



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

# ORDER PO-1700

Appeal PA-990195-1

Ontario Hydro



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## **NATURE OF THE APPEAL:**

On March 31, 1999, the appellant submitted a request to Ontario Hydro (as represented by Ontario Power Generating Corp.) (Hydro) under the Freedom of Information and Protection of Privacy Act (the Act). The request was for access to “all documents prepared for, and motions and decisions made by the Ontario Hydro Board of Directors for the period September 1, 1997 to March 31, 1999 regarding the ‘Nuclear Asset Optimization Plan’ and the ‘Integrated Improvement Program’”. The appellant also made 11 separate requests at the same time which are not at issue in this appeal.

On April 30, 1999, Hydro, pursuant to section 27(1)(a) of the Act, extended the time for responding to the request to January 29, 2000. On May 31, 1999, the appellant appealed to this office Hydro’s time extension of approximately 10 months.

A Confirmation of Appeal (COA) was sent to the appellant and Hydro on June 10, 1999. The COA indicated that I would, as a Mediator, attempt to settle this appeal with the parties. The COA also stated that the Commissioner has delegated Mediators the authority to issue an order disposing of appeals that are not mediated where the sole issue is the extension of time by an institution to make an access decision.

Mediation was not successful. Notice that an inquiry was being conducted to review the decision of Hydro was sent to the appellant and Hydro on June 29, 1999. Written representations were received from Hydro.

## **DISCUSSION:**

The sole issue for me to determine in this appeal is whether the extension of time claimed by Hydro to respond to the request was made in accordance with section 27(1)(a) of the Act.

Section 27(1)(a) of the Act states:

A head may extend the time limit set out in section 26 for a period of time that is reasonable in the circumstances, where,

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;

In her letter of appeal, the appellant states that the time extension is unbelievable as her request is for materials presented to and decisions made by the Board of Directors for a period of only one and a half years. The appellant also states that she is concerned that the extension may have been used to avoid public scrutiny of controversial decisions planned by the Board of Directors relating to the restart of the Pickering A and Bruce A nuclear stations.

In its representations, Hydro addresses the fact that there are a large number of records, that processing the request requires a search through a large number of records and the impact processing the request will have on Hydro's resources.

Hydro states that during the last week of March, 1999, it received approximately 66 access requests from a number of different requesters. Of these, 62 related to Ontario Power Generation. In order to process the requests without unreasonably interfering with Hydro's operations, a schedule of time extensions for responding to all of the requests was prepared.

Hydro also advises that many of the requests are focused on the nuclear operations area and the processing of these requests is the responsibility of one individual. Hydro submits that this individual, for the next six months, has a particularly heavy workload on top of her regular workload and the processing of access requests. Hydro outlined this individual's principle accountabilities for this period of time.

In Order 28 former Commissioner Sidney B. Linden stated:

... in invoking section 27, the head 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. I do not believe that section 27 lends 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.

While I am sympathetic that the individual who is responsible for processing requests relating to nuclear operations obviously is accountable for many other matters, in my view, section 27 can only be properly triggered by the head upon considering whether **any particular request** involves a search through a large number of records that cannot reasonably be completed within the 30-day time limit.

With respect to this request, Hydro submits that staff familiar with the records have estimated that, in order to locate the responsive records, they would have to search through approximately 42 inches of records equal to approximately 10,000 pages. Hydro states that such a search would take 14 hours. Further, Hydro staff estimate that, of the 10,000 pages, around 420 pages will be responsive to the request and it will take a further 14 hours to prepare the records for possible disclosure.

During mediation, Hydro advised me that 1 board minute consists of 15 pages and each agenda was usually 2 pages in length. Accordingly, for each meeting held, there would be approximately 17 pages of records to review. While I have been provided with no information on the frequency with which the Board of Directors meet, if the Board had met weekly over this 18 month period, there would be approximately 1326 pages of records to review. Even on the unlikely assumption that the Board meet daily during a five day work week, there would be around 6630 pages of records to review. However, I accept that any of these number of pages constitute a large amount of records.

I have carefully reviewed the representations of Hydro and I am satisfied that the request is for a large number of records (420 pages) and that the request will necessitate a search through an even larger number of records. However, I am not satisfied that meeting the time limit would unreasonably interfere with the operations of the Hydro. Hydro has stated that the total search and preparation time to process the request amounts to 28 hours, less than 1 work week. Hydro has had this request for four months and has not provided me with any indication that it has yet started to process the request. If Hydro had dedicated a mere 2 hours per week to the processing of this request, the request would have been completed by the early part of July, 1999. Accordingly, I am not satisfied that the time extension invoked by Hydro under section 27(1)(a) is reasonable in the circumstances of this appeal.

**ORDER:**

1. I order Hydro to provide a decision letter to the appellant regarding access to the records in accordance with the Act by **August 20, 1999**.
2. In order to verify compliance with this order, I order Hydro to provide me with a copy of its decision letter on access referred to in Provision 1 by **August 25, 1999**. The notice should be sent to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

Original signed by: \_\_\_\_\_  
Janice E. Nemeth  
Acting Adjudicator

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July 30, 1999