

ALBERTA
INFORMATION AND PRIVACY COMMISSIONER

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

Grant MacEwan College
(IPC File Reference: #F3885)

March 13, 2007

[1] On November 20, 2006, I received a request from Grant MacEwan College ("the College") for authorization under section 55(1) of the Freedom of Information and Protection of Privacy Act ("the FOIP Act") to disregard:

- an access request dated September 23, 2006 from an applicant ("the Applicant"); and
- "any and all other requests made pursuant to the Alberta Freedom of Information and Protection of Privacy Act" by the Applicant for a "considerable length of time in years, the exact length to be *determined by*" my Office.

Commissioner's Authority

[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 request 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

[3] The following chronology is relevant to this matter.

[4] On June 16, 2006, the Applicant applied under the FOIP Act to Advanced Education (now Advanced Education and Technology) for access to information.

[5] Advanced Education and Technology responded to the Applicant on August 10, 2006:

"It is Grant MacEwan College's "position that without an adequate understanding of the FIRS and KPIRS methodology and classification protocols revisions and refinements over

the past several years comparisons of data might prove problematic and be inaccurate” and “therefore objects to the release of this information.” Because Grant MacEwan College has not consented to the disclosure of their record, access to all information which you requested is therefore denied under subsection(s) 21(1)(b) & 21(3) of the Act...”,

[6] On September 23, 2006, the Applicant applied to the College for access as follows:

“With this Access to Information Application, I hereby request a copy of the College's 2004-2005 FIRS Submission to Alberta Advanced Education, control over access to which has evidently been retained by the College ...”

[7] On October 19, 2006, Advanced Education and Technology notified the Applicant it had further reviewed its August 10, 2006 response and has decided to release the information previously denied.

[8] The Applicant sent an email to Advanced Education and Technology on October 24, 2006 that states:

As per our conversation this morning, I am taking issue with the absence of the following records from the college's June 30/04 – July 1/05 FIRS submission in access request #0445.

The following records were not included:

- The cover letter from the FIRS submission outlining the docs submitted
- Statement of Financial Position at Year End
- Statement of Changes in Financial Position
- Deferred Contributions
- Staffing Profile FTE
- Indirect Costs per FLE

All of the above-named docs were included in your response to access request 0248 in which you provided the reporting data for the 2000 - 2004 fiscal periods.

I note in your letter of June 22, 2006, you indicate that you understand I am asking for the *same information I had requested in Request 0248 “concerning earlier fiscal periods.”*

If there is any confusion or misunderstanding resultant from my focusing on the above sentence and thereby expecting to get the same data as for 0248, that misunderstanding is *not, in my opinion, my problem...”*

[9] The Applicant also sent a separate email to the College that same day saying:

“As per the e-mail to [Advanced Education and Technology] I've just copied to you, I have failed to obtain from Advanced Ed most of the 04/05 FIRS Submission. This means I am unwilling at this time to withdraw my request to the College for the FIRS submission. However, I am narrowing the request to include only the docs missing from Advanced Ed's response...”

[10] On November 15, 2006, the Applicant emailed the College as follows:

"I'm just now going through the online versions of the Foundation's Registered Charity Information Returns. [I try to stay current] I see someone's been making an effort to correct the 2002 Return. It's still not free of internal inconsistencies..."

I have still not received most of the 2005 FIRS from either public body. I'd be happy with a PDF file in an email - which would take no trouble at all for the college [relative to that incurred by a FOIP inquiry, anyway]. Moreover, I would trade you, as I have said, as thanks for sparing everyone from another round of FOIP battles, for not only a copy of my 2005 report, but also for ample opportunity to resolve any issues raised by the report or to correct/challenge any data.

I'm afraid I can't give you much more time to mull the offer - the 60-day deadline for filing a FOIP complaint is almost up..."

[11] On November 20, 2006, I received the College's written request for authorization under section 55(1) of the FOIP Act to disregard the Applicant's September 23, 2006 access request and any future requests by the Applicant under the FOIP Act. The College said supporting documentation would be delivered under separate cover during the week of November 20, 2006. I received the supporting documentation on November 24, 2006.

[12] The College provided the Applicant with copies of its correspondence to me.

[13] I provided the Applicant the opportunity to submit comments in relation to the College's request for authorization to disregard the Applicant's requests.

[14] On November 27, 2006, I received a written complaint from the Applicant against Advanced Education and Technology and the College that:

- Advanced Education and Technology failed to provide records in response to the Applicant's access request; and
- The College failed to provide records which were missing from Advanced Education and Technology's response to the Applicant's access request.

