

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4420

Appeal MA23-00278

City of Hamilton

July 27, 2023

Summary: On October 4, 2021, the requester submitted a 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 10, 2023, without any recourse to a time extension.

Statutes Considered: Municipal Freedom of Information and Protection of Privacy Act, ss. 19, 20 and 22(4).

BACKGROUND:

[1] On October 4, 2021, the requester submitted a request to the City of Hamilton (the City) for the following records:

I request all records in the possession of the City of Hamilton that arise out of, or are related to the City of Hamilton procedures for training By-Law Enforcement Officers.

This request is for all documents, including but not limited to, notes, e-mails, forms reports, policies, procedures and manuals related to the above-mentioned request.

[2] On October 5, 2021, the City acknowledged receipt of the request.

[3] On April 12, 2023, the Information and Privacy Commissioner/Ontario (this office) received a deemed refusal appeal from the requester (now the appellant) indicating that since October 5, 2021, there has been no response from the City. As a result, file MA23-00278 was opened and assigned to me as the Acting Adjudicator.

[4] On May 2, 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*.

[5] 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 May 16, 2023, I may issue an order requiring the City to issue a decision letter to the appellant.

[6] On May 8, 2023, the City contacted me via email and advised that a response from the affected City Department remained outstanding and that it would be unlikely that a final access decision could be issued by May 16, 2023. When asked about the timeline for receiving a response from the affected City Department, the City stated the following:

The affected City department has not provided any records to our office. An email was sent to a dept/div manager yesterday who advised that she will "...look back in my notes and see. I will get back to you ASAP.

[7] Subsequent to the above, on May 17, 2023, the City wrote me an email and stated that the division manager needed to speak with the appellant in order to clarify the details of the request, which would further assist the division staff with undertaking and completing record searches.

[8] On May 18, 2023, I contacted the City about the email noted above. On this same day, I also received a call from the appellant who expressed his frustration and dissatisfaction with the City. The appellant explained that it had been almost two years since he submitted his request. I advised the appellant that the City had indicated that they needed to clarify the request with him. The appellant found this unreasonable.

[9] On May 29, 2023, I wrote to the City and requested an update on this matter. I also left voicemails on June 2, 2023 and June 15, 2023.

[10] As of today's date, the City has not responded to my request for an update, nor has a final access decision been issued 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 October 4, 2021, 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 10, 2023, without recourse to any further time extensions under section 20 of the *Act*.

ORDER:

1. I order the City 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 10, 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 10, 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 27, 2023