

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4583

Appeal PA24-00352

Ministry of Finance

December 20, 2024

Summary: On April 2, 2024, an individual asked the ministry for records between it, the staff of three private sector beverage companies, and the Beer Store since 2018. On May 1, 2024, the ministry provided the appellant with a fee estimate and on June 5, 2024, the appellant paid a deposit. Upon payment of the deposit, the ministry claimed a time extension of 240 days under section 27(1) of the *Act* until February 3, 2025. This order partly upholds the ministry's decision to claim a time extension, but reduces it from 240 days to 223 days, and orders the ministry to issue a final access decision by January 14, 2025.

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

Orders Considered: Orders 81 and PO-2634.

BACKGROUND:

[1] On April 2, 2024, the appellant submitted an access request under *the Freedom of Information and Protection of Privacy Act* (the *Act*) to the Ministry of Finance (the ministry) for:

I request a copy of all correspondence between the Ministry of Finance and any personnel from [three private sector beverage companies] and the Beer Store from 2018 to present. Specifically, all discussions around and/or on the topic of the Master Framework Agreement and any correspondence

relating to the dissolution of the Master Framework Agreement and any plans for the Ministry to begin selling beer and alcohol in corner stores.

Please include all paper, electronic, and multimedia records. Timeframe: June 1, 2018 to April 2, 2024.

[2] On May 1, 2024, the ministry issued a fee estimate to the appellant for \$930. It advised that the search time was 31 hours and that the file would be as placed on hold until the appellant paid the deposit of \$465.

[3] On June 5, 2024, the appellant paid the deposit of \$465 to the ministry. On that day, the ministry issued a time extension letter advising that it required until February 3, 2025, to respond to the access request "due to a very large volume of records that must be searched for and reviewed in order to respond to [the] request. Consultations outside of the ministry will also be required to fulfill this request."

[4] On June 17, 2024, the appellant filed an appeal of the time extension with the Information and Privacy Commissioner of Ontario (the IPC). File PA24-00352 was opened.

[5] On August 2, 2024, I was assigned this appeal as case lead.

[6] On August 6, 2024, I requested a meeting with the ministry to discuss this matter.

[7] On August 12, 2024, the ministry explained that the time extension was required due to the large number of responsive records. I asked the ministry to explain why it required until February 3, 2025, for an estimated 31 hours of search time. The ministry explained that this was an estimate and did not reflect the actual duration of time it would take to search for the records and issue a final decision to the appellant. It also explained that this estimate was issued prior to a fulsome search, which identified thousands of responsive records. It further advised that third party notices were likely necessary, which contributed to the need for the time extension. We discussed options for resolving this appeal, including releasing records in parts as they were completed. The ministry advised that this option would likely result in further delays of the final decision and was not feasible in the circumstances. I advised the ministry that I would discuss with the appellant the option of narrowing the scope of his request. I also advised the ministry that a formal inquiry would be required if an informal resolution was not possible.

[8] On August 20, 2024, I spoke to the appellant about narrowing the scope of the request, including splitting the access request into parts based on year. I advised the appellant that I would propose this to the ministry.

[9] On August 22, 2024, the ministry advised that this proposal would likely prolong the processing time for records.

[10] As further informal dispute resolution was not possible, I decided to conduct an inquiry and issued a Notice of Expedited Inquiry to the parties, setting out the issue in

this appeal and inviting written representations. In response, I received representations from both parties, which I shared in accordance with the IPC's *Code of Procedure*.

[11] In this order, I partly uphold the ministry's time extension decision, reducing it from 240 days to 223 days. I order the ministry to issue a decision by January 14, 2025.

DISCUSSION:

Was the ministry entitled to extend the time to respond to the request under section 27 of the *Act*?

[12] The sole issue in this appeal is whether the additional 240-day time extension claimed under section 27(1) of the *Act* was reasonable in the circumstances of this appeal.

[13] Time extensions are governed by section 27(1) of the *Act*, which states:

A head may extend the time limit set out in section 26 for a period of time that is reasonable in the circumstances, where,

(a) the request is for a large number of records or necessitates a search through a large number of records and meeting the time limit would unreasonably interfere with the operations of the institution; or

(b) consultations with a person outside the institution are necessary to comply with the request and cannot reasonably be completed within the time limit.

[14] Relevant factors may include:

- the number of records requested;
- the number of records the institution must search through to locate the requested records;
- how meeting the time limit would unreasonably interfere with the operations of the institution; and
- whether consultations outside the institution are necessary to comply with the request and if so, whether such consultations could not reasonably be completed within the time limit.

