

## **Application by the Town of Ponoka to disregard an access request made by an Applicant under the *Freedom of Information and Protection of Privacy Act***

On June 18, 2002, I received a letter on behalf of the Town of Ponoka (the "Public Body"), requesting authorization for the Public Body to disregard the May 6, 2002 access request made by a named individual (the "Applicant") under the *Freedom of Information and Protection of Privacy Act* (the "FOIP Act"). On August 7, 2002, I issued the following decision, from which I have removed the names of all individuals.

### **Commissioner's authority**

Section 55 of the FOIP Act gives me a discretionary ("may") power to authorize a Public Body to disregard certain requests under the FOIP Act. Section 55 reads:

*55 If the head of a Public Body asks, the Commissioner may authorize the Public Body to disregard one or more requests under section 7(1) or 36(1) if*

*(a) because of their repetitious or systematic nature, the requests would unreasonably interfere with the operations of the Public Body or amount to an abuse of the right to make those requests, or*

*(b) one or more of the requests are frivolous or vexatious.*

### **The Applicant's access request**

On May 6, 2002, the Applicant applied to the Public Body for access to records under the FOIP Act, as follows:

1. My request is for any documentation, records, reports or evidence of any kind that would indicate or show wrongdoing, mismanagement or dishonesty on the part of senior town of Ponoka officials.
2. In relation to [a named Councillor's] claim in the paper that investigations have taken place and these complete reports are available for the public to see at the town office. My request is for a copy of these complete reports.
3. I am requesting documentation or evidence of any kind showing that town officials did in fact investigate [the Third Party's] allegations of wrongdoing on the part of senior town officials.
4. May I have documentation or evidence of any kind showing that the town has repeatedly tried to work with [the Third Party] to address his concerns and documentation or evidence of any kind showing that the town has tried to refuse and evade addressing his concerns.

5. I am requesting documentation or evidence of any kind that would clearly confirm what the 'Development Area' is as contained and defined in the Qualicare Development Agreement.
6. My sixth request is for documentation or evidence of any kind showing:
  - What concession or benefits of any kind, at the town's expense, past, present or future, were given the Qualicare Development, that:
    - i) were properly authorized by town council;
    - ii) were not properly authorized by town council;
    - iii) contradict or are in contravention of the requirements of the Qualicare Agreement; and
    - iv) involve local improvements that still need to be completed by the town.

#### **The Public Body's submissions under section 55(a) of the FOIP Act**

The Public Body says that the Applicant's access request was directed by a named individual (the "Third Party"), whose February 19, 2002 access request was the subject of an earlier application by the Public Body under section 55 of the FOIP Act. On April 10, 2002, I authorized the Public Body to disregard the Third Party's February 19, 2002 access request.

To support its contention that the Applicant's access request was directed by the Third Party, the Public Body stated that the Applicant has advised that (i) he is good friends with the Third Party; (ii) the Third Party has provided him with access to and he has reviewed the documents that the Public Body released to the Third Party; and (iii) the Third Party typed out the Applicant's access request that was sent to the Public Body in the Applicant's name.

To show the similarities between the Applicant's and the Third Party's access requests, the Public Body highlighted the following excerpts from the Third Party's February 19, 2002 access request:

#### **A. My Request Is:**

1. Please provide a copy of any documentation, record, report or evidence of any kind that would indicate or show wrongdoing, mismanagement or dishonesty on the part of Senior Town of Ponoka Officials. Please include documentation or evidence showing that Town Officials did not tell the truth.
2. Please also provide me with documentation or evidence of any kind showing what wrongdoing by Senior Town Officials, was revealed in the Town's response to my FOIP requests #1, 2, 3 and 4.

**B. My Request Is:**

Please provide me with the complete reports, (regarding these investigations), available for the public to see at the Town Office, referred to by Councillor [name of Councillor].  
If these complete reports, referred to by Councillor [name of Councillor], do not exist please clearly confirm this in your reply.

**C. My Request Is:**

1. Please provide me with documentation or evidence of any kind showing that Town Officials did in fact investigate my allegations of wrongdoing on the part of Senior Town Officials.
2. Please also provide me with documentation or evidence of any kind showing on what these Town Officials based their conclusion that the allegations were unfounded.

