



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

# **ORDER PO-2866**

**Appeal PA09-441-2 and PA09-442-2**

**Ministry of Health and Long-Term Care**



Tribunal Services Department  
2 Bloor Street East  
Suite 1400  
Toronto, Ontario  
Canada M4W 1A8

Services de tribunal administratif  
2, rue Bloor Est  
Bureau 1400  
Toronto (Ontario)  
Canada M4W 1A8

Tel: 416-326-3333  
1-800-387-0073  
Fax/Télé: 416-325-9188  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## **NATURE OF THE APPEAL:**

This order relates to two appeals under the *Freedom of Information and Protection of Privacy Act* (the *Act*).

### **Request #1**

On October 22, 2009, the requester submitted a request to the Ministry of Health and Long-Term Care (the Ministry) for access to records relating to expenses claimed by Ministry staff holding positions at the executive office, managerial and administrative levels involving the Ontario Public Drug Programs Division. The requester identified he was seeking all receipts and expense forms for the period January 1, 2009 to October 22, 2009.

### **Request #2**

On October 30, 2009, the requester submitted another request to the Ministry for access to the following records:

All records relating to payments made to [a named company] between January 1, 2005 and October 31, 2009.

This includes

- copies of any contracts signed with [a named company], including any amendments, follow-on agreements, and/or extensions
- procurement documents related to the above referenced contracts including RFPs, names of others who responded to the RFPs, and rationales for choosing [the named company]
- invoices submitted by [a named company] or its employees or representatives
- expenses submitted by [a named company] or its employees or representatives including receipts, expense forms, etc.

The Ministry responded to the requester advising that the time to issue an access decision has been extended under section 27 of the *Act* for an additional 45 days to January 6, 2010 (for request #1) and 90 days to March 2, 2010 (for request #2). The Ministry advised that the reason for the time-extension was due to a large volume of records that must be searched in order to complete the requests.

On November 30, 2009, the requester (now appellant) appealed the Ministry's decision to extend the time in both cases to the Office of the Information and Privacy Commissioner/Ontario (IPC). IPC appeal file PA09-442 was opened to deal with request #1 and PA09-441 for request #2.

A Confirmation of Appeal was sent by the IPC to both the Ministry and the appellant that indicated if a settlement of the time-extension issue could not be reached by a specific date both appeals would proceed to an inquiry. Following the mediator's discussion with the Ministry's Freedom of Information Co-ordinator (the Co-ordinator) a new deadline of December 22, 2009 for responding to both requests was agreed to by the appellant. As the appellant was satisfied with this new deadline, he agreed to close both appeal files at the mediation stage.

On December 16, 2009, the mediator concluded her Mediator's Report by stating the following:

It should be noted that the Ministry must issue a final decision to the appellant by [December 22, 2009], otherwise it will be in a deemed refusal situation which can be immediately appealed by the appellant to our office. If the Ministry wishes to issue an interim decision with a fee estimate for [the] request, it must do so *prior* to the deadline.

On December 22, 2009, the Co-ordinator contacted the mediator to advise that the Ministry could not meet the agreed upon deadline of December 22, 2009 for responding to the appellant's requests. The Co-ordinator indicated the program area responsible for dealing with the requests has not received the required approvals and the decision maker for the appellant's requests would not be available until the New Year.

On December 23, 2009, the mediator advised the Co-ordinator that the Ministry is now in a deemed refusal situation and indicated she would contact the appellant to discuss how he wishes to proceed on this matter.

On December 24, 2009, the mediator contacted the appellant to inform him that the Ministry could not meet the agreed upon deadline of December 22, 2009. The appellant responded on the same date advising the IPC to proceed with two deemed refusal appeals against the Ministry and new IPC appeal files PA09-441-2 and PA09-442-2 were opened.

On December 29, 2009, the IPC sent a Notice of Inquiry to both the Ministry and the appellant that stated the Ministry is in a deemed refusal position. The Notice further stated that if a final decision was not issued by January 8, 2010 (for both appeals) I would be in a position to issue an order requiring the Ministry to provide its decisions to the appellant.

On January 4, 2010, I contacted the Co-ordinator to discuss the deemed refusal appeals and determine if the Ministry will be issuing final access decisions by the deadline set in the Notice for both appeals. The Co-ordinator advised that it was unlikely the Ministry would have final decisions issued by January 8, 2010 and indicated that it could have them provided some time within the week of January 11, 2010. I asked to be updated on the Ministry's progress in issuing its final decisions by the deadline set in the Notice, and for the Co-ordinator to contact me on January 6, 2010.

On January 6, 2010, the Co-ordinator advised that she did not feel the Ministry would be able to provide final decisions by the deadline or provide me with a firm date when the decisions would be issued.

On January 8, 2010, I informed the appellant of my discussion with the Ministry. The appellant advised that he would wait until January 11, 2010 for the Ministry to issue its decisions. I informed the Ministry of this.

On January 11, 2010, I contacted the Co-ordinator and was advised that she has not received any further updates on the matter since our last discussion and confirmed that the decisions have not been issued. I asked that I be contacted by phone by the end of the business day with confirmation on whether or not the decisions have been issued. I did not receive a call back from the Co-ordinator.

## **DISCUSSION:**

The matter before me is whether the Ministry is in a deemed refusal position pursuant to section 29(4) of the *Act* with respect to the appellant's two requests.

Section 26 of the *Act* requires the Ministry to issue a decision within 30 days of receipt of a request. If a decision is not issued within that time period, the Ministry is in a "deemed refusal" position pursuant to subsection 29(4) of the *Act*. That 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.

In my view, the Ministry was required to meet the mutually agreed upon date to issue the decisions regarding access to the records on or before December 22, 2009. To date no final access decisions have been issued with respect to either of the two appeals. 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 its final access decisions to the appellant, without recourse to any further time extensions.

## **ORDER:**

1. I order the Ministry to issue its **final** decision letters to the appellant regarding access to the requested records in both appeals in accordance with the *Act* and without recourse to a further time extension, **no later than January 20, 2010.**

2. In order to verify compliance with provision 1 in this order, I order the Ministry to provide me with a copy of the decision letter referred to in provision 1 **by January 20, 2010**. 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: \_\_\_\_\_

Joseph Sommer

Analyst

\_\_\_\_\_ January 13, 2010