



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER PO-2950**

**Appeal PA10-168**

**Ministry of Labour**



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## **NATURE OF THE APPEAL:**

The Ministry of Labour (the Ministry) received a request dated March 11, 2010 under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to copies of various charges brought against specified employers for specific offences, as well as certain witness interviews provided by the appellant to the Ministry and records relating to an investigation undertaken by the Ministry as a result of a complaint instituted by the appellant.

On March 30, 2010, the Ministry clarified with the requester that he was seeking “the entire Ministry of Labour files for [two specified] work sites located at Dryden Ontario, from Jan. 1 2000 – present date”.

Between March 31 and April 19, 2010, the Ministry and the requester further clarified the scope of the request in a number of discussions. On April 19, 2010, the Ministry provided the requester with the results of its searches conducted in its “OHSa [*Occupational Health and Safety Act*] database” and asked the requester to review the list and identify which files are relevant to his request.

On May 3, 2010, the requester responded by letter indicating the following:

I have crossed out the files on the list that do not pertain to the Dryden operations, and I am requesting copies of the remaining files on the list.

This narrowing of the scope of the request was acknowledged by the Ministry in a letter to the requester on May 12, 2010.

On May 25, 2010, the Ministry issued an interim decision and fee estimate to the requester. In its decision, the Ministry advised that its searches had turned up approximately 10,200 pages of responsive records. It went on to state that the estimated cost for processing the request is \$2,040.00 which is based entirely on photocopying charges. The Ministry explained that the cost for severing the records, which is charged at a rate of \$30.00 an hour, can only be assessed at the end of its review of the records. The Ministry requested a 50% deposit in the amount of \$1,020.00. With its decision, the Ministry attached a list that detailed the number of pages in each relevant file, in the event that the requester wished to narrow the scope of his request. The Ministry also indicated that the volume of records would necessitate an extension of time for responding to the request and that once the requested deposit had been received the Ministry “will determine the length of the time extension and we will begin to process your request.”

The requester paid the deposit amount of \$1,020.00 on June 7, 2010. The Ministry subsequently issued a supplementary decision letter dated June 15, 2010, advising the requester that it was necessary for it to extend the time for responding to the request by 12 months:

In this case, given the large volume of records covered by your request, the fact that our office still needs to copy the records before we can review them, and the fact that we have a number of other requests in our office involving numerous records, the date for responding to this request will be extended by 12 months.

That will make our response to your request now due on Wednesday, June 15, 2011. At that point, we will advise you of the final cost for processing your request.

The requester (now the appellant) appealed the Ministry's May 25<sup>th</sup> and June 15<sup>th</sup> decisions.

During mediation, the appellant submitted a fee waiver request to the Ministry which was denied by the Ministry. The mediator subsequently held numerous discussions with the parties. On September 30, 2010, during a teleconference meeting between the appellant, the mediator and the Ministry, the appellant agreed to narrow his request to include only copies of the Ministry's investigation records concerning ten event files listed in the summary previously provided to him.

As a result of the narrowing of the scope of the appeal, on October 13, 2010 the Ministry issued a revised decision to the appellant confirming that his request was narrowed to "copies of the Ministry of Labour's investigation records concerning the ten event files listed in the summary previously provided to you". The Ministry went on to indicate that the revised fee estimate cost is \$770.20 for the photocopying of 3851 pages at \$0.20 per page and \$187.50 for 6¼ hours of severing time at \$30.00 per hour, totaling \$957.70. The Ministry further stated that:

Given the volume of records for this request is relatively large and because of a number of other requests in our office involving numerous records, the date for responding to this request will be extended by eight months. This dates from September 30, 2010, the day the scope of your request was narrowed. That will make our response to your request now due on May 30, 2011.

Following further discussions with the parties, on November 4, 2010 the Ministry agreed to waive the 6¼ hours of severing time (\$187.50). At this point, the appellant indicated that he is no longer appealing the Ministry fee or its fee waiver decision. The appellant confirmed that the only outstanding issue in this appeal relates to the Ministry's time extension decision and requested that the appeal proceed to adjudication on this issue alone.

The Ministry subsequently indicated to the mediator that, because its decision on the time extension is under appeal and proceeding to adjudication, it will not be taking further steps towards processing the appellant's request until the appeal is resolved. It indicated to the mediator that it was placing the processing of the request "on hold" pending the outcome of the adjudication of the time extension issue. It also advised that the time extension date will need to be adjusted depending on the date when the adjudication is completed. The appellant takes issue with this characterization of the status of the request. He disagreed with the Ministry's position that the processing of the request must stop until the time extension appeal has been resolved and that the time extension date must be extended in accordance with the time required to complete the adjudication. The appellant also takes issue with the reasonableness of the time extension.

The file was then moved to the adjudication stage of the process, where an adjudicator conducts an inquiry under the *Act*. I sought and received representations from the Ministry, initially in response to a Notice of Inquiry. In its representations, the Ministry indicates that it is now

prepared to fulfill the appellant's request by March 31, 2011, rather than May 30, 2011 as proposed in its October 13, 2010 interim decision. I shared a complete copy of the Ministry's representations with the appellant, who was also invited to submit representations in response to the Notice of Inquiry. The appellant also provided me with representations.

