



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-1862

Appeal PA-000403-1

Ontario Human Rights Commission



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BACKGROUND:

On February 8, 2000, the requester wrote to a named Investigation Officer in the London office of the Ontario Human Rights Commission (the OHRC) requesting access to the following information: the number of persons working as investigating officers in the area of Middlesex County and working on average during a specified period between July 4, 1997 and February 1, 2000; the number of complaints actually addressed by the investigating officers during that period; the dates of the complaints initiated in connection with the requester's case; and the kind of investigation conducted by the named investigator regarding the requester's case.

On March 15, 2000, the Investigation Officer responded by stating he was unable to provide any information regarding staffing and processing of complaints.

On March 27, 2000, the requester wrote to the Investigation Officer to ask him to provide the name of the person who is able to provide the requested information as he is considering making an application under the provisions of the *Freedom of Information and Protection of Privacy Act*. The Investigation Officer did not respond to this letter.

NATURE OF THE APPEAL:

As a result, on May 31, 2000, the requester wrote to OHRC's Investigation Officer and submitted a request for access to the information described above under the *Freedom of Information and Protection of Privacy Act (the Act)* and for all records which contain a report or study on the performance or efficiency of the Ontario Human Rights Commission, especially in regards to the investigative procedure, the time it takes to investigate a usual complaint, recommendations for improving this time, and any other relevant information regarding the performance and efficiency of the investigative process of the Commission.

In his request letter, the requester again asked the Investigation Officer to provide him with the name of the person to contact to obtain access to the records. The Investigation Officer failed to respond to the request submitted under the *Act*.

On August 1, 2000, the requester again wrote to the OHRC's Investigating Officer requesting the above information under the *Act*. In his letter, the requester stated that it is his understanding that pursuant to section 24(1)(c) and the regulations that a prescribed fee is required to be paid for a request made under the *Act* and he submitted his cheque in the amount of \$5.00. In this letter, the requester again asked the Investigation Officer to provide him with the name of the person to contact to obtain access to the records.

The OHRC did not issue a 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 OHRC request a time extension to process the request under section 27(1) of the *Act*. Accordingly, the OHRC placed itself in a "deemed refusal" situation pursuant to section 29(4) of the *Act*. This provision states:

A head who fails to give the notice required under section 26 or subsection 28(7) concerning a record shall be deemed to have given notice of refusal to give access to the record on the last day of the period during which notice should have been given.

On November 30, 2000, the requester (now the appellant) filed an appeal of the OHRC's "deemed refusal" to provide access to the records.

On December 21, 2000, the Intake Analyst in this office contacted the OHRC's Freedom of Information and Privacy Coordinator (the Coordinator) in order to determine whether a decision had been issued. The Coordinator confirmed that she had not issued an access decision respecting this request. She indicated that the London office had been closed and that the information responsive to the request would be stored in boxes.

On January 3, 2001, this office sent a Notice of Inquiry to both the appellant and the OHRC stating that the OHRC is in a "deemed refusal" situation because it had not issued a decision letter within the required 30-day time-frame. The Notice also advised that if this matter was not resolved by way of settlement by January 17, 2001, I would be in a position to issue an order requiring the OHRC to provide a decision letter to the appellant.

On January 19, 2001, the OHRC's Coordinator informed me that she had not issued a decision because she did not have a copy of the appellant's request, and because the appellant had not paid the required \$5.00 request fee.

On January 22, 2001, I had delivered to the OHRC, by hand, a copy of all of the appellant's correspondence to the OHRC pertaining to his access request, including a letter referring to the enclosed \$5.00 request fee.

Section 26 of the *Act* requires the head of the institution to which the request is made to issue a decision within 30 days of receipt of the request. While institutions have established the position of Freedom of Information and Privacy Coordinator to handle access requests, and the best way for a requester to make the request is through the Coordinator, any request made under the *Act* to an institution is considered to be properly received by the institution wherever it is submitted.

In this case, as indicated above, the requester asked the OHRC's Investigation Officer to advise him on three separate occasions of the name of the proper person to send his access request to. The Investigation Officer neither responded to this query nor did he forward the request made under the *Act* to the Coordinator. Since this request was clearly submitted to the OHRC, I find that the OHRC failed to issue a decision within 30 days of receipt of the request.

In addition, the Coordinator has been aware that a deemed refusal appeal had been filed since speaking to this office on December 21, 2000. She has also been aware that an inquiry is being conducted into the matter since receiving our Notice on January 3, 2001. At no time between December 21, 2000 and January 19, 2001 did the Coordinator indicate she did not have a copy of the request.

The Coordinator has also stated that the required request fee has not been paid. However, the appellant has provided me with a copy of his request letter in which his cheque for \$5.00 was enclosed. Based on the evidence, I am satisfied that the appellant has paid the required request fee.

To date, the OHRC has not issued a decision respecting access to the information responsive to this request. To ensure that there are no further delays in the processing of this request, I am ordering the OHRC to issue a decision respecting access by February 14, 2001.

ORDER:

1. I order the OHRC to provide the appellant with written notice of its decision on access to the records responsive to the request **by February 14, 2001**.
2. In order to verify compliance with Provision 1 of this order, I order the OHRC to provide me with a copy of the decision referred to in Provision 1 by February 20, 2001. 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: _____ January 31, 2001
Susan Ostapiec
Acting Adjudicator