



**Information and Privacy
Commissioner/Ontario**

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

ORDER 108

Appeal 890039

Ministry of Health



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October 26, 1989

VIA PRIORITY POST

Appellant

Dear Appellant:

Re: Order 108
Ministry of Health
Appeal No. 890039

This letter constitutes my Order in your appeal from the decision of the Ministry of Health (the "institution") regarding your request for information made under the Freedom of Information and Protection of Privacy Act, 1987 (the "Act").

The appeal file indicates that on December 13, 1988 you wrote to the institution asking for the following:

...all documents pertaining to the polls that have been tabled in the Legislature from January 1, 1985 to the present date, excluding the information on these polls that has already been tabled. This information would include: the complete analyses of the polling results, documents regulating or giving instructions to take polls, documents indicating the costs of taking these polls and the bills or instructions for billing.

I consider any document that contains public opinion on government policy over the last 3 years to come under the definition of polls: this would include surveys, consultants' reports, and any study conducted in combination with another group. In the latter instance, I request a breakdown of the percentage of questions allotted each party, and details of how the costs to each were calculated.

[IPC Order 108/October 26, 1989]

Further to this, I request under Section 24(3) and Section 24(4) of the Freedom of Information Act, all of the above documentation for a period of 2 years, commencing January 1, 1989. I would ask that the schedule you send me sets down the time required to provide me with each of the above-mentioned documents after they are produced or received by your Ministry.

On January 23, 1989, the Freedom of Information and Privacy Co-ordinator (the "Co-ordinator") for the institution responded to your request as follows:

...A copy of the record is enclosed.

You have asked for continuing access for two years beginning January 1, 1989. Your request will be reopened every six months as follows: July 4, 1989; January 2, 1990; July 3, 1990; January 2, 1991 (the first working day in each of these months). The 30 day time limit for processing these files applies, therefore we will contact you each time the file is reopened to inform you of the due date. If this is not agreeable to you, I would be pleased to discuss an alternate schedule.

On February 3, 1989, you replied to the institution indicating that six-month intervals were not satisfactory and that you would prefer a continuing access schedule which would result in the request being reactivated every 30 days.

On February 9, 1989, the Co-ordinator replied, stating, in part, the following:

...Section 24 of the Freedom of Information Act which provides for continuing access to a record does not specify any timeframe for activation of an access request. If the Ministry conducted polls on a regular basis, we would have sent you a copy of the polling schedule and would reactivate your request to coincide with it. This is my understanding of what was contemplated by Section 24(4) (a) of the Act. The Ministry does not however conduct polls on a regular basis. The reason I suggested to you that we would reactivate your request every six months was an attempt to link it to the frequency with which the Ministry of Health has conducted polls recently (two over the last two years). However, given that you find this proposal unsatisfactory, we are prepared to reactivate your request every three months...

I regret that we are unable to comply with your

proposed schedule of reactivating your request every 30 days. I do want to assure you however that if it comes to our attention that a poll has been undertaken, we will undertake on your behalf to activate your request regardless of when the next 90 day timeframe commences.

On February 15, 1989, you wrote to me appealing the decision of the institution.

As you are aware, as soon as your appeal was received by my office, an Appeals Officer was assigned to investigate the circumstances of the appeal and attempt to mediate a settlement.

Settlement was not effected because both you and the institution retained your original positions with respect to the proper application of subsection 24(4) (a) of the Act.

Accordingly, an Appeals Officer's Report was prepared and sent to you and the institution on July 4, 1989, together with a Notice of Inquiry. You and the institution were asked to make representations to me concerning the subject matter of the appeal.

I have received and considered representations from both parties in reaching my decision.

Section 24 of the Act reads as follows:

24.--(1) A person seeking access to a record shall make a request therefor in writing to the institution that the person believes has custody or control of the record and shall provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record.

(2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

(3) The applicant may indicate in the request that it shall, if granted, continue to have effect for a specified period of up to two years.

(4) When a request that is to continue to have effect is granted, the institution shall provide the applicant with,

(a) a schedule showing dates in the specified period on which the request shall be deemed to have been received again, and explaining why those dates were

chosen; and

(b) a statement that the applicant may ask the Commissioner to review the schedule.

(5) This Act applies as if a new request were being made on each of the dates shown in the schedule.

If access to a requested record has been granted by an institution, subsection 24(3) provides a requester with the right to have this request continue to have effect for up to two years. When this occurs, subsection 24(4)(a) requires the institution to provide the requester with a schedule showing the dates on which it will re-consider the request and an explanation as to why those dates were chosen. If the requester is not satisfied with the institution's schedule, he or she may apply to me for a review. The Act does not set out a specific basis for establishing a schedule, however, in my view, the general standard should be one of reasonableness.

In your representations you state that you "do not believe it would be an undue burden on the Deputy Minister to re-activate my request everyday, if not every 30 days. The Deputy Minister knows when a poll has been commissioned and when it is expected to be produced." Also, in support of your position, you argue that, because the government can legally call an election within a period of 40 days, it is important that candidates for election have quick access to all accessible information held by the government.

While I have some sympathy for your arguments, it is incumbent on me as Commissioner to consider the reasonableness of each continuing access schedule in the context of the overall operation of Ontario's access scheme. In this case the institution has submitted that, at the time of your request, it had only conducted two polls in the previous two years. I accept that it would be preferable for you to receive polling information as soon as it becomes available to the institution, however, in my view, it would be unreasonable in the circumstances for me to require the institution to respond in this manner. The historical infrequency of polling, and indications by the institution that this pattern is likely to continue, draw me to the conclusion that a 30-day continuing access schedule would be an unreasonable drain on the institution's resources and therefore on the public purse.

Consequently, my Order is that a three-month continuing access schedule be implemented with respect to your request, in accordance with the position agreed to by the institution during mediation. This schedule should commence on the first working day of the first month following the issuance of this Order.

In closing, I would also like to commend the institution on its

offer to activate your request whenever a poll has been undertaken, regardless of when the next 90-day timeframe begins. Although not included within the scope of this Order, I would encourage the institution to follow through with this offer.

Yours truly,

Sidney B. Linden
Commissioner

cc: The Honourable Elinor Caplan
Minister of Health

Mr. Andrew Parr, FOI Co-ordinator