

**ALBERTA  
INFORMATION AND PRIVACY COMMISSIONER**

**REQUEST TO DISREGARD F2021-RTD-04**

October 21, 2021

MUNICIPALITY OF CROWSNEST PASS

Case File Number 021501

- [1] The Municipality of Crowsnest Pass (the “Public Body” or the “Municipality”) requested authorization under section 55(1) of the *Freedom of Information and Protection of Privacy Act* (“FOIP” or the “Act”) to disregard access requests made by an individual whom I will refer to as the Applicant. The Public Body also requested authorization to disregard any future access requests made by the Applicant.
  
- [2] The Public Body is required to respond to the Applicant for access requests 2021-009A, 2021-009B, 2021-010, and 2021-011 in accordance with the FOIP Act. To the extent that responsive records may have already been provided to the Applicant in response to his previous FOIP request(s), the Public Body may disregard these requests (2021-009A, 2021-009B, 2021-010, and 2021-011) such that the Applicant does not receive the same records more than once, but is otherwise required to respond to the Applicant.
  
- [3] The Public Body may disregard access requests 2021-012, 2021-013, 2021-014, and 2021-015 as the Applicant states these requests were submitted on the wrong form and are abandoned. The Applicant may, however, re-submit these requests to the Public Body on the correct form.
  
- [4] The Public Body’s request for authorization to disregard future requests made by the Applicant is denied. If the Public Body believes the criteria of section 55(1) are met on any future access requests, it may request authorization to disregard those requests.

**Commissioner’s Authority**

- [5] 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.

## Background

- [6] The parties disagree as to the number of access requests at issue. The Public Body states there are eight access requests at issue. The Applicant argues that two of them were combined by the Public Body into one request, and four of them were either not accepted by the Public Body, or were abandoned by the Applicant.
- [7] The eight access requests, generally, may be summarized as requests for files relating to land in the Municipality, including the Applicant's land, records regarding Council meetings, and communications the Applicant had with an individual representing the Public Body.
- [8] The Public Body states that the access requests all relate to an ongoing dispute regarding drainage and other concerns at the property the Applicant owns within the Municipality. The Public Body describes the dispute as follows [footnotes omitted]:

The Applicant has corresponded with the Municipality's representatives to discuss his concerns since mid-2020. However, the situation grew more contentious in April 2021, when an application for subdivision approval for neighbouring land within the [Applicant's subdivision] was heard and ultimately approved by the Municipality's Planning Commission ("MPC"). The Applicant had opposed this submission and provided submissions urging that it be denied. Nevertheless, approval for the proposed subdivision was granted on April 28, 2021.

Shortly thereafter, from May 10 to May 17, 2021, the Applicant submitted the Requests to the Municipality, eight in total. The content of the Requests relates to the Municipality's file materials for his property and other properties within the [Applicant's subdivision], Council and MPC meeting minutes, and correspondence with a Councillor of the Municipality.

Since he began submitting the Requests on May 10, 2021, the Applicant has also sent correspondences to the Municipality's representatives which, among other things:

- Allege criminal and fraudulent behaviour on the part of the Municipality;
- Threaten legal action against the Municipality; and
- Assert that the Municipality failed to follow the Land Use Bylaw and the Municipal Development Plan in approving the subdivision.

- [9] The Public Body's Affidavit states [references to Exhibits omitted]:

3. For over one year now, the Applicant has been corresponding with [name redacted], Directory of Development, Engineering and Operations at the Municipality, to raise concerns regarding drainage/grading and water pressure issues at his Lands.

4. In March 2021, an application to further subdivide land adjacent to his property at [legal land description redacted] and nearby his property at [legal land description redacted] was submitted (the "Proposed Subdivision"). The matter was set to be heard by the Municipality's Municipal Planning Commission ("MPC") on April 28, 2021. The Applicant was opposed to the Proposed Subdivision.

5. On April 20, 2021, the Municipality received a request for information from the Applicant for the following records from January 1, 1995 to January 1, 2016:

"Development permit, site plan, floor plans, Elevations and sections, foundation plan, copies of all permits and inspections for my property, [legal land description redacted]"

6. On April 21, 2021, the Municipality received an email correspondence from the Applicant, outlining his opposition to the Proposed Subdivision on the basis of 1) drainage concerns, 2) water pressure concerns, and 3) road traffic concerns, with respect to his Lands.

