

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4436

Appeal MA23-00429

Toronto Police Services Board

August 31, 2023

Summary: On July 14, 2022, the requester submitted a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the Toronto Police Services Board (the TPS) for access to general records. The requester appealed to this office on the basis that the TPS failed to provide an access decision within the prescribed time limit under the *Act*. This order finds the TPS to be in a deemed refusal situation pursuant to section 22(4) of the *Act*. The TPS is ordered to issue a final decision regarding access by September 15, 2023, without any recourse to a time extension.

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

BACKGROUND:

[1] On July 14, 2022, the requester submitted a multi-part access request to the TPS as follows:

1. On August 24, 2021, the Toronto Police Service announced a mandatory COVID-19 vaccination policy for all Service members. As of September 1, 2021, the policy had "not yet been developed." Please provide any documents in your possession, power, and/or control - including electronic, print, and multimedia files - that demonstrate the justification for and the planning undertaken by the Service to establish the mandatory vaccination policy, including: (1) any cost-benefit analysis, (2) any operational plans detailing the execution of the policy,

including any plans for periodic review/reconsideration of or an expiration date for the policy, and (3) any considerations of medical, religious, or other factors that may prevent members from complying with the policy. The relevant timeframe is July 2021 to December 2021.

2. Since February 2021, the Toronto Police Service (TPS) COVID-19 Vaccine Working Group has worked to secure vaccine doses for Service members. For a 10-day period beginning on March 1, 2021, "public-facing police officers, who regularly have to do medical calls in an emergency" were eligible to receive their first dose of a COVID-19 vaccine. Additional inventory was to be made available to other Service members. Please provide any documents in your possession, power, and/or control - including electronic, print, and multimedia files - that demonstrate (1) the number of members who received their first dose of a COVID-19 vaccine within this 10-day period, and (2) which category they fit into of the priority matrix developed by the TPS Vaccine Taskforce.
3. Since February 2021, the Toronto Police Service (TPS) COVID-19 Vaccine Working Group has worked to secure vaccine doses for Service members. Please provide any documents in your possession, power, and/or control – including electronic, print, and multimedia files - that demonstrate, on a monthly basis, the number of Service members who received either a first or second dose of a COVID-19 vaccine from March 2021 to December 2021.
4. Since February 2021, the Toronto Police Service (TPS) COVID-19 Vaccine Working Group has worked to secure vaccine doses for Service members. Members were instructed to "schedule their second dose 'Off Duty' and at least 48 hours before their next scheduled tour of duty" to "ensure operational continuity" due to "possible short-term side effects." Please provide any documents in your possession, power, and/or control - including electronic, print, and multimedia files - that demonstrate, on a monthly basis, the number of Service members who suffered side effects after receiving their second dose that resulted in time off of work and/or paid leave. The relevant timeframe is May 2021 to December 2021.
5. The meeting minutes of various Toronto Police Services Board meetings, as part of the quarterly Occupational Health and Safety Reports, indicate the number of quarterly I.O.D. [injured-on-duty] reports that resulted in health care or lost time. Please provide any documents in your possession, power, and/or control - including electronic, print, and multimedia files - that demonstrate, on a quarterly basis, (1) the number of Emotional/Psychological I.O.D. reports that were COVID-19 related, (2) the reasons given for those reports, and (3) how many of those reports resulted in claims to the W.S.I.B. for health care or lost time. The relevant timeframe is January 2021 to March 2022.

6. Please provide any documents in your possession, power, and/or control - including electronic, print, and multimedia files - that demonstrate (1) the number of grievances received by the Toronto Police Service relating, directly or indirectly, to the mandatory COVID-19 vaccination policy for Service members, (2) the type of complaints made in those grievances, and (3) the status of those grievances. The relevant timeframe is August 2021 to December 2021.
7. The Wellness Unit of the Toronto Police Service has been a key stakeholder in the facilitation of COVID-19 testing for Service members. Please provide any documents in your possession, power, and/or control - including electronic, print, and multimedia files - that demonstrate: (1) the preparations undertaken to allow for the provision of testing for members, including the arrival date(s) of testing supplies; (2) the monthly testing rate for members; and (3) the monthly rate of positive tests. The relevant timeframe is August 2021 to March 2022.
8. The meeting minutes of various Toronto Police Services Board meetings indicate that COVID-19 has had financial impacts on the Service since 2020. Please provide any documents in your possession, power, and/or control – including electronic, print, and multimedia files -that demonstrate the COVID-19 related costs and revenue losses to the Service, such as the cost of providing COVID-19 testing and protective equipment and of purchasing third-party services (cleaning, nursing, legal, etc.). This may also include the number and cost of Service members who have taken paid time off work for COVID-19 related reasons, such as members who have used the following SWE codes: 4148, 4147, 4146, 4144, and 4142. The relevant timeframe is March 2020 to March 2022.
9. The meeting minutes of various Toronto Police Services Board meetings indicate that COVID-19 has had financial impacts on the Service since 2020. Please provide any documents in your possession, power, and/or control – including electronic, print, and multimedia files - related, directly or indirectly, to considerations of how the COVID-19 related costs and revenue losses will be paid for, such as alternative sources of funding or plans to decrease other costs. The relevant timeframe is January 2021 to March 2022.
10. The Toronto Police Services Board’s March 31, 2022 meeting minutes state that the Service has received I.O.D. [injured-on-duty] claims related, directly or indirectly, to the Service’s mandatory COVID-19 vaccination policy. Please provide any documents in your possession, power, and/or control - including electronic, print, and multimedia files - that demonstrate (1) the number of claims received that are related, directly or indirectly, to the mandatory COVID-19 vaccination policy, (2) the reasons for the claims, and (3) the status of the claims. The relevant timeframe is August 2021 to March 2022.
11. In June 2020, with “the support of Toronto Police Service Chief Mark Saunders and Mike McCormack, President of the Toronto Police Association, frontline

