



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-2029

Appeal MA-060016-1

Durham Regional Police Services Board



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NATURE OF THE APPEAL:

On December 2, 2005, the Durham Regional Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy* (the Act) for access to information related to a propane gas explosion that occurred at a specified location on November 9, 2004.

The request specifically stated:

We already have the Second Level Incident Request Response, dated May 31, 2005 i.e. our production #4, which copy is enclosed for your ease of reference.

May we please have a copy of the following information with regards to the above noted incident:

1. Police notes
2. Fighter [sic] Departments' notes
3. Field notes
4. Witness Statements
5. Photographs

On December 28, 2005, the Police wrote to the appellant and advised that it was extending the time to respond to the request, in accordance with section 20 of the *Act* for an additional 60 days to March 9, 2006. The Police relied on section 20(1)(a) in stating that the request was for a large number of records which would necessitate a search through a large number of records and as a result would unreasonably interfere with its operations.

On January 16, 2006, the requester, now the appellant, appealed the Police's decision to extend the time required to respond to the request.

On January 20, 2006, our office sent a Confirmation of Appeal to both the appellant and the Police. The Confirmation of Appeal indicated that I was the Mediator assigned to attempt to settle the appeal. It stated that if the appeal was not resolved through mediation by February 3, 2006 I would issue a Notice of Inquiry in my capacity as acting-Adjudicator, asking the parties to submit their representations on the issue.

During the mediation process, the Police explained that they had considered several factors before requesting the time extension. The Police stated that it had to obtain and compile notes of more than 20 police officers from different parts of the region. The notes then had to be reviewed for responsiveness and also to identify other police officers who may have attended the site of the incident.

During mediation, the Police advised the requester to make separate requests directly to the Fire Department for their records and to the Forensic Identification Unit for photographs.

The appellant was advised of the Police's reasons for claiming the time extension.

No issues were resolved through mediation.

On February 3, 2006, I sent a Notice of Inquiry (NOI) to the appellant and the Police setting out the issues in the appeal.

DISCUSSION:

The sole issue for me to determine in this appeal is whether the extension of time claimed by the Police to respond to the appellant's request, was made in accordance with section 20(1) of the *Act*.

Section 20(1) of the *Act* states:

A head may extend the time limit set out in section 19 for a period of time that is reasonable in the circumstances, if,

- (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; or

The appellant did not respond to the NOI. However, in earlier discussions, he clearly expressed his concern that the Police had not sent him the requested material. In his letter dated January 27, 2006 he specifically states:

Our initial request for the police records was February 28, 2005, approximately one year ago. We do not understand what is going on and why Durham Regional Police is delaying forwarding the requested material to us.

In support of his position, he submitted a package of correspondence between himself and the Police. The package included his letter dated February 28, 2005.

The appellant's position is that he made his request to the Police over a year ago, and to date, he has not received the information he requested.

There is no dispute that the appellant initially wrote to the Police on February 28, 2005 and requested a copy of the police report, relating to the incident. The letter specifically made the following request: "[M]ay we please have the Police Report of that incident." After several exchanges of correspondence, a copy of a Level II Incident Report was sent to the appellant by the Information Release Unit of the Police.

On December 2, 2005, the appellant then made another request, this time for information under the *Act* to the Information and Privacy Unit of the Police which resulted in the subject appeal. The request included access to police notes, fire department notes, field notes, witness statements and photographs.

I do not agree with the appellant's assertion that his request was initiated in February, 2005. That request was limited to the police report and the appellant was provided with a copy by the Information Release Unit. Therefore, on the basis of all of the above, my review is limited to the appellant's request dated December 2, 2005 and made under the *Act* to the Information and Privacy Unit and the Police's decision dated December 28, 2005 and will not include the appellant's request to the Information Release Unit.

The Police responded to the NOI and provided information in support of their assertion that a time extension was necessary in order to respond to the request.