7. Further correspondence was received by the Applicant on April 26, 2021 inquiring as to whether or not the [Applicant's Subdivision] had ever had a Geotechnical Assessment/Environmental Assessment done, and further discussing his concerns with drainage.

8. The Applicant's April 21, 2021 correspondence was considered by the MPC at its April 28, 2021 meeting and was included in the draft resolution for the approval of the Proposed Subdivision.

9. The MPC ultimately approved the Proposed Subdivision at its April 28, 2021 meeting.

10. The Municipality processed the Applicant's request for information in accordance with the requirements of the *FOIP Act* and provided the requested records, with redactions, on May 4, 2021 via email.

11. After the completion of this step, between May 10 and May 17, 2021, the Municipality received eight (8) separate requests for information from the Applicant (the "May Requests").

[10] The Applicant provided background information to his access requests as follows:

[The Applicant] purchased his property [...] in March 2016. Since that time, he has experienced various problems with his house and also with drainage and water pressure on his property. [The Applicant] is experienced in the construction industry and, in his

attempts to deal with the various problems he and his family have experienced on the property, he has become aware that certain aspects of his house were not built in compliance with applicable building codes, and one or more of the properties adjacent to his property has been re-graded such that water is redirected onto [the Applicant's] property. [The Applicant] has legitimate questions about his property, including what building permits were issued for his house, as well as the inspections that were done when construction of the house was completed, and whether an occupancy permit was issued for the house. He also has legitimate questions about his property, including how and when related properties were subdivided, whether the development on the property adjacent to his, including the significant changes in grade, was done in accordance with the Municipality's development plan and bylaws, and other applicable laws and regulations.

[The Applicant] has been communicating with employees at the Municipality for over a year regarding his concerns about drainage, grading, water pressure, and other issues relating to his property and house – and he has been encouraged by Municipality employees to make FOIP requests to access the information he is seeking, as set out in paragraphs 2 – 4 of his affidavit.

[The Applicant] has submitted FOIP requests as described in paragraphs 5 – 10, and attached as Exhibits B through G of his affidavit. We disagree with the Municipality's listing and characterization of the relevant FOIP requests. The Municipality has applied for authorization to disregard eight FOIP requests that were submitted by [the Applicant] with the request numbers (assigned by the Municipality): 2021-009A, 2021-009B, 2021-010, 2021-011, 2021-012, 2021-013, 2021-014, and 2021-015. [The Applicant] submitted the requests numbers 2021-012, 2021-013, 2021-014, and 2021-015 (the "GoA Requests") using the FOIP request form applicable to Government of Alberta public bodies based on a misunderstanding he had following a conversation he had with a Municipality employee. As [the Applicant] explained in paragraph 7 of his affidavit, [an employee] emailed him following his mistaken submission of the GoA Requests and informed him that the Government of Alberta form is not applicable to the Municipality. [The Applicant] was never charged for, and never paid for, those FOIP requests. The Municipality has not provided any information to [the Applicant] suggesting that it considered those FOIP requests to be valid requests. Based on all the foregoing facts, the GoA Requests were never validly initiated. Alternatively, they have been abandoned.

In addition, requests 2021-009A and 2021-009B are identical except that one was a request for a copy of the relevant records and the other was a request to examine the same set of records. [A Municipality employee] communicated with [the Applicant] following his submission of those requests and advised him they could be combined into one request. The parties have treated those requests as one combined request since that time (the "2021-009 Request"), which is also evident from the Municipality's numbering of them – 2021-009A and 2021-009B.

The Municipality's inclusion in its application of the GoA Requests, and the 2021-009A and 2021-009B requests, as if they were two distinct requests, appears to be to support its claim that [the Applicant] has submitted a large number of FOIP requests. In reality,

there are only three FOIP requests that are relevant for the purposes of the Municipality's application – the 2001-009 Requests and requests 2021-010 and 2021-011 (the "Relevant Requests").

