

Information and Privacy Commissioner,  
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,  
Ontario, Canada

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## ORDER MO-2794

Appeal MA12-314-2

Strathroy-Caradoc Police Service

October 2, 2012

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 19, 21(1)(2)(4), and 22(4).

### BACKGROUND:

[1] This is an appeal under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) with regard to a request made to the Strathroy-Caradoc Police Service (the police) on May 14, 2012 for all information in a police file identified by number.

[2] Section 19 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 is in a "deemed refusal" situation pursuant to subsection 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.

[3] On July 10, 2012 the Office of the Information and Privacy Commissioner (IPC) received an appeal which indicated that it had been more than 30 days and the appellant had not received a decision letter.

[4] On July 13, 2012, the IPC opened appeal file MA12-314 and sent a Notice of Inquiry (notice) to both the appellant and the police stating that the police was in a deemed refusal situation. The notice also advised that if a decision was not issued by July 27, 2012, I would be in a position to issue an order requiring the police to provide the appellant with a decision letter.

[5] On August 14, 2012 the IPC received a letter from the police indicating that a decision was issued on August 9, 2012 and all records will be disclosed with the names severed, upon receipt of the \$44.00 fee. As a result, on August 23, 2012, a closing letter was sent to both the appellant and the police.

[6] On September 5, 2012 the appellant informed me that the \$44.00 fee was paid, however the requested records were not disclosed.

[7] The IPC opened appeal MA12-314-2 and on September 6, 2012 sent a notice to both the appellant and the police regarding the appellant's claim that the police had failed to disclose the requested records despite issuing a decision indicating they would do so. The notice stated that if a settlement in this matter was not reached by September 20, 2012, I would be in a position to issue an order requiring the police to disclose the records to the appellant.

[8] On September 13, 2012, I was informed by the police that the records were not disclosed due an affected party objecting to the disclosure. The police had not made any reference to an affected party within their decision letter dated August 9, 2012, nor had the police informed the appellant as to why the records were not being disclosed despite their decision to disclose them. The police were advised to contact the appellant immediately to inform him of the delay due to involvement of an affected party.

[9] Section 21 of the *Act* requires the police to give written notice to any affected parties prior to granting access to the records. That provision states:

(1) A head shall give written notice in accordance with subsection (2) to the person to whom the information relates before granting a request for access to a record,

(a) that the head has reason to believe might contain information referred to in subsection 10 (1) that affects the interest of a person other than the person requesting information; or

(b) that is personal information that the head has reason to believe might constitute an unjustified invasion of personal privacy for the purposes of clause 14 (1) (f).

[10] Section 21(2) states that the contents of the notice must contain:

(a) a statement that the head intends to disclose a record or part of a record that may affect the interests of the person;

(b) a description of the contents of the record or part that relate to the person; and

(c) a statement that the person may, within twenty days after the notice is given, make representations to the head as to why the record or part should not be disclosed.

[11] Section 21(4) states that the requester must be given written notice of the delay:

(4) A head who gives notice to a person under subsection (1) shall also give the person who made the request written notice of delay, setting out,

(a) that the disclosure of the record or part may affect the interests of another party;

(b) that the other party is being given an opportunity to make representations concerning disclosure; and

(c) that the head will within thirty days decide whether or not to disclose the record.

[12] On September 20, 2012, the appellant informed me that the records had not been disclosed by the police nor had the police provided a notice of delay pursuant to section 21(4) of the *Act*.

## **DISCUSSION:**

### **Has the institution complied with its obligations to disclose the requested records?**

[13] When an institution makes a decision to disclose records, or parts of records, in response to a request under the *Act*, section 19 sets out the time frames within which this disclosure is to take place. This section reads:

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 18, the head of the institution to which it is forwarded or transferred, shall, subject to sections 20, 21 and 45, 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 of it will be given; and

(b) if access is to be given, give the person who made the request access to the record or part, and if necessary for the purpose cause the record to be produced.

[14] In my view, section 19 of the *Act* requires the police to issue a decision and to disclose those records for which access is to be given within 30 days of receipt of the request.

[15] The police's August 9, 2012 decision letter indicated that all records would be disclosed with names severed, upon receipt of the fee. The appellant paid the required fee pursuant to section 45 of the *Act*, however the records were not disclosed.

[16] To date the police have not disclosed the records to the appellant nor has it provided any indication of when it intends to do so.

[17] I find that the police did not comply with its obligations under section 19(b) of the *Act* to disclose all of the responsive records referred to in its August 9, 2012 decision letter within the time frame required by both sections 19 and 45 of the *Act*.

[18] I also find that the police did not comply with its obligation under section 21 of the *Act* to notify any person affected by the disclosure of the requested records, nor did it comply with its obligation to notify the requester of the delay that would occur as a result of notification.

## **ORDER:**

1. For those records where notice pursuant to section 21(1) of the *Act* is required, the notice to the affected party shall be issued no later than **October 9, 2012** with a return date for submissions for the affected person of **October 26, 2012**.
2. For those records where notice pursuant to section 21(1) of the *Act* is required, I order the police to notify the requester of the delay pursuant to section 21(4) of the *Act*, no later than **October 9, 2012**.

3. I order the police to disclose to the appellant all records relating to the August 9, 2012 decision letter that do not require notice to an affected party pursuant to section 21 of the *Act*, or to provide the appellant with a letter stating that all records require affected party notice, without recourse to a time extension, or charging a fee, no later than **October 9, 2012**.
4. I order the police to issue a final decision on the records where notice pursuant to section 21(1) of the *Act* was required, no later than **October 30, 2012** without a time extension or charging a fee.
5. In order to verify compliance with Provisions 1 and 2, I order the police to provide me with a copy of the notice sent to the affected party and the notice sent to the appellant, no later than **October 9, 2012**.
6. In order to verify compliance with Provision 3, I order the police to provide me with a copy of the cover letter sent to the appellant with the disclosed records, or a letter stating all records require affected party notice, no later than **October 9, 2012**.
7. In order to verify compliance with Provision 4, I order the police to provide me with a copy of the final decision letter no later than **October 30, 2012**.
8. These compliance verifications 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: \_\_\_\_\_  
Ruth Koziembrocki  
Analyst

October 2, 2012 \_\_\_\_\_