

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4579

Appeal PA24-00110

Ministry of Health

December 2, 2024

Summary: On November 5, 2023, the appellant asked the ministry for records related to vaccine passports, vaccine mandates and exemption grounds. The requester filed an appeal with the IPC because the ministry did not issue an access decision within the prescribed time limit. The decision-maker agrees that the ministry is deemed to have refused the access request under section 29(4) of the *Act* and orders the ministry to issue a final access decision by December 27, 2024.

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

Orders Considered: MO-1520-I, MO-1777, PO-2595 and PO-2634.

BACKGROUND:

[1] On November 5, 2023, the appellant filed an access request to the Ministry of Health (the ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for:

all records / communications re vaccine passports, vaccine mandates and or proof of vaccine certificates, as well as same for any records / communications regarding the Goodlifegym "FastPass" / "Fast Pass" system, using those keywords. Also provide all records and communications in possession of any agency regarding exemptions on medical or conscience

or religious etc. or human rights code grounds to vaccine passports, vaccine mandates and proof of vaccine certificates. Also provide all records and drafts and communications re the OHRC September 22, 2021 statement entitled Ontario Human Rights Commission policy statement on COVID-19 vaccine mandates and proof of vaccine certificates. E-copies requested only. The time period is Jan 1 2020 to Nov 5 2023.

[2] On November 6, 2023, the ministry acknowledged receipt of the request.

[3] After the appellant requested an update from the ministry, on December 28, 2023, there was a discussion between the parties about the scope of the request and the appellant sent the ministry news articles to clarify the request.

[4] On January 9, 2024, the appellant subsequently requested confirmation that the ministry had received his previous email.

[5] On January 10, 2024, the ministry advised that it had not seen additional emails from the appellant. The following day, the appellant provided screenshots of emails previously sent to the ministry. On January 12, 2024, the ministry acknowledged receipt of the email and advised it would forward the information to the program area.

[6] On February 5, 2024, the ministry advised that a preliminary search located a significant volume of potentially responsive records and large portions would likely be withheld due to the exemptions of cabinet records, and advice and recommendations (sections 12 and 13 of the *Act*). The ministry asked the appellant questions, requiring responses within 30 days; otherwise, the request would be considered abandoned, and the file would be closed.

[7] On February 7, 2024, the appellant requested that the file remain open for 45 days to respond to the ministry. The appellant also sent two additional emails to the ministry with clarifications.

[8] On February 9, 2024, the appellant sent another email to the ministry regarding the ability to search the ministry's file server repository with keywords.

[9] On February 24, 2024, the appellant filed an appeal with the Information and Privacy Commissioner of Ontario (the IPC) because the ministry did not issue an access decision within the time limit prescribed by section 29(4) of the *Act*.

[10] On May 21, 2024, I was assigned as the case lead for this appeal.

[11] On May 24, June 3 and June 6, 2024, I requested a discussion with the ministry about this appeal; the ministry did not respond. In my last attempt, I provided a due date of June 10, 2024 for a response.

[12] On June 10, 2024, the ministry advised that the request was in the clarification

stage and that it had not received a response from the appellant to its additional clarification request of February 5, 2024. I advised the ministry that the appellant had sent two emails to the ministry on February 7, 2024, and one email on February 9, 2024, in response to the ministry's clarification request. The ministry did not respond.

[13] On July 8, 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 access request by July 22, 2024.

[14] On July 24, 2024, the ministry acknowledged receipt of the notice and requested a discussion about the request.

[15] On July 29, 2024, the ministry maintained its position that the request was in the clarification stage and advised that the request was voluminous and its scope needed to be narrowed. I encouraged the parties to work together to clarify the request in the interests of resolving this appeal.

[16] On October 10, 2024, the ministry issued an interim decision with fee estimate following clarification efforts. On October 28, 2024, the ministry issued a time extension decision, extending the time to respond by 60 days to December 27, 2024 because the ministry had to search a large volume of records.

[17] On November 8, 2024, the ministry processed the appellant's fee deposit.

[18] Considering this and to ensure there are no further delays in processing this request, I will order the ministry to issue a final access decision to the appellant.

DISCUSSION:

[19] 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.

[20] 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.

[21] The ministry acknowledged receipt of the appellant's request of November 5, 2024, on November 6, 2023. After the appellant requested an update from the ministry, there were discussions between the parties from December 28, 2023 to February 9, 2024. During this time, the appellant responded to the ministry's clarification requests. The

ministry never advised the appellant that his request was abandoned due to a lack of response from him. The ministry also did not acknowledge the appellant's emails sent in February 2024, requiring the appellant to file an appeal with the IPC; it did not resume clarifying the request until July 29, 2024, after this appeal was filed and an inquiry initiated, despite repeated attempts by me to contact the ministry.

[22] It is important to note that although the ministry issued an interim decision on October 10, 2024, and a time extension on October 28, 2024, both were issued after the 30-day time limit for responding to an access request, which prevents it from doing so.

[23] Previous IPC orders have found that interim decisions/fee estimates and time extensions must be issued within the initial 30-day time limit for responding to a request.¹ Despite any appropriate pauses in the time limit calculation where the ministry sought and received clarifications from the appellant, which the appellant demonstrated having provided to the ministry, the ministry is in a deemed refusal situation for having not responded to the appellant's request within the initial 30-day time limit. To be clear, because the 30-day time limit had passed, the ministry was required to issue a final access decision, not an interim decision² or an extension of time³.

[24] While the clock to respond to an access request is paused when an institution seeks clarification from the appellant, the clock is re-started once the appellant provides the requested clarification. If the requested clarification is inadequate, it is the ministry's obligation to seek further clarification from the appellant to pause the clock again.⁴ In this appeal, the appellant provided the requested clarification to the ministry and followed up with the ministry to ensure it had received it and provided it with evidence that the clarification had been previously provided; it would be unfair to the appellant to allow the clock to remain paused because the ministry did not acknowledge receipt of the appellant's clarification or seek additional clarification from the appellant.

[25] As of today's date, the ministry has not issued a final access decision in response to the appellant's access request. Therefore, I find the ministry to be in a deemed refusal situation under section 29(4) of the *Act*. To ensure that there are no further delays, I will order the ministry to issue a final access decision to the appellant.

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 **December 27, 2024**.

¹ Orders MO-1520-I, MO-1777 and PO-2634.

² Orders PO-2595 and PO-2634.

³ Orders MO-1777 and PO-2634.

⁴ Orders PO-2634.

2. To verify compliance, the ministry shall provide me with a copy of the response referred to in provision 1 by email by **December 27, 2024**. I remain seized of this appeal to deal with any issues arising from the order provisions.

Original Signed by: _____

Asma Mayat

December 2, 2024 _____