

Information and Privacy Commissioner,  
Ontario, Canada



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

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## **ORDER PO-3667**

Appeal PA16-186-2

Ministry of the Environment and Climate Change

November 17, 2016

**Summary:** On September 1, 2016, the Ministry of the Environment and Climate Change (the ministry) issued a decision granting partial access to records requested by the appellant. To date, the ministry has failed to disclose to the appellant, the records for which access was granted in full or in part. The ministry is ordered to disclose the records to the appellant in accordance with its September 1, 2016, decision letter by November 30, 2016.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, ss. 24, 26, 27, 28 and 29.

**Orders and Investigation Reports Considered:** Orders MO-1777, PO-2595, PO-3632, MO-2275.

### **BACKGROUND:**

[1] On September 30, 2015, the requester made a request to the Ministry of the Environment and Climate Change (the ministry) for access to the following records [under the *Freedom of Information and Protection of Privacy Act* (the *Act*)]:

All records that reference "roadsweeping materials", and/or "road sweepings" and/or "street sweepings". I am specifically requesting records that include any of these terms in:

a) draft or final form in policies, guidance documents, memoranda, correspondence and reports produced and/or within the possession of the Ministry between January 1, 2010 and September 22, 2015; and

b) draft or final approvals issued by the Ministry since January 1, 1990.

[2] On February 11, 2016, the request was narrowed as follows:

Records that reference: "road sweep" and/or "roadsweep" and/or "roadsweeping material(s)" and/or "road sweeping material(s)" and/or "road sweeping(s)" and/or "street sweeping(s)" in the following requested records:

Property records search

All records that reference the above key words for the timeframe of 2003 to present (February 9, 2016) that relate to property records. Note: this search will be based on an electronic search only of the key words noted above in our property related databases for the following regional areas – Toronto District Office, Barrie District Office, York Durham District Office, Halton Peel District Office, Central Regional Office and London District Office, Owen Sound Area Office, Sarnia District Office, Windsor Area Office and Southwest Regional Office.

All records that reference the above key words for the timeframe of January 1, 1990 to present (February 9, 2016) for all draft or final approvals to include ECAs, CofAs (exclude supporting documents). Note: this search will be based on an electronic search only of the key words noted above in our property related databases. Environmental Approvals Branch to perform this search.

Program areas and any other offices that may have records (including but not limited to Minister's Office, Communications Branch, Standards Development Branch, Halton Peel District Office (lead)).

All records that reference the above key words for the timeframe of January 1, 2010 and February 9, 2016 for all drafts or final forms in policies, guidance documents, memorandum, correspondence and reports produced and/or within the possession of the Ministry. Note: this search will be based on an electronic search only of the key words noted above in any database, email, or other electronic search available.

[3] On March 18, 2016, the requester (now the appellant) filed an appeal, alleging that the ministry was in a deemed refusal situation as it did not issue a decision in

accordance with section 26 of the *Act*. Appeal PA16-186 was opened.

[4] In that appeal, I attempted to assist the parties in reaching a mutually agreeable date for the issuance of a final access decision. An informal settlement was not possible.

[5] On July 15, 2016, in order to ensure that there were no further delays in processing the request, I ordered the ministry to do the following:

1. I order the ministry to issue third party notices by **July 26, 2016**.
2. I order the ministry to issue a final decision to the appellant regarding access to the records in accordance with the *Act* without recourse to any further time extension, no later than **August 31, 2016**.
3. In order to verify compliance with provision 1 of this Order, I order the ministry to provide me with a copy of the decision letter referred to in Provision 1 no later than **August 31, 2016**. This should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 2 Bloor Street East, Suite 1400 Toronto, Ontario, M4W 1A8.

[6] The ministry issued a decision on September 1, 2016, that stated the following:

#### Third Party Records

In accordance with section 28(1)(a) of the *Act*, multiple third parties were consulted on the disclosure of the records of interest to their corporations. Two third parties have not provided the Ministry with a response.

...

On the basis that both third parties did not provide the Ministry with evidence of harms, the records and previous decisions of the Information and Privacy Commission, it is my decision to provide you with partial access to the information.

- Personal information of individuals who are not acting in a business capacity, specifically, names and contact information have been withheld in order to protect their personal privacy (Section 21(1)(f)), and

Not relevant records have been withheld and marked as 'N/R'.

Since two third parties have not consented to disclosure of the records, they have 30 days to appeal the Ministry's decision. During this 30 day period, the records will not be disclosed.

