

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3319

Appeal PA14-13

Ministry of Economic Development, Trade and Employment

March 13, 2014

Summary: On December 20, 2013 the Ministry of Economic Development, Trade and Employment wrote to the requester to acknowledge the receipt of his request and a further clarification on November 5, 2013. The decision acknowledged receipt of the 50% fee deposit, in response to a previous interim access decision and fee estimate. The Ministry advised that notification of third parties pursuant to section 28 of the *Act* was being undertaken and that that time to issue a decision was being extended to April 7, 2014 to allow for consultations pursuant to section 27 of the *Act*. This order was issued to ensure certainty as to the timeframe for the issuance of a final access decision.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 26, 27 and 28.

BACKGROUND:

[1] This appeal is under the *Freedom of Information and Protection of Privacy Act* (the *Act*).

[2] On September 17, 2013 the Ministry of Economic Development, Trade and Employment (the Ministry) received a request for access to:

all records for time period January 2008 to August 31, 2013 inclusive, including any correspondence, reports, statistics, summaries, analysis, briefing notes, or plans in possession MEDT or MoF pertaining to the

evaluation of the costs and benefits to the Government of Ontario of the following:

1. The Craft Brewer Opportunity Fund;
2. Marketing grants or other funding to the Ontario Craft Brewers Association;
3. The commodity tax mark-up program for craft brewers; and
4. Any other Craft Brewer Incentives allowed, studied, or contemplated.

[3] The Ministry advised that as the same request was submitted to the Ministry of Finance (Finance), it was agreed that Finance would confirm and clarify the request on behalf of both ministries. Such clarification was obtained on October 15, 2013.

[4] On November 1, 2013, the Ministry issued an interim access decision with a fee estimate of \$2,610.

[5] On December 20, 2013 the Ministry wrote to the requester to acknowledge the receipt of his request and a further clarification on November 5, 2013. The decision acknowledged receipt of the 50% fee deposit. The Ministry advised that notification of third parties pursuant to section 28 of the *Act* was being undertaken and that the time to issue a decision was being extended to April 7, 2014 to allow for consultations pursuant to section 27 of the *Act*.

[6] On January 8, 2014, the requester (now the appellant) appealed the Ministry's decision. Appeal PA14-13 was opened.

[7] It appeared that the Ministry may be in a deemed refusal pursuant to section 26 of the *Act* so a Notice of Inquiry was issued to both parties. The notice indicated that if a final decision was not issued by January 31, 2014, I would be in a position to decide whether to issue an Order requiring the ministry to issue a final decision to the appellant.

DISCUSSION:

[8] On January 21, 2014, the Registrar, Robert Binstock, and I had a teleconference with the Freedom of Information Co-ordinator (the Co-ordinator) for the Ministry to discuss the appeal. Instead of focusing on whether the Ministry is or is not in a deemed refusal situation, we discussed a time frame for the completion of the work necessary to issue a final access decision.

[9] As a result of the teleconference it was my understanding that:

- Third party notification would be issued during the week of January 21, 2014 and that the access decision with respect to these records would be issued by the Ministry within the 30 days following the issuance of the notification letters pursuant to the requirements of section 28 of the *Act*.
- The consultation pursuant to section 27 of the *Act* would be completed and an access decision issued by March 7, 2014, rather than April 7, 2014.

[10] On February 5, 2014 I contacted the Co-ordinator for a status up-date and was advised that:

- An access decision with respect to the third party notification had not been issued and that one of the third parties had requested an extension until March 11, 2014 to provide the Ministry with its representations regarding disclosure of the requested records that would affect its interest.
- The consultation pursuant to section 27 of the *Act* would not be completed and an access decision would not be issued by the Ministry by March 7, 2014, but by April 7, 2014.
- There are additional records (approximately 18) which have been identified that do not require third party notification or consultation.
- New records (the "new records") have been identified as being responsive to the request and for which an access decision has not been issued.

[11] On March 5, 2014 the Ministry sent a letter to the Assistant Commissioner Brian Beamish stating:

- The additional records that do not require third party notification or consultation will be disclosed to the appellant by March 7, 2014.
- The Ministry is doing all it can to process the remaining records as quickly as possible. All available staff have been assigned to this file to ensure that the work is completed by April 7, 2014.

[12] On March 7, 2014, I received a copy of the access decision letter that was sent to the appellant disclosing the records that did not require third party notification or consultation.

[13] The Co-ordinator informed me that third party notification was issued on January 24, 2014. According to section 28 of the *Act*, the affected parties have twenty days to make representations to the Ministry as to why the record, that affects its interest, or part thereof should not be disclosed. The Ministry then has ten days to issue an access decision. The whole process should have been completed by February 23, 2014.

[14] I have also been advised that all of the third parties, with the exception of one, have provided the Ministry with representations. One of the third parties has requested until March 11, 2014 to make its representations.

[15] The Ministry has still not issued an access decision with respect to records for which the notification of the third parties has occurred and representations have been received. As a result, the Ministry is not in compliance with the requirements of section 28 of the *Act*.

[16] An access decision with respect to the "new records" has not been issued.

[17] I accept that the Ministry will issue a final decision with respect to the records for which consultations pursuant to section 27 of the *Act* is required, by April 7, 2014.

[18] To ensure that there are no further delays and to ensure that the appellant has some certainty, I have decided to issue this order.

ORDER:

1. For those records where third party notice was issued on January 24, 2014 pursuant to section 28 of the *Act* and representations have been received a final access decision relating disclosure shall be issued within **5 days** from the date of this Order without recourse to a further time extension.
2. For those records where third party notice was issued on January 24, 2014 pursuant to section 28 of the *Act* and the date for representations has been extended to March 11, 2014 a final access decision relating disclosure shall be issued by **March 19, 2014** without recourse to a further time extension.
3. I order the Ministry to issue a final decision on the records where consultation pursuant to section 27 has occurred, no later than **April 7, 2014** without recourse to a further time extension.
4. I order the Ministry to issue a final decision with respect to the "new records" identified by the Co-ordinator in accordance with the *Act* without recourse to a time extension by **April 7, 2014**, where notice pursuant to section 28 of the *Act* is not required.
5. For those "new records" where notice pursuant to section 28 of the *Act* is required, the notice shall be issued no later than **March 21, 2014** with a return date for representations of **April 10, 2014**.

6. I order the Ministry to issue a final decision on the "new records" where notice pursuant to section 28 of the *Act* is required no later than **April 15, 2014**.
7. In order to verify compliance with Provisions 1 to 6 of this Order, I order the Ministry to provide me with a copy of the decision letters referred to in Provisions 1 to 6 **within seven days of issuance**. These 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: _____
Ruth Koziembrocki
Analyst

_____ March 13, 2014