We note that in addition to Relevant Requests, [the Applicant] has made two FOIP requests on April 20, 2021, requesting information relating to his property and house, and the subdivision of lands including his property and adjacent properties. The Municipality provided its initial response to the request 2021-007 the following day. The Municipality's response included certain detailed information, but much of the information that would be expected to be included regarding the construction of his home – building permits, inspection reports (other than plumbing and gas inspections, which were included), and an occupancy permit – were missing. Although the Municipality charged [the Applicant] for both requests he submitted on April 20, 2021, it has not responded to the second request (presumed to be request number 2021-008, based on the Municipality's number system). The combination of the Municipality's response to request 2021-007, which appears not to have included all responsive records, its failure to respond at all to the request presumed to be 2021-008, and its request to disregard the Relevant Requests suggest the Municipality is seeking to avoid its statutory obligation to respond to access to information requests submitted to it under the FOIP Act.

[11] In his Affidavit, the Applicant provided additional details as follows:

2. For more than a year, I have been communicating with employees at the Municipality, including [name redacted], Director of Development, Engineering and Operations at the Municipality, to raise concerns regarding drainage, grading, water pressure, and other issues relating to my property and my house on my property. My concerns could be grouped into two main issues: (1) my house, which was on my property when I purchased it in March 2016 was not built in compliance with the building codes applicable in Alberta; and (2) my neighbor on the land adjacent to mine has drastically changed the grade on his property, which I believe has caused drainage and water pressure problems on my property, and flooding of my house.

3. Although [name redacted] agreed to meet with me on or around April 23, 2020 and told me he would bring detailed information about my house and property to the meeting, he did not. A copy of the emails relating to this meeting and the documentation that was supposed to be provided to me are attached to this Affidavit as Exhibit "A". When he met with me he told me that the best way for me to deal with the problems on my property would be to discuss the issues with my neighbor, whose development I believe has caused the problems on my property. I disagree with [name redacted] that this is the right approach. However, whether I work with the Municipality or my neighbour to try to find a solution, I need to have as much information as I can about whether the developments my neighbour made have been done with the Municipality's approval and whether they align with its regulations, bylaws and land development plan, and also about what building permits were issued for my home and how it passed inspections for building occupancy when it does not meet the applicable building codes.

4. In addition to my discussions with [name redacted], I also had discussions with [name redacted], a Development Officer at the Municipality, about accessing information about my property and the adjacent properties. [Name redacted] told me I should FOIP “the file” for my land and the development permits for my land and the surrounding lands. She told me the file would contain all of the relevant information relating to whatever request I submitted.

## **Analysis**

[12] As a preliminary note, the Applicant has raised concerns regarding the responses he has received from the Public Body on his previous access requests. A public body’s application under section 55(1) is not the appropriate forum to deal with these concerns; however, the Applicant may consider filing a request for review with my office if he has concerns with a response (or lack of response) from an access request made to a public body.

### ***Section 55(1)(a) – requests are repetitious or systematic in nature***

[13] “Repetitious” is when a request for the same records or information is made more than once. “Systematic in nature” includes a pattern of conduct that is regular or deliberate.

[14] The Public Body submits the Applicant’s requests are repetitious and systematic in nature, stating [footnotes omitted]:

- Three of the eight Requests are for substantially the same file information for the Applicant’s property, much of which was already provided to the Applicant in a response to an earlier FOIP request submitted to the Municipality on April 20, 2021. This makes four requests in less than a month which are more or less duplicates of one another.
- The nature of the Requests evinces a pattern of conduct that is regular, deliberate, and systematic in nature. The Applicant has made repeated and continual requests which relate to the present dispute between the Applicant and the Municipality and his concerns with the [Applicant’s Subdivision].

These repetitious and systematic requests in and of themselves are an abuse of the right to make requests.

[15] The Public Body, in its Affidavit, provided the following table of the access requests:

