

**ALBERTA**  
**INFORMATION AND PRIVACY COMMISSIONER**

**REQUEST TO DISREGARD F2022-RTD-07**

October 6, 2022

RED DEER PUBLIC SCHOOLS

Case File Number 027057

- [1] Red Deer Public Schools (Public Body) requested authorization under section 55(1) of the *Freedom of Information and Protection of Privacy Act* (“FOIP Act” or “Act”) to disregard two access requests made by an applicant (Applicant).
- [2] For the reasons outlined in this decision, the Public Body is not authorized to disregard the Applicant’s access requests under section 55(1) of the FOIP Act. The Public Body must proceed with processing the Applicant’s access requests in accordance with the FOIP Act.

**Commissioner’s Authority**

- [3] Section 55(1) of the FOIP Act gives me the power to authorize a public body to disregard certain requests. Section 55(1)(a) and (b) state:

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.

## Burden of Proof

- [4] The FOIP Act is silent on the burden of proof associated with a request to disregard an access request under section 55(1). Former Commissioner Clayton, stated the following about where the onus lies for this provision.<sup>1</sup>

The proposition that “he who asserts must prove” applies across all areas of law, unless there is a specific reverse onus: for example, see *Garry v Canada*, 2007 ABCA 234, para 8; and *Rudichuk v Genesis Land Development Corp*, 2017 ABQB 285, para 27. The proponent of a motion needs evidence.

As the moving party requesting my authorization, the onus is on the Public Body to prove, with evidence, the requirements of section 55(1)(a) or (b), on a balance of probabilities. As I stated in the *MacEwan University Decision* under section 55(1) Decision (September 7, 2018), “I cannot make arguments for any party before my office. I must make a decision based on the arguments and evidence the parties put before me”.

Under section 55(1)(a), I am permitted to authorize the Public Body to disregard one or more of the Applicant’s requests if they are repetitious or systematic in nature, and would unreasonably interfere with the operations of the Public Body or amount to an abuse of the right to make those requests. Under section 55(1)(b), I may authorize the Public Body to disregard one or more of the requests if they are frivolous or vexatious.

Because section 55 provides that I “may” give authorization, if the Public Body meets its burden I must then decide whether to exercise my discretion to authorize the Public Body to disregard the requests.

Applying this reasoning to section 55, if a public body meets its burden, I will then go on to consider whether there is any compelling reason not to grant my authorization to disregard a request.

- [5] I agree with former Commissioner Clayton that it is up to the Public Body to establish, on a balance of probabilities, that the thresholds in section 55 (1)(a) or (b) are met in this case and on doing so I must exercise my discretion about whether to authorize the Public Body to disregard the Access Requests.

## Background

- [6] The Public Body states it received two separate access requests on July 27, 2022. The two access requests are dated July 19, 2022, and are for information and communications relating to the Public Body's requirements for i) the use of medical grade masks (Masking Request) and ii) ventilation and filtration (Ventilation and Air Filtration Request) in the

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<sup>1</sup> F2019-RTD-01, at pp. 8 and 19.

Public Body's schools from March 1, 2020 – July 20, 2022 (collectively, the Access Requests). Each of the Access Requests include a schedule where the Applicant lists the specific information that they are seeking. The Public Body states that in total, the information listed in the schedules comprise 78 separate requests for information.

[7] Both the Applicant and the Public Body provided submissions. I will address their submissions in the analysis portion of this document as they pertain to my analysis about whether the Public Body has established that any of the circumstances set out in section 55 (1)(a) or (b) exist as it relates to the Access Requests.

[8] In the preamble to its submission, the Public Body provided the following information:

Prior to sharing the specifics of our rationale, it should be noted that Red Deer Public Schools had a dedicated area on our school division's website that included comprehensive information regarding our COVID-19 protocols and procedures. This website was actively maintained and updated by our Red Deer Public Schools' Central Services staff.

Content of the Red Deer Public School's COVID-19 website included a page dedicated to student and staff absenteeism due to illness (due to the protection of both student and staff health privacy we never posted specific COVID-19 illness information). The statistics on this page were updated each and every day schools were in session, up to June 14, 2022. At any time during the pandemic visitors to this page could see the number of absent students from each of the 22 schools within our school division, as well as the number of absent staff from the division as a whole.

