

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3275

Appeal MA15-400

City of Niagara Falls

January 5, 2016

Summary: The appellant sought access to information relating to developments considered by the City of Niagara Falls. The City of Niagara Falls failed to provide the requester with an access decision within the prescribed time limit under the *Municipal Freedom of Information and Protection of Privacy Act*. The appellant appealed to this office that the City of Niagara Falls was in a “deemed refusal” situation. This order finds the City of Niagara Falls to be in a deemed refusal situation pursuant to section 22(4) of the *Act*, and is ordered to provide an 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 is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act).

[2] On July 27, 2015, the requester hand-delivered a request to the City of Niagara Falls (the City) for access to the following records:

1. Policy statements or reports supporting the contention that Niagara Falls is underserved by post-secondary educational institutions.

2. Records of payments made from the "special account" related specifically to the downtown educational hub.
3. Documents related to the role and any contractual arrangements by the firm listed on this email stream.
4. Copies of Agenda Item 1 "Report back on Meeting with [named individual]".
5. Copies of the Agenda and "number of additional items for discussion" as indicated.
6. Copies of the "document identifying the City's strengths and related opportunities" as indicated.
7. Copies of the "corresponding fee letter" as indicated.
8. Records of payments made from the "special account" related specifically to the downtown educational hub.
9. Copies of the "PKF files" as indicated.
10. Copies of "assumptions" made in the document indicated.
11. Valuations of lands made "available" as indicated.
12. Discussion notes and correspondences on the financial "burden" as indicated.
13. Copies of Agenda Item 1 "Report back on Meeting with [named individual]".
14. Valuations of lands that would be provided as indicated.
15. Notes and reports from the discussions indicated in the correspondence.
16. Notes and reports from the discussions indicated in the correspondence.
17. Definition of "confidentiality" used to justify the costs as indicated.
18. Discussions, notes, commitment documents and analysis of the statement that "construction costs might be lower with the assistance from the developer".
19. Notes and correspondence relating to the "clarification" Item on page 90 as indicated.

[3] The requester (now the appellant) appealed the City's "deemed refusal" to provide access to the requested records. Appeal MA15-400 was opened.

[4] Section 19 of the *Act* requires the City to issue a decision within 30 days of

receiving a request for access to information. If a decision is not issued within that time limit, the City is deemed to have refused access, 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.

[5] The City did not issue a decision, thereby creating a “deemed refusal” situation pursuant to section 22(4) of the *Act*.

[6] On October 21, 2015, this office issued a Notice of Inquiry to both parties advising that the appellant had filed an appeal. The Notice stated that the appellant claimed the City was in a “deemed refusal” situation because a decision had not been issued to the appellant within the time period set out in section 19 of the *Act*. The Notice also stated that I would attempt to settle the appeal with the parties but if a settlement was not reached by November 4, 2015, I could issue an order requiring the City to issue a decision letter to the appellant.

[7] On November 12, 2015, I was advised by the City’s Freedom of Information Coordinator (the coordinator) that the coordinator had met with the appellant on November 11, 2015 to discuss his request. Following this meeting, the appellant agreed to allow the City until November 30, 2015 to issue a decision.

[8] On November 30, 2015, the appellant advised this office that he had not received a decision from the City in relation to his request.

[9] Despite repeated efforts to contact the coordinator via e-mail on December 1, 11, and 22, 2015, and by telephone on December 2, 2015 and December 15, 2015, I have not received any response from the City.

[10] On January 4, 2016, the appellant has advised me that he has not received a decision from the City.

DISCUSSION:

[11] The City 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 statutory timelines set out in section 19. As a result of this appeal, the City has been provided with additional time to issue an access decision but has not done so.

[12] To ensure that there are no further delays, I am ordering the City to issue its decision letter to the appellant, without recourse to a time extension under section 20 of the *Act*, no later than January 14, 2016.

ORDER:

1. I order the City to issue an access decision to the appellant regarding access to the requested records in accordance with the *Act*, **no later than January 14, 2016.**
2. To verify compliance with this order, I order the City to provide me with a copy of the decision letter referred to in Provision 1, no later than **January 14, 2016.** 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: _____

Gordon Bridge
Analyst

January 5, 2016