



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER P-751

**Appeals P_9400487, P_9400488, P_9400489, P_9400490 and
P_9400491**

Ministry of Health



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NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The requester sent a letter containing several requests to the Ministry of Health (the Ministry).

The Ministry did not respond within the 30 days prescribed by the Act and did not request a time extension to process the requests under section 27(1) of the Act. The Ministry thus placed itself in a "deemed refusal" situation pursuant to section 29(4) of the Act. The requester appealed the Ministry's deemed refusal to provide access.

Five appeal files were opened on August 16, 1994. The letter of appeal in these matters designated and authorized an agent (the agent) to act on the appellant's behalf.

According to the agent, a copy of the letter containing the requests was provided to the Ministry on June 1, 1994 and was then sent by facsimile to the Ministry in the second week of June, 1994. The Ministry's Acting Freedom of Information and Privacy Co-ordinator advised the Appeals Officer on August 23, 1994, that request files had been opened that day and processing of the requests and issuance of decision letters should proceed within a 30-day time period. The Appeals Officer advised the Ministry's Co-ordinator that production of a decision letter within 30 days of August 23, 1994 did not comply with the statutory requirements of sections 26 and 28(7) of the Act, which set out the timeframes and procedures for responding to requests.

The issuance of a comprehensive decision letter is critical both to the integrity of the access process and the timely processing of an appeal. In addition, until the appellant receives a decision on the requested records, he cannot make an informed decision on whether access has been properly granted or denied and whether an appeal on such access decision(s) would be appropriate.

The Ministry has provided reasons as to why this request has not been processed in a timely fashion. Ministry employees have alluded to difficulties with the program area from which the responsive records originate. In addition, the Ministry's Freedom of Information Office is in the process of replacing its Co-ordinator and is experiencing staff shortages in these times of government fiscal restraint.

While I appreciate the Ministry's difficulties, I would suggest that the Act sets out procedures for an institution to follow where circumstances are appropriate to request more time to respond to requests.

In any case, the Act requires that an institution apprise a requester of the reason for the delay in responding to the access request and the time at which the decision will be made. In my view, the key to these sections is adequate and timely communication by an institution to a requester. At a minimum, the Ministry should advise the appellant of its position within a reasonable period of time. In this case, the appellant received no response from the Ministry within the statutory time frames and thus did not know what, if anything, the Ministry was doing to respond to his request.

As I have indicated, the Ministry now anticipates that it will complete the processing of this request shortly. However, given the length of time that has passed since the filing of this request, it is necessary that the final resolution of this matter be established with some certainty.

Based on my review, the Ministry has failed to comply with sections 26 and 28(7) of the Act. The Ministry has indicated an intention to issue decision letters in these matters within 30 days of August 23, 1994, but did not make a firm commitment to issue a decision by a specific date.

Accordingly, I am ordering the Ministry to issue a decision letter or letters with respect to the outstanding requests.

ORDER:

1. I order the Ministry to provide the appellant with a decision on access to the records requested on June 1, 1994 within fourteen (14) days of the date of this order, without recourse to a time extension.
2. In order to verify compliance with Provision 1 of this order, I order the Ministry to provide me with a copy of the decision letter referred to in Provision 1 within twenty (20) days of the date of this order. This should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

Original signed by: _____
Laurel Cropley
Inquiry Officer

September 9, 1994