Additionally, the school division's website had a comprehensive "Handbook for Students and Families" that was dynamically updated whenever a change was necessary. Within the handbook all of our air filtration and masking procedures and protocols were included; the content of this handbook was monitored and updated whenever the school division received new or revised guidance from our provincial government.

Finally, this website included all of the information that had been shared with the school division from Alberta Health Services. At all times during the entire period from March 16<sup>th</sup>, 2020, until the removal of all public health restrictions on June 14<sup>th</sup>, 2022, Red Deer Public schools followed the guidelines and mandates directed by Alberta Health Services. Any and all information that the school division would have received from Alberta Health Services would be represented on this site.

Red Deer Public Schools strongly believes our website, during the entire time of the pandemic, represented the culmination of all communication and correspondence that the school division would have received in regards to doing what was best for staff and students. This prelude to our request for the OIPC to authorize Red Deer Public Schools to disregard

the FOIP requests from [the Applicant] was included because we feel that a vast majority of these requests for information were, at all times, available on this website.

### **Access Requests**

[9] According to the evidence, the Applicant made two access requests to the Public Body, the Masking Request and the Ventilation and Air Filtration Request.

[10] In the Masking Request, they request information “relating to the use of medical grade masks in Red Deer Public Schools”. The time period associated with the request is March 1, 2020 to July 20, 2022. Attached to the request is a schedule. The schedule is two pages in length and there are 47 sentences setting out the specific information sought, which can be broken down as follows.

- communication “regarding the use of medical grade masks and/or respirators in schools to mitigate against COVID-19” with Alberta Health, Health Canada, Alberta Education, its insurance provider, WCB, Alberta Labour/Occupational Health & Safety (AL/OHS), Alberta Teacher’s Association (ATA), its board of trustees, other school districts (Entities), and parents/community;
- communication “regarding the differences in COVID-19 outbreaks in schools with and without school mask mandates” with the Entities and parents/community;
- internal or external correspondence “regarding the number of [short and long term] disability claims due to COVID-19 when mask mandates were in place for school staff versus no mask mandates” between the Public Body and the Entities; and
- internal or external correspondence “regarding the number of sub days due to COVID-19 illness related to staff absences when mask mandates were in place for school staff versus no mask mandates” between the Public Body and the Entities.

[11] In the Ventilation and Air Filtration Request, they request information “relating to the ventilation and filtration in Red Deer Public Schools” (Schools). There is a schedule attached to the request which is two pages in length and contains 31 sentences that set out the specific information sought. This information can be broken down as follows.

- documents “regarding the potential use of portable HEPA air filters, Corsi-Rosenthal boxes, or other air filtration methods [(AF)]” in the Schools;
- requests by any of the Schools for permission to use AF and the Public Body’s response;

- documents “on ASHRAE standards, with respect to any of the Schools or in general”;
- reports or recommendations sent to the Public Body from its board on ventilation or ASHRAE guidelines;
- documents regarding replacement of AF including the timing;
- communication with 10 named schools regarding the use of AF;
- approvals or documents regarding the use of AF to mitigate against COVID-19 in any of the Schools;
- assessment of any of the School’s HVAC systems with respect to virus/contaminant mitigation;
- communication with Alberta Health, Alberta Education, or its insurance provider “regarding ventilation in the Schools and COVID-19” or “regarding the potential use of HEPA filters in schools to mitigate against COVID-19”;
- communication with other school districts regarding ventilation and air filtration in schools and COVID-19;
- communication with “APEGA” “regarding recommendations, regulations, standards on ventilation and air filtration in the Schools and COVID-19”;
- communication with the “APEGA”, ATA, its insurance provider, and parents/community “regarding ventilation and air filtration in the Schools to mitigate against COVID-19”;
- internal or external documents “regarding ventilation and air filtration” involving communications or correspondence between the Public Body and Environmental Services, its board of trustees, or its insurance provider;
- communications with AL/OHS “regarding inspections of the Schools from March 2020 to present”;
- inspection results, reports or recommendations from AL/OHS, the Public Body or an independent P.Eng “regarding inspections of the Schools from March 2020 to present”;
- documents relating to CO2 monitoring and thresholds for HVAC systems in the Schools and reports of exceedance of CO2 threshold since March 2020;

