



Information and Privacy  
Commissioner/Ontario

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

# **ORDER PO-1765**

Appeal PA-000032-1

Ministry of Training, Colleges and Universities



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/Téloc: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## **NATURE OF THE APPEAL:**

On December 9, 1999, the appellant submitted a request under the Freedom of Information and Protection of Privacy Act (the Act) to the Ministry of Training, Colleges and Universities (the Ministry). The request was for records generated in the past year relating to any applications by a named university to the Ministry for funds directed towards building and similar projects under the program generally referred to as Superbuild. The request also included records relating to the Ministry's review of such applications.

On December 29, 1999, the Ministry wrote to the appellant informing him that pursuant to section 28 of the Act, it had notified a third party of the request and had given the third party an opportunity to make representations concerning the disclosure of the records which respond to the request. The Ministry further advised the appellant that a decision on whether the records will be disclosed would be issued by January 28, 2000.

The Ministry did not issue a final decision letter to the appellant on or by January 28, 2000, nor did the Ministry request a time extension to process the request under section 27(1) of the Act.

On January 31, 2000, the appellant appealed the Ministry's lack of access decision. On February 8, 2000, I sent a Notice of Inquiry to the Ministry and to the appellant. The Notice stated that the Ministry was in a "deemed refusal" situation because a final decision letter had not been issued within the prescribed time period. The Notice also indicated that I would attempt to settle the appeal, but if a settlement was not reached by February 23, 2000, I would issue an order requiring the Ministry to issue a decision letter to the appellant.

Once a request has been received, and clarified if necessary, section 26 of the Act prescribes a thirty-day time limit in which the head must give written notice to the person who made the request as to whether access to the record will be granted. This thirty-day limit is subject to extensions under sections 27 and 28 of the Act.

In the circumstances of this appeal, the Ministry notified the third party of the request under section 28(1) of the Act. The Ministry notified the appellant of the delay under section 28(4) of the Act which states:

(4) Where a head gives notice to a person under subsection (1), the head shall also give the person who made the request written notice of delay, setting out,

(a) that the record or part thereof may affect the interests of another party;

(b) that the other party is being given an opportunity to make representations concerning disclosure; and

**(c) that the head will within thirty days decide whether or not to disclose the record.** [Emphasis added]

The Ministry calculated this time period as expiring on January 28, 2000.

Section 28(7) of the Act states:

(7) The head shall, **within thirty days after the notice under subsection (1) is given**, but not before the earlier of,

(a) the day the response to the notice from the person to whom the information relates is received; or

(b) twenty-one days after the notice is given,

decide whether or not to disclose the record or the part thereof **and give written notice of the decision** to the person to whom the information relates and the person who made the request.

[Emphasis added]

I contacted the Ministry on several occasions to inquire about the status of the decision. On every occasion I was advised that the decision had not been issued. To date, the Ministry has not issued a decision letter to the appellant.

Accordingly, I am ordering the Ministry to issue a decision letter to the appellant with respect to his request for records.

**ORDER:**

1. I order the Ministry to provide the appellant with written notice of the decision on access to the records responsive to the request of December 9, 1999 by **March 21, 2000**, without recourse to a time extension.
2. In order to verify compliance with Provision 1 of this order, I order the Ministry to provide me with a copy of the decision letter referred to in Provision 1 by **March 28, 2000**. This should be forwarded to my attention, % Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

Original signed by: \_\_\_\_\_

Alex Kulynych  
Acting Adjudicator

\_\_\_\_\_  
March 14, 2000