

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 PO-3794

Appeal PA17-377

Ministry of Finance

December 12, 2017

**Summary:** On February 15, 2017, the appellant submitted a request pursuant to the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the Cabinet Office for access to records. On March 10, 2017, the request was transferred to the Ministry of Finance (the ministry). The appellant appealed to this office on the basis that the ministry failed to provide an access decision within the prescribed time limit under the *Act*. This order finds the ministry to be in a deemed refusal situation pursuant to section 29(4) of the *Act*. The ministry is ordered to issue third party notices by December 22, 2017, and a final decision regarding access by January 26, 2018, without any recourse to a further time extension.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, ss. 26, 28 and 29.

### BACKGROUND:

[1] On February 15, 2017, the requester submitted a request to the Cabinet Office for access to the following records [under the *Freedom of Information and Protection of Privacy Act* (the *Act*)]:

- (1) All e-mails (including the entirety of any chain of e-mail correspondence and any attachments thereto), sent or received by, or forwarded or copied to, the e-mail account [named email address], which relate to artificial intelligence (a.k.a. "AI");

(2) All e-mails (including the entirety of any chain of e-mail correspondence and any attachments thereto), sent or received by, or forwarded or copied to, [named individual], which relate to artificial intelligence (a.k.a. "AI").

Time period of records: September 1, 2016 to February 15, 2017, both inclusive.

[2] On March 6, 2017, the Cabinet Office sent the requester an email indicating that the request would be transferred to the Ministry of Finance (the ministry). The Cabinet office also confirmed that the request had been narrowed as follows:

All e-mails (including the entirety of any chain of e-mail correspondence and any attachments thereto), sent or received by, or forwarded or copied to, the e-mail account [named email address], which relate to artificial intelligence (a.k.a. "AI"). The time period specified for this request is September 1, 2016 to February 15, 2017.

To be clear, only records that were authored/sent by [named email address] or records directly received by (rather than cc'd) [named email address] are to be considered responsive to the request.

[3] On March 22, 2017, the appellant advised the ministry that the request should be revised to "include all email chains which reference artificial intelligence (or "AI")."

[4] On April 27, 2017, the ministry issued an interim decision and a fee estimate for file number A-17-30.

[5] According to the ministry's letter dated April 27, 2017, the request was received by the ministry on March 13, 2017.

[6] On May 17, 2017, the ministry acknowledged receipt of the deposit paid by the requester. The ministry also claimed a 60 day time extension to July 17, 2017. The ministry indicated that the time extension was required due to the large volume of responsive records.

[7] On July 18, 2017, the requester sent an email raising concerns over the delays in the request. In that email, the requester asked the ministry to provide specific documents from the material it had thus far "pulled" in response to the request.

[8] On July 28, 2017, the requester (now the appellant) filed an appeal, alleging that the ministry was in a deemed refusal situation as it did not issue a decision in accordance with section 26 of the *Act*. Appeal PA17-377 was opened.

[9] Additional information regarding the appeal was requested from the appellant by this office on August 14, 2017.

[10] This information was received from the appellant on September 18, 2017 and the appeal was assigned to me in order to address the "deemed refusal" issue.

[11] On September 22, 2017, this office sent a Notice of Inquiry to the ministry stating that the ministry was in a deemed refusal situation for failing to issue an access decision within the 30 days mandated by section 26 of the *Act*. The Notice advised the ministry that if a final decision was not issued by October 6, 2017, I would be in a position to issue an order requiring the ministry to provide a decision letter to the appellant.

[12] Once the file was assigned to me, the ministry advised that it had issued a revised fee estimate on September 11, 2017, based on the appellant narrowing the request further.

[13] On September 28, 2017, the ministry confirmed receipt of the requested deposit from the appellant and issued a further time extension of 50 days to November 10, 2017. The ministry reiterated that the additional time was required in order to search through a large number of records.

[14] During the time period of September 29, 2017 and November 24, 2017, I attempted to assist the parties in reaching a mutually agreeable date for the issuance of a final access decision.

## **DISCUSSION:**

[15] On November 2, 2017, the ministry advised that the time extension letter dated September 28, 2017, was intended to provide it with time to identify affected third parties and that it was not intended to indicate that a final access decision would be issued by November 10, 2017. It was the ministry's intention to issue third party notices under section 28(1) of the *Act* by this date.

[16] The ministry advised me on two separate dates in November that it was endeavouring to issue third party notices to identified parties that were affected by the request.

[17] Despite these assertions, the ministry has not yet notified third parties, nor has it provided a definitive timeframe as to when the third party notices will be sent out.

[18] I find therefore, that the ministry is in a deemed refusal situation pursuant to section 29(4) of the *Act* as it has failed to issue an access decision pursuant to the statutory timelines set out in section 26 of the *Act*.

[19] In reference to the third party notification, section 28(1) of the *Act* states that:

28. (1) Before a head grants a request for access to a record,

(a) that the head has reason to believe might contain information referred to in subsection 17 (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 21 (1) (f),

the head shall give written notice in accordance with subsection (2) to the person to whom the information relates. R.S.O. 1990, c. F.31, s. 28 (1) .

### **Contents of notice**

(2) The notice shall contain,

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

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

(c) a statement that the person may, subject to subsection (5.1), within twenty days after the notice is given, make representations to the head as to why the record or part thereof should not be disclosed. R.S.O. 1990, c. F.31, s. 28 (2) ; 2016, c. 5, Sched. 10, s. 2 (1).

### **Time for notice**

(3) The notice referred to in subsection (1) shall be given within thirty days after the request for access is received or, where there has been an extension of a time limit under subsection 27 (1) , within that extended time limit. R.S.O. 1990, c. F.31, s. 28 (3).

[20] As per section 28(3) of the *Act*, the head must issue a notice to persons whose interests might be affected by the disclosure of the requested records upon receipt of the requests.

[21] Although the ministry failed to provide notice to third parties within thirty days after the request for access was received, affected third parties cannot be denied the opportunity to make representations as to why records or part thereof should not be disclosed.

[22] To ensure that there are no further delays in processing this request, I am ordering the ministry to issue the third party notices and subsequently, a final decision regarding access.

**ORDER:**

1. I order the ministry to issue third party notices by **December 22, 2017**.
2. I order the ministry to issue a final decision to the appellant regarding access to the records in accordance with the *Act* without recourse to any further time extension, no later than **January 26, 2018**.
3. In order to verify compliance with provision 1 of this Order, I order the ministry to provide me with a copy of the decision letter referred to in Provision 1 no later than **January 26, 2018**. 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: \_\_\_\_\_

Charish Maraj  
Analyst

December 12, 2017 \_\_\_\_\_