



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

# **ORDER MO-1326**

**Appeal MA-000076-1**

**The Corporation of the Municipality of Arran-Elderslie**



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## **NATURE OF THE APPEAL:**

On February 11, 2000, the appellant made a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to the Corporation of the Municipality of Arran-Elderslie (the Municipality). The request was for access to “copies of the minutes of the last council meeting, marked ‘not approved’.”

The Municipality responded in writing on February 18, 2000, advising the appellant that it did not have any records marked “not approved” but that it understood that she was seeking access to the February 7, 2000 Council meeting minutes. The Municipality also indicated to the appellant that, under section 19 of the Act, it is obliged to render a decision on access to a requested record within 30 days of the date the request is received. The Municipality informed the appellant that, pursuant to its obligations under section 19, it would provide notice to her within 30 days as to whether access to the requested record is to be granted or not. The appellant was also advised that the requested February 7th minutes would be made available to her on February 23, 2000. The Municipality also made reference to its disclosure obligations under section 74 of the Municipal Act, which requires that it make available to the public “all minutes of the proceedings of the council ... within a reasonable time” and “subject to the Municipal Freedom of Information and Protection of Privacy Act”.

On March 14, 2000, the appellant appealed the Municipality’s decision to the Commissioner’s office on the basis that she ought to be entitled to timely access to the requested information, as mandated by section 74 of the Municipal Act. In a letter to this office dated March 31, 2000, the appellant sets out in greater detail her reasons for initiating the present appeal. She submits that:

What is of utmost importance here is the connecting of the requirements of the Municipal Act to the parameters of MFIPPA, with the added admonition of “within a reasonable time” under the Municipal Act as a stop-gap to possible misuse of the provisions of the MFIPPA to unwarrantly delay release of pertinent and time-sensitive documents to the public.

During the mediation of the appeal, the Municipality confirmed with the appellant that she was seeking access to the version of the minutes of the February 7, 2000 council meeting which was prepared for Council’s approval. The Municipality agreed to provide her with access to this record, in its entirety. Accordingly, whether or not the appellant is to be granted access to the record requested is no longer at issue in this appeal and there is agreement between the parties that the requested record, in fact, exists.

The appellant takes the position that, under section 74 of the Municipal Act, the Municipality is required to provide her with access to the requested unapproved minutes within a reasonable time, which she interprets as meaning within sufficient time for her to ensure that the contents of the minutes of a council meeting are available to be placed on the agenda for the following meeting. The appellant is also of the view that by requiring that a requester make a request under the Act, with its 30 day time limit for response, the Municipality is not meeting its obligations under section 74 of the Municipal Act to provide the information “within a reasonable time”.

I provided a Notice of Inquiry to the appellant, soliciting her representations on the issue raised in her appeal letter. I received detailed representations from her. Because of the manner in which I will dispose of this appeal, it was not necessary for me to seek the representations of the Municipality.

## **DISCUSSION:**

### **TIMELINESS OF ACCESS**

In my view, the sole issue to be determined in this appeal is whether the Municipality's decision to grant the appellant access to the record within the 30 day period prescribed by section 19 of the Act is in compliance with its obligations under the Act.

### **Appellant's Submissions**

The appellant argues that the public has two avenues of access to the requested information, under both section 17(1) of the Act and section 74 of the Municipal Act, which states:

Subject to the Municipal Freedom of Information and Protection of Privacy Act any person may, at all reasonable hours, inspect any of the records, books or documents mentioned in section 73 and the minutes and proceedings of any committee of the council, whether the acts of the committee have been adopted or not, and other documents in the possession or under the control of the clerk, and the clerk shall, within a reasonable time, furnish copies of them, certified under the clerk's hand and the seal of the corporation of the municipality, to any applicant on payment at such rate as the council may by by-law establish.

Section 19 of the Act prescribes the time frames within which an institution must respond to a request made under section 17(1). It states that:

Where a person requests access to a record, the head of the institution to which the request is made or if a request is forwarded or transferred under section 18, the head of the institution to which it is forwarded or transferred, shall, subject to sections 20, 21 and 45, within thirty days after the request is received,

- (a) give written notice to the person who made the request as to whether or not access to the record or a part of it will be given; and
- (b) if access is to be given, give the person who made the request access to the record or part, and if necessary for the purpose cause the record to be produced.

The appellant submits that the Municipality has in place an unwritten policy whereby it denies access to unapproved council minutes (which is the requested record in this appeal) until such time as they have been approved by the council at its next meeting. The appellant argues that section 74 of the Municipal Act

requires that records such as council minutes be disclosed within a reasonable time after they are prepared, rather than after the date they are approved by council. She suggests that by relying on the 30 day time period prescribed for a response under section 19 of the Act, the Municipality is thwarting the intention of the timely access avenues provided in each statute.

