

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4550

Appeal PA24-00107

Ministry of Long-Term Care

September 13, 2024

Summary: On November 8, 2023, the requester asked for records related to a long-term care facility. 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 September 27, 2024 and October 15, 2024 where third party notification is required.

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

Orders Considered: MO-1520-I, MO-2029, MO-2514, PO-2595, and PO-2634.

BACKGROUND:

[1] The appellant mailed a letter to the minister's office addressed to the then Minister of Long-Term Care and dated November 8, 2023, requesting access to:

- Documents, e-mails, and other communications between [the former minister's office], including [their] political staff and [the principals of third party companies] between October 15, 2022 and April 30, 2023 regarding [a third party company's] plans for an expanded and redeveloped facility at [a long-term care facility] site [in a city].

- Documents related to the criteria and process used to determine whether or not the license and bed expansion should be approved by your Ministry and who approved it.
- Documents, e-mails and other communications related to the role your Ministry played in seeking a Minister's Zoning Order (MZO) for [a city] in furtherance of [a third party company's] plan to build a 15 storey long-term care facility in that [city].

[2] On January 19, 2024, the ministry acknowledged receipt of the request and fee on January 17, 2024.

[3] On February 15, 2024, the ministry issued a time extension notice to the appellant pursuant to section 27 of the Act, extending the time for an additional 120 days until June 18, 2024.

[4] On February 21, 2024, the appellant filed an appeal with the Information and Privacy Commissioner of Ontario (the IPC) related to the ministry's time extension.

[5] On May 23, 2024, I was assigned as the case lead for this appeal.

[6] On June 10, 2024, I requested an update on the request from the ministry. It responded: "The due date to provide a decision to the requestor is June 18. The request is still out for search within our divisions." I advised the ministry that I would follow-up the following week.

[7] On June 19, 2024, I inquired about whether the ministry had issued a decision and requested a response by June 20, 2024. The ministry did not respond.

[8] On June 24, 2024, the appellant sent me a copy of a second time extension letter from the ministry dated June 18, 2024. In this letter, the ministry extended the time to respond by 180 days from the initial 30-day time period after receipt of the request, until August 16, 2024, to complete third party consultations.

[9] On June 27, 2024, I advised the ministry that the appellant did not consent to the ministry's additional extension of time and inquired whether the ministry would consider issuing a decision and releasing records in a staggered manner. While I requested a response by July 2, 2024, no response was received.

[10] On July 4, 2024, I again requested a response to my June 27, 2024 email. The ministry responded as follows on July 10, 2024: "Thank you for your patience as the ministry continues to work towards the release of this records package. I am currently working with the responsible Division to finalize the responsive records package."

[11] On July 23, 2024, I decided to conduct an inquiry and issued a Notice of Expedited Inquiry, requiring the ministry to issue a final decision in response to the request by August 16, 2024. The ministry acknowledged receipt of the notice.

[12] On August 16, 2024, the ministry issued an interim decision with a fee estimate of \$140.00, requiring a deposit of \$70.

[13] On August 19, 2024, I advised the ministry that issuing an interim decision with a fee estimate once the 30-day time limit for responding to a request had expired, did not cure a deemed refusal and that I would proceed with issuing an order. On the same day, I spoke to the appellant, who advised the fee deposit of \$70 was mailed to the ministry.

[14] On September 10, 2024, the ministry confirmed receipt of the fee deposit. I asked the ministry if a final decision would be issued. The ministry advised it would be completing additional third party consultations and giving parties two weeks from September 13, 2024 to provide submissions. The ministry advised it would then require an additional two weeks to review and issue a final decision with fee by October 11, 2024.

[15] In light of 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:

[16] 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.

[17] 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.

[18] The ministry received the appellant's request on January 17, 2024. On February 15, 2024, the ministry issued a time extension pursuant to section 27 of the Act, extending the time to issue its decision to June 18, 2024. On June 18, 2024, the ministry issued a second time extension further extending the time to issue its decision to August 16, 2024, to complete consultations. On August 16, 2024, the ministry issued an interim decision with a fee estimate.

[19] I note that previous orders have found that extending the time for response a second time before the time limit has expired does not cure a deemed refusal situation.¹

[20] I also note that the ministry's interim decision of August 16, 2024 was issued on

¹ Orders MO-2514 and MO-2029

the date by which the ministry was to issue its final decision.

[21] It is important to note that although the ministry issued an interim decision on August 16, 2024, previous orders have found that an interim decisions/fee estimates must be issued within the initial 30-day time limit for responding to a request.² To be clear, because the 30-day time limit, or in this case the time-extension date had passed, the ministry was required to issue a final access decision, not an interim decision.³ As such, the ministry is in a deemed refusal situation.

[22] As previously noted, as of today's date, the ministry has not issued a final access decision.

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

[24] 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 October 15, 2024, without recourse to any further time extensions under section 27 of the Act.

ORDER:

1. Where notice to third parties is not required to be given, I order the ministry to issue a **final** access decision to the appellant in accordance with the *Act* without recourse to a time extension, no later than **September 27, 2024**.
2. Where notice to third parties is required to be given, I order the ministry to issue a **final** access decision to the appellant in accordance with the *Act* without recourse to a time extension, no later than **October 15, 2024**.
3. In order to verify compliance, the ministry shall provide me with a copy by email of the final access decisions referred to in provisions 1 and 2 by **September 27, 2024** and **October 15, 2024** respectively.

Original Signed by: _____
Asma Mayat
Case Lead

September 13, 2024 _____

² Orders MO-1520-I and PO-2634

³ Orders PO-2595 and PO-2634