

**ALBERTA
INFORMATION AND PRIVACY COMMISSIONER**

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

City of Edmonton
(OIPC File Reference 007234)

April 6, 2018

- [1] The City of Edmonton (the “Public Body”), in a letter dated November 29, 2017, requested authorization under section 55(1) of the *Freedom of Information and Protection of Privacy Act* (“FOIP” or the “Act”) to disregard an access request (2017-P-0517) made by an individual (the “Applicant”).
- [2] On January 2, 2017, I received the Applicant’s submission regarding the Public Body’s request.

Commissioner’s Authority

- [3] Section 55(1) of the Act 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.

- [4] A decision under section 55 is a discretionary “may” decision. A public body making a request under section 55 has the burden to establish that the conditions of either section 55(1)(a) or (b) have been met. If a public body meets its burden, then I will decide whether to exercise my discretion to authorize the public body to disregard the access or correction request at issue.

Scope of Section 55 Decision

- [5] The Public Body further requested that I:
- a. authorize a schedule of a quarterly continuing request for requests with the same or similar wording to 2017-P-0517; and

b. to authorize the City to not produce duplicate copies of records already in the possession of [the Applicant] such as email correspondence between [the Applicant] and the City.

[6] Section 55(1) of FOIP gives me the power to authorize a public body to disregard certain requests; however, section 55 is not a “catch-all” provision for me to set terms as to how a public body is to manage its access request process.

[7] Sections 9 and 10 of the Act outline the law regarding continuing requests and a public body’s duty to assist applicants. Issues relating to a public body’s decisions under those provisions may be dealt with through my office’s regular complaint/request for review process.

[8] Without commenting on the specific merits of the Public Body’s request to authorize a quarterly continuing request schedule, I note that a public body has some discretion to determine how it will manage its responses to access requests, so long as it complies with the requirements of the Act. If an individual disagrees with a decision made by a public body, that individual has a right of review before my office.

[9] The Public Body also requested authorization to not produce duplicate copies of records such as email correspondence already in the possession of the Applicant. It stated:

Many records provided to [the Applicant] when she makes a request for access to information are records already in [the Applicant’s] possession. For example, a number of records provided to [the Applicant] in request 2017-P-0484 are emails between [the Applicant] and the Corporate Access and Privacy Office. While releasing these records does not require access and privacy staff to spend time redacting records, a significant amount of employee time is spent collecting the records because of the high volume of emails [the Applicant] sends to the City. However, we are not, of course, seeking to prohibit [the Applicant] from corresponding with the City, but we do not think that it is unreasonable for [the Applicant] to maintain copies of her own correspondence.

[10] The Applicant stated, “I have no issue with the City and the FOIP Unit excluding email communication that has occurred between myself and anyone with the City”.

[11] As such, based on their submissions to my office, both parties agree there is no need for the Public Body to provide duplicate records, such as emails to the Applicant; therefore, there is no need for me to address this issue further.

[12] This Decision is solely about whether I will authorize the Public Body to disregard Request 2017-P-0517.

Background

[13] On November 1, 2017, the Applicant made an access request under FOIP (2017-P-0517), as follows:

Any and all records that relate to my name or home address from all departments, including Mayor and Councillor Henderson's offices from October 11 to October 31, 2017.

[14] The Public Body included in its submission a table summarizing the 25 access requests made by the Applicant to the Public Body since 2016.

[15] As both parties acknowledged, four of the Applicant's previous access requests (to which the Public Body has already responded) are very similar to the current request at issue, other than the date range. The previous 4 similar requests are outlined below:

- All information that relating [sic] to my name or my address. Includes notes, emails, faxes, text messages, letters and any bylaw or general complaints from January 24 to June 13, 2017
- All information that relates to my name or address including notes, emails, faxes, regular mail and complaints but excluding complaints I have made. June 14, 2017 – August 4, 2017
- Any and all records that relate to my name or home address of [redacted] from all departments, including Mayor and Councillor Henderson's offices from Aug 5, 2017 to Sept 24, 2017
- Any and all records that relate to my name or home address from all departments, including Mayor and Councillor Henderson's offices from Sept 25 – Oct 10, 2017

[16] The Applicant's current access request, and the subject of the Public Body's request for authorization to disregard under section 55(1) is for:

- Any and all records that relate to my name or home address from all departments, including Mayor and Councillor Henderson's offices from October 11 to October 31, 2017.

Section 55(1)(a) of FOIP

[17] The Public Body stated it was not seeking authorization under this section; therefore there is no need for me to consider it.

Section 55(1)(b) – Frivolous or Vexatious

[18] The Public Body stated it was seeking authorization only under section 55(1)(b); that is, that the Applicant's access request was frivolous or vexatious. It stated (in part):

We acknowledge that the right to request access to information held by a public body is a fundamental one so we are not seeking to prevent [the Applicant] from exercising her right. However, as this submission will demonstrate, [the Applicant's] requests over the past year are vexatious and therefore your intervention is necessary. Ultimately, we are seeking a solution that will both support [the Applicant's] right to request information and allow the City to continue to support an efficacious access and privacy program.

[19] The Applicant's submission appears to agree that the access request at issue is part of a continuing request given that the majority of the Applicant's submission focused on the dispute as to whether the Public Body ought to respond to the Applicant's access requests on a monthly basis (preferred by the Applicant) or a quarterly basis (preferred by the Public Body).

[20] In its submission, the Public Body referenced Commissioner Work's November 4, 2005 Decision¹ at paragraph 28 which states:

Factors that may support a finding that a request is vexatious include:

- a request that is submitted over and over again by one individual or a group of individuals working in concert with each other;
- a history or an ongoing pattern of access request designed to harass or annoy a public body;
- excessive volume of access requests; and
- the timing of access requests.

[21] The Public Body stated:

It is our position that the narrow time frame and the identical scope of the four requests submitted between August 5 and October 31, 2017, indicates an excessive volume and unreasonable timing of access requests.

[22] The Applicant pointed out that the access requests, although many are similarly worded, are for different time periods.

[23] I agree with the Public Body that the scope of the requests is essentially identical; however, as the Applicant has pointed out, the access requests cover different time periods. There is no time overlap between the requests. On the evidence before me, I am not convinced that the Applicant's request 2017-P-0517 is frivolous or vexatious under s. 55(1)(b) of FOIP.

¹ Request for Authorization to Disregard Access Requests Under section 55 of the *Freedom of Information and Protection of Privacy Act*, Edmonton Police Service (IPC File References #3448 and #3449), November 4, 2005, available online at: https://www.oipc.ab.ca/media/144959/Section55_EdmontonPoliceService_2005.pdf

- [24] Based upon my review of this file, it does not appear as though the Public Body is actually requesting authorization to disregard 2017-P-0517; rather, it requests authorization to respond to this request and others on a quarterly basis, instead of the monthly or *ad hoc* basis requested by the Applicant.

Commissioner's Decision

- [25] For the reasons outlined above, I do not grant the Public Body authorization to disregard request 2017-P-0517.
- [26] Although I have decided not to authorize the Public Body to disregard access request 2017-P-0517, this Decision does not prevent the Public Body from making future requests for authorization to disregard under section 55(1), if it believes the Applicant's pattern of requests meets the threshold at that time.

Jill Clayton
Information and Privacy Commissioner