- recommendations to or correspondence involving the Public Body and [two Public Body employees (The Employees)] about ventilation, filtration, in-room HEPA units, HVAC upgrades in the schools to mitigate against COVID-19;
- correspondence between The Employees “regarding ventilation and air filtration in schools to mitigate against COVID-19” or “regarding the continued use of plexiglass” in the Schools;

## Analysis

[12] In this office’s first published decision under section 55(1) of the FOIP Act, former Commissioner Frank Work made the following observations on the purpose of this provision.

The FOIP Act was intended to foster open and transparent government (Order 96-002 [pg. 16]). Section 2(a) and section 6(1) of the FOIP Act grants individuals a right of access to records in the custody or under the control of a public body. The ability to gain access to information can be a means of subjecting public bodies to public scrutiny.

However, the right to access information is not absolute. The Legislature recognizes there will be circumstances where information may be legitimately withheld by public bodies and therefore incorporated specific exceptions to disclosure to the FOIP Act. Section 2(a) of the FOIP Act states the right of access is subject to “*limited and specific exceptions*” as set out in the FOIP Act. Section 6(2) of the FOIP Act states that the right of access “*does not extend to information excepted from disclosure*” under the FOIP Act.

In my view, the Legislature also recognizes that there will be certain individuals who may use the access provisions of the FOIP Act in a way that is contrary to the principles and objects of the FOIP Act. In Order 110-1996, the British Columbia Information and Privacy Commissioner wrote:

*“...The Act must not become a weapon for disgruntled individuals to use against a public body for reasons that have nothing to do with the Act...”*

Section 55 of the FOIP Act provides public bodies with a recourse in these types of situations.<sup>2</sup>

[13] In *Crocker v British Columbia (Information and Privacy Commissioner) et al*,<sup>3</sup> the British Columbia Supreme Court provided the following guidance with regard to how section 43

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<sup>2</sup> F2002-RTD-01, at pp. 3 and 4

<sup>3</sup> 1997 CanLII 4406 (BCSC).

in British Columbia's *Freedom of Information and Protection of Privacy Act* should be interpreted.<sup>4</sup> This provision contains similar wording to the Alberta FOIP Act.

[14] The Court stated:

Section 43 is an important remedial tool in the Commissioner's armory to curb abuse of the right of access. That section and the rest of the Act are to be construed by examining it in its entire context bearing in mind the purpose of the Legislation. The section is an important part of a comprehensive scheme of access and privacy rights and it should not be interpreted into insignificance. The legislative purposes of public accountability and openness contained in s. 2 of the Act are not a warrant to restrict the meaning of s. 43. The section must be given the "remedial and fair, large and liberal construction and interpretation as best ensures the attainment of its objects", that is required by s. 8 of [BC's] *Interpretation Act*...<sup>5</sup>

[15] BC's former Information and Privacy Commissioner, David Loukidelis, added his views on how that provision is to be interpreted. Specifically he said that "any decision to grant a section 43 authorization must be carefully considered, as relief under that section curtails or eliminates the rights of access to information." Another past commissioner has cautioned that, "[g]ranting section 43 requests should be the exception to the rule and not a routine option for public bodies to avoid their obligations under the legislation."<sup>6</sup>

[16] I concur with the above decisions. These interpretations, in my view, accord with the purposes of the FOIP Act and the legislative scheme of the access to information provisions therein.

***Are the Access Requests "repetitious in nature"?***

[17] As indicated, section 55 (1)(a) authorizes me to exercise my discretion to authorize the Public Body to disregard the Access Requests where the Public Body has established, on a balance of probabilities, that "because of their repetitious nature", one or both of the Access Requests "would unreasonably interfere with its operations or amount to an abuse of the right to make those requests".