[15] On December 7, 2006, I received the Applicant's comments in relation to the College's request for authorization to disregard her requests.

The College's Submission

[16] In requesting authorization to disregard under section 55(1) of the FOIP Act, the College wrote:

...The College does this reluctantly because we firmly believe in the right of access provisions of the Act. However we believe the circumstances of our situation are such that the public good is best served by no longer replying to and releasing information to this

individual. This would allow the College to better apply our resources to serve those taxpayers and clients who use resources and legislation appropriately.

It is our position that the above named individual has demonstrated a repetitious and systematic use of the FOIP Act to obtain College information for frivolous and vexatious purposes. This activity began in 2001 and consumed considerable time and resources culminating in the issuance of Adjudication Order #5 addressing ten Requests for Review made by this individual that were the product of an even greater number of FOIP Requests....

...[The Applicant] has continued unabated to seek and obtain information about Grant MacEwan College from a wide range of sources. She has bombarded the College and others who interact with the College with unsolicited communications, and used the information obtained for purposes that we regard as harassing, frivolous and vexatious.

Part of this pattern includes use of the FOIP Act to access College information held by other public bodies. These third party requests result in the College having to divert resources to address those requests just as we would if they had been sent directly to us. We do not know having Section 55 Authorization to Disregard granted to the College can apply to such requests, but we would ask that you consider this in your decision.

In support of this request, we reference Adjudication Order #5 by Justice Martin in which he confirmed that the actions of the College had been in good faith. He also commented in paragraphs 63, 64 and 65 that the actions of this individual were an abuse of the system for the purpose of harassing College officials, were both frivolous and vexatious, and that for that reason should have been disregarded. He goes on to express disappointment at the College resources expended in dealing with requests from this individual. It is our position that [the Applicant] has never stopped both abusing the system and harassing the College and its officials. We believe the chronology and the supporting documents solidly support *our position....*"

The Applicant's Submission

[17] In the submission received by my Office on December 7, 2006, the Applicant states:

"... I have withdrawn my request to the College for the records [see attached] and I am hereby withdrawing my complaint against the College and Advanced Education for not supplying the records.

As I no longer required the records and I have withdrawn my complaint, my position as Applicant is that the Section 55 issue is moot...

...In the alternative, the Applicant's position that the facts and the relevant case law show that: 1. the Applicant's interest in the records is genuine and not frivolous; 2. the Applicant's request to the College for the records was motivated by a genuine interest in obtaining the records..."

[18] The Applicant also says her decision to request the records from the College was due to “significant external factors” such as:

- Advanced Education and Technology’s failure to “reply in a timely manner to my emailed complaint that I had not received the records” and its failure to “to inform me in a timely manner that they had in fact decided to give me the records I was demanding”.
- A “defect” in the FOIP Act that allowed the College to control and block the Applicant’s access request to Advanced Education and Technology.

The College’s Request for Authorization to Disregard Applicant’s Requests

[19] The College is requesting authorization under section 55(1) of the FOIP Act to disregard the Applicant’s September 23, 2006 access request and future requests by the Applicant under the FOIP Act.

[20] The Applicant has withdrawn her September 23, 2006 access request. However, the College’s request for authorization to disregard the Applicant’s future requests remains outstanding.

[21] I have previously received requests from public bodies for authorization to disregard future requests from certain applicants. I said that the removal of the right to make future requests is a serious matter that I will only entertain in the most extreme situations.

[22] In my decision on the Application by the Edmonton Police Service (issued November 4, 2005), I wrote:

[37] ...I want to make it clear that I will not hesitate to allow public bodies to disregard requests where I am satisfied they are frivolous or vexatious. I have done so several times in the past. This legislation is meant to give access to information, not to exact punishment or harass public bodies.

[23] I had previously authorized the Town of Ponoka to disregard future access requests made by a third party and an applicant for certain records, as well as future access requests for those same records in which it is evident that the third party is the “directing mind” (see my decision on the Application by the Town of Ponoka, issued on August 14, 2002).

[24] Therefore, I will review whether the circumstances and evidence warrants issuing a decision to authorize the College to disregard the Applicant’s future requests.

Application of section 55(1) of the FOIP Act

1. Section 55(1)(a) – Repetitious or Systematic in nature

[25] In previous decisions, I said:

- “repetitious” is when a request for the same records or information is submitted more than once;
- “systematic in nature” includes a pattern of conduct that is regular or deliberate .

