

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4232

Appeal PA21-00182

Ministry of the Environment, Conservation and Parks

February 8, 2022

Summary: On September 14, 2020, the requester submitted a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the Ministry of Environment, Conservation and Parks (the ministry) for access to records. The requester appealed to this office on the basis that the ministry failed to provide an access decision within the prescribed time limit under the *Act*. This order finds the ministry to be in a deemed refusal situation pursuant to section 29(4) of the *Act*. The ministry is ordered to issue a final decision regarding access by February 22, 2022, without any recourse to a time extension.

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

Orders and Investigation Reports Considered: MO-1520-I, PO-2595, PO-2634

BACKGROUND:

[1] On September 14, 2020 the requester submitted a request to the ministry for the following records:

All correspondence, emails, letters and meeting notes, agendas or minutes between the Ministry, inclusive of the Minister's office or Minister, and York Region regarding Upper York Sewage Solutions or the Lake Simcoe Protection Plan.

[2] On February 23, 2021, the ministry acknowledged receipt of the request and payment of the application fee.

[3] On April 6, 2021, the Information and Privacy Commissioner/Ontario (this office) received a deemed refusal appeal from the requester (now the appellant) indicating that since February 23, 2021, there has been no response from the ministry. As a result, file PA21-00182 was opened and assigned to me as the Acting Adjudicator.

[4] On May 12, 2021, I sent a Notice of Inquiry to the appellant and the ministry. The notice indicated that the appellant had filed a deemed refusal appeal against the ministry on the basis that the ministry had not issued a decision letter within the time period set out in section 26 of the *Act*.

[5] The Notice of Inquiry indicated that the ministry should issue a final access decision letter to the appellant as soon as possible and forward a copy to me. The notice also indicated that, should a resolution not be reached by June 2, 2021, I may issue an order requiring the ministry to issue a decision letter to the appellant.

[6] On May 27, 2021 the ministry issued an interim decision and fee estimate in the amount of \$589.50, including 16.25 hours of search time and 3.4 hours of preparation time.

[7] Subsequent to the issuance of the interim decision, I attempted to assist the parties in reaching a mutually agreeable date for the issuance of a final access decision. The ministry indicated that it needed three months from the date of receipt of the fee deposit, and an additional 30 days for potential third party notice, in order to issue the final access decision. The appellant accepted this timeline.

[8] The appellant paid the 50% deposit on June 11, 2021, thereby bringing the ministry's three-month due date, either to issue a final access decision or to send out the third party notices to the affected parties, to September 11, 2021.

[9] The ministry did not issue the final access decision or third party notices by the committed date of September 11, 2021.

[10] After that date, I had further discussions with the ministry wherein it provided various target dates to issue the third party notices.

[11] On December 3, 2021, the ministry issued a notice of delay to the appellant in accordance with section 28(4) of the *Act*. In the notice, it advised that "notice has been provided to the third parties in relation to the records that they supplied to the Ministry." As a result, in accordance with section 28(7) of the *Act*, the issuance of the notice to the affected parties brought the ministry's due date for a final access decision to January 2, 2022. The ministry, however, did not issue its final access decision on that date.

[12] Further discussions regarding the date for issuance of the final access decision ensued, however a resolution could not be reached. To date, the ministry has not issued its final access decision.

DISCUSSION:

[13] Section 26 of the *Act* states that the head of an institution shall, subject to sections 27 (time extension), 28 (third party notice) and 57 (payment of fees), give written notice of its decision on an access request within 30 days after the request is received.

[14] Where a head fails to issue a decision on access within the legislated framework, section 29(4) of the *Act* applies. This section states:

A head who fails to give the notice required under section 26 or subsection 28(7) concerning a record shall be deemed to have given notice of refusal to give access to the record on the last day of the period during which notice should have been given.

[15] The ministry received the appellant's request on or about September 14, 2020, and did not issue an access decision or extend the time for its decision pursuant to section 27 of the *Act* within the 30-day statutory requirement. Although the ministry issued an interim access decision on May 27, 2021, previous orders have found that an interim decision/fee estimate should be issued within the initial 30-day time limit for responding to a request (Orders MO-1520-I, PO-2634). Otherwise the institution would be in a "deemed refusal" pursuant to section 29(4) of the *Act*. Issuing an interim decision/fee estimate once the time limit has expired does not cure a deemed refusal (Orders PO-2595, PO-2634).

[16] Therefore, I find the ministry to be in a deemed refusal situation pursuant to section 29(4) of the *Act*.

[17] To ensure that there are no further delays I will order the ministry to issue a final access decision to the appellant no later than February 22, 2022, without recourse to any further time extensions under section 27 of the *Act*.

ORDER:

1. I order the ministry to issue a **final** access decision to the appellant regarding access to the records in accordance with the Act without recourse to any further time extensions, no later than **February 22, 2022**.
2. In order to verify compliance, the ministry shall provide me with a copy of the response referred to in provision 1 by **February 22, 2022**. This copy 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: _____

February 8, 2022 _____

Suzy Hodge
Acting Adjudicator