[18] The term "repetitious" is not defined in the FOIP Act. However, this office has consistently held in prior decisions made under section 55(1)(a) of the FOIP Act,

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<sup>4</sup> Section 43(1) of the British Columbia's FOIP Act reads: If a public body asks, the commissioner may authorize the public body to disregard one or more requests under section 6 or section 32 that

(a) would unreasonably interfere with the operations of the public body because of the repetitious or systematic nature of the requests; or

(b) are frivolous or vexatious.

<sup>5</sup> *Ibid.*, at para. 33.

<sup>6</sup> Office of the Auditor General of British Columbia, Order F18-37, 2018 BCIPC 40 (CanLII), at para 11.

“repetitious” is when a request for the same records or information is made more than once.<sup>7</sup>

[19] In Decision F2019-RTD-01, former Commissioner Clayton added the following about the meaning of “repetitious” in section 55 (1)(a) in analyzing whether 23 requests made by an Applicant on May 5, 2017 and on May 11, 2017, respectively, were repetitious. The public body in that case argued that “the majority of the requests seek the same information of one (1) or more of the other requests and are therefore repetitious in nature”.<sup>8</sup>

Evidence of previous requests is relevant to the determination of whether a current request is repetitious: Request for Authorization to Disregard an Access Request – Alberta Motor Association, March 8, 2010.<sup>9</sup>

She added that:

There is an important distinction to be drawn between overlap and repetition. Where there is overlap between requests that are made at the same time, as is the case here, only one search will be required for all of the overlapping requests. Where more than one request has been made for the same information at more than one time, more than one search will be required for the same information. The latter is repetitious; the former is not.<sup>10</sup>

[20] In finding that the applicant in that case had made all their requests at one time to the public body, Commissioner Clayton expressed her view that because the public body will be required to respond to the requests only once and can address any overlap that may exist in the requests, that the requests were not repetitious.

### Public Body’s submissions

[21] The Public Body provided the following submissions regarding the Applicant’s Masking Request:

Referring to the first document labelled “Masking”, you will note there are 47 specific requests for information made. Included within these 47 requests [the Applicant] is searching for communication between the school division and the following organizations:

- Alberta Health Services;
- Health Canada;
- Alberta Education;
- Red Deer Public Schools’ insurance providers;

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<sup>7</sup> See, for example F2003-RTD-01.

<sup>8</sup> Decision F2019-RTD-01, at p. 9.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

- Workers' Compensation Board of Alberta;
- Alberta Occupational Health and Safety;
- The Alberta Teachers' Association;
- The Board of Trustees for Red Deer Public Schools; and
- All parents and community members

Furthermore in addition to the large number of organizations, groups and Ministries involved in [the Applicant's] request, the number of requests for communication expected from each are quite large in scope. For example, [the Applicant] is looking for all communication between the school division and each of the organizations listed above in regards to:

- the use of medical grade masks and/or respirators in schools to mitigate against COVID-19;
- the difference in COVID-19 outbreaks in schools with and without school mask mandates;
- the number of short-term disability claims due to COVID-19 when masks [sic] mandates were in place for school staff, versus when there were no mask mandates; and
- the number of substitute teachers required due to COVID-19 illness when mask mandates were in place, compared to when there were no mask mandates.

We respectfully believe that the amount of time required for Red Deer Public Schools' staff, both administrative, teaching, and clerical staff, to search for communication with all of the organizations listed, and then analyze and compile data to respond to the questions, would clearly interfere with the operations of the school division.

[Emphasis in original]

[22] The Public Body made the following submission regarding the Ventilation and Air Filtration Request:

In regards to the second request for information, "Air Filtration", you will note 31 specific requests for information. Of these 31 individual requests, [the Applicant] includes an extremely large scope by naming large number of schools, including Mattie McCullough Elementary School, Normandeu School, Barry Wilson Elementary School, Hunting Hills High School, Lindsay Thurber Comprehensive High School, Joseph Welsh Elementary School, Don Campbell Elementary School, Central Middle School, Westpark Middle School, and Eastview Middle School. Furthermore, [they] also include a number of bulleted requests in which [they] asks for communication from "any RDPSD school". With 22 schools in our school division, the amount of time and resources necessary to meet these requests would be substantial.

