

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4417

Appeal MA23-00176

City of Hamilton

July 25, 2023

Summary: On August 22, 2022, the requester submitted a multi-part request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the City of Hamilton (the City) for access to records. The requester appealed to this office on the basis that the City failed to provide an access decision within the prescribed time limit under the *Act*. This order finds the City to be in a deemed refusal situation pursuant to section 22(4) of the *Act*. The City is ordered to issue a final decision regarding access by August 8, 2023, without any recourse to a time extension.

Statutes Considered: Municipal Freedom of Information and Protection of Privacy Act, ss. 19 and 22(4).

BACKGROUND:

[1] On August 22, 2022, the requester submitted a request to the City of Hamilton (the City) for the following records:

1. Please provide all public notification and consultation documents associated with construction noise from the construction of the Linc. (Lincoln Alexander Expressway). Please provide all Council and committee minutes, agendas, reports, or other documents about construction noise from the construction of the Linc. (Lincoln Alexander Expressway).

2. Please provide the same documentation as above for the Red Hill Valley Parkway.
3. From the attached City of Hamilton comments/action...excerpted from the second entry of the page 8 chart, of the attached Environmental Screening Document, who is speaking on behalf of the city?
4. From the attached City of Hamilton comments/action..., excerpted from the second entry of the page 8 chart, of the attached Environmental Screening Document, please provide the exemption permit application "Request for noise bylaw exemption" noted in the comments/action.
5. From the attached City of Hamilton comments/action..., excerpted from the second entry of the page 8 chart, of the attached Environmental Screening Document, please provide the noise bylaw exemption permit that was granted.
6. From the attached City of Hamilton comments/action..., excerpted from the second entry of the page 8 chart, of the attached Environmental Screening Document, please provide records of the...

"discussions with the city (to develop a) project specification to reflect the requirement for noise compliance."

7. From the attached City of Hamilton comments/action..., excerpted from the second entry of the page 8 chart, of the attached Environmental Screening Document, please provide the "project specification (for) noise compliance." that was developed as stated above.
8. From the attached City of Hamilton comments/action..., excerpted from the second entry of the page 8 chart, of the attached Environmental Screening Document, please provide documentation/minutes, reports, etc. with respect to the work of "developing a process to review noise impacts so that it will be part of a staff process through delegated authority" as stated.
9. From the attached City of Hamilton comments/action..., excerpted from the second entry of the page 8 chart, of the attached Environmental Screening Document, please provide the documentation about the resulting "review process" ultimately developed to "Review noise impacts" as stated.

[2] On March 3, 2023, the Information and Privacy Commissioner/Ontario (this office) received a deemed refusal appeal from the requester (now the appellant) indicating that there had been no response from the City. As a result, file MA23-00176 was opened and assigned to me as the Acting Adjudicator.

[3] On March 9, 2023, I sent a Notice of Inquiry (the Notice) to the appellant and the City. The Notice indicated that the appellant had filed a deemed refusal appeal

against the City on the basis that the City had not issued a decision letter within the time period set out in section 19 of the *Act*.

[4] The Notice indicated that the City 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 March 23, 2023, I may issue an order requiring the City to issue a decision letter to the appellant.

[5] Subsequent to the issuance of the Notice, I attempted to assist the parties in reaching a mutually agreeable date for the issuance of a final access decision.

[6] On March 28, 2023, the City stated that the final access decision would be issued by April 14, 2023. However, the City did not issue its final access decision on that date.

[7] Further, on April 18, 2023, the City stated that the final access decision would be issued by April 28, 2023. However, a decision was not issued.

[8] On May 17, 2023, the City provided an update and stated the following:

“I will follow up with department staff with respect to record search efforts and advise of results and a likely date for the issuance of the City’s access decision.”

[9] On May 29, 2023, I wrote to the City and requested an update on this matter.

[10] As of today’s date, the City has not responded to my request for an update, nor has it issued its final access decision to the appellant.

DISCUSSION:

[11] Section 19 of the *Act* states that the head of an institution shall, subject to sections 20 (time extension), 21 (third party notice) and 45 (payment of fees), give written notice of its decision on an access request within 30 days after the request is received.

[12] Where a head fails to issue a decision on access within the legislated framework, section 22(4) of the Act applies. This section states:

A head who fails to give the notice required under section 19 or subsection 21(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.

[13] The City received the appellant’s request on or about August 22, 2022, and did not issue an access decision or extend the time for its decision pursuant to section 20 of

the *Act* within the 30-day statutory requirement.

[14] Therefore, I find the City to be in a deemed refusal situation pursuant to section 22(4) of the *Act*.

[15] To ensure that there are no further delays, I will order the City to issue a final access decision to the appellant no later than August 8, 2023, without recourse to any further time extensions under section 20 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 **August 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 **August 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

July 25, 2023 _____