



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-2000

Appeal MA-050364-1

City of Vaughan



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NATURE OF THE APPEAL:

This is a deemed refusal appeal under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) with regard to a request made to the City of Vaughan (the City).

On September 2, 2005, the requestor made the following access request to the City:

The winning bidder for Bid T-03-003 [name of construction project], [name of construction company], would have submitted pre-qualification documents to show, among other things, that it had completed a public institutional project valued at over \$30 million at the time or by the time of seeking such pre-qualification. I understand that such a document, a Contractor's Qualification Statement, was submitted by [name of construction company] for RF102-258 and Bid T-03-003.

I am requesting a copy of the lines, the line, or a portion of the line, in the Contractor's Qualification Statement submitted by [name of construction company] for RF102-258 and Bid T-03-003, which reveal the name of the specific project submitted by [name of construction company] to satisfy pre-qualification requirement that it had completed a \$30+ million public institutional project.

Section 19 of the *Act* requires the City to issue a decision within 30 days of receipt of a request. If a decision is not issued within the time period, the City is in a "deemed refusal" situation pursuant to section 22(4) of the *Act*. The provision states:

A head who fails to give the notice required under section 19 or subsection 21(7) concerning a record shall be deemed to have given notice of refusal to give access to the record on the last day of the period during which notice should have been given.

On October 7, 2005, the requestor (now the appellant) wrote to this office indicating that the City had not provided him with a decision. He provided a copy of a letter addressed to him from the City dated September 9, 2005. This letter advises that the City will not be providing a response to the appellant's request as they are waiting for the result of a judicial review of Order MO-1811 issued by this office on July 13, 2004.

Order MO-1811 related to the qualification statements of companies bidding on a contract to build the [name of construction project], which is the same project at issue in this request. The City was ordered to disclose the qualification statements for the two bidding companies with some severances.

On October 17, 2005, this office sent a Notice of Inquiry to both the appellant and the City stating that the City is in a deemed refusal situation. The Notice also stated that if a decision is not issued by November 1, 2005, I would be in a position to issue an order requiring the City to provide a decision to the appellant.

On October 27, 2005, the City provided the appellant with a further letter advising that they were extending the time limit for responding to his access request until November 25, 2005, to allow for a decision to be issued by the Divisional Court with respect to the judicial review of Order MO-1811. The City advised that this extension is pursuant to sections 19 and 20 of the *Act*.

I spoke with the City on November 25, 2005, and was advised that a further interim decision would be issued to the appellant advising that the time limit would be further extended to an unspecified date.

It is my understanding that the judicial review of Order MO-1811 has been resolved between the parties and the matter is no longer before the Divisional Court.

To ensure there are no further delays in processing this request, I am ordering the City to issue a decision regarding access.

ORDER:

1. I order the City to issue a decision letter to the appellant regarding access to the records in accordance with the *Act* and without recourse to a time extension, no later than **December 7, 2005**.
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 referred to in Provision 1 by **December 7, 2005**. This should be forwarded to my attention c/o Information and Privacy Commissioner/Ontario, 2 Bloor St. East, Suite 1400, Toronto, Ontario, M4W 1A8.

Jim Palmer
Intake Analyst

November 29, 2005