



Information and Privacy  
Commissioner/Ontario

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

# ORDER PO-1821

Appeal PA-000298-1

Ministry of the Environment



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## **NATURE OF THE APPEAL:**

By letter dated February 14, 2000, the appellant submitted a request to the Ministry of the Environment (the Ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The request was for access to records relating to any environmental concerns, orders, spills or any charges/prosecutions with respect to a specified property located in Kirkland Lake.

The Ministry located the responsive records and, on May 23, 2000, it issued a decision letter granting partial access to the records and requesting that the appellant pay a fee of \$641 in accordance with section 57 of the *Act*. On May 25, 2000, the appellant paid the requested fee, in full.

On August 1, 2000, the appellant contacted the Ministry by letter requesting that the disclosure of the records referred to in the May 23, 2000 decision letter be expedited. The appellant also advised that unless the records were received by August 21, 2000, she intended to initiate an appeal to this office. The records were not disclosed to the appellant.

By letter dated September 18, 2000, the appellant filed an appeal with this office on the basis that the Ministry was in a "deemed refusal" situation by failing to disclose the records in accordance with its May 23, 2000 decision letter.

On September 28, 2000, I sent a Notice of Inquiry to both the appellant and the Ministry requesting their submissions on whether the Ministry had complied with its obligations under section 26 of the *Act*. The date for receipt of their representations was October 5, 2000. I have not received any response from either party.

## **DISCUSSION:**

### **HAS THE MINISTRY COMPLIED WITH ITS OBLIGATIONS TO DISCLOSE THE REQUESTED DOCUMENTS?**

Where an institution makes a decision to disclose records, or parts of records, in response to a request under the *Act*, section 26 sets out the time frames within which this disclosure is to take place. This section reads:

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 25, the head of the institution to which it is forwarded or transferred, shall, subject to sections 27, 28 and 57, 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 thereof will be given; and

- (b) if access is to be given, give the person who made the request access to the record or part thereof, and where necessary for the purpose cause the record to be produced.

In my view, section 26 requires the issuance of a decision *and* the disclosure of records to which access is to be given within 30 days of receipt of the request. However, where an access fee is requested, the “30 day clock” stops, pending payment, but begins to run again upon receipt of payment (see Order 81).

In the present appeal, the Ministry issued a decision on May 23, 2000, some three months after the request, advising the appellant that access to a portion of the records would be granted upon payment of the sum of \$641. The appellant sent the Ministry a letter dated May 25, 2000, enclosing a cheque dated May 26, 2000 in accordance with section 57. In my view, upon receipt of the requested payment, which would have occurred no later than May 28, 2000, the Ministry was required to disclose the records described in its decision letter immediately, because the 30 day time period set forth in section 26 had already expired.

I find that the Ministry did not comply with its obligation under section 26(b) to disclose those portions of the responsive records referred to in its decision letter within the time frame required by both sections 26 and 57. I note that I have not been provided with any explanation from the Ministry as to its reasons for non-compliance. Accordingly, I will order that the Ministry disclose to the appellant those records or parts of records referred to in its May 23, 2000 decision letter in accordance with the provisions set out below.

### **ORDER:**

1. I order the Ministry to disclose to the appellant those portions of the responsive records in accordance with its decision letter of May 23, 2000 by **October 13, 2000**.
2. In order to verify compliance with Provision 1, I order the Ministry to provide me with a copy of the covering letter to the appellant which accompanied the records which are disclosed pursuant to Provision 1.

Original signed by: \_\_\_\_\_  
 Donald Hale  
 Adjudicator

\_\_\_\_\_  
 October 6, 2000