

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4624

Appeal MA24-00672

Corporation of the Town of Caledon

February 4, 2025

Summary: On July 17, 2024, an individual asked the town for records about a specific address. The town extended the time to respond to the request until December 16, 2024. On December 18, 2024, the town issued a notice of delay under section 21(4) of the *Act* for an additional 60 days, instead of the 30 days permitted by that section. The town has not issued its final decision as of today's date. This order finds the town to be in a deemed refusal situation and orders it to issue a final decision by February 10, 2025.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, sections 19, 20, 21 and 22.

Orders Considered: Orders MO-2514 and PO-4540.

BACKGROUND:

[1] On July 17, 2024, the appellant submitted an access request to the Corporation of the Town of Caledon (the town) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for:

All correspondence regarding [a specified address] including notes/inspections/complaints/texts/bylaws/building depts with [specific individuals] dates July 2014-July 17/24 - Time frame: 07/17/2024 to [not specified]

[2] On July 18, 2024, the town acknowledged receipt of the request and sought clarification of the request from the appellant. On that date, the appellant confirmed the clarified scope of the request as follows:

A copy of all correspondence records To/From/Cc [specified individuals] for the time frame of July 1, 2014 to July 17, 2024 regarding [a specified address]. Excludes: Duplicate records provided in response to [a previous request].

[3] On August 16, 2024, the town issued a time extension letter to the appellant, extending the time to respond to December 16, 2024.

[4] On August 19, 2024, the appellant filed an appeal with the Information and Privacy Commissioner of Ontario (IPC), in relation to the time extension. File MA24-00672 was opened.

[5] On November 8, 2024, I was assigned this appeal as case lead.

[6] On November 18, 2024, I contacted the town but was unable to obtain an update on the town's efforts to issue a final decision.

[7] On December 2, 2024, I spoke with the appellant, who agreed to wait until the end of the time extension, December 16, 2024, for the final decision. I then advised the town of this. The town advised that it intended to issue its final decision by the extended due date.

[8] On December 16, 2024, the town issued a further time extension letter to the appellant, advising that pursuant to section 20 of the *Act*, the town was further extending the time to respond by an additional 60 days, until February 16, 2025.

[9] On December 17, 2024, I asked the town to clarify if it was claiming a second time extension under section 20¹, or issuing a notice of delay under section 21(4) of the *Act*. The town advised that it would revise its letter.

[10] On December 18, 2024, the town issued a revised letter, indicating that, pursuant to section 21(4) of the *Act*, the town was issuing a notice of delay of 60 days to notify affected third parties.

[11] On that date, I contacted the town to advise that section 21(4) permits an institution to delay its decision by a total of 30 days – 20 days to permit affected third parties to provide representations as to why the record should not be disclosed and another 10 days for the institution to issue its decision. The town advised that the 60

¹ Previous IPC orders have found that claiming more than one time extension results in a deemed refusal – see Orders MO-2514 and PO-4540. Had the town maintained this second time extension under section 20 of the *Act*, it would have been in a deemed refusal as of the expiry of the extended due date of December 16, 2024.

days reflects the 30 days under sections 21(4) and (2)(c) of the *Act* and the 30-day appeal period for an affected party to file an appeal with the IPC of an institution's decision to disclose records. I advised the town that the intended purpose of a notice of delay was not to incorporate the 30-day time limit for an affected party to file an appeal with the IPC. The town confirmed that it was not willing to revise its notice of delay.

[12] As the town did not issue its final decision on January 16, 2025, I decided to conduct an inquiry and issued a Notice of Expedited Inquiry, encouraging the town to issue its final decision by January 28, 2025. As of today, the town has not issued its final decision. To ensure that there are no further delays in processing this request, I am ordering the town to issue a final access decision to the appellant.

DISCUSSION:

Notice of delay

[13] Section 21(4) of the *Act* outlines the parameters for issuing a notice of delay to the requestor of records:

A head who gives notice to a person under subsection (1) shall also give the person who made the request written notice of delay, setting out,

(a) that the disclosure of the record or part may affect the interests of another party;

(b) that the other party is being given an opportunity to make representations concerning disclosure; and

(c) that the head will, within 10 days after the expiry of the time period for making representations under subsection (5), decide whether or not to disclose the record.

[14] Section 21(2)(c) of the *Act* outlines the time limit for an affected party to submit representations as to why the records should not be disclosed:

a statement that the person may subject to subsection (5.1), within twenty days after the notice is given, make representations to the head as to why the record or part should not be disclosed.

[15] The town's notice of delay claims a total of 60 days. However, section 21 of the *Act* permits an institution to issue a notice of delay for a total of 30 days. Based on section 21 of the *Act*, the town was permitted to delay the issuance of its final decision by 30 days, meaning that its final decision should have been issued thirty days after the extended due date, namely, by January 16, 2025. I also note that the town is unable to include in its notice of delay the 30-day limit for an affected third party's file an appeal of

an institution's decision to disclose records.

Deemed refusal

[16] Section 19 of the *Act* outlines the time parameters for an institution to respond to an access request:

Where a person requests access to a record, the head of the institution to which the request is made or if a request is forwarded or transferred under section 18, the head of the institution to which it is forwarded or transferred, shall, subject to sections 20, 21 and 45, within thirty days after the request is received,

(a) give written notice to the person who made the request as to whether or not access to the record or a part thereof will be given; and

(b) if access is to be given, give the person who made the request access to the record or part thereof, and where necessary for the purpose cause the record to be produced.

[17] Section 22(4) of the *Act* outlines the circumstances giving rise to a deemed refusal:

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.

[18] Previous IPC orders have found that a decision to extend the time for responding to a request should be issued within the initial 30-day time limit for responding to a request² and that issuing a time extension once the time limit has expired does not cure a deemed refusal.³ Moreover, extending the time for response a second time before the time limit has expired does not cure a deemed refusal situation.⁴

[19] Once a time extension has been issued, it is expected that, prior to the expiry of the extension, subject to section 21 and 45 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 22(4) of the *Act*. The

² Orders P-234, M-439 M-581, MO-1748 and PO-2634.

³ Orders MO-1777 and PO-2634.

⁴ Order MO-2514 and PO-4540 (see also Orders M-581 and MO-2029, where a further time extension was found not to be reasonable and Order P-234, where two separate time extensions were found to be reasonable in the circumstances of that case although the decision-maker expressed concern with the institution's use of two separate time extensions).

issuance of a further time extension does not cure a deemed refusal.⁵

[20] Given the information before me, I find the town to be in a deemed refusal position under section 22(4) of the *Act*, because the town has not issued its final decision within 30-days of its extended due date and after the issuance of its notice of delay.

[21] To ensure that there are no further delays, I will order the town to issue a final access decision to the appellant by no later than **February 10, 2025**, without recourse to a time extension under section 20 of the *Act*.

ORDER:

1. I order the town 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 **February 10, 2025**.
2. To verify compliance, the town shall provide me with a copy of the response referred to in provision 1 by email by **February 10, 2025**. I remain seized of this appeal to deal with any issues arising from the order provisions.

Original Signed by: _____
Alline Haddad
Case Lead

February 4, 2025 _____

⁵ Order PO-2595. Moreover, issuing an interim decision/fee estimate once the time limit has expired does not cure a deemed refusal (Orders PO-2595 and PO-2634).