



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-1138

Appeal MA-980160-1

City of Thunder Bay



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/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The requester asked the City of Thunder Bay (the City) for a copy of the agreement between the City and the company responsible for curbside garbage pick up at the time of the request. The requester also asked for a copy of the City Manager's contract and a job description for his position. The request was made on May 12, 1998.

On May 12, 1998, the City sent the requester a letter indicating receipt of the request and indicating that "pursuant to the legislation [the Act], a formal response [decision letter] must be finalized [sent to the requester] within 30 days of receiving your request, unless a time extension becomes warranted." The City's letter also indicated that "at this time, access review procedures have been placed 'on hold' pending conclusion of the current work stoppage circumstances."

Section 19 generally requires an institution to issue a decision letter in response to a request under the Act within 30 days of receiving the request. Section 20 permits an institution to extend the 30 day time limit in certain circumstances. The contents of a decision letter are generally described in sections 19 and 22.

The City did not issue a decision letter to the requester as required by sections 19 and 22 within the 30 days prescribed by the Act and did not request a time extension to process the request under section 20(1) of the Act. The City thus placed itself in a "deemed refusal" situation pursuant to section 22(4) of the Act. The requester (now the appellant) appealed the City's deemed refusal to provide access.

On June 26, 1998, I sent the City and the requester each a Notice of Inquiry which indicated that the City was in a "deemed refusal" situation, having failed to issue a decision letter within the time period set out in section 19 of the Act. I further indicated that I would attempt to assist the parties in reaching a settlement of the appeal and if settlement had not been reached by July 10, 1998, that I might issue an order requiring the City to issue a decision letter to the appellant.

I advised the City of its obligations under the Act, and endeavoured to have the City issue the necessary decision letter. I informed the City that if they failed to issue a decision letter, I may issue an order requiring the City to issue a decision to the appellant. To date, the City has not issued a decision letter.

In a letter to me dated July 15, 1998, the City explained that it is presently experiencing a work stoppage. The City further submits that the resultant resource restrictions and in some cases inability to enter picketed work locations safely have left it unable to process requests under the Act within the prescribed time frames. Finally, the City requests, by implication, that I either not issue or delay issuing an order requiring the City to issue a decision letter, given the particular circumstances of this case.

While I acknowledge the difficult circumstances in which the City finds itself, I am not persuaded that this is an appropriate case in which the City should be relieved of its obligations under the Act. The issuance of a proper 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 these records, her ability to exercise her rights under the Act is postponed. It is widely accepted that information is a "perishable commodity" and that the

rights of access and appeal processes under the Act should operate as expeditiously as possible. As stated by the Williams Commission on Freedom of Information and Individual Privacy:

In many situations, the timeliness of access will be important to the individual. Accordingly, it would be desirable to implement appeal mechanisms capable of responding with a minimum of delay to a request for a review.

Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy 1980, vol. 2 (Toronto: Queen's Printer, 1980) (Chair: D.C. Williams), p. 359.

Given all of the circumstances, including the fact that there appear to be only three records responsive to the request, in my view, it would not be unduly onerous for the City to issue a decision letter in the circumstances of this appeal. Accordingly, I am ordering the City to issue a decision letter with respect to the appellant's request for records.

ORDER:

1. I order the City to provide the appellant with a decision on access to the records responsive to the request of May 12, 1998 by August 7, 1998, without recourse to a time extension.
2. In order to verify compliance with Provision 1 of this order, I order the City to provide me with a copy of the decision letter referred to in Provision by August 12, 1998. 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: _____
Rafael Eskenazi
Acting Adjudicator

July 23, 1998