Furthermore, this “Air Filtration” request contains similar details to the aforementioned request dealing with masking, specifically requiring Red Deer Public Schools to search for and compile communication between the school division and the following organizations:

- Alberta Health Services;
- Alberta Education;
- Other School Divisions (there are over 60 school divisions in Alberta);
- Association of Professional Engineers and Geoscientists of Alberta (APEGA);
- Alberta Teachers’ Association;
- Red Deer Public Schools’ insurance providers; and
- All parents and community members.

Additionally, the “Air Filtration” request contains repetitive requests for information, in much the same manner as the aforementioned masking request. For example, within the 31 requests for information there are repeated requests for communication that includes:

- ventilation and air filtration mitigation in schools to mitigate COVID-19;
- general information about ventilation and air filtration; and
- results, reports, or recommendations from any inspections which may have occurred within a Red Deer Public Schools’ school.

In much the same way we believe the “Masking” requests would unreasonably interfere with the operations of Red Deer Public Schools, and amount to an abuse of the right to make those requests, we also believe that the “Air Filtration” requests would do the same. Without repeating all of the justifications previously mentioned, we strongly believe that, should we undertake the enormous effort in both time and resources to satisfy these 31 requests the information would only serve to demonstrate that Red Deer Public Schools was again working under the recommendations of the provincial government and, at all times, doing the most we could for our staff and students given the resources available.

[23] The evidence submitted by the Public Body that is relevant to a determination of whether the Access Requests are repetitious is the following:

- (a) the Masking Request contains 47 “specific requests for information made”;
- (b) the Ventilation and Air Filtration Request:
  - i. contains 31 “specific requests for information”;
  - ii. this request “contains similar details to the aforementioned request dealing with masking, specifically, requiring [the Public Body] to search for and compile communication between the school division” and most of the organizations identified in the Masking Request; and

- iii. this request “contains repetitive requests for information, in much the same manner as the [Masking Request], with examples of communication including “ventilation and air filtration in schools to mitigate COVID-19, general information about ventilation and air filtration, and results, reports or recommendations from any inspections which may have occurred within a...school”.

[24] The Applicant did not provide any submissions that are relevant to the issue of whether their Access Requests were repetitious.

[25] Based on the evidence before me I have determined the following.

[26] The Applicant made two access requests to the Public Body dated July 19, 2022, the Masking Request and the Ventilation and Air Filtration Request. They had not made any requests to the Public Body requesting the same or similar information prior to the Access Requests.

[27] For the following reasons, I disagree with the Public Body that the Access Requests contain 78 separate requests for access to information.

- (a) It is clear from the Access Requests that the Applicant is seeking information about the use of masks in the Schools in the Masking Request and information about ventilation and air filtration in the Schools in the Ventilation and Air Filtration Request.
- (b) The time period of the information sought in the Access Requests, which is March 1, 2020 to July 20, 2022<sup>11</sup>, demonstrates that the Access Requests are associated with the time period that COVID-19 was circulating among the population in Canada including in schools. Having reviewed the Applicant’s submission, I am satisfied based on the contents that they are seeking the information in the Access Requests for the purposes of assessing the decisions and actions taken by the Public Body during the COVID-19 pandemic associated with the use of masks and ventilation and filtration.
- (c) In each of the schedules attached to the Access Requests, the Applicant clarifies specifically what information they are seeking as it relates to their general request for information relating to the use of medical grade masks and the ventilation and filtration in the Schools. The information set out in the schedules appears to be based on their knowledge of certain information related to the use

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<sup>11</sup> The day following the Applicant’s submission of their Access Requests to the Public Body.

of masks and ventilation and filtration to mitigate the risks of COVID-19 in Schools as provided for in their submission, which I have summarized below.

