

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4437

Appeal PA23-00245

Ministry of Municipal Affairs and Housing

September 1, 2023

Summary: On December 2, 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, and 29.

BACKGROUND:

[1] On December 2, 2022, the requester submitted an access request to the ministry for the following records for the time period of June 1, 2021 to September 1, 2022 to December 2, 2022:

- A digital, machine-readable copy of Minister Steve Clark's daily calendar (including meeting and appointment schedules) from June 1, 2021 through Dec. 2, 2022.

[2] On January 17, 2023, the requestor contacted the ministry to request an update and the anticipated date for the issuance of the final decision.

[3] On January 18, 2023, the ministry provided an update to the requester, which explained that the ministry was "experiencing a large volume of FIPPA inquiries" and they continued to process the request "as expeditiously as possible". The update

also advised that there would be a delay in the ministry's response, but did not provide a timeline for the final decision.

[4] On January 18, 2023, the requester asked the ministry if it could provide a timeline for the issuance of a final decision. On January 20, 2023, the ministry advised the requester that they were unable to provide a date with respect to when the decision would be issued.

[5] On April 25, 2023, the Information and Privacy Commissioner/Ontario (this office) received a deemed refusal appeal from the requester (now the appellant) indicating that the ministry had not provided a response to the access request. As a result, file PA23-00245 was opened and assigned to me as the Acting Adjudicator.

[6] On March 23, 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 June 6, 2023, an order requiring the ministry to issue a decision letter to the appellant could be issued.

[8] On June 6, 2023, the ministry advised this office that it had not started working on the request and given the scope of the request, it could take as long as two months to issue the final access decision.

[9] On August 8, 2023, the ministry advised this office that it would begin processing this request in early September. This information was provided to the appellant.

[10] On August 17, 2023, the ministry advised that it was aiming to start working on this request in mid-September.

[11] 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:

[12] 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.

[13] 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.

[14] The ministry received the appellant's request on or about December 2, 2022.

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

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

[17] 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

September 1, 2023 _____