

ALBERTA
INFORMATION AND PRIVACY COMMISSIONER

Request for Authorization to Disregard an Access Request
under section 55(1) of the
Freedom of Information and Protection of Privacy Act

Alberta Justice and Solicitor General
(OIPC File Reference 008660)

July 31, 2018

[1] Alberta Justice and Solicitor General (“JSG”) brought an application for authorization under section 55(1) of the *Freedom of Information and Protection of Privacy Act* (“FOIP” or the “Act”) to disregard two access requests made by an individual (the “Applicant”).

[2] Section 55(1) of the FOIP Act gives me the power to authorize a public body to disregard certain requests. Section 55(1) states:

55(1) 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.

[3] On May 8, 2018, JSG received the following access request under FOIP from the Applicant (JSG File No. 2018-P-0463):

“Cell [redacted] video footage of me showing the camera a FOIP form that was delivered but my name & the sticker is made up LOW Budget CRC goofiness continuing to try and hide their illegal actions. 1 envelope from the exact same FOIP office is without a sticker. my name [indcipherable] is printed onto the envelope this one is made up. Likely from a [indcipherable] envelope that was previously illegally opened.”

Time period: “between 5:15 pm & 5:20 pm on May 4, 2018”

[4] On May 10, 2018, JSG received the following access request under FOIP from the Applicant (JSG File No. 2018-P-0471):

“Cell [number redacted] camera and unit camera showed an envelope to [OIPC SIPM], To ensure it gets from point B from point A which has happened before. Also between 5:25-5:30. I showed cell [number redacted] camera enveloped addressed to [JSG employee], then placed under my door.”

Time period: "between 12:30 pm to 12:40 pm May 6, 2018"

[5] On May 14, 2018, I received an application from Alberta Justice and Solicitor General under section 55(1) of FOIP for authorization to disregard the Applicant's two access requests. JSG requested authorization for the following:

1. *Authorization to disregard this access request.*
2. *Authorization to disregard any access request made by the Applicant, or made on his behalf, to the extent that the request covers records or information where the Applicant wants to demonstrate continuity of his numerous submissions of Request for Information or the alleged wrongful opening of mail. Both matters can be resolved outside of the FOIP Act.*
3. *Authorization to disregard any access request made by the Applicant, or made on his behalf, to the extent that the request covers records or information that have already been the subject of an access request made by or on behalf of the Applicant and to which the Public Body has responded.*

[6] JSG stated the Applicant had made 15 access requests this year (2018), of which 4 had involved my office. JSG stated, "the time required by our staff to dedicate service exclusively to matters involving this Applicant is detrimental to our ability to provide service to our other Applicants."

[7] The Applicant was provided a deadline of June 8, 2018 to provide comments relating to this matter.

[8] As is detailed in the section 55(1) Decision for OIPC File No. 008539 (released concurrently), on June 28, 2018 in the course of reviewing that file, I encountered a comment regarding record destruction. Similarly, in this matter, on June 28, 2018, I encountered the following statement on the last page of JSG's application:

"Please note that the video records that are requested are on a 30-day loop and have not been secured. The Public Body requests the OIPC to advise if they want the Public Body to secure the video records. A response is required by May 24, 2018 in order to ensure that the video records are secured before the 30-day loop."

[9] On June 29, 2018, I requested immediate confirmation from JSG as to whether it had secured the records responsive to the Applicant's access request under FOIP. In that letter, I stated:

"I should not have to tell Alberta Justice and Solicitor General that it is required to preserve and not destroy any and all records that are responsive to these access requests while these matters are before me."

- [10] On July 12, 2018, Alberta Justice and Solicitor General informed me that it had destroyed the records which were responsive to the Applicant's access request under FOIP.
- [11] FOIP does not authorize public bodies to decide whether they will respond to an access request; a public body is required to apply to me under section 55(1) to disregard an access or correction request. Although section 55(1) of the FOIP Act gives me the power to authorize a public body to disregard certain requests, it is a necessary precondition that the records subject to a request under FOIP must exist. Regardless of a public body's belief in the merits of a section 55(1) application, bringing an application under section 55(1) of FOIP does not guarantee a public body will be granted authorization to disregard a request. Further, a public body does not have authorization under FOIP to destroy records that are the subject of an access request during the intervening period between its application under section 55(1) and my decision.
- [12] In this case, Alberta Justice and Solicitor General received two access requests under FOIP, applied to me under section 55(1), and then 10 days later, destroyed the responsive records.
- [13] An application under section 55(1) must be in relation to records that exist. Since these records do not exist, there is nothing for me to authorize or to refuse to authorize; therefore, I am not going to decide whether I will exercise my discretion under section 55(1) of FOIP to authorize Alberta Justice and Solicitor General to disregard the access requests at issue in this matter because the records no longer exist and have been destroyed.
- [14] I am extremely concerned about Alberta Justice and Solicitor General's destruction of records that are responsive to an access request under FOIP. I am aware that this same destruction of responsive records has occurred in two other JSG applications under section 55(1) (OIPC File Nos. 008539 and 009008). My decisions in those matters are being issued concurrently.
- [15] I have opened a new file to investigate Alberta Justice and Solicitor General's destruction of responsive records.

Jill Clayton
Information and Privacy Commissioner