



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

ORDER MO-1311

Appeal MA-000123-1

City of Hamilton



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 hand-delivered a request to the City of Hamilton (the City) on March 13, 2000.

The request stated:

Please provide disclosure of any and all records, documentation and information, including but without limiting memorandum, correspondences, minutes of meetings, consultation notes or records, telephone notations or any other written notation document or record (hereinafter referred to collectively as "documentation") pertaining to;

1. Concerns and/or problems which were expressed to a named construction company during the course of the work carried out by the company at a named address;
2. Concerns and/or problems which were expressed to the company after completion of the work carried out by the company at the named address;
3. Concerns and/or problems which were expressed to the company during the course of the work carried out by the company at a named project;
4. Concerns and/or problems which were expressed to the company after completion of the work carried out by the company at a named project;
5. Any documentation received by the City of Hamilton or its representatives from third parties;
6. Any documentation pertaining to any concerns and/or problems with work carried out by the company at either a named address or at a named project that has not been brought to the attention of the company;
7. Copy of contract between the Corporation of the City of Hamilton and the company for the renovation work at a named address;
8. Copy of contract between Corporation of the City of Hamilton and the company for the renovation work at a named project;
9. Documentation regarding the assessment and analysis of bids received for the renovation project at a Fire Station, including but without limiting any documentation or analysis of the bids by any representatives of the purchasing department, community services division and fire department representatives;
10. A copy of the "time sensitive" approval process;

11. Documentation substantiating any difficulties experienced in obtaining quality workmanship and co-operation from the company site personnel from the fire department and community services division;
12. Documentation detailing any excessive staff time spent enforcing and arguing quality issues leading to compromising an overall project, quality, schedule and budget with respect to work carried out by the company;
13. Documentation pertaining to the complexity of the fire station renovation and expansion project;
14. Documentation detailing concerns with the company to perform the renovation project due to the complexities involved or any other reasons;
15. Documentation from any source whether within the Corporation of the City of Hamilton or third party which was received and/or relied upon in making a recommendation that the contract for the fire station not be awarded to the company;
16. Documentation detailing arguing with the company personnel and documentation supporting the suggestion that projects worked on by the company compromised the overall project, quality, schedule and budget;
17. Documentation used or considered to come to the conclusion that the second lowest bid was the most qualified bid and best represents a bid that will be successful relative to final price, timeliness and quality of work;
18. Documentation pertaining to the six general contractors which attended the mandatory site meeting including but without limiting any documentation or information pertaining to whether or not the six general contractors (or any of them) were contacted by the City of Hamilton or its agents to attend the mandatory site meeting; and
19. Any documentation that the company representatives attended the site meeting and whether or not anyone from the Corporation of the City of Hamilton or its agents notified the company or informed the company or made a determination at that time or any time prior to or subsequent to receipt of the bids that the company should not bid on the project or any bid by the company would be rejected;
20. Documentation reviewed by the City manager and the general manager of community services to determine whether or not there would be a change in the award of the contact for the fire station;
21. Documentation relied on to reject the company's bid on the fire station;

22. Documentation supporting any quality control matters pertaining to the company's performance on contracts with the City;
23. Any additional or other documentation relied on by the City of Hamilton not otherwise covered above which was relied on by the City not to award the contract for the renovations to the fire station to the company;
24. Documentation whereby the company was pre-qualified to bid on work projects of the City of Hamilton for the period commencing after the company was awarded a named project.

On April 18, 2000, the requester wrote to the City asking for a response to the request and reminding the City that the Act required that he be notified of any proposed time extension.

The City did not issue a decision letter to the requester as required by sections 19 and 22 of the Act within the 30 days prescribed by the Act, nor did the City request a time extension to process the request under section 20(1) of the Act. Accordingly, the City 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 to the records.

Upon receipt of the appeal, the City was contacted by our Intake staff. A City staff member explained that one staff person was attempting to deal with all informal and formal requests received by the City as a number of employees had been transferred to work on the upcoming amalgamation. Because the City could not provide any indication of when a decision would be made, the appeal was moved on to mediation/adjudication.

On May 19, 2000, the City and the appellant were each sent a Notice of Inquiry. The Notice stated that the City was in a "deemed refusal" situation because a decision letter had not been issued to the appellant within the time period set out in section 19 of the Act. The Notice also indicated that I would attempt to settle the appeal but, if a settlement was not reached by June 6, 2000, I would issue an order requiring the City to provide a decision letter to the appellant.

I contacted the City to ascertain if it would be issuing a decision letter to the appellant. I was advised that the City was dealing with a high volume of work with a reduced staff and had not been able to process the request. The City provided no other explanation regarding why a decision letter had not been issued.

This is a 24 part request which may involve a large volume of records or an extensive search for responsive records. However, the City did not avail itself of the time-extension provisions of the Act; nor did it appear to consider whether this was an appropriate circumstance to issue an interim decision. To date, the City has not issued a decision letter to the appellant.

Given the above, I am ordering the City to issue a decision letter to the appellant with respect to his 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 March 13, 2000 by **June 30, 2000**, without recourse to a time extension under section 20 of the Act.
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 1 by **June 30, 2000**. 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: _____
Marianne Miller
Acting Adjudicator

_____ June 14, 2000