

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4433

Appeal PA23-00095

Ministry of Municipal Affairs and Housing

August 28, 2023

Summary: On November 18, 2022, the requester submitted a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the Ministry of Municipal Affairs and Housing (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 September 15, 2023, without any recourse to a time extension.

Statutes Considered: Freedom of Information and Protection of Privacy Act, ss. 26, 27, 28 and 29.

BACKGROUND:

[1] On November 18, 2022, the requester submitted an access request to the ministry for the following records for the time period of September 1, 2022 to November 18, 2022:

- All requests from landowners or their representatives, affiliates, family members or agents, to the Ministry of Municipal Affairs and Housing to modify the official plans of Niagara, Hamilton, Halton, Waterloo, Peel, York, and Durham Regions.
- All directions of the Minister's Office to MMAH staff regarding the above landowner requests.

- Any changes or amendments to the above resulting from the above landowner requests.
- This request includes documentation of any kind in all formats including emails, USB drives and SharePoint or another file sharing service.

[2] On December 19, 2022, the ministry issued a time extension under section 27 of the *Act*, extending the issuance of the final access decision to January 18, 2023.

[3] On January 25, 2023, the requestor contacted the ministry to request an update and the anticipated date for the issuance of the final decision.

[4] On January 27, 2023, the ministry responded to the requester stating that they were "experiencing higher than usual volume of FOI requests" and "still processing [the] request". The response did not provide a timeline for the final decision.

[5] On February 7, 2023, the Information and Privacy Commissioner/Ontario (this office) received a deemed refusal appeal from the requester (now the appellant) indicating that since January 27, 2023, there had been no response from the ministry. As a result, file PA23-00095 was opened and assigned to me as the Acting Adjudicator.

[6] On February 13, 2023, I sent a Notice of Inquiry (the notice) to the appellant and the ministry. The notice indicated that the appellant had filed a deemed refusal appeal against the ministry, on the basis that the ministry had not issued a decision letter within the time period set out in section 26 of the *Act*.

[7] The notice advised the ministry 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 February 28, 2023, an order requiring the ministry to issue a decision letter to the appellant could be issued.

[8] On February 17, 2023, the ministry advised this office that it was working on this request but could not provide a timeline for when the final decision would be issued.

[9] On March 3, 2023, the ministry advised that third party consultation notices would be going out and that the ministry was aiming to issue its final decision by the end of April.

[10] On April 28, 2023, the ministry provided an update and stated that the records review was underway and that third-party consultations would be required. This information was provided to the appellant.

[11] On May 19, 2023, the ministry advised that it was aiming to issue a final decision by the end of July.

[12] The above noted updates were provided to the appellant.

[13] On June 5, 2023, the ministry wrote to me and advised that it was aiming to issue third-party notices the week of June 26, 2023 and that the final access decision would be issued by the end of July or the first week of August. This update was also provided to the appellant.

[14] On July 24, 2023, the ministry issued a Notice of Delay for Third Party Consultation to the appellant under section 28(4) of the *Act*. The Notice of Delay stated the following in part:

I am writing to advise you of a notice of delay regarding your request for access under the *Freedom of Information and Protection of Privacy Act* (the Act). As the request may affect the interests of third parties, the third parties are being given an opportunity to make representations concerning disclosure of the records. This process requires the timelines for response to be adjusted. A decision on whether the records will be disclosed will be made by August 23, 2023.

[15] On August 17, 2023, the ministry advised this office that it now expected the final access decision to be issued by mid-September.

[16] In light of the above, and to ensure there are no further delays in processing this request, I am ordering the ministry to issue a final access decision to the appellant.

DISCUSSION:

[17] 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.

[18] 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.

[19] The ministry received the appellant's request on or about November 18, 2022, and extended the time to issue its decision to January 18, 2023, pursuant to section 27 of the *Act*.

[20] As of today's date, the ministry has not issued its final access decision.

[21] Therefore, I find the ministry to be in a deemed refusal situation pursuant to

section 29(4) of the *Act*.

[22] 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 September 15, 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 a time extension, no later than **September 15, 2023**.
2. In order to verify compliance, the ministry 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 28, 2023