



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-2431

Appeal MA09-183

Toronto Police Services Board



Tribunal Services Department
2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

Services de tribunal administratif
2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel: 416-326-3333
1-800-387-0073
Fax/Téloc: 416-325-9188
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

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

On April 16, 2009, the Toronto Police Service (the Police) received a request for access to the following records:

Recordings and logs of Toronto Police Service enquiries relating to my Ontario driver's licence. Logs and recordings made on or after July 22, 2008. ALL logs and recordings. Licence # [specified number]. Including names and badge numbers of the police enquiring.

Section 21(7) of the *Act* requires the Police to issue a decision within 30 days of receipt of a request. If a decision is not issued within that time period, the Police are in a "deemed refusal" situation pursuant to Section 22(4) of the *Act*. That 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 May 19, 2009, the requester attended Police headquarters where he spoke with a staff member of the Freedom of Information Office. The requester said the staff did not give him an access decision or provide an explanation for the delay in processing his request. Nor was he advised that a letter had been sent to him to inform him of a time extension to provide a decision.

On May 20, 2009, the requester, now the appellant, filed an appeal with this office as the Police still had not replied to his request under the *Act*.

On May 21, 2009, this office sent a Notice of Inquiry to both the appellant and the Police stating that the Police were in a deemed refusal situation. The Notice also stated that if a decision was not issued by June 4, 2009, I would be in a position to issue an order requiring the Police to provide its decision to the appellant.

On May 25, 2009, the appellant informed me that he had received a letter from the Police. The letter dated May 15, 2009, stated the following:

In reference to your access request received on April 16, 2009, under the Municipal Freedom of Information and Protection of Privacy Act, the time limit for a response is 30 days. We wish to advise you that the time has been extended in accordance with section 20 of the Act for an additional 30 days to June 14, 2009.

The appellant expressed his belief that the letter was backdated to May 15, 2009, to appear as though it was issued before the end of the 30 day deadline to issue a decision. The appellant advised that he was basing his belief on the letter's postmark which was dated May 20, 2009.

The appellant provided me with a copy of the Police's letter and the envelope which has the May 20, 2009, postmark.

In Order MO-1777, former Intake Analyst Lucy Costa discussed the implications of attempting to claim a time extension under section 20(2) of the Act after the 30-day response time has expired. 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(2) of the *Act* (Orders P-234, M-439 and M-581, MO-1748).

In this case, notice of the time extension for responding to the request does not appear to have been issued within the initial 30-day time limit for responding to the request. To the contrary, based on the postmark on the envelope for the May 15, 2009 letter, it appears to have been processed by the post office on May 20, 2009, which is clearly not in accordance with the direction provided by these previous orders.

Despite several attempts to get the Police to issue an access decision, I received a message on June 15, 2009, from the Freedom of Information Co-ordinator indicating that a decision has not yet been issued.

Even though the Police were not entitled to issue a time extension in this case, they have failed to meet their June 14, 2009, deadline as well.

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

ORDER:

1. I order the Police to issue a **final** decision letter to the appellant regarding access to the records in accordance with the *Act* and without recourse to an additional time extension, no later than June 22, 2009.

2. In order to verify compliance with Provision 1 of this Order, I order the Police to provide me with a copy of the decision referred to in Provision 1 by June 22, 2009. This should be forwarded to my attention c/o Information and Privacy Commissioner/Ontario, 2 Bloor Street East, Suite 1400, Toronto, Ontario, M4W 1A8.

Original signed by: _____
Nathalie Rioux
Analyst

_____ June 17, 2009