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

ORDER 193

Appeal 900297

Stadium Corporation of Ontario Limited

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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, as amended (the "Act") which gives a person who has made a request for access to a record under subsection 24(1) or to personal information under subsection 48(1) a right to appeal any decision of a head under the Act to the Commissioner.

On January 5, 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 procedures employed in making this Order are as follows:

1. On May 23, 1990, the Stadium Corporation of Ontario Limited (the "institution") received a letter from the requester seeking access to the following information:

> Appl. Two - Record(s) of Ray Lemberg report(s) on risk management (subject mentioned in April 21/88 Board minutes).
>
> Appl. Three - Imagineering Engineering Ltd. evaluation/report(s) on scoreboard options (mentioned in Dec 17/87 Board minutes).

2. In response to both requests (the "first request" and the "second request"), the institution's Freedom of Information and Privacy Co-ordinator (the "Co-ordinator") wrote to the requester on June 25, 1990 as follows:

> Please be advised that we need to extend the time limit to consider your request by sixty-one (61) days to August 27, 1990, under section 27 of the Act. Your request will necessitate a search through a large number of records and meeting the time limit would
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> unreasonably interfere with the operations of the corporation and require consultations that cannot be completed within the time limit.
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> In addition, please be advised that these records may also contain information affecting third parties under section 17(1) and personal information under section 21, requiring us to obtain representations from affected third parties.

3. The requester appealed the head's decisions by letter to this office dated July 4, 1990. Notice of the appeal was given to the institution and to the appellant.

4. The appeals officer attempted to mediate a settlement of the two requests but none was effected.

5. By letter dated July 31, 1990, notice that an inquiry was being conducted to review the head's decision was sent to the institution and representations were requested from the institution as to the reasons and the factual basis for its decisions to extend the time to respond to the requests. The appellant was also notified of the inquiry and given the opportunity to comment on the issues raised by the appeal.

6. Representations were received from the institution only and I have considered them in making my Order. The

institution's representations relating to the time extensions sought for both requests were almost identical.

The sole issue for me to determine in this appeal is whether the extensions of time claimed by the institution as necessary to respond to both requests are reasonable in the circumstances.

Subsection 27(1) of the Act states as follows:

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

With respect to subsection 27(1)(a), the institution advised that for both requests it searched in "80 file cabinets and storage boxes". The institution also stated that the searches were conducted manually and were "udertaken (sic) over a 4 week period". The institution further advised in its representations that the record responding to the first request was eventually retrieved from inactive files, while the record responding to the second request was retrieved from the consultant who produced it.

In its representations, the institution did not indicate the dates upon which the searches were commenced and completed, nor did it state who conducted the searches, what position in the

institution that person held, nor whether he/she was familiar with the files to be searched. However, on July 27, 1990, the Appeals Officer was advised by telephone by the Vice-President of Operations of the institution that the Co-ordinator had "transferred" the second request to him, requesting that he conduct a search for the record. This transfer took place on June 24, 1990, one month after the date of the appellant's request to the institution.

Further, during a telephone conversation on July 27, 1990, the Appeals Officer was advised by the Co-ordinator that the record responding to the first request was located during the week of July 23, 1990, two months after the request was made. The Co-ordinator also advised the Appeals Officer that the record was then sent to senior management of the institution for a decision, which decision had not been made as of July 27, 1990. With respect to the second part of subsection 27(1)(a), i.e. whether responding to the requests would unreasonably interfere with operations of the institution, for each request the institution advised that:

> A response to this request within the 30 day time period would have disrupted the normal day to day operations of the company and it is unlikely full and proper consultations could have been completed. In this particular case the work load of key officials would have been altered whereby certain other duties would not have been performed on a timely basis.

The institution provided no evidence as to who those "key officials" were or of the precise ways in which their work load "would have been altered" or that "certain other duties would not have been performed on a timely basis".

