

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4353

Appeal PA22-00334

Ministry of the Environment, Conservation and Parks

February 10, 2023

Summary: On May 4, 2022, 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 27, 2023, without any recourse to a time extension.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31. sections 26, 27, 28 and 29.

BACKGROUND:

[1] On May 4, 2022, the requester submitted a request to the ministry for the following records:

1. The Ministry of Environment Conservation and Parks 2020 full study "Updated fish contaminant levels and consumption advisories for Porcupine Lake".
2. The Ministry of Environment Conservation and Parks 2022 full study "Update on fish contaminant levels for Porcupine Lake".

3. All records dating between 2019 and 2022 which relate to sampling methodology, collection of samples, lab processes, results methodology and the results for fish sampling in Porcupine Lake and any changes to methodology or fish sampling in Porcupine Lake as it relates to the (1) Ministry of Environment Conservation and Parks 2020 full study "Updated fish contaminant levels and consumption advisories for Porcupine Lake", and (2) the Ministry of Environment Conservation and Parks 2022 full study "Update on fish contaminant levels for Porcupine Lake".

[2] On May 5, 2022, the requester received an autoreply email from noreply@ontario.ca acknowledging receipt of the request and payment of the application fee and advised that a representative from the ministry may be in contact for additional information.

[3] On August 2, 2022, the Information and Privacy Commissioner/Ontario (this office) received a deemed refusal appeal from the requester (now the appellant) indicating that since May 5, 2022, there has been no response from the ministry.

[4] As a result, file PA22-00334 was opened.

[5] On September 22, 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 October 13, 2022, an order requiring the ministry to issue a decision letter to the appellant could be issued.

[6] On October 11, 2022, this office contacted the ministry and requested an update with respect to the issuance of a final decision. The ministry advised that they were hoping to "send a fee estimate decision by the end of this week or early next week". This office explained that since this matter is a "deemed refusal", the ministry must issue a final access decision letter, and not an interim decision.

[7] On October 31, 2022, the ministry provided an update and stated the following:

We will be providing some of the records that have been requested (i.e. two studies), while we continue to conduct our full records search.

[8] On November 7, 2022, the ministry advised this office that it had contacted the appellant who agreed to the issuance of the decision in two stages. The ministry also explained that the first stage of the decision would respond to the first two parts of the request, and that the second stage of the decision would respond to the third part of the request. Lastly, the ministry advised this office that they had not yet received the records for the first two parts of the request.

[9] On December 5, 2022, the ministry advised that it had received records responsive to the first two parts of the request and agreed to issue the first stage of the decision by December 9, 2022.

[10] On December 14, 2022, this matter was transferred to me and I contacted the ministry to provide me with an update. However, I did not receive a response.

[11] On December 29, 2022, I contacted the ministry again regarding the status of the decision letter.

[12] On January 3, 2023, the ministry stated the following:

We are still in the process of finalizing our review and compiling records for release. This continues to be a priority and we are doing our best to have a decision made as soon as possible.

[13] To date, the ministry has not issued its final access decision.

DISCUSSION:

[14] 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.

[15] 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.

[16] The ministry received the appellant's request on or about May 5, 2022, 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.

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

[18] 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 27, 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 any further time extensions, no later than **February 27, 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 27, 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

February 10, 2023 _____