

Information and Privacy Commissioner,  
Ontario, Canada



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

---

## ORDER PO-4540

Appeal PA23-00363

Ministry of the Environment, Conservation and Parks

August 6, 2024

**Summary:** On April 17, 2023, the requester asked the ministry for records related to Rondeau Provincial Park. The requester filed an appeal because the ministry failed to provide a decision within the prescribed time. This order finds the ministry to be in a deemed refusal situation and orders the ministry to issue a final decision by August 20, 2024.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, as amended, sections 26, 27 and 29.

**Orders Considered:** Orders PO-2595 and PO-2634.

### BACKGROUND:

[1] On April 17, 2023, the requester submitted an access request to the Ministry of Environment, Conservation and Parks (the ministry) for:

All internal and external correspondence from June 1, 2018 to the date of this request, on behalf of the Ministry regarding:

- existing cottage lot leases in Rondeau Provincial Park, including the lease conditions
- the extension of existing cottage lot leases in Rondeau Provincial Park

- the sale or transfer of cottage lots or other land in Rondeau Provincial Park

[2] On April 24, 2023, the ministry acknowledged receipt of the access request.

[3] On June 22, 2023, the Information and Privacy Commissioner of Ontario (the IPC) received a deemed refusal appeal from the requester (now the appellant) pursuant to section 29(4) of the *Act* and an acting adjudicator was assigned to explore resolution.

[4] On August 8, 2023, the acting adjudicator issued a Notice of Inquiry (the notice) to the parties, advising that the appellant had filed a deemed refusal appeal against the ministry. It also advised the ministry to issue a final access decision as soon as possible and that should a resolution not be reached by August 22, 2023, an order requiring the ministry to issue a decision to the appellant could be issued.

[5] On August 21, 2023, the ministry advised that a fee estimate would be issued to the appellant, which the ministry believed would resolve the deemed refusal.

[6] On August 22, 2023, the ministry issued a fee estimate and interim decision letter.

[7] On August 29, 2023, the ministry confirmed that the appellant had responded to the fee estimate and interim decision letter issued on August 22, 2023 and it was working with the appellant to narrow the scope of the access request and reduce fees.

[8] On September 14 and 22, 2023, the ministry advised the acting adjudicator that a revised fee estimate would be provided the following week.

[9] On October 17, 2023, the ministry issued a revised fee estimate and interim decision to the appellant, with a copy to the acting adjudicator. That same day, the appellant advised that the revised fee estimate and interim decision issued on October 17, 2023 was the same fee estimate and interim decision of August 22, 2023 and did not include the narrowed scope of the access request. The ministry apologized for the error, indicating that a revised fee estimate would be issued shortly.

[10] On October 26, 2023, the ministry provided an updated fee estimate and interim decision dated October 26, 2023.

[11] On October 27, 2023, the appellant advised that the fee estimate and interim decision of October 26, 2023 did not include the narrowed scope of the access request.

[12] On December 8, 2023, the ministry advised the acting adjudicator that it had not received a deposit from the appellant.

[13] On December 8, 2023, the acting adjudicator advised that the appellant had informed the ministry on October 27, 2023 that the fee estimate and interim decision did not include the narrowed scope of the access request. The ministry confirmed it would

provide a revised fee estimate and interim decision for the narrowed scope.

[14] On December 20, 2023, the ministry issued another fee estimate and interim decision for the narrowed scope of the access request.

[15] On January 9, 2024, the ministry contacted the acting adjudicator to advise that the appellant had paid the fee deposit and that it would begin retrieving the records.

[16] On January 9, 2024, the ministry explained that it required three months to retrieve the responsive records and asked if the IPC would consider closing the case with the fee estimate. The acting adjudicator informed the ministry that a deemed refusal cannot be resolved until a final decision letter has been issued.

[17] On April 12, 2024, the appellant was advised by the ministry that it was retrieving the records and did not have a specific timeframe for the release of records.

[18] On April 23, 2024, the ministry advised the acting adjudicator that it hoped to issue a decision in May 2024 and it would provide a more definitive date.

[19] On April 25, 2024, the ministry advised the acting adjudicator that it did not have a definitive date to issue a final decision and the access request may be expedited if its scope could be further narrowed by the appellant. The acting adjudicator advised the ministry that a final decision should be issued to the appellant as soon as possible.

[20] On April 29, 2024, the appellant advised that they expected a final decision to be issued no later than May 30, 2024.

[21] On June 3, 2024, the acting adjudicator advised that the IPC would issue an order against the ministry because a final decision letter was not issued on May 30, 2024.

[22] On June 10, 2024, the ministry asked the acting adjudicator if the appellant would further narrow the scope of the access request and proposed a further narrowed scope.

[23] On June 12, 2024, the acting adjudicator forwarded the ministry's proposal to the appellant, asking if they agreed with it.

[24] On June 13, 2024, I was assigned to this appeal as a case lead and reviewed all file materials.

[25] On June 26, 2024, I asked the appellant if they had considered the narrowed scope proposed by the ministry, as outlined in the acting adjudicator's email of June 12, 2024.

[26] On June 27, 2024, the appellant advised that they were not willing to further narrow the scope of their access request and asked that this appeal continue through the IPC's appeal process.

[27] On July 11, 2024, I advised the ministry that the appellant had declined its proposal

and that I would proceed with issuing an order against the ministry.

[28] Considering the above and to ensure there are no further delays in processing this access request, I am ordering the ministry to issue a final access decision to the appellant.

## **DISCUSSION:**

[29] 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.

[30] 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.

[31] Past IPC orders have found that an interim decision/fee estimate should be issued within the initial 30-day time limit for responding to a request.<sup>1</sup> Otherwise, the institution would be in a “deemed refusal” pursuant to section 29(4) of the *Act*. Issuing an interim decision/fee estimate once the time limit has expired does not cure a deemed refusal.<sup>2</sup>

[32] The ministry acknowledged the request on April 24, 2023. The ministry has yet to issue its final access decision. It has only issued fee estimates and interim decisions, which based on previous IPC orders, does not cure a deemed refusal.<sup>3</sup> Therefore, I find the ministry to be in a deemed refusal situation pursuant to section 29(4) of the *Act*.

[33] 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 August 20, 2024, 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 in response to their access request of April 17, 2023 in accordance with the *Act* without recourse to a time extension, no later than **August 20, 2024**.

---

<sup>1</sup> Orders PO-2634.

<sup>2</sup> Orders PO-2595 and PO-2634.

<sup>3</sup> Orders PO-2595 and PO-2634.

2. In order to verify compliance, the ministry shall provide me with a copy by email of the final access decision referred to in provision 1 by August 20, 2024.

Original signed by: \_\_\_\_\_

Alline Haddad  
Case Lead

\_\_\_\_\_ August 6, 2024