



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

# **ORDER MO-2514**

**Appeal MA10-85-2**

**City of Toronto**



**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/Téloc: 416-325-9188  
TTY: 416-325-7539  
<http://www.ipc.on.ca>**

## **NATURE OF THE APPEAL:**

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

On October 20, 2009, a request for access to information was sent to the City of Toronto (the City) under the *Act*. The request was for all communications, including emails, relating to discussions and meetings between various named managers and staff of several divisions of the City and any Council Members, their assistants and/or staff, including the Mayor, his assistants and/or staff, dealing with the 2009 operating and capital budgets, but excluding those for setting up meeting appointments.

On November 24, 2009, the City issued a decision in response to the request. Access was granted in full to the following responsive records provided by the following City staff:

- Deputy City Manager's Offices
- Chief Corporate Officer's Office
- Director Corporate Finance
- General Manager, Solid Waste Management
- General Manager, Employment & Social Service
- Acting General Manager, Children's Services

The decision further indicates that records were not found for the following divisions:

- Director, Special Projects
- General Manager, Long-Term Care
- Chief & General Manager, EMS
- Director, Social Policy Analysis & Research

The City extended the time to respond to the request by 90 days to February 19, 2010, for the following divisions:

- City Manager's Office
- Deputy City Manager/Chief Financial Officer's Office
- Treasurer's Office
- Financial Planning Division
- Finance and Administration Division
- Toronto Water General Manager's Office.

On February 12, 2010, the requester received a further decision from the City indicating:

- (a) Partial access was granted to records responsive to the Deputy Manager/Chief Financial Officer's Office and Finance and Administration Division;
- (b) The Shelter, Support & Housing division did not respond to the City's request for responsive records. The City assumed therefore, that the records did not exist; and

- (c) A further time extension to May 20, 2010 (an additional 90 days) was sought for records from the City Manager's Office, Financial Planning Division, Toronto Water General Manager's Office, and Treasurer's Office.

Section 19 of the *Act* requires the City to issue a decision within 30 days of receipt of a request. If a decision is not issued within that time period, the City is in a "deemed refusal" situation pursuant to subsection 22(4) of the *Act*. The provision states:

A head who fails to give the notice required under section 19 or subsection 21(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.

This office received an appeal from the requester (now the appellant) on March 1, 2010, indicating that he has not received a full response to his request from the City since he submitted his request in October, 2009. Appeal MA10-85-2 was opened accordingly.

On March 19, 2010, a Notice of Inquiry was sent to the City and the appellant stating that the appellant had filed an appeal alleging that the City was in a deemed refusal situation. The Notice also advised that if a decision was not issued by April 6, 2010, I would be in a position to issue an order requiring the City to provide a decision letter to the appellant.

I contacted the City on March 25, 2010, and was notified that it was endeavouring to prepare a decision for April 6, 2010, with regard to the following divisions of the City:

- Shelter, Support & Housing
- City Manager's Office
- Deputy City Manager/Chief Financial Officer's Office
- Treasurer's Office
- Financial Planning Division
- Finance and Administration Division
- Toronto Water General Manager's Office

No firm commitment as to the date the access decision would be issued was given.

I contacted the City again on April 1, 2010, and was notified that a decision would be issued for records responsive to the Shelter, Support and Housing division and the Treasurer's Office. It was further explained that the City was able to prepare a decision with regard to the remaining divisions for records prepared in the year 2008. The City would not be able to prepare a decision with regard to the remaining divisions for records prepared in the year 2009. The City indicated that no firm time commitment could be agreed to for the remaining records; however, a decision should be completed by the May 20, 2010 date, as communicated in its February 12, 2010 decision letter.

On April 6, 2010, a decision was received from the City as follows:

- No access decision was made for the Shelter, Support and Housing division or the City Manager's Office. No firm date was given with regard to when searches of these offices would be completed.
- Full access to responsive records from the Treasurer's office was granted.
- A partial decision relating to records created during 2008, for the Toronto Water General Manager's Office and the Financial Planning Division was made.
- No access decision was made with regard to the records created in these departments for 2009. Although the City has indicated that a final access decision will likely be issued by May 20, 2010, no firm commitment to a date was provided for access with regard to these outstanding 2009 records.

## **DISCUSSION:**

The issues before me are whether the City processed the request with regard to access in accordance with section 19 of the *Act*, and if the City issued its time extension (to May 20, 2010) within the time required under the *Act*. If it did not, then the City may be in a deemed refusal position pursuant to section 22(4).

