

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3090

Appeal MA14-334

Township of Bonfield

August 28, 2014

Summary: On July 18, 2013, the Township of Bonfield received a request for access to a copy of records relating to the numbered company 2284456 Ontario Inc, also known as King of the North Dragway, and lot 13 concession 7. The Township failed to provide the requester with an access decision within the prescribed time limit under the *Act*. The appellant appealed to this office that the Township was in a “deemed refusal” situation. This order finds the Township to be in a deemed refusal situation pursuant to section 22(4) of the *Act*, and is ordered to issue a final access decision without any further time extensions.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 19 and 22(4).

BACKGROUND:

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

[2] On July 18, 2013 the Township of Bonfield (the Township) received a request for access to:

Records relating to the 2284456 Ontario Inc, also known as King of the North Dragway, and lot 13 con 7.

1. The registered site plan control agreement as ordered by the OMB;

2. Any explanation, to the precedent setting action, of the Township producing technical documents for this developer, in the form of site plan control (Regular Council Meeting, May 14th, 2013, and then approving them;
3. The details of the cost incurred by the Township to produce technical documents and any other costs incurred by the Township for this private developer and the cost recouped to date;
4. The engineering working drawings and specifications received by the Township, for this development, that formed the bases for the building permit;
5. The building permit number for the construction of this development;
6. The cost of a building permit in this Township as a percentage of construction or as set out in the Township laws. By-law excerpts;
7. The value of the building permit and the amount received to date by this Township for this commercial development;
8. The engineers of record for this development;
9. All environment and safety studies that have taken place and construction implementations, including drainage, storm water management, spillage control, traffic and safety (excluding the SS Wilson preliminary noise study dated March 30, 2012)
10. Information about current excavation work, which we understand to be RV parking, camping area, outside the boundaries of the zone zoned as special documented in OMB July 28, 2010 PL080798 correspondence attachment #1. Confirmation that this zone has not been expanded or all documentation with the Township regarding the expansion of the special zone; and
11. The west neighboring Lot 13 con 7, was designated as agricultural in our former official plan, now designated as aggregate extraction in the new official plan. All documentation on the re-zoning, including public notices, address of residences informed, council meeting minutes, resolution etc. Reason as to why it was re-zoned such, since I understand the property has no aggregate resources.

[3] There was a strike at the Township from August 1, 2013 to June 13, 2014.

[4] On July 25, 2014, the requester (now the appellant) appealed the Township's "deemed refusal" to provide access to the records, to the Office of the Information and Privacy Commissioner/Ontario.

[5] Section 19 of the *Act* requires the Township to issue a decision within 30 days of receipt of a request. If a decision is not issued within the time limit, the Township is in a "deemed refusal" situation pursuant to section 22(4) of the *Act*. That 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.

[6] The Township did not issue a decision within the 30 days prescribed by sections 19 and 22 of the *Act*, nor did the Township advise the appellant in writing that it required a time extension to process the request under section 20(1) of the *Act*. Accordingly, the Township was in a "deemed refusal" situation pursuant to section 22(4) of the *Act*.

[7] On July 31, 2014, a Notice of Inquiry was issued to both the appellant and the Township stating that the Township was in a deemed refusal situation, as a decision letter had not been issued within the time period described by the *Act*. The Notice also advised that if a final decision was not issued by August 15, 2014, I would be in a position to issue an order requiring the Township to do so.

[8] To date the Township has not issued a final decision.

[9] On August 26, 2014, I contacted the Mayor of the Township who advised that he could not commit to a firm date upon which a final decision would be issued.

DISCUSSION:

[10] The Township is in a deemed refusal situation pursuant to section 22(4) of the *Act* as it has failed to issue an access decision pursuant to the stator time lines set out in section 19. As a result of the appeal, the Township has been provided with additional time to issue a final access decision but has not done so.

[11] To ensure that there are no further delays I will order the Township to issue a final access decision to the appellant, without recourse to a time extension.

ORDER:

1. I order the Township to issue a **final** access decision to the appellant regarding access to the records in accordance with the *Act*, no later than **September 12, 2014**, without recourse to any time extension.
2. In order to verify compliance with Provision 1 of this Order, I order the Township to provide me with a copy of the decision letter referred to in Provision 1 no later than **September 12, 2014**. 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:
Janelle Firebrace
Analyst

August 28, 2014