



**Information and Privacy  
Commissioner/Ontario**  
**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

## **ORDER P-243**

**Appeals P-910662 and P-910663**

**Ministry of Treasury and Economics**



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## ORDER

On July 8, 1991, the Ministry of Treasury and Economics (the "institution") received two requests which were transferred to it by the Ministry of Intergovernmental Affairs. In its covering letter transferring the requests, the Ministry of Intergovernmental Affairs advised the institution that the time for responding to each request was extended to August 8, 1991.

The requests were for access to the following records:

... all background papers, memorandums, notes, correspondence, policy papers relating to the economic impact of a sovereign and/or independent Quebec (Appeal No. P-910662);

... all background papers, memorandums, notes, correspondence, policy papers relating to the recession within Canada. This request includes inter-Provincial meetings, First Minister's meetings, etc. (Appeal No. P-910663).

On August 7, 1991, the institution wrote two letters to the appellant advising him that the time for responding to the two transferred requests would be extended. The following extract appears in both letters:

... I wish to inform you that I am extending the time limit for this Ministry's response for an additional 60 days to October 6, 1991.

The reason for the extension is the need to search through a large number of records and meeting the time limit would unreasonably interfere with the operations of this Ministry.

The appellant appealed the institution's decisions to extend the time to respond to each request. Notice of the appeals was given to the institution and the appellant.

The reason given for the extensions by the institution is derived from the provisions of section 27(1)(a) of the Act, which states:

A head may extend the time limit set out in section 26 for a period of time that is reasonable in the circumstances, where,

- (a) the request is for a large number of records or necessitates a search through a large number of records and meeting the time limit would unreasonably interfere with the operations of the institution;

During the Appeals Officer's efforts to mediate these appeals, the Appeals Officer was advised by the institution that at the end of the time extension period its decisions on access would not be final, but would instead be interim notices and fee estimates in the form contemplated in Order 81, dated July 26, 1989. In that Order, former Commissioner Sidney B. Linden set out the procedures to be followed where the records are unduly expensive for the institution to produce for review by the head for the purpose of making a decision on access to the records.

The procedures outlined by Commissioner Linden contemplate the institution reviewing a representative sample of records, or seeking the advice of knowledgeable staff within the institution, in order to produce an interim notice containing a fee estimate and an indication of what exemptions might possibly apply. As stated by Commissioner Linden at page 9 of Order 81 supra:

... Familiarity with the scope of the request can be achieved in either of two ways: (1) the head can seek the advice of an employee of the institution who is familiar with the type and contents of the requested records; or (2) the head can base the estimate on a representative (as opposed to random) sample of the records.

In the context of the present appeals, the fee estimate would give an approximate fee for searching through the relevant body of records to locate records responsive to the requests and preparing the records for disclosure. Only if the fee estimates were accepted and any required deposits paid would the full search and preparation take place, including a final decision as to exemptions to be applied, if any.

The institution's intention to issue interim notices is confirmed by the following statement, which appeared in its representations for both appeals:

An extensive review of records held by branches of the Ministry to determine the extent of record holdings on the issue relevant to the request has been carried out to support an interim notice and fee estimate to be issued to the requester.

The institution also indicated in its representations that the volume of records to be searched is extremely large. For Appeal Number P-910662, the institution has determined that isolating relevant records and assessing releasability would require an estimated 3 to 5 person days. It indicated that the records are located in at least three branches of the institution, and the volume to be reviewed is estimated as the equivalent of more than five three-drawer filing cabinets. For Appeal Number P-910663, the institution submits that isolating relevant records would take an

estimated 100 person days. As in the case of Appeal Number P-910662, the institution submits that records are located in at least three branches of the institution, and the records to be reviewed in one branch alone are estimated as the equivalent of 50,000 pages. The institution's representations also indicate that the necessary steps which would permit it to produce interim notices have been completed.

At pages 8 and 9 of Order 81 supra, Commissioner Linden considered the availability of time extensions in situations where the records are unduly expensive to produce for review, and stated as follows:

Section 27 is not applicable to a situation where the institution is experiencing a problem because a record is unduly expensive to produce for inspection by a head in making a decision. This is true whether the undue expense is caused by either the size of the record, the number of records or the physical location of the record within the institution.

What should the head do in these situations? In my view, the Act allows the head to provide the requester with a fees estimate pursuant to subsection 57(2) of the Act. This estimate should be accompanied by an "interim" notice pursuant to section 26. This "interim" notice should give the requester an indication of whether he or she is likely to be given access to the requested records, together with a reasonable estimate of any proposed fees. In my view, a requester must be

