

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4403

Appeal PA23-00096

Ontario Media Development Corporation

June 8, 2023

Summary: On January 24, 2022, the requester submitted a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the Ontario Media Development Corporation (the OMDC) for access to personal records. This order finds the OMDC to be in a deemed refusal situation pursuant to section 29(4) of the *Act*. The OMDC is ordered to issue a final decision regarding access by June 22, 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 January 24, 2022 the requester submitted a request to the OMDC which stated the following in part:

Any and all documents (including but not limited to correspondence, emails, letters, memos, handwritten notes and notebooks, files et cetera) pertaining to [requester] and [a named company] (and any of its agents including but not limited to ...) and any subsidiary companies with regard to the Ontario Interactive Digital Media Tax Credit. I request specific searches of documents of any nature relating to the following: [named individuals]

[2] On February 3, 2022, the OMDC issued an interim decision and fee estimate.

[3] On February 28, 2022, the requester submitted a fee waiver request to the OMDC.

- [4] On March 11, 2022, the OMDC issued a revised fee estimate decision.
- [5] On March 30, 2022, the requester provided a 50% deposit to the OMDC.
- [6] On April 28, 2022, the OMDC issued a time extension letter pursuant to section 27(1)(a) of the *Act* for an additional 90 days, thereby bringing the OMDC's three-month due date to issue its final access decision to July 28, 2022.
- [7] On April 1, 2022, the Information and Privacy Commissioner/Ontario (this office) received an appeal from the requester (now the appellant) appealing the revised fee estimate decision by the OMDC. That matter is being dealt with under a separate file. However, during the processing of that file, the issue of deemed refusal was raised as the OMDC had not issued a decision within the time period set out in section 26 of the *Act*. As a result, file PA23-00096 was opened and assigned to me as the Acting Adjudicator.
- [8] On February 13, 2023, I sent a Notice of Inquiry (the Notice) to the appellant and the OMDC. The Notice indicated that the OMDC was in a deemed refusal by not issuing a decision letter within the time period set out in section 26 of the *Act*.
- [9] The Notice indicated that the OMDC should issue a final access decision letter to the appellant as soon as possible and forward a copy to me. The Notice also indicated that, should a resolution not be reached by February 28, 2023, I may issue an order requiring the OMDC to issue a decision letter to the appellant.
- [10] Subsequent to the issuance of the Notice, I attempted to assist the parties in reaching a mutually agreeable date for the issuance of a final access decision.
- [11] On February 15, 2023, during a telephone conversation, the OMDC indicated that they had been working away at this appeal and needed until the end of March 2023 to issue its final access decision. The appellant accepted this timeline.
- [12] On March 10, 2023, the OMDC provided another update and indicated that they had been working on a large volume of records and were now aiming to issue the final access decision by the end of April 2023.
- [13] On April 19, 2023, the OMDC explained that while they continue to review and assess the records associated with this appeal, they needed to allow extra time to prepare the Index of Records and to review the package and submitted that they were now aiming to issue the final decision by end of May 2023.
- [14] The appellant accepted the new timeline.
- [15] On May 10, 2023, the OMDC advised this office that while they continue their review of the records, the final access decision may not be issued to the appellant until mid-June 2023.
- [16] After receiving the above update, the appellant expressed his disappointment with the OMDC's response and continued delays. I note that it has been almost a year and a half since the access request was submitted, and to date, the OMDC has

failed to issue its final access decision to the appellant.

DISCUSSION:

[17] 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.

[18] 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.

[19] The OMDC received the appellant's request on or about January 24, 2022, and issued an interim access and fee estimate decision on February 3, 2022. On April 28, 2022, the OMDC issued a time extension decision for additional 90-days, bringing the due date to issue its final access decision by July 28, 2022.

[20] As of today's date, the OMDC has not issued a final access decision. I therefore find the OMDC to be in a deemed refusal situation pursuant to section 29(4) of the *Act*.

[21] To ensure that there are no further delays I will order the OMDC to issue a final access decision to the appellant no later than June 22, 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 **June 22, 2023**.
2. In order to verify compliance, the ministry shall provide me with a copy of the response referred to in provision 1 by **June 22, 2022**. 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

June 8, 2023