

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-3151**

Appeal PA12-509

Ministry of the Environment

January 11, 2013

**Summary:** The Ministry of the Environment (the ministry) received a request for records relating to an application for a proposed wind farm project. The ministry claimed a time extension for an additional 120 days under section 27 of the *Act*, which was reduced to 90 days during mediation. This order does not uphold the ministry's decision to extend the time for an additional 90 days. The ministry is ordered to issue its final decision on access on or before January 25, 2013.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, 27(1)(a).

### **OVERVIEW:**

[1] The Ministry of the Environment (the ministry) received a request on October 15, 2012 under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records relating to an application for a particular wind farm project as follows:

All documents submitted to the [ministry] in connection with the Project; and  
Any correspondence or communication between the [ministry] and [a named corporation] in respect of the Project.

[2] In response, the ministry issued a decision letter on November 13, 2012 which read, in part:

After a search of the Ministry's Barrie District Office, Investigations and Enforcement Branch, Environmental Assessment and Approvals Branch, Environmental Monitoring and Reporting Branch, Sector Compliance Branch and Safe Drinking Water Branch, records were located in response to your request. It is my preliminary decision to provide partial access to the information as the identity of complainants and any other personal information will be removed to protect privacy (Section 21(1)(f) of the *Act*.) As well, corporate confidential information will require notice to the third party (Section 17(1)(a), (c) of the *Act*).

[3] The ministry went on to indicate that the estimated fee for the processing of this request totals \$763, representing 8 hours of search time, 6 hours of preparation time and photocopying of approximately 1,700 pages, and requested a deposit in the amount of \$381.50 before continuing to process the request.

[4] The ministry then stated:

A request for records must usually be answered with 30 calendar days, however Section 27 allows for time extensions under certain circumstances. The time limit for answering your request has been extended for an additional 120 days after receipt of your deposit. This additional time is required because of the extremely large volume of material to be reviewed and prepared for disclosure.

[5] The requester paid the deposit on November 19, 2012, and filed an appeal with this Office of the ministry's decision to extend the time for response for an additional 120 days.

[6] In an effort to resolve the appeal, the ministry advised that it would reduce the time extension from 120 additional days to 90 additional days. The appellant did not feel that this was reasonable; however, the ministry advised it will nevertheless shorten the time extension by 30 days, making it a 90 day extension instead of 120 days. As no further mediation was possible, it is now in the inquiry stage of the appeal process.

[7] I sent a Notice of Inquiry to the appellant and the ministry, setting out the issue in this appeal and inviting the party to submit representations. In response I received representations from both the appellant and the ministry.

## **ISSUE:**

[8] The issue in this appeal is whether or not the ministry's decision to extend the time for response for an additional 90 days is in accordance with section 27(1) of the *Act*.

## **DISCUSSION:**

[9] Section 27(1) of the *Act* states:

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.

[10] In its representations, the ministry pointed out that it had forwarded the request to seven program areas in the ministry, resulting in an estimated 1,700 pages being located between two of these program areas. No records were located at the other program areas. The ministry then stated:

The head felt the time extension of 120 days was reasonable and necessary in order to thoroughly review approximately 1,700 pages of detailed information. The type of information that the requester has requested often contains the personal information of private citizens giving comments on the proposed renewable energy projects. It also usually involves third party information, which requires notice to and consultation with third parties.

The ministry receives the most FOI requests of all provincial institutions. Last year was the busiest year yet, with approximately, 6,900 requests received. Of this number, 39 requests were received from the appellant's firm...[This] request is just one of the many that the Ministry is working to complete within legislated timelines and expediting his request would mean that other requests are late.

The Ministry's FOI Office has also been short-staffed throughout 2012, making the completion of this file and others challenging.

...

In addition, the processing of this request [fell] during the Christmas and year-end shut down and vacations that placed additional pressures on the processing of the numerous requests received on a daily basis.

The Ministry's FOI Office has also been short-staffed, making the completion of files challenging. The hiring of FOI experienced employees is impossible and therefore we are in the process of training newly hired staff who will require considerable time to become proficient to review a file of this complexity.

The approximately 1,700 pages of technical and/or scientific information will have to be reviewed thoroughly with numerous third parties involved that may require notification and/or consultation as required by the *Act*.

...

The time extension of 120 days was applied in order to allow for detailed review of personal information and corporate confidential information, in addition to other exempt information.

[11] In his representations, the appellant submits that the ministry's time extension is unreasonable. He pointed out that this request was an identical request to one previously filed, albeit for a different time period. He stated that:

[i]n the current case, the search result yielded a number of responsive records, but nothing in the magnitude that would require 5 months in order to provide a response. The number of records at issue is comparable to other requests, but the extension is extraordinary. As a result the extension imposed is not reasonable in the circumstances.

...