The Police note that the incident in question was a very large propane gas explosion. The Police stated that "this potential life-threatening incident" caused a strain on their operations. The incident involved significant police personnel to conduct several tasks such as evacuation, traffic control protecting the scene, gathering evidence and interviewing witnesses. The Police note that it would take time to identify and then locate the appropriate police officers. Once the records have been requested and received, they will be reviewed for responsiveness and to identify other police officers who may have attended the site. The schedules and shift work of the police officers would also make it difficult to obtain and search through the records in a timely manner.

I consider it significant that the Police officer's notes are not kept in a central location. The Police explained that each officer retains his notes for a three-year period, after which they are stored with the Property Bureau for an additional twelve years. The Police have also pointed out that the magnitude of the incident meant that the Police involvement was not limited to one day and that notebook entries could cover several days or weeks.

In their representations the Police requested a further time extension. This would be in addition to the additional 60 days claimed in their letter dated December 28, 2005. The second time extension would extend the time on a decision to May 10, 2006. The Police indicate that in the event that the records contain third party information, then notice provisions under section 21 of the *Act* would also have to be considered. The Police representations stated as follows:

However, having begun the process, we have realized that our initial time extension was underestimated and I am therefore respectfully requesting a one hundred and twenty day time extension to respond to this request.

This extension would be in addition to the thirty-day response outlined in Section 19 of the *Act*. Should third partying be required, Section 21 of the *Act* would be applied accordingly.

On February 24, 2006, I asked the appellant to provide submissions on this new issue. On February 28, 2006, I received a response from the appellant in which he suggests that the Police could "provide our office with their records/notes that they have readily at hand... [w]e will

review same to see if this might be sufficient for our purposes.” The Police were copied with this letter.

Based on the position of the Police that it was a major incident and the Police must contact at least 21 police officers, I agree with their assessment that the request necessitates a search through a large number of records. I am also satisfied that meeting the time limit set out in section 19 of the *Act* would have unreasonably interfered with the operations of the Police.

Having carefully considered all of the information provided to me by the institution and the appellant, and in the circumstances of this appeal, it is my view that the head's first decision to extend the time for responding to the appellant's request to March 9, 2006 is reasonable.

In this case, however, the Police have requested two separate time extensions. I am mindful of the concerns raised by former Commissioner Tom Wright regarding the use of two time extensions. In Order P-234, the former Commissioner upheld the total time claimed, but indicated that he had concerns about the use of two separate extensions, stating that:

... [g]enerally speaking, it is my view that an institution, when assessing the time and resources it will need to properly respond to a request, must decide within the initial 30 day time limit for responding to the request, the length of any time extension it will need.

This approach was also considered and adopted by Senior Adjudicator John Higgins in Order M-581 where he did not uphold the second time extension. I agree with this approach and adopt it for the purposes of this appeal.

Under the circumstances of this appeal, though the Police have satisfied me that a time extension to March 9, 2006 is reasonable, based on the information provided to me, I am unable to conclude that the further time extension claimed by the Police is reasonable.

In their representations, the Police have indicated that it may be necessary for them to notify third parties, depending on the content of the records. This will have an impact on when the decision on access is issued to the appellant and I will address this in my Order provisions below.

The expiry date for the time extension is March 9, 2006. As it is not practical to ask the Police to issue a decision by March 9, 2006, I order the Police to do so within one week from the date of this order, having regard for notice to third parties, where necessary.

ORDER:

1. I uphold the Police's decision to extend the time limit to March 9, 2006. As this is not practical given the date of this order, I order the Police to issue their decision to the appellant as set out in order provisions 2 and 3.

2. Where notice to third parties is required to be given, I order the Police to substitute seven days for the thirty days provided for in section 19 and 21(3) of the *Act* and to issue a final decision to the appellant in accordance with sections 19, 21 and 22 of the *Act*, treating the date of this order as the date of the request.
3. With respect to those records that do not require third party notice to be given, I order the Police to issue a final decision on access to the appellant by **March 15, 2006**.
4. To verify compliance with this order, I reserve the right to require the Police to provide me with a copies of their decisions sent to the appellant pursuant to Provision 2 and 3.

Original signed by: _____
Brian Bisson
acting-Adjudicator

_____ March 8, 2006