- i. The Ventilation and Filtration Access Request appears to stem from the Applicant's concerns, as set out in their submission, regarding ventilation in schools during the pandemic, the Public Body's "responsibility to keep [students] safe", and their own experience with an outbreak of COVID-19 in a school that resulted in their child contracting COVID-19. It also stems from their understanding, as described in their submission, of:
  1. the use of HVAC and building codes;
  2. information and guidance provided by ASHRAE about HEPA air filters;
  3. information regarding ventilation in the schools set out in the COVID-19 handbook about ventilation and filtration;
  4. the lack of adequate ventilation or filtration during the pandemic;
  5. the importance of relying on engineers for advice associated with ventilation and air filtration; and
  6. information provided by APEGA, ASET and ASHRAE about "core recommendations for mitigating aerosol infection risk".
- ii. The Masking Request appears to stem from the Applicant's concern, as set out in their submission, regarding decisions made by the Public Body to eliminate the masking requirements in the Schools given the recommendations made by the CPOH of Canada for indoor masking, Alberta data that "shows that schools without mask mandates had higher outbreaks", and information provided by the Canadian Aerosol Commission on the importance of masking and protection about the levels of masking. The Applicant indicates in their submission that they are seeking information that led to the decisions made by the Public Body about the use of masks in schools and any effect that these decisions had or may have on students, teachers, and the education system in Red Deer. They are also seeking statistical information to undertake their own analysis.

[28] On the facts and evidence before me, I have determined that the Applicant has made two access requests for information and that neither contain any information that was

requested by the Applicant in prior requests for information to the Public Body. I have also determined that there is no repetition in the information that the Applicant requested between the Access Requests. Therefore, I find that the Access Requests are not repetitious. Any overlap that may exist in the schedules can be addressed as part of the Public Body's duty to assist the applicant.

***Are the Access Requests "systematic in nature"?***

- [29] This office has consistently held that the meaning of "systematic in nature" in section 55 (1)(a) includes a pattern of conduct that is regular or deliberate.<sup>12</sup>
- [30] In Decision F2003-RTD-01, former Commissioner Work had occasion to consider whether a single access request could be "systematic" for the purposes of section 55 (1)(a). The matter before him was a request to disregard by the Southern Alberta Institute of Technology (SAIT) for access to information contained in Fee for Service contracts for all instructors between the years of 1997 and 2003. SAIT argued that the applicant in that case was using the FOIP Act to obtain information that they could not obtain through other processes to obtain information. The Commissioner found that the request was not systematic in nature on the basis that using the FOIP Act to obtain information after exhausting other informal avenues could not be systematic in nature because to do so would be contrary to the intent of the Act, which he stated "is to grant individuals a legislated right of access to information is not otherwise available to them". He did, however, clarify that a single request could be systematic in nature.<sup>13</sup>
- [31] In the same decision referenced above (Decision F2019-RTD-01<sup>14</sup>), former Commissioner Clayton stated the following about the public body's argument that because the applicant in that case submitted 20 requests in one document, at one time, this amounts to a "deliberate act" on the part of the applicant to burden the FOIP unit and affected program areas of the public body.

I disagree. By submitting his requests at one time, the Applicant has enabled the Public Body to conduct contemporaneous searches for all of the requested information. I see nothing improper about the number of requests or the overlap between them. Had the Applicant submitted tranches of the same or similar requests at different points in time, requiring the Public Body to conduct the same or similar searches more than once, then I might find the requests to be repetitious or systematic.

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<sup>12</sup> See, for example, Decision F2007-RTD-01.

<sup>13</sup> At paras. 22 to 27.

<sup>14</sup> *Supra* 8.

She added that:

Based on the Applicant's representations in his submissions, I am satisfied that he is interested in receiving the requested information. There is no evidence before me to suggest the Applicant's requests are a "deliberate act" to inundate or disrupt the Public Body. I find that the requests are not systematic in nature.<sup>15</sup>

Neither the Public Body nor the Applicant made any submissions on whether the Applicant's Access Requests are "systematic in nature" and, based on the evidence before me, I find that the Applicant's Access Requests are not systematic in nature. There is no evidence to suggest that the Applicant, in making their requests, has engaged in any deliberate conduct of a systemic nature to negatively affect the Public Body.

[32] The Public Body did not provide any submissions about whether the Access Requests are systematic in nature and nor did the Applicant. There is no evidence before me to suggest that the requests made by the Applicant resulted from some deliberate conduct intended to negatively affect or disrupt the Public Body.

