

**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*

Energy  
(OIPC File Reference 007378)

October 31, 2018

- [1] Alberta Energy (the “Public Body”) 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 made by an individual (the “Applicant”). The Public Body requested authorization to disregard the Applicant’s access request as well as authorization to disregard any future requests submitted by the Applicant for the same or similar information.
- [2] During my review of this matter, the Applicant made additional access requests, which were added to the Public Body’s application under section 55(1) of FOIP.
- [3] For the reasons provided below, other than the records identified by the Public Body in its September 13, 2018 letter that have not yet been provided to the Applicant, I have decided to authorize the Public Body’s request. The Public Body is authorized to disregard the Applicant’s access requests. The Public Body is further authorized to disregard access requests for the same or similar information for a period of 6 months from the date of this decision.

**Commissioner’s Authority**

- [4] 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.*

- [5] A decision under section 55 is a discretionary “may” decision. A public body making a request under section 55(1) 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 request at issue.

## Background

- [6] On December 4, 2017, the Applicant made an access request under FOIP (Public Body File No. 2017-G-0127), as follows:

*Information requested includes all pictures/photographs/discussions/reports/media that were publicized to the Department of Energy (DoE). Publicity of information may not be limited to DoE. It includes all information publicized to other Government and public bodies/audiences.*

- 1) All records and photographs/pictures of and appearing to be: [son of the Applicant], and all other immediate and extended relatives (together or individual).*
- 2) All pictures of [the Applicant] or pictures that appear to be [the Applicant] wearing a yellow tank top and pictures of [the Applicant] or appearing to be [the Applicant] wearing undergarments*
- 3) All other publicized photographs assumed taken by [the Applicant] and/or her family (flowers, pets, landscapes, and all other photographs)*
- 4) All ‘public’ mentions address [sic]: [redacted]*
- 5) All discussions of unlawful entry into [address redacted]*
- 6) All records of [the Applicant’s] family (together or individually) discussing the breach of personal privacy of dwelling at [address redacted]*
- 7) All records of [the Applicant]’s breach of personal privacy at workspace [redacted]*
- 8) All comments of [the Applicant] and/or [redacted] being abusive, misconduct and violence towards son and other individuals*
- 9) Records and discussions [of employee of Public Body] abusing [the Applicant]*
- 10) All financial comments of [the Applicant]and family (includes extended family)*
- 11) All publicized personal, medical and health comments/information of [the Applicant] and family (includes extended family).*
- 12) Unauthorized access/provision of information/passwords of [the Applicant]’s electronic devices and work [redacted] and at home [address redacted]*
- 13) All public mentions/comments of [son of the Applicant]*
- 14) All accusations/complaints reported by [employee of the Public Body] about [the Applicant]*
- 15) All reports/discussions of [employee of the Public Body] gaining entry into [the Applicant]’s work area/desk [redacted] and entry into residence at [address redacted]*
- 16) Records/discussions of defamation of [the Applicant] by [employee of the Public Body]*

*\*Other Information regarding [the Applicant]’s information:*

*-Numbers to Identify: Employee ID: [redacted]*

*-Names that could be used for [redacted]: [redacted]*

*\*This request is directed to all Department of Energy's departments, including Legal Services.*

- [7] On December 20, 2017, the Organization applied to me under section 55(1) of FOIP for authorization to disregard the Applicant's access request.
- [8] On December 27, 2017, the OIPC received an email from the Public Body attaching emails from the Applicant with modifications/additions to her initial FOIP request:
- 1. Instead of paper documents, I am requesting the FOIP be provided in electronic format. A memory stick will be sufficient.*
  - 2. Add to request: Documentation regarding comments / accusations about me [the Applicant] made by [employee of Public Body] to the employees at the Department of Energy (written or verbal). Comments should include anything about my clothing, footwear, being a prostitute and all other comments/accusations.*
  - 3. Add to request: Documentation regarding personal comments by [employee of the Public Body] about me [the Applicant]'s personal appearance and comments about personal comments about [the Applicant's] family members. Documentation should also [employee of the Public Body] [sic] comments about being punched by [employee of the Public Body].*
  - 4. All complaints/accusations about [the Applicant] by [employee of the Public Body].*
- [9] The Applicant then responded to the December 27, 2017 email to advise the Public Body to disregard #2 and #3 and go forward with #1 and #4.
- [10] On February 26, 2018, the Applicant made another access request (Public Body File No. 2018-P-0012) which she summarized as *"asking for information about [a Public Body employee's] comments of [another Public Body employee] punching me and of [a third Public Body employee's] comments about my clothing and footwear."*
- [11] Later that same day (February 26, 2018), the Applicant emailed the Public Body to cancel that access request. According to the record before me, that access request (2018-P-0012) was not reopened.
- [12] Below, I have briefly summarized the history of communications on this file as it provides context for my decision.
- [13] On April 15, 2018:
- 8:32 am - the Applicant emailed the Public Body to cancel her access request.
  - 3:36 pm - the Applicant emailed the Public Body to cancel her cancellation request.
- [14] On April 17, 2018:
- 7:36 am - the Applicant emailed my office and the Public Body requesting cancellation of her access request.

