



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-1850

Appeal PA-000377-1

Ministry of the Environmen



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NATURE OF THE APPEAL:

By letter dated August 18, 2000, the appellant submitted a request to the Ministry of the Environment (the Ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The request was for access to records relating to the proposed clearing, opening, improvement, authorization for use, construction, road-building or access of a road allowance in an area in the Municipality of Northern Bruce Peninsula from 1998 to the present, with specific exceptions.

The Ministry located the responsive records and, on September 19, 2000, it issued a decision letter granting partial access to the records and requesting that the appellant pay a fee of \$47.10 in accordance with section 57 of the *Act*. On September 29, 2000, the appellant paid the requested fee, in full.

By letter dated November 21, 2000, the appellant filed an appeal with this office on the basis of the Ministry's failure to disclose the records in accordance with its September 19, 2000 decision letter.

On December 7, 2000, I sent a Notice of Inquiry to both the appellant and the Ministry requesting their submissions on whether the Ministry had complied with its obligations under section 26 of the *Act*. The date for receipt of their representations was December 14, 2000. I have not received any response from either party.

DISCUSSION:

HAS THE MINISTRY COMPLIED WITH ITS OBLIGATIONS TO DISCLOSE THE REQUESTED DOCUMENTS?

Where an institution makes a decision to disclose records, or parts of records, in response to a request under the *Act*, section 26 sets out the time frames within which this disclosure is to take place. This section reads:

Where a person requests access to a record, the head of the institution to which the request is made or if a request is forwarded or transferred under section 25, the head of the institution to which it is forwarded or transferred, shall, subject to sections 27, 28 and 57, within thirty days after the request is received,

- (a) give written notice to the person who made the request as to whether or not access to the record or a part thereof will be given; and
- (b) if access is to be given, give the person who made the request access to the record or part thereof, and where necessary for the purpose cause the record to be produced.

In my view, section 26 requires the issuance of a decision *and* the disclosure of records to which access is to be given within 30 days of receipt of the request. However, where an access fee is requested, the "30 day clock" stops, pending payment, but begins to run again upon receipt of payment (see Order 81).

In the present appeal, the Ministry issued a decision on September 19, 2000, advising the appellant that access to a portion of the records would be granted upon payment of the sum of \$47.10. The appellant made payment in accordance with section 57 on September 29, 2000. In my view, upon receipt of the requested payment, the Ministry was required to disclose the records described in its decision letter immediately, because the 30 day time period set forth in section 26, even excluding the time between its decision and payment of the fee, had expired.

I find that the Ministry did not comply with its obligation under section 26(b) to disclose those portions of the responsive records referred to in its decision letter within the time frame required by both sections 26 and 57. I note that I have not been provided with any explanation from the Ministry as to its reasons for non-compliance. Accordingly, I will order that the Ministry disclose to the appellant those records or parts of records referred to in its September 19, 2000 decision letter in accordance with the provisions set out below.

ORDER:

1. I order the Ministry to disclose to the appellant those portions of the responsive records in accordance with its decision letter of September 19, 2000 by **January 10, 2001**.
2. In order to verify compliance with Provision 1, I order the Ministry to provide me with a copy of the covering letter to the appellant which accompanied the records which are disclosed pursuant to Provision 1.

Original signed by: _____
 Sherry Liang
 Adjudicator

_____ December 22, 2000