



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2540

Appeal PA06-351

Ministry of Public Infrastructure Renewal



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NATURE OF THE APPEAL:

The Ministry of Public Infrastructure and Renewal (the Ministry) received the following request under the *Freedom of Information and Protection of Privacy Act* (the *Act*):

Would you please produce for us any and all documents of whatever nature or kind that in any way relate to:

- (a) the agreement of purchase and sale entered into by our client with [a named company] for the purchase of the Property [described elsewhere in the request];
- (b) the Caution registered by our client on title to the Property on June 29, 2006;
- (c) the purchase of the Lands [lands which have been the subject of the aboriginal land claims dispute in Caledonia, Ontario] by the Minister from [the named company]; and
- (d) any additional compensation paid or to be paid to [the named company], including but not limited to, payment for loss of future profits.

As part of this request, would you please ensure that any and all:

- (i) Correspondence;
- (ii) Memoranda;
- (iii) Handwritten notes;
- (iv) Telephone messages;
- (v) Electronic mail messages or correspondence;
- (vi) Minutes of any meetings; and
- (vii) Any written documents of whatever nature or kind;

that have passed between any or all of representatives of the federal government, provincial government, municipal government, [the named company] and/or Six Nations which are in any way related, connected or associated with (a) through (d) above are reviewed and disclosed.

Subsequently, during the request stage, the requester provided April 1, 2005 as the initial date from which records should be identified.

In response, the Ministry issued a fee estimate in the total amount of \$5,820.40. This estimate included search, preparation and photocopying charges. The Ministry estimated that there are approximately 19,200 pages of records. The Ministry's response also included an interim access decision outlining exemptions that may apply to deny access to some of the requested information. The Ministry asked for a deposit of \$2,910.20, equal to 50% of the fee estimate, in order to continue processing the request. The requester paid the deposit, which was received by the Ministry on November 8, 2006.

On November 14, 2006, the Ministry informed the requester that, pursuant to section 27(1)(a) of the *Act*, the time for processing the request had been extended an additional 90 days to February 12, 2007. The letter indicated that the reason for the time extension was that the request

necessitated a search through a large number of records and meeting the time limit would unreasonably interfere with the operations of the institution.

The requester (now the appellant) appealed the Ministry's decision to extend the time to process the request to February 12, 2007.

This office sent a Confirmation of Appeal to the Ministry and the appellant advising the parties that I was the mediator assigned to attempt to settle the appeal. The Confirmation of Appeal stated that if a mediated settlement was not reached, I would issue a Notice of Inquiry in my capacity as Acting-Adjudicator, asking the parties to submit representations on the issue. A mediated settlement of the appeal was not reached.

I sent a Notice of Inquiry to the appellant and the Ministry setting out the issue in the appeal. I received written representations from both parties.

DISCUSSION:

The sole issue for me to determine in this appeal is whether the extension of time applied by the Ministry to respond to the appellant's request was made in accordance with section 27(1) of the *Act*.

Section 27(1) of the *Act* states:

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;

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

In its decision extending the time to respond to the request, the Ministry specifically referred to section 27(1)(a) of the *Act* as the relevant provision.

Representations

In its representations, the appellant submits that the Ministry's time extension is excessive. The appellant refers to the Ministry's fee estimate in which the Ministry estimated that it would require 9080 minutes of search time to locate responsive records. In the appellant's view, this is not reasonable under the circumstances.

The appellant also refers to information provided by the Ministry during a conference call which I arranged during the mediation stage of this appeal. During that discussion, the Ministry advised that the records sought are located in three separate areas within the Ministry and that staff within these areas are in the process of responding to the request. The appellant suggests that this is more efficient than having one person alone prepare the response and should decrease the time needed to process the request.

The appellant further submits that the three hours per day estimated by the Ministry during the conference call as the time used to respond to the request since receipt of the deposit is insufficient and more time can be dedicated to provide a response. Furthermore, according to the appellant, even if the Ministry has spent only three hours per day since receipt of the deposit, this should have been adequate time to prepare a response to the request and would not unreasonably interfere with the Ministry's operations.

During the conference call mentioned above, the Ministry referred to the receipt of other requests from other parties for information relating to the same subject matter. The Ministry described the other requests as not as "broadly worded" as the present request. The appellant submits that the Ministry has not made any attempt to clarify the request or ask for additional details to facilitate the search for records. Furthermore, according to the Ministry, no additional outside staff have been brought in to assist in processing the request. The appellant argues that if there is a sudden influx of requests, the Ministry could take appropriate action, such as bringing in external resources, on an emergency basis, to assist those within the Ministry who are processing the requests.

In its submissions, the appellant also raises the issue of fees. Specifically, the appellant states:

Further, if the adjudicator finds that [the Ministry's] time extension was unreasonable, but is unable to impose a deadline in late December 2006 or early January 2007 given the time constraints of this appeal process, the appellant submits that any records ought to be disclosed without any further fees to the appellant...

The Ministry's representations refer to section 27(1)(a) of the *Act* as the basis for the time extension.

In its representations, the Ministry points out that the fee estimate included not only search time, but also 1106 minutes required to prepare the records. It also maintains that the 19,200 pages of records it originally estimated is, in fact, accurate. The Ministry explains that the requested records relate to a high profile land dispute in Caledonia, Ontario. According to the Ministry, this land dispute matter essentially overtook its normal operations and generated an exceptionally large number of records.

The Ministry submits that the request is quite broad and requires a search through a large volume of records and involves the identification of a large number of responsive records. The Ministry refers to the wording of the request, "...any and all documents of whatever nature and kind that in any way relate to..." to illustrate the extent of the request.

