



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

ORDER P-279

Appeal 900296

Ministry of Government Services



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O R D E R

BACKGROUND:

On May 14, 1990, the requester submitted a request for copies of an Agreement of Purchase and Sale between the Ministry of Correctional Services, the Ministry of Government Services and Better Beef Limited. The request was originally made to the Ministry of Government Services (the "institution") but was subsequently transferred to the Ministry of Correctional Services (the "Ministry") on June 12, 1990.

The Ministry denied access to the record pursuant to sections 17(1) (a) and (c) of the Freedom of Information and Protection of Privacy Act (the "Act").

The requester appealed both the institution's decision to transfer the request to the Ministry and the Ministry's decision to deny access to the record.

Commissioner Tom Wright addressed the Ministry's decision to deny access to the record in Order P-251, wherein he ordered the release of the record to the appellant.

Following release of the record the Appeals Officer contacted the appellant to determine whether he wished to pursue his appeal of the institution's decision to transfer his request. The appellant indicated that he did.

Mediation to resolve the appeal was attempted but was not successful, and the appeal proceeded to an inquiry. A Notice of Inquiry, accompanied by an Appeals Officer's Report, was sent to the institution, the Ministry and the appellant, outlining the

issues in the appeal and inviting representations. Representations were received from all three parties.

ISSUES:

The issues arising in this appeal are as follows.

- A. Whether the Ministry has a greater interest than the institution in the record at issue.
- B. Whether the institution fulfilled its obligation under section 25(2) of the Act to transfer the request to the Ministry within 15 days after it was received.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the Ministry has a greater interest than the institution in the record at issue.

In his representations, the appellant states that the document he sought was in the possession of the institution, and he objects, on principle, to the transfer of his request to the Ministry.

Section 25(2) of the Act reads as follows:

Where an institution receives a request for access to a record and the head considers that another institution has a greater interest in the record, the head may transfer the request and, if necessary, the record to the other institution, within fifteen days after the request is received, in which case the head transferring the request shall give written notice of the transfer to the person who made the request.

Section 25(2) gives the head of an institution the discretion to transfer a request and, if necessary, the record to another institution where the head considers the other institution has a greater interest in the record.

Further, section 25(3) of the Act outlines how "greater interest" is determined. Section 25(3) reads as follows:

For the purpose of subsection (2), another institution has a greater interest in a record than the institution that receives the request for access if,

- (a) the record was originally produced in or for the other institution; or
- (b) in the case of a record not originally produced in or for an institution, the other institution was the first institution to receive the record or a copy thereof.

Section 25(3) (a) recognizes that, regardless of whether an institution has custody or control of a record, another institution can have a "greater interest" in that record if it was the institution that originally produced the record or the institution for which the record was originally produced.

In its representations, the institution indicates:

[The institution] is authorized by statute to represent the Government of the Province of Ontario in all transactions involving the transfer of real property on behalf of its various client ministries.

Further, the institution submits:

Notwithstanding that [the institution] was the registered owner of such lands, [the institution] was not a party to such discussions and did not in any way participate in any of the negotiations between [the Ministry] and the Purchaser surrounding the preparation of the ... agreement. [The Ministry] proceeded entirely independently of [the institution]

in the negotiation of the agreement granting the option to purchase to the Purchaser.

The institution indicates that portions of the record were in the possession of both the institution and the Ministry. The portions in the possession of the Ministry were produced by the Ministry for

its own benefit as the current user of the subject lands. I am satisfied that the Ministry had the greater interest in these portions of the record.

The portions of the record in the possession of the institution were produced by the institution for the purpose of completing the legal documentation necessary to transfer the subject lands from the Crown, as represented by the institution, to the Purchaser. In my view, these portions were produced for the benefit of both the institution and the Ministry.

The evidence before me indicates that the institution's role in the purchase and sale of the lands was limited to preparing and processing the documentation transferring the lands to the Purchaser, preparing an Agreement of Purchase and Sale, and clarifying the terms and conditions of the agreement of purchase and sale between the Purchaser and the Ministry. The institution prepared the record for its client ministry, which the evidence demonstrates had the primary role in negotiations and discussions surrounding the agreement. Therefore, in my view, the Ministry had a greater interest in the record for the purposes of section 25(3) of the Act.

I am further satisfied that the head, in considering the client/agent relationship between the Ministry and the institution, and the limited role the institution played in the sale of the property, properly exercised his discretion in transferring the request under section 25(2) of the Act.

ISSUE B: Whether the institution fulfilled its obligation under section 25(2) of the Act to transfer the request to the Ministry within 15 days after it was received.

he appellant's primary complaint in respect of the transfer of his request is the length of time it took to obtain the record.

The Act specifies that a request is to be transferred within 15 days of its receipt. The institution indicates that the Ministry was not formally notified of the transfer until June 7, 1990, 24 days after receipt of the request. Although the institution acknowledges that it was aware of the Ministry's interest in the record, it did not provide an explanation for the delay. Rather, the institution simply asserts that consultations between the two organization extended beyond the 15 day limit.

Following the transfer of the request by the institution, the appellant was given a decision regarding his request by the Ministry on June 22, 1990. Under section 26 of the Act, a decision regarding access is to be given within 30 days after the request is received. In this case, the appellant received a decision 39 days after his request was originally received by the institution.

In my view, the circumstances surrounding transfer in this case were not complex, and should have been completed within 15 days.

However, because I have found that the head properly exercised his discretion in transferring the request to the Ministry, and the appellant has received the record, I feel that there is no appropriate remedial order for me to make in the circumstances.

ORDER:

1. I uphold the decision of the institution to transfer the request to the Ministry.

Original signed by:
Tom Mitchinson
Assistant Commissioner

DATE: March 5, 1992