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

INTERIM ORDER M-715

Appeal M_9500624

Corporation of the County of Northumberland

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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 appellant and his wife submitted a request under the Act to the Corporation of the County of Northumberland (the County) on August 28, 1995. The request was for copies of the appellant's General Welfare Assistance (GWA) file and employment file, and his wife's employment file and personnel file. The appellant is representing his wife's interests throughout this process, as well as his own.

The County acknowledged the request on August 29, 1995. On September 26, 1995, the appellant contacted the County to advise that the 30 day time limit for responding to the request had arrived and that he would like the records to be ready for pick-up the next day. The County did not provide a written access decision. However, it appears that the appellant was granted full access to the records on September 27, 1995. At that time, he submitted a written request for copies of any other working files or information relating to him or his wife. The County did not acknowledge or respond to this request.

The appellant filed an appeal with this office on October 5, 1996. In his letter of appeal, the appellant indicated that the photocopies of the records he received were of such poor quality that he was unable to read them.. He also stated that specific information from his wife's personnel file and information from his GWA file, as well as a number of other records, were missing. Some of this information, it appears, may be responsive to the second request submitted on September 27.

On October 26, 1995, the appellant wrote to the County and requested all information which he believed was missing from the records he received. He also requested that the County provide him with legible copies of the records he received. The County responded that it had only received one access request (the August 28 request), with which it had complied. The County then advised the appellant to send all further correspondence and requests to the County's solicitors. The County did not take any further steps to respond to the September 27 request.

The appellant's appeal regarding his September 27 request was premature at the time he originally submitted his appeal relating to the August 28 request. However, as of October 26, the County had still not responded to the September 27 request. As the issues relating to these two requests are closely related, and indeed, may cover much of the same information, the issues arising from the September 27 request have been incorporated into the current appeal. Accordingly, I will deal with both request letters.

Mediation efforts to clarify the issues in this appeal were not successful and a Notice of Inquiry was sent to the County and the appellants. The sole issue raised in the Notice was whether the County's search for responsive records was reasonable in the circumstances of this appeal. Both parties provided representations. The County's representations were made on its behalf by its solicitor.

The County's representations raise a number of new issues completely unrelated to the issues raised on appeal, including a refusal to confirm or deny the existence of any other records which might be responsive to these requests. I am not prepared to address these issues in this interim order, partly because of the late date at which they were raised, and partly because of my ultimate findings.

It is clear from the above outline of the history of this file that the County has made no effort to deal with this request in accordance with the procedures set out in the Act. The County did not provide a written access decision to the appellants in accordance with the requirements in sections 19 and 22 of the Act. The County did not respond to the second request submitted by the appellant.

It is not clear whether the appellant has received all records in the custody or control of the County, and the County has not provided sufficient information to the Commissioner's office to allow for a proper determination of the issues in this appeal. In effect, however, by not responding to the appellant's second request, the County is deemed to be denying the appellant access to the records which are responsive to his request pursuant to section 22(4) of the Act.

Finally, the County has not responded to the appellant's concerns regarding the legibility of the copies of the records which were provided.

The factual circumstances of this appeal raise a number of issues which must be addressed before the issues raised in the Notice of Inquiry can be dealt with. These issues are: the provision of a decision letter regarding access to the requested records, and legibility of the records which were disclosed to the appellant. Accordingly, in this interim order I will deal with these preliminary issues.

DISCUSSION:

PROVISION OF A DECISION LETTER

The issuance of a proper 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 the requested records, he cannot make an informed decision on whether access has been properly granted or denied and whether an appeal on such access decision(s) would be appropriate.

Section 19 of the Act requires an institution to give written notice to a requester as to whether or not access to the requested records will be granted. When an institution denies access to a record, section 22 of the Act prescribes that the institution must issue a notice of refusal to the requester. The contents of this notice (which are conveyed in a decision letter) are more fully described in sections 22(1) and (2), which read as follows:

> (1) Notice of refusal to give access to a record or part under section 19 shall set out,
>
> (a) where there is no such record,

(i) that there is no such record, and

(ii) that the person who made the request may appeal to the Commissioner the question of whether such a record exists; or

(b) where there is such a record,

(i) the specific provision of this Act under which access is refused,

(ii) the reason the provision applies to the record,

(iii) the name and position of the person responsible for making the decision, and

(iv) that the person who made the request may appeal to the Commissioner for a review of the decision.

