



Information and Privacy
Commissioner/Ontario

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

ORDER PO-1683

Appeal PA-990136-1

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 requester asked the Ministry of Health (the Ministry) for access to any documents relating to the withdrawal of doctors' services from the Ontario Medical Association and the Specialists Coalition of Ontario. In particular, the requester sought access to documents relating to strategy and details of the position of the Ontario Medical Association regarding the impact of the withdrawal of services on patients. The request covers the time period of 1996 to the date of the request. The request is dated December 5, 1997. The requester subsequently expanded her request to include the College of Physicians and Surgeons of Ontario and the Ontario Hospital Association.

On September 21, 1998, the Ministry issued an interim decision to the requester granting access to seven pages. The interim decision stated that, pursuant to section 28 of the Act, third party notice was being given on other responsive records and the Ministry would be in a position to issue a final decision with respect to these records by October 21, 1998. Further, the interim decision stated a manual search of files in the Corporate Correspondence Unit was required to locate another portion of potentially responsive records and a fee estimate of \$57.20 had been assessed to complete this part of the request. The interim decision indicates that receipt of \$57.20 from the requester was required before the Ministry would proceed with this part of the request. The Ministry has advised me that full payment of the fee estimate was received by the Ministry on October 13, 1998.

The Ministry did not issue a final decision letter to the requester as required by sections 26 and 29 of the Act within the 30 days prescribed by the Act, nor did the Ministry request a time extension to process the request under section 27(1) of the Act. Accordingly, the Ministry placed itself in a "deemed refusal" situation pursuant to section 29(4) of the Act.

On April 7, 1999, the requester (now the appellant) appealed the Ministry's deemed refusal to provide access to the records. On April 22, 1999, the Ministry and the appellant were each sent a Notice of Inquiry. The Notice stated that the Ministry was in a "deemed refusal" situation because a final decision letter had not been issued to the appellant within the time period set out in section 26 of the Act. The Notice also indicated that I would attempt to settle the appeal but if a settlement was not reached by May 6, 1999, I would be in the position to issue an order requiring the Ministry to issue a decision letter to the appellant.

On May 5, 1999, the Ministry wrote to the appellant indicating that, pursuant to section 28 of the Act, third-party notification had been given to two affected parties whose interests may be affected by the disclosure of 14 records. The Ministry advised the appellant that they would be in the position to make a decision on access to these 14 records by June 4, 1999.

On May 19, 1999 the Ministry issued a second decision letter to the appellant regarding access to ten remaining records for which no decision had been issued but third party notification had been completed.

In making this order, I must take into account section 28(1) of the Act which states:

[IPC Order PO-1683/June 4, 1999]

Before a head grants a request for access to a record,

- (a) that the head has reason to believe might contain information referred to in subsection 17(1) that affects the interest of a person other than the person requesting information; or
- (b) that is personal information that the head has reason to believe might constitute an unjustified invasion of personal privacy for the purposes of clause 21(1)(f), the head shall give written notice in accordance with subsection (2) to the person to whom the information relates.

Subsection 28(3) of the Act states:

The notice referred to in subsection (1) shall be given within thirty days after the request for access is received, or where there has been an extension of a time limit under subsection 27(1), within that extended time limit.

Section 28(3) states that such notice shall be given within 30 days after receiving the request. As noted above, the Ministry did not request a time extension pursuant to section 27(1) of the Act. The request is dated December 5, 1997. Therefore, third party notification should have been completed by mid January of 1998. The appellant was advised by letter dated May 5, 1999 that third party notification had just been given for 14 records, 16 months after the notification should have been sent. However, section 28(1) of the Act places a statutory obligation on the head to give notice to any person whose interests might be affected by the release of a record as outlined in sections 17 and 21 of the Act. Accordingly, I acknowledge that the Ministry must await the expiration of the notification date prior to issuing a decision on the remaining 14 records.

The Ministry's Freedom of Information and Protection of Privacy Office is currently undergoing staffing changes. Given the extreme delay in the Ministry's processing of this request and the fact that personnel changes are occurring, I am ordering the Ministry to issue a final decision on access with respect to the 14 records no later than June 11, 1999 to ensure that the urgency of this matter is recognized and that there are no further delays in the processing of this request. In making this order I am mindful of the fact that the Ministry indicated that it would be in the position to issue a decision on access to these records, after consultation pursuant to section 28(1) of the Act, by June 4, 1999.

ORDER:

1. I order the Ministry to provide the appellant with a decision on access to the remaining 14 records no later than **June 11, 1999**, without recourse to a time extension.

2. In order to verify compliance with Provision 1, I order the Ministry to provide me with a copy of the decision letter referred to in Provision 1 by **June 14, 1999**. 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: _____

Janice E. Nemeth
Acting Adjudicator

_____ June 4, 1999