[26] The College’s history with the Applicant is documented in the August 6, 2004 Adjudication Order #5 issued by the Honorable Justice Peter Martin. The following excerpts are relevant:

[1] The requests for information leading to this Inquiry, have a long and complicated *history...*

[2] In September 2001, the applicant enrolled as a student in Grant MacEwan College, (the College). Within a few weeks she wrote a number of rather unusual e-mails to two of her instructors. These messages became the source of the discord between the applicant and *the College...*

[5] The remarkable nature of these communiques appears to have taken the recipient instructors by surprise. The ominous tone of the second message concerned the recipient *who consulted the College’s Dean of Student Affairs to determine how he should respond.* That led to a meeting on October 3, 2001, between him, the Dean of Student Affairs, the applicant, and the applicant’s student advisor. The applicant walked out in mid-meeting. Thereafter, she stopped attending classes, apparently believing she had been suspended. *In fact, she had not...*

[7] The applicant returned to classes and completed her exams. Her subsequent marks were not as she expected. She appealed them without success. She then withdrew from the *program,...* Thereafter, *the applicant launched a barrage of requests for information* relating first to her records with the College; then to records relating to the appointment of the second recipient to Chair of the Program; and, finally, to records relating to the protocol the College developed to deal with unusual situations such as that presented by the applicant’s earlier behavior.

[8] In the course of those communications, other demands and requests for information were made. They included requests for personal information of a number of the College’s employees who apparently had, or may have had, peripheral contact with the applicant. There was also a request that a memo authored by a College official regarding a telephone call received from the applicant be altered or deleted from the applicant’s file.

[9] The College took these requests seriously. They provided the information requested where available. When the information requested was unavailable, the applicant was *advised accordingly...*

[10] *...the applicant began seeking the College’s year-end, financial reports and the College Foundation’s financial reports.*

[11] The information provided by the College was scrutinized by the applicant and found wanting. Indeed, the applicant accused the College of a number of serious misdeeds including filing false documents and lying to her...

[54] ...the applicant wrote to the Department of Alberta Learning and requested a copy of the College's financial statements and budget/strategy plan. That information was provided...

[27] Adjudication Order #5 dealt with 10 requests for review submitted by the Applicant to my Office against the College. The Adjudication Order also referenced other requests made by the Applicant to the College that did not come before my Office

[28] In its submission, the College included copies of emails it received from the Applicant requesting various pieces of information in relation to the College's financial statements, returns, online materials, policies, etc.

[29] The Applicant's use of other public bodies to obtain College information both formally under the FOIP Act and outside the FOIP Act is noted in the following documents:

- Paragraph 54 of Adjudication Order #5 (see above);
- The Applicant's October 24, 2006 email to Advanced Education and Technology (which the Applicant copied to the College) regarding her access request for the College's 2004-2005 FIRS submission. That email also referenced a previous access request by the Applicant to Advanced Education and Technology for similar College information for the 2000-2004 fiscal periods.
- On June 21, 2005, the Office of the Auditor General sent the following e-mail to the Applicant (the Applicant provided a copy of this email to the College):

“...Please direct your inquiries to the College. We are not mandated to assist you in the preparation of your report...”

- A letter dated July 7, 2005 from the Office of the Auditor General to the Applicant (copied to the College), which states:

“Please cease emailing members of this Office with requests for information in relation to a report on Grant MacEwan College that you state you are preparing...”

[30] I find the volume of requests for information made by the Applicant to the College under the FOIP Act is excessive. I also find that the volume of requests submitted to the College in addition to the Applicant's requests to the College outside the FOIP Act and the Applicant's requests to other public bodies for information about the College demonstrates a pattern of conduct that is systematic in nature (that is, regular or deliberate).

2. Section 55(1)(a) – Unreasonably interfere with the operations of the public body or amount to an abuse of the right to make those requests

[31] In my decision on the Application by the Town of Ponoka (issued April 23, 2002), I defined “abuse” to mean misuse or improper use.

[32] The College says the Applicant is “abusing the system and harassing the College and its officials”. The College referenced Justice Martin’s comments in Adjudication Order #5:

[62] I am completely satisfied that the College acted in good faith throughout all of its dealings with the applicant and did to the best of its ability answer the many requests for information put to it...I find the College met all of its obligations under the Act and exercised remarkable patience and cooperation throughout this process.

[63] I am able to be more direct. I believe it was the applicant who abused the system by making these endless requests for information, which were fuelled by her desire to harass College officials...

[65] I am concerned that the College was required to expend several hundred hours of staff time – including that of very senior administrative staff – to meet these requests; and, in the process, spend what I estimate must have been tens of thousands of dollars of public funds. Those funds should have been directed to public education, rather than these demands...