[33] As I indicated above, it is clear from the Applicant's submission that they are seeking access to the information specified in the Access Requests in order to assess the decision making of the Public Body in relation to masking in the schools and ventilation and air filtration associated with the risks to students, teachers and the education system from COVID-19. This is precisely what the FOIP Act is for.

[34] Based on the foregoing, I find that the Public Body has not established that the Access Requests are repetitious or systematic in nature. Given this, I will not go on to assess whether responding to the Access Requests would unreasonably interfere with the Public Body's operations or are an abuse of the right to make access requests.

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

[35] The Public Body submits that the Applicant's request is frivolous or vexatious as follows:

Red Deer Public's third area of justification in regards to our request to have the OIPC authorize our school division to disregard the request involves details that would indicate that all of these requests are, indeed, frivolous or vexatious.

Please note that on the attachment labelled "Air Filtration", the second bulleted request references the Calgary Board of Education (...or other air filtration methods in an CBE school...). We believe that [the Applicant] has simply copy-and-pasted this unreasonably large list of requests from another source, and sent it to Red Deer Public Schools in order to interfere with the school division's operations. Whether [the Applicant] drafted all 78 of the

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<sup>15</sup> *Ibid.*

original requests for information, sent them to the Calgary Board of Education first, and then simply attempted to change all the references of “CBE” to “RDPSD”, or [they] found, or was sent, these 78 requests from another author [sic], it would appear that [the Applicant’s] requests to Red Deer Public Schools are part of a larger attempt to create issues for school divisions in Alberta.

In essence, [the Applicant] is requesting that Red Deer Public Schools (and potentially other school divisions in Alberta) undertake a project that would entail potentially hundreds of hours of research, only to demonstrate that Red Deer Public Schools not only followed the COVID-19 guidelines mandated by our provincial government, but was also available on our school division’s website.

- [36] Typically, a frivolous request is one that is 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. A vexatious request may also involve misuse or abuse of a legal process.
- [37] As noted by the Public Body, one sentence in schedule A of the Applicant’s Ventilation and Filtration Request refers to a “CBE school”, rather than the Public Body. The Public Body relies on this as evidence to demonstrate that the Access Requests are frivolous or vexatious. The Applicant states they have not made access requests to any other school board. The Public Body speculates that other individuals may have made similar requests to other school boards, but provides no additional information in support of this position.
- [38] I cannot find that this error (whether typographical or otherwise) or the Public Body’s speculation that additional similar requests may have been made to other school boards is sufficient to establish that the requests are frivolous or vexatious.
- [39] Although it is not required by an applicant, in this case the Applicant chose to make a submission and provided an explanation for making their Access Requests. As indicated, there is no evidence to suggest that their Access Requests are an illegitimate use of the right of access in the FOIP Act. Further, even if similar requests have been made to other school boards, this does not lead to an automatic conclusion that the request is frivolous or vexatious. If additional similar requests have been made, arguably, it may also indicate a genuine interest on the part of the Applicant (or other individuals making the request) in the information requested.
- [40] I find the Public Body has not established, on a balance of probabilities, that the criteria of section 55(1)(b) are met for the Access Requests.

[41] I will note there that in the preamble to its submission, the Public Body indicates its view that it has (or had) information on its website that represents “the culmination of all communication and correspondence that the school division would have received in regards to doing what was best for staff and students”.<sup>16</sup> It added further that “we feel that a vast majority of these requests for information were, at all times, available on this website”. As part of its duty to assist the Applicant, the Public Body should work with the Applicant to identify what, if any, of the information they are requesting is publicly accessible, which may narrow their request and reduce the workload on the Public Body in responding to the Access Requests.

### **Decision**

[42] After consideration of the relevant circumstances, and for the reasons stated above, I have decided not to authorize the Public Body under section 55(1) of the FOIP Act to disregard the Applicant’s Access Requests, dated July 19, 2022. Therefore, the Public Body must proceed with processing the Applicant’s access requests in accordance with the FOIP Act.

Diane McLeod

Information and Privacy Commissioner

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<sup>16</sup> Public Body submission, at p. 2.