12. The May Requests are as follows:

<b>Exhibit</b>	<b>Request #</b>	<b>Date of Request</b>	<b>Request for</b>	<b>Time Frame</b>
G	2021-009A	May 10, 2021	"File for [Applicant's property] & Whatever this land was called before it had this designation"	1950 - Present
H	2021-009B	May 10, 2021	"File for [Applicant's property] & Whatever this land was called before it had this designation"	1950 - Present
I	2021-010	May 12, 2021	"File for Lot [legal description redacted*] Including application for subdivision for this lot."	1980 - Present
J	2021-011	May 12, 2021	"File for Lot [legal description redacted*] Including application for subdivision for this lot."	1980 - Present
K	2021-012	May 17, 2021	"Council Meeting In Camera & Minutes May 04/2021 All Circulation 11. 11.b) Personal privacy- Board member resignation FOIP act section 17 All Circulation"	April 22, 2021 – May 17, 2021
L	2021-013	May 17, 2021	"Entire File for MPC Meeting on 04/28/202. [sic] ORRSC Recommendations, emails & minutes"	Not Specified
M	2021-014	May 17, 2021	"FOIP Act Section 17 All records for my emails to councilor [name redacted]. Minutes and Agenda Municipal affairs says any topics a ratepayer asks a councilor to bring up to council are public information. I never requested anything to be made private. All Circulation"	January 1, 2020 – May 17, 2020

N	2021-015	May 17, 2021	“File for My Property [legal land description redacted] All Circulation”	January 1, 1980 – May 17, 2020
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[\*the legal land descriptions for Requests 2021-010 and 2021-011 are for two different lots that are not the Applicant’s lot]

13. Accordingly, the Municipality has received eight requests from the Applicant in the span of eight days, and nine in less than 30 days. The initial fees have been paid for the requests submitted on May 10 and May 12, but not for the four requests submitted on May 17.

[16] The Applicant, in his Affidavit states:

5. I have made a number of access to information requests of the Municipality under the FOIP Act. However, they have not been repetitious or for any “ulterior motive” as the Municipality has claimed. In fact, I made several of the requests on the recommendation of Municipality representatives, including [name redacted], who is the FOIP Coordinator for the Municipality.

6. I have submitted the following FOIP requests. The request numbers listed below are those the Municipality has given the requests, either in correspondence with me or in the affidavit of [the FOIP Coordinator], provided with their submissions. Most, but not all, of this information aligns with the information the Municipality provided in the affidavit of [the FOIP Coordinator].

Exhibit	Request #	Date of Request	Request for	Time Frame
B	2021-007	April 20, 2021	Development permit, site plan, floor plans, elevations and sections, foundation plan, copies of all permits and inspections for my property [legal description of Applicant’s property redacted]	Jan 1, 1995 – Jan 1, 1996
C	Unknown (presumed to be 2021-008)	April 20, 2021	Subdivision File for [Applicant’s Subdivision]. All municipal development plans and land use bylaws for this timeframe.	Jan 1, 1983 - Present
D	2021-009A	May 10, 2021	File for [Applicant’s property] & whatever this land was called before it had this designation	1950 - Present

E	2021-009B	May 10, 2021	File for [Applicant's property] & whatever this land was called before it had this designation	1950 - Present
F	2021-010	May 12, 2021	File for Lot [legal description redacted*] including application for subdivision for this lot	1980 - Present
G	2021-011	May 12, 2021	File for Lot [legal description redacted*] including application for subdivision for this lot	1980 - Present

[\*the legal land descriptions for Requests 2021-010 and 2021-011 are for two different lots that are not the Applicant's lot]

7. In addition to the FOIP requests listed above, I also submitted four FOIP requests on May 17, 2021, using the form used for Government of Alberta public bodies. At the time, I understood, from a conversation I had with [name redacted] an employee of the Municipality, that there was another, different form for submitting FOIP requests than the one I had been using. I believed the form used for Government of Alberta entities was the one being referred to, so I made the four requests using that form. [The FOIP Coordinator] contacted me after she received the forms and she informed me that they did not apply to the Municipality. A copy of the email from [the FOIP Coordinator] noting that these requests are not applicable to the Municipality is attached to this Affidavit as Exhibit "H". I was never charged for those requests and have not paid anything for them. My understanding was that both sides acknowledged these submissions were a mistake and have treated them as abandoned requests (the "Abandoned Requests").

[...]

10. Requests 2021-009A and 2021-009B have been combined into one request. They are identical, except that I checked the "receive a copy of the record" box in one and "examine the record" box in the other. [The FOIP Coordinator] discussed these requests with me after I submitted them and she suggested they could be treated as one request (the "2021-009 Request").