### Ministry Records

It is my decision to provide partial access to ministry records.

[7] Access was denied to parts of the "ministry records" pursuant to sections 13(1), 19(1)(a)(b), 21(1)(f), and 22(a) of the *Act*.

[8] On October 3, 2016, the appellant filed an appeal with this office on the basis that the ministry had failed to disclose the records in accordance with its September 1, 2016, decision letter. In particular, the appellant submitted that the records that did not relate to a third party, or that were defined as "ministry records" in the decision letter, should have been disclosed. Appeal PA16-186-2 was opened.

[9] I contacted the ministry shortly after this appeal was opened and left a voicemail message to request an update on the disclosure of the records to the appellant. A response was not received.

[10] On October 13, 2016, this office sent a Notice of Inquiry to the ministry stating that the ministry had failed to disclose the requested records to the appellant, even though it issued a decision indicating that partial access had been granted. The Notice advised the ministry that if a settlement was not reached by October 27, 2016, I would be in a position to issue an order requiring the ministry to disclose the records to the appellant.

[11] On October 27, 2016, the ministry contacted this office by email and advised that two third parties had indicated that the ministry's request for representations and/or the records related to their September 1, 2016, decision letter had not been received. Accordingly, the ministry re-sent the request for representations regarding third party records and the records at issue to both third parties to ensure they were provided with an opportunity to make representations regarding disclosure pursuant to section 28 of the *Act*.

[12] The ministry did not advise when it would disclose the "ministry records" and those records related to third parties whose appeal rights under the *Act* had expired, in accordance with its September 1, 2016 decision.

### **DISCUSSION:**

[13] When an institution makes a decision to disclose records, or parts of records, in response to a request under the *Act*, section 26 sets out the time frames within which this disclosure is to take place. This section reads:

Where a person requests access to a record, the head of the institution to which the request is made or if a request is forwarded or transferred under section 25, the head of the institution to which it is forwarded or

transferred, shall, subject to sections 27, 28 and 57, within thirty days after the request is received,

(a) give written notice to the person who made the request as to whether or not access to the record or a part of it will be given; and

(b) if access is to be given, give the person who made the request access to the record or part, and if necessary for the purpose cause the record to be produced.

[14] In order MO-2275, former Registrar, Robert Binstock stated:

“In my view, section 19 [equivalent to section 26 in the *Freedom of Information and Protection of Privacy Act*] of the *Act* requires the ministry to issue a decision and to disclose those records for which access is to be given within 30 days of receipt of the request.”

[15] I agree with the former Registrar’s approach and adopt his reasoning for the purposes of this appeal.

[16] While the ministry may be delayed in making a decision regarding access and providing access to some of the records that relate to two third parties, I do not find that it is prevented from disclosing those records it has granted access to in accordance with its September 1, 2016 decision.

[17] I find, therefore, that the ministry did not comply with its obligations to disclose the requested records under section 26 of the *Act* as outlined in the September 1, 2016 decision. To avoid further delays in providing access to the records, I order the ministry to disclose to the appellant, all of the records it granted full or partial access to in its September 1, 2016, decision. This order does not apply, however, to those records that relate to affected third parties who have not exhausted their opportunity to make representations to the ministry regarding disclosure of the records, or who have not exhausted the time limit for filing an appeal with this office pursuant to section 28 of the *Act*.

## **ORDER:**

1. I order the Ministry to disclose to the appellant the responsive records in accordance with its decision letter of September 1, 2016 by **November 30, 2016**.
2. This order does not apply to those records that relate to affected third parties who have not exhausted their opportunity to make representations to the ministry regarding disclosure of the records, or who have not exhausted the time limit for filing an appeal with this office pursuant to section 28 of the *Act*.

3. In order to verify compliance with Provision 1, I order the ministry to provide me with a copy of the covering letter to the appellant which accompanied the records which are disclosed pursuant to Provision 1.

**POSTSCRIPT:**

During the processing of this appeal, the ministry advised this office that additional records responsive to the appellant's request were located. The ministry has not issued a decision regarding access to these records. It appears that the ministry is in a deemed refusal situation pursuant to section 29(4) of the *Act*, as it has failed to provide the notice required under sections 26 or subsection 28(7) to the appellant or any possible affected parties. To avoid further complications and delays, the issue of the deemed refusal for the additional records found will be addressed through appeal PA16-186-3.

Original Signed by: \_\_\_\_\_  
Rita Najm  
Analyst

\_\_\_\_\_ November 17, 2016