



15 Falcon Street.
Toronto, ON M4S 2P4
416-485-5103
rkindersley@georgianbay.ca

www.georgianbay.ca

January 17, 2022

Ms. Cathy Hamilton, Adjudicator
Information and Privacy Commissioner of Ontario
Tribunal Services Department
2 Bloor Street East, Suite 1A8
Toronto, ON
M4W 1A8

**Re: Re-exercise of discretion by Ministry of Northern Development, Mines,
Natural Resources and Forestry (NDMNRF)**

Dear Ms. Hamilton,

We are writing to reply to the Ministry of Northern Development, Mines, Natural Resources and Forestry's (NDMNRF) representations of December 9, 2021.

We confirm our full support and agreement with the attached replies of Dave Seglins, CBC dated Jan. 15, 2022 ("Seglins Reply") and Jean Burke dated Jan. 17, 2022 ("Burke Reply") on this matter.

We were pleased to see the Order that you submitted to NDMNRF dated November 9, 2021 and note the following:

ORDER	RESPONSE/STATUS
1. I order the ministry to disclose the attachments to the Wildfire Investigation Report (the "Report") to the appellant by December 14, 2021 but not before December 9, 2021.	NDMNRF complied and released the attachments
2. I reserve the right to require the ministry to provide the IPC with copies of the records it discloses to the appellant.	NDMNRF complied
3. I order the ministry to re-exercise its discretion under section 14(2)(a) with respect to the body of the Report and to provide the IPC with representations on its exercise of discretion within 30 days of the date of this order.	NDMNRF complied but is still refusing to release the Report
4. I remain seized of this appeal to review the ministry's re-exercise of discretion.	Response from IPC still to come

Rather than reiterating the Seglins and Burke's replies and repeating matters we have already raised in our previous correspondence on this matter, we would like to set out a few additional points, as follows:

Public Interest - Is there a continuing public interest in the disclosure of the Report?

Georgian Bay Association (GBA) represents an estimated 18,000 people who rely on GBA to respond to, and engage on, issues of this nature. As such, we reflect and confirm the public interest of around 18,000 people who want to see the Fire Investigation report released. Furthermore, the Burkes are representing the views and concerns of many local residents directly or indirectly affected by the fire, and Seglins represents the CBC who reflect the broader public interest. All three appellant parties have made it abundantly clear throughout this process that there is strong public interest in the release of the Report.

Therefore, the NDMNRF statement that "*the ministry has not been aware of any ongoing interest from the public in the disclosure of the Report*" is incorrect and any and all arguments that it makes with regard to there being no continuing public interest are similarly incorrect.

Public confidence in NDMNRF - Would disclosure of the Report promote public confidence in the ministry? - Would non-disclosure of the Report undermine public confidence in the ministry?

We agree with the NDMNRF statement that: "*the ministry submits that it conducts hundreds of fire investigations each year and that that the ministry is viewed as experienced and skilled at conducting them, and the ministry is not generally questioned in this regard,*"

However, we do not agree with the second half of this sentence that: "*... and so the non-disclosure of this Report is not likely to call into question or undermine the public confidence in the ministry on that basis.*" In this respect NDMNRF argues that this is all about preserving the integrity of the process of carrying out fire investigation reports and ensuring that the public come forward with information knowing that they will be protected by the process, but this misses the point completely. What matters in this case is that NDMNRF is open and transparent and is seen and viewed as acting in the best interest of the public. Releasing the report would achieve this. Not releasing the report means that NDMNRF will be viewed as not acting in the public interest, be obfuscating the facts, and will therefore undermine public confidence in NDMNRF.

Furthermore, as the Burke's Reply confirms, there have been and will be additional suspicions raised that NDMNRF is covering up shortfalls in the way that the investigation into the fire was conducted, if NDMNRF continues to withhold the report. Since we are sure that NDMNRF believes that there were no such shortfalls in its process it is in its own best interest to release the Report and avoid this inevitable perception and thereby promote public confidence in NDMNRF doing the right thing.

Disclosure of identities

We would like to expand on the point raised in the Burke Reply regarding disclosure of the identities of individuals mentioned in the Report, including the investigators, if applicable. We have never expected such disclosure and have already confirmed that. If a person has agreed that their identity can be released, it can be, but, if they have asked for their identity to be kept confidential, then it should not and will not be released. Therefore, we fail to see the relevance of any argument in this respect in support of not releasing the Report. There is none. This argument is used extensively by NDMNRF to support its “public confidence in the process” position. We submit that this NDMNRF argument is incorrect and all positions used in its responses that rely on this argument to demonstrate that the Report should not be released should be disregarded.

We hope that this letter and the Burke’s and Seglins Replies will collectively provide you with support for challenging the continued refusal by NDMNRF to release the Report and compel the Ministry to release it.

Yours sincerely,

A handwritten signature in blue ink that reads "Rupert Kindersley". The signature is written in a cursive style with a horizontal line underneath the name.

Rupert Kindersley
Executive Director