



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

# **ORDER PO-2980**

## **Appeal PA11-282**

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



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## **NATURE OF THE APPEAL:**

On August 10, 2010, the requester, under the *Freedom of Information and Protection of Privacy Act* (the *Act*), made request to the Ministry of Health and Long-Term Care (the ministry) for access to records relating to a report by the Chief Medical Officer of Health of Ontario entitled *The Potential Health Impacts of Wind Turbines*.

Specifically, the requester sought access to the following records:

1. Names, titles, and qualifications of all members of the “technical working group” referenced in the “Summary of Review” section of the report.
2. Copies of all draft materials circulated, distributed, and commented on, by all those participating in the drafting of the final report.

On September 3, 2010, the ministry wrote to the requester seeking clarification to part 2 of the request, asking whether draft versions of the report only were being sought or all records that would have been created in the completion of the report.

On September 28, 2010, the requester clarified the request indicating they were interested in draft versions of the report but also wished to know the costs associated with the processing of all records that would have been created.

On October 18, 2010, the ministry issued an interim decision stating access to the responsive records was being granted in full and provided an estimate of the fee.

On October 29, 2010, the requester provided the deposit amount required by the ministry to complete the processing of the request.

On November 17, 2010, the ministry wrote to the requester advising that a 90 day time-extension to February 17, 2011 would be required to complete consultations relating to the request.

On June 1, 2011, the requester (now the appellant) submitted an appeal to the Office of the Information and Privacy Commissioner/Ontario (IPC) indicating that the ministry is in a deemed refusal position with respect to issuing a final access decision to the request.

On June 15, 2011, appeal file PA11-282 was opened and a Notice of Inquiry was sent to the ministry and the appellant that stated the ministry is in a deemed refusal position. The notice indicated that if a final decision was not issued by June 29, 2011, I would be in a position to decide whether to issue an order requiring the ministry to issue a final decision to the appellant.

To date, I have corresponded with the ministry by e-mail on several occasions to inquire about the status of the final decision letter and when it will be issued but have not been advised of a definitive date when such a decision can be expected.

## DISCUSSION:

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

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 determining whether the ministry is in a deemed refusal position, I have taken into account the time for mailing of correspondence between the ministry and the appellant, including the ministry's request for clarification from the appellant. In my view, the ministry was required to issue either an interim decision, time-extension or final access decision no later than October 8, 2010 to avoid being in a deemed refusal position, and it failed to do so. I wish to point out that when the ministry issued its interim decision on October 18, 2010, and subsequent time-extension it was already in a deemed refusal situation.

To date, the ministry has yet to issue a final access decision. Therefore, I find that the ministry continues to be 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 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 requested records in this appeal in accordance with the *Act* and without recourse to a further time extension, **no later than July 13, 2011**.
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 July 13, 2011**. 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

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July 6, 2011