



FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT
Section 55(1) Decision: Request for Authorization to Disregard an Access Request

Public Body	MacEwan University
OIPC File Reference	006847
Public Body File Reference	2017-P-037
Date of Decision	September 7, 2018
Summary of Decision	<p>The Public Body's application under section 55(1) is dismissed.</p> <p>The Public Body is required to respond to the Applicant's access request under the FOIP Act.</p>
Public Body's Request	<p>The Public Body seeks authorization to disregard access request 2017-P-037 and any future requests made by the Applicant for a period to be determined by the Information and Privacy Commissioner.</p>
Access Request at Issue	<p>The Public Body did not provide a copy of the access request at issue in its application under section 55(1) of FOIP.</p> <p>The Applicant provided a "corrected" copy of the access request at Tab F of his submission.</p> <p>As reported to my office, the Applicant's request is for the following:</p> <p><i>All correspondence, including attachments, appendices, enclosures, etc., sent and/or received by</i></p> <ul style="list-style-type: none"><i>[8 named staff members of the Public Body]</i> <p><i>That refers to me, [the Applicant], and variants thereon. My employee ID was [redacted].</i></p> <p>The Public Body reports the time period of the request as being January 1, 2013 – July 14, 2017.</p> <p>The Applicant states the "corrected" time period of his request is January 1, 2015 to "present" (present being the date of the access request, July 14, 2017).</p>

Overview

On October 18, 2017, the Office of the Information and Privacy Commissioner received an application from The Public Body under section 55(1) of the FOIP Act to disregard an access request made by the Applicant on July 14, 2017. The Public Body explained it had asked for a time extension to facilitate the request and that during this period, it had decided to seek authorization under section 55(1) of the Act.

The Public Body explained its reason for bringing an application under section 55(1) as follows:

This decision was made after careful consideration of the Applicant's current and past requests under the Act, and other details which will be provided to help elucidate the circumstances leading up to this request. Despite its best efforts to satisfy the Applicant, it has become clear that he is using the Act as an instrument of retribution against the University and its employees. He continues to repetitiously and systematically submit requests under the Act for vexatious reasons, which amounts to an abuse of this right. Unquestionably, the Applicant will continue to make these requests unless his right of access is restricted.

The quotation above constitutes the entirety of the Public Body's submission as it relates to section 55(1) of FOIP. The Public Body provided an extensive amount of records and documentation, including background information about the Applicant's lengthy history with the Public Body as well as additional evidence about other activities of the Applicant, such as his other matters before my office and dealings with another public body. In particular, the Public Body provided extensive evidence of the contents of a website the Applicant created which is solely devoted to the Applicant's concerns with the Public Body. Other documents included a timeline and details about previous files between the Public Body and the Applicant that had been before my office, an email the Applicant had sent to another university about the Public Body, a news article and numerous internet postings about the Applicant's behaviour at another post-secondary institution.

Upon review of the documents provided by the Public Body, it is clear that the relationship between the parties has broken down. The Public Body, however, did not explain how the large amount of records it provided specifically related to its application under section 55(1) of FOIP.

The Applicant's submission was received on December 1, 2017. He provided an explanation as to why he requested the information

	<p>and provided copies of his previous access requests to the Public Body. The Applicant stated he was correcting the initial time period in his access request from January 1, 2013 to January 1, 2015; the end date is July 14, 2017.</p> <p>The Applicant explained that it had been 3.5 years since his last access request to the Public Body. He took the position that the purpose of his website was to bring public awareness of “administrative wrongdoing” occurring at the Public Body. He stated the purpose of his current request was to ascertain the Public Body’s administration’s actions following the launch of his website, and that his request was not vexatious for various reasons. He pointed out that “the FOIP Act was instituted to increase transparency and increase accountability of public bodies.”</p> <p>To summarize the parties submissions before me: 1) the Public Body provided extensive documentary evidence of the contents of the Applicant’s website and other records, but no argument as to how the website (and other records) related to its application, and 2) the Applicant relied on his website to explain why he was concerned with the Public Body and had made another access request under FOIP 3.5 years after his last access request.</p>
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LEGISLATIVE AUTHORITY

“Public Body”	The Public Body is a “public body” as defined by section 1(p)(vii) of the FOIP Act, as it is a “local public body” as defined by section 1(j)(i) of the FOIP Act, and an “educational body” as defined by section 1(d) of the FOIP Act.
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Commissioner’s Authority	<p>Section 55 of the FOIP Act reads as follows:</p> <p style="text-align: center;"><i>Power to authorize a public body to disregard requests</i></p> <p><i>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</i></p> <p style="margin-left: 40px;"><i>(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</i></p> <p style="margin-left: 40px;"><i>(b) one or more of the requests are frivolous or vexatious.</i></p>
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	A decision under section 55(1) 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 discretion to authorize the public body to disregard the access or correction request at issue.
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SUBMISSIONS		
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Public Body’s Submission	Repetitious or systematic	No argument made.
	Unreasonable interference with operations	No argument made.
	Amount to an abuse	No argument made.
	Frivolous or vexatious	No argument made.

Applicant’s Submission	Repetitious or systematic	Not applicable.
	Unreasonable interference	Not applicable.
	Amount to an abuse	Not applicable.
	Frivolous or vexatious	Not applicable.

