



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

# **ORDER 28**

**Appeal 880317**

**Ministry of Correctional Services**



80 Bloor Street West,  
Suite 1700,  
Toronto, Ontario  
M5S 2V1

80, rue Bloor ouest  
Bureau 1700  
Toronto (Ontario)  
M5S 2V1

416-326-3333  
1-800-387-0073  
Fax/Télééc: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

**O R D E R**

This appeal was received pursuant to subsection 50(1) of the Freedom of Information and Protection of Privacy Act, 1987 (the "Act") which gives a person who has made a request for access to a record under subsection 24(1) and to personal information under subsection 48(1) a right to appeal any decision of a head under the Act to the Commissioner.

The facts of this appeal and the procedures employed in making this Order are as follows:

1. On September 26, 1988, the Ministry of Correctional Services (the "institution") received a letter from the requester seeking access to 60 different records. The requester asked the institution to "consider each request to be totally separate and process them individually."
2. On October 12, 1988, the requester received a letter from the Freedom of Information Co\_ordinator (the "Co\_ordinator") for the institution which stated that "...pursuant to section 27 of the Act, a time extension is required to process your requests due to necessary consultations and the number of records to be reviewed. You will receive a response from this office by November 25, 1988."

3. The requester appealed the head's decision by letter to me dated October 19, 1988. I gave notice of the appeal to the institution.
4. By letter dated November 2, 1988, I requested and have received the institution's representations as to the reasons and the factual basis for its decision to extend the time to respond to the requests.

Subsection 27(1) of the Act 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; or
- (b) consultations that cannot reasonably be completed within the time limit are necessary to comply with the request.

In reviewing the extension of a time limit under this subsection, I confine my inquiry to establishing whether the extension is reasonable in the circumstances.

In its representations, the institution indicates that, by the date its representations were submitted, November 10, 1988, it had responded to 47 of the 60 requests initiated by the appellant. The remaining 13 requests comprised two requests for general records and 11 requests for the appellant's own personal information.

With respect to the two requests for general information, the institution indicates that consultation with the officials involved in the compiling of the records was required, which would take the time indicated in the notice. The institution's submissions satisfy me that such consultation was reasonable in the circumstances.

In respect of the 11 personal information requests, the submissions of the institution indicate that the reason for the delay in its response was that, taken together, the 11 requests involved over 3,500 pages of records.

There are unusual features in the way in which the institution has responded, both to the request and to me in its representations. It is notable that the institution made submissions in respect of the 11 requests for personal information "en bloc", rather than taking each request individually and explaining the circumstances that resulted in the delay. This approach was also taken in its initial response to the appellant. One letter was sent to the appellant in respect of a matter in which the institution itself had, for good administrative and statistics\_keeping reasons, divided into 60 separate requests.

These anomalies in approach are clearly the result of the fact that the requests submitted by the appellant represented a large increase in the institution's normally busy workload of Freedom of Information requests. This influx placed a sudden and considerable strain on the resources presently allocated by the institution for dealing with requests under the Act. In the circumstances, the institution's Co\_ordinator did her best to honour the terms of the Act with the resources available to her.

However, while I am convinced that the Co\_ordinator exercised her best efforts to comply with the Act, the fact is that I cannot conclude that the approach she took met the requirements of the Act.

The Act provides institutions with a clear and relatively short time limit for responding to requests. This time limit can be extended only in the circumstances set out in section 27. Further, in my view, in invoking section 27, the head must address him or herself to whether **any particular request** involves a large number of records or consultations that cannot reasonably be completed within the 30 day time limit. I do not believe that section 27 lends itself to the interpretation that, where the response to a number of separate requests by the same individual, which collectively involve a large number of records or necessitate consultation, section 27 is properly triggered.

In coming to this conclusion, I am fully aware of certain of the problems created for institutions by the Act . Institutions are faced with a "requester driven" system. There appears to be no way that the institution can accurately predict when a large number of requests will come in, whether or not that large number is from the same individual. Therefore, it is difficult to plan for adequate staff and resources.

On the other hand, if I were to take the view that the fact that a large number of requests coming from one individual has a legitimate impact on the interpretation of section 27, it seems to me that such an approach would be open to potential abuse. Absent statutory amendment, I can suggest two legitimate courses of action that an institution might consider when compliance

with the time limits set out in the Act places an inordinate strain on resources. They are as follows:

1. Negotiate with the individual requester who sends in numerous requests as to whether the requester would consent to waive the 30 day limit for each of the requests in favour of a response within 30 days in respect of certain "priority" requests and a longer time for response in respect of others.
2. Allocate its resources in such a way that it can import, on an emergency basis, additional staff to assist those routinely working on Freedom of Information requests in situations in which there is a sudden influx of requests.

In the circumstances of this appeal, I do not believe that the institution's approach was correct in that it did not consider each request separately and decide whether each individual

request was for a sufficiently large number of records as to justify a section 27 time extension. However, I am convinced that the Co\_ordinator was acting in good faith, and since she undertook to supply the appellant with a response in respect of these requests by November 25, 1988, it is not necessary for me to make an Order in respect of this matter.

Original signed by: \_\_\_\_\_  
Sidney B. Linden  
Commissioner

December 6, 1988  
Date