- 1:45 pm - the Public Body emailed the Applicant back to request clarification that she was cancelling her original access request (2017-G-0127).
- 3:41 pm - the Applicant responded that before she cancelled she wanted to know if the review showed defamation of her character and harm to her family publicly.
- 4:17 pm - the Public Body responded, explaining to the Applicant that a section 55(1) application did not review those issues, and the matter was solely whether the Public Body could disregard her access request and any future requests she might make.

[15] On April 18, 2018:

- 10:18 am - the Applicant emailed to ask that the review continue.
- 1:27 pm - the Applicant emailed again and asked to have the review cancelled.

[16] On April 23, 2018, the Public Body confirmed it had closed the Applicant's request file, but asked my office to proceed with making a decision regarding future requests from the Applicant.

[17] On April 24, 2018:

- 1:42 pm - the Applicant asked the Public Body to re-open her access request.
- 4:26 pm - the Applicant emailed the Public Body again, stating, "*I apologize. I have changed my mind in this request. Please end and close the Foip request. Thank-you.*"
- 5:47 pm – the Applicant apologized and asked to continue with her request.
- 8:46 pm – the Applicant asked to have her request disregarded.
- 9:51 pm – the Applicant asked to continue with her request.

[18] On April 25, 2018:

- 3:51 pm – the Applicant stated she wanted to cancel the request.

[19] On May 9, 2018, the Applicant made two additional access requests to the Public Body. The first access request states:

*All pictures /photos publically [sic] shared to Department & public. Pictures of [the Applicant] and immediate family members including son, [name redacted]. Also include records of discussion regarding the publicity of pictures/photos. Information/discussions of [the Applicant] being accused of being a prostitute or mentions of prostitution in her residence [address redacted].*

*All family and pictures taken by [the Applicant] Husband [name redacted] Assumed taken by or family took pictures.*

*Time period of records: May 1, 2016 – May 9, 2016*

[20] The second May 9, 2018 access request states:

*All records of discussions (emails/minutes of meetings) regarding employment and personal health information.*

*Time period of records: May 1, 2016 – May 9, 2018*

[21] On May 14, 2018, the Applicant asked to have her General request cancelled.

[22] On May 17, 2018, the Applicant amended her access request and asked to include any mentions of a Public Body employee punching her or causing physical harm, defaming her, and discussions of intrusions of personal/work/home privacy.

[23] On May 18, 2018, the Applicant amended her access request again to not include the pictures of her husband but to include photos of all other relatives and children.

[24] On June 8, 2018 the Applicant asked to stop my review of this matter.

[25] On June 9, 2018, the Applicant asked not to stop the review but to clarify the items most important to her.

[26] On June 10, 2018 (at 5:54 pm), the Applicant asked to stop the review.

[27] On June 11, 2018:

- 9:19 am - the Public Body explained to the Applicant that the Public Body had brought the Application under section 55(1) to my office, and that the Applicant could not request that it be stopped.
- 10:58 am – the Applicant stated, *“I demand that MY request of the Commissioner review of MY FOIP request #007378 be stopped immediately. [...] If you do not comply with my request to cancel, I will be seeking legal action.”*
- 11:05 am – the Applicant stated, *“This is my urgent request to stop MY request to have the Commissioner review MY FOIP request #007378. Failure to comply with my wishes is illegal and against my rights. Please confirm asap that my review will be stopped as these are my wishes and my request.”*
- 11:46 am – the Applicant stated, *“Please continue the request until I find out further information.”*
- 11:48 am – the Applicant emailed the Public Body for clarification regarding her request.
- 1:44 pm – the Public Body explained to the Applicant that both parties would receive a copy of my decision in this matter when it is issued.
- 1:55 pm – the Applicant requested information from the Public Body.
- 2:06 pm – the Applicant stated she wished to have the final decision as to whether or not she would pursue her FOIP request.

