

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4393

Appeal MA22-00696

Toronto Police Services Board

June 12, 2023

Summary: On October 7, 2022, the requester submitted a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the Toronto Police Services Board (the TPS) for access to general records. The requester appealed to this office on the basis that the TPS failed to provide an access decision within the prescribed time limit under the *Act*. This order finds the TPS to be in a deemed refusal situation pursuant to section 22(4) of the *Act*. The TPS is ordered to issue a final decision regarding access by June 26, 2023, without any recourse to a time extension.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, ss. 19, 22(4).

BACKGROUND:

[1] On October 7, 2022 the requester submitted a request to the TPS for the following records:

1. All email communications from the records of [named individual] that contain the keyword "encampment" and/or "encampments." From March 13 2020 to October 7, 2022
2. All communications that contain the term "encampment steering committee" and/or "encampments steering committee" in the emails of [named individuals] from March 13, 2020 to October 7, 2022. Please note

that this request will duplicate the previous request with respect to [named individual]. If the above request is processed as is, [named individual] name can be removed from this request.

[2] On November 8, 2022, the Information and Privacy Commissioner/Ontario (this office) received a deemed refusal appeal from the requester (now the appellant) indicating that there has been no response from the TPS. As a result, file MA22-00696 was opened and assigned to me as the Acting Adjudicator.

[3] On January 19, 2023, I sent a Notice of Inquiry (the Notice) to the appellant and the TPS. The Notice indicated that the appellant had filed a deemed refusal appeal against the TPS on the basis that the TPS had not issued a decision letter within the time period set out in section 19 of the *Act*.

[4] The Notice of Inquiry indicated that the TPS 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 2, 2023, I may issue an order requiring the TPS to issue a decision letter to the appellant.

[5] 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.

[6] On February 2, 2023, the TPS indicated that the relevant stakeholders had been consulted with, the responsive records had been gathered and the records review was still underway. The TPS also advised that further consultations were required and advised that it was aiming to issue its final access decision by March 2, 2023. The appellant accepted this timeline.

[7] On March 1, 2023, the TPS advised this office that additional time would be required to conduct internal and external consultations and to review and prepare the records for release. The TPS also indicated that it was aiming to issue its final decision by May 1, 2023.

[8] On March 8, 2023, I advised the TPS that the appellant agreed to the new timeline and requested that updates on this file be provided to me on a regular basis.

[9] On March 29, 2023, the TPS provided an update and stated that the consultations had not commenced but that they were hopeful to do so in the next 2 -3 weeks.

[10] On April 24, 2023, the TPS provided another update via email. The email stated the following, in part:

I am hoping to forward a consultation this week. At this time, I am uncertain that a final decision will be issued by May 1st, 2023, however a response will be provided as soon as practicable.

[11] As of today's date, the TPS has not issued its final access decision on this matter.

DISCUSSION:

[12] Section 19 of the *Act* states that the head of an institution shall, subject to sections 20 (time extension), 21 (third party notice) and 45 (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 22(4) of the *Act* applies. This section 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.

[14] The TPS received the appellant's request on or about October 7, 2022, and did not issue an access decision or extend the time for its decision pursuant to section 20 of the *Act* within the 30-day statutory requirement.

[15] Therefore, I find the TPS to be in a deemed refusal situation pursuant to section 22(4) of the *Act*.

[16] To ensure that there are no further delays I will order the TPS to issue a final access decision to the appellant no later than June 26, 2023, without recourse to any further time extensions under section 20 of the *Act*.

ORDER:

1. I order the TPS 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 26, 2023**.
2. In order to verify compliance, the TPS shall provide me with a copy of the response referred to in provision 1 by **June 26, 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

_____ June 12, 2023