

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 MO-4580

Appeal MA24-00033

The Corporation of the City of Cornwall

October 15, 2024

**Summary:** On August 8, 2023, the appellant asked the city for access to records related to a recreational centre. The appellant filed an appeal because the city failed to provide a decision within the prescribed time. This order finds the city to be in a deemed refusal situation and orders the city to issue a final decision by October 29, 2024, and November 14, 2024, where third party notification is required.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, as amended, sections 19, 20 and 22.

### BACKGROUND:

[1] On August 8, 2023, the appellant submitted a multi-part access request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the Corporation of the City of Cornwall (the city) for the period of April 1, 2009, to present as follows:

1. All records regarding any agreements between the Corporation of the City of Cornwall or any of its constituent parts, affiliated entities, agents, representatives, or employees (collectively, "Cornwall") and anyone else concerning any cameras or camera systems installed at the [recreational centre] and all correspondence concerning the same, including but not limited to any agreements and related correspondence concerning access to footage recorded on those cameras or camera systems;

2. All records concerning [an individual's] involvement in the planning, development, construction, and operation of the [recreational centre], including but not limited to all correspondence involving [this individual] and the [recreational centre];

3. All records regarding the tenancy or any other use of the [recreational centre] by the [a soccer organization or indoor soccer league], or any of their constituent parts, parent, affiliated, or subsidiary entities, agents, representatives, or employees...and all correspondence concerning the same, including but not limited to any correspondence between Cornwall and [the soccer organization's] directors, including: [a list of four individuals]; and

4. All records regarding any agreements between Cornwall and [a private sector company] or any of its constituent parts, parent, affiliated, or subsidiary entities, agents, representatives, or employees, including but not limited to an agreement concerning maintenance of traffic controller cabinets and traffic signal and roadway lighting poles, and all correspondence concerning the same.

[2] On August 11, 2023, the city acknowledged receipt of the request.

[3] On September 8, 2023, the city issued a time extension notice<sup>1</sup> pursuant to section 20 of the *Act* to extend the time to respond by an additional 90 days until December 11, 2023, for items 1 and 4 of the request due to a large volume of records that would need to be searched and reviewed. For items 2 and 3 of the request, the city sought clarification from the appellant, advising that the file would be closed if a response was not received within 30 days of the notice being issued.

[4] On September 18, 2023, the appellant asked the city for additional information about its time extension for items 1 and 4 of the request and clarified items 2 and 3 of the request.

[5] On October 17, 2023, the city issued a time extension notice<sup>2</sup> pursuant to section 20 of the *Act* to extend the time to respond by an additional 60 days until December 11, 2023, for items 2 and 3 of the request and confirmed receipt of the appellant's clarifications.

[6] On October 20, 2023, the appellant asked the city for additional information about its time extension for items 2 and 3 of the request.

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<sup>1</sup> While the notice was dated September 8, 2023, the appellant advised the city that he received it on September 11, 2023 by email.

<sup>2</sup> While the notice was dated October 17, 2024, the appellant advised the city that he received it on October 18, 2023 by email.

[7] On January 12, 2024, the appellant filed an appeal with the Information and Privacy Commissioner of Ontario (the IPC) when the city failed to issue a decision to the appellant by the extended due date of December 11, 2024. File MA24-00033 was opened and assigned to an acting adjudicator.

[8] On March 11, 2024, the acting adjudicator issued a Notice of Inquiry (the notice). The notice advised the city to issue a final access decision to the appellant as soon as possible and that should a resolution not be reached by March 25, 2024, an order requiring the city to issue a decision letter to the appellant could be issued.

[9] On March 27, 2024, the acting adjudicator sent an email to the city, requesting a response to the March 11, 2024 notice.

[10] On April 9, 2024, the city responded with an interim decision dated January 12, 2024.

[11] On April 11, 2024, the acting adjudicator advised the city that issuing an interim decision did not cure a deemed refusal and inquired when the interim decision was issued.

[12] On April 18, 2024, the acting adjudicator received an email from the city's representative advising it had been retained as counsel.

[13] On April 23, 2024, the acting adjudicator discussed the appeal with city's representative and inquired:

- When the January 12th, 2024 interim decision letter was sent to the appellant and why it was dated January 12, 2024 but only sent to the acting adjudicator on April 9, 2024;
- if the interim decision related to all items, or only items 1 and 4 of the request;
- if so, where was the decision for items 2 and 3 of the request; and
- when the city would issue a final access decision because an interim decision would not remedy a deemed refusal.

[14] On May 23, 2024, the acting adjudicator followed up with the city's representative on the issues discussed in their April 23, 2024, phone call.

[15] On May 28, 2024, the acting adjudicator sent another email to the city's representative, requesting an update and a final access decision by June 11, 2024.

[16] On June 11, 2024, the city advised that it was preparing a final access decision with fee and requested additional time to respond to the request.