**D. My Request Is:**

1. Please provide me with documentation or evidence of any kind showing that the Town has repeatedly tried to work with me to address my concerns.
2. Please also provide me with documentation or evidence of any kind showing that the Town has tried to refuse and evade addressing my concerns. Please include my written questions that I submitted to the Town, which the Town did not answer.  
If you feel I already have this information please, in the public interest, provide this information anyway.

**E. My Request Is:**

Please now provide me with documentation or evidence of any kind that would clearly confirm exactly what the "Development Area" is as contained and defined in the Qualicare Development Agreement.  
If you feel you have already provided this information, please provide it again to clarify this matter.

**F. My Request Is:**

Please provide me with documentation or evidence of any kind showing:

1. What concessions or benefits of any kind, at the Town's expense past, present or future, were given the Qualicare Development, that were properly authorized by Town Council.
2. What concessions or benefits of any kind, at the Town's expense past, present or future, were given the Qualicare Development that were not properly authorized by Town Council.
3. What concessions or benefits of any kind, at the Town's expense, past, present or future, were given the Qualicare Development that contradict or are in contravention of the requirements of the Qualicare Agreement.
4. What concessions or benefits of any kind, at the Town's expense past, present or future involving local improvements that still need to be completed by the Town.

If you feel that I already have this information please provide it anyway in order to have the Town isolate this information so that in the public interest the truth can be established.

The Public Body submits that the Applicant's access request is virtually identical to the Third Party's access request summarized above. The Public Body says that both access requests contain six parts having virtually the same wording, as follows:

- (a) "... documentation, records, reports or evidence of any kind that would indicate or show wrongdoing, mismanagement or dishonesty on the part of the Senior Town of Ponoka officials."

- (b) "...complete reports [regarding investigations that are] available for the public to see at the Town office [as referred to by] Councillor [name of Councillor]."
- (c) "... documentation or evidence of any kind showing that town officials did in fact investigate [the Third Party's] allegations of wrongdoing on the part of senior town officials..."
- (d) "... documentation or evidence of any kind showing that the Town has repeatedly tried to work with [the Third Party] to address [his] concerns and documentation or evidence of any kind showing that the Town has tried to refuse and evade [the Third Party's concerns]."
- (e) "... documentation or evidence of any kind that would clearly confirm what the 'Development Area' is as contained and defined in the Qualicare Development Agreement."
- (f) "... documentation or evidence of any kind showing concessions or benefits of any kind, at the Town's expense, past, present or future, were given the Qualicare Development that:
  - (i)...were properly authorized by Town Council;
  - (ii)...were not properly authorized by Town Council;
  - (iii)..contradict or are in contravention of the requirements of the Qualicare Agreement;
  - and
  - (iv)..[involve] local improvements that still need to be completed by the Town."

The Public Body submits that the repeated requests for records that indicate wrongdoing on the part of Council and Administration, and records relating to the Qualicare Development Agreement and local improvements (which have already been disclosed), amount to a "pattern of conduct" as contemplated by Ontario Order M-850 and Order M-1066. The Public Body quotes Ontario Order M-850, as follows:

*... [I]n my view, a "pattern of conduct" requires recurring incidents of related or similar requests on the part of the requester (or with which the requester is connected in some material way).*

*... [T]here are reasonable grounds for the Town to have concluded that the appellant has demonstrated a pattern of conduct. The recurring incidents of related or similar behaviour on the part of the appellant are the regular submission of sweeping requests for information of an extremely detailed nature, as well as the regular submission of interrelated requests which closely resemble each other."*

The Public Body also quotes a 1996 decision of the British Columbia Information and Privacy Commissioner, *In the Case of an Application for Authorization to Disregard Requests from [a Respondent] under Section 43 of the Freedom of Information and Protection of Privacy Act (the Act) by Joan Hesketh, Assistant Deputy Minister, Ministry of Employment and Investment at Page 2 – August 23, 1996*. In authorizing the Ministry of Employment and Investment to disregard certain requests for information, the British Columbia Commissioner stated:

