

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4346

Appeal PA22-00248

Ministry of the Environment, Conservation and Parks

January 31, 2023

Summary: On November 10, 2021, the requester submitted a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the Ministry of Environment, Conservation and Parks (the ministry) for access to records. The requester 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 a final decision regarding access by February 14, 2023, without any recourse to a time extension.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 26, 27, 28 and 29.

BACKGROUND:

[1] On November 10, 2021, the requester submitted a request to the ministry for the following records:

A proposed Aquaculture facility at 83 Berford Lake Road in the Town of South Bruce Peninsula.

[2] On November 10, 2021, the requester received an autoreply email from noreply@ontario.ca acknowledging receipt of the request and payment of the application fee and advised that a representative from the ministry may be in contact for additional information.

[3] On June 7, 2022, the Information and Privacy Commissioner/Ontario (this office) received a deemed refusal appeal from the requester (now the appellant) indicating that since November 10, 2021, there has been no response from the ministry. As a result, file PA22-00248 was opened.

[4] On August 16, 2022, the ministry wrote to the appellant and acknowledged receipt of the request and payment of the application fee.

[5] On September 13, 2022, this office sent a Notice of Inquiry (the Notice) to the appellant and the ministry stating that the appellant had filed an appeal which claimed the ministry was in a deemed refusal because the ministry had not issued a decision letter within the time period set out in section 26 of the *Act*. The Notice indicated that the ministry should issue a final access decision letter to the appellant as soon as possible. The Notice also indicated that should a resolution not be reached by October 4, 2022, an order requiring the ministry to issue a decision letter to the appellant could be issued.

[6] On September 26, 2022, the ministry issued third-party notices pursuant to section 28(1)(a) of the *Act*. The third-party notice stated the following in part:

A decision on whether the information will be disclosed will be made by October 31, 2022.

[7] On November 4, 2022, this office contacted the ministry and requested an update with respect to the issuance of a final decision. The ministry advised that a third party had requested "extra time for consultation as they were having some emailing issues on their end" and that the third party had confirmed that they would be responding by November 10, 2022. The ministry also advised that a final decision would be issued shortly.

[8] On Nov 21, 2022 and Nov 28, 2022, this office attempted to contact the ministry with respect to the issuance of a final decision. On December 1, 2022, the ministry responded and advised that efforts were being made to issue a decision "in the next few weeks".

[9] On December 13, 2022, this matter was transferred to me.

[10] Subsequent to the above, I contacted the ministry regarding the status of the decision letter. On December 23, 2022, the ministry responded and advised the following in part:

We are still in the process of finalizing our review and compiling the release package. This continues to be a priority for me and I am doing my best to have a decision made as soon as I can.

[11] To date, the ministry has not issued a decision regarding access to the

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

DISCUSSION:

[12] Section 26 of the *Act* states that the head of an institution shall, subject to sections 27 (time extension), 28 (third party notice) and 57 (payment of fees), give written notice of its decision on an access request within 30 days after the request is received.

[13] Where a head fails to issue a decision on access within the legislated framework, section 29(4) of the *Act* applies. This section states:

A head who fails to give the 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.

[14] The ministry received the appellant's request on or about November 10, 2021, and did not issue an access decision or extend the time for its decision pursuant to section 27 of the *Act* within the 30-day statutory requirement.

[15] Therefore, I find the ministry to be in a deemed refusal situation pursuant to section 29(4) of the *Act*.

[16] To ensure that there are no further delays I will order the ministry to issue a final access decision to the appellant no later than February 14, 2023, without recourse to any further time extensions under section 27 of the *Act*.

ORDER:

1. I order the ministry 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 **February 14, 2023**.
2. In order to verify compliance, the ministry shall provide me with a copy of the response referred to in provision 1 by February 14, 2023. This copy 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: _____

Soha Khan
Acting Adjudicator

January 31, 2023