[17] The Applicant, in his submission states [footnotes omitted]:

The relevant requests are not repetitious or systematic in nature. The OIPC has stated that "repetitious" means a request for the same records or information is submitted more than once, and "systematic in nature" includes a pattern of conduct that is regular or deliberate. The OIPC found a much larger set of 26 access requests over a period of 25 months not to be repetitious because the same access request was not made more than once. Likewise, the information requested in each of the Relevant Requests differs. The Relevant Requests consist of three requests – there is no pattern of conduct

established by three requests. Accordingly, the Relevant Requests are not systematic in nature.

- [18] The Applicant refers me to an earlier decision (Request for Authorization to Disregard an Access Request under section 55(1) of the *Freedom of Information and Protection of Privacy Act*, Service Alberta, OIPC File F8116, August 27, 2014). In that case, the applicant had made approximately one request per month over a lengthy period of time on behalf of a political party. The applicant explained he made his requests on a wide variety of topics in his role as researcher for the Wildrose Critic. While I did not find those requests were repetitious, I did find they were systematic.
- [19] The parties disagree as to the number of access requests before the Public Body. The four access requests received on May 17, 2021 (which the Applicant states are either not valid because they were submitted on the wrong form, or are abandoned) generally relate to Council information or communications and another request for the file relating to his property. While it appears there may be some repetition in the Applicant's access requests it is not necessary for me to make that determinations because, given the short timing of the requests and the broad similarity in subject matter, regardless of whether there are three or four or eight access requests at issue, I find the requests are systematic.

***Section 55(1)(a) – the requests would unreasonably interfere with the operations of the public body or amount to an abuse of the right to make those requests***

- [20] In addition to establishing that a request is either repetitious or systematic, under section 55(1)(a), a public body must also provide evidence that the requests would unreasonably interfere with the operations of the public body or that they amount to an abuse of the right to make those requests.
- [21] The Public Body submits as follows [footnotes omitted]:

These repetitious and systematic requests in and of themselves are an abuse of the right to make requests. Further there is evidence that the Applicant is abusing the process under the *FOIP Act* trying to intimidate/harass the Municipality and its employees and acting for an improper purpose:

- The Requests all follow only a matter of days after the MPC's subdivision approval decision on April 28, which the Applicant vigorously opposed.
- Four of the Requests were submitted on the same day (May 17) that the Applicant contacted Councillor [name redacted] by text message alleging fraud on the part of the Municipality and noting that he had contacted the RCMP.
- As noted at paragraph 17 of the Affidavit of [name redacted], the Municipality believes that the Requests are related to ulterior motives besides access to information. Specifically, the Municipality believes the Applicant is using the Requests for the purposes of harassing the Municipality, taking up the time and

resources of the Municipality, revenge against the Municipality, and causing harm to the Municipality.

Further, the Municipality submits that the processing of these eight requests would unreasonably interfere with the operation of the Municipality. The nine requests that the Municipality has received from the Applicant within a span of 30 days (eight of which are in a span of eight days) is more than the Municipality typically receives in a full year. The volume of these access to information requests in a short period of time will be difficult for the Municipality to process given that the Municipality does not have a full-time employee dedicated to processing FOIP requests and is party of a broader scope of duties for the Municipality's FOIP coordinator.

The Municipality therefore requests that it be authorized to disregard the Requests on the basis that they are repetitious and systematic requests in nature and are an abuse of the right to make such requests and will unreasonable [sic] interfere with the operations of the Municipality.

[22] The Applicant states as follows:

Even if the Relevant Requests were repetitious or systematic in nature, which they are not, section 55(1)(a) also requires that the requests either unreasonably interfere with the operations of the public body or amount to an abuse of the right to make those requests. The Municipality has claimed, in its arguments, "that the processing of these eight requests would unreasonably interfere with the operations of the Municipality". As noted already, the Municipality is aware that eight requests is an inflated number. There are only three Relevant Requests. The Municipality also responded to the 2021-007 request in one day, which implies that these requests are generally not onerous or disruptive to its operations. Public bodies are obligated to respond to access to information requests under the FOIP Act. The fact that the Municipality does not have a full-time employee dedicated to FOIP matters does not mean it is excused from that obligation.

There is no evidence that the Relevant Requests represent an abuse of the right to make FOIP Requests. As noted above, there is no systematic nature to the Relevant Requests. The Municipality cited a decision in which the Commissioner found such an abuse where there were continuous access requests, the processing of which generates processing records, to which the applicant then requests access. That decision does not apply in any way to the Relevant Requests. The Relevant Requests do not include any such requests for the processing of records generated from previous requests.

