

Message

From: Picard, Michel [mpicard@kpmg.ca]
Sent: 2017-11-09 2:09:53 PM
To: Michael Boll [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4811917e15054407b665fe16d12ff415-Michael Bol]
CC: Kim Marshall [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b63a22b42bf14587870d93119a054d88-Kim Marshal]
Subject: FW: Freedom of Information and Protection of Privacy Request 2017-015_Third Party Notice

fyi

From: Winton, Paul
Sent: Thursday, November 09, 2017 1:57 PM
To: Anushka Walgama <Anushka.Walgama@ieso.ca>
Cc: Picard, Michel <mpicard@kpmg.ca>
Subject: RE: Freedom of Information and Protection of Privacy Request 2017-015_Third Party Notice

Confidential

Ms. Walgama,

I reiterate KPMG's request for an extension until December 20. Requiring KPMG to provide representations sooner, and in particular by November 30, is unreasonable given the volume of records at issue. An earlier deadline would severely prejudice KPMG's ability to respond substantively in order to protect its interests under FIPPA.

As you noted in your November 7 email, there is nothing in FIPPA that prevents the IESO from extending its time to reply to the requester in these circumstances, other than the requirement that it be reasonable (s. 27(1)). The extension at issue would clearly be reasonable, given the time needed for the IESO to consult with KPMG — a consultation that cannot be completed within the time currently provided (s. 27(1)(b)).

In our view, and that of our external counsel at Blakes who is an expert in FIPPA, refusing KPMG's reasonable request would defeat the purpose of the third party consultation process in s. 28 of FIPPA, and the protection for third party information in s. 17(1). Further, we find your view that s.28 dictates that only a 6 day extension can be provided in the circumstances because you are required to make a decision within 30 days of providing us with notice astonishing in light of the mechanisms contained in FIPPA for the granting of extensions. Ontario institutions routinely provide extensions for a response well beyond 30 days after notice is received, and we are surprised and puzzled by the IESO's refusal to do so in this case. If we understand you correctly, by your logic, the maximum extension that could ever be granted to a third party would be 10 days beyond the 20 day period that a third party has to make representations following their receipt of notice since a decision must be made within 30 days. If that is in fact your view, we would strongly encourage you to consult with the IPC on your interpretation of FIPPA.

I ask you to reconsider KPMG's extension request. If it is refused, KPMG will have no choice but to consider other options, including the possibility of an appeal to the IPC from the IESO's refusal to provide sufficient time for KPMG to respond.

Paul Winton
Assistant General Counsel

KPMG LLP

Bay Adelaide Centre
333 Bay Street, Suite 4600
Toronto, Ontario M5H 2S5
T 416 777 3846
F 416 777 8365
pwinton@kpmg.ca

From: Anushka Walgama [<mailto:Anushka.Walgama@ieso.ca>]
Sent: Wednesday, November 08, 2017 2:48 PM
To: Winton, Paul <pwinton@kpmg.ca>
Cc: Picard, Michel <mpicard@kpmg.ca>
Subject: RE: Freedom of Information and Protection of Privacy Request 2017-015_Third Party Notice

Mr. Winton,

We can grant you an additional 6 days, which takes us **until November 30, 2017**. Please note, we will have to issue our decision by end of day November 30th because section 28 (Notice to Affected Person) dictates that a decision must be made within 30 days after we provide notice. Should we not hear from you, we will unilaterally issue our decision.

Further to my email dated November 3, 2017, you will be provided the opportunity to request a review of our decision from the Registrar at the Information and Privacy Commissioner of Ontario within 30 days of the date of the decision letter if you disagree with our decision.

If you have any questions about the FOI process itself, please feel free to give me a call at 416-969-4937.

Regards,
Anushka

From: Winton, Paul [<mailto:pwinton@kpmg.ca>]
Sent: November 07, 2017 2:19 PM
To: Anushka Walgama
Cc: Picard, Michel
Subject: RE: Freedom of Information and Protection of Privacy Request 2017-015_Third Party Notice

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Ms. Walgama,

We are aware of the 20 day period specified under section 28(5) of FIPPA. We are also aware that section 27(1)(b) of FIPPA is directly applicable in the circumstances, and we believe our request for an extension to be perfectly reasonable given the volume of materials received. While IESO may have previously claimed an extension given the time demands that were put on IESO, we do not believe that should in any way prejudice KPMG's ability to have a reasonable period of time to conduct our assessment.

Please advise as to whether an extension will be granted, and if so how long that extension will be.