members of the Toronto Police Service [were] invited to participate in [a] voluntary clinical trial” run by the University Health Network (UHN) to determine if the Bacille Calmette Guerin (BCG) vaccine may “be successful in preventing or reducing the severity of COVID-19 infection.” Please provide any documents in your possession, power, and/or control - including electronic, print, and multimedia files - related, directly or indirectly, to the participation of Service members in this vaccine trial, including (1) the number of members who volunteered, and (2) the number of volunteers who suffered adverse reactions to the BCG vaccine, resulting in time off work.

12. In June 2020, with “the support of Toronto Police Service Chief Mark Saunders and Mike McCormack, President of the Toronto Police Association, frontline members of the Toronto Police Service [were] invited to participate in [a] voluntary clinical trial” run by the University Health Network to determine if the Bacille Calmette Guerin (BCG) vaccine may “be successful in preventing or reducing the severity of COVID-19 infection.” Please provide any documents in your possession, power, and/or control - including electronic, print, and multimedia files - that document any vaccine trials that have similarly been promoted to Toronto Police Service members since 1985.
13. On February 26, 2021, the Province of Ontario directed that “public-facing police officers, who regularly have to do medical calls in an emergency” were eligible to receive a COVID-19 vaccine under Phase 1 of the Provincial mandate based on their occupation as medical first responders, not as police officers. Please provide any documents in your possession, power, and/or control - including electronic, print, and multimedia files - that demonstrate (1) which Toronto Police Service members are considered to be medical first responders as opposed to police officers, and (2) consideration of the policy and/or legal implications of classifying select Service members as medical first responders as opposed to police officers.
14. In August 2021, Mayor John Tory announced the implementation of a mandatory COVID-19 vaccination requirement for all City of Toronto employees and made a request of the Chief and Toronto Police Services Board (TPSB) “to adopt the same or a similar mandatory vaccination policy.” Please provide any documents in your possession, power, and/or control - including electronic, print, and multimedia files - that document correspondence between Mayor Tory and the TPSB regarding the implementation of a COVID-19 vaccination requirement for Toronto Police Service members.

[2] On July 20, 2022, the TPS issued a time extension pursuant to section 20 of the *Act*. The letter stated the following in part:

We wish to advise you that the time has been extended in accordance with Section 20 of the *Act* for an additional 120 days. The new due date for a response will be December 11th, 2022.

The reason for the extension is that the request necessitates a search through a large number of records, and meeting the time limit would unreasonably interfere with the operations of the institution.

[3] On December 21, 2022, February 3, 2023, March 16, 2023, and March 28, 2023, the requestor contacted the TPS to request an update and the anticipated date for the issuance of the final decision.

[4] On March 29, 2023, the TPS advised the requester that the request was being processed. The TPS did not provide a timeline for the final decision.

[5] On June 7, 2023, the Information and Privacy Commissioner/Ontario (this office) received a deemed refusal appeal from the requester (now the appellant) indicating that the TPS had not issued a final access decision in response to her request. As a result, file MA23-00429 was opened and assigned to me as the Acting Adjudicator.

[6] On July 11, 2023, I sent a Notice of Inquiry (the notice) to the appellant and the TPS. The notice indicated that the appellant had filed a deemed refusal appeal against the TPS, on the basis that the TPS had not issued a decision letter within the time period set out in section 19 of the *Act*.

[7] The notice advised the TPS to 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 July 25, 2023, an order requiring the TPS to issue a decision letter to the appellant could be issued.

[8] On July 19, 2023, the TPS requested 30-day extension to respond to the request. This was agreed to by the appellant.

[9] On August 21, 2023, the TPS submitted that they hope to issue a final decision by the end of the month. To date, a decision has not been issued.

[10] In light of the above, and to ensure there are no further delays in processing this request, I am ordering the TPS to issue a 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 TPS received the appellant's request on or about July 14, 2022 and pursuant to section 20 of the *Act*, extended the time to issue its final decision to December 11, 2022.

[14] As of today's date, the TPS has not issued a final access decision.

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

[16] To ensure that there are no further delays, I will order the TPS to issue a final access decision to the appellant no later than September 15, 2023, without recourse to any further time extensions under section 20 of the *Act*.

ORDER:

1. I order the TPS to issue a **final** access decision to the appellant regarding access to the records in accordance with the *Act* without recourse to a time extension, no later than **September 15, 2023**.
2. In order to verify compliance, the TPS shall provide me with a copy of the response referred to in provision 1 by **September 15, 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

August 31, 2023 _____