

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-4172

Appeal PA21-00279

Ministry of Government and Consumer Services

July 30, 2021

**Summary:** The Ministry of Government and Consumer Services received a multi-part request under the *Freedom of Information and Protection of Privacy Act*. The ministry claimed a time extension of 90 days under section 27. During the appeal, the ministry issued a fee estimate and revised its time extension to 60 days from the conclusion of the appeal. In this order, the adjudicator finds that a 60 day time extension is reasonable, but that the 60 day time period has already passed. The ministry is ordered to issue its final decision on access to records that do not require third party notice on or before August 16, 2021.

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

**Orders and Investigation Reports Considered:** Orders MO-3353 and PO-2950

### OVERVIEW:

[1] The Ministry of Government and Consumer Services (the ministry) received a multi-part request on April 16, 2021 for access to records under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The request was clarified on April 19, 2021, as follows:

1. Any documentation (e.g. emails, notes, meeting minutes or agenda) in connection with the Ministry's response to a letter I sent to the Ministry, addressed to the Minister's Office, the Deputy Minister's Office, and Assistant Deputy Minister, in April of 2017 through my lawyer.
2. Any documentation (same as above) the Ministry has in connection with a discrepancy in OMVIC's 2016 Annual Report (AR) and the 2017-18 Business Plan (BP) which is posted on OMVIC's website within a single document (AR/BP). Specifically, I would ask you to provide copies of any correspondence between

OMVIC and the Sector Liaison Branch of the Ministry regarding drafts of the AR /BP including copies of the relevant drafts. What I'm looking for is any documentation which would shed light on whether,

- a. the AR/BP approved by the Ministry matches the one that was published (specifically with respect to Goal 4),
- b. the Sector Liaison Branch caught any discrepancies, and
- c. what (if any) steps were taken by the Ministry when (and if) any discrepancies were discovered

It is also possible that any discrepancies were discovered by the Ministry or brought to their attention at a later date. If that is the case, I want copies of any documentation in connection with OMVIC's AR/BP relating to this discrepancy involving the Sector Liaison Branch which may have occurred at a later date.

3. Any complaints received by the Ministry or any correspondence (i.e. the Deputy Minister's Office or the Sector Liaison Branch) concerning the "Board turnover" referred to in the Minutes of the Motor Vehicle Dealers Compensation Fund Board of Trustees Minutes dated July 22, 2019. This should include the complaint itself and documentation relating to any actions taken by the Ministry as a result.
4. ... I would be interested in receiving any documentation the Ministry has concerning the circumstances of [named individual's] departure including any complaints or correspondence that arose from it. I expect this documentation would most likely be housed in the Minister's or Deputy Minister's Office or at the Sector Liaison Branch.
5. In addition to items 1, 3, 4, I would like to receive documentation regarding any additional complaints received since January of 2017 by the Deputy Minister's Office or the Sector Liaison branch in connection with:
  - a. Complaints from any member of OMVIC's Board
  - b. Complaints from any member of the Compensation Fund Board of Trustees
  - c. Complaints from any current or former staff member of OMVIC
6. Finally, I'd like to obtain copies of the Minutes of every OMVIC/SLB meeting since January of 2017.

[2] The ministry issued an interim decision/fee estimate on April 30, 2021 and requested a 50% fee deposit to continue processing the request. The ministry also indicated it would be issuing a notice of time extension, due to the volume of records and consultations with individuals outside the ministry, once the fee deposit was paid. The ministry estimated, based on a representative sample, approximately 300 responsive records.

[3] The ministry received the requester's fee deposit on May 10, 2021.

[4] On May 26, 2021, the ministry issued a notice of time extension under section 27 of

the *Act*, stating:

A request under FIPPA usually must be answered within 30 calendar days. However, section 27 (enclosed) allows for time extensions under certain circumstances. The time limit for answering your request has been extended for an additional 90 days to August 23, 2021.

The reason for the time extension is that your request has yielded a large volume of records which must be reviewed.

[5] The requester (now the appellant), appealed the ministry's decision to extend the time for responding to the request.

[6] A Notice of Mediation dated June 8, 2021, was sent to the appellant and the ministry.