Parties' representations

[15] The ministry submits that it is reasonable to extend the time limit to respond by 240 days due to the large number of records and the time required to search for such records, which would unreasonably interfere with its operations. The ministry also advises

that third party consultations are necessary and could not be completed within the original time limit. In response to the appellant's concerns regarding the estimated 31 hours of search time in the fee estimate, the ministry advises that since engaging in the search process, the average number of pages of relevant records increased significantly from its preliminary assessment to over 14,000 pages of records, noting that this total may vary significantly as the search and review process progresses. The ministry also references previous orders where similar time extensions were found to be reasonable for large numbers of responsive records.¹

[16] The appellant raises concerns that the ministry claimed its time extension after he paid the deposit for the records. The appellant indicates that the time extension issued on June 5, 2024, outlined an enormous increase in time required to search for records from the fee estimate issued on May 1, 2024. The appellant further expresses concern that the discrepancy would lead to higher fees once the final decision is issued and possibly render him unable to pay for the responsive records to be released.

Analysis and findings

[17] For the reasons outlined below, I find that section 27(1) of the *Act* applies, and I uphold the ministry's time extension decision, in part.

[18] I am satisfied that the request is for a large number of records. As outlined by the ministry, these records need to be located, reviewed, and prepared.

[19] I am also satisfied that, based on the nature of the request, consultations with other parties outside the ministry are necessary to comply with the request. The nature of the request is that it will likely include information related to third parties, who may be affected by the release of the records.

[20] In the circumstances of this appeal, I am satisfied that an extension is necessary as meeting the 30-day time limit set out in section 26 of the *Act* would unreasonably interfere with the ministry's operations and third-party consultations are necessary.

[21] However, in determining the length of the time extension, I note that the ministry issued its time extension to the appellant after issuing its fee estimate and on the same day that the appellant paid the fee deposit based on the information in the fee estimate.

[22] Previous IPC orders have referenced the importance of issuing to a requester an interim decision under section 26 of the *Act*.² In Order 81, former Commissioner Linden emphasized that an "interim notice" should be provided to a requestor, which includes sufficient information to make an informed decision regarding payment of fees. Order PO-2634 further expanded this point to include the institution's application of time extensions. This order states that institutions should be encouraged to identify that they

¹ Orders PO-3842 and PO-4432.

² Orders 81 and PO-2634.

will require a time extension and the reasons for taking that position, as early as possible in the request process, and communicate this in an interim decision to the requestor.

[23] In addition, the IPC's *Fees, Fee Estimates and Fee Waivers* guide encourages institutions when issuing fee estimates in response to access requests, to provide requesters with sufficient information to make an informed decision regarding access to records, which includes any time extension the institution requires to fulfill the request.³ In order to accomplish this, it is important the requesters are informed of how much it may cost to obtain access to responsive records and how long it may take to receive those records. These are two important factors for a requester to consider when deciding how to proceed with an access request.

[24] In considering an appropriate date for the ministry to complete its processing of the request and issue a final access decision, I have considered previous IPC orders, including Orders PO-3842 and PO-4432, which relate to time extensions found to be reasonable in relation to similar, but smaller numbers of pages of records compared to the number of records responsive to this request.

[25] While I agree that the ministry was entitled to extend the time to respond to the request in the circumstances, I do not uphold the ministry's decision to claim a 240-day time extension to February 3, 2025. Given the large number of pages of records that require review and possible severance, I agree that some form of a time extension is reasonable. However, because the ministry issued its time extension 35 days after its fee estimate and on the same day that the appellant paid his fee deposit based on the fee estimate, I reduce the length of the time by 17 days from 240 days to 223 days.

[26] I encourage all institutions to provide as much information in interim decisions to requesters, including fee estimates and time extensions, to permit requesters to make informed decisions on how to proceed with a request.

[27] I allow the appeal, in part and will order the ministry to issue its final decision by **January 14, 2025**.

ORDER:

1. I partly uphold the ministry's decision under section 27(1) of the *Act* to extend the time limit in section 26 to issue a final access decision in response to the request.
2. 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 **January 14, 2025**.

³ See the IPC's [Fees, Fee Estimates and Fee Waivers](#) (available online).

3. Where notice to third parties is required to be given for some records, I order the ministry to issue a final access decision to the appellant for those records in accordance with the *Act* without recourse to a time extension, no later than **February 3, 2025**.

Original Signed by: _____
Alline Haddad
Case Lead

December 20, 2024 _____