APPLICATION/ANALYSIS OF S. 55(1) TO ACCESS REQUESTS		
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Access and privacy rights have been identified as “quasi-constitutional” by the Supreme Court of Canada (See, for example: *Douez v. Facebook Inc.*, 2017 SCC 33; *Alberta (Information and Privacy Commissioner v. United Food and Commercial Workers*, 2013 SCC 62; *Canada (Information Commissioner) v. Canada (Minister of National Defence)*, 2011 SCC 25; *H.J. Heinz Co. of Canada Ltd. v. Canada (Attorney General)*, 2006 SCC 13; *Pro-Swing Inc. v. Elta Golf Inc.*, 2006 SCC 52; *Lavigne v. Canada (Office of the Commissioner of Official Languages*, 2002 SCC 55).

An individual cannot be deprived of his or her quasi-constitutional access rights under the FOIP Act unless a public body brings an application under section 55(1).

Further, in a section 55(1) application under the FOIP Act, the public body bears the burden to establish that the conditions of section 55(1)(a) or (b) or both are met. If the public body meets its burden, I will decide whether to exercise my discretion to authorize the public body to disregard the request at issue.

My office’s 2011-2012 Annual Report summarized the Alberta Court of Queen’s Bench judicial review of a section 55 decision of the former Commissioner in *Clarence J. Bonsma v. The Office of the Information and Privacy Commissioner and Alberta Employment and Immigration Information and Privacy Office (Bonsma)*, an oral decision of Clackson J. in Action No. 1103-05598 as follows:

Alberta Employment and Immigration (the Public Body) applied to the Commissioner under section 55 of the FOIP Act to disregard the Applicant's access request. The Commissioner decided to authorize the Public Body to disregard the request.

On judicial review of the Commissioner's decision, the Court of Queen's Bench quashed the decision. The Court said that if requests are not the same, then the fact that there are numerous requests made regularly cannot run afoul of section 55 in the absence of compelling evidence of ulterior improper motive. That is where the second part of section 55 becomes important. The ulterior motive is what establishes the abuse.

Since the request here was not repetitious, summary dismissal was dependent upon regular and deliberate requests and motivation. On the record, there was no basis to conclude that the Applicant was improperly motivated. Therefore, the Commissioner's conclusion that the Applicant's request was abusive was not reasonable.

Furthermore, in *Bonsma*, the Court expressed its view that a person defending what amounted to a summary dismissal application under section 55 need do no more than show merit. In other words, that person did not have a burden to show the request was for a legitimate purpose.

A large portion of the Public Body's evidence relates to a website created by the Applicant. The entire website appears to be solely devoted to outlining the Applicant's personal opinion of his experience with the Public Body and certain employees of the Public Body. It may be, perhaps, that the Public Body felt the background information and records it provided were self-evident in establishing the conditions of section 55(1) were met. This is not so. A public body must still 'connect the dots' and link its evidence to its application. That is, a public body must provide some argument regarding its evidence.

In his submission, the Applicant relied on the same website to justify his access request.

Other than the Public Body's above-noted quote in the "Overview" portion of this decision, the closest its submission came to making an argument relating to FOIP was its introduction to a number of direct quotations from the Applicant's website which stated, "The following statements made by him on the website validate that he is not acting in good faith with respect to his requests, and that his motive is to seek reprisal against the University instead of engaging its staff for genuine reasons." The Public Body then provided numerous quotations from the Applicant's website, but provided no further argument or explanation as to how this related to its application under section 55(1).

Generally, a public body must provide both arguments and evidence relating to its application. Arguments (or assertions) alone, without evidence are insufficient. Similarly, evidence, without an explanation about how it relates to the application is insufficient. In this case, although the Public Body identified its application as being brought under section 55(1), its only submission specific to FOIP legislation was an assertion about the Applicant, "He continues to repetitiously and systematically submit requests under the Act for vexatious reasons, which amounts to an abuse."

The onus is on a public body to make the link between its evidence and its application under FOIP. I cannot make arguments for any party before my office. I must make a decision based on the arguments and the evidence that parties put before me. The burden lies on the public body making an application under section 55(1) to explain why it believes the criteria have been met. Although the Public Body

provided extensive background information and documentation, it cannot simply provide evidence without explaining how that evidence relates to the legislative provision under which it is bringing an application.

In a section 55(1) application, a public body must:

- 1) Identify which subsection (or both) of section 55(1) it is relying on; and
- 2) Explain why it believes the conditions of section 55(1)(a) or (b) or both are met, through argument and evidence.

[Practice Note: Authorization to Disregard Requests, available at www.oipc.ab.ca]

Although there is plenty of documentation before me regarding the Applicant, there is no argument, and therefore, I must find that the Public Body has not met its burden under section 55(1) of FOIP.

DECISION

The Public Body has not met its burden under section 55(1); therefore, I have decided not to authorize the Public Body to disregard the Applicant's Request 2017-P-037.

The Public Body is required to respond to the Applicant's request for access in accordance with FOIP. Based upon the Applicant's representations to my office, the time period of his request is January 1, 2015 – July 14, 2017.

This decision should not be taken in any way as supporting or validating the Applicant's personal opinion regarding the conduct of the Public Body. This decision has been made on the basis that, despite the abundance of background information and documentation, the Public Body did not provide an argument on which I could make a decision under section 55(1) of the FOIP Act.

More generally, public bodies may benefit from reviewing the Practice Note: Authorization to Disregard Requests that my office issued in June 2017 to assist them with preparing their applications under section 55(1) of the FOIP Act.

The Public Body has not provided any submissions regarding its request for authorization to disregard future access requests from the Applicant; therefore, there is nothing for me to decide.

If the Public Body receives access requests from this Applicant in the future which it believes meet the criteria of section 55(1) of the FOIP Act, it may consider bringing an application at that time. As with any application under section 55, the Public Body should provide a copy of the access request at issue, specify the subsections of 55(1) upon which it seeks to rely, and provide both argument and evidence to support its application.

Jill Clayton
Information and Privacy Commissioner