[23] The Public Body's Affidavit confirms its position that it believes responding to the access requests would unreasonably interfere with its operations, but does not provide additional detail on the amount of responsive information or resources required to process the access requests. As the Applicant noted, the fact that the Public Body does not have dedicated staff to respond to access requests does not relieve it of its statutory duties under the FOIP Act. There is insufficient evidence before me to find that

responding to the Applicant's access requests would unreasonably interfere with the Public Body's operations.

- [24] As I have noted in numerous prior decisions under section 55(1), the fact that a request is repetitive can be abusive in and of itself. Depending on the circumstances of an access request, it may be reasonable to make the same request more than once; however repeatedly making the same request is more likely to be abusive. While several of the Applicant's current and previous requests specifically refer to his property, I note that the time frames of these requests vary, and there may be additional responsive records that the Applicant has not yet received. Other access requests appear to be unique, in that they refer to different properties and if there are any responsive records, it appears they have not yet been provided to the Applicant.
- [25] On the evidence before me, I am not satisfied that the Public Body has met its burden to establish that the criteria of section 55(1)(a) are met with respect to all of the access requests at issue. However, I accept that to the extent that a responsive record to a request (or portion of a request) may overlap with a record already provided, that request (or portion of a request) may be abusive.
- [26] The conflicting evidence before me as to which requests are active prevents me from definitively determining whether requests are repetitive, but to the extent that any responsive records in the current requests overlap with records already provided to the Applicant, the Public Body does not need to provide the same records again.
- [27] As such, I will consider whether the Applicant's access requests are frivolous or vexatious.

***Section 55(1)(b) – frivolous or vexatious***

- [28] A frivolous request is typically associated with matters that are trivial or without merit. Information that may be trivial from one person's perspective, however, may be of importance from another's. A vexatious request is one in which the Applicant's true motive is other than to gain access to information, which can include the motive or harassing the public body to whom the request is made.
- [29] The Public Body submits as follows:

In addition to being repetitious and systematic in nature, the Requests are frivolous and vexatious.

The broader context of the Applicant's Requests, combined with the nature of his comments made to and about the Municipality and its representatives, indicates that the Applicant's goal is not to access information so much as it is to retaliate in respect of his perceived grievances against the Municipality, and especially in respect of the MPC's April 28 subdivision approval decision. The timing of the Applicant's Requests (which

closely follow the MPC's decision), the excessive volume of his requests and their repetitive nature, and his allegations of fraud and improper behaviour on the part of the Municipality are all strong indicators of improper motivations on the part of the Applicant.

On the basis of these factors, the Municipality submits that the Applicant has made the Requests for purposes of ulterior motives besides access to information, and more specifically for the purposes of:

- a. harassing the Municipality;
- b. taking up the time and resources of the Municipality;
- c. revenge against the Municipality for the April 28 MPC decision and other perceived improper conduct of the Municipality;
- d. causing harm to the Municipality.

The Municipality therefore requests that it be authorized to disregard the Requests on the basis that they are frivolous and vexatious.

[30] The Applicant submits as follows [footnotes omitted]:

Although the Municipality has argued that the Relevant Requests are frivolous and vexatious, it has not provided any evidence or argument in support of the claim that they are frivolous. "Frivolous" has been taken to mean "matters that are trivial or without merit". The information requested by [the Applicant] in the Relevant Requests is of high importance to him and definitely does not consist of matters that are trivial or without merit.

Previous decisions of the OIPC have found that a FOIP request is "vexatious" when the "primary purpose of the request is not to gain access to information but to continually or repeatedly harass a public body in order to obstruct or grind a public body to a standstill". The primary purpose of the Relevant Requests is to gain access to information. [The Applicant] has no interest in obstructing the Municipality or grinding it to a standstill. The Municipality included a few selected communications which suggest [the Applicant's] interactions with the Municipality's employees have been "consistently confrontational". In fact, the vast majority of [the Applicant's] interactions with the Municipality's employees have been amicable, as noted in paragraph 13 of [the Applicant's] affidavit. As noted elsewhere in these submissions and in [the Applicant's] affidavit, [the Applicant] has been communicating with the Municipality for over a year and has expressed his interest in accessing some of the information in the Relevant Requests previously. The Municipality's employees have told him he should make FOIP requests if he wants to access the information and he has done so.