[28] On July 30, 2018, the Applicant was provided an opportunity to make a submission regarding the Public Body's request to disregard her two May 9, 2018 access requests. Later that day, the Applicant emailed my office stating that she did not make any request on May 9, 2018.

[29] On July 31, 2018:

- 12:05 am – the Applicant reiterated that she had not made an access request on May 9, 2018 and requested a copy of the access request.
- 2:25 pm – the Applicant asked to have the matter disregarded, stating, "*Any further action on this is a waste of my time*".
- 2:43 pm – the Applicant apologized for her previous comment and asked to have the matter reviewed.

[30] On August 1, 2018:

- 7:50 am – the Applicant stated she no longer wanted a copy of any requests made on May 8 [sic], and asked to have her request disregarded.
- 9:55 am – the Public Body confirmed the Applicant did not want any copies of requests at that time.

[31] On August 10, 2018:

- 10:36 am – the Applicant denied making access requests on May 9, 2018 and requested time to respond.
- 11:54 am – the Applicant added to her previous email that she would "*not be proceeding with this foip however I want to ensure these false statements are brought forward*".

[32] On August 13, 2018:

- 7:47 am – the Applicant stated she would not be pursuing her FOIP request.
- 7:57 am – the Applicant stated she regretted her previous comment and did want an extension to respond to false information.
- 8:04 am – the Applicant asked to not be denied "*the opportunity to request future personnel information*" from the Public Body.
- 8:24 am – the Applicant updated her mailing address and stated her previous mailing address on the May 9, 2018 access request was another false statement.

[33] On August 14, 2018:

- 12:05 am – the Applicant stated she was no longer interested in having the matter reviewed and asked to have her FOIP request disregarded.
- 12:09 am – the Applicant stated she had reconsidered and regretted her last email, and wanted to have the matter reviewed.
- 12:25 am – the Applicant stated she wanted to stop the review and move on with her life but did not want to lose the right to ask for personal information in the future.

- 12:49 am – the Applicant asked to have the review continued.
- 3:14 pm – the Applicant stated she had located her May 2018 requests.

[34] On August 15, 2018:

- 7:23 am – the Applicant stated although she had located her May 2018 requests, she had cancelled them, and provided additional explanation regarding the circumstances.
- 7:42 am – the Applicant stated she regretted some of her comments about a particular individual in her previous email and asked to have her comments disregarded.

[35] On August 20, 2018:

- 1:40 pm – the Applicant stated she had resigned from the Public Body and was requesting personnel information from HR.
- 4:18 pm – my office emailed a letter from me to the Public Body (copied to the Applicant) noting that the Applicant had requested access to her personnel file and requesting clarification as to whether the Applicant had already received access to this information.
- 4:27 pm – my office re-emailed my letter to the Public Body (with a copy to the Applicant) as the first staff member emailed was away.

[36] On August 21, 2018:

- 12:34 pm – the Applicant stated there were a number of errors in my August 20, 2018 letter and provided additional explanation relating to allegations she had made in previous access requests.
- 9:03 pm – the Applicant asked several questions including why her access request had been stopped without her approval, and stating it was her human right to request information.

[37] On August 22, 2018:

- 10:26 am – the Public Body requested an extension to respond to my letter of August 20, 2018.
- 10:46 am – my office responded to the Public Body granting an extension to September 14, 2018.
- 10:47 am – my office emailed both the Public Body and the Applicant notifying them that the Public Body's response deadline had been extended to September 14, 2018.
- 10:50 am – the Public Body confirmed receipt of the extension authorization.
- 12:22 pm – the Applicant stated she was not interested in pursuing her information request.
- 6:27 pm – the Applicant apologized and stated she wanted to ensure she was able to access information in the future.

