

**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

Alberta Justice and Solicitor General
(OIPC File Reference 009008)

July 31, 2018

[1] Alberta Justice and Solicitor General (“JSG”) brought an application for authorization under section 55(1) of the *Freedom of Information and Protection of Privacy Act* (“FOIP” or the “Act”) to disregard one access request made by an individual (the “Applicant”).

[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 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.

[3] On June 20, 2018, JSG received the following access request under FOIP from the Applicant (JSG File No. 2018-P-0595):

“I would like a copy of cell [number redacted] video footage from May 28, 2018 early morning when I put 2 RFI’s in my door frame to be picked up by a CO at count time after showing the video camera.”

Time period: “May 28, 2018 between 6:25 am - 6:35 am”

[4] On June 21, 2018, I received an application from JSG under section 55(1) of FOIP for authorization to disregard the Applicant’s access request. JSG requested authorization for the following:

1. *Authorization to disregard this access request.*

2. *Authorization to disregard any access request made by the Applicant, or made on his behalf, to the extent that the request covers records or information where the Applicant wants to demonstrate continuity of his numerous submissions of Request for Information*

or the alleged wrongful opening of mail. Both matters can be resolved outside of the FOIP Act.

3. *Authorization to disregard any access request made by the Applicant, or made on his behalf, to the extent that the request covers records or information that have already been the subject of an access request made by or on behalf of the Applicant and to which the Public Body has responded.*

[5] JSG stated the Applicant had made 16 access requests this year (2018), of which 5 had involved my office. JSG stated, “the time required by our staff to dedicate service exclusively to matters involving this Applicant is detrimental to our ability to provide service to our other Applicants.”

[6] By the time this matter came to my attention, I was aware of JSG’s destruction of records in OIPC File Nos. 008539 and 008660. As in those matters, in this application, I encountered at the bottom of the last page of JSG’s application, the following statement:

“Please note that the video records that are requested are subject to a short retention period and have not been secured. The Public Body requests the OIPC to advise if they want the Public Body to secure the video records. A response is required by June 25, 2018 in order to ensure that the video records are secured.”

[7] As such, prior to giving the Applicant a deadline to respond to JSG’s application, on July 18, 2018, I wrote JSG requesting confirmation as to whether the responsive records in this matter had also been destroyed.

[8] On July 19, 2018, Alberta Justice and Solicitor General confirmed it had destroyed the records which were responsive to the Applicant’s access request under FOIP.

[9] FOIP does not authorize public bodies to decide whether they will respond to an access request; a public body is required to apply to me under section 55(1) to disregard an access or correction request. Although section 55(1) of the FOIP Act gives me the power to authorize a public body to disregard certain requests, it is a necessary precondition that the records subject to a request under FOIP must exist. Regardless of a public body’s belief in the merits of a section 55(1) application, bringing an application under section 55(1) of FOIP does not guarantee a public body will be granted authorization to disregard a request. Further, a public body does not have authorization under FOIP to destroy records that are the subject of an access request during the intervening period between its application under section 55(1) and my decision.

[10] In this case, Alberta Justice and Solicitor General received an access request under FOIP, applied to me under section 55(1), and then 4 days later, destroyed the responsive records.

- [11] An application under section 55(1) must be in relation to records that exist. Since these records do not exist, there is nothing for me to authorize or to refuse to authorize; therefore, I am not going to decide whether I will exercise my discretion under section 55(1) of FOIP to authorize Alberta Justice and Solicitor General to disregard the access requests at issue in this matter because the records no longer exist and have been destroyed.
- [12] I am extremely concerned about Alberta Justice and Solicitor General's destruction of records that are responsive to an access request under FOIP. I am aware that this same destruction of responsive records has occurred in two other JSG applications under section 55(1) (OIPC File Nos. 008539 and 008660). My decisions in those matters are being issued concurrently.
- [13] I have opened a new file to investigate Alberta Justice and Solicitor General's destruction of responsive records.

Jill Clayton
Information and Privacy Commissioner