

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4341

Appeal PA22-00314

Ministry of the Environment, Conservation and Parks

January 25, 2023

Summary: On December 17, 2021, 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 general 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 8, 2023, without any recourse to a time extension.

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

BACKGROUND:

[1] On December 17, 2021, the requester submitted an access request to the ministry for the following records:

'Documentation provided or sent (including correspondence) from the MECP to the City of Sault Ste. Marie and the Office of the Mayor (Mayor Christian Provenzano) and Sault Ste. Marie M.P.P Ross Romano from 2019 to 2020 regarding major emissions Incidents/discharges to the environment on March 09, 2019 and October 18, 2019. This also Includes all notices of any spills to the surface water/waterways Including the St. Mary's River in 2019 and 2020.

[2] On January 25, 2022, the ministry acknowledged receipt of the request and payment of the application fee.

[3] On June 15, 2022, the Information and Privacy Commissioner/Ontario (this office) received a deemed refusal appeal from the requester (now the appellant) indicating that it had been more than 30 days since the request for access to records had been submitted to the ministry and that no decision had been issued. As a result, file PA22-00314 was opened.

[4] On August 5, 2022, this office sent a Notice of Inquiry (the Notice) to the appellant and the ministry stating that the appellant had filed an appeal which claimed the ministry was in a deemed refusal because the ministry had not issued a decision letter within the time period set out in section 26 of the *Act*. The Notice indicated that the ministry should issue a final access decision letter to the appellant as soon as possible. The Notice also indicated that should a resolution not be reached by August 26, 2022, an order requiring the ministry to issue a decision letter to the appellant could be issued.

[5] On August 5, 2022, the ministry indicated that it would issue a decision shortly. However, a decision was not issued.

[6] Between September 26, 2022 and October 18, 2022, this office attempted to settle this matter by assisting the parties in reaching a mutually agreeable date for the issuance of a final access decision. On October 18, 2022, the ministry committed to issuing a decision by the end of November. The appellant accepted this timeline however, the ministry did not issue a decision.

[7] On December 14, 2022, this matter was transferred to me.

[8] Subsequent to the above, I contacted the ministry regarding the status of the decision letter. In response, the ministry indicated it needed more time to issue the final access decision.

[9] To date, the ministry has not issued a decision regarding access to the information responsive to this request. To ensure there are no further delays in processing this request, I am ordering the ministry to issue a decision regarding access.

DISCUSSION:

[10] 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.

[11] 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.

[12] The ministry received the appellant's request on or about December 17, 2021, 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.

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

[14] 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 8, 2023, 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 a time extensions, no later than **February 8, 2023**.
2. In order to verify compliance, the ministry shall provide me with a copy of the response referred to in provision 1 by **February 8, 2023**. 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: _____
Soha Khan
Acting Adjudicator

January 25, 2023