

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4434

Appeal PA23-00098

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.

Orders and Investigation Reports Considered: MO-1520-I, PO-2595, PO-2634

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:

1. Records in relation to withdrawals of land from the Greenbelt Plan, including:
 - All draft/redlined greenbelt plan policies;
 - All draft/redlined greenbelt plan mapping;

- All staff reports providing risks/analysis and justifications for modifications or changes to the greenbelt;
 - All decision packages, including modification analysis;
 - All analysis of the statement of environmental values, all decision summaries;
 - All memoranda, emails or minute notes from Premier's Office, Minister's Office and Ministry officials regarding modifications and changes; and
 - Information and data on the quantum of expansion lands and employment conversions.
2. This request includes documentation of any kind in all formats including emails, USB drives and SharePoint or another file sharing service.
 3. This request does not include information submitted to MMAH by Niagara, Hamilton, Halton, Waterloo, Peel, York or Durham Regions, communications materials, publicly available documentation or purely scheduling correspondence.

[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] Despite the Ministry's time extension letter indicating that a final decision would be issued by January 18, 2023, the ministry issued an interim decision with a fee estimate on January 26, 2023 stating the following in part:

Section 57 of the *Act* allows certain fees to be charged. The estimated fee for the records requested is \$255.00. Your written acceptance of this fee estimate together with a deposit of \$127.50 (50% of the estimated fee) is requested prior to proceeding with the request. Our preliminary review of the records indicates that partial access may be granted.

[4] In response, on February 15, 2023, the appellant paid the deposit. However, to date, the ministry has not issued a final decision.

[5] On February 8, 2023, the Information and Privacy Commissioner/Ontario (this office) received a deemed refusal appeal from the requester (now the appellant) indicating that since January 26, 2023, there has been no response from the ministry. As a result, file PA23-00098 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, I spoke to the ministry and was advised that it continues to work on this file but could not provide a timeline for when the final decision would be issued.

[9] On May 10, 2023, I requested an update from the ministry. In response, the ministry advised that they were aiming to issue a final decision by the end of September and that consultations would be required. This information was provided to the appellant.

[10] On June 5, 2023, the ministry wrote to me and advised that it was aiming to issue third-party notices the week of August 28, 2023 and that the final access decision would be issued by the end of September. This update was provided to the appellant.

[11] On July 26, 2023, the ministry advised this office that they were aiming to issue the final decision by the end of August or first week of September.

[12] On August 4, 2023, the ministry advised this office that there would not be any third-party consultations and that it was now aiming to issue its final decision by mid-September.

[13] 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:

[14] 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.

[15] 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.

[16] The ministry received the appellant's request on or about November 18, 2022. On December 19, 2022, the ministry issued a time extension pursuant to section 27 of

the *Act*, further extending the time to issue its decision to January 18, 2023. On January 26, 2023, the ministry issued an interim decision with a fee estimate.

[17] I note that the ministry's interim decision was issued after the time-period specified in the ministry's time extension letter had lapsed.

[18] It is important to note that although the ministry issued an interim decision on January 26, 2023, previous orders have found that an interim decisions/fee estimates must be issued within the initial 30-day time limit for responding to a request (Orders MO-1520-I, PO-2634. To be clear, because the 30-day time limit, or in this case the time-extension date had passed, the ministry was required to issue a final access decision, not an interim decision (Orders PO-2595, PO-2634). As such, the ministry is in a deemed refusal situation.

[19] As previously noted, as of today's date, the ministry has not issued a final access decision.

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

[21] 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