



**Information and Privacy
Commissioner/Ontario**

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

ORDER 104

Appeals 890079, 890080 and 890081

Ministry of the Solicitor General



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October 19, 1989

VIA PRIORITY POST

Appellant

Dear Appellant:

Re: Order 104
Ministry of the Solicitor General
Appeal Numbers 890079. 890080 and 890081

This letter constitutes my Order in your appeals from the decision of the Ministry of the Solicitor General (the "institution"), to extend the time in which to respond to your requests for access to certain information under the Freedom of Information and Protection of Privacy Act, 1987 (the "Act").

On January 24, 1989, you wrote to the institution asking for access to the following:

(Appeal No. 890079):

1988-89 memos/issue sheets/ reports on Solicitor General's knowledge of (via inventories/calls etc.) of 'special purpose weapons issued by police forces and cost sharing of such weapons, and plans to review the existing arsenals/system of accountability. (sic)

(Appeal No. 890080):

records/reports in 1988, 1989 of all specific incidents where police officers killed civilians, and any resulting changes undertaken or contemplated.

(Appeal No. 890081):

Any 1988, 1989 studies, plans/reports done on improving provincial response to major emergencies including on-site accidents at nuclear plants.

On February 28, 1989 (890079, 890080), and March 1, 1989 (890081), the institution responded to your requests by indicating that "time has been extended in accordance with section 27 of the act for an additional 30 days ... The reason for this extension is for consultations with Ministry personnel that cannot reasonably be completed within the time limit and which are necessary to comply with the request."

On March 14, 1989, you wrote to me to appeal the institution's decision and I gave notice of the appeals to the institution on March 29, 1989. According to your letter of appeal, you are of the opinion that "...this section is meant for consultation (sic) that are reasonable such as extensive consultations with several agencies or even remote field offices with their own separate record system."

Upon receipt of the appeals, the Appeals Officer assigned to this case reviewed the file. The records were not reviewed by the Appeals Officer as access was not at issue. Because the sole issue in these appeals was the interpretation of section 27(1)(b) the Appeals Officer formed the opinion that mediation was not possible.

On August 9, 1989, notices were sent to you and to the institution advising that I was conducting an inquiry to review the institution's decision. Enclosed with this notice was a report prepared by the Appeals Officer which is intended to assist the parties in making their representations concerning the subject matter of the appeals. The Appeals Officer's Report outlines the facts of the appeal and sets out questions which appear to the Appeals Officer, or any other parties, to be relevant to the appeal. The Appeals Officer's Report indicates that the parties, in making their representations to the Commissioner, need not limit themselves to the questions set out in the report.

Representations were received from you and the institution and I have taken them into consideration in making my Order.

The sole issue for me to determine in these appeals is whether or not the extension of the time limit was reasonable in the circumstances.

Subsection 27(1)(b) of the Act states:

27.--(1) A head may extend the time limit set out in section 26 for a period of time that is reasonable in the circumstances, where,

- . . .
- (b) consultations that cannot reasonably be completed within the time limit are necessary to comply with the request.

On September 22, 1989 you were contacted by the Appeals Officer who informed you that the institution had agreed with your interpretation of subsection 27(1)(b). You indicated, however, that you wanted me to make an Order in this matter.

In your representations to me dated August 11, 1989 you state:

It is not reasonable to use Section 27 as a means of delaying response when the reason is intradepartmental communications.

In its representations dated September 19, 1989 the institution submits:

Although clause 27(1)(b) does not restrict the scope of the term "consultation", Bill 52, ... which received first reading on July 20, 1989, provides in section 3(10) that clause 27(1)(b) of the Freedom of Information and Protection of Privacy Act be repealed and the following substituted therefore:

- (b) consultations with a person outside the institution are necessary to comply with the request and cannot reasonably be completed within the time limit.

In light of this legislative development, this Ministry will be interpreting clause 27(1)(b) to mean consultations with a person outside the institution. As a result, we believe the issue in these appeals is resolved.

While the Freedom of Information and Protection of Privacy Act, 1987 does not define the scope of consultations, it is clear that both the proposed amendment to the Act, as well as the proposed Municipal Freedom of Information and Protection of Privacy Act, 1989, attempt to remove any ambiguities regarding the intent of the subsection. Both clearly state that consultations are to be with persons external to the institution.

I have reviewed Bill 52, An Act to amend certain Statutes of Ontario Consequent upon Enactment of the Municipal Freedom of Information and Protection of Privacy Act, 1989 and it clearly states in subsection 3(10) that subsection 27(1)(b) of the Freedom of Information and Protection of Privacy Act, 1987 will be amended

to mean consultations with people external to the institution. I have also reviewed Bill 49, An Act to provide for Freedom of Information and Protection of Individual Privacy in Municipalities and Local Board. Subsection 20(1)(b) states:

20.--(1) A head may extend the time limit set out in section 19 for a period of time that is reasonable in the circumstances, if,

. . .

(b) consultations with a person outside the institution are necessary to comply with the request and cannot reasonably be completed within the time limit.

Based on the foregoing, it is my view that the intent of section 27(1)(b) of the Freedom of Information and Protection of Privacy Act, 1987, was to allow for external consultations. Certainly, the proposed amendment to the Act will clarify this fact. By determining that internal consultations are not consistent with the intent of the section, I find that the extension of time was not reasonable in the circumstances of this appeal.

Access to the records has been granted and the institution has reconsidered and revised its original position and stated that "this Ministry will be interpreting clause 27(1)(b) to mean consultations with a person outside the institution". Therefore, there is no remedial order for me to make in the circumstances of this appeal.

Yours truly,

Sidney B. Linden
Commissioner

cc: The Honourable Steven Offer
Solicitor General for the Province of Ontario

Ms. Isabel MacTavish, FOI Co-ordinator