the Postscript to Order M-583 are particularly pertinent. He said:

> To this point my comments have been directed toward government organizations. In my opinion this is appropriate since these organizations maintain the records and, therefore, can determine how they are best made available to the public. However, in my view requesters also have a responsibility when making requests.
>
> The reality is, as unfortunate as it may be, that government organizations do not have an unlimited capacity to respond to freedom of information requests. Therefore, as I have said publicly on numerous occasions, users of the freedom of information system have an obligation to be reasonable; to be conscious of the financial constraints under which all government organizations are operating.
>
> For example, users can consider viewing records, instead of asking for copies. They can narrow their requests and clarify exactly what information they are seeking.

While the appellant has, for the most part, chosen to view records rather than to request copies, he must also realize that the volume of requests which he makes will have some impact on the Town's resources. In my view, the mediated solution between the Town and the appellant represents a reasonable and efficient way of meeting the objectives of the Act while recognizing the limitations on the Town's resources. The parties have indicated a willingness to proceed in this manner in the past, and I would urge them to persevere in their efforts to find a mutually agreeable solution in the future.