

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-3707

Appeal PA17-46

Metrolinx

March 15, 2017

**Summary:** On April 20, 2016, the appellant submitted a request pursuant to the *Freedom of Information and Protection of Privacy Act* (the *Act*) to Metrolinx for access to records. Metrolinx failed to provide the appellant with an access decision within the prescribed time limit under the *Act*. The appellant appealed to this office on the basis that Metrolinx was in a “deemed refusal” situation. This order finds that Metrolinx is found to be in a deemed refusal situation pursuant to section 29(4) of the *Act*. Metrolinx is ordered to issue third party notices by March 29, 2017, and a final decision regarding access by May 12, 2017, without any recourse to a further time extension.

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

### BACKGROUND:

[1] On April 25, 2016, the requester submitted a request to Metrolinx for access to the following records [under the *Freedom of Information and Protection of Privacy Act* (the *Act*)]:

...in relation to the eastward extension of the GO Rail Transit System from the City of Oshawa to the Town of Bowmanville (the “East Extension”):

1. All records in the possession of Metrolinx that relate to the implementation of the recommended routing of the East Extension;

2. All records, including but not limited to studies, correspondence, reports, analyses and documents to and from Metrolinx, that relate to the land use regulations governing the potential route of the East Extension;
3. All correspondence, or other records and documents, either to Metrolinx, or originating from Metrolinx, that relates to the acquisition and/or preservation of property requirements, including the requirements for future transit stations, for the construction of the East Extension;
4. All records, including but not limited to correspondence and agreements, of any land acquisitions, attempts to acquire land and/or processes to acquire land (voluntary or involuntary) that have been carried out to date by Metrolinx for the purpose of acquiring lands for the East Extension, including acquisitions for future transit stations along the route;
5. Any records relating to the expropriation of and land or property requirements for the East Extension, including expropriations for the purposes of future transit stations along the route of the extension;
6. Any agreements entered into between Metrolinx and land owners for the acquisition of lands associated with the East Extension. This request includes records in relation to such agreements for lands to construct future transit stations;
7. All records relating to the design and construction of the future Thornton Station along the East Extension;
8. All records relating to the acquisition, or planned acquisition, of lands for the purposes of constructing the future Thornton Station along the East Extension;
9. All records relating to the funding of the East Extension;
10. All records, including but not limited to any studies, reports or analyses of the impact of the construction of the East Extension on the local community;
11. All records, including but not limited to studies, reports or analyses, of the anticipated timing of the impacts of the construction of the East Extension on the local community.

[2] Based on the information before me, Metrolinx contacted the requester on May

20, 2016, seeking clarification of the request in order to assist in the preparation of the fee estimate. The requester provided clarification of the request on the same day.

[3] On May 31, 2016, Metrolinx issued an interim decision, and advised that the total estimated fee for access to the requested records was \$5980.00 and that a deposit of half of the estimated fee was required in order to proceed with the request. Metrolinx advised that in order to fulfill the request, record collection by more than 20 staff members is required and will generate approximately 12,600 pages of records. Metrolinx indicated that it will require a significant time extension in accordance with sections 27(1)(a) and 27(1)(b) of the *Act*, as processing the request will necessitate a search through a large number of records. Metrolinx stated that formal notice containing details of the time extension would be provided, following receipt of the fee deposit.

[4] On June 8, 2016, the requester wrote to Metrolinx, expressing concern regarding the amount of the fee estimate. The requester asked Metrolinx to attempt to reduce the number of hours spent on the request, and requested an anticipated timeline for a response. The requester provided a cheque for the deposit in the amount of \$2,990.00.

[5] On June 14, 2016, Metrolinx acknowledged receipt of the deposit paid by the requester. Metrolinx also claimed a time extension for an additional 24 weeks in order to respond to the request for access. Metrolinx indicated that the time extension was required as the request is for a large volume of records, and will require consultations with third parties outside of Metrolinx, and would therefore unreasonably interfere with the operations of the institution.

[6] On June 23, 2016, the requester sent a letter to Metrolinx. The requester raised concerns that the time extension sought by Metrolinx was not reasonable and obstructed its right of access to the records. The requester suggested an alternate timeline to produce the records. The requester asked Metrolinx to provide information to explain the reason why the proposed timeline was not reasonable, the number of staff involved in the request and the timing of each step in processing the request, should Metrolinx not agree with it.

[7] On July 20, 2016, Metrolinx sent a letter to the requester to advise that a time extension until November 30, 2016, was required in order to process the 11-part request in full. Metrolinx further explained that the time extension was based on the estimated work required to process the request. Metrolinx provided a detailed breakdown of each part of the request, the number of staff working on each part of the request, the number of the records involved, total search time, estimated timeframes for the packaging of records, the review and redaction of records, and the estimated timeframe for consulting with third parties.

