



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER PO-1876**

**Appeal PA-010049-1**

**Ministry of Municipal Affairs & Housing**



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

## **NATURE OF THE APPEAL:**

On January 30, 2001, the appellant submitted a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the Ministry of Municipal Affairs and Housing (the Ministry).

The request sought access to:

all memos, notes - including handwritten notes, briefing notes and information notes - all letters, faxes, fax cover sheets, telephone messages, records of verbal transactions, records of meetings, minutes of meetings and e-mails produced or received by the Ministry of Municipal Affairs and Housing from April 1, 1998 to June 30, 1998 in connection with the Osprey Links subdivision and golf course.

The request also included all records received or produced by the former Minister of Housing and a former named employee, related to the same subject and for the same time period.

On January 31, 2001, the Ministry sent a letter acknowledging receipt of the request. On February 5, 2001, the Ministry advised the appellant that the time for responding to the request had been extended, under section 27 of the *Act*, for an additional 30 days to March 30, 2001. The Ministry stated that the "reason for the extension is that a review of the records may indicate that consultations outside of this Ministry are necessary to comply with the request and therefore that the request cannot reasonably be completed within the time period". The Ministry relied on section 21(1)(b) of the *Act*.

On February 9, 2001, the appellant appealed the Ministry's decision to extend the statutory 30-day time limit.

In his letter of appeal, the appellant submits that section 27 does not apply as he has not asked for a large number of records and that the 30 day statutory time period is sufficient to allow for consultations to be completed.

This office sent a Confirmation of Appeal (the Confirmation) to the appellant and the Ministry. The Confirmation indicated that I was the Mediator assigned to attempt to settle the appeal. The Confirmation stated that the Commissioner has delegated Mediators the authority to issue an order disposing of appeals that are not mediated where the sole issue is the extension of time taken by an institution to make an access decision. The Confirmation stated that if a mediated settlement was not reached by February 20, 2001, I would issue a Notice of Inquiry in my capacity as acting-Adjudicator, asking the parties to submit representations on the issue.

Mediation was not successful. On February 22, 2001, I sent a Notice of Inquiry to the appellant and the Ministry and asked the parties to submit their representations to this office by February 27, 2001. Representations were received from both parties.

## **DISCUSSION:**

[IPC Order PO-1876/March 1, 2001]

The sole issue for me to determine in this appeal is whether the extension of time claimed by the Ministry to respond to the request was made in accordance with section 27(1)(b) of the *Act*. I note that the Ministry's representations include section 27(1)(a) even though it did not rely on that section in its decision letter. Because of the manner in which I have disposed of the issue below, I will consider the possible relevance of section 27(1)(a).

Sections 27(1)(a) and (b) of the *Act* read as follows:

A head may extend the time limit set out in section 26 for a period of time that is reasonable in the circumstances, where,

- (1) the request is for a large number of records or necessitates a search through a large number of records and meeting the time limit would unreasonably interfere with the operations of the institution;
- (2) consultations with a person outside of the institution are necessary to comply with the request and cannot reasonably be completed within the time limit.

The appellant submits that the time extension is unreasonable as the scope of his request is narrow in that it relates to one file and covers a 90 day period.

The Ministry states that the request is among a number that it received simultaneously, relating to Osprey Links and that it started to process the request very quickly. With respect to section 27(1)(a), the Ministry states that additional time was warranted because:

- 1) the majority of the responsive records were located in the Sudbury Regional Office and that the process of "culling records, reviewing and communicating regarding severances would be time consuming".
- 2) it would take time to locate and consult on records of the former Minister and former employee.
- 3) processing the request within the statutory 30 day period would place an unreasonable burden upon the Ministry and
- 4) the "broad nature of the request, necessitated a time extension in order to carry out a proper and thorough search" and that the nature of the request required the records "be carefully reviewed by individuals familiar with the records".

In support of its representations, the Ministry refers to earlier orders of the Commissioner which addressed the issue of time extensions and upheld the institutions' decisions, Order P-517 and P-617. In my view, the fact situation in the current appeal is significantly different.