The basic requirement for responding to a request is set out in section 19 of the *Act*, which states:

Where a person requests access to a record, the head of the institution to which the request is made or if a request is forwarded or transferred under section 18, the head of the institution to which it is forwarded or transferred, shall, subject to sections 20 and 21, within thirty days after the request is received,

- (a) give written notice to the person who made the request as to whether or not access to the record or a part of it will be given; and
- (b) if access is to be given, give the person who made the request access to the record or part, and if necessary for the purpose cause the record to be produced.

Section 20 of the *Act* indicates that in certain circumstances, an institution may extend the time for issuing a response. It states as follows:

- (1) A head may extend the time limit set out in section 19 for a period of time that is reasonable in the circumstances, if,
  - (a) 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; or
  - (b) consultations with a person outside the institution are necessary to comply with the request and cannot reasonably be completed within the time limit.

(2) A head who extends the time limit under subsection (1) shall give the person who made the request written notice of the extension setting out,

- (a) the length of the extension;
- (b) the reason for the extension; and
- (c) that the person who made the request may ask the Commissioner to review the extension.

When an institution issues a time extension it is expected that, prior to the expiry of the extension, subject to section 21 and 45 of the *Act*, written notice will be given to the requester as to whether or not access to the record or a 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.

In this case, the City did not provide a final access decision for the divisions outstanding in its search for responsive records. Instead, the City sought a second 90 day time extension.

In Order MO-2029, Acting-Adjudicator Brian Bisson addressed the issue of an institution seeking two separate time extensions. Acting-Adjudicator Bisson found that the institution's first decision to extend the time for responding to the appellant's request was reasonable.

However, with regard to the second time extension sought, he stated:

I am mindful of the concerns raised by former Commissioner Tom Wright regarding the use of two time extensions. In Order P-234, the former Commissioner upheld the total time claimed, but indicated that he had concerns about the use of two separate extensions, stating that:

... [g]enerally speaking, it is my view that an institution, when assessing the time and resources it will need to properly respond to a request, must decide within the initial 30 day time limit for responding to the request, the length of any time extension it will need.

This approach was also considered and adopted by Senior Adjudicator John Higgins in Order M-581 where he did not uphold the second time extension.

I agree with this approach and adopt it for the purposes of this appeal.

The issue of time extensions is also discussed in Order MO-1777. Intake Analyst Lucy Costa discussed the implications of attempting to claim a time extension under section 20 of the *Act* after the 30-day response time has expired. She stated:

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 [*Municipal Freedom of Information and Protection of Privacy Act*] (Orders P-234, M-439 and M-581, MO-1748).

I agree with this approach, and I also find that there are no exceptional circumstances here that were not apparent to the City at the time it sought its first time extension in November, 2009.

The City has explained that the delay in issuing a decision comes from the necessity to restore archived emails for various departments. This task has been communicated as being labour intensive. The City has not demonstrated that it was not fully aware of the extent of the search at the time of receiving the request in October, 2009; nor the methods that would be required to satisfy the request.

In addition, no information has been provided to show that the original request has been amended in any way to cause a more expansive search than was originally requested, or to cause new challenges or issues with its search for responsive records.

It is my view therefore, that an adequate time extension should have been sought within the original 30 day time limit. Extending the time for response a second time in this case does not cure the deemed refusal situation. The City's opportunity has passed to extend the time for its search for records.

I find that the City has not issued a final access decision within the time afforded it by the time extension to February 19, 2010. I further find that there are no exceptional circumstances at play and that the second time extension was not requested within the time limits set out in sections 19 and 20 of the *Act*. Finally, even though the City has indicated that a final access decision will likely be issued by May 20, 2010, no firm commitment has been made to a date. As such, I find the City to be in a deemed refusal position pursuant to section 22(4) of the *Act*.

To ensure that there are no further delays in the processing of these requests, I am ordering the City to issue a final decision, respecting access, by **April 20, 2010**.

## **ORDER:**

1. I order the City to issue a final access decision respecting access to the information responsive to the Shelter, Support and Housing division, City Manager's Office, Deputy City Manager/Chief Financial Officer's Office, Financial Planning Division, Finance and Administration Division, and the Toronto Water General Manager's Office of the City, to the appellant in accordance with the *Act* and without recourse to any further time extensions, no later than **April 20, 2010**.

2. In order to verify compliance with Provision 1 of this Order, I order the City to provide me with a copy of the decision letter referred to in Provision 1 no later than **April 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: \_\_\_\_\_  
Suzanne Brocklehurst  
Analyst

\_\_\_\_\_ April 13, 2010