

ORDER PO-2698

Appeal PA08-156 and PA08-159

University of Ottawa

NATURE OF THE APPEAL:

These are two appeals under the *Freedom of Information and Protection of Privacy Act* (the Act).

On April 21, 2008, the University of Ottawa (the University) received two requests for access to the following,

Request 1:

...all records about me that have been sent by or received by the President of the University since November 30, 2006.

Request 2:

...all records about me that have been produced or sent by or received by the Dean of the Faculty of Science since November 30, 2006.

On May 22, 2008, the University sent the requester two identical letters indicating that he had already requested the records outlined in the four requests on October 31, 2006. The University stated in this letter that:

Since we already provided you with a fee estimate with respect to your previous request (University's file number), we will not be providing you with another distinct response to these four latest requests.

On June 11, 2008, two appeals were received by this office from the requester (now the appellant) indicating that the May 22, 2008 correspondence did not constitute a proper access decision as required under the Act for a number of reasons.

Appeal PA08-156 was opened in relation to Request 1 and PA08-159 was opened in relation to Request 2.

I contacted the University on June 20, 2008 to discuss its claim that the records had already been requested. The University maintained that the two requests were encompassed in another request that the appellant made in October, 2006, currently under appeal with this office.

Further inquiries were made over the next few days. The result showed that the dates for the requested records in the October, 2006 request and the current four appeals do not overlap. It was decided that the University was required to issue decisions for the two requests for records for the time period of November 30, 2006 to the date of the requests, April 21, 2008.

On June 25, 2008, a Notice of Inquiry was sent, for each of the appeals, to the University and the appellant stating that the appellant had filed an appeal alleging that the University was in a deemed refusal situation. The Notice also advised that if a decision was not issued by July 10, 2008, I would be in a position to issue an order requiring the University to provide a decision letter to the appellant.

Section 26 of the *Act* requires the University to issue a decision within 30 days of receipt of a request. If a decision is not issued within that time period, the University is in a “deemed refusal” situation pursuant to subsection 29(4) of the *Act*. The provision states:

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.

After the Notice of Inquiry was sent out by this office, further discussions were held with the University and appellant regarding the confusion over the timelines for the responsive records and how they might overlap with another appeal filed by the appellant and currently under appeal with this office.

On July 2, 2008, it was confirmed that the dates, as noted in the request and mentioned above, would be the responsive dates with respect to the two appeals. As the timelines for these appeals was not settled until a week after the Notice of Inquiry was sent from this office, the appellant agreed to allow a one week extension to July 17, 2008 for the University to issue decisions for the two requests.

DISCUSSION:

I contacted the University on July 15, 2008, and was notified that it was endeavouring to prepare the decisions for July 17, 2008, but no firm commitment was provided.

Two decisions were received from the University by this office on July 21, 2008, indicating that both were issued on July 17, 2008. Upon review of the decisions it became apparent that the decisions were not final access decisions, but interim decisions with fee estimates. The appellant also contacted this office on July 19, 2008, to communicate that when he attempted to pick up the records outlined in the index for each of the two decisions, the University was not ready to disclose them to him.

Previous orders have found that an interim decision/fee estimate should be issued within the initial 30 day time limit for responding to a request (Orders MO1520-I, PO-2634). Otherwise the institution would be in a “deemed refusal” pursuant to section 29(4) of the *Act*. Issuing an interim decision/fee estimate once the time limit has expired does not cure a deemed refusal (Orders PO-2595, PO-2634).

Other orders have found that a decision to extend the time for responding to a request should be issued within the initial 30 day time limit for responding to a request (Orders P-234, M-439 , M-581, MO-1748, PO-2634) and that issuing a time extension once the time limit has expired does not cure a deemed refusal (Orders PO-1777, PO-2634).

To date, the University has not issued a final decision respecting access to the information responsive to these requests. To ensure that there are no further delays in the processing of these requests, I am ordering the Ministry to issue a final decision, respecting access, by **July 28, 2008**.

ORDER:

1. I order the University to issue a final access decision to the appellant regarding access to the records in accordance with the *Act* without recourse to any time extensions, no later than **July 28, 2008**.
2. In order to verify compliance with Provision 1 of this Order, I order the University to provide me with a copy of the decision letter referred to in Provision 1 no later than **July 28, 2008**. 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: _____
Suzanne Brocklehurst
Intake Analyst

July 22, 2008 _____