

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4366

Appeal PA22-00452

Ministry of the Environment, Conservation and Parks

March 20, 2023

Summary: On August 11, 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 April 3, 2023, 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 August 11, 2021, the requester submitted a request to the ministry for the following records:

1. All written and electronic records, reports memos, minutes communications, emails and letters dealing with or mentioning in any manner the "Reid Road Quarry";

2. All communications received from or sent to The Premier or the office of the Premier that deal with or mention the "Reid Road Quarry".
3. All communications received from or sent to the Cabinet Office that deal with or mention the "Reid Road Quarry".
4. All communications received from or sent to the Ministry of Northern Development, Mines, Natural Resources and Forestry that deal with or mention the "Reid Road Quarry".
5. All communications received from or sent to Parm Gill, MPP for Milton, that deal with or mention the "Reid Road Quarry".

[2] On October 13, 2022, the Information and Privacy Commissioner/Ontario (this office) received a deemed refusal appeal from the requester (now the appellant) indicating that there has been no response from the ministry.

[3] As a result, file PA22-00452 was opened.

[4] On November 8, 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 November 29, 2022, an order requiring the ministry to issue a decision letter to the appellant could be issued.

[5] On November 15, 2022, the ministry issued an interim decision and fee estimate.

[6] Subsequent to the issuance of the interim decision, the ministry confirmed to this office that the appellant had paid the 50% deposit and advised that it may require an additional six months or more before a final access decision could be issued.

[7] On December 14, 2022, this matter was transferred to me and as such, I contacted the ministry to provide me with an update.

[8] On December 16, 2022, the ministry advised this office that attempts to complete a review of the records by April of 2023 would be made. The ministry also noted that this timeline might increase depending on "the complexity of the records, and if (for example) any third-party consultations are required".

[9] On February 17, 2023, I contacted the ministry again and was advised that the records were still being reviewed, and that a final decision may be issued by the end of March.

[10] On February 27, 2023, the ministry contacted me and advised that it was receiving a considerable amount of additional records this week and therefore, will not be able to issue a decision by the end of March. The ministry further noted that the original timeline of April 2023 might be more appropriate to issue the final decision.

[11] On March 2, 2023, I discussed the above with the appellant's representative, who raised concerns with respect to further delays on the ministry's part to issue a final decision and did not agree to this timeline.

DISCUSSION:

[12] 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.

[13] 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.

[14] The ministry received the appellant's request on or about August 11, 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. Although the ministry issued an interim access decision on November 15, 2022, 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).

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

[16] 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 April 3, 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 **April 3, 2023**.
2. In order to verify compliance, the ministry shall provide me with a copy of the response referred to in provision 1 by **April 3, 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

March 20, 2023 _____