

ORDER PO-2168

Appeals PA-030246-1, PA-030247-1, PA-030248-1

Ontario Human Rights Commission

NATURE OF THE APPEAL:

Three requests contained in one letter were submitted to the Ontario Human Rights Commission (OHRC) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following information:

Copies of all materials received and produced by the OHRC regarding [two specified files].

The following statistical information regarding applications made to the OHRC during the past 10 years:

1. The number of complaints received from men against women, citing gender discrimination, and the number carried forward.
2. The number of complaints received from women against men, citing gender discrimination, and the number carried forward.

The OHRC received these requests on June 16, 2003 and opened three request files. On July 2, 2003, the OHRC sent three separate letters to the requester advising him that the time for responding to each of the requests had been extended pursuant to section 27 of the *Act* by 30 days, to August 16, 2003. The OHRC stated in each one of the July 2, 2003 letters that “the reason for the time extension is we will not be able to respond to your access request within the 30 days due to staff vacations.”

On July 10, 2003, the requester (now the appellant) appealed the OHRC’s decisions to extend the 30-day time limit.

A Confirmation of Appeal was sent to the OHRC and the appellant on July 15, 2003 for each of the three appeals advising the parties that I was the mediator assigned to attempt to settle the appeals. The Confirmations of Appeal stated that if a mediated settlement were not reached, I would issue a Notice of Inquiry in my capacity as acting-Adjudicator, asking the parties to submit representations on the issues. A mediated settlement of the appeals was not reached.

On July 21, 2003, I sent a Notice of Inquiry to the appellant and the OHRC setting out the issues in the three appeals. Written representations were received from the OHRC.

DISCUSSION:

The sole issue for me to determine in these appeals is whether the extensions of time claimed by the OHRC to respond to the appellant’s three requests were made in accordance with section 27(1) of the *Act*.

Section 27(1) of the *Act* states:

A head may extend the time limit set out in section 26 for a period of time that is reasonable in the circumstances, where,

(a) the request is for a large number of records or necessitates a search through a large number of records and meeting the time limit would unreasonably interfere with the operations of the institution;

(b) consultations with a person outside of the institution are necessary to comply with the request and cannot reasonably be completed within the time limit.

While the appellant did not make any representations, in his letter of appeal, the appellant states that “staff being on vacation is not a reasonable ground for delay in this matter.” The appellant adds:

Given that much of the material was originally provided by me, that my request is a straight copy job that could be carried out within half an hour and that the balance of the material should be readily available by a simple ten minute inspection of annual reports, it should already be in my hands.

In its representations, the OHRC does not specify whether it is relying on section 27(1)(a) or 27(1)(b) of the *Act* for claiming the time extensions in these appeals. However, in its representations, the OHRC makes no reference to the need for outside consultations in processing these requests. Therefore, I do not consider section 27(1)(b) of the *Act* to be relevant in the circumstances of this appeal and will only give consideration to the possible application of section 27(1)(a) of the *Act*.

The OHRC provides the following general explanation for the time extensions:

The Commission is a small agency with a tremendous volume of work and has resources for only one part-time employee, [name of FOI Co-ordinator], to process all requests received by the Commission pursuant to the “**Act**”. [The FOI Co-ordinator] was unable to search the records and locate the requested information for disclosure prior to her departure for vacation. For this reason, the Commission has requested an extension of time.

As you are aware, it is simply not possible to have Commission staff who have no FOI expertise or experience to review the appellant’s request. While the appellant may be inconvenienced by this extension, there is no option but to await [the FOI Co-ordinator’s] return on July 29, 2003. This is because each record must be carefully reviewed and a determination made on whether it can be disclosed in its entirety, severed or must be withheld.

Please be assured that the Commission will give priority to the processing of [the appellant’s] request with respect to his files when [the FOI Co-ordinator] returns from vacation on July 29, 2003.

The OHRC also provides some information regarding the types of records that are likely responsive to the first part of the request involving the two specified OHRC files including some discussion around the possible application of exemptions. However, there is no mention as to the volume of records involved in processing this request nor an estimate of the amount of time involved in conducting a search for records.

With respect to the requests for the statistical information, the OHRC states that they “will have to locate, retrieve and manually conduct a search of **ten** years of its records to provide [the appellant] with the requested information”. However, once again, the OHRC does not identify the type of records to be searched, nor does it quantify the number of records, nor the amount of search time that is required in order to respond to these requests other than to say that some of the information is contained in the OHRC’s Annual Reports.

As such, I am not satisfied that any one of the requests is for a large number of records nor that they will necessitate a search through a large number of records. As well, the OHRC does not indicate whether they have, in fact, lumped the three requests into one for the purpose of extending the time.

In Order 28, former Commissioner Sidney Linden stated:

The Act provides institutions with a clear and relatively short time limit for responding to requests. This time limit can be extended only in the circumstances set out in section 27. Further, in my view, in invoking section 27, the head must address him or herself to whether **any particular request** involves a large number of records or consultations that cannot reasonably be completed within the 30 day time limit. I do not believe that section 27 lends itself to the interpretation that, where the response to a number of separate requests by the same individual, which collectively involve a large number of records or necessitate consultation, section 27 is properly triggered.

In coming to this conclusion, I am fully aware of certain of the problems created for institutions by the Act. Institutions are faced with a "requester driven" system. There appears to be no way that the institution can accurately predict when a large number of requests will come in, whether or not that large number is from the same individual. Therefore, it is difficult to plan for adequate staff and resources.

On the other hand, if I were to take the view that the fact that a large number of requests coming from one individual has a legitimate impact on the interpretation of section 27, it seems to me that such an approach would be open to potential abuse. Absent statutory amendment, I can suggest two legitimate courses of action that an institution might consider when compliance with the time limits set out in the Act places an inordinate strain on resources. They are as follows:

1. Negotiate with the individual requester who sends in numerous requests as to whether the requester would consent to waive the 30

day limit for each of the requests in favour of a response within 30 days in respect of certain "priority" requests and a longer time for response in respect of others.

2. Allocate its resources in such a way that it can import, on an emergency basis, additional staff to assist those routinely working on Freedom of Information requests in situations in which there is a sudden influx of requests.

I feel that the views expressed above regarding the planning of adequate staff and resources are applicable in the circumstances of this appeal given that the reason for the time extension is due to staff vacations. The OHRC has not provided any information with respect to any efforts made in relation to the two courses of action described above in processing the three requests. Furthermore, I find that the explanation for the time extension provided above by the OHRC is not sufficient to convince me that meeting the time limit would unreasonably interfere with the operations of the institution. For the future, I urge the OHRC to give consideration to the two suggested courses of action described above when processing requests.

Based on the OHRC's representations, I find that the requests are not for a large number of records, nor that they will necessitate a search through a large number of records such that the time limit would unreasonably interfere with the operations of the institution. To conclude, I find that the extensions of time claimed by the OHRC to respond to the appellant's three requests were not in accordance with section 27(1) of the *Act*.

ORDER:

1. I do not uphold the OHRC's decisions to extend the time limit for responding to the three requests.
2. I order the OHRC to provide decision letters to the appellant regarding access to the records in accordance with the *Act* by no later than **August 1, 2003**.
3. In order to verify compliance with this order, I order the OHRC to provide me with a copy of its decision letters on access referred to in Provision 2 by **August 1, 2003**. The notice should be sent to my attention, c/o Information and Privacy Commissioner, 80 Bloor Street West, Suite 1700, Toronto, Ontario M5S 2V1.

Original Signed By: _____

Maria Tzimas
Acting Adjudicator

July 28, 2003 _____