[7] During the mediation stage of the appeal, the appellant narrowed her request to the final/most complete versions of the records, with the exception of request item #2. The ministry revised its time extension, indicating it would require 60 days from the conclusion of the appeal, to review the records. In an email dated June 22, 2021, the ministry stated:

The ministry has conducted a preliminary review of the records responsive to the narrowed request and determined that it will require 60 days from the date the appeal is concluded to review the records. The narrowed request has yielded an estimated 310 records, equaling roughly 2,100 pages. This time is necessary so that we can thoroughly review and process the records (index, convert to pdf, mark for redactions were applicable, etc.), and to compile various third party notice packages. For clarity, we note that this time does not include the timelines stipulated within section 28 of FIPPA. Any reduction in this time would unreasonably interfere with the ministry's operations, particularly other ongoing access requests and multiple appeals currently in mediation.

[8] The appellant did not consider the 60 day time extension to be reasonable.

[9] As no further mediation was possible, the file proceeded to the inquiry stage of the appeal process.

[10] As the Acting-Adjudicator, I sent a Notice of Inquiry to the appellant and the ministry, setting out the issue in the appeal and inviting them to submit representations. I received representations from both the appellant and the ministry.

## **ISSUE:**

[11] The sole issue in this appeal is whether a time extension is reasonable in the circumstances of the request, in the context of the provisions of section 27.

## **DISCUSSION:**

[12] Time extensions are governed by section 27(1) which 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; or

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

[13] Section 26 of the *Act* requires an institution to issue an access decision to the requester within 30 days of receiving the request.

[14] The issue to be addressed is whether the extension is reasonable in the circumstances of the request, in the context of the provisions of section 27(1).

[15] Factors which might be considered in determining reasonableness include:

- the number of records requested;
- the number of records the institution must search through to locate the requested record(s);
- whether meeting the time limit would unreasonably interfere with the operations of the institution;
- whether consultations outside the institution were necessary to comply with the request and if so, whether such consultations could not reasonably be completed within the time limit.

[16] The ministry submits that the 60 day time extension is reasonable.

[17] The ministry states that when it retrieved the records responsive to the appellant's original request, it yielded approximately 480 records, approximately 3,000 pages. The ministry states that the narrowed request yielded approximately 310 records, approximately 2,000 pages. The ministry indicates that since the narrowed request resulted in one third fewer pages, it accordingly revised its time extension by one third, from 90 to 60 days.

[18] The ministry submits that 2000 pages of records requires significant time to review, redact and prepare third party packages for consultation. The ministry states that the review of the records involves various steps such as cross referencing other records, conferring with the ministry's program area experts and technical leads, ensuring all personal information and third party information is noted and requisite packages prepared, consulting relevant IPC orders, drafting decision letters, administrative documentation, seeking approvals. The ministry states that based on a review of 2 minutes per page, it

would take the FOI Coordinator assigned to the file approximately 67 hours to review the pages, and that a further 2 minutes per page would be needed for redactions. The ministry states that to balance the FOI Coordinator's responsibilities, the FOI Coordinator would dedicate approximately two hours per day to the file. The ministry indicates that it took over 30 days to retrieve the records and that the same technological constraints that occurred with retrieving the records will also occur when applying redactions and preparing the records for consultations.

[19] The ministry states that it currently employs two full time FOI Coordinators who are responsible for complex files involving a large volume of records and third parties, as well as a project coordinator who works on more routine matters to process the ministry's FOI requests. The ministry notes that the FOI Coordinator assigned to this request has 11 active and complex files.

[20] The ministry submits that requiring the ministry to focus on one request to meet a timeline under 60 days would unreasonably interfere with its operations because the rest of the active files would be neglected. The ministry states that it must balance the staff resources available for processing access requests to ensure that it provides all requesters with an acceptable level of service.

[21] The ministry submits that a 60 day time extension for the 2000 pages of records is supported by IPC orders and refers to Order MO-3353 and Order PO-2950.

[22] The ministry also submits that the recent pandemic has placed constraints on the ministry's ability to process FOI requests and that with the remote working environment, the FOI Coordinators and program area staff are faced with using slower and less reliable network connections, which causes delays and logistical issues.

[23] In her representations, the appellant indicates that she submitted her request to shed light on the ministry's oversight of OMVIC, a consumer protection agency. The appellant submits that government accountability and transparency underlie the *Act* and that in light of this, the ministry should ensure that its FOI office is adequately resourced and that pandemic and workload pressures which may cause delay are mitigated. The appellant submits that this is particularly important in light of the ministry's responsibility for the government's administration of the *Act*.

[24] The appellant submits that anything beyond May 20, 2021 should be regarded as an extension beyond the 30 day statutory limit. The appellant submits that her appeal was clarified on April 19, 2021 and that the ministry should not have paused the 30 day time period for responding to her request, while it was awaiting payment of her fee deposit.