- [38] On August 27, 2018:
- 6:15 am – the Applicant stated she disagreed with the process and wanted to stop the review of her file and request.
- [39] On September 8, 2018:
- 3:12 pm – the Applicant requested an update as to what was happening with her request.
- [40] On September 10, 2018:
- 9:26 am – the Applicant stated she had “*asked several weeks ago to cancel this response*”.
  - 4:23 pm – the Applicant asked to have the matter continue.
- [41] On September 13, 2018, my office received the Public Body’s response to my August 20, 2018 letter. The Public Body stated it had checked with its Human Resources office and had determined that given the new time period of the Applicant’s request, “email records do exist which meet the scope of the records identified in the May 9, 2018 request” and these records had not been previously provided to the Applicant through the FOIP process.
- [42] On September 18, 2018, my office confirmed receipt of the Public Body’s response and notified the parties that submissions were closed and no further submissions from the parties would be accepted or considered. I note the Applicant continued to email my office after this date with a similar pattern of communications.

### **The Public Body’s Submissions**

- [43] Prior to bringing its application under section 55(1), the Public Body responded to two previous access requests from the Applicant between June 2016 and December 2017. The Public Body provided details regarding these access requests, which are briefly summarized below.
- i. Request #2016-P-0080 - 78 pages of records were released to the Applicant
  - ii. Request #2016-P-0127 - 389 pages of records were released to the Applicant. The Applicant requested a review by my office, and ultimately the assigned Senior Information and Privacy Manager held that “the Public Body properly discharged its duty to assist the Applicant under section 10.”
  - iii. Request #2017-P-0126 – Withdrawn by the Applicant.
  - iv. Request #2017-P-0127 – Current request subject to this application.
- [44] On December 19, 2017 the Public Body contacted the Applicant to discuss the requested records and provided a detailed summary of that discussion. Among other information, the Applicant “confirmed she [was] requesting records that are not related to government business and that government would have no reason to have such records in the normal



course of business” and the Applicant “was advised she had received full access to every record responsive to her previous FOIP requests and that some of the information she asked for simply did not exist. [The Applicant] believes that it is possible records may exist now and stated, ‘one never knows’”. Because the Applicant has been on a leave of absence from the Public Body, the time frame of her request is during her absence from her position, and the Applicant wanted the full wording of her request sent for searches throughout the Public Body.

[45] The Public Body submits that the Applicant believes an employee of the Public Body gained unlawful access to her home (although the Applicant has no evidence), and that the records she requested could have been found on Facebook or Twitter and disseminated further. The Applicant further believes employees of the Public Body gained access to her electronic devices at work and at home, although she has no evidence. The Applicant believes “this information has ruined her life” and “is adamant that she did not get the records she requested in her previous FOIP requests, she believes it is possible that the newer information she is requesting could exist and indicated ‘she would continue to submit FOIP requests until she got what she was looking for’”.

[46] The Public Body stated:

Energy submits the applicant’s requests are being submitted repetitiously for mainly the same information. The applicant is unwilling to deviate from the same list of information previously requested and contained in her current request. Our efforts to discuss the scope of her request and determine if there is any new information she may be interested in obtaining, which is reasonable or likely to exist, have been unsuccessful. The applicant’s unwillingness to accept the results of Alberta Energy’s previous responses to her requests and continuing to submit requests for the same types of information outlined in the four requests submitted to date by the applicant or on her behalf, demonstrate an abuse of the access to information process available to the public.

An additional concern is related to the very sensitive specific personal information included in the latest request. She has expanded her request to information that is highly personal and likely damaging to her in many ways and is insisting the search is carried out by various Divisions of the department that she has never worked in and that have no reasons to hold any personal information concerning the applicant. Disclosure of the information included in her request could have an impact on her as a department employee if she returns to work here as she is currently on a leave of absence. As well, information contained in the current request is defamatory regarding another GOA employee and broad dissemination of this request within the department, (as requested by the applicant) could unfairly damage the reputation of the other employee. During the applicant’s conversation with FOIP office staff on December 19, 2017, she indicated that she will keep asking for information until we give her the records identified, many that we have previously determined through our search processes do not exist.

The review conducted by the OIPC has confirmed that searches conducted have been thorough, complete and accurate. All information located in response to her previous

requests was completely disclosed to the applicant, no exemptions or exclusions applied. We have been unable to determine during discussion with the Applicant that there is any different information other than what has already been searched for and provided, that she can reasonably identify for our office to proceed to search and locate in response to her request.