[17] On June 13, 2024, I was assigned as the case lead for this appeal. I reviewed the appeal file and inquired several times as to when the city anticipated issuing a final access

decision. On June 26, 2024, I received a response advising a final access decision would be issued on August 26, 2024.

[18] On July 2, 2024, after speaking with the appellant, I proposed to the city the idea of releasing records in a "phased" or "staggered" approach to expedite the release of records that were already identified by the city as being responsive to the request.

[19] On July 4, 2024, the city responded, agreeing to the above. The city advised it would propose decision dates by July 8, 2024 to take back to the appellant.

[20] On July 16, the city outlined the following:

- First decision letter to be released on August 6, 2024.
- Second decision letter to be released on August 26, 2024.
- The city's review of responsive records is ongoing, and it anticipates it may need to deliver notices to affected persons in accordance with section 21 of the *Act*. If that were to occur, a final decision letter may be released by September 30, 2024.

[21] On August 12, 2024, the city issued a decision, granting full access to documents 1-93 for item 4 of the request. It advised that third party notification was required pursuant to section 21 of the *Act* and a final decision would be issued by September 12, 2024.

[22] On August 28, 2024, the city issued a second decision, granting full access to documents 94-152 for item 4 of the request, pending third party notification, indicating that a final decision in response to these items would be issued by September 28, 2024.

[23] On August 29, 2024, I inquired as to why the two decisions only responded to item 4 of the request and when the city intended to respond to the remaining items.

[24] On September 4, 2024, the city advised it was "continuing its review of the responsive records collected to date..., including for Item 4. The city proposes to continue to issue decision letters on a rolling basis, with the following dates proposed:

- Items 1 and 2 – September 23
- Item 3 – September 30
- Item 4 – October 7

[25] On September 13, 2024, I contacted the appellant to inquire if a final decision was received in response to the August 12, 2024, decision issued by the city. The appellant advised that a final decision had not been received. Accordingly, I contacted the city inquiring about the delay.

[26] On September 18, 2024, I again inquired from the city why a final decision was not issued in response to documents 1-93 that was pending consideration for third party notification, as noted in the August 12, 2024 decision. I advised that a final decision was to be made by September 12, 2024, and by September 28, 2024, for the August 28, 2024, decision for documents 94-152.

[27] On September 23, 2024, the city issued a decision responding to items 1-3 of the request, advising that a final decision would be made by October 7, 2024, pending consideration of third party representations.

[28] On September 24, 2024, the city's representative confirmed the decision dated September 23, 2024. It also advised:

In respect of Item 4: the City's review of the responsive records is ongoing, and the intention remains to deliver a decision letter by October 7th for the records not covered by the earlier decision letters of August 12th and 28th. The Clerk is preparing a decision letter for those records that were subject to a Third-Party Notice.

[29] On October 1, 2024, I advised the city to issue final decisions by October 2, 2024, in response to the decisions issued on August 12, 2024, and August 28, 2024.

[30] On October 2, 2024, the city issued a decision with respect to item 4 of the request, advising "A further decision has been made to grant access in part. Information on 42 pages of records will be partially withheld (redacted). 12 pages will be withheld in full."

[31] On October 3, 2024, I inquired from the city if the decision responded to the 152 items identified in its letters dated August 12 and August 28, 2024.

[32] To date, a response has not been provided.

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

## **DISCUSSION:**

[34] 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.

[35] 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.

[36] The city received the appellant's request on or about August 11, 2023, and pursuant to section 20 of the *Act*, extended the time to issue its final decision to December 11, 2023.

[37] On August 12 and 28, 2024, the city issued decisions regarding documents 1-152 for item 4 of the request, pending third party notification. It is unclear at this time if the subsequent decision of October 2, 2024, is a new decision, or a final decision in response to one or both of the previous decisions.

[38] On September 23, 2024, the city issued a decision responding to items 1-3 of the request, advising that a final decision would be made by October 7, 2024, pending consideration of third party representations. To date, a final decision has not been issued.

[39] With respect to item 4, the city maintains that its search for responsive records was ongoing and that a final decision would be issued by October 7, 2024. To date, a final decision has not been issued.

[40] As previously noted, as of today's date, the city has not issued a final decision regarding the request in its entirety.

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

[42] To ensure that there are no further delays, I will order the city to issue a final decision to the appellant, without recourse to any further time extension under section 20 of the *Act*.

## **ORDER:**

1. Where notice to third parties is not required to be given, I order the city to issue a **final** access decision to the appellant in accordance with the *Act* without recourse to a time extension, no later than **October 29, 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 **November 14, 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 **October 29, 2024**, and **November 14, 2024**, respectively.

Original Signed by: \_\_\_\_\_  
Asma Mayat  
Case Lead

\_\_\_\_\_ October 15, 2024