[33] The Applicants says her access request to the College is “genuine and not frivolous” and “motivated by a genuine interest in obtaining the records...”. Further, the Applicant says her access request was made because Advanced Education and Technology’s response to her access request was not timely and “a reasonable response to the college’s exercise of control over her request to Advanced Education for the records with the result that the records were denied”. The Applicant said she had “not previously placed a request to the College for FIRS records, and I will not require any other records from the College – barring any legal actions between me and the college...”.

[34] I find the evidence is contrary to the Applicant’s claims. For example:

- In Adjudication Order #5, Justice Martin wrote:

[7] ...the applicant launched a barrage of requests for information...[8] In the course of those communications, other demands and requests for information were made...[10]...the applicant began seeking the College’s year-end financial reports and the College Foundation’s financial reports...[54]...the applicant wrote to the Department of Alberta Learning and requested a copy of the College’s financial statements and budget/strategy plan....

- On March 26, 2004, the Applicant wrote to the College:

I’ve just sent an e-mail to [name of person] pointing out that the link from his web page does not actually work to provide the Budget and Strategic Plan as advertised, and I’ve asked him to tell me where I can access the same. I know you’ll want to answer for him so I am providing this memo to speed up the appraisal of yourself of my latest doings. Also, I’ve sent an e-mail to [name of person] asking him about the legal status of the Ukrainian Foundation for College Education, so you can head him off at the pass and answer for him too. Also, I’ve sent [FOIP Coordinator] a FOIPP Request for a copy of that

report you were supposed to provide the Board last June on the Ukrainian Resource and Development, so you've got the whole weekend to think about how you're not going to provide me with a copy of the same. Cheerio.

- On August 30, 2005, the Applicant applied to the College under the FOIP Act for “a complete set of the documents entered as evidence in the FOIPP Inquiry between me and the College and which was adjudicated by Hon. J. Peter Martin Jan, 2001 – Aug 31, 2004”.

The Applicant subsequently wrote to the College on September 2, 2005:

“...if you will drop your plans to try to enter the FOIPP inquiry documents into any future legal proceeding (except for perjury, as the FOIPP Act allows), then I will abandon my FOIPP Request for the inquiry records. Here's why you want to consider accepting my offer: You would have a long, expensive legal road...The agony and expense of a trial would be significantly prolonged for both of us, because I would fight you every step of the way.”

- The Applicant applied to Advanced Education and Technology for access to College information relating to the 2000-2004 fiscal periods. The Applicant subsequently submitted a second access request to Advanced Education and Technology for similar information but for the 2004-2005 year.
- On September 12, 2006, I received the Applicant's request to review the College's actions in relation to Advanced Education and Technology's response to her second access request. I informed the Applicant that her access request was submitted to Advanced Education and Technology and that under section 65(1) of the FOIP Act, she had the right to request a review of Advanced Education and Technology but not the College. I notified the Applicant I had no jurisdiction under section 65(1) of the FOIP Act to review the College.

The Applicant then applied to the College on September 23, 2006 for the information that she had requested from Advanced Education and Technology. The Applicant says her “request to the college was a reasonable response to the college's exercise of control over her request to Advanced Education”.

[35] I find that the Applicant's use of the FOIP Act is not for the purpose for which the FOIP Act is intended. The Applicant is using the FOIP Act as a weapon to harass and grind the College. The Applicant is also using the FOIP Act as a means to bend the College to her will, such as is evidenced in her offer to abandon her August 30, 2005 access request if the College agreed not to enter the FOIP inquiry documents in future legal proceedings.

[36] In her submission, the Applicant said an “attempt to call the College to account” was unsuccessful. It is evident that the Applicant's September 23, 2006 Access request to the College was not for the purpose of obtaining information but an attempt to use the FOIP Act to continue to harass the College.

[37] I find that the Applicant's requests to the College and to the other public bodies are part of a long-standing history and pattern of behavior designed to harass, obstruct or wear the College down, which amounts to an abuse of the right to make those requests.

[38] In conclusion, I accept the College's position that future requests from the Applicant under the FOIP Act would be of a systematic nature and amount to an abuse as set out in section 55(1)(a) of the FOIP Act.

3. Section 55(1)(b) – frivolous or vexatious requests

[39] As I have found that the conditions under section 55(1)(a) of the FOIP Act apply, it is not necessary for me to consider the application of section 55(1)(b). However, I have decided to do so in this case.

[40] In a previous decision under section 55 (Application by the Edmonton Police Service, issued on November 4, 2005), I wrote:

[26] A 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.

[41] As indicated earlier, I find the Applicant has demonstrated a history and pattern of behavior of continually and repeatedly harassing the College through requests under the FOIP Act and outside the FOIP Act. This is documented in Adjudication Order #5 and earlier in this decision.

