



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-2427

Appeal MA09-179

City of Toronto



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NATURE OF THE APPEAL:

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

On April 7, 2009, the City of Toronto (the City) received a request dated April 3, 2009, for access to a copy of all records that resulted in the issuance of an order from the City regarding a line fence/retaining wall issue at a specified address.

On April 29, 2009, the City wrote to the requester indicating that, under section 20 of the *Act*, it was extending the time for responding to the request by an additional 20 days to May 27, 2009. The reason for doing so was that the request necessitates a search through a large number of records and meeting the time limit would unreasonably interfere with the operations of the City.

On May 15, 2009, the requester (now the appellant) appealed the City's time extension decision. Appeal MA09-179 was opened to deal with the time extension appeal.

On May 21, 2009, I spoke with the appellant and he agreed to wait until May 27, 2009 for the City to issue an access decision.

I contacted the City's Corporate Access and Privacy Office numerous times regarding the status of the decision letter. I was advised that the City would try to issue a decision letter on May 27, 2009 but it was unable to commit to this date.

On May 27, 2009, I confirmed with the City that an access decision had not been issued to the appellant.

On May 28, 2009, this office sent a Notice of Inquiry to both the appellant and the City stating that the City was in a deemed refusal situation. The Notice also advised that if a decision was not issued by June 4, 2009, I would be in a position to issue an order requiring the City to provide a decision letter to the appellant.

On June 5, 2009, I contacted the City and was advised that the decision had not been issued and a firm commitment as to when it would be issued could not be given.

DISCUSSION:

On April 14, 2004, Intake Analyst Lucy Costa issued Order MO-1777, in which she noted:

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 *Act* (Orders P-234, M-439 and M-581, MO-1748).

Intake Analyst Tanya Huppmann also addressed the expectations of institutions when relying on time extensions, in her order PO-2595 issued on July 16, 2007. In this respect the order reads as follows:

When an institution issues a time extension it is expected that, prior to the expiry of the extension, subject to section 28 and 58 of the [*Freedom of Information and Protection of Privacy Act*], written notice will be given to the requester as to whether or not access to the record or part thereof will be given, and for access to the record to then be given to the requester. This is referred to as a final access decision.

Section 22(4) of the *Act* states that:

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.

The City is in a deemed refusal situation pursuant to section 22(4) of the *Act* as it has failed to issue an access decision by May 27, 2009. Even after being provided with additional time to issue an access decision the City has not done so. To ensure that there are no further delays I will order the City to issue a final access decision to the appellant, without recourse to any further time extensions.

ORDER:

1. I order the City 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 extensions, no later than **Friday June 12, 2009**.
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 letter referred to in Provision 1 no later than **Friday June 12, 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: _____
Dave Misir
Analyst

June 5, 2009