Paul Winton

Assistant General Counsel

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PRIVILEGED AND CONFIDENTIAL: SOLICITOR'S WORK PRODUCT

From: Anushka Walgama [<mailto:Anushka.Walgama@ieso.ca>]
Sent: Tuesday, November 07, 2017 2:06 PM
To: Winton, Paul <pwinton@kpmg.ca>
Cc: Picard, Michel <mpicard@kpmg.ca>
Subject: RE: Freedom of Information and Protection of Privacy Request 2017-015_Third Party Notice

Mr. Winton,

Thank you for your email. The IESO has already sought an extension with the requester when we received the request in order for the IESO to search and review the records for responsiveness.

Pursuant to ss. 28(5) of the Freedom of Information and Protection of Privacy Act ("Act") the Act states that where a notice is given under subsection (1), the person to whom the information relates may, within twenty days after the notice is given, make representations to the head as to why the record or the part thereof should not be disclosed.

While there is no indication in the Act that specifically says we cannot claim more than one extension; pursuant to section 21(1) of the Act, the period of the extension must be reasonable. That being said, seeking another extension may not be reasonable to the requester and/or to the Office of the Information and Privacy Commissions ("IPC").

Would you be agreeable to receiving an extension until November 30th instead, which is the date our decision is due?

Thank you,
Anushka

From: Winton, Paul [<mailto:pwinton@kpmg.ca>]
Sent: November 06, 2017 9:20 AM
To: Anushka Walgama
Cc: Picard, Michel
Subject: RE: Freedom of Information and Protection of Privacy Request 2017-015_Third Party Notice
Importance: High

Confidential

Dear Sir or Madam,

This email is further to the correspondence you received from Michel Picard of KPMG dated November 1st.

In that correspondence, KPMG requested that IESO exercise its discretion under section 27 of the Freedom of Information and Protection of Privacy Act to extend the deadline for our response an extra 30 days, until December 20, 2017. As you note below, this discretion is available to IESO in the circumstances.

As stated in our November 1st correspondence, KPMG is of the view that it would be appropriate and reasonable for you to exercise such discretion in the circumstances, particularly in light of the significant volume of materials which you have sent to us for review on the basis that their disclosure could impact the interests of KPMG. The materials you have provided are in excess of 200 pages, and will take some time for KPMG to undertake a proper review.

We would be grateful for your prompt response to our request for an extension, in order that we may take such steps as are necessary in order to protect our legal interests in the event that an extension is not received from your office.

Should you wish to discuss this matter, please do not hesitate to contact me.

Paul Winton
Assistant General Counsel

KPMG LLP

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From: Anushka Walgama
Sent: November 03, 2017 11:10 AM
To: 'mpicard@kpmg.ca'
Subject: RE: Freedom of Information and Protection of Privacy Request 2017-015_Third Party Notice

Good morning Michel,

Further to your letter dated November 1, 2017, section 27 of the Freedom of Information and Protection of Privacy Act ("Act") can only be claimed by an institution that is subject to the Act, like the IESO and not a private company like KPMG.

Pursuant to section 28(2)(c) of the Act, the affected person may within twenty days after the notice is given, make representations to the head as to why the record or part thereof should not be disclosed.

Please note, the requester clarified his request and is now only seeking the final versions of the reports/documents, therefore the number of records you will have to review should be reduced.

We will send you the revised third party notice letter with the accompanying records later today, and you will now have until November 24th to respond.

If we do not hear from you by November 24th, the IESO will proceed with issuing its decision on November 30th. However, you will be provided the opportunity to request a review of our decision from the Registrar at the Information and Privacy Commissioner of Ontario within 30 days of the date of the decision letter if you disagree with our decision.

Regards,
Anushka

From: Picard, Michel [<mailto:mpicard@kpmg.ca>]
Sent: November 01, 2017 3:55 PM
To: Anushka Walgama
Subject: RE: Freedom of Information and Protection of Privacy Request 2017-015_Third Party Notice

Hello Anushka,

Please find enclosed our comments to the request.

Regards,

Michel

From: Anushka Walgama []
Sent: Sunday, October 29, 2017 4:02 PM
To: Picard, Michel <mpicard@kpmg.ca>
Subject: Freedom of Information and Protection of Privacy Request 2017-015_Third Party Notice

Hello Mr. Picard,

The IESO has received a request under the *Freedom of Information and Protection of Privacy Act* (Act) for "all documents and reports authored or provided to the IESO by KPMG, PricewaterhouseCoopers and Ernst and Young regarding Ontario's Hydro System between May 1, 2016 and March 8, 2017, that relate to Ontario's new Fair Hydro Plan."

Please see attached our Third Party Notice letter that I will be couriering to your attention tomorrow along with a copy of the records.

If you have any questions, please do not hesitate to contact me.

Thanks,

Anushka Walgama | Freedom of Information Administrator & Litigation Support
Planning, Legal, Indigenous Relations and Regulatory Affairs
Independent Electricity System Operator (IESO) | T: (416) 969-4937
120 Adelaide Street West, Suite 1600 Toronto, Ontario M5H 1T1

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