The appellant also points out that section 19 only requires that the Municipality render a decision on disclosure and grant access to the requested information **within** 30 days of its receipt of the request. Nothing in the Act precludes an institution from disclosing information in a shorter time frame than the 30 day maximum which is prescribed by the Act. The appellant further submits that the inclusion of the wording "Subject to the Municipal Freedom of Information and Protection of Privacy Act" in the preamble to section 74 of the Municipal Act does not suggest that a request for information under that provision must be made in accordance with the access provisions in the Act. Rather, the appellant argues that the inclusion of that language is intended to recognize that the exemptions contained in the Act may apply to the information which is requested and that it may not be disclosed on that basis.

Essentially, the appellant objects to the Municipality's use of the 30 day response period provided by section 19 to delay the disclosure of the requested unapproved versions of council minutes. She suggests that their value is diminished as the public is denied the opportunity to scrutinize and use the contents of the unapproved minutes prior to their acceptance by council at its following meeting.

In addition, the appellant submits that in order to appear before a council meeting, the Municipality's own procedural by-law requires that members of the public wishing to address council or have an item added to the agenda of its meeting give notice of their intention to do so. Without having the opportunity to discern the contents of the previous meeting's minutes, the public is unable to raise a previously-discussed item at the immediately following council meeting. The appellant also argues that a number of other jurisdictions in Ontario routinely provide copies of unapproved council minutes to the public as a matter of course, immediately after they are prepared.

In conclusion, the appellant submits that the Municipality:

. . . is under no obligation to utilize the whole of the thirty day reply period available in the MFIPPA; the Act says "...within thirty days." In fact, the municipality is under no obligation to force a request through an FOI process at all for information which can be routinely released to comply with the Municipal Act Sect. 74, which includes what we have all agreed are "unapproved minutes". However, if it does choose to force *formal* requests, then the "reasonable time" for release of the unapproved minutes is determined by their time-sensitive nature vis-a-vis other extenuating circumstances, such as requirements under the municipality's own procedural by-law. I contend that this necessity is of greater weight than the *optional* thirty day reply period, and the unapproved minutes should be available to the public within several working days after a council meeting.

## **Findings**

In the circumstances of this appeal, it is important to note that the appellant's request which has given rise to this appeal was made under the provisions of the Act. Had the request been made pursuant to the access rights granted by section 74 of the Municipal Act, I would not have jurisdiction to make a determination as

to whether the Municipality had complied with its obligations to the appellant under that statute. In this appeal, I am simply being asked to, and can do no more than, determine whether the Municipality met its statutory obligation to the appellant, set out in section 19 of the Act.

Again, I note that an institution is required by section 19 to respond to a request made under section 17(1) of the Act within 30 days of its receipt of the request. The Municipality has indicated that it is prepared to disclose the requested records within the time frame prescribed by section 19. Contrary to the assertions by the appellant, the Municipality takes the position that by meeting the 30 day time frame prescribed by section 19, it has fulfilled its obligations under the Act.

In my view, the provisions of the Act with respect to the time in which a request must be responded to are clear. Section 19 requires that an institution respond to a request within 30 days after it is received. The Municipality indicated to the Mediator assigned to this file that council meeting minutes, in their unapproved form, are made available to the public within two to four weeks of each meeting. Following its receipt of the request on February 11, 2000, the Municipality advised the appellant on February 18, 2000 that she would be granted access to the requested record, in its entirety, on February 23, 2000, 16 days after the date of the council meeting in question. The Municipality has not, therefore, made use of the full 30 day period available to it under section 19.

I find that the Municipality responded to the appellant's request within the time frame required by section 19 as it advised her that access would be granted some 12 days after the request was received.

Accordingly, I find that the Municipality did not breach its obligations to the appellant under section 19 of the Act and I must dismiss the appeal on that basis. I agree with the position taken by the appellant that nothing in the Act prevents an institution from responding to a request and granting access within the 30 day time limit (as was the case here), but I am not persuaded that section 74 of the Municipal Act affects the 30 day time period in any way. In addition, I agree with the appellant that the words "Subject to the Municipal Freedom of Information and Protection of Privacy Act" contained in that section refer only to the fact that exemptions contained in the Act may apply to limit the access to information which is granted under that section.

**ORDER:**

The Municipality complied with its obligations under section 19 of the Act and I dismiss the appeal.

Original signed by: \_\_\_\_\_ July 27, 2000  
Donald Hale  
Adjudicator

**POSTSCRIPT:**

The appellant refers in her submissions to an article published by this office in its *IPC Perspectives, Spring 1996* publication entitled "Towards a Culture of Openness". In that article, the concept of Routine Disclosure of information which is normally made available to the public by institutions is endorsed and recommendations as to how this might be accomplished are outlined.

Routine Disclosure/Active Dissemination (RD/AD) of information by institutions was also the subject of IPC Practices Number 22, released by this office in September 1998. In that document, the Commissioner's office urged institutions to consider the institution of certain information disclosure policies and procedures which would enhance the public's access to information in the context of a request made under the Act or one which is made informally. A comprehensive step-by-step guideline for the creation of an RD/AD process for the disclosure of records which are normally made public is outlined in this document.

The website operated by the Commissioner's office also contains each of these publications. I would urge the Municipality to review its current information disclosure practices in light of the suggestions referred to in these materials. By moving towards a more pro-active approach to the disclosure of public information, the Municipality may in future avoid disputes over the disclosure of documents of this sort.