*Section 55(1) - generally*

If FOIP requests are not the same, then even the fact there are numerous requests made regularly (not the case here) "cannot run afoul of section 55 in the absence of compelling evidence of ulterior improper motive". The Relevant Requests (and [the Applicant's] previous requests) are all for information relating to his legitimate and

important interests in his property and the decisions that have been made that affected his property. There is no ulterior improper motive in [the Applicant] submitting FOIP requests for access to information relating to his own home and property. The Municipality has suggested that the timing of the Relevant Requests indicates some improper purpose. [The Applicant] has made the requests based on the suggestions of the Municipality's employees (some of which occurred in April and May of 2021, shortly before the Relevant Requests), and because the Municipality's employees have declined to provide such information without a FOIP request. The Municipality's April 28 subdivision approval decision did raise the importance for [the Applicant] of obtaining the information he has been seeking, but the Relevant Requests relate to information he has been seeking since long before the Municipality's April 28 decision. The Relevant Requests follow from the discussions [the Applicant] has had with the Municipality for over a year, not in retaliation for any decisions the Municipality has made.

#### Concluding Comments

One of the primary purposes of the FOIP Act, as stated in section 2(a) is "to allow any person a right of access to the records in the custody or under the control of a public body subject to limited and specific exceptions as set out in this Act". In many cases that statutory right of access to information under the FOIP Act represents the only way an individual can access important information held by a public body.

In a very recent joint resolution of the Federal, Provincial and Territorial Information and Privacy Commissioners, the Commissioners stated that access to information is a quasi-constitutional right (courts have similarly deemed access rights to be quasi-constitutional, which governments have an obligation to protect). In that same resolution, the Commissioners stressed the importance of "properly documenting institutional decisions and any resulting actions, and organizing and storing such documentation in a manner that enables timely access to such documentation are central principles of open, transparent and responsible government". The Municipality should follow those principles of open, transparent and responsible government, not ignore FOIP requests or apply for authorization to disregard the Relevant Requests and future FOIP requests.

The OIPC should only deny the critical and quasi-constitutional right of access to information in circumstances that truly warrant such an extraordinary remedy. No such remedy is merited in these circumstances. [The Applicant] has made a small number of FOIP requests, covering different subject matter, and for legitimate purposes. The Municipality should not be authorized to disregard any of [the Applicant's] FOIP requests.

[31] The Applicant provided additional information in his Affidavit:

11. My FOIP requests are each for different information (noting that the 2021-009 Request is being treated as one request). There may be some information that overlaps in certain of the requests, but they are all legitimate requests I made with the aim of understanding how my property and the ones surrounding it have been developed;

whether in each case the development complied with applicable laws, regulations and bylaws; and what permits, etc. have been issued relating to my house.

12. My only motive in making my FOIP requests has been to gather information about how my house passed building inspections and was granted an occupancy permit, how the subdivision of lands occurred on my property and adjacent properties and how the land adjacent to mine was allowed to be developed in a way that has caused problems on my property. The Municipality's own employees, including [names redacted] have advised me to make FOIP requests to access this information.

13. The Municipality's suggestion that I have made FOIP requests for an ulterior motive, particularly in relation to the Municipality's approval of a subdivision of lands in April 2021 does not fit with the fact that for over a year I have been regularly discussing how I can access information about my property and adjacent properties with the Municipality's employees, including [names redacted]. The Municipality chose to include in its submissions a few isolated communications in which I could have managed my frustration better. However, the vast majority of our communications have been polite and friendly on both sides, as is evident in the emails attached to this affidavit, as well as Exhibits "B" and "C" of the affidavit of [the Public Body] included in the Municipality's submissions.

14. The Municipality appears to be reluctant to provide information that it is required to provide under the FOIP Act. For request 2021-007, it seems very unlikely that the Municipality has certificates of plumbing inspection and gas inspection for my house, but no building permits or occupancy permits for it. The Municipality has not provided any response at all to my other request dated April 20, 2021, which is well beyond the deadline for a response required under the FOIP Act, although it has provided a receipt to me acknowledging that I paid for it. Based on the Municipality's failure to provide a response to that request, its application to disregard the other requests I have made, and its inclusion of the Abandoned Requests in its submissions despite having acknowledged those requests as abandoned, I do verily believe the Municipality made its request to disregard certain of my FOIP requests to avoid its statutory obligation to provide a proper response to my legitimate requests.