[8] In the July 20, 2016 letter, Metrolinx suggested options to reduce the processing time, such as revising the timeframe of the requested records and narrowing the

request.

[9] During the time period of July 21 to October 20, 2016, the requester attempted to contact Metrolinx on seven occasions in an effort to discuss the possibility of reducing the processing timelines of the access request.

[10] On October 24, 2016, the requester contacted Metrolinx, advising that they were made aware that their access request had been transferred to a new freedom of information coordinator, and requested an update on the status of the request.

[11] On October 24, 2016, Metrolinx contacted the requester and advised that there are large volumes of records involved in the request, and that a review of the documentation is necessary to ensure proper identification of the responsive records. Metrolinx also advised that it is required to consult with third parties whose interests may be affected by the release of the records.

[12] On November 21, 2016, Metrolinx advised the requester that it would be in a position to issue a decision by January 12, 2017. At this time, the requester agreed to the time extension based on Metrolinx's assurance that there would be no further delays.

[13] On January 12, 2017, Metrolinx contacted the requester advising it would not be able to meet the deadline for response.

[14] On January 26, 2017, the requester (now the appellant) filed an appeal, alleging that Metrolinx was in a deemed refusal situation as it did not issue a decision in accordance with section 26 of the *Act*. Appeal PA17-46 was opened.

[15] This appeal was assigned to me to determine if Metrolinx was in a deemed refusal situation with respect to this request.

[16] On February 8, 2017, this office sent a Notice of Inquiry to Metrolinx stating that Metrolinx was in a deemed refusal situation for failing to issue an access decision within the 30 days mandated by section 26 of the *Act*. The Notice advised Metrolinx that if a final decision was not issued by February 23, 2017, I would be in a position to issue an order requiring Metrolinx to provide a decision letter to the appellant.

[17] On February 22, 2017, Metrolinx advised me that it was still in the process of identifying the affected third parties in order to provide notice of the request under section 28(1) of the *Act*. Metrolinx could not provide a definitive timeframe as to when the third party notices will be sent out.

[18] During the time period of February 28, 2017 and March 6, 2017, 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.

## **DISCUSSION:**

[19] I find that Metrolinx is in a deemed refusal situation pursuant to section 29(4) of the *Act* as it has failed to issue an access decision pursuant to the statutory timelines set out in section 26.

[20] In reference to the third party notification, Section 28(1) of the *Act* states that:

28. (1) Before a head grants a request for access to a record,

(a) that the head has reason to believe might contain information referred to in subsection 17 (1) that affects the interest of a person other than the person requesting information; or

(b) that is personal information that the head has reason to believe might constitute an unjustified invasion of personal privacy for the purposes of clause 21 (1) (f),

the head shall give written notice in accordance with subsection (2) to the person to whom the information relates. R.S.O. 1990, c. F.31, s. 28 (1).

### **Contents of notice**

(2) The notice shall contain,

(a) a statement that the head intends to release a record or part thereof that may affect the interests of the person;

(b) a description of the contents of the record or part thereof that relate to the person; and

(c) a statement that the person may, subject to subsection (5.1), within twenty days after the notice is given, make representations to the head as to why the record or part thereof should not be disclosed. R.S.O. 1990, c. F.31, s. 28 (2); 2016, c. 5, Sched. 10, s. 2 (1).

### **Time for notice**

(3) The notice referred to in subsection (1) shall be given within thirty days after the request for access is received or, where there has been an extension of a time limit under subsection 27 (1), within that extended time limit. R.S.O. 1990, c. F.31, s. 28 (3).

[21] As per Section 28(3) of the *Act*, the head must issue a notice to persons whose interests might be affected by the disclosure of the requested records upon receipt of

the request.

[22] Although Metrolinx failed to provide notice to third parties within thirty days after the request for access was received, affected third parties cannot be denied the opportunity to make representations as to why records or part thereof should not be disclosed.

[23] To ensure that there are no further delays in processing this request, I am ordering Metrolinx to issue the third party notices and subsequently, a final decision regarding access.

**ORDER:**

1. I order Metrolinx to issue third party notices by **March 29, 2017**.
2. I order Metrolinx 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 **May 12, 2017**.
3. In order to verify compliance with provision 1 of this Order, I order Metrolinx to provide me with a copy of the decision letter referred to in Provision 1 no later than **May 12, 2017**. This 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: \_\_\_\_\_

Rita Najm  
Analyst

March 15, 2017 \_\_\_\_\_