



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2671

Appeal PA08-97

University of Ottawa



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NATURE OF THE APPEAL:

This is an appeal under the *Freedom of Information and Protection of Privacy Act* (the *Act*).

On February 25, 2008, the requester submitted a request to the University of Ottawa (the University) for access to the following records:

...all emails received or sent by André E. Lalonde, dean of the Faculty of Science, that concern the [named series] that I organize or that concern the [named group] in general.

On April 13, 2008, the requester sent an e-mail to the Freedom of Information and Protection of Privacy Unit Co-ordinator (the Co-ordinator) and indicated that he had not received an acknowledgement letter or decision from the University.

On April 14, 2008, the University sent the requester a letter acknowledging receipt of his request. The letter from the University stated the following:

Your request necessitates a search through a large number of records and the University has not yet been able to complete the search to properly respond to your request. Please be advised that your request is being processed and we expect to send you a response by May 9, 2008.

On April 17, 2008, the requester (now the appellant) filed an appeal of the University's decision. The appellant alleges that the University is in a deemed refusal situation as it did not issue a decision to extend the time for a response in accordance with sections 26 and 27 of the *Act*.

On April 21, 2008, this office sent a Notice of Inquiry to both the appellant and the University stating that the University was in a deemed refusal situation. The Notice also stated that if a final decision was not issued by May 6, 2008, I would be in a position to issue an order requiring the University to provide its decision to the appellant.

On April 23, 2008, I was informed by the University that it was waiting for the program area to locate and assemble the responsive records, and provide them to the Co-ordinator for a decision regarding access. I was informed that the University should be able to issue its final decision by May 6, 2008.

DISCUSSION:

The matter before me is whether the University issued a proper decision pursuant to sections 26 and 27 of the *Act* or whether it is in a deemed refusal situation pursuant to section 29(4) of the *Act*.

In Order PO-2595, Tanya Huppmann, Intake Analyst, stated:

Section 26 of the *Act* requires that within 30 days of receiving the request the Institution provide the requester with an access decision indicating whether or not

access to the record or a part thereof will be given. If access is to be given the institution should, along with the access decision, provide a copy of the record to the requester. However, the timing of the response may be affected by:

- the application of a time extension pursuant to the conditions set out in Section 27 of the *Act*;
- notice being given to persons who may be affected by the disclosure of the record pursuant to Section 28 of the *Act*; or
- the requirement to pay a fee pursuant to the conditions set out in Section 57 of the *Act*.

Section 26 of the *Act* states that:

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.

Section 27 of the *Act* states that:

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

(2) Where a head extends the time limit under subsection (1), the head shall give the person who made the request written notice of the extension setting out,

- (a) the length of the extension;
- (b) the reason for the extension; and

(c) that the person who made the request may ask the Commissioner to review the extension.

If a decision is not issued within the time allowed under section 26 of the *Act*, then an institution is in a “deemed refusal” situation. Section 29(4) of the *Act* states:

A head who fails to give notice required under section 26 or subsection 28(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.

Intake Analyst Lucy Costa discussed the implications of attempting to claim a time extension under section 20 of the *Municipal Freedom of Information and Protection of Privacy Act* (the equivalent of section 27 of the *Act*) after the 30-day response time has expired, in Order MO-1777.

She stated:

“Barring exceptional circumstances, which are not present here, when assessing the time and resources it will need to properly respond to a request, an institution must decide and provide written notice within the initial 30-day time limit for responding to the request, the length of any time extension it will need pursuant to section 20 of the *Municipal Freedom of Information and Protection of Privacy Act* (Orders P-234, M-439 and M-581, MO-1748.”

In Order PO-2634, John Higgins Senior Adjudicator stated:

Although it may seem inappropriate, and possibly even harsh, to state that barring exceptional circumstances, the consequence of being one day late is that a section 27 time extension may not be claimed, it is entirely consistent with the time-driven approach to responding to access requests established in sections 24 through 29 of the *Act*. In order to have meaningful time limits for taking steps in an access request, it is sometimes necessary to take a “bright line” approach to the establishment of such limits, as the legislature itself has done. In my view, the requirement that a decision to claim a time extension be communicated to the requester within the original time frame for responding to a request (30 days) is consistent with sections 26 and 27, and with the legislative scheme in sections 24 through 29. In order to be effective, the expiry of a time limit must have consequences.

The University acknowledged that it received the appellant's request on February 27, 2008. It did not issue a decision to the appellant within the 30 day statutory requirement pursuant to section 26 of the *Act* or extend the time for its decision pursuant to section 27 of the *Act*, i.e. on or before March 27, 2008.

Therefore, I find the University to be in a deemed refusal situation pursuant to section 29(4) of the *Act*. I also find that there have been no exceptional circumstances present here to justify the delay.

On May 6, 2008, I was informed by the University that it would issue an "interim" decision and provide the requester with a fee estimate. As noted in Order PO-2595, "...a deemed refusal is not cured by issuing an interim access decision and fee estimate," and therefore, the University would have remained in a deemed refusal situation even if it had issued an interim decision and fee estimate beyond March 27, 2008.

ORDER:

1. I order the University to issue a **final** access decision to the appellant regarding access to the records in accordance with the *Act* without recourse to any further time extension, no later than **May 14, 2008**.
2. In order to verify compliance with provision 1 of this Order, I order the University to provide me with a copy of the decision letter referred to in Provision 1 no later than **May 14, 2008**. This should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 2 Bloor Street East, Suite 1400 Toronto, Ontario, M4W 1A8.

Nathalie Rioux
Intake Analyst

May 7, 2008