



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

INTERIM ORDER P-1612

Appeal PA_980214_1

Ontario Hydro



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NATURE OF THE APPEAL:

Ontario Hydro (Hydro) received a request dated May 4, 1998 under the Freedom of Information and Protection of Privacy Act (the Act) from a newspaper reporter. The request was for access to information relating to employment contracts, including any salary or compensation information, for seven individuals hired by Hydro for its nuclear operations. On July 3, 1998, nearly a month after the expiration of the thirty-day period prescribed by section 26 of the Act, Hydro issued a decision to the requester in which it denied access to the responsive records pursuant to the invasion of privacy exemption contained in section 21(1) of the Act.

By letter dated July 16, 1998 and postmarked July 17, 1998, the requester, now the appellant, appealed Hydro's decision to deny access to the records to the Commissioner's office. The appeal was not, however, received by the Commissioner's office until August 17, 1998. The following day, this office advised Hydro that the appeal had been received.

Hydro then took the position that because the appeal had been filed more than 30 days after the date of its decision, it was out of time in accordance with the requirements of section 50(2) of the Act. The appellant disputed this position.

On August 19, 1998, I provided a Notice of Inquiry to Hydro and the appellant seeking their submissions on the issue of the timeliness of the appeal. I also provided each of the parties with a copy of Interim Order M-775 which addressed similar issues respecting the time for making an appeal under the Act and the appropriate calculation of the time period prescribed by section 50(2).

Submissions were received only from the appellant. In the intervening period, however, Hydro provided with appellant with a second decision letter in which it claimed the application of a number of additional exemptions to the records. In addition, Hydro advised the appellant that, under section 65(6) of the Act, the records fall outside the ambit of the Act.

This interim order will address only the issue of the timeliness of the appeal, as outlined in the Notice of Inquiry provided to the parties.

DISCUSSION:

TIMELINESS OF THE APPEAL

The facts surrounding the mailing of the letter which initiated the appeal by the appellant are not in dispute. As evidenced by the postmark on the envelope which contained the appeal letter, the appellant mailed his appeal to this office on July 17, 1998. This took place 14 days following the date of Hydro's original decision letter, well within the 30-day time period prescribed by section 50(2) for the making of an appeal.

As noted above, the appeal letter was delayed in the mail and was not received by our office until August 17, 1998. The question which needs to be addressed in this interim order is whether the

appeal was “made” within the meaning of section 50(2) inside the 30-day time period prescribed by that section.

Section 50(2) provides that:

An appeal under subsection (1) shall be made within thirty days after the notice was given of the decision appealed from by filing with the Commissioner written notice of appeal.

In Interim Order M-775, Adjudicator Laurel Cropley articulated several principals surrounding the timing of appeals made under the Municipal Freedom of Information and Protection of Privacy Act. She made the following comments with respect to when an appeal is deemed to be “made” under the municipal Act:

The question of when the period ends is somewhat more ambiguous. The language of the provision does not require that the appeal be “filed” or “registered” with this office. Rather, an appeal is “made”, and there is no further explicit guidance in the Act. It is thus arguable that an appeal is “made” by mailing the appeal within thirty days of receipt of the decision by the requester.

In view of the evidence which shows that an appeal mailed to this office can take a considerable time to arrive, and there is no deemed mailing date provision in the statute, the purpose of the statute to provide an independent review of government decisions could be frustrated by a requirement that the effective date for an appeal is the date of receipt by the Commissioner’s office. Therefore, it is my view that the effective date for making an appeal is the date of mailing by the requester.

I agree with the approach enunciated by Adjudicator Cropley with respect to the determination of the effective date for the making of an appeal. In the present case, it is not disputed that the appellant mailed his appeal to this office on July 17, 1998. In my view, the arguments put forward by Hydro that the appeal was not made in a timely manner are untenable. The position taken by Hydro is even more disingenuous considering that it failed to comply with the timeliness requirements imposed on institutions in section 26 when responding to the original request. In addition, even after having been apprised by this office after the appeal file was opened of the circumstances surrounding the delay in receiving the appeal, Hydro persisted in maintaining its position that the appeal was out of time. It appears that Hydro took this position solely with a view to delay the processing of the appeal.

I find, accordingly, that the appeal was made well within the 30-day time period for the making of an appeal described in section 50(2) and that it may now proceed through the normal procedure for the processing of an appeal, without further delay. As the original appeal made by the appellant will now go forward, I will order Hydro to refund to the appellant the filing fee which it required following the submission of a second request for the same information.

The second decision letter from Hydro, dated August 26, 1998, was made within the 35-day period prescribed by this office. Accordingly, in order to resolve all of the outstanding issues

extant in this matter, the present appeal will address the application of the exemptions claimed by Hydro in its two decision letters and the mandatory exclusion in section 65(6) to the records.

ORDER:

1. Hydro's objection to the timeliness of the making of this appeal is dismissed.
2. I order Hydro to refund the second filing fee paid by the appellant by **September 25, 1998** and that the original appeal proceed.

Original signed by: _____
Donald Hale
Adjudicator

_____ September 11, 1998