[25] The appellant indicates that the only justification for a time extension in this appeal would be pursuant to section 27(1)(b) and that it would be reasonable to grant an extension of 30 days and a few additional days for administration.

[26] The appellant also indicates that despite narrowing her request, this did not appear to result in an earlier date for completing the processing of her request. The appellant submits that by pausing the processing of her request during the course of her appeal, the ministry is effectively rendering the appeal process moot and providing itself a further time extension. The appellant refers to Order PO-2950 in submitting that this is an abuse of

process to penalize her for exercising her right to appeal and right to adjudication. The appellant further states that the need for the FOI Office to handle appeals should be incorporated into the ministry's resource planning based on the principle that requesters should not be discouraged from exercising their right to appeal.

## **ANALYSIS/FINDINGS:**

[27] I have carefully considered all of the information provided to me by the appellant and the ministry.

[28] The ministry has indicated that there are approximately 2000 pages of records relating to the appellant's narrowed request. It has further outlined the steps and time involved in retrieving the records and reviewing the records, including technological constraints. Based on the evidence provided by the ministry, I find this to be a large number of records and that meeting the 30 day time limit would have unreasonably interfered with the ministry's operations under section 27(1) of the *Act*.

[29] The appellant in her representations indicates that anything beyond May 20, 2021 should be regarded as an extension, based on her request being clarified on April 19, 2021. However, subsequent to this clarification, the ministry issued an interim fee estimate. Section 7 of Regulation 460 establishes that, where the fee is \$100 or more, the institution may require the requester to pay a deposit equal to 50% of the estimate before the institution takes any further steps to respond to the request. It is well established in orders of the IPC that an interim access decision and outstanding fee estimate "stops the clock" on the 30-day time period. [Orders 81, M-555, PO-2634] Accordingly, I find that the clock stopped on April 30, 2021 when the ministry issued its fee estimate and resumed when the fee deposit was received on May 10, 2021 and that the ministry was within the 30 day period, when it issued its time extension on May 26, 2021.

[30] The appellant also asserts that the ministry's decision to pause the processing of her request for 60 days from the conclusion of the appeal amounts to a further extension. She contends she should not be penalized for exercising her right to appeal and relies on Order PO-2950 to support her position. The ministry indicated in its revised fee estimate of June 22, 2021 that the 60 days would run from the conclusion of the appeal.

[31] In Order PO-2950, Adjudicator Hale stated:

The fact that an appeal has been filed and was proceeding on the time extension issue did not entitle the Ministry to stop processing the appeal and cease working on its review and preparation of the responsive records.

[32] Based on the finding in Order PO-2950, I find that the ministry's 60 day time extension commenced May 26, 2021, the date it issued its originating notice of time extension, and that it had an obligation to continue working on processing the request.

[33] I must now consider whether 60 days is a reasonable time extension.

[34] In reviewing orders involving the processing of a large number of records, I note that in Order MO-3353, Adjudicator Smith ordered a four month extension to complete

processing 4000 pages of records and in Order PO-2950, Adjudicator Hale accepted a 90 day time extension for 3800 pages of records. Based on the submissions of the ministry and the findings in such orders, I accept that 60 days is a reasonable time for processing a request involving 2000 pages of records.

[35] In considering an appropriate date for the ministry to complete its processing of the request and issue a final access decision, I note that more than 60 days has already passed since May 26, 2021. I also bear in mind that the ministry's search for the responsive records has concluded and take into account that the ministry has indicated that most of the records affect the interests of one third party, which I believe should minimize the ministry's work in preparing third party packages.

[36] Accordingly, with respect to those records that do not require third party notice to be given or for which third party notice has already been given, I will require the ministry to issue a final access decision to the appellant no later than **August 16, 2021**.

[37] With respect to records affecting third party interests for which notice is required under section 28, notice to affected parties in relation to those records must be given by **August 16, 2021**, and the ministry must issue a final decision on access to the appellant and to the third parties no later than 30 days following this notification pursuant to section 28(7) of the *Act*.

**ORDER:**

1. With respect to those records that do not require third party notice to be given, I order the ministry to issue a final access decision to the appellant no later than **August 16, 2021**.
2. Where affected party notice is required to be given under section 28, I order the ministry to give such notice no later than **August 16, 2021** and to issue a final access decision to the appellant and affected third parties no later than 30 days following this notification.

Original signed by \_\_\_\_\_  
Lois Friedman  
Acting Adjudicator

July 30, 2021 \_\_\_\_\_