



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

# **ORDER PO-1900**

**Appeal PA-010105-2**

**Ministry of Northern Development and Mines**



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## **NATURE OF THE APPEAL:**

On February 9, 2001, the Ministry of Northern Development and Mines (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records connected to a grant of \$500,000 made to the Northern Ontario Tourism Marketing Corporation (the Corporation). The requester specified in his request that he was seeking access to documents related to the Corporation's application, the approval of the grant and any assessment/audit records.

The Ministry issued a decision on March 9, 2001 in which it provided the requester with a fee estimate of \$190.00. On March 14, 2001 the requester, now the appellant, paid 50% of the fee estimate, \$95, to the Ministry by way of a deposit and also filed an appeal with the Commissioner's office, disputing the quantum of the fee estimate provided by the Ministry. The fee estimate issue was ultimately resolved during the mediation stage of the appeal. However, on April 18, 2001 the Ministry advised the appellant that pursuant to section 28 of the *Act*, it was required to notify a third party whose interests may be affected by the disclosure of the records and that it would provide him with a decision on access to the requested information by May 18, 2001.

The appellant disputes the appropriateness of the manner in which the Ministry has processed this appeal, arguing that the third party notification under section 28 ought to have occurred within the 30 day period following the Ministry's receipt of the request, or by March 9, 2001 and that the Ministry's decision on access ought to have been provided to him no later than April 9, 2001. The appellant notes that no time extension under section 27(1) was sought by the Ministry in order to effect this notification.

The sole issue to be addressed in this appeal is whether the Ministry complied with its obligations under the *Act* to respond to the access request and to give the required third party notification within the time frames established by section 28.

I provided the appellant and the Ministry with a Notice of Inquiry asking that they comment on whether the Ministry has complied with its obligations under section 28 with respect to the timing of the third party notification given by the Ministry under section 28(3). I received representations from the appellant only.

## **HAS THE MINISTRY COMPLIED WITH ITS OBLIGATIONS UNDER SECTION 28?**

Section 28 of the *Act* imposes certain requirements on an institution in situations where it has reason to believe that the disclosure of information contained in a requested record may affect the interest of a third party. The section states:

- (1) Before a head grants a request for access to a record,
  - (a) that the head has reason to believe might contain information referred to in subsection 17(1) that affects the interest of a person other than the person requesting information; or

(b) that is personal information that the head has reason to believe might constitute an unjustified invasion of personal privacy for the purposes of clause 21(1)(f),  
the head shall give written notice in accordance with subsection (2) to the person to whom the information relates.

(2) The notice shall contain,

- (a) a statement that the head intends to release a record or part thereof that may affect the interests of the person;
- (b) a description of the contents of the record or part thereof that relate to the person; and
- (c) a statement that the person may, within twenty days after the notice is given, make representations to the head as to why the record or part thereof should not be disclosed.

(2.1) If the request covers more than one record, the description mentioned in clause (2)(b) may consist of a summary of the categories of the records requested if it provides sufficient detail to identify them.

(3) The notice referred to in subsection (1) shall be given within thirty days after the request for access is received or, where there has been an extension of a time limit under subsection 27(1), within that extended time limit.

(4) Where a head gives notice to a person under subsection (1), the head shall also give the person who made the request written notice of delay, setting out,

- (a) that the record or part thereof may affect the interests of another party;
- (b) that the other party is being given an opportunity to make representations concerning disclosure; and
- (c) that the head will within thirty days decide whether or not to disclose the record.

(5) Where a notice is given under subsection (1), the person to whom the information relates may, within twenty days after the notice is given, make representations to the head as to why the record or the part thereof should not be disclosed.

(6) Representations under subsection (5) shall be made in writing unless the head permits them to be made orally.

(7) The head shall, within thirty days after the notice under subsection (1) is given, but not before the earlier of,

- (a) the day the response to the notice from the person to whom the information relates is received; or
- (b) twenty-one days after the notice is given,

decide whether or not to disclose the record or the part thereof and give written notice of the decision to the person to whom the information relates and the person who made the request.

(8) Where a head decides to disclose a record or part thereof under subsection (7), the head shall state in the notice that,

- (a) the person to whom the information relates may appeal the decision to the Commissioner within thirty days after the notice is given; and
- (b) the person who made the request will be given access to the record or to a part thereof, unless an appeal of the decision is commenced within thirty days after the notice is given.

(9) Where, under subsection (7), the head decides to disclose the record or a part thereof, the head shall give the person who made the request access to the record or part thereof within thirty days after notice is given under subsection (7), unless the person to whom the information relates asks the Commissioner to review the decision.

In the present appeal, the Ministry received the appellant's request on February 9, 2001. Under section 28(3), the Ministry was then required to provide the third party with the notification described in subsection (1) within 30 days of the date of receipt of the request, by March 11, 2001. The Ministry did not, however, provide the third party notification under section 28(1) until April 18, 2001. I note that the Ministry did not request an extension of that time limit under section 27(1) of the *Act*. Clearly, the Ministry did not comply with the requirement that the third party notification take place within 30 days of its receipt of the request.

I must now determine the appropriate remedy for this breach, bearing in mind the rights of the appellant, the third party and the Ministry. The section 28(1) notification was forwarded on April 18, 2001 and requested that the third party make representations as to why the record should not be disclosed by no later than May 8, 2001. Section 28(7) indicates that the Ministry is required to render a decision on access within 30 days after the section 28(1) notification (by no later than May 18, 2001), but not before the response of the third party is received (by no later than May 8, 2001) or 21 days have elapsed since the third party notification (by no later than May 9, 2001).

In fashioning a remedy in the present circumstances, I am required to ensure that the rights of the third party to object to the disclosure of the requested information within the 20 day notification

period are not abridged. The time period for the decision of the Ministry on whether to grant access to the information is not, however, similarly fixed. I will, accordingly, order the Ministry to render a decision on access to the requested information immediately following its receipt of the third party's representations under section 28(5). As those representations are to be received by the Ministry no later than May 8, 2001, I will order the Ministry to issue a decision with respect to the disclosure of the requested information under sections 28(7) and (8) within two days of its receipt of the third party's representations, and in any event by no later than May 10, 2001.

In this way, the rights of the third party to object to the disclosure of the requested information are not impinged and the Ministry's decision on access will be made promptly upon receipt of the third party's submissions.

**ORDER:**

1. I order the Ministry to provide the appellant with a decision under sections 28(7) and (8) respecting access to the requested information within two days of its receipt of the representations of the third party and in any event no later than May 10, 2001.
2. I order the Ministry to provide me with a copy of the decision provided to the appellant pursuant to Provision 1 by sending a copy to my attention c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario M5S 2V1.
3. I remain seized of this appeal should any further problems be encountered with respect to issues surrounding the time frames for compliance with the provisions of the *Act*.

Original signed by: \_\_\_\_\_  
Donald Hale  
Adjudicator

\_\_\_\_\_ May 3, 2001