[t]he FOI request was not broad or ambiguous in nature. It did not cover a vast number of areas within the [ministry]. In fact, the FOI request was limited to a single project, for a recent time period. As a result the [ministry] ought to have been able to process the request by contacting the few individuals responsible for this project. The limited nature of the search is evidenced by the [Ministry's] own November 13, 2012 [decision] correspondence which provides a total estimated time to process the request of 8 hours. This is one day's work, for one person. It is unreasonable for the [ministry] to advise that 5 months is necessary to perform 8 hours of work.

...

As of the date of these submissions, more than two months has elapsed since the FOI request was made. If the [ministry] had spent 4 hours in each month processing the request, it would already have been completed. Requiring 5 months to conduct a search that would take one day is patently unreasonable in the circumstances and the context of this FOI request. The [ministry] ought to have already completed the search.

## **Analysis**

[12] The ministry did not specify whether it is relying on section 27 (1)(a) or (b) of the *Act* to support its claim to a time extension in either its decision or representations.

[13] I will start by addressing the possible application of section 27(1)(b). As outlined above, the ministry stated that “[t]he type of information that the requester has requested often contains the personal information of private citizens giving comments on the proposed renewable energy projects. It also usually involved third party information, which requires notice to and consultation with third parties.” It appears from these submissions that the ministry is referring to its obligation to notify affected parties as outlined in section 28 of the *Act*.

[14] In Order M-1, former Assistant Commissioner Tom Wright made the following comments:

In its representations, the institution appears to suggest that the fact that it was required to send notices to third parties justifies, in part, the time extension. Section 21 of the [*Municipal Freedom of Information and Protection of Privacy Act* which is equivalent to section 28 of the *Act*], provides for notice to third parties in certain circumstances, but, in my view, the procedures for sending such notices are not relevant to the issue of time extension and are a separate consideration for the institution.

[15] I agree with these comments. Section 28 of the *Act* sets out the relevant timelines that the institution must follow when notifying affected parties. Therefore, such notification and consultations are not relevant to the issue of the ministry’s time extension.

[16] Other than notice to the affected parties, the ministry has not provided any submissions or evidence that it is necessary to undertake “consultations with a person outside the institution” as contemplated in section 27(1)(b). Consequently I find that this section is not applicable in the circumstances of this appeal. I will now consider

whether the extension of time claimed by the ministry to respond to the appellant's request was made in accordance with section 27(1)(a).

[17] I have carefully considered all of the information provided to me by the ministry and the appellant. I acknowledge that the ministry has reduced its proposed time extension to 90 days from 120 days. This demonstrates that the ministry is mindful of its obligation under the *Act* to provide access to records in a timely fashion. I also accept that the request is for a relatively large number of records. However, that alone is not sufficient to support the application of section 27(1)(a). The ministry must also establish that meeting the time limit to respond to the request "would unreasonably interfere with their operations."

[18] Consequently, I now need to decide whether meeting the time limit would unreasonably interfere with the operations of the institution so to warrant an extension of time to February 19, 2013.

[19] In its decision of November 13, 2012, the ministry advised that various searches had been undertaken and records responsive to the request had already been located. In its submissions, the ministry again reiterated this point and stated that the time extension was applied "in order to allow for detailed review of personal information and corporate confidential information, in addition to other exempt information".

[20] I note that approximately two months have already passed since the ministry issued its decision and that the searches for responsive records have already been completed. Aside from general comments about reviewing the records which contain technical and/or scientific information, it does not provide specific details about the extent of the work that is yet to be done to complete the processing of this request or how much time would be required to undertake this work, other than the six hours that the ministry requires for record preparation time as outlined in its decision.

[21] I acknowledge that the issues raised by the ministry regarding shortage of staff and a large number of requests received present a challenge for the ministry staff. However, having considered all of the information provided to me by the parties, I find that the ministry has not provided sufficient evidence to satisfy me that meeting the time limit to respond to this request "would unreasonably interfere with" its operations to warrant a 90 day time extension.

[22] Accordingly I do not uphold the ministry's decision to seek a time extension under section 27(1) for an additional 90 days.

[23] With respect to those records that do not require third party notice to be given or for which third party notice has already been given, I will require the ministry to issue a final access decision to the appellant no later than January 25, 2013.

[24] If there exist any responsive records for which the ministry has not given notice to affected parties under section 28 and for which notice is required, then notice to affected parties in relation to those records must be given by January 18, 2013, and the ministry must issue a final decision on access to the appellant and to the third parties no later than 30 days following this notification pursuant to section 28(7) of the *Act*.

**ORDER:**

1. I do not uphold the ministry's time extension decision of an additional 90 days.
2. With respect to those records that do not require third party notice to be given, I order the ministry to issue a final access decision to the appellant no later than **January 25, 2013**.
3. If there exist any responsive records in relation to which the ministry is required to give notice to affected parties under section 28, then I order that the ministry give notice to the affected parties in relation to those records by **January 18, 2013** and the ministry shall issue a final decision on access to the appellant and to the third parties no later than **30 days** following this notification pursuant to section 28(7) of the *Act*.

Original signed by: \_\_\_\_\_  
Leslie McIntyre  
Mediator

\_\_\_\_\_ January 11, 2013