### **The Applicant's Submissions**

[47] On January 31, 2018, my office received a submission from the Applicant dated January 29, 2018. which states in part:

Regarding Section 55(1)(a) on the letter, I am requesting that instead of asking the full department to do perform the request [sic], that this be modified to a smaller group or one person who oversees the Division or another individual at a higher level.

Regarding Section 55(1)(b) on the letter, one or more of the requests may be frivolous or vexatious, however the actions and comments of several people involved in selfish and childish actions were also frivolous and vexatious. Comments and actions that several individuals made were real and created a change to my daily lifestyle and the lifestyle of my family. I am not asking for this request to be vengeful. I am requesting this information because the safety of my family and I have been compromised and because I need to take the necessary precautions to protect my life. My career and personal life have suffered. [Emphasis added]

[48] The Applicant then asserted that she believed her previous manager had stolen her personal identity and passwords. She explained she believed this individual was responsible for a number of things including: personal items being stolen from her home, family recordings being deleted from her camcorder, computer and memory sticks, suspicious activity with her wifi and phone account, suspicious vehicle activity, and her laptop being compromised at her home with personal information being taken and emails sent from her computer. The Applicant did not provide any evidence for her assertions.

[49] On the afternoon of January 31, 2018, the Applicant telephoned my office to request that her submission not be considered. The Applicant communicated the same to the Public Body in an email sent at 3:58 pm that day. At 6:54 pm that day, the Applicant notified the Public Body she decided to continue and wished to have her previous request to disregard the letter disregarded. At 7:50 pm, the Applicant indicated she wanted to "stop continuation of the review". The next day, February 1, 2018, the Applicant emailed and telephoned the Public Body indicating she wanted the matter to proceed.

[50] Based on the last communication from the Applicant that appears to relate to her January 31, 2018 submission, I understand I am able to consider it. I have further considered the broader pattern of the Applicant's communications with the Public Body and my office during my review of this matter. In particular, the Applicant's pattern of alternately asking to amend or withdraw and reopen her access requests is relevant to my decision. I

also note that the Applicant initially denied making her May 8, 2018 access requests, although she later confirmed she had made them.

### **Application of Section 55(1)(a) of FOIP**

[51] The rationale behind section 55 was explained by Commissioner Work when he stated:

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.<sup>1</sup>

#### **1. Section 55(1)(a) – Repetitious or Systematic in Nature**

[52] “Repetitious” is when a request for the same records or information is submitted more than once, and “systematic in nature” includes a pattern of conduct that is regular or deliberate.

[53] The Public Body submits that Applicant’s requests are repetitious and request “mainly the same information. The applicant is unwilling to deviate from the same list of information previously requested and contained in her current request.”

[54] The Applicant has previously received a total of 467 pages of records in response to her access requests without any redactions. The Public Body states she has been provided

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<sup>1</sup> Application by Alberta Municipal Affairs to disregard an access request made by an applicant under the *Freedom of Information and Protection of Privacy Act*. Available online at: [https://www.oipc.ab.ca/media/134022/Section55\\_MunicipalAffairs\\_2002.pdf](https://www.oipc.ab.ca/media/134022/Section55_MunicipalAffairs_2002.pdf)

with access to her information and no new information will be found with these requests, and most of the information requested does not exist.

[55] I have reviewed the Applicant's previous access requests, and although the specific wording and time frames vary, I note there is significant overlap in the nature of the request. For example, in the Applicant's 2016 access request which was reviewed by my office, she requests photographs of herself, documentation of harassment and bullying by the same Public Body employee who features predominantly in her current request, and information regarding breaches of privacy in both her work and personal communications.

[56] Because the time frames of the Applicant's access requests vary, they are not entirely repetitious, but, given the similar nature of her access requests, and the regularity with which she makes them, I find the Applicant's access requests are systematic in nature.

