



Information and Privacy
Commissioner/Ontario

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

ORDER 93

Appeal 890264

Ministry of Treasury and Economics



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September 21, 1989

VIA PRIORITY POST

Appellant

Dear Appellant:

Re: Order 93
Appeal Number 890264
Ministry of Treasury and Economics

This letter constitutes my Order in your appeal of the decision by the Ministry of Treasury and Economics (the "institution"), to extend the time in which to respond to your request for access to certain information under the Freedom of Information and Protection of Privacy Act, 1987 (the "Act").

On June 18, 1989, you wrote to the institution to request the following records:

Appl. One _ Memos written by Susan Gunn in the 1985_89 period regarding Skydome (the Stadium Corporation of Ontario and on Dome Consortium Investments Inc.). Include her reports back on Stadium Board of Director meetings.

Appl. Two _ Briefing notes to your Minister or the Premier in the 1985 _ 1989 period regarding the Skydome construction and costs.

Appl. Three _ Your Ministry's 1988, 1989 reviews/assessments/reports, or those done by consultants, on

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Skydome costs, cost increases, long term revenues projections, public debt handling and scenarios, views on potential public share offering, and other components of the economics of Skydome.

Appl. Four _ Your Ministry's 1985 _ 89 approvals/agreement for each increase in credit for Skydome as arranged through the Canadian Imperial Bank of Commerce.

Appl. Five _ Records that indicate and document provincial funds committed beyond the \$30 million, including the terms of the \$5,766,250 advanced to the Stadium Corporation.

Appl. Six _ Any favourable tax benefits/incentives/breaks provided to Dome Investments or the Stadium Corporation by the Province of Ontario _ provide the records.

On July 18, 1989, the head of the institution responded to your request by indicating that "we will require an additional 90 days, until October 20, 1989, to provide you with a response. While we had hoped that the retrieval and review of the records could be completed within the initial thirty days, due to the volume of information and the requirement for third party consultations, we will require the additional time to review the material involved."

On August 11, 1989, you wrote to me to appeal the institution's decision and I gave notice of the appeal to the institution on August 23, 1989. According to your letter of appeal, you are of the opinion that it is unreasonable and improper for the institution to have processed your request as one application with six parts as opposed to six separate applications.

Upon receipt of the appeal, the Appeals Officer assigned to this case spoke with the institution's Freedom of Information and Privacy Co_ordinator (the "Co_ordinator") who advised of the circumstances which, in the institution's view, necessitated the 90_day time extension under section 27 of the Act in which to respond to your request. Although you had indicated that an official with the institution had advised you that "some applications or data may be forthcoming in a more reasonable time frame", the Co_ordinator indicated to the Appeals Officer that this position was "under advisement". Accordingly, the

Appeals Officer formed the opinion that a mediated settlement of this appeal was not possible.

On August 29, 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 appeal. 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 the institution only and I have taken them into consideration in making my Order.

The sole issue for me to determine in this appeal is whether the extension of time claimed by the institution as necessary to respond to your request is reasonable in the circumstances.

Subsection 27(1) 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,

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

In its representations, the institution submitted that the processing of the request as a single request with six parts is the most efficient and effective method of proceeding. In support of this position, the institution made the following points:

- Because the subject matter of the six component parts is inter-related, records relevant to one part of the

request may be positioned in the same files as records pertaining to another part of the request.

- By being cognizant of all parts of the request while searching for relevant records, the institution is able to maximize efficiency in its search, and eliminates the necessity of multiple passes over the same record holdings relating to the same general subject material, in any given year.
- Because many of the records involved are not current, requisitioning of record collections from remote storage sites can be conducted in the most efficient and effective manner.
- Recommendations regarding disposition of records and third party consultations are also influenced by the inter-relatedness of the subject matter.
- Multiple passes over the same materials, treating each in a serial manner, would prolong the time required by the institution to come to decisions regarding disposition and third party matters.

In support of its decision to extend the time in which to respond to the request by 90 days, the institution made the following points:

- Record holdings in four divisions of the ministry and from one other ministry must be searched.
- The requested records are maintained in 40 to 50 separate groups of files; many of which are historical in nature and are maintained in remote storage locations.
- All of the requested records are maintained in paper files and cannot be retrieved by way of a computer program.
- Third party consultations with 10 to 15 organizations whose interests may be affected by the request are required.

I had the occasion to consider a similar fact situation in Order 28 (Appeal Number 880317, released on December 6, 1988). In that case, the institution received a number of separate requests from the same individual and extended the time in which

to respond to the requests en bloc pursuant to section 27. In my Order I stated:

I do not believe that section 27 lends itself to the interpretation that, where the response to a number of separate requests from the same individual, which collectively involve a large number of records or necessitate consultation, section 27 is properly triggered. ... I do not believe that the institution's approach was correct in that it did not consider each request separately and decide whether each individual request was for a sufficiently large number of records as to justify a section 27 time extension.

I find, therefore, that the institution's decision to process the appellant's request as a single request with six parts was not a correct approach. A requester should not be penalized for having listed multiple requests in one letter as would be the case if an institution were able to combine requests and then determine that an extension of time is required before it can respond to that combined request. Whether an institution receives multiple requests from one individual or single requests from several individuals it must consider each request separately and decide whether the request triggers the circumstances in which a time extension is authorized by section 27 of the Act.

Having determined that the institution was in error when it combined the appellant's six requests, I must now determine whether the 90_{day} time extension claimed by the institution was reasonable in the circumstances.

It is apparent from the institution's representations that if it had responded to any of the individual parts of the request separately, an extensive search and review of the requested records still would be necessary followed by third party consultations. It follows, therefore, that the appellant would have received six separate time extensions from the institution. Similarly, had the institution received the six individual requests from six separate requesters, all six requesters would have received a 90_{day} time extension from the institution. Accordingly, I am of the view that even if the institution had responded to each of the six requests separately, as required by Order 28, it would have led to no practical difference in the time in which the institution could have responded to the requests. I conclude, therefore, that the head's decision to extend the time in which to respond to the appellant's request

by 90 days is reasonable in the circumstances. The head's decision is upheld.

Despite my finding that the head's decision is reasonable in the circumstances of this case, I am hopeful that the institution will find itself in a position to release some of the requested records, because of the process described above, in advance of the date presently contemplated.

Yours truly,

Sidney B. Linden
Commissioner

cc: The Honourable Robert Nixon
Treasurer of Ontario

Ms Sharon Cohen, FOI Co_ordinator
Ministry of Treasury and Economics