



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

# ORDER 190

Appeal 900355

Ministry of Culture and Communications



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## ORDER

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

On January 5th, 1990, the undersigned was appointed Assistant Commissioner and received a delegation of the power to conduct inquiries and make Orders under the Act.

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

1. On June 15th, 1990, the Ministry of Culture and Communications (the "institution") received a request for access to the following information:

Mr. R.M. Farewell, Planner, Ministry of Government Services, Realty Group wrote to Mr. Bill Fox, Regional Archaeologist, South Central Region, Min. of Culture and Communications on January 27th, 1988 regarding:

"Archaeological Considerations at the Penetanguishene Mental Health Centre."

Mr. Fox replied to Mr. Farewell on March 7th, 1988.

I would like access to all records relating to these two letters including the "(attached) installation plan" which Mr. Farewell mentions in the 2nd paragraph of his letter to Mr. Fox of Jan. 27, 1988.

2. By letter dated July 15th, 1990, the institution's Freedom of Information and Privacy Co-ordinator wrote to the requester as follows:

In reference to your access request received on June 15, 1990, under the Freedom of Information and Protection of Privacy Act, the time limit for response is 30 days. We wish to advise you that the time has been extended in accordance with section 27 of the Act for an additional 30 days to August 15, 1990.

The reason for the extension is that consultations with other institutions having greater interest in the records are necessary in order to comply with the request.

3. The requester appealed the institution's decision by letter to this office which was received on July 23rd, 1990. Notice of the Appeal was given by this office to the institution and the appellant.
4. By letter dated July 25th, 1990, notice that an inquiry was being conducted was sent to the institution. Representations were requested from the institution as to the reasons and the factual basis for its decision to extend the time to respond to the appellant. The appellant was also notified of the inquiry and given the opportunity to comment on the issues raised by the appeal.
5. I have received representations from the institution. No representations were received from the appellant.

The sole issue for me to determine in this appeal is whether the extension of time, claimed by the institution as necessary to respond to the request, is reasonable in the circumstances.

Subsection 27(1)(b) of the Act states:

27.--(1) A head may extend the time limit set out in section 26 for a period of time that is reasonable in the circumstances, where,

...

(b) consultations that cannot reasonably be completed within the time limit are necessary to comply with the request.

The institution has made representations to me regarding its reason for deciding a 30 day time extension was necessary in order to consult with other institutions. The institution states that these consultations were necessary solely because it was attempting to honour the appellant's admonition in his request letter "not [to] transfer this request to any other Ministry".

In its representations, the institution states:

It should be noted that MCC [Ministry of Culture and Communications] was not aware of the potential interest of other parties until late in the 30-day period. ...

However, the ministry is of the opinion that in accordance with subsection 25(3)(a) of the Freedom of Information and Protection of Privacy Act, 1987, MOH [Ministry of Health] has a greater interest with respect to the records requested.

In retrospect, we are of the opinion that we should have ...transferred the request.

In the circumstances, I believe that the institution was not in a valid situation for the application of subsection 27(1) of the Act. In this sense, in attempting to direct the institution's application of the Act, the appellant must bear some responsibility for the delay which has resulted. For whatever reasons, the institution decided to deal with the appellant's request in consultation with the other institutions which had an interest in the record rather than transfer the request.

Having been provided with a description of the records which respond to the appellant's request for information, in my view, it should have been clear to the institution well in advance of the original 30 day time limit that other institutions had a greater interest in these records and that consultations would be required if the head decided not to transfer the request as is his prerogative under subsection 25(2) of the Act.

Although the institution has provided me with a schedule indicating the amount of time it believed would be required to consult with other institutions, it has provided no explanation as to why this consultation should take 16 days.

Accordingly, in my view the 30 day extension of time for responding to the request is not reasonable. However, in the circumstances, I do not propose to order the institution to respond to the appellant's request earlier than August 15, 1990. I do order the institution to provide the appellant with its decision on access by August 15, 1990. I further order the institution to notify me in writing that it has given its

decision to the appellant within five (5) days of having done so. The said notice should be forwarded to the attention of Maureen Murphy, Registrar of Appeals, Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario M5S 2V1.

Original signed by:  
Tom Wright  
Assistant Commissioner

August 3, 1990  
Date