## 2. Section 55(1)(a) – Amount to an Abuse of the Right to Make Those Requests

[57] Previous decisions from this office have defined "abuse" to mean misuse or improper use. In *Chutskoff v. Bonora*<sup>2</sup>, the Court of Queen's Bench outlined various indicia of vexatious litigation and held that *any* of these factors could be a basis to declare that a litigant is vexatious, to end abusive litigation and to restrict future access to the courts. These categories of abuse are also relevant to proceedings before my office and include:

1. collateral attacks,
2. hopeless proceedings,
3. escalating proceedings,
4. bringing proceedings for improper purposes,
5. initiating "busybody" lawsuits to enforce alleged rights of third parties,
6. failure to honour court-ordered obligations,
7. persistently taking unsuccessful appeals from judicial decisions,
8. persistently engaging in inappropriate courtroom behaviour,
9. unsubstantiated allegations of conspiracy, fraud, and misconduct,
10. scandalous or inflammatory language in pleadings or before the court,  
and
11. advancing OPCA strategies.

[58] Based upon my review of the materials before me, I find that at least three of the categories are met in this case.

[59] First, based on the Public Body's submission, I understand there was an investigation regarding the Applicant's allegations about the employee of the Public Body who predominantly features in her access requests. Although I have no specific information

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<sup>2</sup> *Ibid.* at paras 13 – 15

regarding the outcome of the investigation, it is clear (particularly given the Applicant's insistence that the full wording of her request be circulated throughout the Public Body) that the Applicant's access requests constitute a collateral attack on the employee of the Public Body.

[60] Second, the access requests are replete with unsubstantiated allegations of misconduct on the part of the employee of the Public Body, which include allegations of home invasion, theft and abuse.

[61] Third, and similar to the second ground, although there is no profane language in the access requests, the allegations contain scandalous language regarding the accusations leveled at the employee of the Public Body. As the Public Body stated, "information contained in the current request is defamatory regarding another GOA employee and broad dissemination of this request within the department, (as requested by the applicant) could unfairly damage the reputation of the other employee." I agree.

[62] I find the Public Body has met its burden under section 55(1)(a) and that the Applicant's access requests are systematic in nature and an abuse of the right to make requests.

### 3. Section 55(1)(b) – Frivolous or Vexatious

[63] There is no need for me to consider this section given my findings under section 55(1)(a); however, in my opinion, the circumstances of this case warrant a brief discussion. "Frivolous" is typically associated with matters that are trivial or without merit.

[64] In her submission dated January 29 2018, the Applicant conceded, "one or more of the requests may be frivolous or vexatious, however the actions and comments of several people involved in selfish and childish actions were also frivolous and vexatious."

[65] I also note that the inordinate number of times the Applicant withdrew and reopened her access requests during the course of this matter, often multiple times in a single day, and her initial denial of submitting the May 9, 2018 access requests lend further support to a finding that her access requests are trivial and without merit. If an applicant cannot even remember making an access request, it is unlikely to be a meritorious request.

[66] I find the Applicant's access requests are frivolous.

### **Commissioner's Decision**

[67] I find that the Public Body has met its burden under section 55(1)(a) of FOIP to establish that the Applicant's access requests are systematic in nature and an abuse of the right to make access requests. I further find, based on the Applicant's own submission, the number of times she asked to withdraw and reopen her requests, and her denial of submitting some of the access requests, that the Applicant's access requests are frivolous.

[68] Although I agree with the Public Body that the Applicant's access requests are systematic, abusive and frivolous, I also note the Public Body confirmed in its September 13, 2018 letter that based on the date range of the Applicant's May 9, 2018 access request, some responsive "email records do exist" that have not previously been provided to her. It is unclear from the Public Body's letter if these email records are simply copies of correspondence the Applicant sent to the Public Body, or if there are other records which contain the Applicant's personal information. As this office stated in *Alberta Motor Association*, "applicants have a strong claim to access records of a personal nature"<sup>3</sup>; therefore, because it is not clear whether the responsive records identified by the Public Body are simply copies of the Applicant's own correspondence to the Public Body, I require the Public Body to provide the Applicant with copies of the responsive records identified in its September 13, 2018 letter.

[69] Other than providing copies of the responsive records identified in the September 13, 2018 letter, I authorize the Public Body to disregard the Applicant's access requests.

#### **Request to Disregard Future Access Requests**

[70] The Public Body also requested authorization to disregard any future requests submitted by the Applicant for the same or similar information.