## **ISSUES:**

### **TIME EXTENSION**

Normally, upon its receipt of a request, an institution is required by section 26 of the *Act* to provide a requester with a decision within 30 days. In this case, because of the volume of responsive records, the Ministry exercised its right under section 27 of the *Act* to extend the time for responding to the request. Ultimately, the Ministry's decision to extend the time for responding to the appellant's request was contained in its letter to the appellant of October 13, 2010. That letter indicated that the reason for the time extension was that the volume of records responsive to his request is relatively large. In addition, it noted that there are a number of other requests in the Ministry's FOI office involving large volume of records. For this reason, the Ministry claimed an additional eight months from the date the request was narrowed (September 30, 2010, to May 30, 2011), was required to process the request, as to do otherwise would unreasonably interfere with its operations.

Time extensions are governed by section 27(1) of the *Act*, which reads:

- (1) A head may extend the time limit set out in section 26 for a period of time that is reasonable in the circumstances, where,
  - (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.

This issue requires consideration of whether the extension was reasonable in the circumstances of the request, in the context of the provisions of section 27(1). Factors which might be considered in determining reasonableness include:

- the number of records requested;
- the number of records the institution must search through to locate the requested record(s);
- whether meeting the time limit would unreasonably interfere with the operations of the institution;

In its representations, the Ministry related the events which gave rise to its earlier interim decisions respecting fees and time extensions that were issued following efforts by the mediator, the appellant and the Ministry to narrow the scope of the request and reduce the amount of the fee for the processing of the request. It notes that the appellant narrowed the scope of his request to include the contents of ten *Occupational Health and Safety Act* investigation files totalling 3,850 pages. Because nine of the files do not address complaints raised by the appellant, many of the records will require severing to ensure that personal information relating to other identifiable individuals is not disclosed.

The Ministry provided me with information relating to the operation of its Freedom of Information and Privacy Protection Office and the manner in which it processes the requests that it receives. It did not, however, provide me with specific evidence as to reasons why meeting the time limit of 30 days from the date of the request would unreasonably interfere with its operations.

I note that in a letter to the appellant dated November 4, 2010 and in the representations submitted to this office on December 21, 2010, the Ministry advised that it would be able to “fulfill the request” by March 31, 2011. This represents approximately three months, taking into account that some of that time included the holiday period in December and January.

The appellant’s representations focus on his reasons for wanting to obtain access to the records as quickly as possible.

Based on the Ministry’s representations, it is clear that there are a large number of responsive records in this appeal and that they will require extensive severing in order to remove the personal information of other individuals. In addition, each of the 10 identified files must be examined in order to extract the responsive documents they contain. As described by the Ministry, all of this requires a significant amount of time. I find that the large number of responsive records necessitate an extension of time beyond the 30-day time limit prescribed by section 26. The questions to be determined is the length of that time extension and the period when it is to run.

In its representations, the Ministry explained that it began processing the appeal once the appellant paid the 50% fee deposit as it appeared that the fee estimate was not an issue in dispute. However, the Ministry advises that the appellant took issue with the amount of the fee estimate at the time he filed his appeal and that issues around the scope of the request were also not resolved until later in the mediation process. The processing of the request file was placed on hold by the Ministry until November 4, 2010, in order to clarify the scope of the appeal and the fee issue, according to the Ministry.

In my view, once the Ministry clarified the scope of the request with the assistance of the mediator, certainly no later than November 4, 2010, it was obliged to re-commence the processing of this request. The issues surrounding the scope of the appeal and the amount of the fees were resolved at that point in time, at the latest. The fact that an appeal had been filed and was proceeding on the time extension issue did not entitle the Ministry to stop processing the appeal and cease working on its review and preparation of the responsive records.

As a result, I find that the Ministry continued to inappropriately leave this matter “on hold” long after the issues around fees and scope of the request had been resolved with the appellant. In my view, by at least November 4, 2010 the Ministry was in a position to accurately evaluate what records it would be required to prepare for disclosure to the appellant and ought to have resumed this work at that time. Continuing to hold the matter in abeyance once these issues were resolved was improper and contrary to its obligations under the *Act*.

On November 4, 2010 and again in its representations submitted on December 21, 2010, the Ministry indicated that it could complete the processing of the appellant’s request by March 31, 2011. I have found above that once the scope of the request was clarified and issues respecting the fee were resolved, the Ministry was not entitled to stop working on the request pending the outcome of this appeal. In my view, had the Ministry continued to work on the processing of this request as it ought to have done, the work could conceivably have been completed by now and this appeal would have been unnecessary. Accordingly, in accordance with its own suggestion, I will allow the Ministry until March 31, 2011 to complete the processing of this request, without recourse to any further time extensions.

**ORDER:**

1. I find that the Ministry’s decision to place the appeal on hold pending the outcome of this appeal was improper and contrary to its obligations under the *Act*.
2. I uphold the Ministry’s decision to extend the time for processing the appellant’s request under section 27 of the *Act* to **March 31, 2011**.

Original signed by: \_\_\_\_\_  
Donald Hale  
Adjudicator

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February 4, 2011