*"Therefore, I authorize the Ministry to disregard the following:*

1. *All outstanding requests for records by [the respondent].*

2. *All future requests for records which relate to mineral claims of [the respondent], the dispute with [third parties], and the allegations of wrongdoing by the Ministry.*
3. *All requests for any kind for a period of one year by [the respondent].*  
*The above apply to requests for records made by [the respondent], [four named parties associated with the respondent], or any other request in which [the respondent] is the "directing mind."*

The Public Body submitted that this situation is very similar to the Ontario and British Columbia decisions referred to above, given that:

- The Applicant's access request and the Third Party's February 19, 2002 access request "closely resemble each other" in that both access requests consist of six parts and both requests contain virtually identical wording; and
- The Applicant is "connected in some material way" to or "associated" with the Third Party, in that the Applicant advises that they are good friends; the Third Party typed out the access request that was sent to the Public Body in the Applicant's name; and the Applicant has access to and has reviewed the records that the Public Body has released to the Third Party under the Third Party's previous access requests;
- Given the Applicant's association with the Third Party and that the Applicant has also advised that the Public Body should be expecting more similar access requests because the Third Party has discussed this matter with several other Town residents, the Public Body submits that the Third Party is the "directing mind" behind the Applicant's access request.

### **My decision**

I have compared the Applicant's access request with the Third Party's February 19, 2002 access request. I find that those two access requests closely resemble each other. Both the Applicant and the Third Party want records concerning alleged wrongdoing on the part of the Public Body's Council and Administration relating to the Qualicare Development Agreement and various local improvements.

I also find that the Applicant is connected in some material way to or associated with the Third Party. That, combined with the access requests closely resembling each other, is sufficient for me to conclude that the Applicant's access request is repetitious in nature.

Does the Applicant's access request amount to an abuse of the right to make the access request?

In both an Order and a previous decision under section 55, I have told the Third Party that he has gotten everything he can get from the Public Body by way of records, and that he

can't hope to gain anything more out of the FOIP process yet another time. All available information from the Public Body has gone out to the Third Party.

Having exhausted his own avenues under the FOIP Act, the Third Party has now taken to directing an access request through the Applicant, who is associated with the Third Party. I conclude that the only reason the Third Party has adopted this new course of action is to grind the Public Body.

Consequently, in these circumstances in which the Third Party is the directing mind behind the Applicant's access request, I find that the Applicant's access request is no less an abuse of the right to make the access request than if the Third Party had made that access request himself.

Therefore, under section 55(a) of the FOIP Act, I exercise my discretion to authorize the Public Body to disregard the Applicant's access request, dated May 6, 2002.

The Applicant has warned the Public Body to expect other similar access requests from friends of the Third Party. As a result, the Public Body has also asked me to authorize it to disregard:

- All future requests for records which relate to the Qualicare Development and the Third Party's requests regarding the same;
- All requests of any kind for a period of one year by the Third Party; and
- That the above apply to requests for records made by the Third Party, the Applicant, or any other request in which the Third Party is the "directing mind".

The Public Body's request is too broad. At this time, I am not prepared to authorize the Public Body to disregard any and all future access requests, in the absence of facts that would bring such access requests within section 55(a) or (b) of the FOIP Act.

However, I am prepared to authorize and I do authorize the Public Body to disregard future access requests made by the Third Party and the Applicant, as well as future access requests in which it is evident that the Third Party is the "directing mind", if those access requests are for the same records requested in the Third Party's February 19, 2002 access request and the Applicant's May 6, 2002 access request.

To avoid having to make further applications to me under section 55 concerning access requests for these same records, particularly when it is not evident that the Third Party is the directing mind, I recommend that the Public Body immediately make available at the Town Office or other public place all the records that it released to the Third Party on his previous access requests. I am making this recommendation in view of section 88 of the FOIP Act, which reads:

*88(1) The head of a public body may specify categories of records that are in the custody or under the control of the public body and are available to the public without a request for access under this Act.*

*(2) The head of a public body may require a person who asks for a copy of an available record to pay a fee to the public body, unless such a record can otherwise be accessed without a fee.*

*(3) Subsection (1) does not limit the discretion of the Government of Alberta or a public body to release records that do not contain personal information.*

If the Public Body makes these records available without an access request, I strongly recommend that the Public Body not charge a fee.

Frank Work, Q.C.  
Information and Privacy Commissioner