



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

ORDER PO-1890

Appeal PA_010096_1

Ministry of the Environment



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NATURE OF THE APPEAL:

On January 23, 2001, the appellant submitted a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the Ministry of the Environment (the Ministry). This request was a follow-up to an earlier request of January, 2000 and stated:

This is a request for non-compliance wastewater discharge information for the year 1999 that was absent from the electronic databases provided to me pursuant to my FOI request of January of 2000 (MOE File Nos. CNR002582, WCR002586, SWR002587, ER002588, NOR002589). Due to the time lag allotted for facilities to report their non-compliance to the Ministry, I agreed to wait until May of 2000 to receive the electronic files. I have now completed the review of the electronic files provided to me by the Ministry and have found much of the required regulatory monitoring data to be absent.

The appellant attached a list of the facilities for which the data was missing and added:

In a conversation with [an identified employee] of MOE, Northern Region, he suggested that I submit a second request for the missing information.

On March 6, 2001, the appellant contacted the Ministry's Freedom of Information and Privacy Co-ordinator and left a message on his answering machine, enquiring about the status of the request. The telephone call was not returned.

Sections 26 and 29 of the *Act* require the Ministry to issue a decision within 30 days after receipt of the request. The Ministry did not issue a decision by February 22, 2001, and accordingly, placed itself in a "deemed refusal" position pursuant to section 29(4) of the *Act*. The appellant appealed the Ministry's deemed refusal to provide access to the records.

On March 19, I contacted the Ministry and informed it that this office had received a "deemed refusal" appeal. I commenced mediation with the parties. Simultaneously, this office sent a Notice of Inquiry to each of the parties. The Notice stated that the Ministry was in a "deemed refusal" situation because a decision letter had not been issued to the appellant within the time period set out in section 26 of the *Act*. The Notice also indicated that I would attempt to settle the appeal but if a settlement was not reached by April 2, 2001, I may, in my capacity as Acting-Adjudicator, issue an order requiring the Ministry to issue a decision letter to the appellant.

During mediation, the Ministry indicated that it had difficulty identifying the request as it receives many similar requests from the same appellant. The Mediator provided information from the request to the Ministry. On April 2, 2001, the Ministry advised that it had now located the request and that it had requested the records from the regions. The decision letter was not ready and the Ministry was not able to indicate when it would receive the records.

I note that the Ministry did not locate the request dated January 23, 2001 until after the appeal had been filed on March 19, 2001, and, given that, as of this date, the Ministry is still not able to indicate when it will be in a position to issue a decision letter. I am ordering the Ministry to issue its decision letter to the appellant, without recourse to a time extension under section 27 of the *Act*, no later than April 7, 2001.

ORDER:

1. I order the Ministry to issue a decision letter to the appellant regarding access to the records in accordance with the *Act* and without recourse to a time extension, no later than April 7, 2001.
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 April 7, 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: _____ April 2, 2001
Mumtaz Jiwan
Acting-Adjudicator