

OIC 5822-03179: Request for representations under paragraph 35(2)(a)

Stephen Konkle <Stephen.Konkle@oic-ci.gc.ca>

Wed 2024-04-03 12:59 PM

To: Dana-lee Melfi <dana_lee_ca@hotmail.com>

Dear Dana-Lee Melfi,

I am writing to seek representations from you on the matters you raised in the above-noted complaint against Department of Justice Canada (Justice).

You allege that:

- Justice took an invalid extension of time and eventually withdrew it. This allegation falls under paragraph 30(1)(a).
- Justice improperly placed the access request on hold. This allegation falls under paragraph 30(1)(f).
- Justice communicated by phone, despite requesting communication in writing. This allegation falls under paragraph 30(1)(f).
- Justice did not meet its responsibilities under subsection 4(2.1) to make every reasonable effort to assist the requester with the above-noted access request(s). This allegation falls under paragraph 30(1)(f).
- Justice did not respond to the above-noted access request(s) within the 30-day or extended period, as required by section 7. This allegation falls under paragraph 30(1)(a).

Allegation: Justice took an invalid extension of time and eventually withdrew it.

Justice received the access request on September 23, 2021. On December 1, 2021, Justice took a time extension of 1825 days pursuant to paragraphs 9(1)(a) and 9(1)(b). On December 8, 2021, Justice confirmed to you by email that the extension had been withdrawn, and copied the Office of the Information Commissioner (OIC) on the correspondence. On December 15, 2021, Justice informed the OIC that the extension would be retracted and that Justice would continue to work with you to clarify the request and provide a response to the access request in a timely manner. On December 20, 2021, Justice sent you a letter that formally confirmed the retraction of the extension letter issued on December 1, 2021. As Justice withdrew the time extension, it is my preliminary view that no further investigation into the validity is required.

Allegation: Justice improperly placed the access request on hold.

Justice stated that the file was placed on hold indefinitely as of December 1, 2021, to allow for additional clarification of scope. There is no provision in the Act for putting an access request on hold for any reason, except when suspending the time limit pending the Commissioner's decision on an application under subsection 6.1(1). As such, it is my preliminary view that Justice improperly placed the access request on hold.

Allegation: Justice communicated by phone, despite requesting communication in writing.

On December 1, 2021, Justice acknowledged your preference to communicate in writing, and noted this preference in the file. Later in the day, you indicated that you would take a call, that you wanted a call from a supervisor, and included your phone number. On December 2, 2021 you arranged with Justice for a phone call on December 3, 2021. This phone call occurred as agreed upon. No evidence was received

that indicated that Justice communicated by phone on other occasions, or that Justice communicated by phone without your express consent.

Allegation: Justice did not meet its responsibilities under subsection 4(2.1) to make every reasonable effort to assist the requester with the above-noted access request(s).

Subsection 4(2.1) requires that the head of a government institution, without regard to the identity of a person making a request for access to a record under the control of the institution, make every reasonable effort to assist the person in connection with the request, respond to the request accurately and completely and, subject to the regulations, provide timely access to the record in the format requested.

Justice stated that every reasonable effort was made to assist you by providing multiple options, clarifying the request, and guiding you through the process of the access request. In particular, multiple efforts were made to assist in clarifying the request through September and October 2021.

However, communication decreased or ceased to a level where you submitted that it appeared that the access request been abandoned by Justice, or purposely not handed over to a new point of contact. You noted that there was no contact or updates on the file since January 2023. Justice informed the OIC that you emailed twice on August 31, 2023, but that the emails were sent to the attention of individuals no longer working at the department. It is clear that updates regarding the point of contact and regarding the processing of the request were not made, and as such it is my preliminary view that Justice failed to meet its obligations to assist you.

Allegation: Justice did not respond to the above-noted access request(s) within the 30-day or extended period, as required by section 7.

Section 7 requires institutions to respond to access requests within 30 days unless they have transferred a request to another institution or validly extended the 30-day period for responding by meeting the requirements of section 9. When an institution does not respond to a request within the 30-day or extended period, it is deemed to have refused access to the requested records under subsection 10(3).

Nevertheless, the institution is still required to provide a response to the access request.

The response must be in writing and indicate whether the institution is giving access to any or part of the requested records.

- When the response indicates that the institution has given access to the records or part of them, the institution must provide access to those records.
- When the response indicates that the institution has denied access to the records or part of them, the institution must explain that the records do not exist or that the institution has exempted them, or part of them, under a specific provision, which the institution must name.

In specific circumstances, the institution may refuse to confirm or deny in its response whether records exist under subsection 10(2).

Justice received the access request on September 23, 2021. On December 1, 2021, Justice took a time extension of 1825 days pursuant to paragraphs 9(1)(a) and 9(1)(b). However, Justice notified you by formal letter on December 20, 2021, that this time extension was being withdrawn. As such, the deadline to respond to the request remains October 29, 2021. Justice did not respond by this date. It is my preliminary view that Justice is deemed to have refused access to the requested records under subsection 10(3).

Justice advised that there are 168,5376 pages of records responsive to the request, and that review of the records has not yet begun. Justice noted that internal and external consultations may be required, which may cause significant delays. Justice estimated that it would take 14 years to process the request.

Final Representations

If you have any representations you wish to share on the allegations under investigation, and on my preliminary conclusions, please respond to me by return email **by April 18, 2024**.

This is the last opportunity for you to provide the OIC with the requested representations. Once the above deadline has passed, the OIC will conclude its investigation, regardless of whether it has received representations. The Commissioner will then make a finding on the complaint and may issue an order(s) if she finds the complaint to be well founded

Thank you.

Stephen (Steve) Konkle

Enquêteur | Cas prioritaires, Documents historiques et Renseignement
Commissariat à l'information du Canada
Stephen.Konkle@ci-oic.gc.ca / Tél : 819-790-8768

Investigator | Priority Cases, Historical and Intelligence
Office of the Information Commissioner of Canada
Stephen.Konkle@ci-oic.gc.ca / Tel: 819-790-8768