



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER PO-2611**

**Appeal PA07-272-2**

**Ministry of Training, Colleges & Universities**



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## **NATURE OF THE APPEAL:**

This is an appeal under the *Freedom of Information and Protection of Privacy Act* (the *Act*).

On June 29, 2007, the Ministry of Training, Colleges and Universities (the Ministry) received a request dated June 26, 2007, for access to all records created, amended, received or distributed between April 1, 2004 and May 31, 2007 regarding ancillary fees, supplemental fees, incidental fees and/or auxiliary fees charged by publicly funded colleges and/or universities in Ontario.

On July 11, 2007, the Ministry wrote to the requester to acknowledge receipt of his request and also advised that the time to respond was being extended. The letter reads as follows:

Please be advised that the time limit for this request has been extended to September 28, 2007 in accordance with section 27(1)(a) of the *Freedom of Information and Protection of Privacy Act* (the *Act*). The reason for the 60 day extension is the request necessitates a search through a large number of records and meeting the time limit would unreasonable interfere with the institution's operations.

On July 13, 2007, the requester (now the appellant) appealed the Ministry's time extension decision. Appeal PA07-272 was opened to deal with the time extension appeal.

During the mediation of Appeal PA07-272, the parties agreed that September 12, 2007 would be a mutually acceptable date for the issuance of the access decision. On this basis the appellant agreed to close his appeal. The Mediator confirmed the outcome of mediation to the appellant and the Ministry in writing.

Notwithstanding this agreement, the Ministry did not issue the access decision on September 12, 2007. The appellant contacted the Ministry's Freedom of Information Co-ordinator (the Co-ordinator) and was advised that the decision and the records were still not ready to be disclosed.

Appeal PA07-272-2 was opened to deal with this matter.

On September 19, 2007, I contacted the Co-ordinator and was advised that the status of the decision and the records remained unchanged. It was the Ministry's intention to issue an access decision on September 21, but a firm commitment could not be given.

## **DISCUSSION:**

On April 14, 2004, Intake Analyst Lucy Costa issued Order MO-1777, in which she noted:

Barring exceptional circumstances, which are not present here, when assessing the time and resources it will need to properly respond to a request, an institution must decide and provide written notice within the initial 30-day time limit for responding to the request, the length of any time extension it will need pursuant to section 20 of the Act (Orders P-234, M-439 and M-581, MO-1748).

Intake Analyst Tanya Huppmann also addressed the expectations on institutions when relying on time extensions, in her order PO-2595 issued on July 16, 2007. In this respect the order reads as

follows:

When an institution issues a time extension it is expected that, prior to the expiry of the extension, subject to section 28 and 57 of the *Act*, written notice will be given to the requester as to whether or not access to the record or part thereof will be given, and for access to the record to then be given to the requester. This is referred to as a final access decision.

Section 29(4) of the *Act* states that:

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.

During a conversation with the appellant a concern was raised that the time extension and further deemed refusal of the Ministry might be used to delay the disclosure of information that could be politically sensitive in light of the upcoming fall election.

In my view the Ministry was required to meet the mutually agreed upon date to issue a decision regarding access to the record on or before September 12, 2007. To date no final access decision has been issued. Therefore, I find that the Ministry is in a deemed refusal situation pursuant to section 29(4) of the *Act*. To ensure that there are no further delays I will order the Ministry to issue a final access decision to the appellant, without recourse to any further time extensions.

## **ORDER:**

1. I order the Ministry to issue a **final** access decision to the appellant regarding access to the records in accordance with the *Act* without recourse to any further time extensions, no later than **Monday September 24, 2007**.
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 no later than **Monday September 24, 2007**. This should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 2 Bloor Street East, Suite 1400, Toronto, Ontario, M4W 1A8.

Original signed by: \_\_\_\_\_

Robert Binstock  
Registrar

September 20, 2007 \_\_\_\_\_