I have reviewed the institution's representations for both requests as they relate to the application of subsection 27(1)(a), and in my view the institution had no justifiable reason for claiming time extensions. I am of the view that the institution has failed to provide sufficient evidence that it dealt with the requests in a timely manner or that meeting the usual 30 day time limit would have unreasonably interfered with the operations of the institution. Instead, the institution's representations and the information provided to the Appeals Officer over the telephone, leads me to conclude that the institution's claims for time extensions under subsection 27(1)(a) were not reasonable.

Regarding the application of subsection 27(1)(b) and the issue of consultations, in its representations relating to the first request, the institution stated that:

> The decision on release of the record is being made in consultation with the President and Legal Counsel of Stadium Corporation of Ontario Limited and with certain
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> other persons involved, including Mr. Ray Lemberg ...Consultations are expected to be completed by August 27, 1990...Estimated time to reach decision on disclosure is seven weeks following completion of search and retrieval process. This includes consultation time and assumes no section 28 notices are required.

In its representations relating to the second request the institution stated:

> The decision on release of the record is being made in consultation with the President and Legal Counsel of

> Stadium Corporation of Ontario Limited and with certain other persons involved, including Imagineering Limited...Consultations are expected to be completed by August 27, 1990...Estimated time to reach decision on disclosure is six weeks following completion of search and retrieval process. This includes consultation time and assumes no section 28 notices are required.

The institution also advised that with respect to both requests the "consultations will determine whether section 28 notices will be required. If so, a further extension may be required to complete the section 28 process."

I do not accept the institution's claim that any consultations that it felt were necessary to comply with both requests could not reasonably have been completed within the 30 day time limit. Again, the institution has failed to provide sufficient evidence as to the nature of the consultations and why it was reasonable that consultations should take seven weeks for the first request and six weeks for the second request, these times running from the date that the records were retrieved. I am not satisfied that the institution began searching for the records or that it initiated consultations in a timely manner.

Further, with respect to the issue of "consultations", I am unable to determine from the institution's representations that the

consultations for the first request were held with someone outside the institution, a requirement which Commissioner Linden found to be necessary in order for an institution to make a successful claim for time extension pursuant to subsection 27(1)(b). [See Order 104 (Appeal Nos: 890079, 890080, 890081)

dated October 19, 1989]. I agree with Commissioner Linden's interpretation of subsection 27(1)(b) and adopt it in this appeal. Accordingly, for the reasons given, it is my view that the institution's claim for a time extension pursuant to subsection 27(1)(b) as it relates to both requests, is not reasonable.

Appeals in which the sole issue is the extension of time for responding to the request are quite different from appeals dealing with other sections of the Act. While this office strives to deal with all appeals promptly, disposing of time extension appeals in a timely manner is of the utmost importance. In this appeal, the passage of time has made it difficult for me to fashion an Order which adequately addresses my conclusion that the institution's time extensions were unreasonable. In order to address this and other difficulties encountered with time extension appeals, this office is presently developing alternative methods for dealing with such appeals.

For purposes of this appeal, I do not see how making an Order reducing the length of the time extensions will be of any real assistance to the appellant. However, having concluded that the institution's time extensions were clearly unreasonable, I feel that it would be appropriate for me to order the institution to respond to the appellant's requests without fee. Accordingly, should the institution ultimately decide to disclose the record or parts thereof to the appellant I order it to do so without fee to the appellant.

In its representations, the institution stated that notices to affected persons pursuant to section 28 of the Act may be

necessary. However, the institution failed to identify with certainty who those affected persons might be. Accordingly, I order the institution to send any section 28 notices that it intends to send within 10 days of the date of this Order. Of course, the institution must follow the appropriate procedures as set out in the Act should any section 28 notices be sent. I further order the institution to provide me with copies of any section 28 notices that are sent to affected persons.

Finally, subject only to the possibility of the institution sending section 28 notices, I order the institution to respond to the appellant's requests by August 27, 1990. I further order the institution to provide me with copies of its decisions on access by August 31, 1990.

Copies of the section 28 notices and the institution's decision on access 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: August 24, 1990
Tom A. Wright Date
Assistant Commissioner