

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-4541

Appeal PA24-00122

Ministry of the Solicitor General

August 6, 2024

**Summary:** On October 11, 2023, the requester asked the ministry for records related to the use of force on inmates at two detention centres. 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 October 11, 2023, the Ministry of the Solicitor General (the ministry) received an access request for:

A digital, machine-readable (spreadsheet) copy of the number of times staff at the Hamilton-Wentworth Detention Centre and Niagara Detention Centre used force on inmates, the type of force used, the reason it was used, as well the number of staff injured and number of inmates injured from these incidents from Jan. 1, 2018 to the most recent records available.

[2] On November 14, 2023, the ministry issued a letter, requesting an extension of time to January 10, 2024 to respond to the request. A decision was not issued by January

10, 2024.

[3] On February 28, 2024, the requestor, now the appellant, filed an appeal with the Information and Privacy Commissioner of Ontario (the IPC) because the ministry did not issue a decision by the extended due date. An acting adjudicator was assigned to explore resolution.

[4] On April 15, 2024, the acting adjudicator issued a Notice of Inquiry to the ministry, advising that it must issue a decision to the appellant by April 29, 2024.

[5] On April 29, 2024, the ministry contacted the acting adjudicator and asked for an additional extension of time until May 31, 2024 to issue a decision. The appellant agreed to the time extension.

[6] On May 28, 2024, the acting adjudicator contacted the ministry to inquire about the status of issuing a decision and the ministry asked for a further extension of time.

[7] On May 29, 2024, the ministry sent a fee estimate letter to the appellant and provided the acting adjudicator with a copy. The ministry explained that this letter constituted an interim access decision only and that a final access decision would only be made after the required deposit is received and all responsive records are reviewed.

[8] On June 3, 2024, the acting adjudicator advised the ministry that an interim access decision with a fee estimate would not resolve the deemed refusal.

[9] On June 7, 2024, the acting adjudicator followed up with the ministry to determine whether it would issue a final decision.

[10] On June 10, 2024, the ministry advised that it would not be issuing a final decision at this time and that it believes that the fee estimate resolves the deemed refusal.

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

[12] On June 27, 2024, I sent the ministry a letter encouraging it to issue a final decision to the appellant, with a copy to me, by July 12, 2024.

[13] A final decision was not issued by July 12, 2024.

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

## **DISCUSSION:**

[15] The circumstances giving rise to a deemed refusal are set out in section 29(4) of the *Act*. This section states:

A head who fails to give 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.

[16] Once a time extension has been issued, it is expected that, prior to the expiry of the extension, subject to sections 28 and 57 of the *Act*, written notice will be given to the requester as to whether access to the record or a part thereof will be given and for access to the record to then be given to the requester. This is referred to as a final access decision. If a final access decision is not issued prior to the expiry of the extension, the institution would be in a "deemed refusal" pursuant to section 29(4) of the *Act*. The issuance of a further time extension does not cure a deemed refusal.<sup>1</sup>

[17] It is the ministry's position that issuing an interim decision with a fee estimate resolves the deemed refusal. However, previous IPC orders have found that issuing an interim decision/fee estimate once the time limit has expired does not resolve a deemed refusal.<sup>2</sup>

[18] As of today, the ministry has not issued its final access decision.

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

[20] 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 regarding access to the records in accordance with the *Act* without recourse to a time extension, no later than **August 20, 2024**.
2. To verify compliance, the ministry shall provide me with a copy by email of the response referred to in provision 1 **by August 20, 2024**.

Original signed by: \_\_\_\_\_  
Alline Haddad  
Case Lead

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

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<sup>1</sup> Order PO-2595.

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