

Information and Privacy Commissioner,  
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,  
Ontario, Canada

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## **ORDER PO-3162-I**

Appeals PA09-125-2 and PA09-125-3

Ministry of Community Safety and Correctional Services

February 14, 2013

**Summary:** This order disposes of a preliminary issue that arose during the course of an inquiry. During the inquiry of three appeals, a preliminary issue arose regarding the validity of consents to the disclosure of personal information submitted by the appellant for the purposes of section 21(1)(a). As a result, the adjudicator formerly assigned to the appeals found that the consents were valid, and ordered the Ministry of Community Safety and Correctional Services to issue new decision letters to the appellant taking this information into account. Eventually, the ministry issued decision letters in respect of one of the appeals, but not the remaining two appeals. In this decision, the adjudicator orders the ministry to issue new decision letters to the appellant in appeals PA09-125-2 and PA09-125-3.

### **DISCUSSION**

[1] This order disposes of a preliminary issue raised during the course of an inquiry with respect to two appeals PA09-125-2 and PA09-125-3.

[2] The requester made a multi-part request to the Ministry of Community Safety and Correctional Services (the ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for information relating to specified protests, which occurred in 2008. The requester subsequently provided the ministry with signed consent forms from a number of the protestors agreeing to the disclosure of their personal information to the appellant. The ministry identified responsive records and issued decision letters, denying access to the records. The ministry claimed the

application of the mandatory exemption in section 21(1) (personal privacy) of the *Act*, citing the exception in section 21(1)(a) (consent) and the factor in section 21(2)(f) (highly sensitive).

[3] The requester (now the appellant) appealed the ministry's decisions to this office. These appeals relate to two parts of the multi-part request.

[4] The request in appeal PA09-125-2 was for prisoner log sheets and guard notes related to named individuals who were held in custody at the Napanee OPP detachment for two identified days.

[5] The request in appeal PA09-125-3 was for intake sheets for named individuals who were held in custody at the Napanee OPP detachment for two identified days.

[6] In a third related appeal, PA09-122-2, the request was for numerous OPP videotapes taken at the sites of the protests.

[7] During the mediation of these appeals, the parties disagreed over whether the appellant had provided the ministry with signed consents that were valid for the purposes of the exception in section 21(1)(a). If the requirements of this exception are met, the personal information of the individuals who provided the signed consents cannot be withheld from disclosure under section 21(1).

[8] Section 21(1)(a) of the *Act* states:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;

[9] The appeals were not resolved during mediation and moved to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry. The adjudicator assigned to these appeals sought and received representations on the preliminary issue of the validity of the consent that the appellant provided to the ministry.

[10] On May 31, 2012, the adjudicator found that the signed consent forms from individuals that the appellant provided to the ministry were valid for the purposes of the first requirement of section 21(1)(a) of the *Act*, and ordered the ministry to issue new access decisions with respect to the records at issue in appeals PA09-125-2 and PA09-125-3 as well as the related third appeal, PA09-122-2. The ministry was ordered to

treat the date of the decision, May 31, 2012, as the date of the request for the purpose of calculating the 30-day period for responding with a decision letter.

[11] On June 29, 2012, the ministry wrote to the appellant and advised him that it would be extending the time to issue decision letters in respect of the three appeals to September 29, 2012, as the requests involved a large volume of records and meeting the time limit would unreasonably interfere with its operations.

[12] In November of 2012, the appeals were transferred to me to continue the inquiry. I noted that the ministry had not yet issued the decision letters relating to the three appeals. I had staff from this office contact the ministry on several occasions throughout November and December of 2012, as well as January of 2013, to inquire about the status of the decision letters. The ministry was unable to provide a date when the decision letters would be issued. The appellant advised this office that he was of the view that the ministry's failure to issue new decision letters constituted a deemed refusal on its part.

[13] Consequently, on January 22, 2013, I wrote to the ministry and reminded them that the adjudicator previously assigned to the appeals had found on May 31, 2012 that the signed consents from various individuals that the appellant provided to the ministry were valid for the purposes of the first requirement of section 21(1)(a) of the *Act*, and that he had ordered it to issue new access decisions to the appellant with respect to the records at issue in the appeals.

[14] I also advised the ministry that since taking over carriage of the appeals, I had instructed staff of this office to contact the ministry on several occasions, seeking updates on the status of the decision letters and that, as of January 22, 2013, they had not been issued and no time frame for their issuance had been provided by the ministry to this office.

[15] Further, I required that the decision letters for the three appeals be issued to the appellant by January 30, 2013, and that if the deadline was not met, I may issue an order directing the ministry to provide the decision letters respecting appeals PA09-122-2, PA09-125-2 and PA09-125-3.

[16] In response, on February 6, 2013, the ministry issued 13 decision letters to the appellant in relation to the records at issue in appeal PA09-122-2. In that appeal, as previously stated, the records consist of numerous OPP videotapes.

[17] However, the ministry did not issue decision letters in appeals PA09-125-2<sup>1</sup> and PA09-125-3.<sup>2</sup> To date, the ministry has still not advised this office as to when the decision letters relating to these appeals will be issued.

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<sup>1</sup> The records consist of 30 pages of check sheets and guards' notes.

<sup>2</sup> The records consist of 12 pages of OPP intake sheets.

[18] Consequently, in the absence of a firm commitment for the issuance of the required decision letters, which have now been due for many months, I will order the ministry to issue decision letters to the appellant with respect to appeals PA09-125-2 and PA09-125-3.

**ORDER:**

1. I order the ministry to issue a new decision letter to the appellant in regard to appeal PA09-125-2 by **February 25, 2013**.
2. I order the ministry to issue a new decision letter to the appellant in regard to appeal PA09-125-3 by **March 4, 2013**.
3. I order the ministry to provide me with copies of the decision letters and I remain seized of these appeals, as well as appeal PA09-122-2.

Original signed by: \_\_\_\_\_  
Cathy Hamilton  
Adjudicator

\_\_\_\_\_ February 14, 2013