[71] Authorization to disregard future access requests will be granted only in exceptional circumstances.<sup>4</sup> Although the British Columbia legislation referenced in the quote below does not contemplate abusive requests, it contemplates only unreasonable interference with the operations of a public body, the B.C. Court's comments in *Mazhero v. The Information and Privacy Commissioner of British Columbia*, remain relevant as to explaining why such an authorization is exceptional:

However, in my view, there will be situations where it would be appropriate for the Commissioner to authorize a public body to disregard all future requests for general information where the applicant has so abused his or her right of access to records that the Commissioner is able to conclude with reasonable certainty from the nature of the previous requests that any future request by the applicant would unreasonably interfere with the operations of the public body. Coultas J. gave potential examples of such situations in *Crocker* when he referred to applicants making repeated requests in bad faith or making frivolous or vexatious requests. But only in very exceptional circumstances would it be appropriate, in my view, for the Commissioner to authorize a public body to disregard all future requests for personal information (or a type of personal information).

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<sup>3</sup> Application by Alberta Motor Association for authorization to disregard an access request under section 37 of the *Personal Information Protection Act* at para 45. Available online at: [https://www.oipc.ab.ca/media/592925/Section\\_37\\_Alberta\\_Motor\\_Association\\_2010.pdf](https://www.oipc.ab.ca/media/592925/Section_37_Alberta_Motor_Association_2010.pdf)

<sup>4</sup> *Ibid.*

As a general rule, even though the Commissioner has determined that the repetitive or systematic nature of past and pending requests represents an unreasonable interference with the operations of a public body, he should not generally authorize a public body to disregard all future requests for records (or a type of records) without regard to whether any such requests will unreasonably interfere with the operations of the public body. As stated by Coultas in *Crocker*, the remedy fashioned by the Commissioner must redress the harm to the public body seeking the authorization. In attempting to minimize such harm, it is too drastic to authorize the public body to disregard all future requests for a records (or a type of records) when it is not known whether any such requests will cause unreasonable interference with the operations of the public body. This is especially so when the requests related to personal information for two reasons. First, personal information is more restricted by its nature and it is less likely that a request for personal information will unreasonably interfere with the operations of the public body. Second, the applicant has a stronger claim to have access to records of a personal nature than to general records.

- [72] I note that the Applicant raised concerns in many of her communications with my office that she did not want to lose her right to make access requests. However, the Applicant did not even remember making some of her access requests. I have already found her access requests are systematic and abusive as well as frivolous. In the exceptional circumstances of this case, I am persuaded that a brief 6-month “cooling off” period is warranted.
- [73] The Public Body stated in its submission, “[the Applicant] is adamant that she did not get the records she requested in her previous FOIP requests, she believes it is possible that the newer information she is requesting could exist and indicated ‘she would continue to submit FOIP requests until she got what she was asking for’”.
- [74] The Applicant’s stated intention of continuing to submit access requests is supported by her submission of several new access requests during the course of my review of this matter. Generally, although the time frames vary, the new access requests cover similar ground as the Applicant’s previous ones, that is, they request information she has already been provided, information that doesn’t exist, or are being used as a collateral attack to further her allegations regarding an employee of the Public Body.
- [75] Canadian courts have held that where a litigant indicates an intention to engage in future abuse of court processes, court access restrictions may be warranted. (See, for example: *Lofstrom v. Radke*, 2017 ABQB 362 at para 8; *Van Sluytman v. Muskoka (District Municipality)*, 2018 ONCA 32 at paras 23 – 24; *Templanza v. Ford*, 2018 ABQB 168 at para 120; *Rothweiler v. Payette*, 2018 ABQB 288 at paras 42 – 44; *ET v. Calgary Catholic School District No 1*, 2017 ABCA 349 at para 11). This principle is also applicable to cases where an applicant indicates an intention to engage in future abuse of access legislation.
- [76] In this case, I find based on the Applicant’s representations to the Public Body, and her actions before my office, that she is likely to continue to submit systematic and abusive,

or frivolous requests to the Public Body. Accordingly, I grant the Public Body authorization for a period of 6 months from the date of this decision to disregard any access requests submitted by the Applicant for the same or similar information.

[77] After 6 months have passed, if the Applicant makes an access request which the Public Body believes meet the criteria under section 55(1) of FOIP, it may bring another application under section 55(1) of the FOIP Act, and I will consider the relevant circumstances at that time.

Jill Clayton  
Information and Privacy Commissioner