(2) A head who refuses to confirm or deny the existence of a record as provided in subsection 8(3) (law enforcement) or subsection 14(5) (unjustified invasion of personal privacy) shall state in the notice given under section 19,

(a) that the head refuses to confirm or deny the existence of the record;

(b) the provision of this Act on which the refusal is based;

(c) the name and office of the person responsible for making the decision; and

(d) that the person who made the request may appeal to the Commissioner for a review of the decision.

A number of previous orders issued by the Commissioner's office have commented on the degree of particularity which should be contained in a decision letter. Although the orders indicate that there are several ways in which an institution can comply with its obligations under sections 22(1) and (2) of the Act, the key requirement is that the requester must be put in a position to make a reasonably informed decision on whether to seek a review of the head's decision.

As I indicated above, it is clear that the County has failed to comply with the requirements of sections 19 and 22 of the Act with respect to the appellant's request. Accordingly, I will order

the County to issue to the appellant a decision letter in the form contemplated by sections 19, 22 and 23 of the Act.

In June 1992, the Commissioner's office published an issue of "IPC Practices" which outlines the requirements for a proper decision letter denying access to records. This document was intended to assist government organizations to prepare decision letters which comply with the requirements of the Act. I would encourage the County to refer to this document in preparing its decision under the Act.

LEGIBLE COPIES OF THE RECORDS

The County provided a number of records to the appellant in response to his request, however, the appellant has indicated to the County and to this office that he is unable to read them. The County did not respond to the appellant's complaints about the quality of the copies. This issue was not raised in the Notice of Inquiry. However, it remains an issue of concern to the appellant. In his representations, the appellant states that he was given poor quality copies of approximately 25% of the information provided to him.

There is nothing in the Act which specifically provides that the copies of records disclosed to a requester must be legible. Section 37(3) of the Act provides that:

> If access to personal information is to be given, the head shall ensure that the personal information is provided to the individual in a comprehensible form and in a manner that indicates the general conditions under which the personal information is stored and used.

There may be situations where it is not possible to make a legible copy of a record, for example, if the original document is of poor quality or fragile. Section 23 of the Act provides alternative options in these situations. This section provides:

> (1) Subject to subsection (2), a person who is given access to a record or a part of a record under this Act shall be given a copy of the record or part unless it would not be reasonably practicable to reproduce it by reason of its length or nature, in which case the person shall be given an opportunity to examine the record or part.
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> (2) If a person requests the opportunity to examine a record or part and it is reasonably practicable to give the person that opportunity, the head shall allow the person to examine the record or part.
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> (3) A person who examines a record or a part and wishes to have portions of it copied shall be given a copy of those portions unless it would not be reasonably practicable to reproduce them by reason of their length or nature.

The records which the appellant states are illegible have not been provided to this office. Therefore, I do not know whether these records are illegible, and if they are, the reason for this. I do not know if it is the actual writing which is illegible, or whether it is the reproduction that is of poor quality.

In my view, however, the general principles of access under the Act require that, if the institution is going to provide the appellant with a copy of the records, it should make every effort to ensure that the copies are of a reasonable quality. I would urge the County to turn its mind to the appellant's complaint regarding those records which he states are illegible to determine whether they are the best available copies. If the copy of the records, that is, the reproduction of the originals, is illegible, and it is not possible, due to the nature of the document, to reproduce it clearly, the County must give the appellant the opportunity to examine the records pursuant to sections 23(1) and (2) of the Act.

ORDER:

1. I order the County to provide a decision letter to the appellant regarding the records requested in his August 28 and September 27, 1995 letters, in the form contemplated by sections 19, 22 and 23 of the Act, on or before **March 7, 1996**, without recourse to a time extension.

2. I order that a copy of the decision letter referred to in Provision 1 should be forwarded, on or before **March 7, 1996**, to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

3. If, upon receipt of the County's decision letter, the appellant is not satisfied with the response, he may notify me, in writing at the above address, that he wishes his appeal to continue on the basis of the written decision provided to him. I remain seized of all issues in this appeal.

Original signed by: February 21, 1996
Laurel Cropley
Inquiry Officer