

Application by Alberta Municipal Affairs to disregard an access request made by an applicant under the *Freedom of Information and Protection of Privacy Act*

On March 12, 2002, I received a letter on behalf of Alberta Municipal Affairs, requesting authorization to disregard an access request made by a named individual (the “Applicant”) under the Freedom of Information and Protection of Privacy Act (the “FOIP Act”). On March 21, 2002, I issued the following decision, from which I have removed the names of all individuals.

Commissioner’s Authority

Section 55 of the *Freedom of Information and Protection of Privacy Act* (“the FOIP Act”) gives me the power to authorize a public body to disregard certain requests for access. Section 55 states:

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 decision to grant a section 55 request is not a matter that I take lightly. In my view, such instances would be rare. In considering section 55 requests, I will be mindful of the principles of the FOIP Act.

Alberta Municipal Affairs’ Position

On February 19, 2002, the Applicant applied to Alberta Municipal Affairs under the FOIP Act for access to:

“...documentation or evidence of any kind showing specifically on what basis Alberta Municipal Affairs concluded that their (sic) was absolutely nothing illegal in regards to my concern of mismanagement or dishonesty on the part of Senior Town of Ponoka Officials.”

Alberta Municipal Affairs said this is the Applicant’s fourth access application and that the records responsive to this access application are “identical” to the responsive records of the Applicant’s previous access applications:

- **September 12, 1995:** *“...would you please provide me with documentation showing specifically what your department did investigate in this regard (applicant’s concern regarding the Administration of the Town of Ponoka) and the basis for their findings.*
- **April 5, 1999:** *“Please consider this letter a request for information under the Freedom of Information Policy...The information I am requesting is:*

1. Any documentation outlining and detailing what an investigation by Alberta Municipal Affairs consists of, i.e. what process or guidelines exist for such an investigation, as well as the requirements for a report or record of what was investigated, and any findings or conclusions.

2. Any documentation detailing any investigations performed by Alberta Municipal Affairs into this matter, and any findings that resulted from these investigations.

a) The time periods of any investigations, and the people involved in the investigation.

b) The findings of the investigators.

c) The conclusions reached, and the basis for these conclusions.

- **February 18, 2000:** *“I have on two previous occasions requested this information from Municipal Affairs. Both times I received considerable documentation but not what Municipal Affairs did investigate (sic). My very specific request is: Would you please provide me with documentation or evidence of any kind showing specifically what Alberta Municipal affairs did investigate in regard to my allegations of mismanagement and dishonesty on the part of senior Town of Ponoka Officials”*

The Applicant submitted a request for review to the Office of the Information and Privacy Commissioner on his February 2000 access application. This resulted in Order 2001-007.

In requesting a section 55 application, Alberta Municipal Affairs states:

“It is the opinion of the Ministry that this request is repetitive, that it constitutes an abuse of the right to make a request, and that it is vexatious and frivolous”.

Decision

After careful consideration of the relevant circumstances, I have decided to authorize Alberta Municipal Affairs to disregard the Applicant’s February 19, 2002 access application pursuant to section 55(a) of the FOIP Act.

My decision is based on the following reasons:

- 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.

- In my opinion, the scope of the Applicant’s access application is the same as his previous three access applications. While the four access applications may have different wording, the subject matter of the records/information that the Applicant is seeking is the same.

My decision to authorize Alberta Municipal Affairs to disregard the Applicant’s February 19, 2002 access application under section 55(a) of the FOIP Act does not deprive the Applicant of his access rights for the requested records. In my view, the Applicant has already exercised his access rights for the requested records through his earlier access applications.

- In Order 2001-007, I found that Alberta Municipal Affairs had fulfilled its section 10 [previously section 9] duty by making every reasonable effort to search for the requested records and by providing any information it thought might assist the Applicant. As the scope of the Applicant’s access request in Order 2001-007 is the same as the Applicant’s February 19, 2002 access application and as I have already determined that Alberta Municipal Affairs fulfilled its obligations under section 10 of the FOIP Act, it makes no sense to revisit this matter.
- I find that the Applicant’s access application for the same records as his earlier three access applications is repetitious and an abuse of the right to make those requests. I do not believe the FOIP Act intended for an applicant to submit and resubmit the same or similar access requests to a public body simply because the applicant does not like the information he obtained.

Although Alberta Municipal Affairs argued that the Applicant’s February 19, 2002 access application is also “frivolous” and “vexatious” as set out in section 55(b) of the FOIP Act, it is sufficient for me to find that section 55(a) of the FOIP Act applies. Therefore, I

do not find it necessary to consider whether the Applicant's access application was frivolous or vexatious.

Frank Work, Q.C.
Acting Commissioner