[42] The Applicant's intent to continually grind the College is further evident in the following communications with the College:

- On March 10, 2005, the Applicant sent an email to the Office of the Auditor General (copied to the College):

I note that in Note 16 Budget no provision appears to have been made for "interest on long-term debt," ...I feel certain that there must be an error in reporting – it is inconceivable that the Governors would have neglected to budget for the interest...I invite you [or the college] to provide me with the amount budgeted for in the 2003 fiscal period for interest on long-term debt.

- The Applicant's April 15, 2005 email to the College:

Notwithstanding the fact that he [sic] College did not volunteer info for my two-part report on the financial and administrative condition of the College/Foundation – in view of my wish to observe the most scrupulous [sic] fairness with respect to the report, I have nevertheless decided in the end to make a copy of the report available at no charge to the College. (It has struck me that it may not be fair to force any subject of a hostile report to go scrounging for a copy of said report from a recipient of the same)...

- The Applicant's April 19, 2005 email to the College:

"...The point is, you have three weeks at any rate to correct the Charities Directorate's version of the College's responses to D4 on the 2003 and 2004 Registered Charities can returns for the College. I will check with the Directorate for corrections before I finalized my report. If you make the corrections to D4 on the 2003 and 2004 Returns, then I won't make [name of person] failure to answer the question an issue of evident non-compliance for the 2003 period.

Now what could be fairer than that?

- The Applicant's July 19, 2005 email to the College:

I must say I am surprised to see that Policy 2300, the "Board of Governors Bylaws", has evidently not been updated since Feb 2003 – a full year and a half since the passing of the Post-Secondary Learning Act...

- The Applicant's July 21, 2005 email to the College

The provincial fillings for the Grant MacEwan College Foundation are a mess. Some of the info belongs in the you-gotta-be-kidding class...

[43] The Applicant's use of the access provisions of the FOIP Act to obtain information about the College from other public bodies is also part of the Applicant's pattern of abuse against the College. The College says "...These third party requests result in the College having to divert resources to address *those requests just as we would if they had been sent directly to us...*".

[44] The Applicant had applied to Advanced Education and Technology. In response to the initial decision by Advanced Education and Technology to withhold certain records, the Applicant submitted an access request to the College for the same information that she had requested from Advanced Education and Technology. The Applicant later narrowed the scope of her request to the College to records that were withheld by Advanced Education and Technology. The Applicant's access request was unnecessary as the FOIP Act granted her a right to request a review of the decision by Advanced Education and Technology to withhold information responsive to her access request. The Applicant's access request to the College is further evidence that the purpose of her requests to Advanced Education and Technology and to the College was not to obtain information but to continue her harassment of the College, which is an abuse and vexatious.

[45] I find the evidence supports a conclusion that future requests by the Applicant under the FOIP Act would be vexatious.

Decision

[46] After careful consideration of the relevant circumstances and evidence in this matter, I accept the College's position that future requests by the Applicant under the FOIP Act would be:

- Of a systematic nature and amount to an abuse of the right to make those requests (section 55(1)(a)); and
- Vexatious (section 55(1)(b)).

[47] Given the history of the College's dealings with the Applicant, I have decided to authorize the College to disregard any and all future requests made by the Applicant under the FOIP Act for a period of three (3) years, commencing from the date of my decision.

[48] Further, if the College receives access requests from third parties in which it is evident that the Applicant is the "directing mind" (see Application by the Town of Ponoka, issued August 14, 2002), the College may also disregard those access requests during the three-year period.

[49] In my view, the three-year period will provide the College some measure of relief against the Applicant's barrage of requests but does not deprive the Applicant of her right to exercise her access rights in the future. However, if after that time, the Applicant continues with her pattern or history of abuse against the College, the College may again apply to me under section 55(1) of the FOIP Act.

[50] The College also asked for authorization to disregard any requests the Applicant may make to other public bodies for information about the College.

[51] Section 55(1) of the FOIP Act allows a public body to ask me for authorization to disregard a request by an applicant to that public body. It does not allow a public body to request authorization on behalf of another public body. Therefore, I cannot extend the scope of my authorization under section 55(1) for the College to other public bodies.

[52] However, I have decided to publicly release my decision to alert other public bodies about the Applicant's pattern of conduct in relation to the College. The other public bodies would then need to consider whether the requests received are part of the Applicant's ongoing pattern of abuse against the College. If so, those public bodies may apply to me for authorization under section 55(1) of the FOIP Act.

Frank J. Work, Q.C.
Commissioner