In Order P-517, one request was divided by the institution into ten requests, of which three were dealt with initially. Inquiry Officer Holly Big Canoe found, based on the evidence presented to her, that each of the three requests involved a large number of records, which required review by individuals familiar with the subject and that the time extension was necessary in order that the operational obligations of the institution were not prejudiced. In Order P-617, Inquiry Officer John Higgins upheld the 39 day time extension on the basis that the request was "extremely broad", that the records were located in three different regional offices and the person best qualified to review the records was located in Toronto.

I have been provided with no evidence to support the Ministry's position that the request is broad. In my view, the request is not broad as it is clearly worded so as to allow the individual conducting the search to be clear as to what is being sought. The request covers a three-month period and relates to one subject and the Ministry has stated that the majority of the records are in one location. Further, the Ministry's representations do not indicate that the request requires a review of a large number of files or records. The Ministry has not provided any evidence as to the number or volume of records responsive or anticipated to be responsive nor has it provided any details on how meeting the time limit would unreasonably interfere with the operations of the institution. In my view, the Ministry has failed to provide sufficient evidence on any of the criteria set out in section 27(1)(a).

With respect to section 27(1)(b), the Ministry is required to provide sufficient evidence that consultations with a person outside the Ministry are necessary to comply with the request and that such consultations cannot reasonably be completed within the 30 day time limit.

The Ministry points out that the request includes records of a former Minister and a former employee and that "it may prove time consuming to...consult on any records...". The Ministry states that consultations may also be required with other ministries such as the Ministry of Natural Resources. The Ministry states that consultations within the Ministry with its legal department and the delegated decision-maker were additional factors in taking the time extension.

Earlier orders of the Commissioner have established that for the purpose of section 27(1)(b), consultations are required to be with someone external to or outside of the institution (Orders 104, 193). I agree. Accordingly, I find that consultations within the institution cannot be a basis for extending the time under section 27(1)(b) and therefore, consultations with the legal department or the delegated decision maker do not qualify.

I have not been provided with sufficient evidence as to the nature or the necessity of the Ministry's consultations with other ministries or whether such consultations actually took place or are even taking place. Therefore, I am unable to conclude that consultations with someone outside the institution are necessary to comply with the request and that such consultations could not be completed without recourse

to a time extension. I find that the time extension taken by the Ministry was not reasonable in the circumstances.

Finally, the Ministry made the following statement:

It should be kept in mind that the Ministry was up-front regarding its need for an extension by requesting the extension within a week of receipt of the request, as we did not wish to risk not meeting the statutory time frame or requesting an extension close to the 30<sup>th</sup> day.

I agree that there is merit in an institution taking care not to place itself at risk of being in a “deemed refusal” situation. However, that does not mean that it can automatically avail itself of the time extension provisions under section 27(1) of the *Act*. In my view, for all the reasons set out above, the factors considered by the Ministry such as “proper and thorough search”, review of records by individuals familiar with the records, consultations with legal and the delegated decision maker are an intrinsic and routine part of an institution’s obligations to comply with the request within the statutory 30 day limit.

Even though the Ministry has not satisfied me that the time extension is reasonable, the original date for the Ministry’s decision was March 1, 2001, the date of this order. For practical reasons, I am requiring the Ministry to issue an access decision no later than March 8, 2001.

**ORDER:**

1. I do not uphold the Ministry’s decision.
2. I order the Ministry to provide a decision letter to the appellant regarding access to the records in accordance with the *Act* no later than March 8, 2001.
3. In order to verify compliance with this order, I order the Ministry to provide me with a copy of its decision letter on access referred to in Provision 1 by March 8, 2001. The notice should be sent to my attention, c/o Information and Privacy Commissioner, 80 Bloor Street West. Suite 1700, Toronto, Ontario M5S 2V1

Original signed by: \_\_\_\_\_  
Mumtaz Jiwan  
Acting-Adjudicator

\_\_\_\_\_ March 1, 2001