[32] The Public Body provided specific examples of the Applicant's comments to a Councillor for the Municipality, and included screenshots of the text conversation. I have reviewed these communications. It is clear that the Applicant used intemperate and inappropriate language at times, but I also observe that, as the Applicant stated, the majority of his communications were more polite. Based on my review, it does not appear that the Applicant's comments were directed specifically towards any person, but were expressing his frustration at the situation and the Public Body in general. I also note that the Applicant apologized and stated that he never intended to berate the Councillor when the Councillor objected to his language. Based on the evidence before me, it appears that the Applicant ceased contacting the Councillor via text message when he was asked to do so. In his submission, the Applicant also acknowledges that he should have managed his frustration with the Public Body better.

- [33] On the evidence before me, although some of the Applicant's comments are offensive, I do not find that it rises to the level that warrants authorizing the Public Body to disregard his access requests on the basis of his language.
- [34] This finding should not be taken as condoning abusive language in the context of an access request. Such behaviour is not acceptable. I have previously found that scandalous or inflammatory language is sufficient to find that a request is vexatious under section 55(1)(b) (See, for example, Request for Authorization to Disregard, Alberta Energy Regulator, OIPC File # 005876, issued July 27, 2018). In this case, unlike other cases I have reviewed, it does not appear that the Applicant was using his access requests as a means to abuse the Public Body or its employees, rather than to obtain access to information.
- [35] I accept the Applicant's sworn evidence that he has been in communications with the Public Body for more than a year regarding his concerns, and that some employees of the Public Body itself directed him to make access requests to obtain the information he seeks. On the evidence before me, I am satisfied that Applicant's purpose in making the requests is to obtain the information he has requested, and not for an ulterior or abusive purpose.
- [36] Accordingly, I find that the Public Body has not met its burden to show that the Applicant's access requests are frivolous or vexatious under section 55(1)(b) of the FOIP Act.

### **Request for Authorization to Disregard Future Access Requests**

- [37] The Public Body also requested authorization to disregard any future access requests made by the Applicant, stating:

At minimum, the Municipality requests that it have authority to disregard any future requests for records that have already been provided to the Applicant. The Applicant has already made repetitive requests, and it is reasonable to believe that these repetitive requests will continue in the future.

The Municipality also seeks authority to disregard any future requests from the Applicant. The Applicant's attitude towards the Municipality and its representatives has been consistently confrontational. The Applicant's requests are clearly aimed at proving a point to the Municipality and retaliating against the Municipality respecting his ongoing dispute with the Municipality, rather than gathering information under the FOIP Act. Based on the history of the Applicant's requests, the Applicant has a clear intent to harass the Municipality and the Municipality believes that these requests will continue into the future.

- [38] As I found above, I accept the Applicant's evidence regarding his legitimate purpose for his access requests. I do not find the Applicant's intent is to harass or retaliate against the

Municipality. As such, the Public Body's request for authorization to disregard future access requests from the Applicant is denied.

- [39] Should the Applicant make an access request to the Public Body in the future, if the Public Body believes the criteria of section 55(1) are met, it may bring an application to disregard that request.

### **Decision**

- [40] The Public Body is required to respond to access requests 2021-009A, 2021-009B, 2021-010 and 2021-011 in accordance with the FOIP Act. However, to the extent that any responsive records in these requests overlap with records already provided to the Applicant in response to his prior access requests under FOIP, the Public Body is authorized to disregard those portions of the access request and does not need to provide the same records to the Applicant again.
- [41] The Applicant argues that his access requests 2021-012, 2021-013, 2021-014, and 2021-015 were on the wrong form and were abandoned. Therefore, I authorize the Public Body to disregard these requests. The Applicant may choose to resubmit these requests on the correct form. Should the Public Body believe any future access requests made by the Applicant meet the criteria of section 55(1), it may request authorization to disregard those requests.
- [42] The Public Body's request for authorization to disregard future request is denied.

Jill Clayton  
Information and Privacy Commissioner

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