The Ministry explains that it is a relatively small ministry with a total of 172 individuals on staff. According to the Ministry, the records which need to be searched are not found in a central file, but are located in four separate divisions within the Ministry: the Agencies division, Legal Services, Communications branch and the Deputy Minister's office. These divisions are among the smallest areas in the Ministry and have few staff to conduct a search for records. Although small, the Ministry has carriage of numerous high profile matters and the role of every individual in the Ministry is vital. According to the Ministry, in order to meet the *Act's* prescribed initial 30 day time frame for responding to requests, it would require the Ministry to remove individuals from their usual positions and dedicate them to searching for and reviewing the records. The Ministry submits that this would significantly interfere with the Ministry's daily operations. To illustrate this as well as demonstrate the volume of records involved, the Ministry, in its representations, provided an affidavit from the Assistant Deputy Minister of the Agencies division as an example from one of the areas to be searched.

In her affidavit, the Assistant Deputy Minister indicates that in her capacity, she has extensive knowledge of the Caledonia file. She attests to the fact that there are in the Agencies division no fewer than 3000 records [as opposed to pages] which may be responsive to the request. Furthermore, she has assigned staff from her division to review their records and gather those that may be responsive to the request. The Assistant Deputy Minister states that to increase the time already dedicated within her division to process the request would prevent her staff from fulfilling the normal daily functions required by the Ministry. She further states that it is her understanding that some records in the possession of the Ministry were actually generated by other ministries and consultations will be required.

In its representations, the Ministry refers to other institutions as being involved with the Caledonia matter and as a result, some of the records in the Ministry's possession "belong to other individuals, including third-parties, and therefore consultations with individuals outside the Ministry are required". The Ministry goes on to say, "While, the time extension letter did not specify this as a reason for the extension, it has become apparent while processing this request that these consultations would be necessary. It is the intention of the Ministry to include these consultations within the current request of the 90 day time extension".

The Ministry makes reference to a portion of the Notice of Inquiry mentioned above which states:

Please note that a number of orders, beginning with Order 28, have found that where the institution is responding to a **number of separate requests** by the same individual, which collectively require a search through a large number of records or necessitate consultation, section 27 is not properly triggered.

[emphasis in the original]

The Ministry submits that this statement does not apply to the current appeal; the Ministry has not received separate requests from the same individual, rather it has received only the present request from the appellant.

Findings

In its November 14, 2006 notice of time extension, the Ministry based the extension solely on section 27(1)(a) of the *Act*, as the Ministry concedes in its representations. The first indication that section 27(1)(b) of the *Act* may be relied upon is found in the Ministry's representations in response to the Notice of Inquiry. It is unclear to me whether the Ministry is now raising section 27(1)(b) as a consideration in this appeal, in addition to section 27(1)(a).

I will first consider whether section 27(1)(a) of the *Act* applies in the circumstances of this appeal.

Both parties have referred to the wording of the request and whether the information sought is broad in its scope. I have quoted the request above. In my view, the request is for a relatively large volume of records. The request asks for, "any and all documents of whatever nature or kind that in any way relate to..." four listed items and asks that the Ministry, "ensure that any and all..." of seven listed types of communications, including, "(vii) Any written documents of whatever nature and kind that have passed between any or all of representatives of the federal government, provincial government, municipal government, [a named company] and/or Six Nations which are in any way related, connected or associated with (a) through (d) above are reviewed and disclosed." My view is also supported by the volume of record pages estimated by the Ministry as potentially responsive to the request (19,200), including the number of records that may be responsive within the Ministry's Agencies division, used as an example (at least 3,000 records).

In my view, the request, although broad, is clear and does not require clarification. I note that efforts were made to narrow or clarify the request by limiting the relevant time by establishing the start date as April 1, 2005. It is unclear from the information before me whose initiative it was to limit the request time frame, but it is apparent that some effort was made.

Based on the wording of the request and the Ministry's description of the number of pages or records involved, I conclude that the request is for a large number of records or necessitates a search through a large number of records.

I have considered the Ministry's description of the effect on its daily functions that would result from being limited to thirty days to respond to the request. This includes the volume of records which need to be identified and reviewed, the location of records in various areas and not

centrally located as well as staff limitations. I am satisfied that meeting the thirty day time limit set out in section 26 of the *Act* would unreasonably interfere with the operations of the Ministry.

Considering all of the factors mentioned above, I find that under the circumstances, the time extension to February 12, 2007 applied by the Ministry under section 27(1)(a) of the *Act* is reasonable.

As mentioned above, it is unclear to me whether the Ministry is also relying on section 27(1)(b) of the *Act* as a basis for the time extension. Having found that section 27(1)(a) of the *Act* applies in this case, it is not necessary for me to consider the possible application of section 27(1)(b).

The appellant has asked that I order that there be no further fees, if I find the time extension unreasonable. Given that I have found the time extension to be reasonable, I need not consider the appellant's request regarding fees. Furthermore, fees are not what is at issue in this appeal. The appellant may appeal any aspect of the fee within 30 days of receipt of the Ministry's final access decision. I will include this last point in the order provisions below.

ORDER:

1. I uphold the Ministry's claim for a time extension under section 27(1)(a) of the *Act* and order the Ministry to complete all necessary searches for responsive records and to issue a final access decision by February 12, 2007.
2. The appellant may appeal any aspect of the Ministry's fee within 30 days of receipt of the Ministry's final access decision.

Original signed by: _____
Alex Kulynych
Acting Adjudicator

January 11, 2007